

BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

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In the Matter of the :  
Review of the :  
Reconciliation Rider of : Case No. 20-0167-EL-RDR  
Duke Energy Ohio, Inc. :  
- - -

PROCEEDINGS

before Mr. Nicholas Walstra and Mr. Matthew Sandor,  
Attorney Examiners, at the Public Utilities  
Commission of Ohio, via Webex, called at 9:00 a.m. on  
Tuesday, May 31, 2022.

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VOLUME IV - PUBLIC TRANSCRIPT

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1 Tuesday Morning Session,  
2 May 31, 2022.

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4 EXAMINER SANDOR: Let's go on the record.  
5 We are reconvening today to continue the hearing in  
6 20-167-EL-RDR.

7 With that -- and I believe -- it appears  
8 all the parties are present, and with that I will  
9 turn it over to OCC. Ms. O'Brien, if you would like  
10 to call your witness.

11 MS. O'BRIEN: Sure. Thank you, your  
12 Honor. Good morning. OCC would like to call Devi  
13 Glick to the stand.

14 MS. GLICK: Good morning.

15 EXAMINER SANDOR: Good morning,  
16 Ms. Glick. If you could please raise your right  
17 hand.

18 (Witness sworn.)

19 EXAMINER SANDOR: Thank you.

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DEVI GLICK

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

DIRECT EXAMINATION

By Ms. O'Brien:

Q. Good morning, Ms. Glick.

A. Good morning.

Q. Do you have before you what has been  
previously marked as OCC Exhibit 2 which is the  
direct testimony public version of Devi Glick?

A. I only have the confidential one printed  
out; but, yes, I have access to both of them.

Q. Okay. And do you also -- you just said.  
Do you also have access to what's been previously  
marked in this case as OCC Exhibit 2C which is your  
confidential version of your testimony?

A. I do, yes.

Q. And did you prepare this testimony  
yourself or -- did you prepare this testimony  
yourself --

A. Yes.

Q. -- or was it prepared under your  
direction?

A. Yes.

Q. Do you have any corrections to make to

1 your testimony today?

2 A. I do not.

3 Q. Okay. And if I were to ask you the  
4 questions in your testimony today, would your answers  
5 be the same?

6 A. Yes, they would.

7 MS. O'BRIEN: Okay. Your Honors, I would  
8 like to tender Ms. Glick for cross-examination.

9 EXAMINER SANDOR: Thank you, Ms. O'Brien.

10 As everyone knows, I believe Duke filed a  
11 motion to strike, so I think it would be appropriate  
12 to take that up right now. Unless there is other  
13 proposals, I propose we just -- we conduct this  
14 process similar to how we did with Witness Haugh, I  
15 suppose with Ms. Akhbari going through the motion by  
16 category kind of going by her chart, and we'll let  
17 the parties, and OCC especially, respond to the oral  
18 memo contra.

19 MS. AKHBARI: Thank you, your Honor.  
20 That sounds good with me. The Company will mainly  
21 stand on its motion, but I'll just direct the parties  
22 to the first category of information that we cite in  
23 our motion on page 13. And there I discuss the  
24 review of future recovery of OVEC-related costs and  
25 reliance on information that cites both information

1 and statistics data that comes from outside or after  
2 the audit period in that Ms. Glick relies on numerous  
3 amounts of information or -- in her testimony that is  
4 from outside the 2019 audit period.

5 Not only is it simply outside the period,  
6 I know we've been talking frequently in this hearing  
7 about some future projections, but the Company would  
8 also just add that it's not appropriate for Ms. Glick  
9 to be making comparisons from information outside the  
10 audit period. She frequently makes comparisons to  
11 2020, 2021, and beyond.

12 Moreover, Ms. Glick makes frequent  
13 reference throughout her testimony, and I won't go  
14 through the table, if Ms. O'Brien intends to do that,  
15 that's fine, but makes frequent reference to either  
16 proposals that she has that the Commission should  
17 adopt in a going-forward capacity, she speaks to  
18 future environmental compliance, she even goes as far  
19 as to mention recommendations for how the Commission  
20 should take up and consider the LGR Rider and the  
21 audit period in LGR.

22 So given all of the references to future  
23 information that Ms. Glick makes and the fact that  
24 information is both outside the scope and prejudicial  
25 to the proceeding for the 2019 audit, the Company



1 would just stand on its motion as it relates to  
2 supporting information for the first category which  
3 begins on page 13 of the Company's motion. Thank  
4 you.

5 EXAMINER SANDOR: Ms. O'Brien.

6 MS. O'BRIEN: Sure. Before I go through  
7 the specific line references, just want to make a  
8 couple of comments. First, I think, as we discussed  
9 with Mr. Haugh, the auditor -- you know, the auditor  
10 herself makes reference to materials that are outside  
11 of the audit period and this is necessary in order to  
12 provide proper scope and context to what should have  
13 been done during the 2019 audit period. So Ms. Glick  
14 does the exact same thing. You can't just make  
15 conclusions in a vacuum in her testimony, and she has  
16 to provide the proper context in support to her  
17 testimony.

18 Two, with respect to specific  
19 recommendations going forward, the auditor makes a  
20 number of recommendations going forward in the audit  
21 report. Those recommendations are perfectly proper  
22 for Ms. Glick's testimony in light of the audit  
23 report as well.

24 With respect to environmental compliance  
25 issues, there's a whole section in the audit report

1 regarding environmental compliance, and again,  
2 Ms. Glick is making recommendations as to what should  
3 be considered on a going-forward basis and what  
4 should have been considered in the 2019 audit period.

5 Now turning to AEP's -- I'm sorry, I get  
6 them confused, Duke's list here. Starting with on  
7 page 15 of Duke's motion, they seek to strike page 7,  
8 line 7 through 14. This testimony is relevant to the  
9 fact that Duke has not acted within the audit period  
10 to mitigate environmental costs from the OVEC plants  
11 that are charged to consumers. As I stated, the  
12 auditor has also made similar forward-looking  
13 recommendations. Therefore, Ms. Glick's testimony is  
14 proper.

15 Page 7, lines 25 to 27 --

16 MS. AKHBARI: Can I make one response to  
17 the last citation from Ms. O'Brien or if she can go  
18 through the table? I'm not sure how your Honor would  
19 find the most constructive.

20 MS. O'BRIEN: Actually if I could just  
21 continue. If I could get through this and  
22 Ms. Akhbari could make her response.

23 EXAMINER SANDOR: Let's do that.

24 MS. O'BRIEN: Okay.

25 MS. AKHBARI: Okay. I will stack up.

1 Thank you, Ms. O'Brien. I appreciate your  
2 consideration.

3 Just one response, so page 7 -- I'm  
4 sorry, Ms. O'Brien. Did I misunderstand you?

5 MS. O'BRIEN: I guess I'm confused what  
6 we are doing here.

7 EXAMINER SANDOR: We were going to  
8 actually go with Ms. O'Brien's suggestion of going  
9 through and then going back.

10 MS. AKHBARI: Okay.

11 EXAMINER SANDOR: Let's track back. No.  
12 I want to hear the response for each individual one,  
13 and then we can keep it in a capsule.

14 MS. AKHBARI: Okay. Thank you, your  
15 Honor. I have just one small comment. Page 7, lines  
16 7 through 14, is discussing significant costs to  
17 comply with USEPA GCR and ELG rules. The Company  
18 would just note that any actions towards compliance  
19 or changes in OVEC's system in -- as it relates to  
20 both of these, the actual activities would not have  
21 taken place until after the audit period had  
22 concluded in 2019. And so for that reason we believe  
23 it is not germane to the proceeding.

24 EXAMINER SANDOR: Okay. Thank you. And,  
25 Ms. O'Brien, you can proceed. I will make the

1 rulings at the end.

2 MS. O'BRIEN: Okay. And just to respond  
3 to that as well, again, you can't look at 2019 in a  
4 vacuum. You have to look at acts both before and  
5 after the audit period to determine what is prudent  
6 for 2019.

7 Okay. So moving on to page 7, lines 25  
8 through 27, this is Ms. Glick's expert opinion  
9 relevant to what the PUCO should do in this case  
10 regarding the operation of the OVEC plants. Again,  
11 the auditor made a number of forward-looking  
12 recommendations that the PUCO should consider.  
13 Furthermore, the PUCO can afford whatever weight to  
14 Ms. Glick's testimony it desires.

15 MS. AKHBARI: The Company would just  
16 stand on the information in its motion. Thank you,  
17 your Honor.

18 MS. O'BRIEN: Okay. Moving to page 7,  
19 lines 28, through page 8, line 6, again, this is  
20 similar to what I just stated. This is Ms. Glick's  
21 expert opinion. The PUCO can afford to it whatever  
22 weight it desires. The testimony should not be  
23 stricken.

24 MS. AKHBARI: Your Honor, I would just  
25 note in response to page 7, line 28, through 8 to 6,

1 that what Ms. Glick is proposing, her expert opinion,  
2 would essentially amount to an advisory opinion on a  
3 Commission's future consideration of an ESP that's  
4 not been filed yet. Clearly outside the audit period  
5 and outside the scope of the audit.

6 EXAMINER SANDOR: Okay. Thank you.

7 MS. O'BRIEN: Okay. Moving to page 8,  
8 lines 7 through 13, again, Ms. -- Ms. Glick is  
9 perfectly -- it's perfectly appropriate for Ms. Glick  
10 to make recommendations to the similar auditor's  
11 recommendations with respect to what she thinks the  
12 PUCO should do in the future. You know, again, the  
13 PUCO can afford to Ms. Glick's testimony whatever  
14 weight it desires. It should not be stricken. It  
15 should be in the public record.

16 MS. AKHBARI: I just have one small  
17 comment and that is the LGR reference I was  
18 mentioning earlier on page 8 of Ms. Glick's  
19 testimony, lines 7 through 13, the LGR is a unique  
20 ongoing proceeding currently before the Commission.  
21 Ms. Glick is free to make testimony in that case or  
22 recommendations, but it's not appropriate at this  
23 time to hear LGR-related recommendations or material  
24 in the underlying matter.

25 MS. O'BRIEN: And again, I would just add

1 that the auditor does make reference to the LGR  
2 proceedings as well. So it should be appropriate for  
3 Ms. Glick to comment on them too.

4 Okay. Moving on to page 8, line 14  
5 through line 16, this is -- this -- I would rely on  
6 the comments I just made previously with respect to  
7 the previous line strike.

8 EXAMINER SANDOR: Okay.

9 MS. O'BRIEN: Okay. Page 12, line 13,  
10 through page 14, line 5, here they -- here Duke is  
11 looking to strike information regarding the  
12 retirement status of other coal-fired plants which is  
13 provided to compare to the OVEC plants. This  
14 information is directly relevant to whether Duke  
15 acted prudently in continuing to run the OVEC plants  
16 during the 2019 audit period.

17 Also, regardless of whether the  
18 materials -- the materials themselves, the  
19 information that went into that figure was developed  
20 after the audit period. The retirement status of  
21 other coal-fired plants provide relevant information  
22 regarding Duke's operation of the OVEC plants in  
23 2019. You know, this -- this rationale that, you  
24 know, no one can rely on any sort of information that  
25 happened to be compiled after 2019 just really,

1 frankly, makes no sense. You know, under that  
2 rationale everyone's testimony in this case would be  
3 stricken because it was "developed after 2019" and  
4 that includes auditor recommendations as well.

5 EXAMINER SANDOR: Thank you.

6 MS. AKHBARI: Your Honor, I just have one  
7 short response and that is that the question of  
8 retirement status of plants -- other plants within,  
9 without PJM all over the country is not relevant to  
10 the underlying proceeding. And the reason that  
11 looking to information developed after 2019 to make a  
12 prudence determination is not -- is not appropriate  
13 is that as we've established in this proceeding,  
14 energy prices change frequently, often, and can  
15 sometimes be volatile. You know, doing a comparison  
16 of 2020 information or 2021 to 2019, as we all know  
17 sitting here, these are very different today than  
18 they were three years ago.

19 So the Company would just stand on its  
20 motion in that regard.

21 MS. O'BRIEN: And I would just add that's  
22 exactly why the auditor testified the other day that  
23 you have to look at different periods of time in  
24 order to determine whether something was prudent at a  
25 specific point in time, for example, the 2019 audit

1 process. I would just add we can't -- you can't have  
2 a proceeding where the auditor can make  
3 recommendations, can rely on information outside the  
4 audit period, but nobody else is allowed to. That is  
5 patently unfair.

6 So with that I'll move on to I believe we  
7 are at page 24, line 1 through 25, line 2. Again,  
8 this is information that concerns excess costs under  
9 the PSR in 2019 relative to different benchmarks.  
10 Duke again complains that it's based off info that is  
11 "developed after 2019," but again, the information  
12 doesn't have to be developed within the precise --  
13 within January to December 2019 to relate to what was  
14 done in 2019. For that reason the testimony there  
15 should not be stricken.

16 MS. AKHBARI: Your Honor, we would just  
17 stand on our motion in that regard. Thank you.

18 MS. O'BRIEN: Okay. So moving on to page  
19 25, line 5, through page 26, line 4, again, this is  
20 Duke objects again to the extent Ms. Glick used 2020  
21 information to compare prices under the PSR. 2019  
22 can't be viewed in a vacuum. The auditor relies on  
23 information both inside and outside the audit period.  
24 Ms. Glick provides this information for context in  
25 determining how to operate the OVEC plants. Duke



1 should look at prior information and forecast to make  
2 decisions. This info is plainly relevant to show  
3 context and comparison of the 2019 costs.

4 MS. AKHBARI: Your Honor, I would just  
5 respond that I know Ms. O'Brien makes much of the  
6 auditor relying on information outside the 2019  
7 period. All of the -- that head-to-head comparison  
8 that the auditor makes within the audit report are  
9 2019 pricing information compared to what transpired  
10 with OVEC. For that reason and for all the reasons  
11 we cite in our motion, we would just argue this  
12 information is not relevant and is prejudicial and  
13 not illustrative of the audit period.

14 MS. O'BRIEN: And then I would just  
15 counter with that it would be extremely prejudicial  
16 and unfair to the consumers who have to subsidize the  
17 OVEC plans to not have this information in the  
18 record.

19 Moving forward to page 26, line 12, to  
20 page 27, line 6, again, this information is for  
21 context, March 2020 prices compared to 2019 costs.  
22 The testimony should not be stricken. Again, the  
23 PUCO can afford whatever weight to Ms. Glick's  
24 testimony it wants as the trier of fact. You know,  
25 and I would also add that the auditor specifically

1 discusses levelized costs of new entry in the audit  
2 report. Ms. Glick is -- Ms. Glick's testimony is  
3 perfectly appropriate on that subject as well.

4 MS. AKHBARI: Your Honor, we will stand  
5 on our motion but just also respond that discussion  
6 of levelized costs of new entry outside the audit  
7 period is -- is -- while CONE may be discussed by the  
8 auditor, she certainly did not discuss the time  
9 period outside the audit period as it relates to  
10 CONE. And for that reason this comparison is  
11 prejudicial and not useful to the Commission's  
12 consideration of this matter.

13 EXAMINER SANDOR: Thank you.

14 MS. O'BRIEN: And I would just add I  
15 don't know that that's exactly true. I would have to  
16 go back and look specifically at the audit report,  
17 but I -- my silence here is not agreeing with Duke on  
18 that point.

19 Moving on to page 27, line 16, through  
20 page 28, line 9, this is question and answer 29 they  
21 seek to strike. You know, again, trends are relevant  
22 to show whether Duke's actions in 2019 were prudent.  
23 For example, a merchant generator would clearly look  
24 at trends and forecasts to determine prudent business  
25 decisions within a specific time period.

1           In addition, you know, the auditor also  
2 testified that you have to look at information  
3 outside the audit period in order to make  
4 determinations for a specific period of time. For  
5 this reason that testimony should not be stricken.

6           MS. AKHBARI: Nothing from me, your  
7 Honor.

8           EXAMINER SANDOR: Okay. Thank you.

9           MS. O'BRIEN: Okay. Page 28, lines 11  
10 through 14, this is -- Duke seeks to strike Q and  
11 A30. Again, this discusses trends that are relevant  
12 to whether Duke's actions in 2019 were prudent. I  
13 think it's patently unfair for Duke to try to strike  
14 huge portions of Ms. Glick's testimony to basically  
15 deny consumers a voice on this issue. It's unfair  
16 that the auditor can do -- make -- make  
17 recommendations and conclusions using information  
18 outside the audit period, but apparently no one else  
19 is. So I would respectfully request that Duke's  
20 motion to strike on this be denied as well.

21           MS. AKHBARI: Your Honor, I have just one  
22 response, and question 30 really wraps up the entire  
23 section we were discussing. You know, Ms. Glick here  
24 states -- in Q and A30 she specifically addresses her  
25 testimony to future years, in future years the amount

1 by which OVEC's costs exceed PJM market prices is  
2 expected to increase. Q and A30 really highlights  
3 what's going on in this entire section, OCC's attempt  
4 to get additional information regarding future years  
5 into the record, years that do not relate to or  
6 compare fairly with the 2019 audit period.

7 MS. O'BRIEN: And I would also add as  
8 well that as an expert witness, Ms. Glick has to  
9 provide the data and information she's basing her  
10 expert opinions on. If this information were absent  
11 from her testimony, we would get accused of providing  
12 baseless testimony and baseless conclusions. So for  
13 that additional reason, Duke's motion to strike  
14 should be denied.

15 Okay. So I think we're on -- are we on  
16 page 49, line 12 to line 14?

17 EXAMINER SANDOR: Yes.

18 MS. O'BRIEN: Again, this is Ms. Glick's  
19 opinion, expert opinion of what a prudent operator  
20 would have done in the 2019 period. You know, the  
21 PUCO can afford whatever weight it desires to this  
22 testimony. And it should remain in the record.

23 MS. AKHBARI: We just stand on our motion  
24 in this regard, your Honor.

25 MS. O'BRIEN: Okay. Page 51, line 6 to

1 line 13, you know, again, these are issues to what  
2 Ms. -- Ms. Glick's opinion of what a prudent operator  
3 should do, should consider, and what Duke did not  
4 consider or do in 2019. Again, the auditor herself  
5 made recommendations regarding the operation of  
6 plants in the future. Ms. Glick should be entitled  
7 to provide similar testimony.

8 MS. AKHBARI: Your Honor, we would just  
9 respond and highlight the fact that in Q and A60  
10 Ms. Glick is specifically addressing the question of  
11 operation of the OVEC plants beyond 2028. It's for  
12 that reason, all the reasons in our motion that we  
13 don't believe Q and A60 is an appropriate conclusion  
14 in Ms. Glick's testimony.

15 MS. O'BRIEN: Okay. Moving on to page  
16 52, line 7 through line 13, and this is Q and A61, I  
17 believe, again, these are Ms. Glick's recommendations  
18 regarding the operation of the OVEC plants based on  
19 Ms. Glick's expertise. They are relevant to this  
20 case and -- and the issues of Duke's -- whether Duke  
21 prudently operated the plants in 2019.

22 Again, the audit report makes  
23 recommendation for improvements in the future and  
24 that's exactly what Ms. Glick does here. The auditor  
25 also states that she relied on 2020 information in

1 making her conclusions and recommendations.

2 MS. AKHBARI: Your Honor, I think we hit  
3 on this topic earlier, but from the Company's  
4 perspective, Q and A60 represents Ms. Glick's  
5 recommendation that the PUCO, you know, issue an  
6 advisory opinion on what it plans to do or not do in  
7 the future, what it plans to do or not do in future  
8 years is governed by the LGR which is, again, an  
9 ongoing proceeding.

10 Ms. Glick's testimony is prejudicial in  
11 the underlying matter in that she is asking the PUCO  
12 to put Duke on notice as to what it plans to do with  
13 environmental permitting, OVEC in the future, and its  
14 recommendations there.

15 For all those reasons in our motion, we  
16 just stand on the initial facts contained therein.

17 MS. O'BRIEN: Okay. Moving on to page  
18 52, line 15 to line 53, 8, again, these are -- I'll  
19 just pull up -- give me one second. Oh, yeah. These  
20 are -- again, these are -- these are Ms. -- these are  
21 Ms. Glick's recommendations as to her expertise as to  
22 whether or not Duke acted prudently within the audit  
23 period. I don't understand why this frankly --  
24 Duke's rationale for striking this quite frankly  
25 doesn't really make any sense. Again, they say that

1 the costs for future investments or environmental  
2 compliance are not properly before the Commission at  
3 this time and Rider PSR 2019 audit. Again, this is  
4 outside the scope. You know, the auditor addressed  
5 these issues in the audit report as well. It's  
6 perfectly appropriate for Ms. Glick to address them  
7 in her testimony as well. This information should be  
8 in the record and should not be stricken.

9 MS. AKHBARI: And I would respond mostly  
10 stand on our motion. I would just note that the  
11 question of a retirement date for the OVEC plants or  
12 future retirement date is not, you know, part of the  
13 consideration of costs, prudent costs, or actions  
14 taken by the company OVEC in the 2019 period. That's  
15 the reason that we are seeking to strike Q and A6.

16 MS. O'BRIEN: And I would just add to  
17 that too it's OCC's position, as Mr. Haugh testified  
18 on Friday, that part of OCC's position is that  
19 perhaps these -- the OVEC plants should have been  
20 retired as part of a prudent decision and shouldn't  
21 have been run at all. So, you know, Ms. Glick's  
22 testimony to that effect is perfectly relevant and  
23 appropriate.

24 EXAMINER SANDOR: Okay. Thank you. I  
25 will actually note right now I am about to have a

1 computer restart, an unavoidable one, so let's go off  
2 the record.

3 (Recess taken.)

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

6 Okay. We are back on the record here  
7 after I had to fix some technology issues. I  
8 believe, Ms. Bojko, you wanted to offer a response to  
9 the motions to strike?

10 MS. BOJKO: Yes, thank you, your Honor.  
11 OMAEG opposes the motion to strike. I think there  
12 was some general themes, so I won't go through each  
13 one. I would just like to point out on the record  
14 that when reviewing prudence of OVEC's decisions as  
15 well as Duke's decision, you need to look at actions  
16 taken during the audit period, and you need to  
17 compare those to make -- to other periods in time in  
18 order to render a decision of whether something was  
19 or was not prudent.

20 As Ms. O'Brien noted, Ohio Rules of  
21 Evidence 702 to 705 allow experts to consider other  
22 expert's testimony, learned treatises, documents, and  
23 other data in the industry in order to explain what  
24 they relied upon and to form an opinion as long as  
25 they disclose that information of those underlying



1 facts that they are relied on. And Rule 702 requires  
2 them to state those factual bases for an opinion  
3 which is what Ms. Glick did here.

4 I would also point out that the auditor  
5 made forward-looking recommendations. Testimony that  
6 was to be filed in this proceeding is based on the  
7 audit report and whether experts and parties support  
8 or oppose the audit report and that would include  
9 forward-looking decisions that the auditor has  
10 recommended.

11 And then, lastly, I would just note that  
12 Duke's own witness, Mr. Swez, also testified to  
13 information that was outside the audit period. He  
14 specifically testified to 2020 information, and he  
15 specifically relied on that information to say that  
16 OVEC already has the actuals and that OVEC can do  
17 seven things with regard to commitment strategy and,  
18 thus, because they could do these in the future there  
19 was no need or reason for the auditor to recommend a  
20 change to the must-run strategy or any kind of  
21 commitment strategy processes. And the auditor  
22 actually relied on some of that in her audit report  
23 so a bit disingenuous for Duke to now try to strike  
24 other parties' expert testimony when their own party  
25 had that in it as well and that was challenged and

1 the court let that stand.

2 So, similarly, we believe that this  
3 information should be allowed in the record. It's  
4 the basis of the expert's opinion, and it also speaks  
5 directly to the audit report and the prudence of the  
6 decisions made by OVEC and Duke which is the whole  
7 point of the audit. Thank you.

8 EXAMINER SANDOR: Okay. Anyone else?

9 Okay. Hearing none, so ready to make a  
10 ruling on this -- the chart. I will note that some  
11 of these, I believe, will be -- some of the same  
12 lines are mentioned further along in other categories  
13 so this will just pertain at least to the reasoning  
14 given here by Duke. Okay. So for the first set  
15 line -- or page 7, line 7 through 14, we will be  
16 granting the motion to strike.

17 From page 7, line 25 to 27, I will be  
18 denying the motion to strike.

19 And I will also mention on the forefront  
20 with anything that's considered, you know,  
21 referencing 2020, if we make rulings opposing it,  
22 then -- or, I'm sorry, denying the motions to strike  
23 and there is reference to 2020 material, it does not  
24 limit us in the future to make decisions about the  
25 scope of the proceeding and further objections.

1                   Line -- or page 7, line 28 through page  
2                   8, line 6, we'll be denying the motion to strike.

3                   Page 8, line 7 through 13, we'll be  
4                   granting the motion to strike.

5                   Page 8, lines 14 through 16, we'll be  
6                   denying the motion to strike.

7                   Page 12, line 13 through page 14, line 5,  
8                   we'll be denying the motion to strike.

9                   Then page 24, line 1, through page 25,  
10                  line 2, we'll be denying the motion to strike.

11                  Page 25, line 5, through page 26, line 4,  
12                  we'll be denying the motion to strike.

