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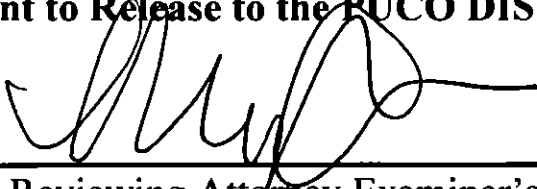
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**PROTOCOL FOR FIRST-COME-FIRST-SERVED CLAIMS FOR
MARKET SUPPORT AND NON-MARKET SUPPORT GENERATION**

PART A - CLAIM

01-393 el-cs

Section 1 Purpose of Document

- 1.a. The Stipulation documents in Case 99-1212-EL-ETP et al. (FirstEnergy restructuring case) establish Generation Commitments on behalf of the company.
- 1.b. Section V.1 of the April 13, 2000 Stipulation and Recommendation calls for Ohio Edison, Cleveland Electric and Toledo Edison to provide 1,120 MW of system level generation capacity to non-affiliated and eligible affiliated marketers and brokers and aggregators (i.e., "suppliers") for the duration of the market development period.
- 1.c. The Supplemental Settlement Materials agreement further describes the availability and applicability of such market support generation (section 2) and specifies that, during the months of September through May, 1,120 MW of the supply of generation other than market support generation will be "measured at the distribution meter" (section 5). This will be defined as non-market support generation. Under this section 5, FirstEnergy supplies the line losses, within its control area, for the 1,120 MW increment of non-market support generation (non-MSG).

Section 2 Definitions

- 2.a. FE or the Company - shall refer to FirstEnergy and its operating companies
- 2.b. MSG - shall mean Market Support Generation as described in Section 1.b. of this document
- 2.c. Non-MSG - means non-Market Support Generation as described in Section 1.c. of this document¹
- 2.d. CRES - refers to Certified Retail Electricity Supplier
- 2.e. Eligible Supplier - means a supplier that has met the eligibility requirements defined in Section 4 of this document

¹ Under Section 5 of Supplemental Settlement Materials, FE absorbs the service area line losses associated with 1,120 MW of non-Market Support Generation identified in that section. This non-MSG is not a second block of 1,120 MW of capacity. Usage of the term "non-MSG" in this protocol does not modify FE's obligations defined by the Supplemental Settlement Materials



- 2.f. **Generation Service Agreement** – the commitment of a customer to purchase generation from or through an Eligible Supplier
- 2.g. **EDI** – means Electronic Data Interchange which format a Supplier will utilize to submit an electronic enrollment of a customer for retail electric service
- 2.h. **Commission or PUCO** – means the Public Utilities Commission of Ohio

Section 3 Allocation of Generation Commitments between companies and retail customer classes

Each of the two Generation Commitments is allocated among the companies and retail customer classes, as follows:

3.a. MSG (Market Support Generation)

<u>Category 1</u>	Ohio Edison	Residential ²	260 MW
<u>Category 2</u>	" "	Other Retail	300 MW
<u>Category 3</u>	The Illuminating Company	Residential	170 MW
<u>Category 4</u>	" "	Other Retail	230 MW
<u>Category 5</u>	Toledo Edison	Residential	70MW
<u>Category 6</u>	" "	Other Retail	90 MW
Total MSG commitment			1,120 MW

3.b. Non-MSG (Service area line losses)

<u>Category 7</u>	Ohio Edison	Residential at least	156 MW
<u>Category 8</u>	" "	Total (incl. Res.)	560 MW
<u>Category 9</u>	The Illuminating Company	Residential at least	102 MW
<u>Category 10</u>	" "	Total (incl. Res.)	400 MW

² "Residential" customers include the following: for Ohio Edison, those customers served on Rates 10, 11, 17 and 18; for The Illuminating Company, those customers served on the Residential, Residential Water Heating, Residential Water and Space Heating, and Residential Space Heating; for Toledo Edison, those customers served on Rates R-01, R-01a, R-02, R-06 and R-06a. "Other Retail" customers include customers served on all other shoppable rate schedules.

<u>Category 11</u>	Toledo Edison	Residential	at least	42 MW
<u>Category 12</u>	" "	Total (incl. Res.)		160 MW
Total Non-MSG commitment				1,120 MW

Section 4 Eligibility to submit a claim

Only claims by Eligible Suppliers will be considered for approval.

4.a Non-affiliated

Any marketer, broker or aggregator, non-affiliated with any Ohio investor-owned utility, that has submitted an application to the Public Utilities Commission of Ohio to be certified as a CRES and an application to FirstEnergy for registration is eligible to submit a claim.

4.b Affiliated

In addition to the above requirements, a utility affiliate will qualify to submit a claim if the affiliate or utility (1) makes capacity available within the utilities' service areas offering choice in a similar manner and magnitude as the claimed generation or (2) has no owned or leased generating capacity within one wheeling transaction from FE's service areas.

4.c. Government Aggregators

Any supplier that participates as a Government Aggregator will qualify to submit a claim by showing evidence of an enacted ordinance and verification that the residents' opt out procedure has been performed so that the amount of load the Aggregator can supply may be determined.

4.d. Customer Aggregators

A customer seeking to acquire MSG capacity or reserve loss absorption on non-MSG capacity on behalf of its own facilities must become an Eligible Supplier in order to be considered for approval.

Section 5 First-come-first-served process: Initial queues

The Stipulation Documents call for the capacity commitments identified in Section 3 as Categories 1 through 12 to be made available to Eligible Suppliers on a first-come-first-served basis. This section outlines the criteria for establishing the queue.

- 5.a. A claim for available capacity must be submitted electronically by an Eligible Supplier via the process identified in this protocol. The forms and protocol are available on FirstEnergy's public web site (identify web site

address). Submission of a claim will require a password, which will be made available to the Eligible Supplier that has submitted an application to the Public Utilities Commission of Ohio to be certified as a CRES and an application to FirstEnergy for registration, and has supplied to FirstEnergy the supplier name, address, telephone and fax numbers, contact person name and e-mail address, or predetermined supplier identifier code provided by the company.

- 5.b. A claim is to be made for one of the Categories 1 through 12, identified in Section 3 of this document.
- 5.c. A claim can include the load for as many customers as the Eligible Supplier serves³. However, each claim must contain only a single duration for all the customers in the claim. If there are multiple durations for the customers for which the supplier is claiming generation, a separate claim must be made for each duration.

The Generation Commitments are available only in increments of twelve consecutive months, or until the end of the market development period, whichever terminates earlier. A monthly period is defined to be the period covered by the company's regularly scheduled cycle bill. The last day of the cycle billing period shall determine in which month the claim falls. The initial period starts with the customer's first bill cycle after January 1, 2001. Requests for capacity for nonconsecutive twelve monthly periods must be made as separate claims.

- 5.d. Each claim for "Other Retail" MSG or non-MSG must contain the following information (each claim is for one Category only)⁴:
- (i) name of each retail customer for whom the supplier has a Generation Service Agreement
 - (ii) the account number for each retail customer identified in (i.)
 - (iii) the amount of capacity being claimed on behalf of each retail customer (this amount cannot exceed the amount of the customer's

³ Each claim shall be a separate file. Due to data processing limitations, no claim shall include more than 10,000 customers. If the supplier is requesting generation for more than 10,000 customers, then multiple claims can be made, each of which shall not exceed the maximum number of 10,000.

⁴ A claimant for a Residential category may, at its option, use the requirements of this section rather than the requirements of Section 5.e.

peak load)⁵. For customers without demand meters, the supplier shall submit calculated peak demand values using the formula:

$$kW = .004194 \times kWh.$$

- (iv) for Market Support Generation, whether the capacity claimed for each retail customer will be classified as "Load Following" or "Capacity Factor" ⁶
- (v) the time period (duration) for which the claim is made, for which period the supplier must have a Generation Service Agreement for all customers included in the claim

5.e. Claims for "Residential" MSG or non-MSG shall be submitted in a two-part process containing a "Reservation Claim" and a "Follow-up Claim" unless the supplier uses the provisions of section 5.d. to make the claim. The Reservation Claim must contain the same information as identified in section 5.d (i) and (v) above. In addition, the claimant must specify in the Reservation Claim the aggregate amount of MSG capacity or non-MSG line losses, and the total number of customers for which the claim is being made. The claimant must subsequently provide, within 40 days of this Reservation Claim, a Follow-up Claim providing the information specified in section 5.d (ii), (iii) and (iv) for each customer included in the claim. The company's approval process will not begin prior to the time when the information in section 5.d (ii), (iii) and (iv) is provided. Failure to supply the data in Section 5.d (ii), (iii) and (iv) within 40 days will result in removing the claim from the queue.

⁵ The historic peak load is defined as the highest measured peak incurred in the most recent available 12 billing months for customers with demand meters, and as the calculated peak load for customers without demand meters, with the calculated peak load based on the customer's energy consumption in the most recent available 12 billing months. For those residential and small commercial customers with new load, or not having 12 months of usage ended, a calculated method shall be used to determine the peak load. For all other customers, the peak load shall be quantified and approved by the company.

Only one supplier's claim for part or all of the customer's load will be accepted, and the supplier may not make more than one claim for MSG and one claim for non-MSG per customer. Per the Supplemental Settlement Materials, the entire customer's load must be served by the Market Support Generation if Load Following option is elected.

⁶ The "Load Following" and "Capacity Factor" options are defined in section 2 of the Supplemental Settlement Materials referred to above. For suppliers selecting the capacity factor option, scheduling details will be identified in subsequent supplier/utility communications. For purposes of claiming market support generation capacity, the peak load in the twelve months ended June 2000 as identified in footnote 3, shall be used.

5.f. The first-come-first-served rule will be followed based on the time of submittal of the claim on the company's web site.

5.g. Pending claims in the queue

Once an Eligible Supplier's claim is submitted on the web site, the total amount of claimed capacity in the submission will be categorized as "pending", meaning that

- (i) the supplier has reserved a place in the first-come-first-served queue, subject to the approval process, and
- (ii) the utility will start the application review to determine that the requirements for approval are met.
- (iii) The pending claim for the customer's load will be noted on the company's public web site as a "pending market support or non-market support generation claim". The identity of the customers and Eligible Suppliers will not be posted on the public web site.

Section 6 Approval Process

6.a. The Company will begin the approval process following the receipt of the totality of the information specified in Section 5.d. or 5.e., whichever Section applies to the submitted claim. It is the Company's objective to complete the approval process as soon as possible after receipt of the required information in Section 5.d. or 5.e. The Company's approval process includes:

- (i) verification that the supplier (including customers aggregating their own facilities' loads) has been approved as a Certified Retail Electricity Supplier (CRES), by the Public Utilities Commission and has been registered with the utility.⁷

⁷ If an intended supplier has not achieved CRES certification when it has made a claim for market support generation, the supplier's place in the first-come-first-served queue shall be forfeited (a) thirty calendar days following submittal of the claim or (b) thirty calendar days following the date when the PUCO first accepts CRES applications, whichever occurs later. Forfeiture Waivers may be granted by the company on a case-by-case basis for good cause shown (reasons beyond the control of the claimant) and shall be granted for each day that the PUCO extends its certification review period. Delivery of MSG capacity and non-MSG line losses to an Eligible Supplier shall not commence prior to its certification by the Commission.

- (ii) determination that the retail customer accounts and customers' names match, and that the identified customers are in fact customers of the utility.
- (iii) for Market Support Generation, determination that (i) for Load Following Option accounts the claimed market support generation equals each customer's historic peak level, and that (ii) for Capacity Factor Option accounts, the claimed market support generation is equal to or less than the historic peak level for each customer. If the claim exceeds the customer's historic peak load level, the company shall reduce the claim to that historic peak load level and notify the supplier.
- (iv) determination that the supplier has a contract (or an alternative form of verification)⁸ with the retail customer that has a duration at least as long as the duration of the claim for MSG capacity non-MSG line losses.⁹
- (v) agreement by the supplier to a contract to abide by the terms of the applicable Open Access Transmission Tariff and the applicable service agreement.¹⁰
- (vi) determination that there is remaining capacity to meet the claim for the Company and retail customer class as identified in the application.¹¹
- (vii) determination that the supplier, if a utility or affiliate, qualifies per the eligibility requirement stated previously in Section 4.2 of this document.

6.b. Should the Company determine that an Eligible Supplier's application not meet the requirements listed in Section 6.a. above, the following provisions apply:

⁸ Such alternative to be consistent with the verification required by the PUCO for CRES certification

⁹ The utility shall verify the contract term by reviewing that provision in the Generation Service Agreement or alternate verification form, or through appropriate auditing techniques

¹⁰ This tariff and its subsequent service agreement mandate all requirements for scheduling, delivery, and billing.

¹¹ If the Company affiliates are required to relinquish any generation per the terms of the Supplemental Stipulation, the affiliates shall relinquish such capacity on the next customer meter reading date following notification of the need to relinquish, as long as such date is at least 12 days following the notice. If less than 12 days remain until the next meter reading date following notification, the following month's meter read date shall be the date of relinquishment.

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- (i) If the Supplier fails to be certified as a Certified Retail Electricity Supplier (CRES) within the stated time limits, the claim shall be denied; should the Supplier subsequently become an approved CRES, a new claim for market support or non-market support generation must be made
 - (ii) If the insufficiency is the result of the Supplier's failure to register with the company, which includes EDI testing, the supplier shall have 30 days to become registered upon notification by the Company or the Supplier shall forfeit its place in the queue.
 - (iii) If the insufficiency is a result of the retail customer accounts and customers' names not matching or a determination that the listed customers are not customers of the utility, the Supplier shall have five business days¹², after receipt of notification by the utility of such fact, to remedy such mismatch by submitting a replacement retail customer list in the specified electronic form. Such replacement list shall include corrections only to the original application.
 - (iv) If the replacement list required by Section 6.b.iii is not received in the time period, or if it is deficient, the Supplier shall forfeit its place in the first-come-first-served queue for those customers for whom information is deficient.
 - (v) If the replacement list required by Section 6.a.(iii) results in a lesser or equal amount of market support capacity being claimed than was identified in the initial claim, such replacement value shall be deemed to be the Supplier's claim for capacity.
 - (vi) If the replacement list required by Section 6.b.iii results in a greater amount of market support capacity being claimed, the excess of the new amount of capacity over the initial claim shall be treated as a new claim at the end of the then-existing queue.
 - (vii) If FE determines that at the time of application, the Eligible Supplier does not have a contract with any retail customer with the required contract duration, the supplier will forfeit its place in the queue for that part of the claim associated with customer who is not under contract. If it is determined for a claim for Residential MSG or non-MSG that the Eligible

¹² A business day is defined as a day when the general office of FirstEnergy is open for business.

Supplier does not have a contract for the duration of the claim for 1% or more customers, the claim shall be rejected in its entirety. If it is determined for a claim for Other Retail MSG or non-MSG that the supplier does not have a contract for the duration of the claim for 1% of the claimed load, the claim shall be rejected in its entirety.

- (viii) If the Eligible Supplier fails to agree to the requirements of Section 6.b.(v), the application for capacity will be denied in its entirety.
- (ix) If the utility or affiliate described in Section 4.b. above, does not make capacity available within its service area in a similar manner and magnitude as the claim or has owned or leased generating capacity within one wheeling transaction from FE's service areas, which would make the utility or affiliate ineligible for the MSG generation, the Eligible Supplier shall forfeit its place in the queue.
- (x) If the claim for MSG or non-MSG exceeds the remaining generation in the specified category, the Eligible Supplier will be notified as such and given the option to modify its claim to equal the remaining generation. Such notification may be required for a part of the claim duration submitted by the Eligible Supplier; eg. month 11 of a 24 month claim may exceed the available generation in the specified category.

- 6.c. An Eligible Supplier may withdraw its claim for market support or non-market support generation on behalf of an individual retail customer in its entirety at any time prior to approval of the application.
- 6.d. If an Eligible Supplier were to discontinue serving a retail customer for which it had an approved market support or non-market support generation capacity claim and had proceeded with its use, at the Company's option, either the supplier's right to that capacity is forfeited and the claimed generation would be returned to the pool for that category, or the supplier shall be subject to a minimum monthly capacity factor identified in the Stipulation for the term of the approved claim.
- 6.e. Once the utility has approved an application for the claimed generation, the amount and duration of the claim shall be noted on the utility's public web site as an approved claim for market support or non-market support generation. The identity of the customers and suppliers will not be posted on the public web site.

Section 7 Electronic Data Interchange

In the event that the enrollment process for a particular customer with the company is not completed by the time the supplier schedules the claimed generation, the supplier shall forfeit the approved claim for that customer and the claimed generation would be returned to the pool for that category.

Section 8 FirstEnergy contact

For questions relating to market support generation, the FirstEnergy contact is:

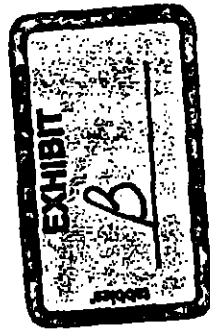
Douglas S. Burnell
Administrator, Competitive Energy Supplier Contracts
FirstEnergy Corp.
76 South Main Street, Akron, Ohio 44308
phone: 330-384-4813 fax: 330-255-1047
e-mail: SupplierSupport@firstenergycorp.com

October 5, 2000

FirstEnergy

Energy Supplier Workshop Information Packet

August 23, 2000



Topic B

Supplier Registration, Supplier Billing and Customer Billing

Doug Burnell, Business Analyst

Mark Downing, Director of Credit Management

Tiffanne Cowan, Business Analyst

FirstEnergy

Supplier Registration

Delivery of Application

- **Delivery Option**

- Certified Mail, hand delivery, or overnight express package delivery service

- The application should be delivered to:

Administrator, Competitive Energy Supplier Contracts

Customer Choice Services - Supplier Services

76 S. Main St.

General Office - 10

Akron, OH 44308

SupplierSupport@firstenergycorp.com

- Applications will be reviewed and the applicant will be contacted within 10 days of either an incomplete or complete application packet
 - In the event that the application is delinquent, the CRES must fully complete the application prior to the application being processed further

FirstEnergy

- FE Registration Team will review the application for initial completeness
- FE internal departments will review appropriate sections
- Applicants with incomplete applications will receive a notification of delinquency within 10 business days of application delivery date
- Upon notification, the application no longer continues to be processed as FE waits for the additional materials from the energy supplier
- If the energy supplier fails to return the additional information needed to complete the application within 30 days, the application is no longer valid. The supplier is then required to resubmit an application packet for further consideration

- Overview

- EGS completes a Credit Application and submits to FirstEnergy for evaluation
- Creditworthiness is based on provided EGS information including External Debt Ratings
- If required, the EGS will be requested to supply an acceptable credit enhancement
- An initial credit limit of \$250,000 will be assigned with any future limit adjustments subject to FirstEnergy's credit assessment criteria
- Credit activity will be reevaluated quarterly using the "Credit Exposure Formula" provided to all EGS applicants

- Credit Application Requirements
- Each EGS will provide the following information regardless of credit status
 - Two Bank References
 - Two Utility Trade References
 - External Credit Ratings
 - Most Recent Audited Financial Statements on the EGS or Annual Report, (10-K/10-Q) from the Parent Company

- **UNSECURED:** The creditworthiness requirement is satisfied if an EGS has, and maintains, investment grade long-term bond ratings from any two of the following four rating agencies:

Standard & Poors

BBB- or higher

Moody's

Baa3 or higher

Fitch IBCA

BBB- or higher

Duff & Phelps

BBB- or higher

- **SECURED:** If an EGS does not satisfy the “unsecured” credit criteria, one of the following credit enhancement types will be provided:

Guarantee of Payment

Irrevocable Letter of Credit

Surety Bond

Prepayment Agreement

FirstEnergy

- Energy Supplier's EDI Responsibilities
 - Receive certification from the State of Ohio
 - Send all completed forms for registration to FirstEnergy for approval
 - Establish a dedicated system for EDI testing
 - Provide Trading Partner Profile information
 - Participate in daily conference calls during the Level II testing period
 - Identify and address areas of non-compliance, exceptions and highly manual processes
 - Notify FirstEnergy which billing options will be utilized
 - Rate Ready:
 - Need routing number and bank account number
 - Need list of supplier rates
 - Dual
 - Provide FirstEnergy with basic billing information

• Trading Partner Profile Information

Trading Partner Profile for FirstEnergy Corp.	
Supplier Name	
File Format (EDI or Non-EDI):	
Communication Methods (VAN, GISB etc.):	
DUNS Number (or DUNS+4):	
Value Added Network (VAN):	
Internet Protocol:	
Production Environment	
VAN Account:	
VAN Mailbox:	
EDI: ISA Qualifier:	
EDI: ISA Sender/Receiver ID:	
EDI: GS Sender/Receiver ID(s):	
Test Environment:	
VAN Account:	
VAN Mailbox:	
EDI: ISA Qualifier:	
EDI: ISA Sender/Receiver ID:	
EDI: GS Sender/Receiver ID(s):	
EDI Contact:	
Name:	
Email Address:	
Telephone:	
Fax:	
Preferred Method of Contact:	
Business/Testing Contact:	
Name:	
Email Address:	
Telephone:	
Fax:	
Preferred Method of Contact:	

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P. U. C. O. NO. S-1

**CLEVELAND ELECTRIC ILLUMINATING COMPANY
CLEVELAND, OHIO**

Electric Generation Supplier Coordination Tariff

**Issued by
H. P. BURG
President
Akron, Ohio**

Issued: January 1, 2001

Effective: January 1, 2001

**Filed under authority of Order No. 00-813-EL-EDI and Order No. 99-1212-EL-ETP issued by The
Public Utilities Commission of Ohio**

**Filed pursuant to Order dated July 19, 2000 in Case No. 00-813-EL-EDI and Case No. 99-1212-EL-ETP before
The Public Utilities Commission of Ohio**

Issued by H. Peter Burg, President

Effective: January 1, 2001



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DEFINITION OF TERMS AND EXPLANATION OF ABBREVIATIONS

Ancillary Services – any function necessary to the provision of electric transmission or distribution service to a retail customer and includes, but is not limited to, scheduling, system control, and dispatch services; reactive supply and voltage control service from generation resources; reactive supply from transmission resources service; regulation service; frequency response service; energy imbalance service; operating reserve-spinning reserve service; operating reserve-supplemental reserve service; load following; back-up supply service; dynamic scheduling; system black start capability; and network stability service

Bad Credit – a Certified Supplier has Bad Credit if it is insolvent (as evidenced by a credit report prepared by a reputable credit bureau or credit reporting agency or public financial data showing liabilities exceeding assets or generally being unable to pay debts as they become due) or has failed to pay Company invoices when they become due on one or more occasions within the last thirty-six billing cycles.

Billing Cycle – the time frame between two regularly scheduled meter readings. Customer meter readings are obtained on a regular schedule, which is managed by the Company.

Certified Supplier - is an Electric Generation Supplier that has received final certification from the Commission pursuant to Ohio Revised Code Section ("R.C.") 4928.08 to provide Competitive Retail Electric Service and has received written notification of registration pursuant to Section V (E) herein.

Charge - any fee or charge that is billable by the Company to a Certified Supplier under this Tariff, including any Coordination Services Charge.

Commission or The Commission - the Public Utilities Commission of Ohio.

Company – Cleveland Electric Illuminating Company or FirstEnergy. All references to FirstEnergy in this Tariff are for purposes of the FERC tariffs referenced herein where FirstEnergy is acting on behalf of Ohio Edison, Toledo Edison, and Cleveland Electric Illuminating Company. Following approval and implementation of the Company's corporation separation plan, as part of its transition plan, all actions or obligations of FirstEnergy under this Tariff, if any, will be performed by the regulated utility business unit of FirstEnergy. American Transmission System Incorporated may be the Company for purposes of certain functions related to energy imbalance and other transmission related functions.

Competitive Retail Electric Service - retail electric generation, aggregation, power marketing, and power brokerage services supplied to Customers of the Company.

Consolidated Billing – a billing service where the Company bills for both the Regulated Utility Charges as well as the Certified Supplier's Charges, unless otherwise provided in the Company's tariff.

Control Area - has the meaning given in Section 1.6 of the FE OATT.

Coordinated Certified Supplier – a Certified Supplier who has appointed a Scheduling Coordinator as its designated agent for certain Coordination Services.

Coordination Activities - all activities related to the provision of Coordination Services.

Coordination Agreement – an agreement between the Company and an EGS or Certified Supplier that arranges for the provision of Coordination Services pursuant to this Tariff.

Coordination Obligations - all obligations identified in this Tariff relating to the provision of Coordination Services.

Coordination Services - those services that permit the interface and coordination between Certified Supplier and the Company in connection with the delivery of Competitive Retail Electric Service to serve Customers located within the Company's service territory including, but not limited to, Ancillary Services (offered under the FE OATT), transmission losses, and distribution losses.

Coordination Services Charges - all charges stated in the Charges section of this Tariff, the FE OATT and the FE Market-Based Rate Tariff that are billed by the Company (on behalf of itself or any FirstEnergy affiliate or subsidiary) for Coordination Services performed hereunder.

Creditworthiness – For the purpose of determining the ability of the Certified Supplier to meet its obligations related to service hereunder, the Company may require reasonable credit review procedures. This review shall be made in accordance with standard commercial practices. In addition, the Company may require the Certified Supplier to provide and maintain in effect during the term of the Coordination Agreement an unconditional and irrevocable letter of credit as security to meet its responsibilities and obligations under the Supplier Tariff, or an alternative form of security proposed by the Certified Supplier and acceptable to the Company and consistent with commercial practices established by the Uniform Commercial Code that protects the Company against the risk of non-payment and default of the Certified Suppliers.