13                  Page 26, line 12, through page 27, line  
14                  6, we'll be denying the motion to strike.

15                  Page 27, line 8 through 14, we'll be  
16                  denying the motion to strike.

17                  Page 27, line 16, through page 28, line  
18                  9, we'll be denying the motion to strike.

19                  Page 28, lines 11 through 14, we'll be  
20                  denying the motion to strike.

21                  Page 49, lines 12 through 14, we'll be  
22                  granting the motion to strike.

23                  MS. BOJKO: I'm sorry, your Honor. May I  
24                  have that one again?

25                  EXAMINER SANDOR: Yes. Page 49, lines 12

1 through 14.

2 MS. BOJKO: Thank you.

3 EXAMINER SANDOR: Then page 51, line 6  
4 through 13, we'll be granting the motion to strike.

5 MS. BOJKO: Ending with "plants," your  
6 Honor?

7 EXAMINER SANDOR: Let me double-check  
8 here. I have two different sheets I'm working off  
9 of. Yes, yes, ending -- aligning with their motion  
10 so ending with "the OVEC plants" on line 13.

11 MS. BOJKO: Thank you.

12 EXAMINER SANDOR: I believe the last one  
13 is page 52, line 15, through page 53, line 8, we are  
14 denying the motion to strike.

15 And now I believe we can --

16 MS. AKHBARI: Your Honor, I apologize.  
17 51 -- okay. I see. Never mind.

18 EXAMINER SANDOR: Okay.

19 MS. AKHBARI: No problem. Thank you.

20 MS. O'BRIEN: I apologize, your Honor.  
21 What was your ruling on page 52, line 7 to 13?

22 EXAMINER SANDOR: 7 to line 13, we are  
23 granting the motion to strike through "the OVEC  
24 plants" on line 13.

25 MS. O'BRIEN: Okay. Thank you.

1 EXAMINER SANDOR: And also just for  
2 regarding the motions to strike, we believe that we  
3 denied in those different areas that there are --  
4 that they are relevant and provide context and the  
5 Commission can provide -- or give it the weight it  
6 deserves.

7 Now moving on to the second category.

8 MS. AKHBARI: Thank you, your Honor.  
9 Sorry. Just getting my wits about me. In the second  
10 category the Company challenges testimony where  
11 Ms. Glick discusses or challenged the Commission's  
12 prior decision to include the OVEC rider, Rider PSR.  
13 The Commission's underlying decision related to the  
14 population of Rider PSR in Case No. 17-263 is not  
15 appropriate for collateral attack via the testimony  
16 of Ms. Glick.

17 And this comes in a number of ways but  
18 some of those include, you know, seeking to  
19 relitigate Rider PSR, posing specific attack upon  
20 population of costs to Rider PSR, all -- this issue  
21 has been long since settled by the Commission, is not  
22 proper in testimony by Ms. Glick at this time. I  
23 guess the Company will stand on its motion and just  
24 respond if Ms. O'Brien has specifics she wants to get  
25 into in the chart that starts on page 21. Thank you.

1 MS. O'BRIEN: Thank you, your Honor. I  
2 would disagree with Ms. Akhbari. This issue has not  
3 been settled by the Commission. That's the entire  
4 purpose for these audit proceedings.

5 With respect to whether or not Duke's  
6 costs are -- Duke's operation of the OVEC plants  
7 within a specific year were or were not prudent, you  
8 know, this -- we discussed this on Friday. Duke is  
9 claiming that we are making -- that Ms. Glick is  
10 making an improper attempt to relitigate the PPA  
11 Rider. You know, that's simply not true.

12 Again, we don't dispute that the PPA  
13 Rider has been approved by the Commission. You know,  
14 what OCC takes issue with are costs that Duke charges  
15 to consumers through the rider during the audit  
16 period. Again, these are two different things and  
17 Duke is conflating them to serve their own purpose.  
18 OCC's testimony plainly addresses what Duke should be  
19 allowed to recover for the 2019 audit period, and it  
20 is perfectly reasonable for OCC to argue that Duke  
21 should re -- should be entitled to recover zero under  
22 the PSR rider for that audit period based upon their  
23 failure to prudently operate the Duke -- the OVEC  
24 plants.

25 Again, Ms. Glick's testimony provides

1 context and background to support her conclusions.  
 2 So this is not an improper attempt to litigate PSR.  
 3 That's the whole -- there is a reason why we are here  
 4 in this audit proceeding and we are allowed to  
 5 provide conclusions and recommendations in that  
 6 regard. Thank you.

7 EXAMINER SANDOR: Thank you.

8 MS. O'BRIEN: So with that if you want me  
 9 to -- I can start with page 4, let's see, lines 11  
 10 through 16, again, this -- Duke argues we are trying  
 11 to improperly litigate the PSR. That's not true. It  
 12 just -- Ms. Glick specifically states that the  
 13 purpose of her testimony is to evaluate costs under  
 14 the PSR for 2019. So I -- her testimony is pretty  
 15 clear there. That's not an improper attack of the  
 16 Commission's determination of the PSR.

17 MS. AKHBARI: Your Honor, the Company  
 18 would just stand on its motion and citation.

19 MS. O'BRIEN: Moving to page 4, lines 18  
 20 through page 5, line 2, again -- again, you know,  
 21 this is not an improper attack on the PSR in  
 22 determining whether 2019 acts were prudent looking at  
 23 what was initially projected versus actual is  
 24 relevant to this case and whether Duke acted  
 25 prudently within the audit period.

1 MS. AKHBARI: Same statement from me,  
2 your Honor.

3 MS. O'BRIEN: Page 6, line 17 through  
4 line 20, again, same argument. This evidence is  
5 relevant to whether the plants were operated  
6 prudently during the audit period.

7 MS. AKHBARI: Same statement from me,  
8 your Honor, both of these --

9 EXAMINER SANDOR: Okay.

10 MS. AKHBARI: -- entries.

11 MS. O'BRIEN: Next, page 7, line 19  
12 through line 21, her testimony here refers to the  
13 precise issue we are litigating in this case. I  
14 mean, I get that Duke doesn't like Ms. Glick's  
15 conclusion but that is simply not a reason to strike  
16 it. And again, Duke's attempts to strike broad  
17 swaths of OCC's testimony and deny consumers their  
18 voice, consumers who have to subsidize the OVEC  
19 plants, is just patently unfair and improper, and the  
20 testimony should stand.

21 MS. AKHBARI: Your Honor, I would just  
22 note on page 7, lines 19 through 21, Ms. O'Brien  
23 characterizes Ms. Glick's testimony or description of  
24 her testimony here as the reason that we're in the  
25 audit period. However, I would note on page 7, lines



1 19 through 21, Ms. Glick is not taking issue with any  
 2 particular costs or actions or activities by Duke  
 3 beyond the fact that Duke populated the Rider PSR.  
 4 She states Duke acted imprudently by including these  
 5 costs. And when she states "these costs," she's  
 6 talking about all \$24.6 million in costs in Rider  
 7 PSR. She is not picking apart and speaking to  
 8 individual actions by the Company. That's the reason  
 9 for the inclusion of this entry here on the table.

10 MS. O'BRIEN: And again, your Honor,  
 11 it's -- we can take the position that Duke shouldn't  
 12 be able to recover this amount. So, you know, this  
 13 is -- this is completely proper. We are allowed to  
 14 take that position that they should be denied  
 15 24.6 million because they did not operate the OVEC  
 16 plants prudently. That's not -- that's not  
 17 re-litigating the PSR rider.

18 Moving on to line -- or page 21, line 10,  
 19 through page 29, line 16, you know, here Ms. Glick  
 20 provides testimony regarding a number of alternative  
 21 benchmarks that provide context and a framework to  
 22 show that the costs under the PSR in 2019 were very  
 23 high. She even states in her conclusion where it  
 24 says that 2019 costs are extremely high by any  
 25 reasonable measure. This is not re-litigating the

1 case. It is completely relevant to show how the 2019  
2 costs were unreasonable and serve to support  
3 Ms. Glick's conclusion in that regard. Again,  
4 Ms. Glick is an expert witness, has to provide data  
5 and information that she relied on in rendering her  
6 opinions and conclusions.

7 MS. AKHBARI: Your Honor, I would just  
8 note that the question of whether or not Duke  
9 performed a competitive bidding process prior to  
10 selection of the OVEC plants as a price hedge to the  
11 SSO price, that is an issue squarely covered and  
12 addressed in Case No. 17-1263. It's not -- the  
13 question of what did or didn't happen prior to OVEC's  
14 inclusion in Rider PSR is not an issue for the  
15 auditor. It's not a question for the proceeding that  
16 we are here on today.

17 This information is square -- squarely  
18 within the Commission's prior consideration of its  
19 approval of Rider PSR. So for that reason we would  
20 argue that testimony addressing competitive bidding  
21 process or selections that could have -- could have  
22 been made but were not made prior to the population  
23 of Rider PSR's approval is really not within the  
24 Commission's consideration of the underlying audit.

25 MS. O'BRIEN: And, your Honor, we had

1 testimony from Michael Haugh on Friday stating that,  
2 you know, Duke could have considered a competitive  
3 bidding process at a different point in time, not  
4 just before the creation of Rider PSR. So it is  
5 completely relevant to this case, and it should stand  
6 in Ms. Glick's testimony.

7 Okay. So I think now we are on page 30,  
8 line 1, through 33, line 11. Here Duke seeks to cut  
9 another broad portion of Ms. Glick's testimony but  
10 really provides no specific objections except that  
11 Duke doesn't believe it's an appropriate topic for  
12 this proceeding. You know, the PUCO is -- is the  
13 entity that should be determining what is and is not  
14 appropriate for this proceeding. Again, this  
15 information is relevant to show how the 2019 costs  
16 were unreasonable and serve to support Ms. Glick's  
17 conclusion in that regard. OCC is not trying to  
18 re-litigate the PSR rider, and Ms. Glick's testimony  
19 should stand.

20 EXAMINER SANDOR: Okay.

21 MS. AKHBARI: Your Honor, I would just --  
22 we would stand on our motion in regard to this  
23 testimony.

24 MS. O'BRIEN: Okay. Page 49, line 8  
25 through 10, okay, this -- this testimony demonstrates

1 that Duke acted imprudently for the 2019 period. You  
 2 know, when faced with continued increased costs of  
 3 the OVEC plants, Duke could have considered other  
 4 options as a hedge. Again, this is not some sort of  
 5 collateral attack on the PSR. We are here to  
 6 determine whether or not Duke's actions within the  
 7 2019 audit period were prudent and that's what Ms. --  
 8 Ms. Glick is doing through her testimony. So it  
 9 should not be stricken. Thank you.

10 MS. AKHBARI: Your Honor, could I ask  
 11 just if other parties could chime in at this time and  
 12 then I can provide some final context on the motion,  
 13 if necessary?

14 EXAMINER SANDOR: Are there any other  
 15 parties that would like to comment regarding these?

16 MS. BOJKO: Yes, your Honor, briefly. As  
 17 we argued on I think it was Thursday or Friday of  
 18 last week, the Commission's prior decisions inform an  
 19 expert opinion in an expert witness's testimony as to  
 20 what constitutes prudent costs and reasonableness in  
 21 the context of Rider PSR during the audit period and  
 22 what costs at issue in this proceeding should be  
 23 disallowed by the Commission.

24 The Commission's orders have rules of  
 25 engagement, so to speak, with regard to the prudence

1 of Rider PSR. And the parties have an opportunity to  
 2 challenge or request disallowance of certain costs or  
 3 all costs through the audit period. And that's what  
 4 we are doing here. So similar to the rulings made  
 5 last week of denying striking anything with regard to  
 6 whether or not a witness talked about the startup of  
 7 Rider PSR or the initial establishment of Rider PSR,  
 8 similarly those motions to strike should be denied in  
 9 this case as the witness is merely explaining how  
 10 their opinion was informed by the Commission  
 11 decisions and is not trying to re-litigate the prior  
 12 decisions and is making the recommendation that all  
 13 costs not be allowed, excuse me, which is certainly  
 14 within the purview and scope of the case. Thank you,  
 15 your Honor.

16 EXAMINER SANDOR: Okay. Anyone else  
 17 before I hand it back to Ms. Akhbari?

18 Okay. Hearing none, Ms. Akhbari.

19 MS. AKHBARI: Your Honor, we would just  
 20 stand on the text of our motion as it relates to the  
 21 second category of information for Ms. Glick. Thank  
 22 you.

23 EXAMINER SANDOR: Okay. Thank you.

24 Okay. Regarding the second category  
 25 after hearing everyone's arguments, we are actually

1 going to rule -- kind of short circuit we are going  
2 to rule to deny the motions to strike and for this  
3 entire category. So let's move on to the third  
4 category.

5 MS. AKHBARI: Your Honor, the third and  
6 final category that the Company seeks to strike from  
7 Ms. Glick's prefiled testimony represents testimony  
8 where Ms. Glick relies upon hearsay or information  
9 from other proceedings, even going so far as to  
10 wholesale adopt that information and attach it to her  
11 testimony.

12 Additionally, Ms. Haugh [sic] relies on  
13 the inclusions of references to AEP's audit  
14 proceeding that were summarily stricken from  
15 Mr. Haugh's testimony on Friday. We would ask -- and  
16 this would be at page 21, lines 1 through 8.

17 Moreover, Ms. Glick goes on to attach  
18 declarations from the FirstEnergy Services'  
19 bankruptcy proceeding. Her testimony, this is a bid  
20 to have the Commission review that case in the  
21 context of Rider PSR. We would argue that the  
22 attachments as well as the testimony that reference  
23 or cite to those attachments and information in the  
24 table be stricken as well. We don't believe that her  
25 reliance or incorporation of that information is

1 appropriate for the underlying matter, and it's  
2 certainly outside the scope of the audit.

3 EXAMINER SANDOR: Okay. Ms. O'Brien?

4 MS. O'BRIEN: I just make the general  
5 comments, you know, Duke objects to Ms. Glick's  
6 testimony to the extent it references materials  
7 attached to her testimony from the FES bankruptcy and  
8 the Judah Rose analysis. I believe they seek to  
9 strike them on hearsay grounds. The declarations  
10 attached to the testimony are actually sworn  
11 declarations admissible under hearsay exception  
12 804(b)(1). Actually excluded rather, I believe.

13 And then, you know, Duke objects to  
14 Ms. Glick's testimony to the extent she's been  
15 informed by her participation in over -- other OVEC  
16 cases, you know, she -- as an expert witness, she's  
17 allowed to review other materials, other matters,  
18 things of that nature, and use them to inform her  
19 recommendations and conclusions in this case.

20 With respect to the AEP draft audit  
21 report, OCC renews its argument that statements  
22 regarding that draft audit report are statements by  
23 party opponents. They are specifically excluded from  
24 hearsay, and although I realize the AE's ruling on  
25 Friday regarding those statements, we would just

1 renew our argument in that regard.

2 EXAMINER SANDOR: Okay. Anything else?

3 Ms. Bojko?

4 MS. BOJKO: Thank you, your Honor. Just  
5 previously note admissions of party opponent are not  
6 hearsay but that in addition to that, Ohio Rules of  
7 Evidence, again, 702 to 705, allow experts to  
8 consider other experts' testimony, learned treaties,  
9 documents, and other data that the experts may rely  
10 upon and then to form an opinion based on what  
11 they're reviewing and lying -- relying on.

12 So I believe that that is the information  
13 that's contained herein, so OMAEG opposes the motion  
14 to strike with regard to this category. Thank you,  
15 your Honor.

16 MR. WYGONESKI: Your Honor, Kroger would  
17 support the arguments made by OCC and OMAEG in  
18 opposition to the motion to strike.

19 EXAMINER SANDOR: Thank you. Anyone  
20 else?

21 Okay. Hearing none, Ms. Akhbari, any  
22 response?

23 MS. AKHBARI: Sure, your Honor.  
24 Ms. O'Brien as it relates to DG-2 and DG-3, she said  
25 the hearsay exception, and correct me if I am wrong,



1 804(b)(1) which would be former testimony. The  
 2 Company would just note former testimony -- for this  
 3 exception to apply, the testimony needed to be given  
 4 at trial or hearing or lawful deposition and needs to  
 5 be offered against a party who had an opportunity and  
 6 similar motive to develop it by cross, direct, or  
 7 redirect examination.

8 Nothing in DG-2 or DG-3 -- I would note  
 9 that both DG-2 and 3 Duke Energy Ohio was not a party  
 10 interest in the proceeding, the underlying  
 11 proceeding. That is the reason for our motion as it  
 12 relates to those two attachments. We had no  
 13 opportunity to direct, cross, or redirect -- perform  
 14 redirect examination as it relates to both of those  
 15 attachments. 804(b)(1), due to these reasons,  
 16 clearly not applicable, and Ms. O'Brien offered no  
 17 other reasoning for why those -- those attachments  
 18 should be saved in the current context.

19 To Ms. Bojko's argument that experts can  
 20 consider other data, 702 to 705, you know, the  
 21 Company would simply argue that Ms. Glick could  
 22 consider it. She should say where she got that  
 23 information, but the wholesale adoption and inclusion  
 24 of those attachments in DG-2 and 3 is not appropriate  
 25 for the Commission. It's not appropriate

1 incorporation into the underlying record. Ms. Glick  
2 can cite where she obtained information. Those are  
3 public records. She could cite the record, but  
4 wholesale adoption, inclusion, and attachment to  
5 Ms. Glick's testimony is wholly inappropriate as it  
6 relates to DG-2 and 3 as well.

7 Likewise, references to FirstEnergy  
8 Solution's bankruptcy proceeding and projections as  
9 relates to Rider PSR, you know, Duke was not a party  
10 to that case, had no opportunity to cross or  
11 participate in that case. And as I stated  
12 previously, on page 21 of Ms. Glick's testimony,  
13 lines 1 through 8, this is the exact information that  
14 the Commission found on Friday should be stricken  
15 from Mr. Haugh's testimony. Ms. Glick even sites  
16 Mr. Haugh directly with regard to the AEP draft audit  
17 in his testimony there. For these reasons the  
18 Company believes this information should be stricken.

19 MS. O'BRIEN: And, your Honor, if I may  
20 just add one thing because I think Ms. Akhbari  
21 misrepresented what I said because I clearly stated  
22 that in addition, the attachments to Ms. Glick's  
23 testimony are -- are proper because she is allowed as  
24 an expert witness to be informed by other experts'  
25 testimony and other experts' opinions. If -- she

1 could have cited them and we could have not included  
2 them but that could have confused the record more.  
3 The fact that she included them for convenience  
4 purposes, for the Commission's convenience and for  
5 the public's convenience, should not -- should not  
6 mean that her testimony on those issues should be  
7 stricken.

8 So, you know, just wanted to add that  
9 because I did provide that additional reason as to  
10 why those -- those exhibits should be saved contrary  
11 to what Ms. Akhbari claims.

12 MS. AKHBARI: Your Honor, I just have a  
13 short response in that it's -- it's not appropriate  
14 styling. Ms. Glick is free to look at public  
15 dockets. She is free to consider that information.  
16 Wholesale adoption and attachment of information from  
17 other proceedings to her testimony of which she has  
18 no firsthand experience, and she can easily cite to  
19 that information if she so chooses, it's not  
20 appropriate for inclusion in this docket.

21 EXAMINER SANDOR: Okay. Thank you.

22 Okay. So regarding the first on the  
23 chart, page 5, line 17 through 20, we'll deny that  
24 part of the motion.

25 With the remainders of pages 33, lines

1 13, through 35, lines 15, we will be granting the  
2 motion to strike and that's including granting  
3 striking the Attachments DG-2 and DG-3. We agree  
4 with Duke -- with Duke's arguments, and especially we  
5 believe that these are just outside the scope and not  
6 relevant to this specific audit. The same goes for  
7 we grant the motion to strike for lines -- I'm sorry,  
8 page 36, lines 1 through 8., and for the same  
9 reasoning.

10 And then for page 21, lines 1 through 8,  
11 we will be denying the motion to strike just as to  
12 the first sentence. And that's including the  
13 footnote, footnote 17, we will be denying the motion  
14 to strike.

15 But as to the remainder, so the end of  
16 line -- on page 21, the end of line 1 through line 8,  
17 be granting the motion to strike. And just this is  
18 remaining consistent with our previous ruling. We  
19 don't believe we need to be re-litigating the AEP  
20 case. We don't find it relevant to this audit.

21 So those are the rulings.

22 MS. O'BRIEN: So, your Honor, could you  
23 just clarify on line 21 the exact sentence you are  
24 retaining?

25 EXAMINER SANDOR: Sure. The exact

1 sentence is "This is consistent with the auditor's  
2 finding published in October 2020."

3 MS. O'BRIEN: Okay. And then the rest of  
4 it is stricken.

5 EXAMINER SANDOR: Correct.

6 MS. O'BRIEN: Okay. Thank you, your  
7 Honor.

8 EXAMINER SANDOR: Okay. I believe we can  
9 commence with cross now.

10 MS. AKHBARI: Thank you, your Honor.  
11 Sorry. Just reconfiguring here.

12 EXAMINER SANDOR: Take a moment. I know  
13 we were just going through a bunch of motions.

14 - - -

15 CROSS-EXAMINATION

16 By Ms. Akhbari:

17 Q. All right. Good morning, Ms. Glick. Are  
18 you still with us?

19 A. Good morning. I'm here.

20 Q. You didn't know you would get a full hour  
21 of preview before your testimony began. Thank you so  
22 much. It's nice to see you again this morning.

23 Ms. Glick, I would like to start just by  
24 talking about your background a little bit. You are  
25 not an attorney; is that correct?

1           A.     That's correct.

2           Q.     And in your testimony you are not  
3 offering legal opinions; is that correct?

4           A.     That is correct.

5           Q.     And any references to legal decisions in  
6 your testimony, those would reflect your personal  
7 understanding of any cases that you discuss or cite;  
8 is that correct?

9           A.     That's correct.

10          Q.     Ms. Glick, you've not had any formal  
11 education on unit commitment practices, correct?

12          A.     Can you maybe ask a more specific  
13 question?

14          Q.     Sure. Have you had any college or  
15 graduate course work on the concept of generation  
16 plant unit commitment practices?

17          A.     No.

18          Q.     And the majority of your knowledge in  
19 this area comes from your on-the-job training; is  
20 that correct?

21          A.     Correct.

22          Q.     And you do not have a degree in  
23 economics; is that correct?

24          A.     My Master's in public policy is applied  
25 heavily economics-based applied degree.

1           Q.    And what was the formal degree that you  
2   received as part of that program?

3           A.    Master's in public policy.

4           Q.    Okay.  You never worked in power plant  
5   operations before; is that correct?

6           A.    I have not.

7           Q.    And you've never worked at a public  
8   utility or municipal utility; is that correct?

9           A.    That's correct.

10          Q.    And you have never been responsible for  
11   making generation plant unit commitment decisions,  
12   have you?

13          A.    No, I have not.

14          Q.    And I know we've been -- you probably  
15   overheard during some of our discussion this morning  
16   but the Public Utilities Commission will have Case  
17   No. 17-1263.  I'll refer to that a few times in our  
18   discussion here today.  Is it your understanding that  
19   that was the case which established the population of  
20   charges to Rider PSR?

21          A.    Yes.

22          Q.    And you did not participate in -- let's  
23   call it the ESP IV case.  I believe that's how  
24   parties have been referring to that case.  You did  
25   not participate in the ESP IV case, did you?

1           A.     That's correct.

2           Q.     And the underlying case that we are here  
3     discussing today and the AEP PPA case, those are the  
4     first cases you've worked on in the State of Ohio,  
5     correct?

6           A.     That's correct.

7           Q.     All right.  Ms. Glick, let's look a  
8     little more specifically to your testimony.  Do you  
9     have -- I believe you mentioned earlier you have a  
10    copy of your -- the confidential version of your  
11    testimony; is that correct?

12          A.     Yes.  I mean, I have access to both, but  
13    I have the confidential one right here printed out.

14          Q.     Great.  I am working from the  
15    confidential one as well, and you very helpfully  
16    included highlights, so I think we can discuss and  
17    probably not get into any confidential information  
18    today, but if you wouldn't mind having that out.  And  
19    I believe this was premarked -- get my numbers -- OCC  
20    Exhibit 3.

21                MS. AKHBARI:  And I can't remember if  
22    it's 3A or C that you went with.

23                MS. O'BRIEN:  It's actually 2C, OCC 2.

24                MS. AKHBARI:  Okay.  Great.  Thank you so  
25    much.



1           Q.     (By Ms. Akhbari) So, Ms. Glick, if you  
2 would have OCC Exhibit 2C before you, I would  
3 appreciate it.

4           A.     I do, yes.

5           Q.     Great. Generally in your testimony you  
6 recommend that the Commission order Duke to conduct a  
7 retirement study for the OVEC plants prior to Duke  
8 being able to develop its next Electric Security  
9 Plan; is that correct?

10          A.     That is one of my recommendations, yes.

11          Q.     And this recommendation first appears on  
12 page I believe 7 and 8, and it's recommendation  
13 No. 4, if you wouldn't mind turning there.