Customer - any person, partnership, association, or corporation receiving Competitive Retail Electric Service from a Certified Supplier in accordance with the Restructuring Act.

DASR (Direct Access Service Request) – an electronic form of communication that shall be exchanged between the Company and a Certified Supplier.

Electric Generation Supplier ("EGS") - all of the entities set forth in R.C. 4928.08(A) and (B) that have not received either certification by the Commission or written notification of registration pursuant to Section V (E) herein.

FERC - the Federal Energy Regulatory Commission.

FirstEnergy ("FE") - the parent company of Cleveland Electric Illuminating Company (and Ohio Edison's wholly owned subsidiary, Pennsylvania Power Company), The Cleveland Electric Illuminating Company, and The Toledo Edison Company.

FirstEnergy ("FE") Market-Based Rate Tariff - the FE Market-Based Rate Tariff (or its successor) on file with the FERC and which sets forth the rates, terms and conditions of the sale of power by FirstEnergy and its subsidiary utility companies including any service agreement executed there under.

FirstEnergy Open Access Transmission Tariff ("FE OATT") - the FirstEnergy Open Access Transmission Tariff (or its successor which may be through a successor organization) on file with the FERC and which sets forth the rates, terms and conditions of transmission service over transmission facilities located in the FirstEnergy System Control Area.

FirstEnergy System Control Center ("FE-SCC") - the control center for the FE System Control Area or its successor.

FirstEnergy ("FE") System Control Area - that certain Control Area recognized by the North American Electric Reliability Council as the "FirstEnergy System Control Area."

Interest Index - an annual interest rate determined by the average of 1-Year Treasury Bills for September, October and November of the previous year.

Interval Meter - an electricity meter which records an End-use Customer's electric usage for defined intervals (e.g., 15 minutes, half-hour, hour, etc.), allowing the possibility for consumption during different time periods to be billed at different rates and providing a means for a Customer's load pattern to be analyzed.

Meter Read Date - the date on which the Company schedules a meter to be read for purposes of producing a customer bill in accordance with the regularly scheduled billing cycles of the Company as the same may be modified from time to time.

Network Integration Transmission Service - transmission service provided under Section III of the FE OATT.

Open Access Same-Time Information System ("OASIS") - has the same meaning as set forth in the FE OATT.

Restructuring Act - Am. Sub. Senate Bill No. 3.

Regulated Utility Charges - utility charges for noncompetitive retail electric services including, but not limited to, tariffed transmission and distribution and generation services that are under the jurisdiction of the Commission. May also include utility charges for noncompetitive gas services.

Schedule - a schedule for the delivery of energy for the benefit of retail customers, prepared by the Certified Supplier or its designated Scheduling Coordinator and submitted to the FE-SCC in the format prescribed by FirstEnergy.

Scheduling Coordinator - an entity that performs one or more of a Certified Supplier's Coordination Obligations.

Service Agreement - the initial agreement and any amendments or supplements thereto entered into by the Certified Supplier and the Company for service under the FE OATT and the FE Market-Based Rate Tariff.

Standard Offer Supply - the provision of energy and capacity by the Company to customers that (1) choose not to obtain Competitive Retail Electric Services from a Certified Supplier other than the Company, (2) return to the Company after having obtained Competitive Retail Electric Services, or (3) contract for Competitive Retail Electric Services from a Certified Supplier that breaches its obligation to deliver such energy or capacity.

Standard Rules and Regulations - The Company's Standard Rules and Regulations in effect as approved by the Public Utilities Commission of Ohio.

Value Added Network ("VAN") - a data transfer network that allows information to be sent and received electronically using an electronic mailbox. This method must meet the following minimum criteria:

- Security and/or encryption of transactions and customer information.
- Proof of transmission and receipt.
- Positive identity of sender and recipient (non-repudiation).
- Reliability.
- Data and file integrity.
- Network performance and availability.
- Recoverability and archiving of data.

RULES AND REGULATIONS

I. THE CERTIFIED SUPPLIER TARIFF

A. Filing And Posting

A copy of this Tariff, which comprises the Charges, Rules and Regulations and Coordination Agreement under which the Company will provide Coordination Services to Certified Suppliers, is on file with the Commission and is posted and open to inspection at the offices of the Company during regular business hours.

B. Revisions

Subject to Section II (B), this Tariff may be revised, amended, supplemented or otherwise changed from time to time in accordance with law, and such changes, when effective, shall have the same force as the present Tariff.

C. Application

The Tariff provisions apply to all Certified Suppliers providing Competitive Retail Electric Services to Customers located in the Company's service territory, including an affiliate or division of the Company that provides Competitive Retail Electric Services, and with whom the Company has executed a Coordination Agreement as required herein. An EGS which has failed to receive certification as a Certified Supplier by the Public Utilities Commission is not lawfully permitted to supply customers with Competitive Retail Electric Service. The Charges herein shall apply as well to anyone receiving service unlawfully or to any unauthorized or fraudulent receipt of Coordination Services in addition to any other remedies available

D. Rules and Regulations

The Rules and Regulations, filed as part of this Tariff, are a part of every Coordination Agreement entered into by the Company pursuant to this Tariff and govern all Coordination Activities. The obligations imposed on Certified Suppliers in the Rules and Regulations apply as well to anyone receiving service unlawfully or to any unauthorized or fraudulent receipt of Coordination Services in addition to any other remedies available to the Company.

E. Statement By Agents

No Company representative has authority to modify a Tariff rule or provision, or to bind the Company by any promise or representation contrary thereto or inconsistent therewith.

III. RELATIONSHIPS AMONG CUSTOMER CHOICE PROGRAM PARTICIPANTS

A. Provision of Coordination Services

The Company shall provide all Coordination Services, as provided herein, necessary for the delivery of a Certified Supplier's Competitive Retail Electric Services to serve retail load located within the Company's certified service territory.

B. Timeliness and Due Diligence

The Company and Certified Suppliers shall exercise due diligence in meeting their obligations and deadlines under this Tariff so as to facilitate supply of Competitive Retail Electric Service to customers.

C. Duty of Cooperation

The Company and Certified Supplier will cooperate in order to ensure delivery of Competitive Retail Electric Service to Customers as provided for by this Tariff, the Standard Rules and Regulations, the FE OATT, the FE Market-Based Rate Tariff.

D. State Certification

Certified Supplier must have and maintain in good standing a certificate from the Commission as a Certified Supplier. The Certified Supplier shall notify the Company within three (3) business days of any amendment, revocation, termination or other change in its Certification.

E. Energy Procurement

A Certified Supplier must make all necessary arrangements for supply and delivery of capacity and energy in a quantity sufficient to serve its own Customers. In the event the Certified Supplier fails to supply sufficient capacity and energy to serve its customers, the Certified Supplier shall be responsible for payment for such capacity and energy as provided in Section XV of this Tariff (Imbalance Service) and all other applicable sections of this tariff.

II. SCOPE AND PURPOSE OF TARIFF

A. Scope and Purpose of Tariff

This Tariff sets forth the basic requirements for interactions and coordination between the Company and Certified Suppliers necessary for ensuring the delivery of Competitive Retail Electric Service from Certified Suppliers to their Customers commencing on and after January 1, 2001. A Customer served by a Certified Supplier pursuant to this tariff shall remain a distribution Customer of the Company.

B. FERC Jurisdiction

The inclusion of FERC-jurisdictional matters within the scope of the Tariff is intended solely for informational purposes and is not intended to accord any jurisdictional authority over such matters to the Public Utilities Commission of Ohio. Furthermore, to the extent that anything stated herein is found by FERC to conflict with or to be inconsistent with any provision of the Federal Power Act ("FPA"), or any rule, regulation, order or determination of FERC under FPA, then such FERC rule, regulation, order or determination of FERC shall control. To the extent required under any provision of the FPA, or any rule, regulation, order or determination of FERC under the FPA, the Company shall endeavor to secure, from time to time, all necessary orders, approvals, and determinations from FERC necessary to implement this Tariff.

IV. COMPANY AND CERTIFIED SUPPLIER OBLIGATIONS (GENERAL TERMS)

A. Multiple Certified Suppliers

Only one Certified Supplier shall provide Competitive Retail Electric Service to a specific Customer's Account during any given Billing Cycle, unless otherwise provided by the Company's tariff.

B. Partial Competitive Retail Electric Service

A Customer's Account is not permitted to have partial Competitive Retail Electric Service. The Certified Supplier shall be responsible for providing the total energy consumed by the Customer's Account during any given Billing Cycle, unless otherwise provided by the Company's tariff.

C. Consolidated Scheduling

Schedules may be combined if submitted to a single dispatch center using a single class of transmission service (e.g. network service) and the transmission service, for all loads scheduled, provides for the same method of calculating energy imbalance settlements. Such consolidated scheduling shall, for example, permit the combined scheduling of retail loads across the FirstEnergy Companies in Ohio that use a single dispatch center and for combined scheduling for retail and wholesale loads under the above stated circumstances.

Combining retail and wholesale schedules is permitted only if the same method of calculating energy imbalance settlements is used for both. It is anticipated there will be different methods when competition begins, and combining schedules will not be permitted. However, there may eventually be a single method when scheduling is done by a regional transmission (RTO), and then combining schedules would be permitted, if otherwise permitted by the RTO.

D. FE-SCC Services and Obligations

1. A Certified Supplier is responsible for procuring, taking and paying for those services provided by the FE-SCC that are necessary for the delivery of Competitive Retail Electric Services to its Customers pursuant to the Service Agreement for Network Integration Transmission Service under the FE OATT and this Tariff.
2. Ancillary services will be provided by the Company to customers at the rates included in the applicable Company retail tariff. A Certified Supplier may acquire Regulation and Frequency Response, Operating Reserve – Spinning, and Operating Reserves – Supplemental from another source if it demonstrates to the Company that it meets all North America Electric Reliability Council (“NERC”) and regional requirements, and will be subject to all associated sanctions for failure to provide Ancillary Services as specified in the FE OATT. Ancillary Services provided by a Certified Supplier must be provided for all of the Customers it supplies and must be provided as long as the Certified Supplier is supplying its Customers. The Certified Supplier may not supply such services one month and then decline to supply them the next month. Failure to supply Ancillary Services will result in a suspension of the Certified Supplier's registration until resumption of such services by the Certified Supplier occurs.
3. The Certified Supplier is responsible for providing all real power losses that are necessary for the delivery of Competitive Retail Services to its Customers. The amount of losses to be provided by the Certified Supplier are as specified in the FE OATT and the Service Agreement for Network Integration Transmission. If mutually agreed, the Certified Supplier may acquire real power losses from the Company at the rate specified in the FE OATT.

E. Energy Scheduling

A Certified Supplier must make all necessary arrangements for scheduling the delivery of energy with FE-SCC.

F. Reliability Requirements

A Certified Supplier shall satisfy the reliability requirements of the Commission, or any other governmental agency or NERC or regional reliability council or their successor which apply to service provided under this Tariff.

G. Supply of Data

Upon reasonable request a Certified Supplier and the Company shall supply to the other all data, materials or other information specified in this Tariff, or otherwise reasonably required by the Certified Supplier or Company in connection with the provision of Coordination Services, in a timely manner.

H. Communication Requirements - A Certified Supplier shall implement:

1. A VAN and a single EDI file transfer protocol, as determined by the Company. Both data transfer methods must meet the minimum criteria of, and be endorsed by, the Company.
2. Internet Access. A Certified Supplier shall have appropriate software for access to the Company's secure internet site for file viewing and downloads
3. Electronic Mail. A Certified Supplier shall have electronic mail ("e-mail") capable of transferring energy schedules to FE-SCC.

I. Payment Obligation

The Company's provision of Coordination Services to a Certified Supplier is contingent upon the Certified Supplier's payment of all charges provided for in this Tariff.

J. Record Retention

A Certified Supplier shall comply with all applicable laws and the Commission rules and regulations for record retention.

K. Emergency Operation

1. Transmission service shall be provided pursuant to the FE OATT. The Certified Supplier shall accept the FE-SCC determination that an emergency exists and will comply with all FE-SCC directives issued pursuant to the FE OATT
2. The Certified Supplier shall require its Customer to shed load to rectify any imbalance it has created in failing to meet its Schedule in the event that the FE-SCC is unable to secure energy/capacity. The Company shall use reasonable commercial efforts to supply the load of the Certified Supplier's customers, including the imbalance load if any. However, the Certified Supplier shall curtail its schedule to rectify any imbalance between its actual load and its lesser schedule in the event that the FE-SCC is unable to secure energy and or capacity to supply that difference in load.

3. **Emergency shutoff.** The Company has the right to curtail a Certified Supplier's schedule in order to maintain system integrity or to otherwise prevent the occurrence of a system emergency or to rectify the occurrence of a system emergency. The Company has the right to require redispatching of generation resources in accordance with the FE OATT, Section 33, Load Shedding and Curtailment to relieve an existing or potential system emergency

V. SUPPLIER REGISTRATION AND PARTICIPATION REQUIREMENTS

A. Registration Process

The Company shall approve or disapprove the EGS registration within thirty (30) calendar days of receipt of complete registration information from the supplier. The thirty (30) day time period may be extended for up to thirty (30) days for good cause shown, or until such other time as is mutually agreed to by the EGS and the Company.

The approval process shall include, but is not limited to: successful completion of the credit requirements and receipt of the required collateral if any by the Company, executed EDI Trading Partner Agreement and Certified Supplier Service Agreement, payment and receipt of any supplier registration fee and completion of EDI testing for applicable transaction sets necessary to commence service.

B. Registration for Coordination Services

An EGS seeking to obtain Coordination Services hereunder must deliver to the Company a completed registration, consisting of the following.

1. a Coordination Agreement fully executed in triplicate by a duly authorized representative of the EGS;
2. a)
for all customers served at less than 69 kV and those above 69 kV who request Network Integration Transmission Service, a Service Agreement For Network Integration Transmission Service under the FE OATT fully executed in triplicate by a duly authorized representative of the EGS;

b)
for Certified Suppliers supplying service to transmission level retail customers, i.e., 69 kV and above, a Service Agreement for any applicable service related provision of the FE OATT fully executed in triplicate by a duly authorized representative of the EGS;
3. a Service Agreement under the FE Market-Based Rate Tariff, fully executed in triplicate by a duly authorized representative of the EGS;
4. the EGS's Ohio sales tax identification number;
5. a copy of the EGS's certification issued by the Commission to provide Competitive Retail Electric Services to the Company's retail customers;
6. a copy of the EGS's certification application submitted to the Commission to apply for its certificate;
7. a Credit History Form, available from the Company, fully completed in duplicate;
and

8. for Customers that have elected the one-bill option, a copy of the Certified Supplier's rate schedule must be provided to the Company, which will seek to implement such rate schedule within two weeks, but in no event longer than 90 days of receipt. The Company reserves the right to limit the number of rates per Certified Supplier prior to the start date of competition.
9. the EGS must demonstrate to the Company's satisfaction that its Electronic Data Interchange ("EDI") is fully functional and capable of performing the necessary data transference functions required to supply the Company with data necessary to operate its business.
10. a Service Agreement for Electronic Data Interchange Trading Partner fully executed in triplicate by a duly authorized representative of the EGS.

C. Incomplete Registrations

In the event the EGS fails to provide all of the information specified in Section V (B), the Company shall provide written notice to the EGS of the registration's deficiencies within ten (10) calendar days after the Company's receipt of the registration. The Company will not process an incomplete registration until the EGS corrects the deficiencies and delivers a completed registration to the Company.

D. Grounds for Rejecting Registration

The Company may reject a registration for Coordination Services on any of the following grounds:

1. the EGS has undisputed outstanding debts to the Company arising from its previous receipt of Coordination Services from the Company.
2. the EGS has failed to comply with payment and billing requirements specified in Rule 12 of the Tariff;
3. the Company has provided written notice to the EGS that a registration is incomplete and the EGS has failed to submit a completed registration within thirty (30) business days of deficiency notification.
4. the EGS has been rejected by the Company as not being creditworthy.
5. the EGS has failed to comply with all applicable requirements of the FE-OATT and the FE Market-Based Rate Tariff for its registration to be accepted as complete.
6. the EGS has contracted to use the services of more than one Scheduling Coordinator for service to customers within the Company's certified service territory. Use of more than one Scheduling Coordinator is not permitted.

VI. CREDIT REQUIREMENTS

The Company will apply, on a non-discriminatory and consistent basis, reasonable financial standards to assess and examine an EGS's creditworthiness. These standards will take into consideration the scope of operations of each EGS and the level of risk to the Company. This determination will be aided by appropriate data concerning the EGS, including load data or reasonable estimates thereof, where applicable.

An EGS shall satisfy its creditworthiness requirement and receive an unsecured credit limit by demonstrating that it has, and maintains, investment grade long-term bond ratings from any two of the following four rating agencies:

AGENCY	SENIOR SECURITIES RATING (BONDS)
Standard & Poors	BBB- or higher
Moody's Investors' Services	Baa3 or higher
Fitch IBCA	BBB- or higher
Duff & Phelps Credit Rating Company	BBB- or higher

The EGS will provide the Company with its or its parent's most recent independently-audited financial statements, (if applicable) and, its or its parent's most recent Form 10-K and Form 10-Q (if applicable).

The Company shall make reasonable alternative credit arrangements with an EGS that is unable to meet the aforementioned criteria and with those EGSs whose credit requirements exceed their allowed unsecured credit limit. The EGS may choose from any of the following credit arrangements in a format acceptable to the Company: a guarantee of payment; an irrevocable Letter of Credit; a Prepayment Account established with the Company; a Surety Bond, including the Company as a beneficiary; or other mutually agreeable security or arrangement. The alternate credit arrangements may be provided by a party other than the Certified Supplier, including one or more ultimate customers. The fact that a guarantee of payment, irrevocable Letter of Credit, Prepayment Account, or Surety Bond is provided by a party other than the Certified Supplier shall not be a factor in the determination of the reasonableness of any alternative credit arrangement, as long as such party and the related credit arrangements meet the Company's standard credit requirements. The amount of the security required must be and remain commensurate with the financial risks placed on the Company by that EGS, including recognition of that EGS's performance.

The Company will make available on request its credit requirements. An EGS may appeal the Company's determination of credit requirements to the Commission or seek Staff mediation as to any dispute.

7. The EGS has failed to execute an EDI Trading Partner Agreement, and/or has not completed EDI testing for applicable transaction sets necessary for the commencement of service.

E. Approval of Registration

Upon its approval of a registration for Coordination Services, the Company shall execute the Coordination Agreement tendered by the registrant and shall provide one copy to the EGS and maintain a copy for its own records. The Company shall send written notification of approval of registration to the EGS and the Commission.

F. Identification Numbers

Upon its approval of a registration for Coordination Services, the Company will use the assigned EGS identification number in subsequent electronic information exchange between the EGS and the Company. In addition, the Company may also assign to the EGS identification numbers that may be required by FE-SCC in connection with the submission and/or confirmation of load schedules for serving load in the Company's service territory.

G. Commencement of Coordination Services

Coordination Services shall commence within thirty (30) business days after the Commission issues its certification following the Company's approval of an EGS's registration for Coordination Services, provided that all of the information necessary for the Company to provide Coordination Services has been provided to the Company. Following certification by the Commission and registration with the Company, the EGS is considered a Certified Supplier, subject to compliance with this Tariff and the Commission's continuing authority.

VII. CUSTOMER ENROLLMENT PROCESS

A. Pre-Enrollment Customer Information List

Upon request, the Company will electronically provide to any Certified Supplier the most recent Customer information list. The Certified Supplier will pay the Company \$150.00 per list for providing the list to the Certified Supplier.

The Company will offer the Customer information list to Certified Suppliers beginning in October 2000 with updates available quarterly throughout the market development period. Once the list has been updated, a Certified Supplier may not use a Customer information list from a prior quarter to contact Customers, but Certified Suppliers shall not be required to purchase subsequent lists.

The Company will provide Customers the option to have all the Customer's information listed in the section below removed from the Customer information list. At the same time the Company will also provide Customers the option to have all Customer's information listed below reinstated on the Customer information list. The Customer will be notified of his or her options quarterly throughout the market development period.

The following information will be provided on the Customer information list for each Customer who has not requested that all information be removed from this list:

- i) End-use Customer name
- ii) Service Address
- iii) Service City
- iv) Service State and Zip Code
- v) Mailing Address
- vi) Mailing City
- vii) Mailing State and Zip Code
- viii) Rate Schedule under which service is rendered, including class and sub-class (if applicable)
- ix) Rider (if applicable)
- x) Load Profile Reference Category
- xi) Meter Type (will provide information that is readily available)
- xii) Interval Meter data indicator (will provide information that is readily available)
- xiii) Budget Bill / PIPP indicator
- xiv) Meter Read Cycle
- xv) Most recent twelve (12) months of historical consumption data (actual energy usage plus demand, if available)

The Company will provide the Customer information list by either a compact disc or on a designated website. The information will be prepared and distributed in a uniform and useable format that allows for data sorting. Customers participating in the percentage of income payment plan (PIPP) program will be coordinated exclusively through the PIPP program administered by the Ohio Department of Development.

B. Certified Supplier Requests for Customer Information

Certified Suppliers may request historical Interval Meter data through a DASR after receiving the appropriate Customer authorization. The Interval Meter data will be transferred in a standardized electronic transaction. The Certified Supplier will be responsible for the costs incurred to prepare and send such data per the Schedule of Fees and Charges attached hereto.

C. Direct Access Service Requests (DASRs)

Enrollment of Customers is done through a DASR, which may be submitted only by a Certified Supplier.

DASRs will be effective on the next Meter Read Date provided that it is received by the Company at least twelve (12) calendar days before the next Meter Read Date, unless otherwise provided in the Company's tariff.

All DASRs will be submitted to the Company no more than thirty (30) calendar days prior to the scheduled Meter Read Date when the Certified Supplier desires the switch to occur, unless otherwise agreed upon by the parties. The Company will process all valid DASRs and send the Customer confirmation within two business days. Simultaneous with the sending of the notice to the Customer, the Company will electronically advise the Certified Supplier of acceptance. Notice of rejection of the DASR to the Certified Supplier shall be sent in one business day, if possible, but in no event later than four (4) calendar days, and include the reasons for the rejection. The Company shall provide a rescission period as provided by the Commission's rules. If the Customer rescinds, the Company shall send a drop notice to the Certified Supplier. In the event of Customer rescission, the previous Certified Supplier will continue to serve the Customer under the same terms and conditions.

Enrollments will be processed on a "first in" priority basis based on the received date, and using contract date as the tie-breaker. Any subsequent enrollment DASRs received within the same Billing Cycle will be rejected and returned to the Certified Supplier who submitted the DASR.

To participate in the Customer Choice Program, a Customer must have an active electric service account with the Company. After the electric service account is active, a Certified Supplier may submit a DASR as described herein.

D. Certified Supplier Selection

The Certified Supplier will obtain appropriate authorization from the Customer, or from the person authorized, per Commission requirements, to act on the Customer's behalf, indicating the Customer's choice of the Certified Supplier. The authorization must provide the customer's name, address, and account number. It is the Certified Supplier's responsibility to maintain records of the Customer's authorization in order to provide documented evidence of authorization to the Company and the Commission.

A Customer may have only one firm power Certified Supplier for any billing month for each customer account with the Company. For each customer account with the Company, a Customer may not split non-interruptible generation supply between two Certified Suppliers or between the Company's Standard Offer Supply and service by a Certified Supplier during a billing month. No Customer shall be provided with Competitive Retail Electric Services by more than one Certified Supplier during the same billing month for each customer account.

If a Customer contacts the Company to request initial service from a Certified Supplier or to request a change of Certified Supplier, the Company will inform the Customer that the Certified Supplier must be contacted directly with the request.

If a Customer contacts the Company to discontinue electric service at the Customer's then current location, and initiates a request for service at a new location in the Company's service territory, the Company will notify the current Certified Supplier of the Customer's discontinuance of service for the account at the Customer's old location.

If the Company elects to change the account number for a Customer receiving Competitive Retail Electric Service from a Certified Supplier, the Company will notify the Certified Supplier of the change in account number at the same Customer location.

E. Provisions relating to a Certified Supplier's Customers

1. Arrangements with Certified Supplier's Customers

Certified Suppliers shall be solely responsible for having appropriate contractual or other arrangements with their Customers necessary to implement Competitive Retail Electric Service consistent with all applicable laws, Commission requirements, and this Tariff. The Company shall not be responsible for monitoring, reviewing or enforcing such contracts or arrangements.

2. Transfer of Cost Obligations Between Certified Suppliers and Customers

Nothing in this Tariff is intended to prevent a Certified Supplier and a Customer from agreeing to reallocate between them any Charges that this Tariff imposes on the Certified Supplier, provided that any such agreement shall not change in any way the Certified Supplier's obligation to pay such Charges to the Company, and that any such agreement shall not confer upon the Company any right to seek recourse directly from the Certified Supplier's Customer for any charges owed to the Company by the Certified Supplier.

F. Customer Return to Standard Offer Supply

A Customer's return to Standard Service Offer may be a result of Customer choice, supplier default, termination of a supplier contract, opt out or termination of a governmental aggregation program, or supplier withdrawal. A Customer may contact the Company to return to the Company's Standard Offer Supply. The return to the Standard Offer Supply shall be conducted under the same terms and conditions applicable to an enrollment with a Certified Supplier. Thus, the Company will provide a rescission period consistent with the Commission rules. Provided the Customer has observed the applicable notification requirements and the Company has effectuated the request to return to the Standard Offer Supply twelve (12) calendar days prior to the next regularly scheduled Meter Read Date, the Customer will be returned to the Standard Offer Supply on the next regularly scheduled Meter Read Date.

Large Commercial and Industrial Customers Return to Standard Offer Rate

Return to Standard Offer Supply will be pursuant to the Company's Standard Rules and Regulations Section XIV Return to Standard Offer Supply.

Residential and Small Commercial Customers Return to Standard Offer Rate

Residential and Small Commercial Customers return to Standard Offer Supply will be pursuant to the Company's Standard Rules and Regulations Section XIV Return to Standard Offer Supply.

XVII. CONFIDENTIALITY OF INFORMATION

A. Generally

All confidential or proprietary information made available by one party to the other in connection with the registration by a supplier with the Company and/or the subsequent provision and receipt of Coordination Services under this Tariff, including but not limited to load curve data, and information regarding the business processes of a party and the computer and communication systems owned or leased by a party, shall be used only for purposes of registration with the Company, receiving Coordination Services and/or providing Competitive Retail Electric Service to Customers in the Company's service territory. Other than disclosures to representatives of the Company or Certified Supplier for the purposes of enabling that party to fulfill its obligations under this Tariff or for a Certified Supplier to provide Competitive Retail Electric Service to Customers in the Company's service territory, a party may not disclose confidential or proprietary information without the prior authorization and/or consent of the other party.

B. Customer Information

The Certified Supplier shall keep all Customer-specific information supplied by the Company confidential unless the Certified Supplier has the Customer's written authorization to do otherwise.

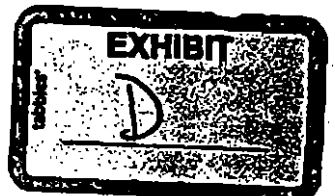
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From: Burnelld@firstenergycorp.com <mailto:Burnelld@firstenergycorp.com>
>
[SMTP:Burnelld@firstenergycorp.com]
<mailto:[SMTP:Burnelld@firstenergycorp.com]>
Sent: Monday, March 05, 2001 4:38 PM
To: SupplierSupport@firstenergycorp.com
<mailto:SupplierSupport@firstenergycorp.com>
Subject: FirstEnergy's Filing of the MSG Service Agreement at FERC

Attention,

Attached below is information pertaining to FirstEnergy's filing of the
"MSG
Service Agreement" at FERC.
(See attached file: 1FEOperat.DOC) (See attached file: 269902.doc) (See
attached file: 26mv06.DOC) (See attached file: 27nm01.DOC) (See attached
file:
27nn01.DOC)

Thank you,
Douglas Burnell <<1FEOperat.DOC>> <<269902.doc>> <<26mv06.DOC>>
<<27nm01.DOC>> <<27nn01.DOC>>



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**FirstEnergy Corp.
Market-Based Rate Wholesale Power Sales Tariff
(MRT)**

**Revised Tariff Sheets
To Implement Sales of
Market Support Generation
And
Loss Free, Non-Market Support Generation
(Clean Version)**

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**ATTACHMENT E: Form of Service Agreement for Sales of Market-Support Generation and Loss
Free, Non-Market Support Generation Under the Ohio Retail Electric Program**

2.03 **Applicant:** An entity that has submitted a complete Application to enter into a Service Agreement under this Tariff.

2.04 **Application:** An application for service under this Tariff in the form attached hereto as Attachment A.

2.05 **Authorized Representative:** The person(s) designated in writing by the Parties to enter into Transactions under their Service Agreement(s).

2.06 **Book-Out:** An agreement whereby the Parties, and/or third parties, are relieved of their respective obligations to deliver and receive Electric Service under Transaction(s) without physical delivery of Electric Service.

2.07 **Bulk Power Group:** The organization within FirstEnergy that performs wholesale merchant function activities on behalf of the FirstEnergy Operating Companies.

2.08 **Business Day:** Any day on which Federal Reserve member banks in New York City are open for business.

2.09 **Buyer:** The Party to a Transaction that is obligated to purchase Power during the Period of Delivery specified for that Transaction.

2.10 **Capacity:** The resource that produces electric energy, measured in megawatts.

2.11 **Certificate of Concurrence:** A certificate, in the form annexed to the Service Agreement appended hereto as Attachment B, executed by a Customer that wishes to engage in exchange Transactions under this Tariff.

2.12 **Confirmation Letter:** A written notice setting forth the terms of a Transaction substantially in the form annexed hereto as Attachment C or in Attachment E.

2.29 Interest Rate: The lesser of Prime Rate plus two percent and the maximum lawful rate permitted by applicable law.

2.30 Loss Free, Non-Market Support Generation: System-level generation made available by FirstEnergy or third party suppliers for which FirstEnergy will supply losses during the months of September through May for energy delivered to Ohio retail customers of The Cleveland Electric Illuminating Company, Ohio Edison Company, and The Toledo Edison Company in accordance with the Supplemental Settlement Materials approved by the Public Utilities Commission of Ohio in its July 19, 2000 Opinion and Order in Case No. 99-1212-EL-ETP, et al.

2.31 Market-Support Generation: System-level generation made available by FirstEnergy pursuant to the terms of (1) the Stipulation and Recommendation and (2) the Supplemental Settlement Materials filed with the Public Utilities Commission of Ohio on April 17, and May 9, 2000, respectively, in PUCO Case No. 99-1212-EL-ETP.

2.32 Month: All of the days in any calendar month, or if a reservation starts on any day other than the first day of the month, the number of days remaining in the month in which the reservation commences.

2.33 NERC: The North American Electric Reliability Council, or its successor.

2.34 Off-Peak: Unless otherwise agreed by the Parties, any hour not falling within the On-Peak period.

2.35 On-Peak: Unless otherwise agreed by the Parties, any hour during the period starting 7:00 a.m. and ending 11:00 p.m. prevailing time in Akron, Ohio, of each day except all hours on Saturday and Sunday and the days on which the following holidays are generally

observed: New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day and Christmas Day.

2.36 Option Transaction: An agreement under which one Party (the "Holder") acquires for a purchase price (the "Premium") the right (an "Option"), but not the obligation, to purchase from or sell to the other Party (the "Grantor") an agreed Contract Quantity for a specified price (the "Strike Price"), duration, and Delivery Point, by exercising such right prior to a specified time on an agreed date (the "Expiration Date"). An Option Transaction under which the Buyer has the right to purchase Electric Service is a "Call Option." An Option Transaction under which the Buyer has the right to required Electric Service to be purchased is a "Put Option." For purposes of this Tariff, an Option Transaction that has been exercised shall be deemed to be a Transaction.

2.37 Out-of-Pocket Costs (OPC): As it applies to Transactions under this Tariff, all expenses incurred by FirstEnergy that would not otherwise have been incurred if the Transaction had not been arranged. Such expenses include, but are not limited to, costs associated with fuel, variable operation, variable maintenance, startup, shutdown, minimum run, taxes, minimum load, SO₂, and other emission allowances, transmission losses, charges for any Capacity and Energy purchased, or charges of a similar or dissimilar nature, which are reasonably allocated by FirstEnergy to such a Transaction. In no event shall such costs include charges for transmission services provided by FirstEnergy.

2.38 Period of Delivery: The period of time measured from the date deliveries commence under a Transaction through the date deliveries are to terminate under a Transaction.

2.39 Power: Either or both electric capacity and energy expressed in megawatts and megawatt hours.

2.40 Party or Parties: FirstEnergy and the Customer that has executed a Service Agreement under this Tariff.

2.41 Prime Rate: For any date, the per annum rate of interest announced from time to time by The Chase Manhattan Bank as its "prime" rate for commercial loans, effective for such date.

2.42 Schedule, Scheduled, or Scheduling: Communicating and confirming, with a Buyer, transmitting utilities, and Seller, that a specified amount of Electric Service is to be made available, delivered, or received and providing all such information, and satisfying all such requirements, as may be necessary, to cause such Buyer, transmitting utilities, and Seller to recognize and confirm the delivery or receipt of the Electric Service.

2.43 Seller: The Party to a Transaction that is obligated to sell Electric Service during the Period of Delivery specified for that Transaction.

2.44 Service Agreement: An umbrella agreement, forms of which are shown as Attachments B and E to this Tariff, and any amendments or supplements thereto, entered into by Customer and FirstEnergy for Transactions under the Tariff.

2.45 Tariff: This Market-Based Rate Wholesale Power Sales Tariff (MRT), including the Service Agreements and attachments appended hereto, as they may be amended from time to time.

2.46 Tolling Agreement: A Transaction under this Tariff where fuel is exchanged for Electric Service.

2.47 Transaction: Each separate arrangement for the supply of Electric Service by

FirstEnergy to a Customer under the rates, terms, and conditions of the Tariff, Service Agreement, and Confirmation Letter between the Parties. A Transaction shall not be deemed complete until the Parties have satisfied their respective obligations and responsibilities related to the Transaction arising under this Tariff.

2.48 Week: Unless otherwise agreed by the Parties, the seven day period commencing at 12:00 midnight on Sunday.

2.49 Year: Any twelve month period ending at twelve o'clock midnight on the eve of the one-year anniversary of its starting date.

ARTICLE III SERVICE AGREEMENTS

3.01 Prerequisite to Service. In order for a Customer to take Electric Service under this Tariff, a Service Agreement must be executed by FirstEnergy and the Customer and filed, as required, with FERC. The Customer will cooperate with FirstEnergy and provide information necessary for FirstEnergy to proceed with any such required filing. FirstEnergy will tender the Service Agreement for filing with FERC, as required, in accordance with FERC rules and requirements.

3.02 Effective Date. Electric Service provided under this Tariff shall become effective on the date specified in the Service Agreement, or on such other date as assigned by FERC.

3.03 Termination. A Service Agreement may be terminated by either Party upon thirty (30) days' prior written notice, provided, however, that the Service Agreement will remain in effect until all Transactions previously agreed upon or entered into are completed.

ARTICLE IV SERVICES TO BE RENDERED

4.01 Electric Service. All Transactions between the Parties other than Transactions involving sales of Market Support Generation shall be at negotiated rates, subject to Service Schedules A and B, between Buyer and Seller. Sales of Market-Support Generation shall be at rates set forth in the Form of Confirmation Letter for Market Support Generation annexed hereto as Attachment E. All Transactions shall be subject to the availability of Electric Service and of transmission service necessary to complete the Transaction. Neither Party commits, by entering into a Service Agreement, to enter into any individual Transaction with the other Party. No undertaking by one Party to the other under any provision of this Tariff or Service Agreement shall be deemed to constitute the dedication of its system or any portion thereof to the public or to the other Party, and it is agreed that any undertaking to perform a Transaction by any Party shall cease upon completion of the Transaction

4.02 Tolling Agreements. The Parties may agree to supply fuel in exchange for Electric Service. At the time the Parties enter into a Transaction, FirstEnergy and the Customer will agree on the value of the delivered fuel and a negotiated price for Electric Service. All such Tolling Agreements will be documented in a Confirmation Letter.

4.03 Option Transactions. FirstEnergy and the Customer may agree to enter into an Option Transaction. Before engaging in a particular Option Transaction, the Parties will agree upon the Strike Price, the Premium, and the date on which it is paid (which, unless otherwise agreed, will be three Business Days from the date on which the Parties enter into the Option Transaction), the Expiration Date, and the terms of the underlying Transaction. All such Option Transactions will be documented in a Confirmation Letter. Upon exercise of an Option by the

FirstEnergy Corp.

Market-Based Rate Wholesale Power Sales Tariff (MRT)

First Revised Sheet No. 11

Superseding Original Sheet No. 11

Effective March 6, 2001

Holder, a Firm Transactions will occur between the Parties.

4.04 Terms and Conditions. FirstEnergy will sell Electric Service under this Tariff when FirstEnergy and a Customer have reached agreement on the rates, terms, and conditions, including priority and firmness of service, for a specific Transaction. Such rates, terms, and conditions shall be in conformance with any requirements of this Tariff and the Parties' Service Agreement.

ARTICLE V ELIGIBILITY FOR SERVICE

5.01 Application. Before a Customer takes Electric Service under this Tariff, it must enter into a Service Agreement with FirstEnergy. To apply for service, a Customer must complete and submit an Application, in the form attached hereto as Attachment A, to the following

Manager, Wholesale Energy Transactions
FirstEnergy Corp.
395 Ghent Road
Akron, OH 44333

or such other person as may be designated in writing by FirstEnergy from time to time.

5.02 Creditworthiness and Security. To determine the ability of the Customer to meet its obligations related to service hereunder, FirstEnergy may subject the Customer's Application to reasonable credit review procedures. In addition, FirstEnergy may require a Customer to provide *and maintain in effect during the term of the Service Agreement an unconditional and irrevocable* letter of credit, a parental guaranty, or an alternative form of security acceptable to FirstEnergy and consistent with commercial practices that protects FirstEnergy against the risk of the Customer's non-payment. FirstEnergy reserves the right to request the Customer to submit to FirstEnergy updated financial information to permit FirstEnergy to evaluate the Customer's creditworthiness on an on-going basis.

If the Customer fails to meet FirstEnergy's credit review standards or provide one of the payment guarantee options above, FirstEnergy may refuse to provide Electric Service or discontinue Electric Service until such time as FirstEnergy is assured of the Customer's ability to pay.

FirstEnergy may request any other information that it requires to evaluate the Customer's Application or continued eligibility for service.

5.03 Limitation. FirstEnergy is not required to enter into a Service Agreement with a potential customer and may suspend Electric Service hereunder if the Customer commits or experiences an Event of Default as defined in Article XVII of this Tariff, provided, however, that FirstEnergy may continue to provide Electric Service if the Customer pays for such Electric Service.

ARTICLE VII AVAILABILITY AND SALE OF CAPACITY AND/OR ENERGY

7.01 General. At any time during the term of an executed Service Agreement, Seller may notify Buyer that Electric Service is available for sale or exchange. The terms and conditions for any Transaction shall be in accordance with this Tariff and as otherwise agreed to by the Parties in advance of the Transaction.

7.02 Authorized Representatives. Each Party shall designate one or more Authorized Representatives who shall be authorized to act on its behalf with respect to those matters set forth herein which are the functions and responsibilities of the Authorized Representatives; within thirty days after execution of a Service Agreement, each Party shall give written notice to the other Party of its designation. All arrangements for Transactions shall be made between the Authorized Representatives of the Seller and the Buyer. Authorized Representatives shall have no authority to unilaterally modify any of the provisions of this Tariff, a Service Agreement, or a Confirmation Letter.

7.03 Confirmation of Transaction Terms and Conditions. Except as set forth in Section 7.04, the specific terms of a Transaction to be established by the Parties for each Transaction shall be documented in a written Confirmation Letter, substantially in the form annexed hereto as Attachment C or in Attachment E, as appropriate, executed by the Parties prior to commencement of the Transaction. Seller shall document in a Confirmation Letter the terms and conditions of each Transaction of more than one day in duration and telecopy it to the Buyer by the next business day after reaching verbal agreement, and prior to the commencement of the Transaction. The Confirmation Letter associated with each Transaction shall constitute an integral part of the Service

Agreement and shall be read and construed as one with the Service Agreement and this Tariff.

Except with respect to sales of Market Support Generation, any conflict not reasonably capable of reconciliation, among this Tariff, a Service Agreement, and a Confirmation Letter shall be resolved in favor of the Tariff. Conflicts between this Tariff and an executed Service Agreement for Sales of Market Support Generation and Loss Free, Non-Market Support Generation that is substantially in the form annexed hereto in Attachment E shall be resolved in favor of the Service Agreement.

7.04 Short-Term Transactions. To meet the needs of the Parties, the Parties' Authorized Representatives may verbally agree on terms and conditions for Transactions which do not exceed one day (twenty-four hours). The terms and conditions of such Transactions agreed to by the authorized Representatives shall be those terms contained in a tape recording of the Authorized Representatives in which they agree to said terms and conditions. Such Transactions shall promptly be confirmed in writing by the Authorized Representatives if requested by either Party.

7.05 Recording. Each Party consents to the recording of all telephone conversations between its Authorized Representatives and agrees to obtain any necessary consent from, and give notice of such recording to, its Authorized Representatives. Any properly authenticated recordings of such telephone conversations may be introduced as evidence in any legal proceeding to establish proof of any matter relating to a Transaction under this Tariff. The Parties agree not to contest or assert any defense to the validity or enforceability of a Transaction established by properly authenticated recordings of telephone conversations under laws relating to whether certain agreements are to be in writing and signed by the Party to be bound thereby.

7.06 Emergency Curtailment or Interruption. In the event of sudden or emergency curtailment or interruption of Transactions hereunder, the Party experiencing or affected by such interruption or curtailment shall so notify the other Party's schedulers or dispatchers, and any third party involved with the delivery of Electric Service pursuant to a Transaction, in as timely a manner as possible.

the charges were incurred. Unless otherwise agreed by the Parties, bills will be electronically transmitted to the Customer, to be followed by a mailed invoice.

12.02 Payment Date. Unless otherwise agreed by the Parties, when prepayment is not required, payment will be due and payable not later than the first business day following the nineteenth day of the month (the "Payment Date"). Unless otherwise agreed in writing, all payments must be wire transferred to an account designated in writing by FirstEnergy from time to time.

12.03 Netting of Payments. Notwithstanding any provisions of the Service Agreement to the contrary, if Electric Service is sold by a Party to the other Party in the same calendar month, then at least three days prior to the Payment Date the Parties shall confer by telephone and compare and confirm amounts owed to each other. Any difference resulting after offsetting the total amount each Party owes to the other Party shall be paid by wire transfer to the Party owing the net amount. Each Party shall in good faith calculate and use best efforts to agree upon the net amount of the monthly bill.

12.04 Failure to Pay. In the event the Customer fails to make full payment of a bill rendered under the Tariff on or before the Payment Date, FirstEnergy will notify the Customer of the delinquency (by mail, fax, or e-mail), and the Customer will have five (5) days from the date of receipt of such notification to resolve its delinquency. If the Customer fails to make full payment of the delinquent amount (including interest accrued at the Interest Rate) within this five (5) day period, FirstEnergy shall have the following right: to suspend Electric Service under the Parties' Service Agreement and this Tariff; to terminate service pursuant to FERC regulations; and to pursue all available remedies for the collection of unpaid amounts owed to FirstEnergy by the Customer.

)

ATTACHMENT E

**FirstEnergy Corp.
Market-Based Rate Power Sales Tariff
(MRT)**

**Form of Service Agreement
For Sales of Market-Support Generation
And
Loss-Free, Non-Market Support Generation
Under the Ohio Retail Electric Program**

)
PUCO Case No. 99-1212-EL-ETP

Stipulation and Recommendation

Dated April 17, 2000

)

PUCO Case No. 99-1212-EL-ETP
Supplemental Settlement Materials

)
PUCO Case No. 99-1212-EL-ETP

**PUCO Opinion and Order
Adopted July 19, 2000**

Confidential Draft of February 14, 2001

**FIRSTENERGY CORP.
MARKET-BASED RATE WHOLESALE
POWER SALES TARIFF (MRT)**

**FORM OF SERVICE AGREEMENT
for
SALES OF MARKET SUPPORT GENERATION
under
THE OHIO RETAIL ELECTRIC PROGRAM**

THIS SERVICE AGREEMENT, made and entered into this ____ day of _____, 2001, by and between [Name of Customer] (hereinafter referred to as "Customer" or "Certified Supplier"), a [Legal/Corporate Description of Customer], and FirstEnergy Corp., as Agent for Ohio Edison Company, The Cleveland Electric Illuminating Company, Pennsylvania Power Company, and The Toledo Edison Company (hereinafter referred to as "FirstEnergy Operating Companies" or). Customer and the FirstEnergy Operating Companies are sometimes hereinafter referred to individually as "Party" and collectively as "Parties" where appropriate.

WITNESSETH:

WHEREAS, Customer is a (description of Customer) and is a competitive retail electric supplier certified by the Public Utilities Commission of Ohio ("Certified Supplier") that has qualified for the purchase of Market Support Generation or Loss Free, Non-Market Support Generation under the Ohio Retail Electric Program of the FirstEnergy Operating Companies;

WHEREAS, FirstEnergy Corp., an Ohio corporation, is acting as agent for the FirstEnergy Operating Companies in administering Service Agreements pursuant to the FirstEnergy Operating Companies FERC Electric Tariff, Original Volume No. 2, Market-Based Rate Wholesale Power Sales Tariff; (Tariff) and

WHEREAS, Customer and the FirstEnergy Operating Companies desire to establish terms and conditions of Market-Based Rate Wholesale Power Sales Service upon which utility operations may be conducted under the Tariff.

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, the Parties hereto covenant and agree as follows:

ARTICLE 1
SCOPE OF SERVICE AGREEMENT

1.1 Availability - FirstEnergy Operating Companies agree to furnish Power to Customer and Customer agrees to purchase and pay for such service subject to conditions of service outlined in the Tariff and this Service Agreement.

1.2 Rate Schedule - The terms and conditions on which the Market-Based Rate Wholesale Power Service is offered and accepted are pursuant to the Tariff or as the same may be amended or superseded due to appropriate filings from time to time with the Federal Energy Regulatory Commission ("FERC") or such other agency as may have jurisdiction. The Tariff in effect at any time is hereby incorporated by this reference and made a part of this Service Agreement. Capitalized terms shall have the meaning ascribed to them in the Tariff, unless otherwise defined in this Service Agreement.

ARTICLE 2
SCHEDULING

2.1 Schedules – Scheduling of Power under this Tariff shall be conducted pursuant to the terms of the Protocol for Market Support and Non-Market Support Generation Scheduling and Billing attached hereto as Appendix A.

ARTICLE 3
TERM OF AGREEMENT

3.1 Agreement Term - This Service Agreement shall become effective upon the date of its execution, or if necessary, approval by the FERC, or any successor regulatory agency having jurisdiction. This initial term of this Service Agreement shall commence on _____

and shall terminate on _____. Thereafter, this Service Agreement shall continue for successive annual terms until terminated by either Party giving the other Party written notice of termination of this Service Agreement, but in no event shall the Service Agreement continue beyond December 31, 2005. Such written notice of termination must be given at least 30 days prior to the intended date of termination.

3.2 After Termination - The applicable provisions of this Service Agreement shall continue in effect after termination thereof to the extent necessary to provide for final billing, billing adjustments and payments.

ARTICLE 4

BILLING AND PAYMENTS

4.1 Payment of Bills – Billing and payments under this Tariff shall be conducted pursuant to the terms of Appendix B, Certified Supplier Billing Terms and Conditions.

4.2 Customer Billing Address - All billings to the Customer shall be sent to:

4.3 FirstEnergy Operating Companies Billing - All questions concerning the billings and payments of invoices under this Service Agreement shall be directed to the following:

Administrator, Supplier Support Services
FirstEnergy Corp.
76 South Main Street Attn: CAN
Akron, OH 44308
Voice (330) 437-1301
FAX (330) 437-1319

ARTICLE 5
MISCELLANEOUS

5.1 Governing Law - The validity, interpretation and performance of this Service Agreement and each of its provisions shall be governed by the laws of the State of Ohio.

5.2 Notices Relating to Provisions of Service Agreement - Any notice, request, demand, or statement which may be given to or made upon either Party by the other Party under any of the provisions of this Service Agreement shall be in writing, unless specifically provided otherwise, and shall be considered delivered when the same is either: (i) personally delivered to the representative of the Party designated below; (ii) deposited in the United States mail, by certified mail, postage prepaid; or (iii) sent by a nationally recognized overnight delivery service, such as, Federal Express and properly addressed to the Party to be served as follows:

To Customer:

[Insert Customer Language Here]

To FirstEnergy Operating Companies:

Administrator, Supplier Support Services
FirstEnergy Corp.
76 South Main Street Attn: CAN
Akron, OH 44308
Voice (330) 437-1301
FAX (330) 437-1319

5.3 Notices of an Operating Nature - Any notice, request or demand pertaining to matters of an operating nature, which matters do not include requests for additional transmission service or modified transmission service under a FirstEnergy FERC transmission tariff, may be served in person or by United States mail, messenger, telephone, telegraph, facsimile transmission or orally,

as circumstances dictate, to the person designated in writing by the Party as its representative for such purposes; provided that should the notice not be written, confirmation thereof shall be made in writing as soon as reasonably practicable thereafter, upon request of the Party being served.

5.4 Section Headings Not to Affect Meaning - The descriptive headings of the various sections of this Service Agreement have been inserted for convenience of reference only and shall in no way define, modify or restrict any of the terms and provisions thereof.

5.5 Further Assurances - From time to time after the execution of this Service Agreement, the Parties may execute such instruments, upon the request of the other, as may be necessary or appropriate, to carry out the intent of this Service Agreement.

5.6 Execution Date of Agreement - The Execution Date of this Service Agreement shall be the date appearing at the beginning of this Service Agreement.

5.7 Amendments - This Service Agreement may be amended upon mutual agreement of the Parties, which amendment shall be reduced to writing and executed by both Parties.

5.8 Severability - In the event any of the terms, covenants or conditions of this Service Agreement, or any amendment hereto, or the application of any such terms, covenants or conditions shall be held invalid as to any Party or circumstance by any Court having jurisdiction, all other terms, covenants and conditions of this Service Agreement or any amendment hereto and their application shall not be affected thereby and shall remain in full force and effect.