14          A.     Recommendation 4?

15          Q.     Yes. It starts on page 7, goes over to  
16 page 8. In recommendation 4 you generally recommend  
17 that -- sorry. I may have gotten my wires crossed.  
18 Just one second, please.

19                 EXAMINER SANDOR: Take a moment.

20          Q.     (By Ms. Akhbari) You recommend that Duke  
21 should -- on page 8, line 2, beginning on line 2, you  
22 recommend that Duke should conduct a transparent and  
23 comprehensive study for the OVEC plants; is that  
24 correct?

25          A.     That is correct.

1           Q.    Ms. Glick, in your work with coal-fired  
2 power plants as an expert witness, is it your typical  
3 practice to recommend a retirement study?

4           A.    Yes.  A retirement study is a best  
5 practice to ensure that the -- the power, in this  
6 case the financial hedge, is delivering value to  
7 ratepayers and that power plants are not being  
8 operated when there are lower cost alternatives  
9 available.

10          Q.    Is it your typical practice to always  
11 recommend a retirement study in offering your expert  
12 testimony, Ms. Glick?

13          A.    Any time a power plant is losing money  
14 relative to the market or relative to alternatives,  
15 it is my recommendation that the Company does a full  
16 retirement analysis to verify my findings and provide  
17 all of the information to the Commission required to  
18 then make a decision on how to move forward with that  
19 information.

20          Q.    And if you would bear with me for a  
21 minute, Ms. Glick, I am trying to make sure I touch  
22 on testimony that's not stricken in the next portion  
23 of my questions.  I apologize for the delay.

24                Okay.  Ms. Glick, continuing on pages 7  
25 and 8 of your testimony, you have recommendations

1 there in recommendation 4 and 6; is that right?

2 A. Sorry. What was the question?

3 Q. Sorry. I was just asking if you could  
4 look to your recommendations on page 7 and 8. You  
5 have two recommendations, recommendation 4 and  
6 recommendation 6; do you see that information --

7 A. Yes.

8 Q. -- in your testimony? Both  
9 recommendation and -- recommendation 4 and 6 state  
10 that the Commission should "put Duke on notice"; is  
11 that correct?

12 A. That is correct.

13 Q. And by putting Duke on notice, you are  
14 asking the Commission to communicate with Duke what  
15 will or will not approve in the future as it relates  
16 to costs associated with OVEC; is that correct?

17 A. That's correct.

18 Q. And you are not aware of any rule or  
19 mechanism that the Commission has in place by which  
20 it can put parties on notice for decisions in the  
21 future that are not currently under consideration; is  
22 that correct?

23 A. No. This recommendation is simply  
24 communicating that the Commission should communicate  
25 to the Company that in the future they will not be

1 allowing the uneconomic costs to be passed on.

2 Q. Are you aware of any rule or mechanism  
3 that the PUCO has in place by which it can put  
4 parties on notice for decisions that it's not  
5 currently considering?

6 A. No.

7 MS. O'BRIEN: Objection, your Honor, to  
8 the extent it asks for a legal conclusion, also on  
9 the grounds that it's been asked and answered.

10 EXAMINER SANDOR: I believe she just  
11 answered.

12 Please go ahead, Ms. Akhbari.

13 Q. (By Ms. Akhbari) Ms. Glick, if you could  
14 look to page 11 of your testimony, please, starting  
15 on line 11.

16 A. Yes.

17 Q. Great. I am going to read if you could  
18 follow along. You state "When PUCO initially  
19 approved the Rider, then-PUCO Chairman Asim Haque  
20 stated in a concurring opinion, 'This should not be  
21 perceived as a blank check, and consumers should not  
22 be treated like a trust account.'" Did I read that  
23 correctly?

24 A. Yes.

25 Q. And, Ms. Glick, did you rely upon the

1 concurring opinion of Former PUCO Chairman Haque in  
2 developing your testimony?

3 A. I relied on part of it, the part that I  
4 include here in my testimony.

5 Q. Okay. So you relied on the sentence  
6 you've included in your testimony on page -- on lines  
7 11 through 14 of page 11; is that correct?

8 A. This section of it -- of the concurring  
9 opinion that that was from.

10 Q. Okay. And did you review the concurring  
11 opinion that you reference here on lines 11 through  
12 14?

13 A. Yeah, part of it. The section that this  
14 is from, I did.

15 Q. Okay. Was that opinion the -- was that  
16 opinion provided to you by counsel this morning? I  
17 know we talked about it in this matter.

18 MS. AKHBARI: If not, I sent it this  
19 morning, Ms. O'Brien. I apologize.

20 A. Oh, yes, I received --

21 MS. O'BRIEN: Yeah. I forwarded it to  
22 her.

23 MS. AKHBARI: Thank you.

24 A. I haven't opened any of them yet, so  
25 you'll have to give me a moment to pull them up.

1           Q.    Of course.  No problem.  This opinion  
2    would have been in the stand-alone e-mail after --  
3    after the one I distributed last night, so I  
4    apologize if that adds confusion.

5           A.    Is it labeled 14-1693-EL-RDR?

6           Q.    Yes.  I believe so.

7                   EXAMINER SANDOR:  I believe it's  
8    previously marked as Duke Exhibit 3 we took  
9    administrative notice of.

10                  MS. AKHBARI:  That's correct.  Thank you,  
11    your Honor.

12           A.    So what I am looking at says in the -- it  
13    says -- it has two case numbers on it, 14-1693 and  
14    14-1694, and it says "Opinion and Order."  Is this  
15    the document you want me to be looking at?

16           Q.    Yes, it is, Ms. Glick.  Thank you.  So,  
17    Ms. Glick, you stated that you read the portion of  
18    the -- the concurring opinion of Chairman Haque in  
19    preparation of your testimony; is that correct?

20           A.    Yes, the portion this quote is from.

21           Q.    Okay.  So you did not read the entire  
22    opinion; is that correct?

23           A.    No, I did not read the full opinion.

24           Q.    So, Ms. Glick, how did you come to just  
25    read the portion of the opinion containing the

1 statement that you've included on page 11?

2 A. I honestly do not remember exactly where  
3 it came from. It would have been from the attorneys.  
4 It would have been from another case. I do about six  
5 or seven cases involving the OVEC plants, so I  
6 honestly cannot remember where every piece of  
7 information is first presented to me.

8 Q. Were you aware of this concurring opinion  
9 prior to your work on this case?

10 A. Well, I did the AEP case also, so I  
11 additionally cannot fess out which case -- in which  
12 this information was first made available. It was  
13 from one of these cases.

14 Q. And you are unaware of whether or not  
15 this was provided to you by counsel or whether or not  
16 you found this information yourself?

17 A. It might have --

18 MS. O'BRIEN: Objection, asked and  
19 answered.

20 EXAMINER SANDOR: I believe she just did  
21 answer. She said it might be. I will ask Ms. Glick  
22 just maybe pause for a moment just to allow your  
23 counsel to object even if she does pause for a  
24 moment. Thank you.

25 Q. (By Ms. Akhbari) I think -- sorry, kind

1 of lost my steam here. So, Ms. Glick, you -- at the  
2 risk of obtaining another asked and answered, just to  
3 clarify, okay, so you're not -- you are not aware of  
4 where you first encountered the concurring opinion of  
5 Former Commissioner Haque; is that correct?

6 A. I just can't remember off the top of my  
7 head. It's definitely information I could track  
8 down, but I apologize. I don't remember where. This  
9 testimony was due in October so that was quite a  
10 while ago, so I apologize.

11 Q. No problem. So let's look at the -- the  
12 opinion in question. And you reference in your  
13 testimony page -- page 5 of the concurring opinion.  
14 I'll represent now this is -- it's not -- page 5 is  
15 very deceiving. It is close to page 115 or 16 if you  
16 scroll through the entire opinion.

17 A. What are you asking me to do?

18 Q. So in your testimony in footnote 8 you  
19 reference the Opinion and Order and the concurring  
20 opinion of Chairman Haque, and I am just asking you  
21 to scroll -- you cite to page 5 of the concurring  
22 opinion. And I am asking you to scroll to page 5 of  
23 the concurring opinion.

24 EXAMINER SANDOR: I believe it's page 119  
25 of 127 if that helps.



1           A.    Okay.  Because there is also a page 5 on  
2   PDF page 8 so.

3           Q.    And there is probably a few page 5s  
4   throughout the document.

5           MS. AKHBARI:  So thank you, your Honor.

6           A.    Oh, okay.  So then -- this is the  
7   concurring opinion.  There is multiple documents that  
8   have been combined in this single PDF; is that what I  
9   am understanding?

10          Q.    Without getting into the semantics of how  
11   concurring opinions work, yes, it's usually typically  
12   attached to an underlying opinion.

13          A.    Sorry.  I thought it was still in the  
14   order so that's why I was confused what I am looking  
15   at.  I'm on page PDF 119, page 5 of the concurring  
16   opinion.

17          Q.    And based on your prior testimony, if you  
18   could look to the first full paragraph at the top of  
19   that page.  And you stated previously that you only  
20   reviewed a subpart of this concurring opinion; is  
21   that correct?

22          A.    I reviewed part of it that includes this  
23   paragraph.  If you are asking me to recall exactly  
24   which paragraphs or pages I read at the time, I  
25   unfortunately cannot recall the exact scope of how

1 many paragraphs or sentences I read.

2 Q. Okay. Did you read the entire concurring  
3 opinion?

4 A. No.

5 Q. Did you read the subsection from which  
6 this comes from which I represent to you is Section  
7 ii -- let me find the right number, ii?

8 A. As I said, my apologies. I really do not  
9 remember the exact number of paragraphs or pages or  
10 lines that I read in preparing my testimony. I know  
11 I read the paragraph that includes this. I know I  
12 read material around it, but I do not remember  
13 exactly which paragraphs or pages.

14 Q. Okay. And do you rely on the  
15 statement -- do you know how many pages the  
16 concurring opinion is?

17 MS. O'BRIEN: Objection, your Honor. The  
18 document speaks for itself, also as to relevance.

19 EXAMINER SANDOR: Overruled. She can  
20 answer.

21 A. Sure. I can look through and count how  
22 many pages are in here. It looks like it's a 13-page  
23 document.

24 Q. Okay. And would you agree that as we sit  
25 here today, you can only verify that you read one

1 paragraph of this 13-page document?

2 A. No, that's not what I said. I said I  
3 can't remember the full scope of what I read. I know  
4 I read more than one paragraph, but I can't remember  
5 back in six months ago, seven months ago the exact  
6 number of paragraphs I read.

7 Q. Okay. But you did not read the full 13  
8 pages of this concurring opinion.

9 MS. O'BRIEN: Objection, your Honor.  
10 Asked and answered repeatedly.

11 EXAMINER SANDOR: Sustained.

12 Q. (By Ms. Akhbari) Okay. Ms. Glick, let's  
13 look at the paragraph that you cite to in your  
14 testimony. It's on page 5.

15 A. Yes.

16 Q. So let's read from the opinion. So you  
17 cite to the sentence which states "This should not be  
18 perceived as a blank check, and consumers should not  
19 be treated like a trust account." Going on the  
20 Commission -- or the concurring opinion states "It's  
21 not right. At the same time, consumers, you have the  
22 potential to benefit from this if market prices  
23 increase."

24 Ms. Glick, do you agree with the  
25 concurring opinion of Commissioner Haque?

1           A.    Can you be more specific on what you are  
2 asking me if I agreed with?

3           Q.    Well, we've already established that you  
4 don't know whether or not you read the full opinion;  
5 is that correct?

6           A.    I know I didn't read the full thing. I  
7 don't remember which pages I read. That's what I  
8 have stated.

9           Q.    Okay. And would you agree with  
10 Commissioner Haque that consumers have potential to  
11 benefit from market -- if market prices increase from  
12 Rider PSR?

13          A.    Yes, I do agree with that sentiment.

14          Q.    In deciding to include what I will call  
15 the blank check quote in your testimony, you did not  
16 choose to include the remainder of the language in  
17 that paragraph, correct?

18          A.    Sorry. I didn't understand the full  
19 question.

20          Q.    Sure. In -- I will read it again. In  
21 deciding to include what I will refer to as the blank  
22 check sentence in your testimony, you did not choose  
23 to include the language in the remainder of that  
24 paragraph; is that correct?

25          A.    I decided to use a specific quote that --

1 by a Former Commissioner that provided a warning on  
 2 the potential for costs. So because during this time  
 3 period of 2019, which is what we are looking at in  
 4 this audit period, the costs passed on to ratepayers  
 5 were higher than the value of the power or -- so  
 6 there were costs being passed on under the rider. I  
 7 was using this quote to illustrate there had been a  
 8 warning issued previously that this could happen and  
 9 that that -- that ratepayers should not be seen as a  
 10 blank check in the -- in the likelihood that the  
 11 prices were low and that costs are passed onto  
 12 ratepayers.

13 MS. AKHBARI: Your Honor, I would move to  
 14 strike the remainder of Ms. Glick's testimony  
 15 following her clarification on what she did and  
 16 didn't include in her testimony which I believe would  
 17 be --

18 MS. O'BRIEN: Your Honor -- your Honor,  
 19 she's responding to counsel's question. Also, I  
 20 would add that Ms. Glick's testimony speaks for  
 21 itself.

22 EXAMINER SANDOR: Okay. I am going to  
 23 deny the motion to strike at this time.

24 MS. AKHBARI: Thank you, your Honor.  
 25 Could you also direct the witness to answer yes or no

1 questions in a yes or no fashion just so the record  
2 can be clear even if she has additional clarification  
3 after the fact?

4 EXAMINER SANDOR: Going forward if it's a  
5 yes or no question, please do and you can clarify as  
6 to that answer if you need to.

7 MS. AKHBARI: Thank you, your Honor.

8 Q. (By Ms. Akhbari) Ms. Glick, let's stay  
9 within paragraph ii and back up a page in the order  
10 to page 4, please. And I think we have established  
11 you don't know whether or not you've reviewed page 4  
12 of this concurring opinion; is that correct?

13 A. I do not remember. I would love the  
14 opportunity to read it if you are going to ask me  
15 questions about this paragraph.

16 Q. Sure. I'll direct you so -- in the first  
17 paragraph please take a minute and read that first  
18 paragraph under romanette ii.

19 A. Thank you. Great. I've read it. Thank  
20 you.

21 Q. Okay. Great. So in paragraph one that  
22 you just reviewed -- well, I guess I should ask, did  
23 reading this -- was that the first time to your  
24 knowledge that you have read this paragraph of the  
25 concurring opinion?

1           A.    I do not remember.

2           Q.    In paragraph one in the third and  
3 fourth -- third and fourth sentence down, please,  
4 follow along while I read Commissioner Haque --  
5 Former Commissioner Haque states "Here's what I think  
6 I know from these projections. I think that, based  
7 upon the projections and the evidence in the record,  
8 there is general consensus that the PPA Riders  
9 will -- will result in a charge to consumers for at  
10 least the first 2-3 years of the riders." Did I read  
11 that statement correctly?

12          A.    Yes.

13          Q.    Given these two sentences that we've just  
14 reviewed, wouldn't you agree that then Commissioner  
15 Haque anticipated charges under at least AEP's PPA  
16 Rider which this order is addressing for the first  
17 two to three years of that rider?

18               MS. O'BRIEN: Objection, calls for  
19 speculation.

20               EXAMINER SANDOR: I will allow her to  
21 answer.

22          A.    Yes, but I would add that the charges  
23 passed on to ratepayers in this time period, 2019,  
24 were significantly higher than even what had been  
25 projected during the time that the Price

1 Stabilization Rider was established.

2 Q. So you would agree, however, that  
3 Commissioner Haque anticipated a charge under at  
4 least AEP's PPA Rider for the first two to three  
5 years of the existence of that rider, correct?

6 MS. O'BRIEN: Objection, your Honor. The  
7 document speaks for itself.

8 EXAMINER SANDOR: The document does speak  
9 for itself. I will allow her to answer but go ahead.

10 A. Yes. I said yes before I clarified also.

11 Q. Okay. And, Ms. Glick, would you agree  
12 that the blank check quote that you cite on page 11  
13 of your testimony comes from the same subsection,  
14 Subsection ii of this concurring opinion; is that  
15 correct?

16 A. Yes, that is correct.

17 Q. All right. Let's move on. On page 12 of  
18 your testimony, if you could turn back to your  
19 testimony. Are you there, Ms. Glick?

20 A. Oh, yes, sorry. I'm on page 12.

21 Q. I'm sorry. I'm just making sure I don't  
22 discuss any information from the prior motion. So on  
23 page 12 of your testimony, question 18, you are  
24 discussing the age of power plants, and in particular  
25 the Clifty Creek and Kyger Creek plants; is that



1 correct?

2 A. That is correct.

3 Q. And you cite an S&P Global article on  
4 page 13 of your testimony, footnote 12; is that  
5 correct?

6 A. I do, yes.

7 Q. Okay. And that article is titled "Duke  
8 Energy considering retiring 9,000 megawatts of coal,  
9 adding vast amounts of storage"; is that correct?

10 A. Yes.

11 Q. That article does not reference Duke  
12 Energy Ohio, correct?

13 A. I believe it's mostly about Duke in the  
14 Carolinas, Progress in the Carolinas.

15 Q. And Duke Energy Carolinas and Duke Energy  
16 Progress, those are separate and distinct entities  
17 from Duke Energy Ohio; is that correct?

18 A. They are separate utilities, but they are  
19 all Duke Energy companies.

20 Q. The article that you cite here in  
21 footnote 12 related to Duke Energy Carolinas and  
22 Progress, in addition to not being about Duke Energy  
23 Ohio, this article is actually describing six  
24 different scenarios that Duke Energy Carolinas and  
25 Duke Energy Progress were considering for their

1 long-term integrated resource plants; is that  
2 correct?

3 A. I believe so. I would have to open the  
4 article to refresh my memory on exactly the topic.

5 Q. Okay. And are you aware that the  
6 retirement of the 9,000 megawatts of coal as you  
7 state in your testimony and cite here that that was  
8 only considered in some of those plans, some of those  
9 IRPs under consideration by Duke Energy Carolinas and  
10 Progress?

11 A. Yes. Generally IRP scenarios do differ  
12 significantly in the retirement assumptions that are  
13 tested. That's the point is to evaluate a range of  
14 scenarios.

15 Q. But you would agree that not all six  
16 scenarios had -- include retirement of  
17 9,000 megawatts of coal-fired power generation?

18 A. As said, I would have to open the article  
19 and look at the IRP, but generally it makes sense  
20 too. The only way you know its lowest costs to  
21 retire megawatts of coal is if you run an alternative  
22 scenario where you don't retire them. So, yes, I  
23 agree but that's kind of the entire point of an IRP  
24 exercise. You do need a benchmark in which to even  
25 evaluate the retirement scenarios.

1           Q.    Staying on page 13, Ms. Glick, you have a  
2 chart here that's organizing coal plants and  
3 megawatts by retirement date; is that correct?

4           A.    Yes, that's correct.

5           Q.    The chart shows every megawatt of coal  
6 generation that is online right now, or at least was  
7 online in October of 2021; is that correct?

8           A.    That is correct, yes.

9           Q.    And the chart shows in different colors  
10 which coal plants have a scheduled retirement date  
11 and which coal plants do not; is that correct?

12          A.    Yes.

13          Q.    And, Ms. Glick, would you agree that the  
14 majority of the chart is in yellow if you have a  
15 color printout before you?

16          A.    So the -- more than half of the megawatts  
17 of coal capacity that are currently online do not  
18 have a scheduled retirement date.

19          Q.    Okay. And that would include Clifty  
20 Creek and Kyger Creek, correct?

21          A.    That is correct.

22          Q.    Ms. Glick, let's look to page 21 of your  
23 testimony, please.

24          A.    Okay. I'm on page 21.

25          Q.    I'm sorry. This has been stricken.

1 Let's go ahead to page 29, please.

2 A. All right.

3 Q. Thank you. Okay. On page 29 of your  
4 testimony you state starting on line 13 -- well, I  
5 will represent to you that question 31 asks -- in  
6 your testimony asks "What are your conclusions  
7 regarding these metrics for evaluating the value of  
8 capacity and energy provided?" So you state starting  
9 on line 13 "I found no evidence that Duke did any  
10 competitive bidding process before selecting the OVEC  
11 plants as a price hedge for the SSO price." Did I  
12 read that correctly?

13 A. Yes.

14 Q. Okay. So to boil it down, you state in  
15 your testimony that Duke did not engage in a  
16 competitive bidding process prior to seeking approval  
17 to include OVEC in Rider PSR; is that correct?

18 A. I state that I don't see any evidence  
19 that they did that prior to implementing the rider.

20 Q. And would you agree that is one of the  
21 reasons you state that above-market costs associated  
22 with Rider PSR are imprudent?

23 A. Yes.

24 Q. And it's your opinion that the  
25 competitive bidding process you mentioned in your

1 testimony would need to take place before the Price  
2 Stabilization Rider was requested -- well, also  
3 requested -- was requested, correct?

4 A. Sorry. Can you rephrase?

5 Q. Sure. So in your opinion would you agree  
6 that the competitive bidding process you mention in  
7 your testimony on page 29 would have needed to take  
8 place prior to the approval of the Price  
9 Stabilization Rider, correct?

10 A. Prior to or currently in order to ensure  
11 that it was or is still a least cost or a viable  
12 hedge. That would have been one way to show that it  
13 was a -- at least a prudent decision at the time.

14 Q. Okay. And I think we mentioned earlier  
15 that the consideration of Rider PSR indicates that  
16 Duke Energy Ohio would have taken place or been  
17 considered under Case No. 17-1263; would you agree?

18 A. That -- well, that's when the rider was  
19 populated but not when it was first established.

20 Q. Correct, yes, the population. Yes, thank  
21 you, Ms. Glick. So would you agree that competitive  
22 bidding would have had to have been in place at the  
23 inception or at the population of Rider PSR, correct?

24 A. I apologize. Even though I am hard wired  
25 in my internet gave me a little bit of trouble, and I

1 did not hear what you said. Sorry. Still going --  
2 giving me a little trouble. Just give me one. I  
3 even hard wired in, and I am not sure why.

4 EXAMINER SANDOR: Take a moment. We can  
5 see and hear you okay.

6 THE WITNESS: Okay. It's been going in  
7 and out occasionally, and I even did a speed test, so  
8 I'm not -- I'm not entirely sure what more I can do.

9 EXAMINER SANDOR: Let's go off the  
10 record.

11 (Discussion off the record.)

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

14 We had some technology issues.  
15 Ms. Akhbari, go ahead and continue with your  
16 questioning.

17 MS. AKHBARI: Okay. Great.

18 Q. (By Ms. Akhbari) Ms. Glick, please speak  
19 up at any time if you don't hear me, and I will try  
20 to not shout but speak as clearly as I can so.

21 A. Appreciate it.

22 Q. Of course. All right. Let me see where  
23 we were here just quickly. Okay. So we were  
24 discussing the population of Rider PSR in the 2017  
25 case that was -- that was filed. Ms. Glick, would

1 you agree that competitive bidding would have had to  
2 have been in place at the inception -- excuse me,  
3 inception, at the population of Rider PSR to be  
4 incorporated into the current audit period?

5 A. Yes.

6 Q. And would you agree that the year 2017  
7 when that population of Rider PSR was -- was  
8 considered is prior to the current audit period that  
9 we are here discussing today?

10 A. Yes, but I will just clarify. So I know  
11 I said, yes, that it would have had to have been in  
12 place prior to the audit 2017 time period, but the  
13 generation rider was implemented technically during  
14 the time period during which the price stabilization  
15 rider was still supposed to be going forward so  
16 there's nothing to stop the Company or the Commission  
17 from reevaluating and implementing a new rider if  
18 they feel -- if they find that the existing one is no  
19 longer functioning properly.

20 Q. Okay. You agree that we are here today  
21 discussing the 2019 audit period and the underlying  
22 case and not the LGR Rider, correct?

23 A. Yes.

24 Q. And, Ms. Glick, it is your belief that  
25 absent a competitive bidding process, Rider PSR

1 cannot be considered prudent; is that correct?

2 A. That's one of the reasons why I believe  
3 it was imprudent.

4 Q. All right. Let's look to page 47 of your  
5 testimony, please, Ms. Glick.

6 A. Great. I'm on 47.

7 Q. Okay. So in question 55 on page 47 of  
8 your testimony, starting on line 13, you state that  
9 "During the review period, Duke had knowledge of the  
10 operational decisions at the units, but the Company  
11 failed to act on that knowledge to exercise oversight  
12 over unit operations"; is that correct?

13 A. That's correct. That's what my testimony  
14 says.

15 Q. And here you are discussing Duke's  
16 oversight of the OVEC plants; is that correct?

17 A. Duke's involvement in the operational  
18 decisions at the OVEC plants.

19 Q. Okay. And with -- with regard to Duke's  
20 involvement of the operations of the OVEC plants, is  
21 it your understanding that Duke has one vote on  
22 OVEC's Operating Committee?

23 A. Yes.

24 Q. And is it your understanding that the  
25 OVEC Board requires unanimous approval to make



1 changes to operating procedures at OVEC?

2 A. Yes, that is true but that it does not  
3 stop individual entities from proposing changes. In  
4 fact, that's the point is an individual entity can  
5 still propose changes even if they can't unilaterally  
6 implement them.