5.9 Computation of Time - In computing any period of time prescribed or allowed by this Service Agreement, the day of the act, event or default from which the designated period of time begins to run shall not be included. The last day of this period so computed shall be included unless it is a Saturday, Sunday or legal holiday, in which event the period shall run until the end of the next business day which is neither a Saturday, Sunday or legal holiday. For purposes of the

administration of this Service Agreement, the prevailing time in effect is the prevailing time in Akron, Ohio.

5.10 Limitation - This Service Agreement is not intended to and shall not create rights of any character whatsoever in favor of any persons, corporation, associations, or entity other than the Parties to this Service Agreement, and the obligations herein assumed are solely for the use and benefit of the Parties to this Service Agreement, their successors in interest or assigns.

5.11 No Dedication of Facilities - Any undertaking by one Party to the other under any provisions of this Service Agreement shall not constitute the dedication of the electric system, or any portion thereof, of any Party to the public or to the other Party, and it is understood and agreed that any such undertaking by any Party shall cease upon termination of this Service Agreement.

5.12 Interconnection with Other Systems - Nothing contained in this Service Agreement shall restrict or limit either Party from establishing, altering or terminating interconnection points with any entity not a party to this Service Agreement or amending or entering into such agreements.

5.13 No Partnership - Notwithstanding any provisions of this Service Agreement to the contrary, the Parties do not intend to create hereby a joint venture, partnership, association taxable as a corporation, or other entity for the conduct of any business for profit, and any construction of this Service Agreement to the contrary which has an adverse tax effect on either Party shall render this Service Agreement null and void from its inception.

5.14 Waivers - Any waiver at any time by either Party of its rights with respect to a default under this Service Agreement, or with respect to any other matter arising in connection with this Service Agreement, shall not be deemed a waiver with respect to any other or subsequent default or matter.

5.15 Entire Agreement - The Tariff and this Service Agreement constitutes the entire agreement between the Parties with respect to the subject matter hereof, and there are no other understandings or agreements between the Parties with respect thereof. No previous or contemporary representation or agreement made by an officer, agent or employee of the Customer, or the FirstEnergy Operating Companies shall be binding upon either Party unless contained herein.

5.16 Representations and Warranties - On the Execution Date of this Service Agreement and on the date of entering into each Transaction, Customer represents and warrants to the FirstEnergy Operating Companies that: (a) it is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation and is qualified by it; (b) it has all regulatory authorizations necessary for it to legally perform its obligations under this Service Agreement and any other documentation relating to this Service Agreement or such Transaction; (c) the execution, delivery and performance of this Service Agreement and any other documentation relating to this Service Agreement or such Transaction are within its powers, have been duly authorized by all necessary action and do not violate any of the terms and conditions in its governing documents, any contracts to which it is a party or any law, rule, regulation, order or similar provision applicable to it; (d) this Service Agreement and each other document executed and delivered in accordance with this Service Agreement constitutes its legally valid and binding obligations enforceable against it in accordance with its terms; (e) there are no bankruptcy proceedings pending or being contemplated by it or, to its knowledge, threatened against it; (f) there is not pending nor, to its knowledge, threatened against it or any of its affiliates, any legal proceedings that could materially adversely affect its ability to perform its obligation under this Service Agreement or any other document relating to this Service Agreement to which it is a party; (g) no Event of Default or event which, with the giving of notice or lapse of time, or both, would constitute an Event of Default with respect to it has occurred and is continuing and no such event or circumstance would occur

as a result of its entering into or performing its obligations under this Service Agreement or any other document relating to this Service Agreement or any Transaction; and (h) it is acting for its own account, has made its own independent decision to enter into each Transaction and as to whether each such Transaction is appropriate or proper for it based upon its own judgment, is not relying upon the advice or recommendations of the other Party in so doing, and is capable of assessing the merits of and understanding and understands and accepts, the terms, conditions and risks of each such Transaction.

IN WITNESS WHEREOF, the duly authorized representatives of Customer and the FirstEnergy Operating Companies have executed this Agreement as of the date first above written.

FIRSTENERGY CORP.

Signature: _____

Name/Title: _____

Date: _____

CUSTOMER

Signature: _____

Name/Title: _____

Date: _____

Appendix A

PROTOCOL FOR MARKET SUPPORT AND NON-MARKET SUPPORT GENERATION SCHEDULING AND BILLING

PART A – SCHEDULING

The Certified Supplier must submit a separate schedule for Market Support Generation ("MSG"), Loss-Free, nonMSG/~~(Loss-Free)~~, and nonMSG Power. ~~and Regular. Regular scheduling shall be for all capacity other than claimed MSG and nonMSG and shall follow the current Open Access Transmission Tariff.~~ All scheduling must also be made through the FirstEnergy SES Scheduling Website, and is subject to the relevant provisions of the applicable Open Access Transmission Tariff.

MSG will not require the submittal of an Etag for scheduling within the Company's control area. However, an Etag will be required for a MSG Capacity Factor excess power transaction, scheduled to be sold outside the Company's control area and for Loss-Free, nonMSG ~~(Loss-Free)~~. Where MSG is sold outside of the Company's control area, the Certified Supplier is responsible for reserving and purchasing the Point-to-Point transmission service necessary to deliver MSG to the interconnection designated as the Point of Delivery.

Section 1 – Load Following

- 1.a If the approved MSG claim is for Load Following, it must be used to serve the Customer's entire load.
- 1.b Load Following will not require scheduling or load factor commitment with the Company and will be treated similar to the Company's native load.

Section 2 – Capacity Factor

- 2.a If the approved MSG claim is for Capacity Factor, it may be used to serve either the Customer's entire load or a portion of the Customer's load.
- 2.b All Certified Suppliers must submit a capacity election for the aggregate of its retail customers, by class, no later than the 25th of the month before scheduled use of the MSG capacity in the following month. This election shall be the basis for the minimum monthly and annual bills. Customer classes shall be defined as Residential, Commercial less than 30kW, All Other Commercial, and Industrial.
- 2.c All Certified Suppliers must maintain at least 12 monthly schedules on the ~~power~~ SES Scheduling Website in advance of capacity usage for each month that the Certified Supplier has an approved Capacity Factor claim. The intent of this requirement is to assist the Company in power supply planning. Therefore, the schedules submitted should reflect the projected hourly load levels of the retail customers being served as

closely as possible. The Company will audit the schedules submitted to ensure this intent is being fulfilled.

- 2.d All schedules must be submitted on a 365-day by 24-hour aggregated schedule.
- 2.e Schedules may be submitted to the tenth of a MW for each retail customer class; however, the Company will summarize the retail customer class schedules by Certified Supplier and round to the nearest whole MW for purposes of imbalance calculations.
- 2.f If Capacity Factor is elected for all or a part of the retail customer's load, the Certified Supplier may resell the scheduled MW per hour if the retail customer does not take all the Power. The Certified Supplier shall pay the same price for the MW per hour, whether taken by the retail customer or not.
- 2.g If the Certified Supplier decides to sell excess Power outside the Company control area, a sale schedule through the Company's SES Scheduling Website and an Etag must be submitted. The Certified Supplier is also responsible for reserving and purchasing the Point-to-Point transmission service necessary to deliver MSG to the interconnection designated as the Point of Delivery.
- 2.h The Certified Supplier will be required to schedule between 0 and 100% of the elected capacity by retail rate class.

Section 3 – Loss-Free, NonMSG - LossFree

- 3.a All scheduling of approved claims for Loss Free, nonMSG/(Loss-Free) shall be made through the FirstEnergy SES Power Scheduling Website, and in accordance with the company's applicable Open Access Transmission Tariff. An Etag must be submitted.

Section 4 – Company Approval of the Schedule

4.a MSG Schedules

The Company shall review the Certified Supplier's schedule for MSG and take the following actions if the schedule is not in compliance with this Service Agreement:

~~4.a.1 If the Certified Supplier does not have an approved MSG claim for any one retail customer, the Certified Supplier's entire schedule shall be deemed a Regular nonMSG schedule, and an Etag schedule must be submitted.~~ In any one hour, if the Certified Supplier's monthly election and schedule exceeds the aggregated retail customers' historic peak load for any month in the same season from the historic year, the Company will not allow the schedule to be submitted.¹ If there is no historic usage available for the retail customers that are included in the schedule, the Company shall proceed to the step below for approval.

4.a.2 In any one hour, if the Certified Supplier's monthly election and schedule exceeds the approved MSG claimed amount, the Company will not allow the schedule to be submitted.

¹ A season shall be defined as follows in any given year: Summer – June, July, August; Fall – September, October, November; Winter – December, January, February; Spring – March, April, May

4.a.3 If, any one hour, the Certified Supplier's schedule exceeds that particular month's election then the Company will not allow the schedule to be submitted.

The Company shall review all schedule changes and not accept the changes if they do not comply with this Service Agreement as specified below:

4.a.4 The percentage change of capacity scheduled daily during off-peak periods must be the same percentage change of capacity scheduled daily during on-peak periods, except for increases in capacity for the off-peak period only.² On and off-peak periods shall have the same definition as provided for in the applicable Open Access Transmission Tariff, which specifies that on-peak hours are 7am to 11pm Monday through Friday except legal holidays listed in the Open Access Transmission Tariff. Off-peak hours are all hours not designated as on-peak.

4.a.5 The hourly schedule may be changed on a day ahead basis, as long as the minimum and maximum capacity percentages are maintained.

4.b Loss Free, NonMSG Schedules – ~~Loss Free~~

The Company shall review the Certified Supplier's schedule for Loss Free, nonMSG and take the following actions if the schedule is not in compliance with this Service Agreement (Note: Etags must always be submitted).

4.b.1 If the Certified Supplier does not have an approved Loss Free, nonMSG claim for any one retail customer, the Certified Supplier's entire schedule shall be deemed as a regular nonMSG schedule.

4.b.2 If the Certified Supplier's monthly schedule exceeds the approved Loss Free, nonMSG claim amount, the Company will not allow the schedule to be submitted.

PART B- BILLING

Section 1 – Load Following

- 1.a The Company shall bill the Certified Supplier for all kWh measured at the meter and used by the Certified Supplier, at the MSG price up to the aggregated retail customer's historic annual peak load. For all usage above the aggregated retail customer's historic annual peak (aggregated by Certified Supplier), load following imbalances shall apply.
- 1.b The Company shall bill the Certified Supplier in accordance with Appendix B of this Service Agreement.

² In the event that the original schedule for either period is zero, the change for that period must be equal to the incremental amount that was added to the alternate period. If the alternate period was adjusted downward, the zero period shall remain zero.

Section 2 – Loss Free, NonMSG – ~~Loss-Free~~

- 2.a** The Company shall bill the Certified Supplier for imbalances as specified in the Company's applicable Open Access Transmission Tariff taking into account the treatment of losses for Loss Free, non-MSG as specified in this Service Agreement.

Section 3 – Capacity Factor

- 3.a** The Company shall bill the Certified Supplier for all scheduled MW per hour in accordance with its existing Certified Supplier billing practices and at the MSG price. All imbalances shall apply for Power used in excess of or less than the scheduled MW per hour. Imbalances shall be billed in accordance with the relevant provisions of the applicable Open Access Transmission Tariff.
- 3.b** For Capacity Factor schedules that include more than one of the FirstEnergy Operating Companies, MW per hour shall be allocated to each FirstEnergy Operating Company at the same percentage as the Certified Supplier's allocation in its original claim.
- 3.c** The Certified Supplier shall be obligated to take or pay for at least the monthly minimum capacity factor and imputed annual usage specified below.
- 3.d** On a monthly basis, the schedule must be between the minimum and maximum capacity factor multiplied by the number of hours in the month (i.e. elected capacity x capacity factor between min and max x hours in the month). Minimum capacity factor shall be used to determine a minimum bill. Minimum MW per hour measured monthly shall be 60% of the elected capacity for residential and small commercial customers, 70% for commercial customers, 80% for all other retail customers. Maximum MW per hour measured monthly shall be 100% of the elected capacity for any rate class.
- 3.e** Additionally, an annual minimum bill (broken down by rate class) shall be determined based on the following;
- 3.e.1** compare the peak hourly load elected in any summer month with the historic peak measured load in that same month;³
- 3.e.2** determine the MSG Percentage Factor by dividing the elected summer peak MW by the historic peak MW measured load for that same month;
- 3.e.3** this MSG Percentage Factor shall be multiplied by the monthly historic peak recorded for retail customers enrolled and served by the Certified Supplier during that month. This Factor will only apply to those months in the year that the Certified Supplier is serving the retail customer to determine the imputed minimum peak MW for each month in the year. The imputed monthly minimum peak will not be retroactively increased for the months before a Supplier begins serving a retail customer;
- 3.e.4** the minimum capacity factor shall be applied to the monthly imputed minimum peak MW in order that a minimum monthly usage may be imputed and summarized for an annual minimum billed usage.

³ Summer months are defined as June, July, and August

Part C – Enrollment

Section 1 – Intent

- 1.a. The purpose of offering 1120 MW of MSG at fixed prices is to "jump start" the market for retail competition in Ohio. It is in the best interest of retail customers for Certified Suppliers to enroll them as soon as possible following approval of the MSG claim. Therefore, if a Certified Supplier falls to enroll a retail customer within sixty days of the start date of an approved claim or by March 1, 2001, whichever is later, the retail customer will be dropped from the claim. The power associated with retail customers dropped from the claim will be returned to the MSG queue for assignment to another claim within the same queue. The sixty day period may be extended by the Company for good cause shown.

Part D – Environmental Disclosure

On request of the marketer, the Company will provide the marketer with information about MSG reasonably necessary for the marketer to meet its environmental disclosure requirements under Ohio law.

Appendix B

Certified Supplier Billing Terms and Conditions

A. Netting of Customer Payment and Certified Supplier Charges Billed by the Company

If the Certified Supplier defaults on payments due the Company, and the Company is performing Consolidated Billing of retail customers for the Certified Supplier, the Company reserves the right to retain the payments collected from the retail customers and apply the payments to the amounts due the Company.

B. Certified Supplier Payment of Obligations to the Company

A Certified Supplier shall pay all Charges it incurs hereunder in accordance with the following provisions:

- 1. Billing Procedure.** Each month, the Company shall submit an invoice to the Certified Supplier for all Charges provided under this Tariff. Such invoice shall be submitted to the Certified Supplier not earlier than the fourth banking day following electronic or other submission of a pre-bill that contains the billing quantities and amounts anticipated by the Company to be included in the invoice. The invoice may be transmitted to the Certified Supplier by any reasonable method requested by the Certified Supplier. A Certified Supplier shall make payment for Charges incurred on or before the due date shown on the bill. The due date shall be determined by the Company and shall not be less than three (3) banking days from the date of transmittal of the bill. The Company may submit monthly bills for Load Following MSG on a cycle bill basis, but shall not submit such bills more frequently than once per week for any individual Certified Supplier.
- 2. Manner of Payment.** The Certified Supplier shall make payments of funds payable to the Company by wire transfer to a bank designated in Section 3 below.
The Company may require that a Certified Supplier that is not Creditworthy tender payment by means of a certified, cashier's, teller's, or bank check, or by wire transfer, or other immediately available funds. If disputes arise regarding a Certified Supplier bill, the Certified Supplier must pay the undisputed portion of disputed bills under investigation.

3. **Wire Transfer.** Payment to the Company by the Certified Supplier must be made by electronic wire transfer or such other means as will cause payment to be available for the use of the Company on the due date. All payments shall be wire transferred to the bank designated by the Company.
4. **Late fee for Unpaid Balances.** If payment is made to the Company after the due date shown on the bill, accrued interest will be added to the unpaid balance at the Interest Rate until the entire bill is paid.
5. **Certified Supplier's Failure to Pay.** In the event the Certified Supplier fails, for any reason other than a billing dispute as described below, to make payment to the Company on or before the due date as described above, and such failure of payment is not corrected within five (5) business days after the Company notifies the Certified Supplier to cure such failure, a breach by the Certified Supplier shall be deemed to exist. In the event of a billing dispute between the Company and the Certified Supplier, the Company will continue to provide service pursuant to this Tariff as long as the Certified Supplier continues to make all payments not in dispute.
6. **Certified Supplier Offset.** In the event a Certified Supplier is deemed to be in Default under Section 17.01(a) of the Tariff, the Company, may at its sole discretion, reduce the reimbursement to the Certified Supplier for amounts collected by the Company by the amount owed to the Company that is not in dispute.

**FirstEnergy Corp.
Market-Based Rate Wholesale
Power Sales Tariff (MRT)**

Form of Confirmation Letter

Market Support Generation and Non-Market Support Generation

This letter shall confirm the terms and conditions of the Parties' agreed-upon Transaction under the Tariff as follows:

Date of Transaction: _____

Buyer: _____

Seller: _____

Type of Transaction _____
(Market Support Generation or Non-Market Support Generation)

Quantity: _____
(Amount of Market Support Generation or Non-Market Support Generation allotted to the buyers' claims, in Megawatts)

Price: See Attachment 1

Delivery Points: Network service

Delivery Period: _____

Specific Terms: This transaction is being conducted pursuant to the terms of (1) the Stipulation and Recommendation and (2) the Supplemental Settlement Materials filed with the Public Utilities Commission of Ohio (PUCO) on

April 17, and May 9, 2000, respectively, and as approved by the PUCO
on July 19, 2000.

This Transaction shall be governed by the Service Agreement entered into between the Parties, which Service Agreement is incorporated herein by reference.

Please confirm that the foregoing correctly sets forth the terms of our agreement with respect to this Transaction by signing this confirmation and immediately returning a copy of the executed confirmation to: Administrator, Supplier Support Services at facsimile number (330) 437-1319. If you disagree with this confirmation, notify us by facsimile within two business days. Failure to notify us within this time period will constitute binding and conclusive evidence of the transaction. We look forward to receiving your prompt reply.

FirstEnergy Corp.

Name/Title: _____

Address: _____

Phone: _____

Fax: _____

Customer

Name/Title: _____

Address: _____

Phone: _____

Fax: _____

**FirstEnergy Corp.
 Market-Based Rate Wholesale
 Power Sales Tariff (MRT)**

Form of Confirmation Letter, Attachment 1

Pricing for Market Support Generation – \$ per MWh

	<u>2001</u>	<u>2002</u>	<u>2003</u>	<u>2004</u>	<u>2005</u>
<u>Ohio Edison</u>					
Residential	31.19	32.98	33.22	35.66	37.69
Commercial	30.83	32.89	32.75	34.98	37.19
Industrial	26.23	27.73	27.98	30.04	31.88

	<u>2001</u>	<u>2002</u>	<u>2003</u>	<u>2004</u>	<u>2005</u>
<u>CEI</u>					
Residential	31.64	33.46	33.70	36.18	38.24
Commercial	30.83	32.89	32.75	34.98	37.19
Industrial	26.23	27.73	27.98	30.04	31.88

	<u>2001</u>	<u>2002</u>	<u>2003</u>	<u>2004</u>	<u>2005</u>
<u>Toledo Edison</u>					
Residential	30.03	31.75	31.98	34.33	36.28
Commercial	30.83	32.89	32.75	34.98	37.19
Industrial	26.23	27.73	27.98	30.04	31.88

The pricing stated above includes losses to the retail customer's meter.

For Market Support Generation delivered under the Capacity Factor option, the provisions of Section B.3 of Appendix A, Protocol for Market Support and Non-Market Support Generation Scheduling and Billing also apply.

Loss Free, Non-Market Support Generation

1,120 MW of non-Market Support Generation was made available on a first-come first-served basis. This capacity is measured at the retail customer's distribution meter during the months of September through May; that is, no distribution losses need be supplied for this capacity during the stated time. All appropriate losses shall apply to non-Market Support Generation during the months of June, July and August.

)
FirstEnergy Corp.
FERC Electric Tariff, Original Volume No.2
Service Agreement No. _

[47706]

Burnell@firstenergycorp.com on 03/06/2001 08:54:32 AM

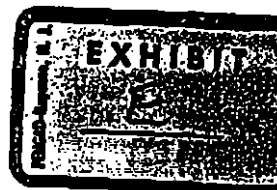
To: nicole.schwartz@enron.com
cc: nanderson@enron.com
Subject: Load Following MSG Bill

INITIAL MSG LOAD FOLLOWING BILL

Please find attached the calculation of your initial MSG Load Following bill for power provided by FirstEnergy. The MSG Load Following Power is for those customers you submitted for MSG Load Following claim approval and then successfully enrolled with FirstEnergy. On March 12 you will receive an invoice billing for this amount which will be due on March 15.

The load following kWh shown on the bill for each operating company and rate class (residential, commercial, and industrial) is the aggregated usage of all of your enrolled MSG Load Following customers. The usage is derived from FirstEnergy's Customer Information System (CIS), which calculates the monthly bills of all customers in FirstEnergy's service territory. Prices charged on the MSG Load Following bill are from Attachment 2 of the Stipulation document and Recommendation approved by the PUCO in Case No. 99-1212-EL-ETP, Case NO. 99-1213-EL-ATA and Case No. 99-1214-EL-AAM. The prices on the bill are converted from a mWh price into a kWh price.

The initial MSG Load Following bill includes usage for your customers having meter readings scheduled between January 31 and February 28. The actual read date for each customer is dependent upon which cycle the customer account has been signed. The initial MSG Load Following bill represents a monthly aggregated amount of kWh used by all of your customers.



FirstEnergy is currently developing a method for issuing weekly MSG Load Following bills. Please be advised that once this method is operational, you will be receiving weekly MSG Load Following bills. FirstEnergy has targeted April as a potential start date for beginning to render weekly MSG Load Following bills.

If you have questions regarding your bill please contact Doug Burnell at 330.437.1301.

(See attached file: ENRLoadFollowingBill0201.xls)

If you prefer that this bill be sent to a different party within your organization, please contact me via reply email and indicate who you would like the bill to go to. Additionally, the March 12 bill will include wiring instructions for payment.

(See attached file: ENRLoadFollowingBill0201.xls)

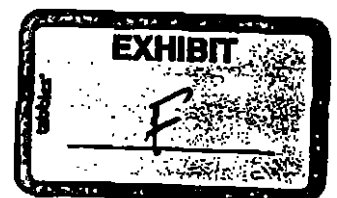
)

Burnelld@firstenergycorp.com To: SupplierSupport@firstenergycorp.com
cc:
01/08/2001 11:59 AM Subject: Scheduling Power for
Deregulation 1/1/01

Attention production and potentially production suppliers with FirstEnergy:

The FirstEnergy Supplier Energy Scheduling website has now been launched. This site will allow for you to submit schedules to serve power to the customers you may have enrolled for a January start date. Please take the time to review the attached scheduling worksheet and presentation, for these are necessary for scheduling. The site can be found by visiting www.firstenergycorp.com and linking to Supplier Services. From there, please click on Ohio and then on SES Scheduling Website.

Should you have questions, please feel free to contact me or Raymond Morella at 330.336.9831.
Thank you,
Douglas Burnell



<Burnelld@firstenergycorp.com> on 12/15/2000 04:08:30 PM

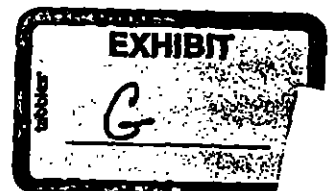
To: gloria.ogenyi@enron.com
cc: Nicole.schwartz@enron.com
Subject: Market Support Generation Claims

Ms. Ogenyi,

This notification is to inform you of the status of the currently pending claims with FirstEnergy that we are currently working on. The attachment below will give you further explanation of the status and necessary action, if any, prior to the claim being approved. Should you have questions about the attachment below, please contact me to discuss. In addition to this, the approval of your claims is pending successful registration with FirstEnergy to operate in its service territories. This registration must be completed prior to the approval of claims.

Thank you,
Douglas Burnell

(See attached file: Enron 12-14-00.xls)
(See attached file: Enron 12-14-00.xls)





Market Support Generation Workshop

October 2, 2000

Market Support Generation: FirstEnergy Registration

- Three Phase approach due to circumstances related to deregulation in Ohio.

- Phase I

- Credit Summary Form and supporting credit information
- FirstEnergy Market Based Rate Tariff
- Supplier Rate Schedule (the currency for EDI testing for consolidated bill)
- Copy of application to PUCO or copy of license issued by PUCO

Above documentation available by visiting www.firstenergycorp.com and linking to Supplier Services in the left hand navigation.



DRAFT

Market Support Generation: FirstEnergy Registration

- Phase II
 - EDI Testing

Further information regarding EDI testing can be found in the Technical Support portion of the Supplier Services website or by emailing FE_Choice@firstenergycorp.com.



DRAFT



Market Support Generation: FirstEnergy Registration

- Phase III (To occur in the latter half of the fourth quarter of this year as documents are available.)
 - Coordination Agreement
 - ATSI Service Agreement for Network Integration Transmission Services under the Ohio Choice Program
 - ATSI Operating Agreement for Network Integration Transmission Services under the Ohio Choice Program
 - Scheduling Coordinator Designation Form (optional)
 - EDI Trading Partner Agreement

Above documentation will be available on FirstEnergy's Supplier Services website. These are currently unavailable pending approval.

FirstEnergy

DRAFT

Market Support Generation: Notifications

- Upon verification against FirstEnergy Customer Information System, we will contact you regarding discrepancies or errors.
- You will have within the allotted time frame to respond with corrections. (Please refer to Section 6.b)
- Upon verification of the entire claim, the Supplier will be contacted to inform them that their claim is to be approved pending their execution of the applicable Service Agreement (Please see footnote 10)
- Upon final approval of the pending claim for Market Support Generation power, you will be notified and given instructions regarding the scheduling of power and customer enrollment procedures.