7 Q. And you would agree though that Duke's  
8 one vote does not represent voting control for either  
9 the Board or the Operating Committee; is that  
10 correct?

11 A. Right. That's correct.

12 MS. AKHBARI: If you would just bear with  
13 me, I need to cross reference the table before  
14 proceeding to my next line of questioning. I  
15 apologize.

16 EXAMINER SANDOR: We just lost your  
17 video, Ms. Akhbari and Ms. Glick. They are dropping  
18 like flies.

19 THE WITNESS: Okay. I turned mine off  
20 because I thought I had lost everything again.

21 EXAMINER SANDOR: Can you hear us,  
22 Ms. Akhbari?

23 All right. Let's go off the record.

24 (Discussion off the record.)

25 EXAMINER SANDOR: Let's go back on the

1 record.

2 We were just resolving several technical  
3 issues. We are done with that now; so, Ms. Akhbari,  
4 if you could now proceed.

5 MS. AKHBARI: Thank you.

6 Q. (By Ms. Akhbari) Welcome back, Ms. Glick.  
7 Thank you for bearing with me. I don't know if you  
8 heard prior to my cutting out entirely, but I was  
9 asking if you could please look to page 50 of your  
10 testimony, question 59.

11 A. Okay. 50. Question 59, yep, I'm here.

12 Q. Great. So this question asks "Is there  
13 evidence that seasonal operations can be deployed at  
14 coal plants that lower consumer costs"; is that  
15 correct?

16 A. Yes.

17 Q. And you state that "this practice has  
18 been utilized by utilities around the country to shut  
19 down coal plants during shoulder season when  
20 electricity demand is lower and market prices are  
21 lower"; is that correct?

22 A. Yes, that's correct.

23 Q. Great. And you provide two examples in  
24 your testimony. One is Xcel Energy Minnesota and the  
25 other one is Tucson Electric Power; is that correct?

1           A.    Yes.

2           Q.    All right.  Are you aware of what  
3 regional transmission organization Xcel Energy is  
4 located in?

5           A.    Excel in Minnesota is -- I don't remember  
6 if it's MISO.  I believe it's in MISO.

7           Q.    Sure.

8           A.    I would have to look at a map to be sure.

9           Q.    Sure.  So of your two examples only Xcel  
10 Energy in Minnesota is actually engaging in the  
11 activity of seasonal operation; is that correct?

12          A.    Actively, yes.  So the Tucson Electric,  
13 the proposal, I believe, was to begin that in 2023.

14          Q.    Okay.  And so you would agree that the  
15 Tucson Electric Power example that you provide in  
16 your testimony is not actively engaged in seasonal  
17 operation; is that correct?

18          A.    I don't believe they are.

19          Q.    And so because Tucson Electric Power has  
20 plans to use these seasonal operation but has not  
21 done so yet, you have no studies or information on  
22 whether or not Tucson Electric Power's plan has  
23 resulted in customer savings; is that correct?

24          A.    Yes.  It hasn't happened yet so there is  
25 no study on something that hasn't happened yet.

1           Q.    Okay.  So Xcel Energy in Minnesota, that  
2           would be your only example of active seasonal  
3           operations deployed at coal plants; is that correct?

4           A.    That's the only one I cited in here, yes.

5           Q.    Okay.  And I think you mentioned that  
6           Xcel Energy is part of the MISO RTO; is that correct?

7           A.    I would have to look on a map.  I  
8           honestly can't remember if it's MISO or SPP.  I'm  
9           pretty sure it's MISO.  They are in a corner.  
10          They -- some Minnesota utilities straddle both, so I  
11          can't remember exactly which one they are in.

12          Q.    If you reviewed the utility article that  
13          you cite in footnote 60 -- well, I just -- I'll  
14          just -- I don't think it matters if you know for sure  
15          or not.  I will ask you are you aware what the MISO  
16          capacity market was clearing at in this time frame  
17          that you set forth in your Xcel Energy seasonal  
18          example?

19          A.    I don't, but capacity market prices don't  
20          actually have anything to do with commitment and  
21          dispatch, so seasonal operation is about commitment  
22          and dispatch.

23          Q.    And are you proposing that owners would  
24          not sell into the capacity market in a seasonal  
25          operation setup?

1           A.    No.  That's exit -- seasonal operation  
2 means you're not committing and dispatching during  
3 specific times of year.  I understand that there are  
4 capacity market constructs that have to be navigated  
5 and arrangements have to be made with the capacity  
6 market.  But if you economically commit such  
7 that you -- it's not economic to operate and you  
8 economically commit during the shoulder seasons, you  
9 do not run the plant.  So there are ways that  
10 seasonal operation can be done without losing  
11 capacity market accreditation by using economic  
12 commitment.

13           Q.   And would you agree that for seasonal  
14 operation to have been employed for the 2019 audit  
15 period, that decision would have had to have been  
16 made -- well, when -- when do you think that decision  
17 would have had to have been made within PJM?

18           A.    So the decision to economically commit  
19 and operate a power plant is made on a daily basis.  
20 And so the decision to operate the plant economically  
21 could have been made during the year of 2019, during  
22 this audit period.

23           Q.    So, Ms. Glick, I understand that.  My  
24 question was as to the decision to perform seasonal  
25 operation for the OVEC plants.  When would a

1 season -- seasonal operation decision have needed to  
2 take place?

3 A. It would have been made in 2019.

4 Q. So within -- okay. And would your answer  
5 remain the same -- do you believe that PJM would  
6 have -- would need to know whether or not seasonal  
7 operations were going to be deployed at OVEC prior to  
8 2019?

9 A. It depends how the Company planned to  
10 operate to deploy seasonal operation, so if the  
11 Company wanted to shut the plant down completely and  
12 not offer it into the capacity market, that would  
13 have to be done in advance. If the plant intends to  
14 switch the plant to economic commitment and dispatch  
15 on a seasonal basis and economically commit it and,  
16 therefore, it would go into economic reserve and not  
17 operate based on market prices on a seasonal basis in  
18 the spring, that is something that they would not  
19 have had to do in advance. That is a day-to-day  
20 market decision.

21 Q. All right. I think we are nearing the  
22 finish line here, Ms. Glick. Throughout your  
23 testimony would you agree you recommend the  
24 performance of a retirement study for the OVEC  
25 plants?

1           A.    I believe I mention it in one or two  
2 places. I am not sure I talk about it extensively  
3 throughout the entire testimony.

4           Q.    Okay. I apologize. I just meant it's  
5 mentioned more than once.

6           A.    Oh, yeah.

7           Q.    Great. And is it your understanding that  
8 utilities are -- nationwide are delaying the  
9 retirement of coal-fired power plants due to market  
10 conditions?

11          A.    I know of two instances in which coal  
12 power plant retirement dates are being delayed  
13 because replacement projects are not available. But  
14 they are being delayed; they are not being canceled.  
15 And I think that honestly demonstrates the  
16 flexibility of conditions so that a company can  
17 decide to retire something and then given the  
18 flexibility when conditions change to have that be  
19 pushed back. It doesn't change the economics of the  
20 power plant.

21          Q.    You mentioned you know of two examples.  
22 What are the two examples that you are aware of?

23          A.    PNM in New Mexico, the San Juan Power  
24 Plant, it's operating through the summer when the  
25 plan was originally to shut it down, and I believe

1     there will -- I don't know the exact plants, but I  
2     think in NIPSCO in Indiana there is a delay in  
3     bringing some of the renewable projects online that's  
4     causing some of their coal plants to stay online for  
5     a little bit longer than they had planned. But we  
6     are talking about like months to a year. This isn't  
7     talking about like keeping a coal plant online for a  
8     decade longer. It's a short period of time.

9             Q.     Are you aware -- in the NIPSCO example  
10     that you gave, are you aware that -- whether or not  
11     that is a multiple year delay in retirement?

12            A.     I don't actually know the details of the  
13     NIPSCO one. I would have to look that up.

14            Q.     Understood. Okay. I know you -- we  
15     talked about this a little earlier, but when we were  
16     discussing Commissioner Haque's concurring opinion,  
17     is it your understanding that at the inception of  
18     Rider PSR, it was anticipated to have charges to  
19     customers flowing through Rider PSR at least for a  
20     period of time; is that correct?

21            A.     Can you clarify if you mean in the 2014  
22     when it was first established or when it was  
23     populated?

24            Q.     When it was populated.

25            A.     Yeah. It's my understanding that there



1       were costs --

2               Q.    I guess I should say both but -- I'm  
3       sorry. I spoke over you. Please go ahead.

4               A.    Sorry. To answer your question it is my  
5       understanding that there were costs projected for the  
6       first two to three years, but my findings are that  
7       the costs actually incurred were significantly higher  
8       than projected costs even at the time the rider was  
9       populated.

10              MS. AKHBARI: If I could take a short  
11     break, I think we are probably -- I am probably  
12     finished with Ms. Glick but if your Honor would  
13     entertain.

14              EXAMINER SANDOR: Let's go -- let's go --  
15     let's come back at 11:15.

16              MS. AKHBARI: Okay. Great.

17              EXAMINER SANDOR: We are off the record.

18              (Recess taken.)

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

21              Ms. Akhbari.

22              MS. AKHBARI: Thank you, your Honor. The  
23     Company has no further questions for Ms. Glick at  
24     this time. Thank you.

25              EXAMINER SANDOR: Thank you.

1 Okay. Any cross from OMAEG?

2 MS. BOJKO: No, thank you, your Honor.

3 EXAMINER SANDOR: From Kroger?

4 MR. WYGONSKI: We have no cross for the  
5 witness, your Honor. Thank you.

6 EXAMINER SANDOR: OEG?

7 MS. COHN: Yes, just a little.

8 - - -

9 CROSS-EXAMINATION

10 By Ms. Cohn:

11 Q. Ms. Glick, on page 44 of your testimony,  
12 you identify -- I'll wait for you to get there. Let  
13 me know when you are there.

14 A. Thank you. Good morning.

15 Q. Good morning.

16 A. I'm on page 44 of my confidential  
17 version.

18 Q. Okay. Okay. Cool. So I'm on Q51 and  
19 really line 17. So you identify a number of events  
20 here where OVEC operated despite Duke's profit and  
21 loss statements indicating it would lose money by  
22 staying online?

23 A. Yes. And I won't say the numbers because  
24 those are confidential but, yes, there are a number  
25 of events for a number of days.

1           Q.    Okay. Did you provide a list of those  
2 specific dates and times anywhere in your testimony?

3           A.    I don't believe I did.

4           Q.    Do you know, did you provide that list in  
5 discovery responses?

6           A.    I don't believe that I was asked for any  
7 responses that I addressed.

8           Q.    Okay. Do you have that list written down  
9 anywhere?

10          A.    Yeah. I have done an analysis. The list  
11 definitely does exist.

12               MS. COHN: Okay. So -- so for OCC, this  
13 is a question for Angela, but for OCC counsel, this  
14 is -- it's probably a confidential list. Is there a  
15 way to get that list without having her read -- read  
16 it on the record?

17               MS. O'BRIEN: Well, I mean, we can -- I  
18 guess we can discuss it off line. I mean, it was  
19 never requested of us in discovery. So, I mean, we  
20 would -- I guess we would have to get a discovery  
21 request and which I don't know is appropriate at this  
22 time given that the hearing is in the middle of the  
23 hearing, so I'm -- I guess I'm a little unclear how  
24 you want to proceed.

25               MS. AKHBARI: If I could just chime in

1 briefly. Duke Energy Ohio did issue discovery  
2 requests for all of Ms. Glick's workpapers to OCC in  
3 May. We did not receive any documents in response.  
4 I think this would have certainly been under that  
5 category as included therein. I don't know if Ms. --

6 MS. O'BRIEN: I would have to go back and  
7 look at the discovery requests. I'm pretty sure  
8 there was probably -- if we didn't provide something,  
9 it was probably because there was an objection to it  
10 in some form or another, so I would have to review  
11 the discovery request. And but with respect to OEG,  
12 I guess my response would be that the discovery --  
13 the date for issuing discovery has probably lapsed  
14 and --

15 MS. COHN: No, I recognize that. I'm  
16 saying I could -- I mean, I do have the right to  
17 cross-examine. I do have the right to ask her for  
18 the specific dates. It's a fundamental part of her  
19 testimony, I believe.

20 MS. O'BRIEN: Sure.

21 MS. COHN: But I'm trying to avoid  
22 discussing confidential information, going into a  
23 confidential session, and really wasting a lot of  
24 people's time when I could just get the list this  
25 way. If not, I can go -- I can ask her for each of

1 the [REDACTED] events -- oh, I'm sorry, each of the  
2 events. Strike that, please. But -- but I prefer to  
3 do it in a more efficient manner.

4 MS. O'BRIEN: Well, I mean, if you need  
5 to go into a confidential section, I mean, that's up  
6 to you. I'm not going to make that decision for you.  
7 I mean, but I'm not going to just hand it over right  
8 now, I guess, if --

9 MS. COHN: Your Honor --

10 MS. O'BRIEN: I guess, you know, this is  
11 something we probably should have dealt with at the  
12 beginning of the hearing or prior to the hearing, so  
13 yeah.

14 MS. COHN: Yeah, I understand your  
15 perspective on it. I still would like the  
16 information for purposes of the record in this case;  
17 so, your Honor, I'll try to move past and I can come  
18 back to this question if you want to do a brief  
19 confidential session and I can ask for the specifics.  
20 I leave it to your preference.

21 EXAMINER SANDOR: So is this -- is this  
22 just to -- so the witness can review it or you are  
23 saying this is for yourself for being able to review?

24 MS. COHN: Yes. I would just like a  
25 specific list of the dates and times of the events

1 discussed on page 44 of her testimony.

2 EXAMINER SANDOR: Let's -- you have more  
3 questions though right now?

4 MS. COHN: Just a few, just a few, yeah.

5 EXAMINER SANDOR: Let's go to those while  
6 I think about this.

7 MS. COHN: Okay.

8 Q. (By Ms. Cohn) Can you -- well, okay. I  
9 am going to skip this. Did you quantify the  
10 projected losses reflected during those periods that  
11 you identify on page 44?

12 A. Yes. I quantify -- so projected losses,  
13 I want to make sure we are defining that word in the  
14 same way, that term. The losses that the Company  
15 projected at the -- you know, on a daily basis based  
16 on the unit commitment sheets they were preparing  
17 each day. I believe I did calculate those. I would  
18 have to look back at the workpapers to see exactly  
19 what numbers I calculated.

20 Q. Yeah. That would actually resolve --  
21 that would resolve my need to look at the documents  
22 themselves. Is there a way -- do you have your  
23 workpapers readily available?

24 A. Well, that's not part of my testimony so  
25 I'm not sure -- I could look and find them, but I

1 haven't -- I haven't entered those into the -- into  
2 the record yet so.

3 MS. BOJKO: I am going to object at this  
4 time to this line of questioning. I mean,  
5 workpapers -- you can ask the witness what their  
6 recollection is, but the more appropriate thing is to  
7 bring a DR response to the witness and refresh her  
8 recollection and then ask questions. We -- even  
9 though this is a -- I mean, it's now a virtual  
10 hearing. We are not allowed -- witnesses are not  
11 allowed to go search their computers for data. If  
12 they don't have it on the stand with them, then it's  
13 not appropriate to ask them to go search for their  
14 workpapers.

15 MS. COHN: Really I don't want her to  
16 have to comb through her workpapers. The relevant  
17 point to me is what are the losses incurred here when  
18 she is saying Duke is acting imprudently, and -- and  
19 although we have a larger imprudence loss figure of  
20 24 million that OCC is recommending, I just want to  
21 understand these specific events what the projected  
22 losses were during that time. I think that is  
23 relevant to the -- very relevant to the prudence  
24 inquiry.

25 I was hoping she would have it. If not,

1 she doesn't have it, and I can accept that. I just  
2 was trying to avoid combing through these documents  
3 to do it myself given that she already specified  
4 these events.

5 A. So the reason I didn't include that  
6 number in the testimony is because there is a larger  
7 context in which that number sits so there is many  
8 reasons why economic commitment happens. There is  
9 losses that you can see. There's an imprudent  
10 process overall.

11 So part of the reason I don't -- I don't  
12 remember the number, honestly this was seven months  
13 ago, but part of the reason the number isn't there is  
14 because it requires a larger conversation around  
15 other issues or other reasons for losses, poor  
16 process, poor projections of LMPs that don't align  
17 with actual LMPs. So the number itself is not all  
18 that relevant compared to the larger context around  
19 the imprudence and the insufficiency of the unit  
20 commitment process at large.

21 Q. Okay. Noted. I kind of -- okay. So --  
22 so then why -- can I ask this then, why did you feel  
23 it necessary to identify that specific number of  
24 events in -- for purposes of your testimony?

25 A. Because it shows the number of days. So



1 the number of days, everyone knows like how many days  
2 there are in a year so that gives you context on the  
3 number of days in which the Company's own analysis  
4 showed something was imprudent. It's just providing  
5 context. The actual number itself can also provide  
6 context, but I felt it could be misinterpreted or  
7 taken out of context in a different way without the  
8 entire context of the other explanations and the  
9 other whole -- when I read testimony on unit  
10 commitment, there is like many pages that go along  
11 with that and that didn't seem like that was required  
12 in this testimony.

13 MS. COHN: Okay. Understood. I guess  
14 because there is already quantification, I don't have  
15 any further questions at this time. I may want to  
16 revisit this confidential session after -- whenever  
17 it's okay with your Honor.

18 EXAMINER SANDOR: Well, okay. So from my  
19 understanding right now, there is an outstanding --  
20 outstanding discovery request from Duke that  
21 requested all documents related to this or just --  
22 the reason I am bringing this up now is because the  
23 confidential session does require quite a bit. We  
24 have to come off of here. We have to create a new  
25 Webex link and everything. I'm not saying we can't

1 necessarily do that. I am just trying to better  
2 understand the circumstances here so we can make --

3 MS. COHN: Your Honor, I will do it  
4 through a motion then. Can I just move for the  
5 witness to provide a list of the -- because it's  
6 confidential of the specific events? I know OCC may  
7 contest that motion, but I would move for that for  
8 purposes of efficiency. And again, I've argued that  
9 this is relevant on the record because she is  
10 specifying this specific number of days of imprudence  
11 or period of imprudence, and I want to understand the  
12 losses associated with those specific -- that  
13 specific time period.

14 MS. O'BRIEN: Your Honor, OCC would  
15 object to that question. I mean, discovery is cut  
16 off. It cuts off before the hearing. This is a very  
17 delayed request for discovery. Parties should have  
18 known what their cross-examination was of witnesses a  
19 long time ago. Devi Glick's testimony was filed in  
20 October of 2021. It's been out there for quite a  
21 while now.

22 With respect to Duke's discovery request,  
23 I went back and looked at them. We provided valid  
24 objections to requests as overbroad and unduly  
25 burdensome to several of them. There were no

1 requests specifically as far as I can see  
2 specifically requesting the workpapers. We never  
3 received any sort of motion to compel or follow-up on  
4 those. So we can't be faulted for at this point  
5 not -- not having provided the workpapers.

6 So for those reasons, I mean, I'm not  
7 saying that OCC necessarily is opposed to ultimately  
8 providing them. I just think it's incredibly delayed  
9 at this point and, you know, move into a confidential  
10 session at this late point, you know, really  
11 prejudices OCC, prejudices our witness.

12 And for those reasons I would -- I would  
13 request that the -- your Honor not entertain this  
14 line of questioning.

15 MS. BOJKO: Your Honor, OMAEG would also  
16 oppose such a motion. Discovery is not proper at  
17 this point. If Duke believes that there was some  
18 kind of deficiency, the rules specifically require  
19 Duke to do a deficiency letter. And then if it is  
20 still not resolved, they have to do a motion to  
21 compel. This is improper to do it.

22 I apologize if it's a burden to do  
23 confidential. I do think OEG has a right to ask  
24 confidential questions but that needs to be done on a  
25 confidential hearing. I think a motion for discovery

1 is improper, prejudicial, sets bad precedent for all  
2 these cases going forward, and we would oppose such a  
3 motion.

4 MS. AKHBARI: Your Honor, I have one  
5 clarifying point for the record. And I will say Duke  
6 actually does not have an opinion either way on how  
7 OEG chooses to advance this topic, but we did  
8 request -- Duke did request in discovery any and all  
9 documents relied upon by any OCC witnesses and/or  
10 expert witnesses whether generated by the witness or  
11 expert witness themselves or provided to them by OCC  
12 including but not limited to expert workpapers, case  
13 files, and any other documents so --

14 MS. O'BRIEN: And I would just add that  
15 we validly -- that we provided a valid objection to  
16 those requests on the grounds they sought any and all  
17 documents, was overbroad as to with respect to scope  
18 and to time limitation, and to date we have not heard  
19 from Duke as to whether that objection was deficient  
20 nor have they filed a motion to compel so here we are  
21 on -- almost ready to wrap up this hearing, and we've  
22 got these requests at this late date.

23 EXAMINER SANDOR: Okay. Well, hearing  
24 all this I think the most appropriate way through  
25 this is to do a confidential session, however brief

1 it may be. My -- so to do that we will need -- we  
2 might need some additional information. We will chat  
3 with Micah in a second, but before going into the  
4 confidential session, I want to try to finish out the  
5 public portion except for admitting in documents. So  
6 at this time I want to ask if Staff has any cross --  
7 or I'll scoot back real quick.

8 OEG, do you have any more public?

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

10 EXAMINER SANDOR: Okay. All right.

11 Staff?

12 MR. LINDGREN: Thank you, your Honor.

13 Staff has no questions for this witness.

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

16 (Discussion off the record.)

17 (CONFIDENTIAL PORTION EXCERPTED.)

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(END OF CONFIDENTIAL PORTION.)

EXAMINER SANDOR: Let's go back on the record. We've now -- we've ended the confidential session and now back in the -- the public transcript.

At this time I would like to hand it over to Ms. O'Brien to see if you have any redirect?

MS. O'BRIEN: No redirect, your Honor, thank you.

EXAMINER SANDOR: Thank you. Okay. Please proceed with exhibits.

MS. O'BRIEN: Excuse me. Your Honor, at this time I would like to move for admission of OCC Exhibit 2 which is the prefiled direct testimony of Devi Glick public version and OCC Exhibit 2C which is the prefiled direct testimony of Devi Glick confidential version.

EXAMINER SANDOR: Any objections?

(EXHIBITS ADMITTED INTO EVIDENCE.)

THE WITNESS: Thank you.

(Thereupon, at 12:08 p.m., a lunch recess

— — —

1 Tuesday Afternoon Session,  
2 May 31, 2022.

3 - - -

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

6 We've just come back from our lunch  
7 break. Now I will hand it over to Ms. Bojko to call  
8 your first witness.

9 MS. BOJKO: Thank you, your Honor. On  
10 behalf of the Ohio Manufacturers' Association Energy  
11 Group, I call Mr. John Seryak to the stand.

12 EXAMINER SANDOR: Good afternoon,  
13 Mr. Seryak. Can you please raise your right hand.  
14 (Witness sworn.)

15 EXAMINER SANDOR: All right. Thank you.

16 MS. BOJKO: Thank you, your Honor.

17 - - -

18 JOHN SERYAK  
19 being first duly sworn, as prescribed by law, was  
20 examined and testified as follows:

21 DIRECT EXAMINATION

22 By Ms. Bojko:

23 Q. Good afternoon, Mr. Seryak. Could you  
24 please state your name and business address for the  
25 record.



1           A.     John A. Seryak and my business address is  
2     5701 North High Street, Worthington, Ohio.

3           Q.     Did you file or cause to be filed  
4     testimony in this proceeding regarding the 2019 audit  
5     of Duke's Price Stability -- Stability Rider --  
6     Stabilization Rider?   Excuse me.

7           A.     Yes.

8           MS. BOJKO:   Your Honor, I would like to  
9     mark as OMAEG Exhibit 1 the direct testimony of John  
10    Seryak public version filed on October 27, 2021, in  
11    this proceeding.

12           EXAMINER SANDOR:   So marked.

13           (EXHIBIT MARKED FOR IDENTIFICATION.)

14           MS. BOJKO:   Also, your Honor, at this  
15    time I would like to mark as OMAEG Exhibit 1C the  
16    confidential version of that same testimony filed on  
17    October 27, 2021, in this proceeding.

18           EXAMINER SANDOR:   So marked.

19           (EXHIBIT MARKED FOR IDENTIFICATION.)

20           Q.     (By Ms. Bojko) Mr. Seryak, do you have in  
21    front of you what has been marked as OMAEG Exhibit 1  
22    and 1C?

23           A.     Yes.

24           Q.     Do you recognize these documents as your  
25    testimony filed in this proceeding?

1 A. Yes.

2 Q. Was this testimony prepared by you or  
3 under your direction?

4 A. Yes.

5 Q. On whose behalf are you testifying today,  
6 sir?

7 A. The Ohio Manufacturers' Association  
8 Energy Group.

9 Q. Since the filing of your testimony, do  
10 you have any change to that testimony?

11 A. No.

12 Q. If I were to ask you the same questions  
13 today as they appear in your testimony, would the  
14 answers be the same?

15 A. Yes.

16 MS. BOJKO: At this time, your Honors, I  
17 would like to move OMAEG Exhibits 1 and 1C, subject  
18 to cross-examination.

19 EXAMINER SANDOR: Thank you. So I'll  
20 note at this time that there is a pending motion to  
21 strike of Mr. Seryak's testimony filed by Duke and  
22 then also there was a memo contra filed in the docket  
23 by OMAEG. And given those filings, we are ready to  
24 make a ruling on the motion to strike. We will be  
25 denying the motion to strike Mr. Seryak's testimony.

1 MS. BOJKO: Thank you, your Honor.

2 EXAMINER SANDOR: Duke.

3 MS. AKHBARI: All right. Thank you, your  
4 Honor.

5 - - -

6 CROSS-EXAMINATION

7 By Ms. Akhbari:

8 Q. Hi, Mr. Seryak. Good afternoon. Can you  
9 hear me okay?

10 A. Yes, I can. Good afternoon.

11 Q. Great. Nice to see you again and thank  
12 you for being with us here this afternoon. So let's  
13 talk a little bit about -- I would like to start by  
14 going over some preliminary items related to your  
15 background. Mr. Seryak, you are not a lawyer,  
16 correct?

17 A. That's right.

18 Q. And you have a Bachelor's Degree in  
19 mechanical engineering; is that correct?

20 A. And a Master's Degree.

21 Q. Yes, sorry. That was my next question.  
22 You have a Master's of science in mechanical  
23 engineering as well; is that correct?

24 A. Yes.

25 Q. And you are a licensed professional

1 engineer in the state of Ohio, correct?

2 A. That's right.

3 Q. And you do not have a degree in  
4 economics, correct?

5 A. I do not.

6 Q. And you don't have a degree in public  
7 policy, correct?

8 A. That's correct.

9 Q. You do not have a degree in finance,  
10 correct?

11 A. Correct.

12 Q. And you do not have experience working  
13 for or in the operation of a power plant; is that  
14 correct?

15 A. I guess I would say not a -- I have  
16 experience with distributed energy power resources --

17 Q. Okay.

18 A. -- but not operating them.

19 Q. I understand. Thank you. That's  
20 helpful. Mr. Seryak, in your testimony you're  
21 offering your opinion as to whether you think costs  
22 contained or populated to Rider PSR are following the  
23 intent of the law and regulation, correct?

24 MS. BOJKO: Objection to the extent it  
25 calls for a legal opinion.

1 EXAMINER SANDOR: Overruled. I will  
2 allow him to give his -- to clarify and give his  
3 opinion on it.

4 A. Can you restate the question?

5 Q. Sure. Sure. And I will repeat it. In  
6 your testimony you are offering your opinion as to  
7 whether you think costs in Rider PSR are following  
8 the intent of the law and regulations; is that  
9 correct?

10 A. I would -- I would say I'm offering a  
11 professional opinion on the reasonableness, the  
12 prudence, and whether certain -- on costs in Rider  
13 PSR and whether those costs are allowed under the  
14 Opinion and Order of the ESP IV.

15 Q. So you are not opining as to whether or  
16 not Rider PSR follows the intent of the law in  
17 regulation -- excuse me, the cost populated to Rider  
18 PSR for following the intent of the law and  
19 regulations, right?

20 MS. BOJKO: Objection, mischaracterizes  
21 his answer and asked and answered.

22 EXAMINER SANDOR: Overruled. I will let  
23 him clarify if he believes he needs to.

24 A. No, I don't think I need to clarify.

25 MS. AKHBARI: Your Honor, I'm sorry, but

1 I don't think I've gotten an answer to the question.

2 Q. (By Ms. Akhbari) So if -- Mr. Seryak, I  
3 can repeat the question or if -- I will move along.  
4 So, Mr. Seryak, you are interpreting the Commission's  
5 previous orders in your testimony, correct?

6 A. Yes.

7 Q. And as part of your process of your  
8 testimony, you've made an interpretation of the past  
9 Commission orders, and you've clarified your  
10 understanding of those orders with your counsel,  
11 correct?

12 MS. BOJKO: Objection, compound. Two  
13 different questions.

14 EXAMINER SANDOR: If you could break it  
15 up, Ms. Akhbari.

16 MS. AKHBARI: Sure.

17 Q. (By Ms. Akhbari) Mr. Seryak, you made an  
18 interpretation of past Commission orders in your  
19 testimony, correct?

20 A. Yes.

21 Q. And you've clarified your understanding  
22 of those orders with counsel, correct?

23 MS. BOJKO: Objection to the extent it  
24 calls for attorney-client privilege.

25 EXAMINER SANDOR: So what I would say

1 here is I will overrule it and to the extent --  
2 please don't divulge any conversations you had with  
3 counsel.

4 THE WITNESS: If I have a -- an  
5 uncertainty in what a certain word means or kind of  
6 how the legal system works, I'll ask my counsel to  
7 clarify for me -- for me.

8 Q. (By Ms. Akhbari) And you've -- the  
9 process that you just described, you've done that to  
10 make sure you have the correct interpretation of the  
11 Commission's orders and the law on which the order  
12 was based, correct?

13 MS. BOJKO: Objection. Your Honor, now  
14 she is getting into the basis of the attorney-client  
15 communication and what he did or did not say to his  
16 counsel.

17 EXAMINER SANDOR: I'll sustain as to that  
18 question.

19 Q. (By Ms. Akhbari) Mr. Seryak, you've  
20 described a process today, correct, of how you  
21 developed your expert testimony, correct?

22 MS. BOJKO: Objection, vague. I'm not  
23 sure what process you are talking about.

24 EXAMINER SANDOR: I will allow him to  
25 answer. If he needs clarification to the question,

1 he can ask.

2 A. No. I did not offer today a full  
3 description of the process I used to develop my  
4 testimony.

5 Q. Let me ask something simpler, Mr. Seryak.

6 MS. BOJKO: Objection.

7 Q. So prior to the analysis, you reviewed  
8 the Commission's orders, correct?

9 MS. BOJKO: Objection. I am going to  
10 object to counsel's argumentative statements in her  
11 beginning of her question or preface of her question.

12 EXAMINER SANDOR: Overruled.

13 Q. (By Ms. Akhbari) I apologize if I seem  
14 argumentative, Mr. Seryak. I'm just trying to break  
15 down a question to get the simplest response. So as  
16 part of your regulatory analysis that you  
17 performed -- well, I guess would you agree you  
18 perform regulatory analysis as part of your expert  
19 testimony?

20 A. I reviewed -- I reviewed some source  
21 materials, and I submitted testimony. I think you  
22 could call what I did analysis in a regulatory space;  
23 so, sure, I think maybe if you use the term  
24 regulatory analysis in a different way, I am not sure  
25 I would agree, but I think generally speaking you



1 could call this a regulatory analysis.

2 Q. Okay. So, Mr. Seryak, as part of your --  
3 well, as part of the process of developing your  
4 expert testimony, you reviewed the Commission's  
5 orders, correct?

6 MS. BOJKO: Objection.

7 A. Yes.

8 EXAMINER SANDOR: Sorry. He answered.  
9 Please proceed.

10 Q. And you reviewed the Commission's  
11 order -- Opinion and Order from December 19, 2018, in  
12 Case No. 17-1263-EL-SSO, et al., correct?

13 A. Let me just make sure we are talking  
14 about the same one. You said December 19, 2018?

15 Q. That's correct. Yes, sir.

16 A. Yes.

17 Q. Okay. And you also reviewed an Opinion  
18 and Order in -- going forward I will refer to Case  
19 No. 17-1263 as the ESP IV case. Does that sound okay  
20 with you?

21 A. Yes.

22 Q. You reviewed the Opinion and Order in  
23 Case No. 14-841 dated April 2, 2015, correct?

24 MS. BOJKO: Objection, your Honor. I  
25 just couldn't hear the first part of the question.

1 The internet faded out.

2 EXAMINER SANDOR: It did a little for me.  
3 If you could just repeat that question, Ms. Akhbari.

4 MS. AKHBARI: Sure. I apologize.

5 Q. (By Ms. Akhbari) Mr. Seryak, if you could  
6 turn to your prefiled testimony at this time, please.

7 A. Give me just a minute.

8 Q. Thank you.

9 A. Okay.

10 Q. All right. In -- on page 8 of your  
11 prefiled testimony, footnote 8.

12 A. Yes.

13 Q. Great. So in footnote 8 you cite to Case  
14 No. 14-841-EL-SSO, et al., and you title -- you call  
15 this the ESP -- ESP III case, correct?

16 A. Yes.

17 Q. And you reviewed the Opinion and Order in  
18 ESP III case that you cite in footnote 8 as well,  
19 correct?

20 A. I did.

21 Q. And, Mr. Seryak, in your testimony you  
22 make certain conclusions related to the orders in the  
23 ESP IV case and the ESP III case, correct?

24 A. I do.

25 Q. And your testimony regarding the

1 Commission's orders in these cases, you state that  
2 the Commission's prior decisions regarding the PSR  
3 Rider are relative to the issues in the underlying  
4 case, correct?

5 MS. BOJKO: Your Honor, may I ask where  
6 the counsel is reading from? What page of the  
7 testimony?

8 Q. (By Ms. Akhbari) Sure. Page 8, lines 3  
9 to 4, Mr. Seryak.

10 MS. BOJKO: Thank you.

11 A. Yeah. Just to make sure we have the  
12 lines correct, could you state the sentence again?

13 Q. I'm sorry. Yes.

14 A. And blipped out that part. I just didn't  
15 hear it.

16 Q. No, I understand. And I know we had this  
17 issue previously about lines so let's make sure we  
18 are on the same page. So in question 14 of your  
19 testimony.

20 A. Yes.

21 Q. Let me find the quote. I'm sorry. I'm  
22 not finding the quote I was originally quoting from  
23 but let me ask you again. Would you agree,  
24 Mr. Seryak, that the Commission's prior decisions in  
25 ESP IV -- III and IV are relative to the issues in

1 the underlying case?

2 A. Yes.

3 Q. Mr. Seryak, you were not a witness in the  
4 ESP IV case, were you?

5 A. I was not.

6 Q. And you -- you did not provide testimony  
7 in that case, correct?

8 A. That's correct.

9 Q. And any conclusions that you make about  
10 the ESP IV case in your testimony, those are part of  
11 your after-the-fact review of that case, correct?

12 A. Yes.

13 Q. OMAEG -- OMAEG was a participant in the  
14 ESP IV case, correct?

15 A. Yes.

16 Q. And is it your understanding that OMAEG  
17 signed on as a nonopposing party to the Stipulation  
18 in the ESP IV case?

19 A. I'm not recalling the overall position.  
20 I know specific to Rider PSR there was a footnote for  
21 OMAEG saying that they did not support that provision  
22 and that's the provision of the settlement I was most  
23 focused on.

24 Q. Okay. And when you say the provision of  
25 the settlement, you were referring to the Stipulation

1 in the ESP --

2 A. Yes, sorry, the Stipulation.

3 Q. And it's your understanding OMAEG --  
4 OMAEG had a footnote in the Stipulation stating that  
5 they did not agree with or adopt the inclusion of  
6 Rider PSR in the Stipulation?

7 A. That's my understanding.

8 Q. And do you believe that OMAEG signed the  
9 Stipulation in ESP IV?

10 MS. BOJKO: Objection, asked and  
11 answered.

12 EXAMINER SANDOR: I'll allow him to  
13 answer. Overruled.

14 A. I don't recall. I didn't check to see if  
15 they signed it or not.

16 Q. All right. So you don't know whether or  
17 not OMAEG was a signatory party to the Stipulation in  
18 ESP IV.

19 MS. BOJKO: Objection, asked and answered  
20 a third time.

21 EXAMINER SANDOR: Sustained. I believe  
22 he said he doesn't know.

23 Q. (By Ms. Akhbari) Okay. So, Mr. Seryak,  
24 did you review the record in the ESP IV case?

25 MS. BOJKO: Objection, vague.

1 EXAMINER SANDOR: I will allow him to  
2 answer.

3 A. Could you be more specific with what you  
4 mean by record? Which parts of the record?

5 Q. Well, I guess I'll ask you what parts of  
6 ESP IV case did you review? What parts of the record  
7 of the ESP IV case did you review?

8 A. Well, it -- I couldn't tell you exactly.  
9 Based on memory I wrote the testimony I think this  
10 was last fall but certainly the Opinion and Order,  
11 Stipulation, and then I may have reviewed certain  
12 witnesses' testimony and other supporting  
13 documentation.

14 Q. All right. Do you recall which witness  
15 testimony you reviewed as part of your preparation of  
16 your prefiled testimony?

17 A. I don't. Not right now I don't recall.

18 Q. Would you say that you generally reviewed  
19 witness testimony in the ESP IV case?

20 MS. BOJKO: Objection.

21 EXAMINER SANDOR: I will allow it.  
22 Overruled.

23 A. Not generally. I reviewed some  
24 witnesses' testimony and not others. I reviewed  
25 witness testimony that I thought was relevant to

1 Rider PSR.

2 Q. But you can't remember what that relevant  
3 witness testimony would be at this time; is that  
4 correct?

5 MS. BOJKO: Objection, asked and  
6 answered.

7 EXAMINER SANDOR: I think she's asking  
8 about the content. Overruled.

9 A. Would you restate that, please?

10 Q. Yeah.

11 MS. AKHBARI: Your Honor, could we read  
12 the question back?

13 EXAMINER SANDOR: Karen, if you don't  
14 mind.

15 (Record read.)

16 EXAMINER SANDOR: You can answer.

17 A. Yeah. I don't recall, and I am not sure  
18 I could say specifically which witness testimony as I  
19 saw at that time. I have a general interest in OVEC,  
20 so I've read lots of witness testimonies in this case  
21 and others at various points but there's a lot of  
22 pages and documents, so I'm not going to be able to  
23 tell you specifically what I reviewed or didn't  
24 review from testimony.

25 Q. When you reference that you reviewed lots

1 of documents, testimony, et cetera, related to OVEC,  
2 did your review of those additional documents inform  
3 your prefiled testimony that we are discussing today?

4 A. Well, I couldn't say given I can't recall  
5 which ones I reviewed, but I think if we get into  
6 specific questions, maybe I could tell you or not. I  
7 thought the -- the citations I had in my testimony  
8 are the most relevant documents and strongly informed  
9 my testimony. I did not when I wrote the testimony  
10 feel the need to cite other -- other testimonies when  
11 I was preparing mine.

12 Q. Do you know if OMAEG offered evidence in  
13 the ESP IV case?

14 MS. BOJKO: Objection. Your Honor, I  
15 didn't hear the question again. Could you maybe have  
16 it reread? My apologies.

17 EXAMINER SANDOR: Ms. Akhbari, are you  
18 able to reread it?

19 MS. AKHBARI: I am. And I'm sorry. Is  
20 the disconnect on my end? And if so, I can speak up  
21 or try to --

22 MS. BOJKO: I didn't hear one of your  
23 words because I think the internet blanked out but.

24 MS. AKHBARI: Okay. I understand.  
25 Thanks, Ms. Bojko.



1 I'll move along anyway. I think we've  
2 established as much. Sorry. I think he answered a  
3 number of things, so I am attempting to skip forward.

4 Q. (By Ms. Akhbari) If you would bear with  
5 me, Mr. Seryak. Mr. Seryak, did you review the  
6 hearing transcript in the ESP IV case when you were  
7 creating your testimony in -- in the underlying  
8 matter?

9 A. I don't recall.

10 Q. Have you ever reviewed the hearing  
11 transcript regarding the approval or consideration of  
12 the Stipulation in ESP IV?

13 MS. BOJKO: Objection, lack of temporal  
14 restriction or vague.

15 EXAMINER SANDOR: I'll allow him to  
16 answer.

17 A. I've reviewed some transcripts in the  
18 last year regarding OVEC. I'm not sure which ones  
19 and which cases or which volumes so.

20 Q. Did you review any of the schedules  
21 submitted in the ESP IV case in preparing your  
22 testimony?

23 A. Do you mean like schedule to a witness --  
24 a witness's testimony like an attachment?

25 Q. Yes, exactly.

1           A.     I may have.

2           Q.     So, Mr. Seryak, in forming your opinion,  
3     you may or may not have reviewed testimony in the  
4     underlying -- in the ESP IV case; is that right?

5           MS. BOJKO:  Objection.  Mischaracterizes  
6     his prior testimony.

7           EXAMINER SANDOR:  Sustained.  If you  
8     could rephrase.

9           MS. AKHBARI:  Well, I am happy for him to  
10    clarify, your Honor, if he disagrees with the  
11    phrasing.

12          Q.     (By Ms. Akhbari) Mr. Seryak, in  
13    developing your testimony for this case for Rider PSR  
14    for the 2019 audit period, did you review testimony  
15    from the -- well, let me ask this, you rely upon  
16    Opinion and Order in the ESP IV case to inform your  
17    opinion in this case in Rider PSR, correct?

18          MS. BOJKO:  Objection, asked and  
19    answered.

20          EXAMINER SANDOR:  Sustained.  I believe  
21    he said yes.

22          Q.     (By Ms. Akhbari) And you can't say  
23    whether or not you reviewed testimony --

24          MS. BOJKO:  Objection.

25          Q.     -- correct?

1 MS. BOJKO: Objection, mischaracterizes  
2 his prior testimony.

3 EXAMINER SANDOR: Sustained. I think we  
4 talked a bit about it.

5 MS. AKHBARI: Your Honor, I -- I'm happy  
6 to rephrase if he knows the answer to that question,  
7 or is it your preference that I move along from  
8 discovering -- exploring what he reviewed in  
9 generating his testimony?

10 EXAMINER SANDOR: You can try to  
11 rephrase.

12 Q. (By Ms. Akhbari) So, Mr. Seryak, if you  
13 can correct me if you disagree or anywhere that I am  
14 wrong, did you review testimony in the ESP IV case in  
15 generating your expert testimony?

16 MS. BOJKO: Objection, asked and  
17 answered.

18 EXAMINER SANDOR: I'll sustain it because  
19 I believe he did answer.

20 MS. AKHBARI: Okay. And if he did answer  
21 it, then what is his answer, I guess?

22 Q. (By Ms. Akhbari) So, Mr. Seryak, as I sit  
23 here, I do not have an understanding as to whether or  
24 not you reviewed testimony to generate your prefiled  
25 testimony in Rider PSR for the 2019 audit. Would you

1 please clarify for me whether or not that was the  
2 case? Or could you list -- I'm going to go through a  
3 list, testimony, schedules, and hearing transcripts,  
4 could you please inform me of which of those you  
5 reviewed in generating your testimony for Rider PSR  
6 in the 2019 audit.

7 MS. BOJKO: I am going to object as asked  
8 and answered, but if she doesn't recall, we can let  
9 him answer again.

10 EXAMINER SANDOR: Well, he did -- he did  
11 say at some point he might have reviewed certain  
12 ones, so if she would like to go through the list, we  
13 can do that.

14 MS. BOJKO: I think he answered he  
15 reviewed. He just doesn't recall which ones he  
16 reviewed.

17 EXAMINER SANDOR: He can -- Ms. Akhbari  
18 can ask that question.

19 MS. AKHBARI: That's fine. Is the answer  
20 he doesn't remember but he did review some of them?

21 Q. (By Ms. Akhbari) Is that the correct  
22 answer, Mr. Seryak?

23 A. Yes.

24 Q. Okay. That was very helpful. Thank you.

25 MS. AKHBARI: And thank you, Ms. Bojko,

1 for bearing with me in my inartful attempt at nailing  
2 that down.

3 Q. (By Ms. Akhbari) Okay. Mr. Seryak, you  
4 agree that the -- that the ESP IV case was litigated  
5 following a Stipulation being signed in that case; is  
6 that correct?

7 A. I don't know. I didn't -- I didn't look  
8 to see if it was litigated after the Stipulation was  
9 signed.

10 Q. Okay. Did you review the Opinion and  
11 Order -- the December 19, 2018, Opinion and Order in  
12 support -- in developing your testimony?

13 MS. BOJKO: Objection, asked and  
14 answered.

15 EXAMINER SANDOR: Sustained. He said  
16 yes.

17 Q. (By Ms. Akhbari) Okay. So, Mr. Seryak,  
18 because you reviewed the December 19, 2018, Opinion  
19 and Order, are you aware of whether or not that  
20 Opinion and Order indicates whether or not the  
21 underlying ESP IV case was litigated?

22 MS. BOJKO: Objection, asked and  
23 answered.

24 EXAMINER SANDOR: As to some specific  
25 question, I will overrule it and allow him to answer.

1           A.    I didn't review that part of the -- of  
2   the order.

3           Q.    Okay.  So you said that you did not  
4   review that part of the order.  What parts of the  
5   order did you review in generating your expert  
6   testimony?

7           A.    I reviewed the components of the order  
8   that specifically refer to Rider PSR.

9           Q.    Mr. Seryak, if you -- did you -- well, I  
10   would like to direct your attention to the order in  
11   Case No. 17-1263, December 19, 2018, order.  If you  
12   don't have it available to you, I can -- we can take  
13   a moment for you to track it down.

14          A.    I have it.

15          Q.    Great.  Thank you.

16                EXAMINER SANDOR:  Was this -- this was in  
17   your e-mail from last night?

18                MS. AKHBARI:  It was, yes, your Honor.

19                MS. BOJKO:  Your Honor, just for the  
20   record it was marked.  It might be easier for you to  
21   find it.  It was marked as OMAEG Exhibit 4.

22                EXAMINER SANDOR:  Oh, yes.  Okay.  Thank  
23   you.

24                MS. BOJKO:  Yep.

25                MS. AKHBARI:  Thank you, Ms. Bojko.

1           Q.     (By Ms. Akhbari) And, Mr. Seryak, if you  
2     have that available to you.

3           MS. BOJKO:   He said he has it, counselor.

4           MS. AKHBARI:   Oh, okay.   Great.

5           Q.     (By Ms. Akhbari) Mr. Seryak, I would  
6     direct your attention to page 32 of the decision,  
7     please.

8           A.     Sure.   I'm there.

9           Q.     Great.   If you look at paragraph 91,  
10    Mr. Seryak, it stays "The evidentiary hearing  
11    commenced on July 9, 2018, and concluded on July 24,  
12    2018.   Rebuttal testimony was heard on August 6,  
13    2018."   Does this paragraph inform you as to whether  
14    or not the underlying case in ESP IV was litigated  
15    before the Commission?

16          MS. BOJKO:   I'm sorry, your Honor.   Could  
17    you repeat the citation, please?

18          MS. AKHBARI:   Sure.   Paragraph 91 on page  
19    32.

20          MS. BOJKO:   Thank you.

21          EXAMINER SANDOR:   And you can answer,  
22    Mr. Seryak.

23          A.     I read this to mean there was an  
24    evidentiary hearing in July of 2018.

25          Q.     Right.   Would you agree that the holding

1 of an evidentiary hearing -- well, you don't have to  
2 agree. Okay. So there was a hearing in the case.  
3 That's a better way to put it. Now, Mr. Seryak,  
4 would you agree that the Commission based its  
5 December 19, 2018, decision on the record as it was  
6 developed in ESP IV?

7 MS. BOJKO: Objection, calls for a legal  
8 conclusion.

9 EXAMINER SANDOR: Overruled. And he can  
10 answer if he understands.

11 A. I mean, that would be my understanding,  
12 yes.

13 Q. And it's your testimony today that --  
14 please correct me if I am wrong, but is it your  
15 testimony today that you did not review -- that you  
16 reviewed some of the parts of the case record in ESP  
17 IV but perhaps not others and that you cannot recall  
18 which parts you did or did not review of the  
19 underlying record in ESP IV?

20 MS. BOJKO: Objection. Your Honor, at  
21 this time I think he has answered that a lot of  
22 times, but I am going to object to relevancy. The  
23 ESP is a very large proceeding. The witness has  
24 stated numerous times that he focused on one issue of  
25 the proceeding. And so I don't understand the



1 relevance of asking him repeatedly whether he's  
2 reviewed the entire record or not the entire record.

3 EXAMINER SANDOR: So I'm going to  
4 overrule the objection. I will allow him to answer,  
5 but perhaps we could move on relatively soon with  
6 regard to reviewing the record or not.

7 MS. AKHBARI: Yes, your Honor.

8 A. You will have to restate it. I forget  
9 what you asked already.

10 Q. It wasn't very artful.

11 MS. AKHBARI: Your Honor, could we please  
12 have it just reread so we can move along?

13 EXAMINER SANDOR: If -- Karen, if you  
14 could please reread the question.

15 (Record read.)

16 A. Yes.

17 EXAMINER SANDOR: You can answer the  
18 question.

19 A. That's right.

20 Q. Mr. Seryak, if you could turn to your  
21 testimony, please, and I believe I am working from  
22 the public version.

23 A. Okay.

24 Q. If you have that one available to you, it  
25 might be -- it might be best.

1 MS. BOJKO: Your Honor, if I just may,  
2 we -- we have confirmed that the two documents that  
3 Mr. Seryak has, confidential and the public, match  
4 the exact page numbers and line numbers of the public  
5 version that was filed. Your Honor, I'm explaining  
6 because there was some confusion during the  
7 deposition of page numbers and line numbers, so I  
8 just want to make sure we are all on the same page  
9 here.