FirstEnergy

DRAFT

Market Support Generation: Password Assignment

- Prior to October 19, Suppliers are encouraged to contact the FirstEnergy Supplier Services Center to obtain password information, as well as import file testing, and resolution of any problems you may encounter with the web application.
- FirstEnergy Supplier Services Center:
 - SupplierSupport@firstenergycorp.com
 - (330) 437-1323

FirstEnergy

DRAFT

Market Support Generation Validation Criteria

Claim Table Definitions:

- 1) the operating company [either OE, CEI, or TE]
- 2) the customer category code [either (R)esidential or (O)ther]
- 3) the claim type [either (M)SG or (N)on-MSG]

Claim Table Validation Criteria:

- 1) Once assigned, the claim number may not be changed.
- 2) Every claim must be for the same operating company, customer category, claim type code (either MSG or non-MSG), time period, and supplier.
- 3) Each claim can be in any one of the following states:
 - a) New – reserved for claims that have yet to be submitted to FirstEnergy for approval.
 - b) Reserved – indicates that the supply intends to retain a placeholder in the queue, but does not have the finalized supporting customer contract data to supply at the present time. The Reserved claim must be replaced within a 40-day period. If no replacement list has been supplied, the claim will automatically be erred out.
 - c) Pending – designates that the supplier has finalized the claim and has submitted it to FirstEnergy for approval.
 - d) Verified – indicates that the claim was verified by FirstEnergy and is Reserved for manual approval. The verification is performed automatically by the validation routine. Additional manual checks may be performed, if need be, by the FE approvers.
 - e) Approved – shows that the claim was approved by FirstEnergy. The power is reserved for this supply for these customers for the specified time frame.
 - f) Canceled – No longer an active claim. Claims may be cancelled by the supplier, the FE administrator, or automatically by the MSG system.
- 4) Whenever the company, customer category code, claim type, or status code changes for a claim, then the MW balances will automatically be recalculated by the system.
- 5) The start date must be the first of the selected month. If it is not, the system will make it so.
- 6) The end date must be the last day of the selected month. If it is not, the system will make it so.
- 7) The start date must be less than the end date and must be at least twelve months in duration.
- 8) The start date must be greater than or equal to the beginning of the market development period.
- 9) The end date must be less than or equal to the beginning of the market development period.
- 10) Capture the peak billing load (in kW) of these customers. This will later be validated against the sum of the contracts for this claim. If the sum is greater than the reservation amount, then the claim is in error and the supplier will need to modify the claim such that the sum of the contracts no longer exceeds the reserved amount.
- 11) For Approved claims, ensure that:
 - a) The operating company cannot be modified
 - b) The customer category code cannot be modified
 - c) The claim type cannot be modified
 - d) the supplier must not be an inactive supplier. If valid, set the approval date and clear out the cancel-related columns.
- 12) For Reserved claims, ensure that:
 - a) The claim must be Residential
 - i) If so, the estimated number of customers and the estimated requested kW must be entered. If valid, set the submission date.
 - ii) If not, produce an error message.
- 13) For Pending claims,:
 - a) The operating company, customer category code, and claim type cannot be modified
- 14) For Verified claims,
 - a) The operating company, customer category code, and claim type cannot be modified



Market Support Generation)

Validation Criteria

Customer Contract Table Definitions:

- 1) account number – no format – must be 15 characters in length
 - a) OE – prefixed by a '2'
 - b) CEI – prefixed by a '01' (after October 2000 – prefixed by '6')
 - c) TE – prefixed by a '02' (after October 2000 – prefixed by '3')
- 2) Claim type - either load following (L) or capacity factor (C) – only applicable to non-MSG.

Customer Contract Table Validation Criteria:

- 1) All contracts must be in 12 month increments unless they go to the end of the market development period.
- 2) All contracts under a single claim must be for the same period of time.
- 3) Customer contracts can span across calendar years.
- 4) Currently the market development period is established as January 1, 2001 to December 31, 2005.
- 5) The start date must be the first of the selected month.
- 6) The end date must be the last day of the selected month.
- 7) The start date must be less than the end date and must be at least one month in duration.
- 8) The start date must be greater than or equal to the beginning of the market development period.
- 9) The end date must be less than or equal to the beginning of the market development period.
- 10) Both the start and end dates are set by a trigger to ensure that they match the valid contract periods.
- 11) Upon entry, the application performs some quick validation checks, namely,
 - a) The account number prefix must be appropriate for the operating company (i.e. for OE, first digit of the account number must start with a '2').
 - b) The account number length must be appropriate for the operating company (i.e. for OE, the total length must be exactly 15 digits).
- 12) If the account number has been changed from the old CEI/TE format to the new format, then create an audit trail record of this transformation.

Customer Contract Table Processing:

The application will automatically overlay the amount claimed value in three different situations:

- 1) if the system detects an "overclaimed" condition (i.e. when the amount claimed is greater than the 12 months' peak)
- 2) if the claim is for Load Following and the amount claimed is less than the 12 months' peak
- 3) if the customer has no billing history and the amount claimed is greater than the class averages (based upon the customer's rate code).

Customer Contract Table Validation Against CIS Table:

After submitting the claim to FE, the application will perform the following validation checks against the CIS Master table for each customer contract:

- 1) Ensure that the Claim exists on the MSG database.
- 2) Ensure that the Claim is in the Submitted (Pending) status.
- 3) Ensure that the Account Number exists on the CIS table.
- 4) Validate that the Rate is associated to the Customer Category (Residential or Other) selected on the Claim.
- 5) Verify that the Supplier is an active Certified CRES registered with FE. If not, produce a warning message.
- 6) For Reserved Claims, ensure that the reserved amount is not exceeded by the sum of the claimed amounts for all customers.
- 7) Processing: Convert all kWh amounts to kW for Comparison purposes.
- 8) If overclaimed condition, reduce the claimed amount to the CIS peak amount.
- 9) If Load Following and underclaimed condition, reset the claimed amount to the CIS peak amount.

Market Support Generatic...)

Validation Criteria

Customer Contract Table Approval:

- 1) Ensure that no residual Validation errors exist for claim.
- 2) The supplier must be an Active supplier registered with FE. If not, claim is in error.

BEFORE THE PUBLIC UTILITIES
COMMISSION OF OHIO

IN THE MATTER OF
THE COMPLAINT OF
ENRON ENERGY
SERVICES, INC.,

Complainant,

and

Case No.

FIRST ENERGY

01-393-EL-CSS

CORP., et al.,

Respondents.

- - - - -

Deposition of DOUGLAS S. BURNELL,
called for examination under the
statute, taken before me, Julie A.
Hascher, a Notary Public in and for the
State of Ohio, at the offices of
FirstEnergy Corp., 76 South Main Street,
Akron, Ohio, on Thursday, April 12,
2001, at 9:55 o'clock a.m.

- - - - -

1 APPEARANCES:

2
3 On behalf of the Complainant:

4 Vorys, Sater, Seymour

5 & Pease, LLP,

6 by, BENITA KAHN, ESQ.

7 52 East Gay Street

8 Columbus, Ohio 43216-1008

9 (614) 464-6400

10
11 On behalf of the Respondents:

12 Jones, Day, Reavis & Pogue,

13 by, PAUL T. RUXIN, ESQ.

14 901 Lakeside Avenue

15 Cleveland, Ohio 44114

16 (216) 586-3939

17 -and-

18 FirstEnergy,

19 by, ARTHUR E. KORKOSZ, ESQ.

20 76 South Main Street

21 Akron, Ohio 44308

22 (330) 384-5849

23 ----

1 DOUGLAS S. BURNELL, of lawful
2 age, called for examination, as provided
3 by the Ohio Rules of Civil Procedure,
4 being by me first duly sworn, as
5 hereinafter certified, deposed and said
6 as follows:

7 EXAMINATION OF

8 DOUGLAS S. BURNELL

9 BY-MS. KAHN:

10 Q. Mr. Burnell, I am counsel
11 for Enron Energy Services and for
12 MidAmerican Energy. My name is Benita
13 Kahn.

14 Will you state your
15 name, please, for the record?

16 A. Yes. My name is Douglas,
17 middle initial S, Burnell,
18 B U R N E L L.

19 Q. Thank you. I'm going to be
20 asking you questions today related to
21 the Enron Energy Services vs.
22 FirstEnergy Corp. proceeding, a
23 complaint proceeding that's been filed
24 at the Public Utilities Commission in
25 Columbus, and also to do some follow-up

1 questions on a deposition that was taken
2 of you on March 13th of this year in
3 the City of Cleveland vs. FirstEnergy
4 Corp. complaint proceeding at the PUCO.

5 If you don't understand
6 any of my questions, I would suggest
7 that you say so or I will assume that
8 you understood my question.

9 A. Okay.

10 Q. Let me start with the
11 complaint in the Enron and FirstEnergy
12 Corp. proceeding. I was wondering if
13 you've read that complaint.

14 A. I believe I've read parts of
15 it.

16 Q. Just to shorten this one I'm
17 going to refer to it as the Enron
18 proceeding if that will help during the
19 deposition. Which portions of the Enron
20 complaint have you read?

21 A. I do not recall specifically
22 what portions I have read.

23 Q. Okay. I assume you are
24 aware that the complaint revolves around
25 the market support generation, also

1 referred to as MSG, that was part of
2 the stipulation in the transition cases,
3 is that correct?

4 A. I am aware of that.

5 Q. Okay. Are you also aware
6 that there are claims being asserted
7 with respect to Industrial Energy Users
8 in the complaint?

9 A. I am aware of that, yes.

10 Q. And are you aware that those
11 assertions relate to IEU's claims for
12 MSG?

13 A. Yes, I am aware of that.

14 Q. Okay. Are you familiar with
15 IEU?

16 A. Can you explain familiar?

17 Q. Okay. Do you know what
18 Industrial Energy Users is?

19 A. To an extent, yes.

20 Q. Am I correct that they are
21 certified as an aggregator with the
22 Public Utilities Commission of Ohio to
23 perform aggregation services at least
24 for the members of IEU?

25 THE WITNESS: Can I have

1 the question read back, please.

2 (Record read.)

3 A. I believe so, yes.

4 Q. Am I correct that they
5 applied for registration to submit
6 claims for MSG with FirstEnergy?

7 A. Yes.

8 Q. And were you responsible --
9 let me correct that. Was that
10 registration application submitted to
11 you?

12 A. Yes, it was.

13 Q. At the time that they
14 submitted their registration
15 application, are you aware that they
16 were certified as anything other than an
17 aggregator with the State of Ohio?

18 THE WITNESS: Can I have
19 that question read back, please.

20 (Record read.)

21 A. At the time of their
22 submission of the registration materials
23 to FirstEnergy, I am aware that they
24 had applied for certification at the
25 State.

1 Q. And applied for certification
2 as an aggregator only?

3 A. As a CRES entity of some
4 kind.

5 MR. RUXIN: C R E S.
6 THE WITNESS: Competitive
7 retail electric supplier.

8 Q. As part of their
9 registration process, were they required
10 to provide you any information to
11 confirm that they had applied with the
12 Public Utilities Commission to be
13 certified?

14 A. The use of the word
15 registration, I assume it is the same
16 use you used before where it is
17 registration to submit claims to
18 FirstEnergy?

19 Q. That's correct.

20 A. Yes, they had evidenced to
21 me in their submission to FirstEnergy
22 that they had applied at the State.

23 Q. Let me follow up on a couple
24 things there. When you say in their
25 submission to FirstEnergy, that's their

1 submission of their application to be
2 registered to submit claims, is that
3 correct?

4 A. That is correct.

5 Q. And when you say evidenced
6 their application for certification, can
7 you explain to me what evidence was
8 provided?

9 A. A copy of their application
10 at the State of Ohio, among other
11 things, was included in their submission
12 to FirstEnergy.

13 Q. And were you the one who
14 examined that application for
15 certification with the State of Ohio?

16 A. Yes.

17 Q. Do you recall what they were
18 applying to be certified as?

19 A. I don't recall at this time,
20 no.

21 Q. Okay. Do you recall
22 approximately when that application was
23 provided to you?

24 A. No, I do not recall.

25 Q. Do you at least recall a

1 month?

2 A. I'm afraid that would be a
3 guess.

4 Q. Okay. Has IEU at any time
5 amended their application for
6 registration to submit a claim with
7 FirstEnergy?

8 A. I do not recall.

9 Q. Do you recall whether you
10 had conversations with anybody from IEU
11 with respect to their application for
12 registration to submit MSG claims?

13 A. With the amount of questions
14 and responses being received and given
15 at that time, I do not recall with any
16 certainty.

17 Q. My last question was with
18 respect to their application. Do you
19 recall any conversations you had with
20 anyone from IEU with respect to approval
21 of their application for registration?

22 A. Again, with the volume of
23 inquiries being received and being
24 responded to at that time, I do not
25 specifically recall, no.

1 Q. You testified in your last
2 deposition that you were the only person
3 responsible for receipt of the
4 registration applications to submit
5 claims, is that correct?

6 A. Yes.

7 Q. Were you also the person who
8 approved the applications for
9 registration to submit an MSG claim?

10 A. I did review applications to
11 insure adherence to the protocol.

12 Q. And we'll get to the
13 protocol in a minute, but I had a few
14 other questions.

15 Did anybody else do those
16 reviews of applications for registration
17 to submit an MSG claim other than you?

18 A. To submit claims, no.

19 Q. Okay. And how did you make
20 a determination to approve an
21 application for registration to submit
22 an MSG claim?

23 A. That determination was made
24 by applying the conditions of the MSG
25 protocol to the application.

1 Q. Before we get to the
2 protocol, I have a couple other
3 questions.

4 As the person who received
5 all the applications for registration to
6 submit MSG claims, do you recall whether
7 there were other applicants who were
8 certified only as aggregators with the
9 Public Utilities Commission?

10 A. I recall that there were
11 other entities only certified with the
12 Commission as aggregators, yes.

13 Q. And just to be completely
14 clear, I'm referring to aggregators and
15 not governmental aggregators, so is that
16 still a correct answer for you?

17 A. Yes.

18 Q. Do you recall who any of
19 those entities are?

20 A. Yes, I do.

21 Q. And who are they?

22 A. I feel that responding to
23 that question would be in violation of
24 the Code of Conduct.

25 MS. KAHN: Can we go off

1 the record for a minute?

2 (Discussion off record.)

3 (Record read.)

4 THE WITNESS: I believe
5 the name of the entity that had applied
6 to become an eligible supplier under the
7 protocol under the conditions you
8 previously discussed does business as Be
9 Many.

10 Q. Can you spell that?

11 A. Lower case B E, second word,
12 upper case M, lower case A N Y.

13 Q. Do you recall any others?

14 A. I do not recall.

15 - - - - -

16 (Thereupon, Deposition
17 Exhibit-A was marked
18 for purposes of
19 identification.)

20 - - - - -

21 Q. I have marked as Exhibit A
22 the protocol for first come first served
23 claims for market support and nonmarket
24 support generation, we'll refer to it as
25 the protocol, and I've given that to

1 you. If you would first like to take
2 an opportunity to look through that.

3 A. (Witness complies.)

4 Q. I am aware that there were
5 different versions of the protocol, but
6 am I correct that this was the final
7 version of the protocol that was used
8 when approving applications for
9 registration for MSG claims and actual
10 approval of those claims?

11 A. Yes.

12 Q. Am I correct that you
13 assisted in the creation of the
14 protocol?

15 A. Yes.

16 Q. And on the last page, page
17 ten of the protocol, it indicates that
18 any questions relating to market support
19 generation are to be directed to you,
20 is that correct?

21 A. Yes.

22 Q. So I assume you got numerous
23 questions during this period with
24 respect to interpretation or application
25 of the protocol, is that correct?

1 A. Yes.

2 Q. Did you get questions with
3 respect to how to apply for registration
4 to submit MSG claims?

5 A. Yes, I did.

6 Q. Let's direct your attention
7 to section four of the protocol, which
8 is at page three.

9 With respect to claimants
10 for MSG who were solely registered --
11 certified with the PUCO as aggregators,
12 how would they become an eligible
13 supplier?

14 A. That entity would need to
15 adhere to section four of the protocol.

16 Q. Is that your answer?

17 A. Yeah.

18 Q. And which part of section
19 four would they need to comply with?

20 A. By they, I understand you to
21 mean aggregators, which I further
22 understand to mean nongovernmental
23 aggregators, correct?

24 Q. That's correct.

25 A. To my understanding, they

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1 would be eligible to submit claims for
2 market support generation under 4.a, or
3 potentially 4.d.

4 Q. With respect to 4.d, am I
5 correct that to really comply with 4.d,
6 you would also have to comply with 4.a
7 to become an eligible supplier?

8 THE WITNESS: Could I
9 have that question read back, please.

10 (Record read.)

11 A. No, that is not correct.

12 Q. Then let's focus a little
13 bit more attention on 4.d. Can you
14 tell me who the customer is at the
15 beginning of 4.d where it says a
16 customer seeking to acquire MSG?

17 THE WITNESS: Can you
18 read that question back as well?

19 (Record read.)

20 A. I really can't, no.

21 Q. Am I correct that you had to
22 be an eligible supplier in order to be
23 able to submit a claim into the queue
24 under the protocol?

25 A. Yes.

1 Q. Am I correct that you were
2 involved in approving applications to be
3 able to submit claims into the queue?

4 A. Yes.

5 Q. Did you have any claims that
6 were submitted to become an eligible
7 supplier based on 4.d only?

8 A. I don't believe so, no.

9 Q. Would it be a correct
10 assumption on my part that IEU applied
11 for registration to submit a claim into
12 the MSG queue pursuant to 4.a?

13 A. Yes.

14 Q. There are two other sections
15 of the protocol of some significance in
16 this proceeding, one is section 5, which
17 is first come, first served process,
18 initial queues is the title of it. The
19 second is section 6 titled approval
20 process.

21 Were you personally
22 involved in assuring compliance with
23 section 5?

24 THE WITNESS: Can you
25 please read that question back.

1 (Record read.)

2 A. Yes, I was personally
3 involved in assuring compliance with
4 section 5.

5 Q. Were there specific
6 subsections of section 5 that you were
7 directly involved in assuring
8 compliance?

9 A. Yes, there are subsections
10 to section 5 that I was personally
11 involved in.

12 Q. Could you tell me which
13 ones?

14 A. Yes, I could.

15 Q. What are those?

16 A. I was personally involved in
17 all of the subsections of section 5.

18 Q. Let me try to get some
19 elaboration there. When you say
20 personally involved with all the
21 subsections, what do you mean by that?

22 A. I would have to ask you what
23 you would mean then by the word
24 personally involved, for I believe that
25 was part of the question.

1 Q. Were you involved in
2 assuring that the applications for
3 registration met the requirements of
4 these subsections?

5 THE WITNESS: Can you
6 read that specific question back,
7 please.

8 (Record read)

9 A. I was involved with that,
10 yes.

11 Q. Were you involved in
12 determining if a submitted claim met the
13 requirements of the subsections of 5?

14 THE WITNESS: I'm sorry,
15 could you read that back, too.

16 (Record read)

17 A. Yes.

18 Q. How did you make those
19 determinations?

20 A. I did not necessarily make
21 the determinations, yet I was involved
22 in the process.

23 Q. If you weren't making the
24 determination of compliance, what was
25 your involvement?

1 A. My involvement was to assist
2 in running an electronic system which
3 had been programmed to accept only
4 claims that adhered to the subsections
5 of section 5.

6 Q. When you were running this
7 electronic system -- scratch that. Who
8 put together the program for that
9 system?

10 A. Are you referring to the
11 actual coding or the basis from which
12 that coding stemmed?

13 Q. If you mean the basis from
14 which it stemmed, if by that you mean
15 what would go into the program to make
16 the determinations of an acceptable
17 claim, yes, that's what I mean.

18 THE WITNESS: Can I
19 please have the question prior to that
20 clarification read back.

21 (Record read)

22 A. And program has been defined
23 as the business rules from which the
24 coding then --

25 Q. Correct.

1 A. -- created a program? A
2 group of FirstEnergy employees.

3 Q. And who was included in that
4 group?

5 A. Myself, David Blank, B L A N
6 K, Michelle Henry, H E N R Y, Gregory
7 Hussing, H U S S I N G, Mark Vaccaro, V
8 A C C A R O. To the best of my
9 recollection, that was all.

10 Q. And how did this group know
11 what business rules should go into the
12 program?

13 A. This group was able to make
14 that determination because this group
15 also drafted the MSG protocol that
16 you've marked as this exhibit.

17 Q. So the business rules for
18 the program were a reflection of the
19 protocol, is that correct?

20 A. Not completely, no.

21 Q. And why were they not
22 completely that?

23 A. Because if I had to point to
24 a document from which this whole program
25 stems, I would point to the FirstEnergy

1 stipulation in its settlement case as
2 well as the supplemental settlement
3 materials filed in that case.

4 Q. And is there a written
5 document of these business rules?

6 A. I do not know.

7 Q. How did this committee let
8 the programmer know what the business
9 rules were?

10 A. The programmer, Mr. Vaccaro,
11 was a member of the group.

12 Q. Were there meetings in order
13 to put together the business rules?

14 A. Yes.

15 Q. Were there memorandum drafted
16 as a result of these meetings?

17 A. I do not know.

18 Q. Were there notes taken at
19 the meetings?

20 A. I directly know only of
21 mine.

22 Q. So you did take notes at the
23 business rules meetings, is that
24 correct?

25 A. Yes, I did take notes to the

1 extent that the topic had an impact on
2 another area of Customer Choice
3 Services.

4 Q. Tell me what Customer Choice
5 Services is.

6 A. Customer Choice Services is
7 a department of FirstEnergy Corporation
8 which I am employed in.

9 Q. And what are the
10 responsibilities for that department?

11 A. To manage and address the
12 additional needs of end use customers
13 and other customers as a result of the
14 restructuring of legislation.

15 Q. And who in your answer would
16 the, quote, other customers be?

17 A. In my answer, other
18 customers, I would be referring to
19 marketers, aggregators, brokers,
20 consultants, municipal aggregation
21 groups that interact with FirstEnergy as
22 a result of the restructuring
23 legislation.

24 Q. And when you said you would
25 take notes from the business rules

1 committee on matters that would impact
2 Customer Choice Services, can you
3 explain that further?

4 A. I believe I said to other
5 areas of Customer Choice Services, and
6 by that I meant to the extent that what
7 we were discussing would impact our
8 customer information system, customer
9 billing procedures, the electronic data
10 interchange process, that those pieces
11 of information would be forwarded to the
12 appropriate individuals in Customer
13 Choice Services.

14 Q. Should I then assume that
15 you were the representative from
16 Customer Choice Services on the business
17 rules committee?

18 A. Can you rephrase that
19 question, please?

20 Q. Of the five people who
21 you've designated were members of the
22 business rules committee, that would be
23 Mr. Blank, Ms. Henry, Mr. Hussing, Mr.
24 Vaccaro and yourself, were any of those
25 other people at that time of the

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1 business rules committee employed within
2 the Customer Choice Services group
3 department?

4 A. I'm uncomfortable with your
5 use of the word committee, but of that
6 group, no other members were employed in
7 that Customer Choice Services.

8 Q. And you're uncomfortable --
9 why are you uncomfortable with the word
10 committee?

11 A. I'm not sure.

12 Q. Okay. Just quickly, Mr.
13 Blank, what department is he involved
14 with at FirstEnergy?

15 A. Rates.

16 Q. Ms. Henry, what department
17 is she involved with?

18 A. I believe she is in the
19 rates department as well.

20 Q. Mr. Hussing's department?

21 A. I am not sure specifically
22 what his department is.

23 Q. What type of work does he do
24 then that you're aware of?

25 A. I am aware that he performs

1 -- let me back up. I am aware he works
2 with the settlement in the balance
3 process for Penn Power.

4 Q. And Mr. Vaccaro, what area
5 does he work in for FirstEnergy?

6 A. I am not sure specifically
7 of the name of that department.

8 Q. What type of work does he
9 do?

10 A. Information systems
11 development.

12 Q. Do you know approximately
13 how many meetings this business rules
14 group had?

15 A. I don't feel as though I
16 could estimate that.

17 Q. Let's try to get it in a
18 ballpark. Was it more than ten, do you
19 recall?

20 A. Yes.

21 Q. Less than 30?

22 A. Again, I couldn't begin to
23 estimate that.

24 Q. Okay. And as far as you
25 know, decisions that were made in the

1 business rules group were implemented by
2 Mr. Vaccaro into this electronic system,
3 is that correct?

4 THE WITNESS: Can you
5 read that question back, please.

6 (Record read)

7 A. My hesitation is that the
8 phrase as far as you know. I have no
9 personal knowledge that that information
10 ended up being programmed into the
11 system, although I assume it was.

12 Q. That it ended up programmed
13 into the system at all or that Mr.
14 Vaccaro was the one that programmed it
15 into the system?

16 A. I have no personal knowledge
17 of either of those items.

18 Q. Okay. Can you turn
19 specifically to section 5.a of the
20 protocol?

21 A. (Witness complies.)

22 Q. In which it indicates that
23 submission of a claim which would be an
24 MSG claim, is that correct?

25 A. Yes.

1 Q. Will require a password. It
2 goes on to indicate that the password
3 will be made available to an eligible
4 supplier that has submitted an
5 application to FirstEnergy for
6 registration, is that correct?

7 A. I am reading that, yes.

8 Q. How were these applications
9 for registration submitted?

10 A. Applications for registration
11 to become an eligible supplier were
12 submitted via overnight, registered
13 mail, hand delivery.

14 Q. Okay. And you were the
15 person who reviewed those applications?

16 A. The answer to your question
17 is no.

18 Q. Who reviewed those
19 applications?

20 A. That would entirely depend
21 on what type of entity was submitting
22 that application.

23 Q. What were the types of
24 entities that could submit applications?

25 A. Marketers, aggregators,

1 brokers could submit applications to
2 become eligible suppliers.

3 Q. And are you indicating that
4 different people reviewed applications
5 for each of those types of entities?

6 A. Saying that the applications
7 differed depending on the entity
8 submitting the application for
9 registration to become an eligible
10 supplier, and as a result of those
11 different applications, there are
12 circumstances where different parts of
13 those applications would be forwarded to
14 different people for review.

15 Q. Explain to me what would be
16 in an application for an aggregator in
17 terms of the information.

18 A. In the information for an
19 aggregator?

20 Q. Uh-huh.

21 A. By the use of the word
22 aggregator, you mean a nongovernmental
23 aggregator?

24 Q. That's correct.

25 A. That their submission to

1 FirstEnergy to become an eligible
2 supplier would include evidence that
3 they had applied to the State of Ohio
4 to become a CRES.

5 Q. And anything else in that
6 registration application?

7 A. I don't believe so, no.

8 Q. Let me just make sure that
9 we're clear on that last answer. This
10 would be the registration application in
11 order to be deemed an eligible supplier
12 and obtain a password to submit claims
13 into the queue, is that correct?

14 A. Yes.

15 Q. And who was the person that
16 reviewed the application for
17 aggregators, or persons if that's
18 correct?

19 A. I reviewed the applications
20 by entities wishing to become eligible
21 suppliers in consultation with Mr.
22 Blank.

23 Q. For marketers, brokers and
24 aggregators who wanted to be eligible
25 suppliers?

1 A. No.

2 Q. For aggregators who wanted
3 to be eligible suppliers?

4 A. I consulted with him in
5 those cases, yes.

6 Q. And what about for marketers
7 who wanted to be eligible suppliers?

8 A. Occasionally, yes.

9 Q. Can you tell me the
10 information that a marketer would
11 provide in their application to obtain a
12 password to submit a claim into the MSG
13 queue?

14 A. They would have had to have
15 applied for registration under the
16 FirstEnergy operating company supplier
17 tariff to become an eligible supplier.

18 Q. Just to be able to submit a
19 claim into the queue?

20 A. Yes. That marketer would
21 have had to send at least one part of
22 their application for registration under
23 the supplier tariff of the operating
24 companies of FirstEnergy to become an
25 eligible supplier.

1 Q. And this was in order to get
2 their password, is that correct?

3 A. Yes, that's correct.

4 Q. And which part of their
5 application for registration under the
6 supplier tariff would they have to send?

7 A. They would at least have to
8 send evidence that they had applied at
9 the State of Ohio to be certified as a
10 CRES. And typically because it is
11 often the most time consuming part of
12 the registration process under the
13 supplier tariff, the marketer would
14 additionally include information
15 regarding credit.

16 Q. When you said that they
17 would additionally include information
18 with respect to credit, are you
19 indicating that that was necessary
20 before they would be given a password?

21 A. Perhaps I could have worded
22 my previous answer more clearly. For
23 marketers to obtain eligible supplier
24 status, the marketer would need to not
25 only submit the state certification

1 application to the PUCO, but
2 additionally the information that our
3 treasury department would ultimately
4 review.

5 Q. And that was due to the fact
6 that the registration to be an eligible
7 supplier for an aggregator versus a
8 marketer was different, is that correct?

9 A. I believe so, yes.

10 MS. KAHN: Why don't we
11 take a break for about five minutes, if
12 that's okay.

13 (Recess had.)

14 BY MS. KAHN:

15 Q. You had just indicated to me
16 that the registration process for
17 aggregators versus marketers was
18 different. Can you explain to me why
19 there was a distinction?

20 A. No, I really cannot.

21 Q. Who made the decision as to
22 making a distinction in the registration
23 process for marketers versus
24 aggregators?

25 A. I do not know that, either.

1 Q. Was it made as part of the
2 business rules?

3 A. I don't know.

4 Q. Were you at all the meetings
5 for the business rules group?

6 A. No, I was not.

7 Q. I'm assuming, however, that
8 the distinction in registration
9 requirements between aggregators and
10 marketers would then have to be one of
11 the inputs into the electronic program
12 that you indicated you were responsible
13 for, is that correct?

14 THE WITNESS: Can you
15 read that question back, please.

16 (Record read)

17 A. That was not an input, no.

18 Q. Let me go back. My
19 understanding was that the program you
20 assist in running was an electronic
21 system programmed to accept only claims
22 that adhered to section 5 of the
23 protocol, is that correct?

24 A. It is a system that insures
25 adherence to sections 5.b through the

1 end of section 5, whereas section 5.a
2 is a determination made prior to an
3 entity having access to that system.

4 Q. Okay. So in making the
5 determination under 5.a as to whether an
6 aggregator was registered -- scratch
7 that.

8 Who made the determination
9 with respect to whether an aggregator
10 could be registered with FirstEnergy
11 under 5.a of the protocol?

12 THE WITNESS: Could you
13 read that back, please.

14 (Record read)

15 A. I do not know specifically
16 who made those decisions.

17 Q. Were you involved in the
18 approval process for applications to
19 register with FirstEnergy submitted by
20 aggregators?

21 A. I was involved in that
22 process, yes.

23 Q. What was your involvement?

24 A. My involvement was in
25 discussions with Mr. Blank regarding the

1 eligibility of aggregators.

2 Q. What information did you
3 review to determine whether or not an
4 aggregator's application should be
5 approved under 5.a?

6 A. We reviewed the information
7 submitted by the applicant to become an
8 eligible supplier in addition to
9 reviewing the market support generation
10 protocol marked in this exhibit as to
11 whether that application met the
12 requirements of the protocol.

13 Q. So for an aggregator, the
14 only thing that you looked at would be
15 their CRES application to the Public
16 Utilities Commission, is that correct?

17 A. Generally, that is correct.

18 Q. Are you aware if Mr. Blank
19 looked at anything in addition to that
20 for an aggregator to finalize an
21 application for registration?

22 A. I do not know.

23 Q. Okay. Looking at 5.a again,
24 in addition to applying for
25 registration, it was also necessary to

1 supply the name, address, phone, fax,
2 contact person and email address or
3 predetermined supplier identifier code,
4 is that correct?

5 A. Yes.

6 Q. And that information needed
7 to be provided by any entity who wanted
8 to obtain a password, is that correct?

9 A. Yes, that's correct.

10 Q. And the supplier that is
11 being referred to with respect to the
12 supplier name, address and phone number
13 would be the entity submitting the
14 application to obtain a password and
15 become an eligible supplier, is that
16 correct?

17 A. Yes.

18 Q. And how would one get a
19 predetermined supplier identifier code?

20 A. If the entity contacting
21 FirstEnergy to participate in making
22 market support generation claims had
23 participated in the Pennsylvania power
24 choice program, they had a predetermined
25 supplier identifier code.

1 Q. Thank you. How was an
2 applicant advised that their application
3 had been approved under 5.a?

4 A. They were given a user name
5 and password to the market support
6 generation system.

7 Q. And how exactly did that
8 occur? Did you email it to them? Did
9 you send it by mail?

10 A. Typically it was in a
11 telephone call.

12 Q. Did you make those telephone
13 calls?

14 A. Yes, I did.

15 Q. And who did you talk to at
16 IEU?

17 A. Kevin Murray, M U R R A Y.

18 Q. Thank you. Let's move to
19 section 6 of the protocol. In
20 particular, this section is designated
21 as the approval process section, is that
22 correct?

23 A. Yes.

24 Q. Can you describe at what
25 point this section became relevant in

1 the process for MSG claims?

2 A. I'm not sure I understand
3 what you mean by that question.

4 Q. Okay. We have looked at
5 section 5 which addresses how to get
6 into the MSG queue, is that correct?

7 A. Yes.

8 Q. So is it correct that once
9 you have complied with section 5 to
10 submit an MSG claim into the queue,
11 then section 6 comes into play on
12 whether or not that claim can get
13 approved, is that correct?

14 A. Yes.

15 Q. And what parts of section 6
16 did you assist with?

17 A. I've been involved with
18 different aspects of sections A through
19 E, 6.a through 6.e.

20 Q. I want to go back very
21 briefly to section 5.a again, one last
22 thing. Do you know who made the
23 determination to approve an application
24 for registration by a marketer?

25 A. An application for

1 registration to become an eligible
2 supplier, I assume?

3 Q. Under 5.a, yes, that was
4 under 5.a.

5 A. I made the determination if
6 a marketer had submitted the necessary
7 PUCO application or PUCO certification
8 and the credit history summary form
9 necessary for them to become an eligible
10 supplier under the MSG protocol.

11 Q. How would you make the
12 determination as to whether or not they
13 had submitted the appropriate credit
14 history summary form?

15 A. I would make that
16 determination based on if that form had
17 been submitted to me or if it had not
18 been submitted to me.

19 Q. Did you actually review the
20 form to confirm that it was
21 appropriately filled out?

22 A. No, I did not.

23 Q. So you were merely checking
24 to see if they submitted a credit
25 history form, is that correct?

1 A. That is correct.

2 Q. At what point were they able
3 to obtain a password? Let me clarify
4 that that is a marketer.

5 A. And you phrased the question
6 in past tense, which are you referring
7 to prior to October 19th or if it were
8 to happen today?

9 Q. Let's go prior to October
10 19th.

11 A. Prior to October 19th, the
12 passwords were handed out on the morning
13 of October 17th, regardless of when the
14 determination was made, if that marketer
15 became an eligible supplier or not.

16 Q. And after October 19th?

17 A. After October 19th, the
18 password would be given to a marketer
19 once the determination was made that
20 they had become an eligible supplier
21 under the protocol.

22 Q. That's what I'm trying to
23 ask you about. How was the
24 determination made that they were an
25 eligible supplier under the protocol for

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1 the purpose of getting a password after
2 October 19th?

3 A. If, in fact, a credit
4 history summary form was in my
5 possession and if the marketer could
6 evidence that they had applied for or
7 had received a PUCO certification.

8 Q. And at that point you would
9 give them a password, is that correct?

10 A. That is correct.

11 Q. Okay. Let's turn to section
12 6.a. As part of the approval process
13 under 6.a (i) is included verification
14 that the supplier has been approved as
15 a certified retail electric supplier by
16 the Public Utilities Commission and has
17 been registered with the utility, is
18 that correct?

19 A. That is correct.

20 Q. Who is the supplier that is
21 referred to in this subsection (i)?

22 A. The entity making the market
23 support generation claims.

24 Q. So that would be the
25 eligible supplier as you've referred to

1 them previously?

2 A. In this instance, I believe
3 so.

4 Q. Let's move to verification
5 that the supplier has been registered
6 with the utility, also under 6.a (i).

7 For an aggregator, what
8 type of verification -- nongovernmental
9 aggregator -- was done with respect to
10 registration with the utility to approve
11 an MSG claim under 6?

12 THE WITNESS: Can you
13 read that question back, please.

14 (Record read)

15 A. I don't know.

16 Q. Do you know who would know?

17 A. Who would know how that
18 determination was made if an entity was
19 registered to submit market support
20 generation claims? /

21 Q. No, I didn't ask about
22 submitting --

23 A. Okay.

24 Q. -- market support generation
25 claims. I'm asking about approval of

1 market support generation claims and the
2 registration that's necessary for an
3 aggregator to get such an MSG claim
4 approved.

5 A. No, I do not.

6 Q. Do you know what type of
7 registration is necessary for a marketer
8 to have an MSG claim approved under
9 section 6.a (i)?

10 A. Yes, I do.

11 Q. And what is that?

12 A. It is completion of the
13 registration process under the
14 applicable operating company's supplier
15 tariff.

16 Q. Am I correct that you
17 indicated you helped put together that
18 supplier tariff?

19 A. I was involved in that, yes.

20 Q. Are you aware if there is
21 any -- if there are any differences in
22 the supplier tariffs between the
23 different operating companies?

24 A. I know that the documents
25 are similar. I am unaware of any

1 similarities between --

2 Q. That's fine. Am I correct
3 that an aggregator would not have to
4 complete the registration process under
5 a supplier tariff in order to get
6 approval of an MSG claim under 6.a (i)?

7 A. I do not know.

8 MS. KAHN: I need the
9 question and answer read back, please.

10 (Record read)

11 Q. Is that an indication that
12 you were not involved in any way with
13 approval of MSG claims for aggregators
14 with respect to the issue of
15 registration?

16 THE WITNESS: Can you
17 read that question back, please.

18 (Record read)

19 A. I would say I was involved
20 in discussions regarding that topic, but
21 not involved in the determination being
22 made.

23 Q. Well, let's address the
24 discussions that you had involving that
25 topic. What did those discussions

1 cover?

2 A. Typically those conversations
3 would be regarding the entity's ability
4 to submit the market support generation
5 claims.

6 Q. That goes back to submitting
7 a claim. I'm still talking about
8 approval of the claim.

9 A. And I'm saying that in
10 discussions regarding the approval of
11 the claim, the conversations were about
12 that applicant's ability to submit a
13 claim.

14 Q. Who were these discussions
15 with?

16 A. David Blank.

17 Q. Can you tell me more
18 specifically what the conversations
19 involved?

20 A. No, I can't.

21 Q. Okay. I think I'm having
22 difficulty with that when you were
23 discussing approval, you ended up
24 talking about submission of the claim.

25 How did the topic of

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1 approval of the claim for aggregators
2 get raised to begin with?

3 THE WITNESS: Can I have
4 that question read back, please.

5 (Record read)

6 A. I do not recall that,
7 either.

8 Q. Okay. Was it Mr. Blank who
9 would have made the verification as to
10 whether an aggregator was registered
11 with the utility under 6.a (i) in order
12 to have an MSG claim approved?

13 A. I don't know.

14 Q. To wrap up this part, as I'm
15 understanding, you were involved in the
16 approval portion of the MSG claim and
17 registration with respect to marketers,
18 but not with respect to aggregators, is
19 that correct?

20 A. The way you've characterized
21 it would be incorrect.

22 Q. Correct me.

23 THE WITNESS: I was
24 involved with -- please read her
25 question back.

(Record read)

A. I was involved and continue to be involved with the approval of all market support generation claims to the extent that I push the button on the market support generation system to approve it.

I, however, am not -- do not make the determination whether or not a claim should or should not be approved.

Q. Okay. With respect to aggregators, who told you to push the button?

A. Mr. Blank.

Q. Okay. Is that also the case for marketers?

A. Yes, it is.

MS. KAHN: Can we go off the record for a moment.

(Luncheon recess had at 12:07 p.m.)

AFTERNOON SESSION

(12:47 p.m.)

- - - - -

(Thereupon, Deposition
Exhibit-B was marked
for purposes of
identification.)

- - - - -

CONTINUED EXAMINATION OF
DOUGLAS S. BURNELL

BY-MS.KAHN:

Q. I have marked as Exhibit B
an energy supplier workshop information
packet from August 23rd of 2000. I'll
hand that to you, Mr. Burnell.

Mr. Burnell, if you will
turn to the second page, it is
designated as topic B, supplier
registration, supplier billing and
customer billing, and your name is
listed. Were you involved in this
workshop?

A. Yes, I was.

Q. Am I correct that you
presented information at the workshop?

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1 A. Yes.

2 Q. Which part of topic B did
3 you present?

4 A. A portion of the supplier
5 registration and I know I was also
6 involved with the supplier billing.

7 Q. With respect to the supplier
8 registration, is this a presentation --
9 explain to me which supplier
10 registration this is a presentation on.

11 A. It was a presentation based
12 on the requirements in the supplier
13 tariffs for the operating companies of
14 FirstEnergy.

15 Q. Okay. Did you prepare any
16 of the pages that were part of this
17 workshop packet?

18 A. Yes, I did.

19 Q. Which pages in the packet in
20 front of you did you prepare?

21 A. I was involved with the
22 creation of slide 64, 65 and 66.

23 Q. And when you say involved
24 with the creation, can you explain
25 further? Would you explain further,

1 please?

2 A. That I created drafts of
3 these three slides and submitted them to
4 the individuals who were formatting and
5 polishing the packet presented at the
6 August 23rd workshops.

7 Q. So the people you submitted
8 to were just doing mechanical, make it
9 look pretty, is that correct?

10 A. They did have some -- some
11 impact in some of the wording as well.

12 Q. That was substantive in
13 terms of these were people who
14 understood the supplier tariff and
15 therefore made changes?

16 A. I would say they
17 participated more than in the mechanical
18 way which you characterized, but I do
19 not believe they made substantive
20 changes.

21 Q. And who were these people?

22 A. Members of Arthur Anderson's
23 business consulting team.

24 Q. Would that be Craig Lobdell?

25 A. I believe so, yes.

1 Q. When did Craig Lobdell get
2 involved in the protocol process?

3 A. I do not remember.

4 Q. Do you recall if he assisted
5 in putting together the protocol?

6 A. Can you rephrase that
7 question, please? I'm not sure what
8 you mean by putting together.

9 Q. Did he have input in the
10 language that actually ended up in the
11 protocol?

12 A. I do not know.

13 Q. What was his involvement
14 that you're aware of in the protocol?

15 A. That he attended and to an
16 extent participated in meetings to glean
17 the information he needed to complete a
18 project he was working on.

19 Q. And what was the project?

20 A. It was a project that Arthur
21 Anderson was charged by the customer
22 services department to complete, but I
23 do not know the specifics of that.

24 Q. Was this a project that
25 occurred prior to October 19th of 2000?

1 A. You're referring to the
2 project as a whole that he was engaged
3 in customer services for?

4 Q. Yes.

5 A. Yes, he did.

6 Q. Do you know when the project
7 was completed?

8 A. I don't know if it has been
9 completed, and if it has been, I don't
10 know when that was.

11 Q. And do you know who assigned
12 the work to Mr. Lobdell from customer
13 services?

14 A. No, I don't.

15 Q. Was Mr. Lobdell involved in
16 the process of creating the protocol?

17 A. Involved? I'm not sure --

18 Q. Did he give suggestions for
19 the creation of the protocol process?

20 A. I don't recall if he did or
21 did not do that.

22 Q. Did you attend meetings
23 where he was in attendance?

24 A. Yes, I did.

25 Q. And what was his

1 participation at those meetings?

2 A. He would listen and ask
3 clarifying questions to better
4 understand the process so that he could
5 glean that information from those
6 meetings to utilize in his project he
7 was completing for customer services
8 department.

9 Q. You may have answered this,
10 but let me ask. Was the project that
11 he was involved in for customer services
12 related to the protocol procedure?

13 A. I'm not sure. I am not
14 privy to the specifics of his project.

15 Q. Okay. What interactions did
16 you have with Mr. Lobdell?

17 A. Can you be more specific
18 with that question?

19 Q. Did you have conversations
20 with Mr. Lobdell yourself?

21 A. Yes, I have had many
22 conversations with Mr. Lobdell.

23 Q. And what did those
24 conversations relate to?

25 A. The topics have been so

1 numerous, I could try to list them, but
2 it would I'm sure be an incomplete
3 list.

4 Q. Can you give me some
5 examples?

6 A. Some examples would be I
7 have discussed with him the
8 responsibilities that would fall inside
9 as well as outside the confines of the
10 Customer Choice Services department of
11 the customer services department. I've
12 had conversations with Mr. Lobdell
13 regarding the EDI process. I've had
14 conversations with Mr. Lobdell regarding
15 the supplier registration process.

16 Q. The conversations that you
17 had with him with respect to the
18 supplier registration process, did those
19 relate to marketer registration under
20 the supplier tariff?

21 A. Yes, they did.

22 Q. Did they relate to
23 registration by aggregators?

24 A. I don't believe they did,
25 no.

1 Q. Okay. Do you recall with
2 any more specifics the conversations
3 that you had with Mr. Lobdell with
4 respect to supplier registration?

5 A. I do not recall specifics
6 other than to say I was trying to
7 characterize the process for supplier
8 registration under the supplier tariff
9 for him again to complete the project
10 he had been tasked to complete.

11 Q. So he was not making
12 suggestions to you of how the process
13 should occur, is that correct?

14 A. That is correct.

15 Q. I want to go back to the
16 protocol for just a moment in section
17 6.b as in boy, (ii). Am I correct that
18 section 6.b addresses what the result is
19 if an eligible supplier's application
20 does not meet the requirements of the
21 approval process in 6.a, is that
22 correct?

23 A. That appears correct, yes.

24 Q. With respect to 6.b (ii),
25 this addresses if the insufficiency is

1 the result of the supplier's failure to
2 register with the company, including EDI
3 testing, is that correct?

4 A. That's how that reads, yes.

5 Q. Who is the supplier that is
6 being referred to in the first line of
7 6.b (ii), do you know?

8 A. To answer that question
9 would be to speculate as to an
10 interpretation of that.

11 Q. You said that you were
12 involved in sections 6.a through 6.e, if
13 I remember correctly?

14 A. That's correct.

15 Q. Did you have specific
16 involvement with respect to 6.b (ii)?

17 A. Minimal, yes.

18 Q. And what was that
19 involvement?

20 A. I believe in one instance an
21 entity that had met the requirements to
22 become an eligible supplier but was not
23 taking steps to meet the requirements of
24 being able to have claims approved, I
25 was in contact with that organization to

1 let them know that they had the 30 days
2 listed here to complete that process or
3 to forfeit their place in the queue.

4 Q. Was that entity a marketer?

5 A. As defined in their CRES
6 application to the State of Ohio, I
7 believe that they were, yes.

8 Q. And how did you make the
9 determination of when to notify them?

10 A. I brought it to Mr. Blank's
11 attention that they had not taken steps
12 to complete the process and Mr. Blank
13 advised me when to notify them of their
14 30 day beginning point.

15 Q. And when you say that they
16 were not completing the process, are you
17 discussing the process in the supplier
18 tariff?

19 A. Yes, I am.

20 Q. And how did you make the
21 determination that enough time had gone
22 by that you should notify Mr. Blank?

23 A. Mr. Blank had already been
24 aware that this particular entity was
25 not taking steps to complete that

1 process and I additionally updated him
2 at a point in time that 90 days had
3 passed before the applicant had
4 additionally not taken any steps just to
5 make him aware.

6 Q. That 90 days had passed from
7 when?

8 A. The submission of the
9 application for registration under the
10 supplier tariff.

11 Q. Am I correct that
12 aggregators would not have to apply
13 under the supplier tariff?

14 A. I do not know the answer to
15 that.

16 Q. Do you know who would?

17 A. I'm sure that Mr. Blank
18 could speak to that question more
19 effectively than I could, but I do not
20 in fact know if he would know the
21 answer.

22 Q. Okay. With respect to an
23 aggregator in 6.b (ii), how would an
24 aggregator fail to register?

25 A. I do not know.

1 Q. Do you know who would know?

2 A. First, I am not sure if this
3 section is even applicable to
4 aggregators, but again Mr. Blank I'm
5 sure could speak to that question more
6 effectively, but I don't in fact know
7 if he would know the answer.

8 Q. And why do you believe that
9 this section may not apply to
10 aggregators?

11 A. Because of the
12 differentiation in the word supplier
13 being capitalized.

14 Q. And what does that mean to
15 you?

16 A. Typically in other areas a
17 capital S Supplier means to me a
18 marketer or a generation supplier.

19 Q. And when you say in other
20 areas, what would you be referring to?

21 A. Such as the supplier tariff,
22 things to that effect.

23 Q. Do you know whether or not
24 that was ever explained at your meetings
25 explaining the protocol?

1 A. I do not recall if it was or
2 was not.

3 Q. Let's go back to the
4 workshop packet if you would, please.
5 You indicated that you prepared draft
6 language for pages 64, 65 and 66
7 dealing with supplier registration, is
8 that correct?

9 A. Yes, I did prepare draft
10 information for that.

11 Q. Did you work with anyone
12 with respect to that preparation?

13 A. No, I did not.

14 Q. Who is the administrator of
15 competitive energy supplier contracts
16 designated on page 64?

17 A. In this context, it is me.

18 Q. Okay. So Supplier
19 applications, that would be with a
20 capital S, to register under the
21 supplier tariff were all submitted to
22 you, is that correct?

23 A. That is correct.

24 Q. Okay. How did you go about
25 putting together your draft materials?

1 Let me rephrase that. What did you
2 rely upon to put together your draft
3 materials?

4 A. I relied upon the supplier
5 tariff and the process in place for
6 Pennsylvania Power.

7 Q. Were you involved in the
8 process in place for Pennsylvania Power?

9 A. No, I was not.

10 Q. So the procedures that you
11 laid out on these pages were based on
12 information you obtained from the
13 supplier tariff?

14 A. In addition to the
15 documentation from the Pennsylvania
16 Power process, yes.

17 Q. Okay. At page 65 it refers
18 to the FirstEnergy registration team.
19 Who is on that team?

20 A. I am not sure who that
21 phrase refers to. I don't believe it
22 was included in my draft.

23 Q. Okay. Did you present these
24 pages at the workshop as well?

25 A. Yes, I did.

1 Q. As I understand this
2 process, within ten days there is a
3 review as to whether or not the
4 application package of a supplier is
5 complete, is that correct? That would
6 be page 64?