10 EXAMINER SANDOR: Okay. That's noted.  
11 So the confidential and public page numbers and line  
12 numbers match; is that what you are saying?

13 MS. BOJKO: Correct.

14 EXAMINER SANDOR: Okay. Thank you.

15 MS. BOJKO: In the deposition, your  
16 Honor, I endeavored to do that. I just forgot to  
17 tell Duke's counsel that that was completed.

18 MS. AKHBARI: I appreciate that very  
19 much. Thank you. And I am just going to make sure  
20 that my printed copy lines up too if you guys would  
21 bear with me here. I apologize.

22 Q. (By Ms. Akhbari) Okay. Mr. Seryak, if  
23 you could turn to page 6 of your testimony, please.

24 A. Okay.

25 Q. Great. And at line 16 through 18, you

1 acknowledge "In approving recovery of the net costs  
2 associated with Duke's contractual entitlement in  
3 OVEC through Rider PSR, the Commission acknowledged  
4 that: Rider PSR 'may likely be a cost to customers';  
5 and the ESP forecasts to quantify as a net lost for  
6 ratepayers, due to" --

7 EXAMINER SANDOR: One moment. One  
8 moment, Ms. Akhbari. I think you completely broke  
9 off there for a moment.

10 MS. AKHBARI: Okay. I apologize. Can  
11 you hear me now, your Honor?

12 EXAMINER SANDOR: Yes. We heard, I  
13 think, line 16 through part of 18, and then you cut  
14 off.

15 MS. AKHBARI: Okay. My apologies.

16 Q. (By Ms. Akhbari) Mr. Seryak, I will just  
17 start again, if that's okay. Mr. Seryak, in your  
18 testimony on page 6 at lines 16 through 18, you  
19 acknowledge that -- that the Commission acknowledged  
20 that the Rider PSR may likely be a cost to customers;  
21 is that correct?

22 A. Yes.

23 Q. And if you could turn to page 7 of your  
24 testimony, please.

25 A. I'm there.

1           Q.    Question -- great.  Thank you.  At  
2   question 9 you state that "At the time the Commission  
3   approved recovery of net costs through Rider PSR,  
4   Duke estimated that Rider PSR would be a net cost to  
5   customers of \$18 million per year"; is that correct?

6           A.    That's right.

7           Q.    Mr. Seryak, will you agree that the  
8   Commission believed Rider PSR would result in a net  
9   charge to customers at -- at its population or  
10  approval in 2018?

11          A.    Yes.

12          Q.    And that charge was forecasted to be  
13  approximately \$18 million per year according to the  
14  Commission's December 19, 2018, order, correct?

15          A.    Yes.

16          Q.    Mr. Seryak, are you aware of how the  
17  Company calculated the 14 -- the forecasted  
18  \$18 million charge that was anticipated to be  
19  included in Rider PSR?

20          A.    I didn't -- I'm not aware of the  
21  specifics of how they came up with that \$18 million.

22          Q.    Would the information of the calculation  
23  of the forecasted \$18 million charge, would that have  
24  been incorporated into the record in Case No. -- in  
25  the ESP IV case?

1           A.     Could have been.

2           Q.     And did you review any testimony or  
3     hearing transcripts or comments from any party in the  
4     ESP IV case that informed how that \$18 million charge  
5     would have been calculated when you were developing  
6     your expert testimony?

7           A.     No. I didn't go that far because I  
8     didn't think it was relevant to my testimony.

9           Q.     Let's look back at the 2018 Opinion and  
10    Order again, if you would, please.

11          A.     Yes.

12          Q.     Okay. If you could please -- so in  
13    your -- on page 7 of your testimony, and sorry to  
14    make you toggle, in footnote 7 you cite to the ESP IV  
15    case, the Opinion and Order at paragraph 283; is that  
16    correct?

17          A.     Yes.

18          Q.     Okay. If you could look to paragraph 283  
19    in the Opinion and Order which I will represent to  
20    you is on page 103.

21          A.     Give me just a second. Okay. I'm there.

22          Q.     Okay. And you cite to paragraph 283 on  
23    page 7 in footnote 7. The statement which you  
24    cite -- or excuse me. Let's read along in paragraph  
25    283. If you could follow along please. "A primary

1 concern of the non-signatory parties is the projected  
2 rate impact of the proposed PSR. By Duke's estimate,  
3 via Mr. Rose's analysis, the rider will be a net cost  
4 to customers of \$77 million over the term of the ESP.  
5 Duke projected an impact on customers' rates of  
6 \$18 million per year." Did I read that correctly?

7 A. That's right. You did.

8 Q. Mr. Seryak, you reviewed paragraph 283 in  
9 developing your testimony?

10 A. Yes.

11 Q. And you rely on paragraph 283 in a number  
12 of places; is that correct?

13 MS. BOJKO: Objection. I am going to  
14 object at this time, your Honor. She read two  
15 sentences of paragraph 283. 283 is much longer, and  
16 while I don't really want her to sit here and read  
17 the whole thing, I think it's a bit unfair to read  
18 two sentences and then imply that she's asking  
19 questions on the whole 283.

20 EXAMINER SANDOR: I would overrule in the  
21 sense that the order speaks for itself so these can  
22 be referenced in brief.

23 MS. BOJKO: Thank you, your Honor.

24 Q. (By Ms. Akhbari) Based on the statements  
25 in 283, would you agree that the Commission cites to

1 Rose's analysis or the net cost to customers of  
2 \$77 million over the term of the ESP as it appears in  
3 the second sentence in paragraph 283?

4 A. I'm not sure that seems likely, but  
5 the -- where they mention the 18 million it says Duke  
6 projected, so I'm not sure if that means Duke  
7 projected with Mr. Rose's analysis or something else.

8 Q. Okay. And, Mr. Seryak, you did not --  
9 you cannot recall whether or not you reviewed any of  
10 Duke's projections in the ESP IV case; is that  
11 correct?

12 MS. BOJKO: Objection. I couldn't answer  
13 [sic] the whole question, but I believe it's been  
14 asked and answered.

15 EXAMINER SANDOR: Could you reask that?  
16 I'm sorry. It did break up there though.

17 Q. (By Ms. Akhbari) Sure. Mr. Seryak, you  
18 raise -- the next sentence which states "Duke  
19 projected an impact on customer rates of \$18 million  
20 per year," and I'm asking whether or not you reviewed  
21 or recall what you reviewed of Duke's projections in  
22 the underlying ESP IV case.

23 MS. BOJKO: Objection. I don't think  
24 that's a question.

25 MS. AKHBARI: I'm asking.

1           Q.     (By Ms. Akhbari) Mr. Seryak, did you  
2     review any projections in the ESP IV case that Duke  
3     submitted in that case that the Commission references  
4     here in paragraph 283 -- paragraph 283 which is cited  
5     in multiple places throughout your expert testimony?

6           MS. BOJKO:   Okay.   Well, now I am going  
7     to object.   He couldn't possibly get into the mind of  
8     the Commission and know what they did or did not rely  
9     on.   The order speaks for itself.

10          EXAMINER SANDOR:   The order speaks for  
11     itself, I agree.   However, I will allow him to answer  
12     this in terms of whether he knows or not.

13          A.     Sure.   I will probably add some color so  
14     maybe this will help us.   I don't recall if I did or  
15     didn't.   I might recognize if I saw it.   I looked at  
16     a lot of these documents, but in preparation for my  
17     testimony, I reviewed the opinions and orders, the  
18     audit, the LEI audit, the ICPA, and other documents I  
19     cited in my testimony.   I felt those were relevant to  
20     the points I am making in my testimony.

21                 I did not feel that the methods that made  
22     up this forecast were -- were as meaningful as what  
23     is in the audit report and the ICPA and orders, and  
24     so I may have seen those, but I did not rely on it to  
25     prepare or create my testimony.



1 Q. Okay.

2 A. That is why I can't quite recall. I  
3 might have seen them, but I didn't incorporate it  
4 into my testimony because I didn't think it was  
5 needed.

6 Q. All right. Mr. Seryak, you've said today  
7 that you don't know how the \$18 million figure in  
8 paragraph 283, how it was calculated, correct?

9 A. Correct.

10 Q. In paragraph 283, which you cite in  
11 multiple places and footnotes throughout your  
12 testimony, it states "Duke projected an impact on  
13 customer rates of \$18 million per year," correct?

14 MS. BOJKO: Objection, asked and  
15 answered.

16 EXAMINER SANDOR: Sustained.

17 Q. (By Ms. Akhbari) Mr. Seryak, you apply  
18 the \$18 million figure throughout your testimony,  
19 correct?

20 MS. BOJKO: Objection, vague.

21 MS. AKHBARI: Commonsense, Ms. Bojko.

22 MS. BOJKO: I'm sorry?

23 MS. AKHBARI: What -- what is the  
24 objection grounds?

25 MS. BOJKO: I said the objection was

1 vague. You said apply throughout your testimony.

2 That was vague.

3 EXAMINER SANDOR: If you don't mind just  
4 rephrasing, Ms. Akhbari.

5 MS. AKHBARI: Sure.

6 Q. (By Ms. Akhbari) Mr. Seryak, in your  
7 testimony you cite paragraph 283 of the Commission's  
8 Order -- Opinion and Order in ESP IV, you cite it  
9 multiple times, correct?

10 A. I believe so.

11 Q. And footnote 2, 5, 10, for example,  
12 correct?

13 A. Yes.

14 Q. And you also rely upon and cite to  
15 \$18 million as the Commission's estimated charges for  
16 Rider PSR at the time it issued this Opinion and  
17 Order in ESP IV, correct?

18 MS. BOJKO: Objection, mischaracterizes  
19 the order.

20 MS. AKHBARI: I'm not characterizing the  
21 order, your Honor. I am asking what his testimony  
22 is.

23 EXAMINER SANDOR: Overruled. He can  
24 answer.

25 MS. BOJKO: Your Honor, can I have the

1 question reread?

2 EXAMINER SANDOR: Sure. Karen, if you  
3 don't mind, please.

4 (Record read.)

5 EXAMINER SANDOR: You can answer,  
6 Mr. Seryak.

7 A. I just want to be accurate here, so I am  
8 checking all the footnotes. I'm sorry. Can you  
9 repeat the question? I think I can answer now, but I  
10 just need to repeated one more time.

11 MS. AKHBARI: Your Honor, if we would  
12 reread it again.

13 I'm sorry, Karen.

14 EXAMINER SANDOR: Thank you, Karen.

15 (Record read.)

16 A. So the -- of the footnotes we're talking  
17 about, there is quite a few footnotes we mentioned  
18 where I cite to paragraph 283 but only some of those  
19 footnotes are referring to the \$18 million number.  
20 In paragraph 283, and there's just perusing, for  
21 example, footnote 5, I am not saying it's the  
22 Commission's estimate. I said that at the time of  
23 the Commission's approval Duke estimated that Rider  
24 PSR would be a net cost to customers of 18 million.

25 Q. Mr. Seryak, your -- throughout your

1 testimony you -- you rely upon or opine upon the  
2 anticipated or projected \$18 million charge in Rider  
3 PSR, correct?

4 MS. BOJKO: Objection. This has been  
5 asked and answered.

6 EXAMINER SANDOR: I believe it has. I'll  
7 sustain. I believe he did say he relied on it.

8 Q. (By Ms. Akhbari) Okay. So going forward,  
9 understanding that you did rely on the \$18 million  
10 figure, Mr. Seryak, you did not look into how that  
11 figure was calculated, correct?

12 MS. BOJKO: Objection, asked and  
13 answered.

14 EXAMINER SANDOR: I'll allow him to  
15 answer it.

16 A. I said I did not look into it, or if I  
17 did, it was not germane to my testimony. I didn't  
18 think it was relevant.

19 Q. Did you review -- well, looking back at  
20 page 283 of the ESP IV Opinion and Order, did you  
21 review direct or supplemental testimony in the ESP IV  
22 case of Rose?

23 MS. BOJKO: Objection, asked and  
24 answered.

25 MS. AKHBARI: The answer that we have so

1 far, your Honor, is he doesn't recall.

2 EXAMINER SANDOR: I will overrule it and  
3 allow him to answer -- answer.

4 A. I don't recall.

5 Q. Okay. And do you recall whether or not  
6 Rose in his direct or supplemental testimony in ESP  
7 IV included fixed costs or sunk costs in his  
8 calculation?

9 MS. BOJKO: Objection. I didn't hear the  
10 whole entire question again, your Honor. I'm sorry.

11 EXAMINER SANDOR: Sorry. Ms. Akhbari, if  
12 you could please repeat it.

13 MS. AKHBARI: Sure.

14 Q. (By Ms. Akhbari) Mr. Seryak, if you did  
15 not -- let me say it a little differently based on  
16 your response. I apologize. If you did not review  
17 the testimony, supplemental or direct testimony of  
18 Rose in the underlying ESP IV case, you cannot say  
19 whether or not Rose included fixed costs or sunk  
20 costs in his calculations in that case, can you?

21 MS. BOJKO: Objection, mischaracterizes  
22 his testimony.

23 EXAMINER SANDOR: Overruled. He can  
24 clarify.

25 A. I've stated I don't recall. I may have

1 looked at it. It was not cited in my testimony if I  
2 did because I didn't think it was relevant. I don't  
3 think Mr. Rose's forecasts govern what costs should  
4 be collected under Rider PSR.

5 What I look at for the scope of my  
6 analysis are the opinions and orders, audit report,  
7 the ICPA. I cite another academic paper. And I  
8 thought those were sufficient to base my testimony on  
9 and recommendations on what counts as a cost under  
10 Rider PSR, which is allowed, what can be allowed as  
11 prudent and impudent, reasonable and unreasonable, so  
12 I did not think the forecasts or the methods of how  
13 this number was derived were important in that  
14 regards. There could be all -- any manner of correct  
15 analysis or errors in Mr. Rose's forecast, so I did  
16 not review it.

17 MS. AKHBARI: Your Honor, I would move to  
18 strike the remainder of Mr. Rose's testimony  
19 following his response of the yes or no question --  
20 excuse me, Mr. Seryak's testimony. He's answering  
21 the question why. My question was simply did you.

22 MS. BOJKO: Your Honor, she's asked the  
23 same question five times. Mr. Seryak is trying to  
24 explain what he reviewed and what he didn't review  
25 because she keeps asking the same question, so I

1 think he should be allowed to explain his answer.

2 EXAMINER SANDOR: At this time I will  
3 deny the motion to strike. Instruct if it is a yes  
4 or no question, please answer and you can clarify, if  
5 need be. Try to stick to the question and that topic  
6 going forward.

7 MS. BOJKO: Thank you.

8 Q. (By Ms. Akhbari) Mr. Seryak, you stated  
9 earlier that if I could jog your memory with -- I am  
10 paraphrasing here. If I could name some specific  
11 testimony, it might jog your memory whether you might  
12 have reviewed that testimony previously; is that  
13 correct?

14 MS. BOJKO: Your Honor, Ms. Akhbari, you  
15 keep fading in and out, so I don't know I am catching  
16 your whole question or not. I am sorry to keep  
17 interjecting, but I don't know if anybody else is  
18 having the same problem I am.

19 EXAMINER SANDOR: It broke up a little  
20 bit. I was still able to comprehend the question.

21 If you don't mind reasking.

22 Q. (By Ms. Akhbari) Yes. Mr. Seryak,  
23 earlier in our discussion today you stated that if I  
24 named certain testimony in the ESP IV case, you might  
25 be able to speak to whether or not you had reviewed

1 that previously. Do you agree with that statement?

2 A. I would say I might be. I mean, we are  
3 going off memory here. And again, as I have said, I  
4 continued to have interest in the OVEC plants, and I  
5 review a lot of documents on a regular basis. So  
6 there is a good chance I will have familiarity with  
7 the methods, the concepts, maybe even the testimony.  
8 What I can say is -- what I can't say is if I  
9 specifically reviewed those testimonies or  
10 transcripts when I was preparing the testimony for  
11 this case.

12 I can tell you that I did not think it  
13 was germane to my testimony because I don't think of  
14 Mr. Rose's methods or forecasts of how he came up  
15 with the 18 million are relevant to whether these  
16 costs should be included in Rider PSR, whether they  
17 are prudent, whether they are reasonable or not. So  
18 when I was preparing my testimony, that -- that is  
19 the line. I may have looked at the documents. I  
20 might have some familiarity, but I did not do an in  
21 depth review in order to fashion my testimony, if you  
22 will, because I didn't think they were relevant.

23 Q. All right. Mr. Seryak, you have  
24 reviewed -- you can say for certain only that you  
25 reviewed the ESP IV order in preparing -- out of the



1 record items in the ESP IV case, you are certain that  
2 you reviewed the ESP IV Order -- Opinion and Order  
3 we've been discussing today, correct?

4 MS. BOJKO: Objection. I think -- out of  
5 the record, I think that mischaracterizes his prior  
6 testimony.

7 EXAMINER SANDOR: If you can --

8 MS. BOJKO: Are you saying out of the  
9 entire record that's what you reviewed?

10 EXAMINER SANDOR: I think that's what you  
11 were asking, right?

12 MS. AKHBARI: It is, your Honor.

13 MS. BOJKO: Sorry. Thank you for the  
14 clarification.

15 A. You are waiting for my response?

16 EXAMINER SANDOR: Yes.

17 A. I found that -- I think I find it  
18 confusing -- that question confusing in a different  
19 way. Could you just rephrase?

20 Q. Sure. I will move on actually,  
21 Mr. Seryak. Mr. Seryak, let's turn in your  
22 testimony, please, the bottom of page 17.

23 A. Okay. Bottom of page 17 you said?

24 Q. Yes, please.

25 A. Okay.

1           Q.    Mr. Seryak, would you -- you would agree  
2           that at the bottom of page 17 of your testimony you  
3           have a number of recommendations, correct?

4           A.    Yes.

5           Q.    And one of those recommendations, the  
6           first recommendation, is that the Commission should  
7           disallow approximately \$6.6 million of charges to  
8           Rider PSR; is that correct?

9           A.    Yes.

10          Q.    And this recommendation is based upon  
11          forecasts of costs in the PSR IV [sic] case versus  
12          the actual costs charged to Rider PSR in 2019,  
13          correct?

14          A.    Yes.

15          Q.    And this \$6.6 million in disallowance  
16          that you are recommending in your testimony, it's not  
17          based upon operational decisions made by Duke in the  
18          audit period, correct?

19          A.    No, not that specific bullet point, no.

20          Q.    In fact, it's made upon the difference  
21          between projected costs and actual costs, correct?

22          A.    Well, that's how -- how I calculated that  
23          number. But I base it in a logic that -- that it  
24          would be unreasonable to go over the 18 million.

25          Q.    So, Mr. Seryak, aside from the

1 recommendation of disallowance for approximately the  
2 \$6.6 million in costs over the forecasted estimate  
3 from ESP IV, you also have a recommendation that  
4 Rider PSR should be populated at zero dollars,  
5 correct?

6 A. Yes, that's right.

7 Q. If you could turn to page 11 of your  
8 testimony, please.

9 A. I'm there.

10 Q. On line 8 on page 11, if you would read  
11 along as I read. You state that in that first --  
12 excuse me, first full sentence starting on line 8,  
13 "The ESP IV Settlement limits costs recoverable  
14 through Rider PSR to 'the net amount resulting from  
15 transactions, in the wholesale market, relating to  
16 Duke Energy Ohio's entitlement under the ICPA.'" Did  
17 I read that correctly?

18 A. Yes.

19 Q. And on line 15 on the same page, if you  
20 could look there.

21 A. I'm there.

22 Q. Great. You state "Costs in Rider PSR  
23 that do not net from a wholesale energy or capacity  
24 market transaction are not authorized to be collected  
25 under Rider PSR"; is that correct?

1           A.    That's right.

2           Q.    Mr. Seryak, the above -- your  
3    interpretation of what may populate Rider PSR, that's  
4    your interpretation of the Commission's Order --  
5    Opinion and Order in Rider PSR, correct?

6           A.    Yes.

7           Q.    And you rely upon your interpretation of  
8    the Commission's Opinion and Order in Rider -- excuse  
9    me, in ESP IV as reasoning -- as your reasoning and  
10   support for zero dollars being credited to Rider PSR,  
11   correct?

12          A.    That's one of the things I rely on.

13          Q.    What are the other things that you rely  
14   on?

15          A.    You mentioned ESP IV.

16          Q.    The Opinion and Order in ESP IV and your  
17   interpretation of that Opinion and Order.

18          A.    Yes.  I also rely on the Opinion and  
19   Order from ESP III, the ICPA, the audit report, the  
20   academic paper CONEfusion that I cite in my  
21   testimony.  I think other testimony in this case from  
22   Duke supports my point.

23          Q.    So outside of the ESP III order which you  
24   cite, the ESP IV order which you cite, the CONEfusion  
25   article, the audit report, and Duke Energy Ohio

1 testimony, do you rely on anything else in your --  
2 to -- to make up -- or to -- I'm sorry, to support  
3 your interpretation of Rider PSR should be populated  
4 to zero dollars?

5 A. For my testimony, I did not. I think  
6 there are other -- there may be other documents that  
7 could support it, but I felt -- I felt this was  
8 sufficient to disallow these costs.

9 MS. AKHBARI: Your Honor, I think I am  
10 about finished. If I could have 5 minutes to go  
11 through my notes, please.

12 EXAMINER SANDOR: You may. We will come  
13 back at 2:20.

14 Off the record.

15 (Recess taken.)

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

18 Ms. Akhbari.

19 MS. AKHBARI: Thank you, your Honor. I  
20 actually do not have any further questions for  
21 Mr. Seryak today.

22 EXAMINER SANDOR: Okay. Thank you. Any  
23 cross from OCC?

24 MS. O'BRIEN: No cross, your Honor.  
25 Thank you.

1 EXAMINER SANDOR: Any cross from Kroger?

2 MR. WYGONSKI: We have no cross for the  
3 witness, your Honor. Thank you.

4 EXAMINER SANDOR: Okay. Any cross from  
5 OEG?

6 MS. COHN: No questions, your Honor.

7 EXAMINER SANDOR: And then any cross from  
8 Staff?

9 MS. KERN: No questions, your Honor.  
10 Thank you.

11 EXAMINER SANDOR: Thank you.

12 Okay. With that, Ms. Bojko, if you would  
13 like to take up the exhibits.

14 MS. BOJKO: Actually, your Honor, I do  
15 have a few redirect questions.

16 EXAMINER SANDOR: I'm sorry. Yeah.  
17 Forgot about that part. If you have redirect, please  
18 go ahead.

19 MS. BOJKO: Sure. Thank you, your Honor.

20 - - -

21 REDIRECT EXAMINATION

22 By Ms. Bojko:

23 Q. Mr. Seryak, could you turn back to OMAEG  
24 Exhibit 4 which is the Opinion and Order that Duke's  
25 counsel asked you about. Do you have that in front

1 of you?

2 A. Yes. The ESP IV order?

3 Q. Yes.

4 A. Yes.

5 Q. Okay. First of all, could you turn to  
6 paragraph 168 on page 58.

7 A. I'm there.

8 Q. At the end of 168. It starts on page 57,  
9 goes over to 58. If you read the top of 58, does  
10 this refresh your recollection about whether OMAEG  
11 was a signatory party or nonopposing party to the  
12 Stipulation?

13 A. I see OMAEG is a nonopposing party.

14 Q. And could we -- could you explain why you  
15 did not review all of the record in ESP IV?

16 A. Sure. I reviewed the audit of Rider PSR  
17 and -- to start and then also the ESP III and IV  
18 opinions and order -- opinion and orders, the  
19 Stipulation, and the ICPA. And having conducted that  
20 review, I thought it was transparent that the audit  
21 showed there were costs being recovered in Rider PSR  
22 that were not allowed or described in the Opinion and  
23 Order or the Stipulation.

24 And I also seen that the function of the  
25 prudence audit is to disallow costs that should not

1 be included in Rider PSR. I felt that was sufficient  
2 to develop testimony.

3 Q. And did the ESP IV Settlement and Order  
4 go beyond establishing the PSR in a prudency review  
5 of that PSR?

6 A. Yes. That's my understanding.

7 Q. So you didn't review all the non-related  
8 issues in ESP IV; is that right?

9 A. That's correct.

10 Q. Could you turn now to paragraph 238 that  
11 you were questioned about significantly in the order,  
12 it's on page 103.

13 A. I'm there.

14 Q. Paragraph 283 was a larger discussion of  
15 the PSR issue in the Commission's decision which  
16 started on page 93. It's numbered "16 PSR."

17 MS. AKHBARI: Your Honor, I would object.  
18 Counsel is testifying as to her understanding of this  
19 paragraph.

20 MS. BOJKO: I did not mean to testify.  
21 I'm sorry. I was putting context to my question. I  
22 apologize. I can rephrase.

23 EXAMINER SANDOR: Please rephrase.

24 Q. (By Ms. Akhbari) Okay. I thought you --  
25 in your previous answer you told me the PSR was only



1 issue of a lot of the -- a larger group of issues all  
2 resolved by the ESP IV settlement and order and I was  
3 trying to ask if the one paragraph, 283, discussed by  
4 Duke is the entirety of the discussion on the PSR or  
5 if it's a part of a larger discussion that the  
6 Commission set forth in its order?