7 A. As it is written and as it
8 was presented, yes, that's correct.

9 Q. Is that not how it's
10 actually occurred?

11 A. That is not how it occurred
12 in the latter part of the year 2000.

13 Q. How did it occur?

14 A. By definition, all
15 applications were incomplete until the
16 point where necessary components of a
17 complete application were either created
18 and filed -- were either created or
19 filed at the PUCO and subsequently
20 approved by the PUCO.

21 Q. So what I think you're
22 indicating is that some parts of the
23 required information had not been
24 created by FirstEnergy yet and approved
25 by the PUCO, is that correct?

1 A. That is correct.

2 Q. Do you know which parts
3 those were?

4 A. I recall specifically the
5 coordination agreements and supplier
6 tariffs for the operating companies of
7 FirstEnergy were in the process of being
8 created, but were not in fact filed and
9 approved by the PUCO at the time we
10 began accepting registration
11 applications for retail electric
12 generation suppliers under those
13 supplier tariffs.

14 Q. When did you begin accepting
15 applications?

16 A. We began accepting
17 applications on or around the same day
18 that the PUCO began accepting
19 applications for CRES certification,
20 although I do not recall the date
21 specifically.

22 Q. Okay. On page 65 you
23 indicate in one of your bullet points
24 that if the energy supplier fails to
25 return the additional information needed

1 to complete the application within 30
2 days, the application is no longer valid
3 and they have to resubmit.

4 When does that 30 days
5 start being counted?

6 A. In the year 2001, if a
7 marketer under the supplier tariff were
8 to submit a registration application,
9 FirstEnergy would have ten days to
10 respond to them, letting them know if
11 it was complete or incomplete.

12 If the notification to the
13 marketer was that it was incomplete and
14 that they did not respond within 30
15 days to take steps to complete that
16 application, then it could be found to
17 be invalid and the marketer would need
18 to reapply.

19 Q. And when you say could be
20 found, to me that's indicating that it
21 isn't automatically found to be invalid,
22 is that correct?

23 A. There are cases -- let me
24 back up. I don't know of any cases
25 where this is -- this has happened, but

1 if cause is shown of why that delay has
2 occurred, I do recall some additional
3 language in the supplier tariff allowing
4 some flexibility.

5 Q. Okay. Have you had
6 situations where people have failed to
7 comply within the 30 day period?

8 A. In the context under which I
9 answered the prior question, for the
10 year 2001, no. Applicants received when
11 all of the documentation has been
12 available have not to my knowledge had
13 this requirement placed upon them --

14 Q. And I'm assuming --

15 A. -- and found to be invalid.

16 Q. I'm assuming that your
17 reference to 2001 and leaving out 2000
18 is once again due to the fact that not
19 all the materials needed for application
20 were available in 2000?

21 A. That is correct.

22 Q. Would you turn to page 66.

23 No, never mind. Can you pull out your
24 protocol again, please.

25 Would it be your belief

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1 that the 30 day reference in 6.b (ii)
2 is the same as the 30 day reference
3 that you're showing on page 65 with
4 respect to completing an application?

5 A. I would agree those are
6 similar statements.

7 Q. You would agree they're
8 similar statements. Do you think that's
9 what the reference is to in the
10 protocol?

11 A. I don't know.

12 - - - - -

13 (Thereupon, Deposition
14 Exhibit-C was marked
15 for purposes of
16 identification.)

17 - - - - -

18 Q. I have now marked as Exhibit
19 C the Cleveland Electric Illuminating
20 Company electric generation supplier
21 coordination tariff. I will tell you
22 that I have not copied the entire
23 tariff as part of this exhibit, but
24 only those portions that I will be
25 asking questions about.

1 Is this the supplier
2 tariff that you have been discussing?

3 A. Yes, it is.

4 Q. And this is the --

5 A. This is one of the supplier
6 tariffs I have been discussing.

7 Q. I understand there is a
8 separate one for Toledo Edison and Ohio
9 Edison, is that correct?

10 A. That is correct.

11 Q. And am I correct that you
12 assisted in developing this supplier
13 tariff or the supplier tariffs including
14 this one?

15 A. Yes.

16 Q. In what ways did you assist?

17 A. By reviewing different drafts
18 of the supplier coordination tariffs and
19 by pointing out inconsistencies with the
20 -- inconsistencies among the three
21 tariffs as well as typographical errors,
22 and I would say that would probably be
23 the extent of my involvement in that.

24 Q. Were you involved in
25 meetings in the development of the

1 supplier tariffs?

2 A. I was involved in a meeting,
3 yes.

4 Q. Can you explain or describe
5 what occurred in the meeting? Please
6 explain what occurred in the meeting.

7 A. The supplier coordination
8 tariffs were reviewed by myself and two
9 other individuals page by page and line
10 by line to insure consistency and to
11 insure that typographical errors were
12 caught.

13 Q. Now, if I understand
14 correctly what you said as part of the
15 workshop, that applications for
16 compliance with the supplier tariff were
17 directed to you, is that correct?

18 A. Yes.

19 Q. Once you received an
20 application, what did you do?

21 A. Once I received an
22 application, I would do different things
23 depending on the pieces that were
24 included in that application, but for
25 purposes of answering this question, I

1 will assume it was a complete
2 application.

3 I would forward the
4 supplier tariff coordination agreement
5 information to an officer of FirstEnergy
6 for review. The credit information,
7 credit history summary form and
8 supplemental credit information that may
9 or may not have been included would be
10 forwarded to our treasury department for
11 review.

12 Any documents involving
13 the market based rate power sales tariff
14 called for in the supplier coordination
15 tariff as a necessary document for
16 registration for a retail electric
17 generation supplier under the supplier
18 coordination tariff would be forwarded
19 to the bulk power group for review.

20 The transmission documents
21 would be forwarded to American
22 Transmission Systems, Incorporated for
23 review. I would forward any information
24 relating to EDI testing to the
25 individuals in Customer Choice Services

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1 who handled EDI testing.

2 Q. Could you repeat that, I'm
3 sorry, just to whom.

4 A. To the EDI testing
5 individuals within Customer Choice
6 Services. I would file the applicant's
7 -- either a copy of the applicant's
8 application to the State for CRES
9 certification or a copy of that
10 applicant's license to the State issued
11 by the State.

12 If the applicant had
13 requested a utility consolidated
14 billing, the rates that would be
15 submitted to me as part of their
16 application would have been forwarded to
17 our customer information system group to
18 make sure those got into our system.

19 I believe those are the
20 items that consist or would consist of
21 an application including all of the
22 documents and all of the required
23 information.

24 Q. When you indicated that you
25 would file the CRES certification

1 application or license, did you file all
2 the information that was provided and
3 then make copies to send off to others?

4 A. The CRES certification or
5 license was not required by any of
6 those entities I mentioned. Therefore,
7 I did not copy that specific item, but
8 did in fact put it in that individual
9 company's file.

10 Q. And when you're referring to
11 the individual company's file, what else
12 would you have put into that file from
13 the supplier application?

14 A. I would have put copies of
15 the information that I did forward to
16 others, which those copies would be then
17 replaced by executed documents when they
18 were available.

19 Q. Okay. Would you turn to
20 page two of 54? It's marked in the
21 upper right hand corner of the supplier
22 tariff. Just for ease of this portion'
23 of the deposition, I'll refer to the
24 CEI electric generation supplier
25 coordination tariff as the supplier

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1 tariff, is that okay?

2 A. That is okay.

3 Q. As I understand it, to be a
4 certified supplier you could be an
5 electric generation supplier that's
6 received certification from the PUCO and
7 then you would also have to have
8 received written notification under
9 section V (E) of this tariff, is that
10 correct?

11 A. Your statement appears to be
12 correct, yes.

13 Q. And just for clarification
14 purposes, at page 4 of 54 is the
15 definition of electric generation
16 supplier. As I read that definition,
17 it would appear to include marketers,
18 brokers and aggregators as well as
19 others, is that correct?

20 A. I don't know.

21 Q. And is that because you
22 don't know what's included in 4928.08
23 (A) or (B)?

24 A. That's correct.

25 Q. Is it your understanding of

1 the supplier tariff that if an
2 aggregator wanted to become a certified
3 supplier under here they could?

4 A. I don't have an
5 understanding related to that.

6 Q. Do you know who might?

7 A. No, I don't.

8 Q. Okay. Do you know whether
9 or not IEU submitted an application to
10 be a certified supplier as it's defined
11 in your supplier tariff?

12 THE WITNESS: Can I have
13 the question read back, please.

14 (Record read)

15 A. I do not know.

16 Q. If IEU had submitted an
17 application, it would have come to you,
18 is that correct?

19 A. That is correct.

20 Q. So are you indicating that
21 you never saw an application from IEU
22 for registration pursuant to Roman
23 numeral 5 of the supplier tariff?

24 A. I am saying that I have not
25 -- well, I don't know if I have seen a

1 registration application from IEU to
2 become a certified supplier as defined
3 in this exhibit.

4 MS. KAHN: Could you read
5 back that answer, please.

6 (Record read)

7 Q. Have you seen an application
8 from IEU?

9 A. Can you please be more
10 specific?

11 Q. Any type of application that
12 would be submitted to you.

13 A. Yes, I have.

14 Q. And what was included in
15 that application?

16 A. I do not recall with any
17 specificity each item that was submitted
18 in that application.

19 Q. Okay. Do you recall whether
20 or not they sent you information with
21 respect to a coordination agreement?

22 A. I don't remember.

23 Q. Do you recall whether or not
24 they sent information with respect to
25 credit, they being IEU?

1 A. I don't recall.

2 Q. If that information exists,
3 it would be in your records?

4 A. I believe it would be, yes.

5 Q. And you have a specific file
6 on IEU, is that correct?

7 A. Yes, I do.

8 Q. And the information related
9 to what IEU has submitted would be in
10 that file?

11 A. Yes.

12 Q. Do you know whether or not
13 IEU has submitted information with
14 respect to rate schedules?

15 A. I don't recall.

16 MS. KAHN: Can we go off
17 the record for a minute?

18 (Discussion off record.)

19 BY MS. KAHN:

20 Q. Mr. Burnell, while we were
21 off the record, it was agreed that you
22 would go back and check your records
23 with respect to IEU and supplement your
24 answers to the questions that I've just
25 asked with respect to information IEU

1 would have submitted to you in
2 applications and whether or not they
3 submitted an application to become a
4 certified supplier under your supplier
5 tariff, is that your understanding?

6 A. Yes.

7 Q. Along those lines when you
8 are supplementing, I would appreciate if
9 that was submitted if you could indicate
10 who submitted on behalf of IEU as well
11 if that's information included in your
12 file. Thank you.

13 Could you also turn to
14 page 3 of the supplier tariff?

15 A. (Witness complies.)

16 Q. And I'm looking at the
17 definition of DASR -- D A S R, all caps
18 -- which stands for direct access
19 service request and that's defined as an
20 electronic form of communication that
21 shall be exchanged between the company
22 and a Certified Supplier, and a
23 Certified Supplier is capitalized.

24 Can you explain to me
25 what your understanding is of a DASR?

1 A. That it is an electronic
2 transaction sent via EDI between a --
3 one entity and another to communicate
4 customer information, customer
5 enrollment, a request for historical
6 usage information, things to that
7 effect.

8 Q. And when you're using the
9 word customer there, you're referring to
10 the retail customer?

11 A. I am referring to end use
12 electric consumers.

13 Q. So for a Certified Supplier,
14 capitalized as here, to provide service
15 to the end user, they would need to
16 submit DASRs, is that correct?

17 A. Yes.

18 Q. And if you could turn to
19 page 18 of 54, it indicates that
20 enrollment of customers under C, direct
21 access service requests, is done through
22 a DASR, which may be submitted only by
23 a certified supplier, is that correct?

24 A. That is what that sentence
25 states, yes.

1 Q. And are you at all involved
2 in the submission of DASRs?

3 A. No, I am not.

4 Q. Are you involved in
5 determining who can submit a DASR?

6 A. Yes.

7 Q. What is your involvement?

8 A. Well, if an entity applies
9 for registration under this tariff, I
10 introduce that applicant to the
11 individuals who perform the EDI testing,
12 which ultimately allows the applicant to
13 submit direct access service requests.

14 Q. When somebody submits an
15 application to become a Certified
16 Supplier, that's in caps, while I
17 understand you distribute the
18 information and therefore it appears you
19 are not the decision maker, how is the
20 applicant informed that they are now a
21 Certified Supplier?

22 A. When the information that is
23 passed to the various entities I
24 discussed in a prior answer and that
25 information is then successfully either

1 reviewed and executed or reviewed and
2 meets the criteria of those individuals
3 it's forwarded to, I am made aware of
4 the fact that that particular piece has
5 either been reviewed and executed or
6 reviewed and meets those specific
7 requirements.

8 Once those pieces of
9 information are returned back to me so
10 that I may forward them on to the
11 applicant, I inform the applicant that
12 they have completed the process of
13 registration.

14 Q. As a capital C capital S
15 Certified Supplier, is that what you
16 mean?

17 A. I'm still unclear as to the
18 meaning of Certified Supplier in this
19 tariff due to the reference to 4928.08
20 of the Revised Code. I don't know what
21 exists in that area.

22 Q. Let me ask it a different
23 way. Are you saying that you give them
24 the notice that is designated in (V)(E)
25 of this tariff at page 15?

1 A. Yes.

2 Q. So you give them a written
3 notice, is that correct?

4 A. Ultimately, yes, I do.

5 Q. I'm interpreting your
6 ultimately that you may call them and
7 tell them you've been approved and then
8 you may follow it up with a letter, is
9 that correct?

10 A. That is correct.

11 Q. Have you sent such a written
12 notification to IEU that they've been
13 approved under (V)(E)?

14 A. I don't recall if such
15 message has been sent to IEU because I
16 am unsure if IEU applied for
17 registration under this tariff.

18 Q. Okay. Just so I can clarify
19 your process, when you contact an entity
20 to notify them of approval, when you
21 contact them by phone to notify them of
22 approval under (V)(E) of the supplier
23 tariff, do you then note that in their
24 file prior to sending a letter?

25 A. Typically I do, yes.

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1 Q. Okay. How much time
2 normally lapses between the phone call
3 and your written letter?

4 THE WITNESS: Can I have
5 that question read back, please.

6 (Record read)

7 A. I am unsure of your use of
8 the word normally, but there have been
9 situations where that verbal
10 communication and written communication
11 have happened within minutes of one
12 another and there have been other
13 instances where it has been a matter of
14 a week or two.

15 Q. Okay. When you are
16 supplementing the other questions I
17 asked, if there's something in IEU's
18 file with respect to written
19 notification of approval of registration
20 under your supplier tariff, could you
21 also advise of that, please?

22 A. Yes.

23 Q. With respect to entities
24 that did apply for becoming a certified
25 supplier under your supplier tariff, am

1 I correct that all those entities would
2 have been required to provide credit
3 information?

4 A. Again, I'm not sure of the
5 meaning of the word certified supplier
6 in this tariff because of its reference
7 to the Revised Code, my not knowing
8 what lies in that reference.

9 Q. Let me ask it a different
10 way. Any entity who applied under the
11 supplier tariff for registration, am I
12 correct that anyone would be required to
13 provide credit information? Or
14 everyone, I should say.

15 A. Yes.

16 THE WITNESS: Before we
17 get rolling on additional questions
18 here, I would like to take about a two
19 minute break.

20 MS. KAHN: That's fine.

21 (Recess had.)

22 THE WITNESS: May I have
23 the last question and answer read back,
24 please.

25 (Record read)

THE WITNESS: Thank you.

- - - - -

(Thereupon, Deposition
Exhibit-D was marked
for purposes of
identification.)

- - - - -

Q. I have marked as Exhibit D
as in dog the FirstEnergy Corp. market
based rate wholesale power sales tariff
and also attached to that is the form
of service agreement for sales of market
support generation.

In addition, on the front
of that is an email from Mr. Burnell to
supplier support.

Am I correct, Mr. Burnell,
that this is an email you sent out with
respect to the FERC tariff for MSG for
market based wholesale power?

THE WITNESS: May I have
the question read back?

(Record read)

A. I would agree that this
first page is a copy of an email that I

1 sent out regarding those tariffs to
2 which several documents were attached.

3 Q. And in your previous
4 questions with respect to -- I'm sorry
5 answers with respect to the supplier
6 tariff, you mentioned a service
7 agreement. Is this the service
8 agreement about which you were
9 referring? I'm sorry, let me take that
10 back. You mentioned a power sales
11 tariff. Is this the tariff about which
12 you were referring?

13 A. No, it is not.

14 Q. Okay. What was the purpose
15 of sending out this information to
16 suppliers with the attachments?

17 A. The purpose was to inform
18 claimants of market support generation
19 and -- to inform claimant's of market
20 support generation of the documents that
21 had been forwarded to me to distribute
22 to those claimants.

23 Q. If a claimant had an MSG
24 claim approved, how would the FERC
25 tariff and the service agreement that

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1 you sent out come into play?

2 A. I do not know.

3 Q. Do you know whether or not
4 the service agreement has to be executed
5 before the MSG could be actually
6 provided?

7 A. I do not know.

8 Q. Okay. If a service
9 agreement were executed by a claimant, a
10 successful claimant, would that executed
11 service agreement be included in the
12 file that you keep?

13 A. I don't know.

14 Q. Do you know who the service
15 agreement would be sent to at
16 FirstEnergy upon execution by the
17 successful claimant?

18 A. No, I do not.

19 Q. Okay. Could you turn in
20 your package to -- I'm sorry, let me
21 ask this first. Before you forwarded
22 the attachments on to the claimants, did
23 you open them up and look at them?

24 A. No, I did not.

25 Q. Okay. Did you have anybody

1 contact you with respect to whether or
2 not a service agreement was attached or
3 that they needed a copy of the service
4 agreement?

5 A. Yes, I did.

6 Q. And what was the request?

7 A. The request was that a clean
8 version of the service agreement be
9 forwarded.

10 Q. Okay. Then will you go back
11 in the packet that I handed you to the
12 page that is titled confidential draft
13 of February 14th, FirstEnergy Corp.
14 market based rate wholesale power sales
15 tariff? It's going to be a ways back.

16 Can you identify if that
17 is the service agreement that you sent
18 out upon request?

19 A. No, I can't.

20 Q. Okay. Do you happen to know
21 if this would be an accurate copy of
22 the service agreement that was filed at
23 FERC?

24 A. No, I don't.

25 Q. Okay. I believe with

1 respect to the workshop, you also
2 indicated that you were involved in
3 preparing the sections on billing, would
4 that be correct, supplier billing?

5 THE WITNESS: Can I have
6 that question read back, please.

7 (Record read)

8 MR. RUXIN: Just so the
9 record is clear, Ms. Kahn, we're
10 referring to Exhibit B now?

11 MS. KAHN: Correct.

12 Q. Let me ask that a different
13 way. Are you involved in supplier
14 billing?

15 A. Yes, I am.

16 Q. And what is your
17 involvement?

18 A. With regards to the workshop
19 or with regards to a larger universe of
20 my job responsibilities?

21 Q. Let's start with the
22 workshop.

23 A. Okay.

24 Q. Then I'll follow up with the
25 rest.

1 A. Okay. I am involved with
2 supplier billing to the extent that it's
3 necessary through the settlement and
4 balance process and something called
5 miscellaneous charges, which would be
6 switching fees for governmental
7 aggregation groups and research time
8 that can be recovered.

9 Q. Is that the portion that you
10 presented at the workshop?

11 A. Yes.

12 - - - - -

13 (Thereupon, Deposition
14 Exhibit-E was marked
15 for purposes of
16 identification.)

17 - - - - -

18 Q. I'll hand you Exhibit E.
19 This would be an email that you sent to
20 Nicole Schwartz at Enron with respect to
21 the initial MSG load following bill.
22 Do you recognize this as an email that
23 you did send?

24 A. Yes, I did.

25 Q. And are you generally

1 responsible for sending out the initial
2 MSG load following bills?

3 A. Yes, I am.

4 Q. And what about capacity
5 factor bills?

6 A. Yes.

7 Q. Do you know if you've sent
8 any MSG bills to IEU?

9 MR. RUXIN: The problem
10 that the question raises, of course, is
11 that under the Code of Conduct, although
12 it's publicly acknowledged that IEU was
13 a claimant, whether or not they received
14 an allocation, I think, is not yet
15 publicly available knowledge.

16 (Discussion off record.)

17 (Record read)

18 A. Yes.

19 Q. I'd better rephrase the
20 question. Have you sent any MSG bills
21 to IEU?

22 A. Yes.

23 Q. And that was to IEU and not
24 the IEU member, is that correct?

25 A. That is correct.

1 Q. And who did you send it to?

2 A. Kevin Murray.

3 Q. Do you know when you sent
4 that bill approximately?

5 A. My hesitation is on the same
6 grounds as my hesitation to answer your
7 question about two questions ago.

8 Q. I'm only asking was that
9 March --

10 A. I understand that.

11 MR. RUXIN: Off the
12 record.

13 (Discussion off record.)

14 A. In March.

15 Q. Was that your first bill to
16 them?

17 A. I'm sorry, let me back up, I
18 misstated. April.

19 Q. Was that your first MSG bill
20 that you sent to IEU?

21 MR. RUXIN: You can
22 answer that.

23 A. Yes, it was.

24 Q. Okay. I believe we
25 discussed early on that IEU is the

1 aggregator for its IEU members, is that
2 your understanding?

3 A. That is my understanding.

4 Q. Do you know who submitted
5 the DASRs for the IEU members?

6 A. No, I don't.

7 Q. Do you know who would know
8 that?

9 A. I can't name anyone
10 specifically who would know that, no.

11 Q. Do you know what department
12 is responsible for that?

13 A. That being if IEU did send
14 EDI transactions to FirstEnergy?

15 Q. I'm sorry, say that again.
16 I blanked out for a moment there.

17 (Record read)

18 Q. My question was, what
19 department would have knowledge of the
20 filing of DASRs?

21 A. The Customer Choice Services
22 department.

23 Q. That's the department that
24 you're in, is that correct?

25 A. That is correct.

1 Q. And who within that
2 department would know?

3 A. I could speculate, but I
4 don't know who would know.

5 Q. And your speculation might
6 be either Stephanie Gibson or Tara
7 Burton?

8 A. That's correct.

9 Q. With respect to billing, it
10 is your understanding that the billing
11 goes to the claimant for MSG and not to
12 the end user, is that correct?

13 A. Under the assumption that
14 the billing you're referring to is
15 market support generation billing?

16 Q. Correct.

17 A. That's correct, yes.

18 Q. If I am correct, there is an
19 exception that the claimant of the MSG,
20 in other words, your aggregator,
21 marketer, broker, can elect to have one
22 single bill sent to the end user which
23 would include the MSG portion as well
24 as the distribution, is that correct?

25 A. When I clarified before as

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1 MSG bill, it appears to me we're
2 blending a couple of different things.

3 Q. Okay. Explain to me.

4 A. How about you explain to me.
5 Can you ask a more specific question?

6 Q. I'm not sure what you think
7 we're blending. What do you think
8 we're blending?

9 A. I clarified by saying MSG
10 billing, which to me is the issuing of
11 bills to claimants for market support
12 generation for the generation they have
13 been allocated.

14 Your follow-up question
15 referred to an end use customer billing
16 that the utility does make available to
17 any entity operating with FirstEnergy in
18 having customers.

19 Q. So if an MSG claimant
20 selected the latter, in other words,
21 having one bill sent to their customer,
22 are you indicating that that is sent to
23 the customer and an MSG bill is then
24 sent to the claimant?

25 A. A bill is sent to the end

1 user which would have a generation
2 component to it as all bills sent to
3 end use customers have a generation
4 component to them.

5 Additionally, you are
6 correct when you state that an MSG bill
7 would be sent to the claimant.

8 Q. I'm just trying to think
9 back on my questions, I'm sorry, I
10 don't want to repeat.

11 With respect to the MSG,
12 if the claimant fails to pay FirstEnergy
13 for the MSG, does FirstEnergy have the
14 option of going after the end user?

15 A. I do not know.

16 Q. Okay. We're back to Exhibit
17 B as in boy and I believe if you will
18 turn to the page that's marked as 110,
19 this is a description of EDI
20 requirements. Do you have familiarity
21 with the EDI requirements?

22 A. To a small extent, yes.

23 Q. Okay. Can you explain to me
24 what is meant by a dedicated system for
25 EDI testing?

1 A. No, I cannot.

2 Q. Okay. Do you know what the
3 trading partner profile information is?

4 A. No, I don't.

5 Q. Do you know who might know
6 what the trading partner profile
7 information is?

8 A. No, not with any degree of
9 certainty.

10 Q. Do you think it may be
11 Stephanie Gibson or Tara Burton?

12 A. It may be.

13 Q. Do you think they may also
14 know what a dedicated system for EDI
15 testing is?

16 A. They may.

17 Q. Okay. Do you know if IEU
18 performed EDI testing?

19 A. No, I don't.

20 Q. Do you know who might know
21 that?

22 A. Not with any degree of
23 certainty, no.

24 Q. Okay. Can we go back to the
25 protocol for a moment, which would be

1 Exhibit A, and at page 2 is the
2 definition of EDI, which is defined as
3 the electronic data interchange which
4 format a supplier will utilize to submit
5 an electronic enrollment of a customer
6 for retail electric service.