7 MS. AKHBARI: Your Honor, I would object  
8 again. Ms. Bojko is leading the witness on redirect.

9 MS. BOJKO: This is a foundation  
10 question, your Honor.

11 EXAMINER SANDOR: I will overrule it. I  
12 will allow the question.

13 A. Sorry. Could we restate the question?

14 Q. I am just asking if the 283, which was  
15 discussed in your direct testimony, is the totality  
16 of the Commission's decision on PSR or if this is one  
17 paragraph regarding PSR of many paragraphs in the  
18 Commission order?

19 A. It is not the totality.

20 Q. So with regard to 283, Duke's counsel had  
21 read to you two sentences. Do you recall that?

22 A. Yes.

23 Q. Okay. Are there other estimates provided  
24 by other parties in this paragraph regarding the PSR?

25 A. Yes, there are.

1           Q.    And did you go and review those estimates  
2   and study the testimony of those other witnesses?

3           A.    No, I did not.

4           Q.    And why not?

5           A.    I did not think they were relevant to the  
6   prudence review of the costs collected under Rider  
7   PSR, and I felt the audit established that there were  
8   costs collected that were clearly not enumerated in  
9   the Stipulation.  So I -- it was not relevant to me  
10   how the -- these other estimates were derived.  I was  
11   concerned with the cost collected under Rider PSR.

12          Q.    Okay.  So with regard to 2019 costs, how  
13   did you utilize the ESP IV order to base your -- your  
14   expert opinion on?

15          A.    Sure.  The order adopted terms of the  
16   Stipulation.  And the Stipulation qualifies what  
17   costs are allowed to be in -- populated into Rider  
18   PSR.  So they have to be costs associated with a  
19   retail stability charge.  I think the demand charge  
20   is not a retail stability charge.

21                They needed to be costs associated with  
22   the market transaction.  The demand charges are not  
23   associated with the market transaction.  They had to  
24   be -- the Stipulation says costs related to energy  
25   and capacity.  Demand charges are not related to

1 energy and capacity.

2 I have a few more points on this order,  
3 but I found multiple cases where the costs being  
4 recovered as listed in the audit report were clearly  
5 not the types of costs described as allowable in  
6 Rider PSR in the stipulated agreement and the Opinion  
7 and Order that adopted it.

8 So seeing that, I did not see any reason  
9 to -- to get into any of these forecasts and  
10 estimates because it was clear to me that the audit  
11 established that there were costs being collected in  
12 Rider PSR that were not allowed or described in the  
13 Stipulation.

14 MS. BOJKO: Thank you, your Honor. I  
15 have no further questions.

16 EXAMINER SANDOR: Okay. Thank you.  
17 Any recross from Duke?

18 MS. AKHBARI: Not at this time, your  
19 Honor. Thank you.

20 EXAMINER SANDOR: Any recross from any  
21 other party?

22 Okay. Hearing none, I think we've now  
23 reached the point of exhibits for OMAEG.

24 MS. BOJKO: Thank you, your Honor. At  
25 this time I would like to move the admission of OMAEG

1 Exhibit 1 and 1C.

2 EXAMINER SANDOR: Any objections to  
3 their -- to their admission?

4 Hearing none, OMAEG's Exhibit 1 and 1C  
5 are admitted.

6 (EXHIBITS ADMITTED INTO EVIDENCE.)

7 EXAMINER SANDOR: Thank you, Mr. Seryak.  
8 You are excused.

9 THE WITNESS: Thank you.

10 MS. BOJKO: Thank you, your Honor.

11 EXAMINER SANDOR: And now I will hand it  
12 over to Judge Walstra.

13 EXAMINER WALSTRA: Thank you.

14 Staff, would you like to call your next  
15 witness.

16 MS. KERN: Yes. Thank you, your Honor.  
17 Staff would like to call Mr. Rodney P. Windle to the  
18 stand, please.

19 MR. SCHMIDT: Mr. Windle, you have been  
20 promoted. If you can enable your audio and video.

21 MR. WINDLE: Yes.

22 EXAMINER WALSTRA: All right. I can see  
23 you and hear you. If you can raise your right hand.

24 (Witness sworn.)

25 EXAMINER WALSTRA: Thank you. Go ahead,

1 Ms. Kern.

2 MS. KERN: Thank you.

3 - - -

4 RODNEY P. WINDLE

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

7 DIRECT EXAMINATION

8 By Ms. Kern:

9 Q. Could you please state your name for the  
10 record.

11 A. Rodney Paul Windle.

12 Q. And where are you employed, sir?

13 A. I am employed at 180 East Broad Street,  
14 Columbus, Ohio, at the Public Utilities Commission of  
15 Ohio.

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

18 A. My job title is Public Utilities  
19 Administrator, and I basically manage PUCO's Energy  
20 Forecasting Group.

21 MS. KERN: Your Honor, I would like to  
22 have marked as Staff Exhibit 3, the direct testimony  
23 of Rodney P., as in Paul, Windle filed in this docket  
24 on May 18, 2022.

25 EXAMINER WALSTRA: So marked.

1 (EXHIBIT MARKED FOR IDENTIFICATION.)

2 Q. (By Ms. Kern) Mr. Windle, do you have the  
3 document before you that I just had marked as Staff  
4 Exhibit 3?

5 A. Yes.

6 Q. And would you please identify that  
7 document for the record.

8 A. This document is the prefiled testimony  
9 of Rodney P. Windle.

10 Q. And was this testimony prepared by you or  
11 at your direction?

12 A. Yes.

13 Q. And, Mr. Windle, do you have any  
14 corrections or changes to make to your testimony?

15 A. No.

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

19 A. Yes.

20 Q. And what is the purpose of your testimony  
21 today?

22 A. The purpose of my testimony is to answer  
23 any questions with regard to Staff's involvement in  
24 the oversight of the Duke OVEC audit under Case 18 --  
25 I mean 20-167.

1 MS. KERN: Thank you. Your Honor, the  
2 witness, Staff Witness Windle, is available for  
3 cross-examination.

4 EXAMINER WALSTRA: Thank you.  
5 We'll start with Duke.

6 MS. KINGERY: Your Honor, thank you. We  
7 don't have any questions.

8 EXAMINER WALSTRA: Thank you.  
9 OCC?

10 MS. O'BRIEN: Thank you, your Honor.

11 - - -

12 CROSS-EXAMINATION

13 By Ms. O'Brien:

14 Q. Good afternoon, Mr. Windle.

15 A. Hello.

16 Q. My name is Angela O'Brien. I am here  
17 today on behalf of the Office of the Ohio Consumers'  
18 Counsel. I just have a few brief questions. Could  
19 you turn to page 2 of your testimony.

20 A. I'm there.

21 Q. Okay. And on page 17 [sic] you state  
22 that it's your response -- your responsibility was to  
23 supervise the oversight of the audit of Duke Energy  
24 Ohio's Price Stabilization Rider for the audit  
25 period, for 2019; is that correct?

1 A. Yes, under line --

2 EXAMINER WALSTRA: What line was that?

3 MS. O'BRIEN: I'm sorry?

4 EXAMINER WALSTRA: Ms. O'Brien, what page  
5 was that?

6 MS. O'BRIEN: Page 2.

7 EXAMINER WALSTRA: Page 2, okay. Thank  
8 you. Sorry to interrupt.

9 MS. O'BRIEN: Line 17.

10 Q. (By Ms. O'Brien) Okay. So for you what  
11 did supervising the audit entail?

12 A. Supervising the audit meant being the  
13 person who oversaw the Staff lead and their  
14 interactions with the auditor who was conducting the  
15 audit in this case.

16 Q. Okay. So when you say oversaw the Staff  
17 members interacting with the auditor, Dr. Fagan, who  
18 specifically from Staff worked on the Duke audit?

19 A. Farhan Butt -- oh, Duke staff you said.  
20 I apologize. I thought you were asking about PUCO  
21 Staff.

22 Q. No. I said who from the PUCO Staff  
23 worked on the Duke audit?

24 A. Oh, yes. PUCO Staff was Farhan Butt.

25 Q. Is that the only person?



1           A.    That -- that was the lead in this case.  
2    I worked with him.

3           Q.    Okay.  So you say he was the lead in this  
4    case.  Did anybody report to Mr. Butt with respect to  
5    the Duke audit?

6           A.    No, no.  He was just the point contact  
7    for the auditor.

8           Q.    Okay.  So your testimony is the people,  
9    the sole people who worked on the Duke audit for  
10   Staff were yourself and Mr. Butt; is that correct?

11           MS. KERN:  Objection, asked and answered,  
12   also relevancy.  This goes far beyond the scope of  
13   Mr. Windle's testimony.

14           MS. O'BRIEN:  Your Honor, he just  
15   testified that the purpose --

16           EXAMINER WALSTRA:  Overruled.

17           A.    Yes, we are the primary two people on  
18   Staff who interacted with the auditor.

19           Q.    Okay.  So that -- but that wasn't my  
20   question.  Not who interacted with the auditor, who  
21   worked on the Duke audit.

22           A.    I suppose I saw those as one and the same  
23   since that's largely what you do when you work on an  
24   audit of Staff in overseeing things.  We did not  
25   write or perform any investigations into this, so

1 I -- I just -- I guess I take issue with your  
2 correction.

3 Q. Okay. Well, I guess help me understand.  
4 All I am asking is who from the PUCO Staff worked on  
5 the Duke audit.

6 MS. KERN: Objection, asked and answered.

7 MS. O'BRIEN: And, your Honor --

8 EXAMINER WALSTRA: We're getting there,  
9 but I will allow the question. You can answer.

10 A. Well, my answer is exactly the same as it  
11 was the first time she asked it which is Farhan Butt  
12 and I had the primary interactions with the auditor  
13 in this case.

14 Q. I am not asking --

15 MS. O'BRIEN: Again, your Honor, if you  
16 could please instruct him to answer the question. I  
17 am not asking -- respectfully I am not asking about  
18 primary interactions with the auditor. I am asking  
19 who worked on the PUCO audit.

20 THE WITNESS: Your Honor, if -- if the  
21 counsel could define perhaps what work means, it  
22 would be easier for me to answer, but I have no  
23 earthly idea what she is trying to get at.

24 Q. (By Ms. O'Brien) Okay. Well, I can -- I  
25 can define that. I can define that a little bit

1 more. For example, you said -- and correct me if I  
2 am wrong. You said that you supervised the audit,  
3 correct?

4 A. I supervised the Staff overseeing the  
5 audit.

6 Q. Okay. And you also testified that Farhan  
7 Butt interacted with the auditor on the audit; is  
8 that correct?

9 A. Yes.

10 Q. Okay. Did any other Staff member have  
11 any involvement other than you and Farhan Butt? Did  
12 they read the report? Did they provide commentary to  
13 the report? Did they provide signoff of the report?  
14 That's what I am getting at.

15 MS. KERN: Objection, compound question  
16 in that she is asking who read the report. I mean, I  
17 don't think Mr. Windle could possibly be responsible  
18 for knowing that. But, you know, if -- if counsel  
19 could narrow -- I do believe Mr. Windle has answered  
20 this a number of times now.

21 MS. O'BRIEN: Well, he hasn't, your  
22 Honor, and respectfully it's really a simple  
23 question. The witness indicated that he was unclear  
24 by what I meant as to work on the audit. To me  
25 that's a pretty clear word, so I am providing some

1 examples. If his testimony is that both himself and  
2 Mr. Butt were the only two who worked on the audit,  
3 the Duke audit, from PUCO Staff, then he can answer  
4 that but so far that has not been his answer. That's  
5 what I am trying get at.

6 EXAMINER WALSTRA: Mr. Windle, how would  
7 you define who works on -- on the report in the  
8 audit?

9 THE WITNESS: Yeah. I defined that  
10 earlier. I believe that direct interactions with the  
11 auditor would be who works on the report as far as  
12 the oversight. As far as her continued question  
13 about who read it, I'm unclear as to everyone that  
14 may have read it from Staff. I do know that Farhan  
15 and I did and there may have been an off chance that  
16 Lori Sternisha did as well, but other than that I  
17 don't know.

18 Q. Okay. So now before the Staff Report  
19 could be filed, right, because it was ultimately  
20 filed in this case, did Mr. Butt have to provide his  
21 authority or sign off before it could be filed?

22 A. Before it could be filed final; is that  
23 what you are asking?

24 Q. Yes. You know, you don't file Staff --  
25 you don't file draft Staff Reports, do you?

1           A.    No.    So, yeah, we -- we had to interact  
2   with the auditor and basically say give our feedback  
3   to them.

4           Q.    Okay.   So did Farhan Butt have to provide  
5   signoff before it was filed?

6                   MS. KERN:   Objection as to the vagueness  
7   of signoff.   Signoff in what regard?   Context of the  
8   report?   I mean, I just --

9           Q.    (By Ms. O'Brien) I'll rephrase.   Did  
10   Farhan Butt have to approve the audit report before  
11   it was filed?

12          A.    I believe approved is a strong word.   I  
13   believe that we had the opportunity to review the  
14   audit report and to make any suggestions with regard  
15   to scope and things of that nature.

16          Q.    Did you have to -- did you have to  
17   approve the final report before it was filed?

18          A.    No.    I don't believe that the Commission  
19   said that Staff's approval was necessary.

20          Q.    So is it your testimony that Dr. Fagan,  
21   the auditor, could have drafted the audit report, and  
22   Staff would have filed it without providing any sort  
23   of comments or input?

24          A.    That's not what I just said.   I said that  
25   Staff certainly had the opportunity to make

1 suggestions and recommendations. You were talking  
2 along the lines of authorization like Staff had to  
3 basically personally sponsor said audit report.  
4 That's not the way I believe that works.

5 Q. Okay. And I'm just trying to get to what  
6 exactly you mean when you say supervise in your  
7 testimony. I am not trying to be argumentative or  
8 obstreperous here. I am just really trying to get to  
9 what the meaning of supervise is. So going back to  
10 the term supervise, did you supervise Dr. Fagan?

11 A. No. I supervised Farhan Butt.

12 Q. Okay. So is it your testimony that  
13 Dr. Fagan acted independently?

14 A. Yes.

15 Q. Now, I think you just testified that you  
16 had the opportunity to provide comments to the audit  
17 report; is that correct? Is that a fair  
18 characterization?

19 A. Yes.

20 Q. Okay. So did you review drafts of the  
21 audit report?

22 A. Yes.

23 Q. How many drafts of the audit report did  
24 you review?

25 A. So my view on what a draft is is a

1 working document. And you may see a version of said  
2 working document at any time, but it is one document  
3 if one person is writing it. And in this case to my  
4 knowledge there was just LEI contributing to the  
5 audit report. And I am aware of that audit report  
6 being sent to us in two separate occasions that I was  
7 copied and one other to Farhan Butt.

8 Q. Okay. So it's your testimony that there  
9 were two drafts of the audit report that you  
10 reviewed?

11 A. Again, that doesn't fit under what I  
12 believe -- I don't believe there were two drafts  
13 under the way that I just described it. I believe  
14 that there was one person writing the draft. It is a  
15 working document by virtue of being called draft and  
16 that we -- two -- twice anyway the draft was sent to  
17 me as a copy and one other time where I was not  
18 copied it was sent to I believe Farhan.

19 Q. Okay. Now, did Lori Sternisha have to  
20 approve the final draft before it was filed?

21 MS. KERN: Objection as to who -- Staff's  
22 inter-operations and who on Staff. I think he  
23 already answered these questions anyway. He doesn't  
24 know about Ms. Sternisha's involvement. So Staff's  
25 interworkings are not part of his testimony.

1 MS. O'BRIEN: Your Honor, he just  
2 testified that the purpose was to answer any  
3 questions with respect to the Duke audit. I asked  
4 him specifically who else worked on the audit. He  
5 said Lori Sternisha was involved, so all I am asking  
6 is did Lori Sternisha have to approve the audit  
7 report before it was filed.

8 MS. KERN: Your Honor, I believe that  
9 grossly mischaracterizes his testimony with regard to  
10 Ms. Sternisha's involvement. He wasn't even sure if  
11 she was involved.

12 MS. O'BRIEN: Well, if --

13 EXAMINER WALSTRA: He can clarify then.

14 MS. O'BRIEN: He can clarify it.

15 A. So I don't believe that it's necessary  
16 for her to give an acquiescence so to speak, like a  
17 final stamp of approval in order for the auditor to  
18 file it so to speak. But she was allotted the  
19 opportunity to review and suggest comments. I just  
20 don't recall her doing so. And when I say that, I  
21 don't mean comment because I don't think we had any  
22 comments on the draft. I mean, read, because you  
23 don't know if someone read something or not unless  
24 they comment sometimes.

25 Q. Okay. And just to clear something up, I



1 think you said you think -- I think you said that the  
2 auditor filed the audit report with the Commission.  
3 It wouldn't have been the auditor, but it would have  
4 been Staff, right?

5 A. Well, I believe that, as a matter of  
6 fact, the Attorney General files these things for us.

7 Q. Okay.

8 A. So I believe that the report was sent to  
9 the Attorney General for filing. I might be wrong.  
10 I just don't recall for certain.

11 Q. Now, at the beginning of this hearing I  
12 believe last Thursday, were you present for  
13 Dr. Fagan's testimony?

14 A. Some of it, yes.

15 Q. Okay. Do you recall her testifying as to  
16 the overlap between the AEP OVEC case and -- which is  
17 Case No. 18-1004-EL-RDR, and the Duke OVEC case?

18 MS. KERN: Objection as to relevancy.

19 MS. O'BRIEN: Your Honor --

20 EXAMINER WALSTRA: I will see where this  
21 goes.

22 A. I don't remember the details, but I  
23 vaguely remember it coming up.

24 Q. Okay. Do you have any reason to dispute  
25 Dr. Fagan's testimony that there was overlap between

1 the AEP OVEC case and the Duke OVEC case?

2 MS. KERN: Noting my continued objection  
3 to relevancy.

4 MS. KINGERY: Duke would also object to  
5 the extent overlap is not defined. Overlap in what  
6 regard?

7 MS. O'BRIEN: Well, you know, it was the  
8 auditor's own testimony. I think overlap means the  
9 common meaning of overlap meaning that they were both  
10 conducted at the same time, that reports were  
11 similar, all of that.

12 MS. KINGERY: At this time then I can  
13 withdraw my objection.

14 EXAMINER WALSTRA: Thank you.

15 A. So -- so, I mean, generally speaking I  
16 have no reason to object to anything that the auditor  
17 said. I think you would need to be more specific.

18 Q. Okay. So the answer to my question is --

19 A. No.

20 Q. -- no, you don't have any reason to  
21 dispute her testimony. Okay. Thank you.

22 Now, you also supervised the audit in the  
23 AEP OVEC case, correct?

24 MS. KERN: Objection as to relevancy.

25 EXAMINER WALSTRA: Overruled.

1 MS. KINGERY: Join.

2 A. Yes.

3 Q. And could the reason for there not being  
4 comments or as many comments on the Duke OVEC direct  
5 report in this case be a function of the fact that  
6 the auditor drafted a substantially similar audit  
7 report in the AEP OVEC case?

8 MS. KINGERY: Objection.

9 MS. KERN: Objection.

10 MS. KINGERY: Speculation.

11 MS. KERN: Relevancy, mischaracterizes  
12 the evidence.

13 MS. O'BRIEN: Your Honor, I am asking him  
14 a question. He can clarify it as he sees fit. I am  
15 trying to get the understanding. I am not  
16 mischaracterizing anything.

17 MS. KERN: You are using the word  
18 substantially similar and I don't have the benefit of  
19 a transcript in front of me and I think a lot of  
20 liberties are being taken as to what the auditor  
21 actually said in her testimony last week, so I think  
22 the question is misleading.

23 MS. KINGERY: And I --

24 MS. O'BRIEN: He can clear it up.

25 EXAMINER WALSTRA: I'll sustain as to

1 spec -- calls for speculation.

2 MS. O'BRIEN: Okay. No further questions  
3 at this time. Thank you.

4 Thank you for your time, Mr. Windle.

5 THE WITNESS: You're welcome.

6 EXAMINER WALSTRA: Thank you.

7 OMAEG?

8 MS. BOJKO: Thank you, your Honor.

9 - - -

10 CROSS-EXAMINATION

11 By Ms. Bojko:

12 Q. Good afternoon, Mr. Windle.

13 A. Hello.

14 Q. You stated your title is Public Utilities  
15 Administrator II and that position resides in the  
16 office of the Federal Energy Advocate; is that  
17 correct?

18 A. Yes.

19 Q. And who do you report to, sir?

20 A. At the time of the audit, I reported to  
21 Lori Sternisha.

22 Q. And who do you report to today?

23 MS. KERN: Objection as to relevancy.

24 Outside the scope of the audit period so who he  
25 reports to today is not relevant to this proceeding.

1 EXAMINER WALSTRA: Overruled.

2 A. Today I report to Sarah Parrot.

3 Q. Is your title the same today as it was  
4 during the audit report -- or audit period? Excuse  
5 me.

6 A. Yes.

7 Q. And the Federal Energy Advocate's Office  
8 typically does not conduct or oversee prudency  
9 audits, correct?

10 A. So that's not a straight yes or no  
11 question I don't believe.

12 Q. Well, the Office of Federal Energy  
13 Advocate has conducted prudency audits of the OVEC  
14 plants only, correct?

15 A. Yes.

16 Q. So how many prudency audits has the  
17 Federal -- Office of the Federal Energy Advocate  
18 conducted?

19 A. Well, when you say conducted, of course,  
20 you mean overseeing others conducting but four.

21 Q. Are you suggesting that the Staff has not  
22 ever internally conducted one of these prudency  
23 audits? They have always outsourced it to an outside  
24 auditor?

25 MS. KERN: Objection as to Staff. Are

1 you speaking of Staff in general or Staff in the  
2 Federal Energy Advocate Department?

3 MS. BOJKO: My question is -- was a  
4 clarifying from his previous question which was about  
5 the Office of the Federal Energy Advocate.

6 MS. KERN: Objection as to vague and  
7 ambiguous as to what she means by Staff.

8 MS. BOJKO: I'll rephrase, your Honor. I  
9 think the witness can ask for clarification if the  
10 witness needs it.

11 Q. (By Ms. Bojko) When you mentioned that  
12 the Office of Federal Energy Advocate has conducted  
13 four prudency audits and you corrected me and said  
14 you were assuming you were talking about overseeing  
15 four of those prudency audits, did you clarify or  
16 correct my question because you are stating that  
17 staff of the Public Utilities Commission in the  
18 Federal Energy Advocate's Office did not personally  
19 conduct any of those four audits; you've outsourced  
20 it to an independent auditor?

21 A. Yes. To my knowledge, every OVEC audit  
22 has been outsourced.

23 Q. And outside of those four OVEC prudency  
24 audits, the Federal Energy Advocate's Office has not  
25 conducted other audits, correct?

1 A. No.

2 Q. No, they haven't conducted them; or, no,  
3 my question -- or my statement wasn't correct?

4 A. The Office of the Federal Energy Advocate  
5 has neither conducted prudency audits nor hired  
6 anyone out to conduct prudency audits.

7 Q. In response to a question from  
8 co-counsel, you testified in the AEP OVEC Rider case;  
9 is that correct, 18-1004?

10 A. Yes.

11 Q. And you were the sole Staff, internal  
12 Staff member, that testified in that proceeding; is  
13 that correct?

14 A. Yes.

15 Q. Do you know when LEI conducted the audit  
16 in this case that resulted in the October 21, 2020,  
17 audit report? When did it start? When did it end?

18 A. No. I don't recall.

19 Q. Would you agree with me that the audit of  
20 the Duke OVEC proceeding was occurring simultaneously  
21 to the audit of the AEP OVEC proceeding?

22 MS. KERN: Objection as to relevancy.

23 EXAMINER WALSTRA: Overruled.

24 MS. KERN: Also asked and answered.

25 EXAMINER WALSTRA: Overruled.

1           A.    So -- so I do know that the timelines  
2           were very -- had quite a bit of overlap.

3           Q.    And you mentioned previously receiving  
4           drafts. Did the cover sheets of the draft audit  
5           reports have dates on them?

6           A.    Sorry. I don't recall. I would need to  
7           see the drafts.

8           Q.    It's my understanding that you were the  
9           Commission's point of contact for the RFP proposals  
10          submitted by bidders in this proceeding; is that  
11          correct?

12          A.    Yes.

13          Q.    And after LEI was selected to conduct the  
14          audit of Duke's Rider PSR in this case, then Mr. Butt  
15          became LEI's primary point of contact; is that  
16          correct?

17          A.    Yes.

18          Q.    What is Mr. Butt's title?

19          A.    Utility Specialist.

20          Q.    Is Mr. Butt in the Commission's Energy  
21          Forecasting Group that you manage?

22          A.    Yes.

23          Q.    And does Mr. Butt report to you always or  
24          just for purposes of this audit proceeding?

25          A.    Always.



1           Q.    And you stated Mr. Butt's role with the  
2   audit and the audit report was that he was the  
3   primary lead in the case?

4           A.    Yes.

5           Q.    So was Mr. Butt's role similar to that of  
6   Ms. Christopher in the AEP audit case?

7                   MS. KERN:  Objection as to relevancy.

8                   MS. KINGERY:  Objection.  Duke joins.

9                   EXAMINER WALSTRA:  I will allow it.

10          A.    I'm sorry.  Was I directed to answer?

11                   EXAMINER WALSTRA:  Yes.

12          A.    Okay.  Yes, their roles were very  
13   similar.

14          Q.    In your oversight of the audit in this  
15   case, did you participate in any meetings with the  
16   auditor?

17          A.    Yes.

18          Q.    Were those meetings virtual or in person?

19          A.    Virtual.

20          Q.    Do you know about how many meetings you  
21   had with the auditor?

22          A.    At least two, I think three.

23          Q.    In your oversight of the audit in this  
24   case, did you also have the opportunity to  
25   participate in telephonic phone calls with the

1 auditor?

2 A. Forgive me. I don't understand the term  
3 telephonic.

4 Q. Did you have telephone calls with the  
5 auditor?

6 A. They were all virtual.

7 Q. Do you know if Mr. Butt had an  
8 opportunity to participate in any meetings, whether  
9 they were virtual or -- or telephonic, outside of  
10 your participation?

11 A. I don't recall that happening.

12 Q. During the audit period, did staff also  
13 exchange e-mails, correspondence with the auditor?

14 A. Yes.

15 Q. Between the time LEI was selected and the  
16 final audit report being filed with the Commission on  
17 October 21, 2020, how many e-mails did Staff exchange  
18 with the auditor?

19 A. I don't know.

20 Q. Would you have been involved in all of  
21 those correspondences between Staff and the auditor?  
22 Would you have been copied?

23 A. I'm aware of at least one I wasn't, so  
24 the answer is no.

25 Q. Is it true that the auditor proposed to

1 have a joint meeting between AEP and Duke in this  
2 matter?

3 MS. KERN: Objection as to relevancy.  
4 Also that would be an appropriate question for the  
5 auditor --

6 EXAMINER WALSTRA: He can answer.

7 MS. KERN: -- as to what she proposed.

8 EXAMINER WALSTRA: Overruled.

9 A. I read an e-mail saying something along  
10 those lines.

11 Q. And Staff was to participate in that  
12 joint meeting between AEP and Duke, correct?

13 MS. KERN: Objection as to the term  
14 meeting. I believe the actual document it's a site  
15 visit. I mean --

16 EXAMINER WALSTRA: The witness can  
17 clarify.

18 A. Yeah. There was at one point an attempt  
19 to have a site visit to the OVEC facilities where AEP  
20 and Duke could participate but that never occurred.

21 Q. And you stated that you received various  
22 drafts. I think you've received at least two  
23 different draft audit reports. Was that your  
24 testimony earlier?

25 A. My testimony was that drafts are a

1 working document and at two different points we  
2 received a version to read from the drafter of  
3 those -- of that audit report which was London  
4 Economics.

5 Q. Okay. So I will use the word version  
6 then if that's better than drafts. So between the  
7 two versions that you received in and reviewed, what  
8 was changed between the two versions?

9 A. So I am not real clear on what changed  
10 from the first to the second. The first was a  
11 courtesy version that we just skimmed through so we  
12 didn't read it in any detail.

13 Q. And you don't recall if Staff responded  
14 to the different versions with comments?

15 A. Yeah. Certainly the official one that  
16 was filed on time we had a meeting with LEI to  
17 discuss the draft version.

18 Q. And then after you had a meeting with the  
19 LEI to discuss a -- that version, then a new version  
20 would have been produced before the final was filed;  
21 is that fair?

22 A. Yes.

23 Q. Is it your understanding, sir, since you  
24 were the supervisor over both auditors and audits,  
25 that there are substantial pieces of -- that both the

1 AEP audit and Duke audit that are similar, in fact,  
2 paragraphs that are nearly identical?

3 MS. KERN: Objection as to relevancy.

4 EXAMINER WALSTRA: I'll allow it.

5 A. Yes, there were similarities.

6 Q. And, sir, given that you supervised the  
7 audit, I understand or believe that you reviewed the  
8 entry and RFP issued in this case that was previously  
9 marked as OMAEG Exhibit 3?

10 A. If you are asking if I reviewed the RFP,  
11 I would say yes.

12 Q. Okay. Do you have OMAEG -- OMAEG  
13 Exhibit 3 in front of you?

14 A. No. I need to pull it up.

15 Q. Would you do that, please, sir.

16 A. Yes. Okay.

17 Q. Is this the document that you stated  
18 previously that you've reviewed?

19 A. Yes.

20 Q. The first part of the document is a  
21 Commission Entry dated February 13, 2020; is that  
22 correct?

23 A. Yes.

24 Q. And the entry is issuing an RFP to assist  
25 the Commission with the prudence and performance of

1 Duke's Rider PSR for the period of 2019, correct?

2 A. Yes.

3 Q. RFP is actually attached to the entry,  
4 correct?

5 A. Yes.

6 Q. Can we turn to page 4 of the RFP, please.  
7 Are you there?

8 A. I believe so. Where the purpose is?

9 Q. Yes. Page 4, Section II, that's titled  
10 "Purpose," and then under that is paragraph A which  
11 is titled "Prudency and Performance Audit"; is that  
12 correct?

13 A. Yes.

14 Q. And under the second paragraph of II.A,  
15 would you agree that the RFP states that the purpose  
16 of the annual prudency audit of Rider PSR is to  
17 establish the prudency of all costs and sales flowing  
18 through the PSR and to demonstrate that the Company  
19 made reasonable efforts to transfer contractual  
20 entitlement under the ICPA?

21 A. Yes.

22 Q. And is it your understanding the transfer  
23 contractual entitlement under the ICP means selling  
24 its energy and capacity into the wholesale market?

25 A. Yes.

1           Q.    And would it be prudent for an auditor to  
2   review whether a company and its affiliates have  
3   conflicts of interests which the Company is making  
4   certain decisions that may affect its customers?

5           MS. KERN:  Objection.  Is the question  
6   was it for the auditor?  I'm sorry.  Can you repeat  
7   the question?  For the auditor to determine prudence  
8   or did you say the Commission to determine prudence?  
9   I just didn't hear the question.

10          Q.    Sure.  I said would it be prudent for an  
11   auditor to review whether a Company and its  
12   affiliates have conflicts of interests when the  
13   Company is making certain decisions that may affect  
14   its customers?

15          A.    That could certainly be one thing that  
16   they look at.

17          Q.    In a regulated utility that chooses  
18   profits to shareholders or favorable treatment to its  
19   affiliates over the provision of lower cost to  
20   customers, those actions may not be in the best  
21   interest of customers, correct?

22          MS. KERN:  Objection.  This is outside  
23   the copy of his testimony and his role in this  
24   proceeding which was not the auditor.

25          MS. BOJKO:  Your Honor, his

1 responsibility was to supervise the oversight of the  
2 audit, and he's already testified he was to determine  
3 whether the auditor was operating within the scope of  
4 the audit. So these questions go to that scope of  
5 the audit and what he believed the auditor was to  
6 review.

7 EXAMINER WALSTRA: Are you asking in  
8 general or about this specific audit?

9 MS. BOJKO: This audit.

10 EXAMINER WALSTRA: Okay. I will allow  
11 the question.

12 A. Can we have the question reread?

13 MS. BOJKO: I'll rephrase, your Honor.

14 EXAMINER WALSTRA: Thank you.

15 Q. (By Ms. Bojko) A regulated utility that  
16 chooses profits to shareholders or favorable  
17 treatments to affiliates over the provision of lower  
18 cost to its customers could be an action that should  
19 be reviewed for prudence.

20 MS. KERN: Objection as to vague.  
21 Outside the scope of his testimony and his role in  
22 this proceeding. I think the RFP was what the  
23 parameters were, and it speaks for itself.

24 MS. KINGERY: Duke --

25 MS. BOJKO: I thought -- I thought you



1 already ruled on this question. I was rephrasing so  
2 that the witness could rehear it.

3 EXAMINER WALSTRA: I'll allow him to  
4 answer if he knows.

5 A. Yeah. I don't know that we were -- I  
6 don't know that the Commission was looking for a  
7 review of corporate separation or anything like that.  
8 But certainly the actions taken by the Companies  
9 involved, in this case Duke, Duke's actions and how  
10 it -- whether or not they were reasonable or not, I  
11 believe that that would certainly qualify as  
12 something the auditor should look at.

13 Q. And is it your understanding from the RFP  
14 that Staff is to be copied on all communications  
15 between the auditor and Duke?

16 A. Give me a second to read that line. Yes.  
17 The -- my answer is no, with the correction of shall  
18 be informed, then it would be yes.

19 Q. Meaning if you aren't copied, you should  
20 at least be informed of the communications; is that  
21 fair?

22 A. Yes.

23 Q. Let's look at page 6 of the RFP. If you  
24 go to Section -- it's III.C. Sorry. Page 6, the  
25 reference is III.A.2. My apologies. Are you there?

1 It's titled "Fuel and Variable Cost Expenses."

2 Excuse me.

3 A. "Fuel and Variable Cost Expenses"? Yes.  
4 Bullet No. 2.

5 Q. Yeah. I believe it's officially Section  
6 III.A.2.

7 A. Okay.

8 Q. Is it your understanding that it requires  
9 the auditor to ensure that all OVEC fuel and variable  
10 O&M-related expenses were prudently incurred and  
11 properly allocated by Duke? Excuse me, allocated to  
12 Duke.

13 A. Yes.

14 Q. And Section III.A.2 also specifically  
15 requires the auditor to compare and cure -- incurred  
16 fuel costs and market prices to evaluate the  
17 reasonableness of fuel expenses during the audit; is  
18 that correct?

19 A. Yes.

20 Q. Then if we go to III.A.3, here the  
21 auditor is expected to ensure that only prudently  
22 incurred costs are included for recovery through  
23 Rider PSR and that any and all costs that have been  
24 deemed to be ineligible for recovery are excluded; is  
25 that correct?

1           A.    With the phrase "by the Commission," yes.

2           Q.    Oh, I'm sorry. I was paraphrasing.

3   Right, it requires the -- that only prudently  
4   incurred costs be included in Rider PSR and requires  
5   any and all costs that have been deemed to be  
6   ineligible to be excluded, correct?

7           A.    Paraphrased, yes.

8           Q.    And this here it says "only prudently."  
9   It doesn't say "fairly prudent" or "mostly adequate";  
10   is that correct?

11          A.    Yes.

12          Q.    And it doesn't condition the prudence on  
13   the ICPA, does it?

14          A.    Not the language here.

15          Q.    And also here with regard to Section  
16   III.A, it doesn't -- this paragraph doesn't contain  
17   or condition the prudence on the other factors or  
18   considerations, does it?

19          A.    No.

20          Q.    If we look at III.A.5 which is the "Power  
21   Plant Performance" section, this requires the auditor  
22   to review and report on OVEC's plant performance  
23   including the impact on ratepayers, correct?

24          A.    Yes.

25          Q.    And this provision also specifically

1 requires the auditor to state whether additional  
2 review is necessary or make a determination of  
3 reasonableness of OVEC and/or Duke's actions,  
4 correct?

5 A. Could you restate the question or have it  
6 reread?

7 Q. Sure. Section III.A.5 specifically  
8 requires the auditor to state whether additional  
9 review is necessary; is that correct?

10 A. Yes. They're to make a recommendation to  
11 the Commission that further review is needed or  
12 undertake its own review to determine that the  
13 reasonableness of OVEC -- determining the  
14 reasonableness of OVEC or Duke's actions.

15 Q. Okay. And if we go back to 4 -- page 4,  
16 II.A, is it your understanding the second paragraph  
17 contains the wrong case number for this audit?

18 A. Yes. That is my understanding.

19 Q. And you believe that that case number  
20 should be 17-1263; is that right?

21 A. Yes, I believe that is correct.

22 Q. So with that correction it's your  
23 understanding that this paragraph requires an annual  
24 prudency audit to establish the prudency of all costs  
25 and sales flowing through PSR; is that correct?

1 A. Yes.

2 Q. And you believe that the audit was  
3 supposed to be in compliance with the Commission's  
4 orders; is that correct?

5 A. Yes.

6 Q. And are you familiar with those  
7 Commission orders that authorize the PSR?

8 A. Somewhat.

9 Q. Have you reviewed the Commission's order  
10 we've been calling it throughout the proceeding ESP  
11 IV order that was in Case 17-32-EL-AIR dated  
12 December 19, 2018?

13 A. I've read it.

14 Q. Do you have a copy of it? It's been  
15 marked as OMAEG Exhibit 4.

16 A. I now have it pulled up.

17 Q. Okay. Can we turn to page -- oh, excuse  
18 me, paragraph 138. Do you -- before we do that, do  
19 you understand that the ESP IV order adopted a  
20 Stipulation regarding the PSR rider?

21 A. That's my understanding.

22 Q. If we turn to paragraph 138. Give you a  
23 chance to look over it.

24 A. I've read it now again.

25 Q. Okay. And here the -- this paragraph is

1 listing conditions surrounding the recovery under  
2 Rider PSR; is that correct?

3 A. Yes.

4 Q. And there are six conditions listed  
5 regarding recovery under Rider PSR; is that correct?

6 A. Yes.

7 Q. And in this paragraph it also states that  
8 the Company is subject to an annual prudency review  
9 of the costs under Rider PSR; is that correct?

10 A. Yes.

11 Q. And 139 it discusses that the signatory  
12 parties are recommending that the audits in the three  
13 utilities, Duke, Dayton, and AEP, are performed in a  
14 uniform manner; is that correct?

15 MS. KERN: Objection to the extent that  
16 the document speaks for itself. If those are  
17 Commission's words, he can verify you are reading it  
18 correctly; but, you know, his interpretation of it is  
19 not relevant here.

20 MS. BOJKO: Actually it's very relevant,  
21 your Honor. That was just a foundation. I will ask  
22 my next question.

23 EXAMINER WALSTRA: Overruled.

24 A. Yes. Under 139 it does say that --  
25 uniform manner was the words used.

1           Q.    Okay.  And in your supervision of two of  
2   the audits, AEP and Duke, thus far, have you ensured  
3   that the riders were reviewed in a uniform manner?

4           A.    I believe the Commission itself ensured  
5   that with its RFPs.

6           Q.    Okay.  So you believe that the auditor,  
7   the same auditor in both cases, approached these two  
8   riders in a uniform manner pursuant to controlling  
9   law?

10           MS. KERN:  Objection, two cases.  The  
11   order we were just looking at mentioned three so if  
12   you want to specify which two cases you are talking  
13   about.

14           MS. BOJKO:  I thought I did.  I said OVEC  
15   and Duke.  The only two that have occurred to date  
16   was a prior question.

17           MS. KINGERY:  I think -- just for clarity  
18   I think you meant AEP and Duke, not OVEC and Duke?

19           MS. BOJKO:  Oh, sorry.  Thank you.

20           EXAMINER WALSTRA:  With that  
21   clarification, thank you.  You may answer.

22           A.    Again, I think that by virtue of the RFP,  
23   I think that the auditor conducted the audit in a  
24   uniform manner.

25           Q.    And you would agree with me that the

1     audit is directed not just at the prudence of OVEC's  
2     actions but also the prudence of Duke's actions?

3             A.    Yes, with regard to the areas identified  
4     in 1 -- paragraph 138, 3 and 5, yes.

5             Q.    Is it your understanding that the auditor  
6     concluded that during the audit period the OVEC  
7     plants cost customers more than the cost of energy  
8     and capacity that could be bought on the PJM  
9     wholesale market?

10            A.    Yes. My understanding is that the costs  
11    exceeded the amount -- well, there was a charge.

12            Q.    That was -- okay. So it -- the Rider PSR  
13    resulted in a net cost to customers that was passed  
14    on during the audit period, correct?

15            A.    Yes.

16            Q.    In the audit report -- you are familiar  
17    with the audit report -- I'm sorry. Let's say some  
18    foundation. You are familiar with the audit report,  
19    correct?

20            A.    Yes.

21            Q.    And do you have that audit report in  
22    front of you? It's been marked Staff Exhibit 1, I  
23    believe.

24            A.    Is it okay if I pull it off DIS?

25            Q.    I'm fine with that. I don't know if



1 anybody else objects.

2 EXAMINER WALSTRA: That's fine.

3 MS. KINGERY: Fine for Duke.

4 A. Okay.

5 Q. On page 9 of the audit report it states  
6 that "Another key component" -- it's in Section 1.2.  
7 Let me make sure you are there, sorry.

8 A. Section 1.2 begins on page 8?

9 Q. Yes. And if you turn to page 9, the  
10 first pull paragraph on that page.

11 A. "Another key component"?

12 Q. Yes. That states "Another key  
13 component," and I am just going to paraphrase, was to  
14 compare and benchmark costs and operational results  
15 against industry data; is that correct?

16 A. Yes.

17 Q. And it also asked that industry data was  
18 to be collected from publicly available sources; is  
19 that right?

20 A. Yes.

21 Q. Do you know whether the auditor conducted  
22 that comparison?

23 A. I believe so.

24 Q. And do you know -- isn't it true when LEI  
25 did that comparison during the audit period, OVEC's

1 costs were more expensive than other similar units,  
2 other units in PJM?

3 A. I'm not real strong on the details of  
4 that comparison.

5 Q. Okay. If information from the audit  
6 period demonstrates that keeping the plants running  
7 was not prudent, then wouldn't Duke's actions taken  
8 during the audit period to keep the plants running at  
9 a loss also not be prudent?

10 MS. KERN: Objection, your Honor. This  
11 is outside the scope of Mr. Windle's role in this  
12 proceeding. He is not determining prudence. That's  
13 something that the Commission will do.

14 MS. BOJKO: Your Honor, he's overseeing  
15 and supervising the audit. This is an audit question  
16 of what was or was not done.

17 EXAMINER WALSTRA: He can -- Mr. Windle,  
18 you can testify to your understanding of your review  
19 and your role. If it's outside your role, feel free  
20 to clarify.

21 THE WITNESS: Yeah. I didn't hear  
22 anything about a process in her question, so can we  
23 have it reread so that I can better understand it  
24 maybe? I don't know.

25 EXAMINER WALSTRA: Do you want to

1 restate, Ms. Bojko, or I can ask Karen?

2 MS. BOJKO: Sure. I can restate.

3 Q. Well, let me ask you this, is it your  
4 understanding that the auditor found that -- that the  
5 plants were running at a loss?

6 A. So she had a very specific way of saying  
7 what was causing the customer charges.

8 Q. She found that the OVEC plants cost more  
9 than they earned; is that the phase you were looking  
10 for?

11 A. Again, I think that she would be best to  
12 answer these questions as far as why there was a  
13 charge, but I recall something about the demand  
14 charges being higher or something like that.

15 Q. Well, would you think as a person  
16 overseeing the audit and checking to make sure that  
17 they were in compliance with the order that you would  
18 want to look at whether the plants were running at a  
19 loss when making a prudency decision?

20 A. So I believe that the auditor did look  
21 into the prudency of the plant.

22 Q. And you don't have an opinion on the  
23 prudency outside of the auditor's; is that right?

24 A. I did not conduct the prudency  
25 investigation, so I cannot offer a contrary opinion.

1           Q.    We looked, if you recall, at six  
2           conditions in the Commission's order. Did you review  
3           the Commission's own order and the conditions set  
4           there forth to determine whether the auditor was in  
5           compliance with the Commission's orders?

6           A.    The primary thing we looked at to make  
7           sure the auditor was doing their job was the RFP.

8           Q.    So does that mean you did not review the  
9           six conditions in the order and review the audit  
10          report to see if she satisfied those conditions?

11          A.    I guess what I am saying is that those  
12          conditions seem to be met to me on the surface and  
13          that the primary thing we looked at was the RFP.  
14          Anything that the Commission wanted us to look at  
15          specifically I believe would have been there.

16          Q.    But didn't the Commission's RFP say that  
17          the RFP was to be in compliance with the Commission's  
18          orders?

19          A.    Yes.

20          Q.    So other than the RFP, you didn't go back  
21          to the Commission's orders and review to ensure  
22          compliance with the Commission's orders?

23          A.    Again, I believe the Commission placed --  
24          placed compliance with its orders with the RFP. I  
25          don't think there is anything in the RFP that's out

1 of compliance with the Commission's orders.

2 Q. But you didn't go back and check, did  
3 you?

4 A. No.

5 MS. BOJKO: Your Honor, may I just have  
6 two minutes? I may be close to being finished here.

7 EXAMINER WALSTRA: Sure. We can go off  
8 the record until 3:45.

9 (Recess taken.)

10 EXAMINER WALSTRA: We can go back on the  
11 record.

12 MS. BOJKO: Thank you, your Honor. I  
13 have no further questions for the witness.

14 Thank you, Mr. Windle.

15 THE WITNESS: You're welcome.

16 EXAMINER WALSTRA: Thank you.

17 Kroger, any cross?

18 MR. WYGONSKI: We have no cross, your  
19 Honor. Thank you.

20 EXAMINER WALSTRA: Thank you.

21 OEG?

22 MS. COHN: No questions, your Honor.

23 EXAMINER WALSTRA: Any redirect from  
24 Staff?

25 MS. KERN: I hate to do this, your Honor.

1 Can we have 5 to 10 minutes just to confirm? It  
2 would be very limited, if so. I just want to confirm  
3 that.

4 EXAMINER WALSTRA: Sure. We'll go to  
5 3:55.

6 MS. KERN: Thank you. Appreciate it.

7 EXAMINER WALSTRA: We are off the record.

8 (Recess taken.)

9 EXAMINER WALSTRA: We'll go back on the  
10 record then.

11 Ms. Kern, any redirect?

12 MS. KERN: No redirect, your Honor.  
13 Thank you for the time.

14 EXAMINER WALSTRA: Thank you, Mr. Windle.  
15 You are excused. If Staff would like to move their  
16 exhibit?

17 MS. KERN: Yes, your Honor. Staff would  
18 move for the admission of Staff Exhibit 3.

19 EXAMINER WALSTRA: Any objections?

20 Hearing none, it will be admitted.

21 (EXHIBIT ADMITTED INTO EVIDENCE.)

22 EXAMINER WALSTRA: Outside of briefs  
23 anything further to discuss, secret witnesses,  
24 anything like that? No?

25 All right. As to briefs, I'm assuming,

1 are we waiting two weeks on a transcript? Ish?

2 That's normal?

3 COURT REPORTER: Yes.

4 EXAMINER WALSTRA: Mid July sometime?

5 MS. KINGERY: I was going the 4th.

6 EXAMINER WALSTRA: We have enough  
7 fireworks.

8 MR. ZETS: Your Honor, I'll be out -- I  
9 mean, it's not all about me but if we toss out when  
10 people are going to be out in July, I expect that's a  
11 busy month, I won't be around the week of the 11th,  
12 although Angela could probably write our whole thing,  
13 but I don't want to volunteer her to do that here in  
14 front of everyone.

15 EXAMINER WALSTRA: Okay.

16 MR. ZETS: Maybe more towards the end of  
17 the month.

18 EXAMINER WALSTRA: Sure. Does the 22nd  
19 work for everyone for initial briefs?

20 MS. O'BRIEN: I mean, I would just say we  
21 have -- well, I mean, we will figure it out  
22 regardless. Columbia rate case is probably going to  
23 start July 13 and go through the 22nd for a good  
24 chunk of the parties on this call so.

25 MS. KINGERY: I would also note, your

1 Honor, the Duke rate case is currently scheduled --  
2 the electric one is currently scheduled to start in  
3 hearing in mid August, I believe.

4 EXAMINER WALSTRA: Yeah.

5 MS. KINGERY: To say nothing of the gas  
6 one whenever, data requests.

7 EXAMINER WALSTRA: We can it do July the  
8 29 and August 12?

9 MS. O'BRIEN: I think that works for OCC.

10 EXAMINER WALSTRA: I know there is a  
11 pending motion to move the hearing date in the Duke  
12 rate case.

13 MS. KINGERY: The electric one, yes.

14 EXAMINER WALSTRA: Yes, yeah.

15 MS. KINGERY: Yes, there is.

16 MS. BOJKO: Your Honor, we would prefer  
17 three weeks for a reply. Did you just say two weeks  
18 or? Yeah.

19 MS. KINGERY: And I would support that.  
20 I think two weeks is a little short.

21 EXAMINER WALSTRA: Sure. Go to the 19th,  
22 August 19?

23 MS. BOJKO: Thank you.

24 MS. O'BRIEN: Thank you. OCC would  
25 support that as well. Thank you very much for your



1 flexibility.

2 EXAMINER WALSTRA: No problem. So just  
3 officially state it initial briefs will be due  
4 July 29, and reply will be due August 19. Anything  
5 else?

6 All right. It's been a pleasure,  
7 everyone. We are officially adjourned.

8 (Thereupon, at 4:00 p.m., the hearing was  
9 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 Tuesday, May 31, 2022,  
and carefully compared with my original stenographic  
notes.

\_\_\_\_\_  
Karen Sue Gibson, Registered  
Merit Reporter.

(KSG-7290)

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Summary: Transcript May 31st 2022 Volume 4 In the Matter of the Review of the Reconciliation Rider of Duke Energy Ohio, Inc. electronically filed by Mr. Ken Spencer on behalf of Armstrong & Okey, Inc. and Gibson, Karen Sue Mrs.