7 What would be your
8 understanding of who's referred to as
9 customer? Is that the end user
10 customer?

11 A. I would agree with that
12 statement, yes.

13 Q. Are you involved in the
14 enrollment process for customers?

15 A. No, I'm not.

16 Q. Do you know who is?

17 A. I do know that Tara Burton
18 and Stephanie Gibson are involved in
19 that.

20 Q. And how are they advised
21 that customers may be enrolled?

22 A. I don't understand your
23 question.

24 Q. Okay. Let me step back.
25 Part of being able to enroll a customer

1 would be successful completion of the
2 registration process, is that correct?

3 A. Yes, that is correct.

4 Q. So how are Stephanie and
5 Tara advised that that process has been
6 completed and they can accept enrollment
7 of customers?

8 A. They are advised of that by
9 an internal broadcast email message
10 illustrating the progress that entities
11 have made with completing their
12 associated registration process with
13 FirstEnergy.

14 Q. And in this enrollment
15 process, just so I understand, the
16 procedure would first be the requirement
17 to register to get a password to submit
18 a claim. Then the claim would be
19 submitted by a successful registrant who
20 has received a password. Then the
21 approval of the claim process would
22 occur, and once that is complete,
23 customers can be enrolled, is that
24 correct?

25 A. No, that is incorrect.

1 Q. This is MSG, okay?

2 A. Okay. With that clarifier,
3 no, that is not correct.

4 Q. Can you tell me what is the
5 process then?

6 A. To allow flexibility for
7 customer enrollments via EDI, those
8 customers can be enrolled anytime by
9 those entities that have contracted with
10 those end use customers for service
11 regardless of a status of a market
12 support generation claim. Once that
13 claim is subsequently approved, the
14 entity which initially enrolled those
15 customers may submit a change
16 transaction to those particular
17 accounts.

18 Q. In order to change them from
19 whatever service they're on to MSG
20 service, is that correct?

21 A. That is correct.

22 Q. And the proper way to enroll
23 a customer is with the DASR, is that
24 correct?

25 A. I believe that is the only

1 way to enroll a customer.

2 Q. Okay. Am I also correct
3 that you have involvement with the
4 actual scheduling of MSG?

5 A. Minimal.

6 Q. And what would your
7 involvement be with the scheduling?

8 A. Pointing schedulers to a
9 specific web site where they are to
10 make their schedules.

11 - - - - -

12 (Thereupon, Deposition
13 Exhibit-F was marked
14 for purposes of
15 identification.)

16 - - - - -

17 Q. I have marked as Exhibit F a
18 January 8th of 2001 email from Doug
19 Burnell to supplier support. Mr.
20 Burnell, did you send this email out?

21 A. Yes, I did.

22 Q. And who do you recall
23 sending it to?

24 A. Anyone whose contact
25 information I had in my records

1 regarding operating and working with
2 FirstEnergy and the operating companies
3 of FirstEnergy.

4 Q. So this went out to a
5 broader group than just MSG claimants,
6 is that correct?

7 A. Yes, it is correct.

8 Q. And where it says attention
9 production and potentially production
10 suppliers, what did you mean by
11 production and potentially production
12 suppliers?

13 A. Entities who may have
14 already been working with FirstEnergy or
15 in the process of progressing to a
16 point where they could work with
17 FirstEnergy and those entities who may
18 have been contemplating working with
19 FirstEnergy in bringing retail electric
20 power into our control areas.

21 Q. So a production supplier
22 would be someone that is bringing
23 generation into FirstEnergy, is that who
24 you intended?

25 A. I don't believe that's an

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1 accurate characterization, no.

2 Q. What would be?

3 A. An entity that has completed
4 the appropriate steps with FirstEnergy
5 to allow them to have retail customers.

6 Q. What would those steps
7 include?

8 A. For a marketer, it would
9 include completion of the registration
10 materials under the supplier
11 coordination tariff, contracting with
12 customers and enrolling those customers.

13 Q. And what would it include
14 for an aggregator?

15 A. I don't know.

16 Q. So I can better understand,
17 are you indicating that before a
18 marketer could do scheduling with
19 FirstEnergy, they would have to complete
20 the obligations in the supplier tariff
21 and the registration?

22 A. If that marketer were
23 required to schedule at all, yes, that's
24 correct.

25 Q. Am I also correct that if an

1 aggregator were required to schedule,
2 you don't know whether or not they
3 would have to comply with the supplier
4 tariff registration?

5 A. That's correct.

6 Q. Why would a marketer not
7 have to schedule?

8 A. One instance would be that
9 marketer has approved load following
10 market support generation.

11 Q. But if the marketer has
12 elected or its customer has elected to
13 make use of capacity factor, that
14 requires scheduling?

15 A. I would say it doesn't
16 necessarily require scheduling.

17 Q. Can you elaborate on that
18 answer?

19 A. A marketer who has approved
20 capacity factor MSG and has enrolled
21 customers for service does not have to
22 schedule.

23 Q. And how would the capacity
24 factor generation be provided if they
25 didn't schedule?

1 A. It would not be.

2 Q. They wouldn't be able -- the
3 end user wouldn't get the generation, is
4 that your answer?

5 A. They would get generation,
6 but they would not get the capacity
7 factor generation.

8 Q. So if they didn't schedule,
9 they would effectively get load
10 following generation is what you're
11 saying?

12 A. No. I'm saying they would
13 get generation, but it would not be MSG
14 generation.

15 Q. Is your answer indicating
16 that capacity factor only really relates
17 to MSG?

18 A. Yes, I am.

19 Q. Okay. So a marketer who has
20 obtained MSG for one of its customers
21 and has elected capacity factor would be
22 required to be involved in scheduling,
23 is that correct?

24 A. No, it's not correct.

25 Q. And why not?

1 A. Because the marketer could
2 opt not to schedule and that customer
3 would be served through the fact that
4 FirstEnergy is the provider of last
5 resort and would serve that customer,
6 the generation albeit not the MSG.

7 Q. So to get the MSG they would
8 have to schedule?

9 A. That's correct.

10 Q. The election as to load
11 following and capacity factor was
12 submitted as part of the claim for MSG,
13 is that correct?

14 A. Yes, that's correct.

15 Q. And that's information that
16 was submitted to you, is that correct?

17 A. It is information that was
18 submitted to FirstEnergy.

19 Q. Okay. Do you have that
20 information in your files with respect
21 to the claimants?

22 A. No, I don't.

23 Q. Where is that information
24 kept?

25 A. In an Oracle database.

1 Q. And who's responsible for
2 the database?

3 A. I do not know.

4 Q. Do you know who has access
5 to it?

6 A. No, I don't.

7 Q. Okay. I assume that means
8 you do not?

9 A. I do have access to it, but
10 I do not know the universe of those who
11 also have access.

12 Q. Okay. So you could
13 determine whether or not somebody had
14 elected capacity factor or load
15 following for a claim?

16 A. Yes, I could.

17 Q. Do you know whether IEU
18 elected capacity factor for its MSG
19 claims?

20 MR. RUXIN: I think you
21 can answer that question.

22 THE WITNESS: Can I have
23 the question read back, please.

24 Q. Let me rephrase it. Did IEU
25 select capacity factor for its MSG

1 claims?

2 A. No, they did not.

3 Q. Therefore I assume they
4 selected load following for their MSG
5 claims, is that correct?

6 A. Yes, that is correct.

7 - - - - -

8 (Thereupon, Deposition
9 Exhibit-G was marked
10 for purposes of
11 identification.)

12 - - - - -

13 Q. I am marking as Exhibit G a
14 December 15, 2000, email from Mr.
15 Burnell to Gloria Ogenyi, O G E N Y I.
16 Mr. Burnell, do you recall sending this
17 email to Enron?

18 A. Yes, I do.

19 Q. And I would note that in
20 this email you indicate that approval of
21 their MSG claims -- let me step back.

22 Does this email deal
23 specifically with MSG claims?

24 A. Yes, it does.

25 Q. And you indicate that

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1 approval of the MSG claims is pending
2 successful registration to operate in
3 its service territories, is that
4 correct?

5 A. Yes.

6 Q. What did you mean by
7 successful registration here?

8 A. Here?

9 Q. Um-hmm.

10 A. I meant successful
11 registration under the supplier
12 coordination tariff.

13 Q. And did you ever send an
14 email to or advise IEU that approval of
15 their claims would require successful
16 registration under the supplier tariff?

17 MR. RUXIN: Go off the
18 record for a minute?

19 MS. KAHN: Um-hmm.

20 (Discussion off record.)

21 (Record read)

22 MR. RUXIN: You may
23 answer the question.

24 A. I don't know, or I don't
25 recall I should say.

1 Q. Would you have been the only
2 person to have advised them of that?

3 A. No.

4 Q. And who else could have
5 advised them of that?

6 A. I don't know.

7 Q. Mr. Blank?

8 A. Perhaps.

9 Q. Do you recall if the topic
10 of being -- of needing to register
11 under the supplier tariff ever came up
12 in a conversation between you and IEU?

13 A. I do not recall.

14 Q. You don't recall if there
15 was ever any conversation with respect
16 to the supplier tariff between you and
17 IEU?

18 A. I do not recall if there was
19 any conversation --

20 Q. Okay.

21 A. -- about that topic.

22 MR. RUXIN: You're
23 dropping your voice, the reporter's
24 having a hard time hearing you.

25 THE WITNESS: Okay.

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1 Thank you, I'm sorry.

2 - - - - -

3 (Thereupon, Deposition
4 Exhibit-H was marked
5 for purposes of
6 identification.)

7 - - - - -

8 Q. I'm handing you what's been
9 marked as Exhibit H. This is a market
10 support generation workshop and I
11 believe that these were slides, Mr.
12 Burnell, that you prepared for that
13 workshop, is that correct?

14 A. Yes, that's correct.

15 Q. Once again this deals with
16 FirstEnergy registration. Can you
17 explain what registration this was
18 applying to?

19 A. This was applying to
20 registration under the supplier
21 coordination tariffs.

22 Q. And once again it's
23 indicated as market support generation
24 registration, is that correct?

25 A. That is what that slide

1 says, yes.

2 Q. Do you know what type of
3 claimants attended this workshop on
4 October 2nd?

5 A. Can you rephrase that
6 question, please?

7 Q. Do you know whether there
8 were aggregators in attendance at the
9 October 2nd workshop?

10 A. No, I do not know if there
11 were or were not aggregators in
12 attendance.

13 Q. Do you recall seeing Mr.
14 Murray? That would be Kevin Murray to
15 be accurate.

16 A. No, I do not.

17 Q. Do you recall seeing Sam
18 Randazzo?

19 A. No, I do not.

20 Q. Do you recall seeing anyone
21 from IEU?

22 A. No, I do not.

23 Q. You just don't recall is
24 your answer to all those, correct, as
25 opposed to they were not there?

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1 A. I do not recall seeing them.

2 Q. In your presentation of your
3 materials at this workshop, did you
4 indicate that there was a distinction
5 between registering for an aggregator
6 versus a marketer?

7 MR. KORKOSZ: Could we
8 hold right there for just a moment,
9 please?

10 (Discussion off record.)

11 (Record read)

12 Q. Let me clarify. That's the
13 October 2nd workshop, so we're all
14 clear.

15 A. I don't recall.

16 Q. In your mind is there a
17 distinction between registration for
18 approval of a claim for an aggregator
19 versus a marketer?

20 A. In my mind, yes, there is a
21 distinction.

22 Q. Tell me what that
23 distinction is.

24 A. I cannot say with any
25 specificity or put to words a

1 description of that distinction.

2 Q. Is it that the information
3 provided is different?

4 A. Can you be more specific,
5 please?

6 Q. Is the information for the
7 registration required for approval of a
8 claim different between an aggregator
9 versus a marketer?

10 A. I don't know if that's the
11 reason why I have that distinction in
12 my mind between those two entities.

13 Q. Well, there must be some
14 basis that you are making a distinction.

15 A. In my mind the reason there
16 is a distinction between those entities
17 is due to the fact that in the
18 stipulation in the FirstEnergy
19 transition case it spells out in one of
20 the first sentences of the market
21 support generation portion marketers,
22 aggregators and brokers.

23 Q. I realize there are three
24 different entities, but what I'm asking
25 is, is there a distinction in how their

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1 claims are approved, the process in
2 which their claims are approved?

3 A. I would have to say
4 physically approving the claim defined
5 as moving the status from a verified to
6 an approved isn't the same, but the
7 determination that an entity is eligible
8 to have that done, I don't know.

9 Q. Could you explain why you
10 don't know?

11 A. Because I was not the
12 individual and continue not to be the
13 individual to make that determination.

14 Q. Do you have knowledge about
15 the information that was reviewed to
16 make those determinations?

17 A. No, I don't.

18 Q. Let me have you turn to page
19 2 of Exhibit H, the slide marked as
20 market support generation notifications.
21 In the third bullet it indicates upon
22 verification the supplier will be
23 contacted and then the claim is to be
24 approved pending the execution of the
25 applicable service agreement. Do you

1 see that?

2 A. Yes, I do.

3 Q. Is that the service
4 agreement that has been filed at FERC?

5 A. I do not know.

6 Q. Okay. Do you know if
7 aggregators would be required to execute
8 the service agreement?

9 A. I do not know that, either.

10 Q. Do you know whether or not
11 IEU has executed a service agreement
12 that's referred to in your slide?

13 A. No, I don't.

14 Q. Do you know who might know
15 that?

16 A. No, I don't.

17 Q. Once the service agreement
18 is executed, who would have -- who
19 would maintain it at FirstEnergy?

20 A. I don't know.

21 Q. I believe you have testified
22 that you don't know whether or not a
23 supplier -- I'm sorry, an aggregator
24 would have to register under the
25 supplier tariff in order to have an MSG

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1 claim approved, is that correct?

2 THE WITNESS: Could I
3 have that question read back, please.

4 (Record read)

5 A. That is correct.

6 Q. If an aggregator were not
7 required to register under the supplier
8 tariff, an aggregator with an approved
9 MSG claim, would it be necessary for a
10 supplier who is registered under the
11 supplier tariff to become involved
12 before the MSG could flow?

13 A. I don't know.

14 Q. Okay. Did you have any
15 involvement in preparing the retail
16 electric tariff?

17 A. Can you be more specific in
18 that, please?

19 Q. Did you assist in the
20 preparation or the development of the
21 retail electric tariff? The retail, not
22 the wholesale.

23 MR. RUXIN: Just to
24 clarify, there are a lot of retail
25 tariffs.

1 MS. KAHN: Okay. PUCO
2 number 13.

3 THE WITNESS: Can you
4 read, please, the original question.

5 (Record read)

6 Q. That was filed in the
7 transition case.

8 A. Yes, I had minimal
9 involvement in that.

10 Q. Okay. What was that minimal
11 involvement?

12 A. I reviewed portions of it
13 for typographical errors on, I believe,
14 one occasion.

15 Q. Do you have any involvement
16 in the FirstEnergy web site supplier
17 list?

18 A. Minimal, yes.

19 Q. How is the information
20 gathered to, number one, create this
21 supplier list and then to update it?
22 How is it to create, let's start there.

23 A. The information is gathered
24 from the entities on the list.

25 Q. So the suppliers on the

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1 list, the information is gathered from
2 them, is that what your answer is?

3 A. Yes.

4 Q. And how is that gathered?

5 A. The applicants or other
6 parties involved in the retail electric
7 program who have submitted information
8 to FirstEnergy either to register under
9 the supplier tariff or to become an
10 eligible supplier under the protocol, if
11 those entities can be widely contacted
12 by a variety of customers and not
13 limited to a specific geographic
14 location, they're contacted and asked
15 the applicable information that appears
16 on that web site.

17 Q. And the web site indicates
18 that it is a list of suppliers
19 certified and registered or whose
20 registration is pending to sell
21 electricity in FirstEnergy's operating
22 company territories.

23 Is it your understanding
24 that merely being an eligible supplier
25 under the protocol could make you

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1 eligible to sell electricity?

2 A. I don't know.

3 Q. Do you know if it's
4 necessary to register under the supplier
5 tariff to be able to sell electricity?

6 A. No, I don't, I don't know
7 that.

8 Q. And do you know how the
9 determination is made on registration
10 status on the web site, whether or not
11 approved or pending is designated?

12 A. Yes, I do.

13 Q. And how is that
14 determination made?

15 A. For marketers, it is
16 completion of the registration process
17 under the supplier coordination tariff.

18 Q. And if you are not a
19 marketer, how is the determination made?

20 A. That I am unsure of.

21 Q. Do you have any input into
22 what registration status is designated
23 on the web site?

24 A. For marketers, yes, I do.

25 Q. So if an entity is merely

1 certified as an aggregator, then you're
2 not involved, is that correct? Is that
3 what you're answering?

4 A. I may be involved, but it is
5 passing the information along as opposed
6 to coordinating and making that
7 determination.

8 Q. As of February 5th, IEU was
9 listed on your web site that their
10 registration was pending. Can you
11 explain why they were designated as
12 having a pending registration?

13 A. No, I really cannot.

14 Q. Were you asked to provide
15 information with respect to IEU's status
16 of registration for the web site?

17 A. Yes, I was.

18 Q. And what information did you
19 provide?

20 A. I don't recall.

21 Q. So how is it that you recall
22 that you were asked?

23 A. I recall being asked, but I
24 do not recall how I learned of that
25 completion and in what manner I

1 forwarded that information to the
2 individual who does keep that web site.

3 Q. When you say completion,
4 what do you mean by completion?

5 A. That they were eligible to
6 be moved from a pending status to a
7 nonpending status.

8 Q. I'm not sure that they have
9 been. Are you aware that they have
10 been?

11 A. I don't recall with any
12 certainty.

13 Q. Do you keep records with
14 respect to information you provide to
15 those people who put together the web
16 site information?

17 A. No, I do not.

18 Q. Do you advise them in
19 writing?

20 A. Sometimes I do.

21 Q. Do you recall when the
22 questions were asked with respect to IEU
23 how you advised of the status to put
24 under registration?

25 MR. RUXIN: For purposes

1 of clarification, when you ask how do
2 you advise, do you mean the means by
3 which?

4 MS. KAHN: The means by
5 which. Thank you.

6 A. In this specific instance, I
7 do not recall the means by which I may
8 have on several occasions communicated
9 to the individual who does work on this
10 web site.

11 Q. When you communicate in
12 writing, is that by email?

13 A. Sometimes.

14 Q. Okay. Would there be a way
15 for a consumer looking at your web site
16 to know whether or not this is an
17 entity -- the registration is pursuant
18 to the supplier tariff?

19 A. I don't know.

20 - - - - -

21 (Thereupon, Deposition
22 Exhibit-I was marked
23 for purposes of
24 identification.)
25 - - - - -

1 Q. Before I do this, Mr.
2 Vaccaro was also a participant or
3 presenter I should say at the October
4 2nd workshop, is that correct?

5 A. Yes, it is.

6 Q. And did you stay for the
7 entire workshop?

8 A. Yes, I did.

9 Q. Let me hand you what's been
10 marked as Exhibit I, which to my
11 understanding is that this is titled
12 market support generation validation
13 criteria and that Mr. Vaccaro handed
14 this out at the October 2nd meeting.
15 Do you recall seeing this handout?

16 A. Yes, I do recall seeing this
17 handout.

18 Q. Could you turn to page 3,
19 please. Did Mr. Vaccaro describe this
20 handout as part of his presentation?

21 A. I don't remember.

22 Q. Okay. On page 3 under
23 customer contract table approval, number
24 2, it indicates that the supplier must
25 be an active supplier registered with

1 FE. Do you know what that means?

2 A. No, I don't.

3 MS. KAHN: I'm done.

4 Thank you very much.

5 MR. RUXIN: Ms. Kahn,
6 we have agreed to supplement certain
7 answers supplied by Mr. Burnell with
8 respect to material submitted by IEU in
9 connection with its application for
10 registration.

11 We have obviously not yet
12 had an opportunity to find the file and
13 review it. We do have a
14 confidentiality agreement with IEU and I
15 don't know whether anything in that
16 agreement reaches any of the material
17 which we would otherwise be obligated to
18 supply you. If --

19 MS. KAHN: Let me clarify.
20 I wasn't asking for the agreements, for
21 copies of them.

22 MR. RUXIN: I
23 understand.

24 MS. KAHN: I was merely
25 asking whether or not they were supplied

1 by IEU.

2 MR. RUXIN: I
3 understand.

4 MS. KAHN: Okay.

5 MR. RUXIN: I
6 understand, and I haven't attempted to
7 compare our confidentiality
8 understandings with what's there and
9 what we have otherwise agreed to supply.

10
11 What I was going to say
12 is if we determine that anything you
13 have inquired of which we have in our
14 possession and would be responsive to
15 your request is covered, what we will
16 propose to do is prepare the appropriate
17 confidentiality agreement for you to
18 execute on behalf of your client.

19 MS. KAHN: That's fine. I
20 just didn't want you to think that I
21 was asking for the actual documents.

22 MR. RUXIN: We
23 understood. It's just that without
24 looking at the stuff in the agreement,
25 I don't know the extent to which we're

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1 allowed to disclose even the existence
2 of some things.

3 MS. KAHN: That's fine.
4 When do you think you can supplement?
5 We can go off the record.

6 (Deposition concluded at
7 4:01 p.m.)

8 (Signature not waived.)

9 - - - - -

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1 CEFARATTI GROUP FILE NO. 4750

2 CASE CAPTION: ENRON ENERGY SERVICES AND
3 FIRST ENERGY CORP., ET AL.

4 DEPONENT: DOUGLAS S. BURNELL

5 DEPOSITION DATE: APRIL 12, 2001

6
7 (SIGN HERE)

8 The State of Ohio,)

9 County of Cuyahoga) SS:

10 Before me, a Notary Public in and
11 for said County and State, personally
12 appeared DOUGLAS S. BURNELL who
13 acknowledged that he/she did read
14 his/her transcript in the above-
15 captioned matter, listed any necessary
16 corrections on the accompanying errata
17 sheet, and did sign the foregoing sworn
18 statement and that the same is his/her
19 free act and deed.

20 IN TESTIMONY WHEREOF, I have
21 hereunto affixed my name and official
22 seal at _____, this _____
23 day of _____, A.D. 2001.

24 _____
25 Notary Public Commission Expires

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ERRATA SHEET

<u>PAGE</u>	<u>LINE</u>	<u>CORRECTION</u>
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CERTIFICATE

State of Ohio)

SS.:

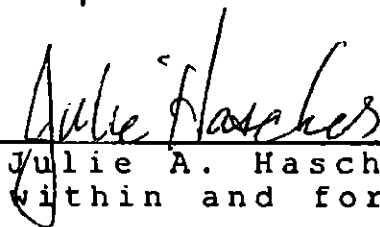
County of Cuyahoga)

I, Julie A. Hascher, a Notary Public within and for the State of Ohio, duly commissioned and qualified, do hereby certify that the within named witness, was duly sworn to testify the truth, the whole truth and nothing but the truth in the cause aforesaid; that the testimony then given by the witness was by me reduced to stenotypy in the presence of said witness; afterwards transcribed, and that the foregoing is a true and correct transcription of the testimony so given by the witness.

I do further certify that this deposition was taken at the time and place in the foregoing caption specified.

I do further certify that I am not a relative, counsel or attorney for either party, or otherwise interested in the event of this action.

IN WITNESS WHEREOF, I have hereunto set my hand this 13th day of April, 2001.


Julie A. Hascher, Notary Public
within and for the State of Ohio

Commission expires November 3, 2004.

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**FirstEnergy Corp.
Market-Based Rate Wholesale Power Sales Tariff
(MRT)**

**Revised Tariff Sheets
To Implement Sales of
Market Support Generation
And
Loss Free, Non-Market Support Generation
(Clean Version)**

01-293-FL-SS

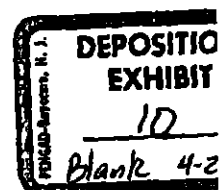


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ATTACHMENT E: Form of Service Agreement for Sales of Market-Support Generation and Loss Free, Non-Market Support Generation Under the Ohio Retail Electric Program

2.03 Applicant: An entity that has submitted a complete Application to enter into a Service Agreement under this Tariff.

2.04 Application: An application for service under this Tariff in the form attached hereto as Attachment A.

2.05 Authorized Representative: The person(s) designated in writing by the Parties to enter into Transactions under their Service Agreement(s).

2.06 Book-Out: An agreement whereby the Parties, and/or third parties, are relieved of their respective obligations to deliver and receive Electric Service under Transaction(s) without physical delivery of Electric Service.

2.07 Bulk Power Group: The organization within FirstEnergy that performs wholesale merchant function activities on behalf of the FirstEnergy Operating Companies.

2.08 Business Day: Any day on which Federal Reserve member banks in New York City are open for business.

2.09 Buyer: The Party to a Transaction that is obligated to purchase Power during the Period of Delivery specified for that Transaction.

2.10 Capacity: The resource that produces electric energy, measured in megawatts.

2.11 Certificate of Concurrence: A certificate, in the form annexed to the Service Agreement appended hereto as Attachment B, executed by a Customer that wishes to engage in exchange Transactions under this Tariff.

2.12 Confirmation Letter: A written notice setting forth the terms of a Transaction substantially in the form annexed hereto as Attachment C or in Attachment E.

2.29 Interest Rate: The lesser of Prime Rate plus two percent and the maximum lawful rate permitted by applicable law.

2.30 Loss Free, Non-Market Support Generation: System-level generation made available by FirstEnergy or third party suppliers for which FirstEnergy will supply losses during the months of September through May for energy delivered to Ohio retail customers of The Cleveland Electric Illuminating Company, Ohio Edison Company, and The Toledo Edison Company in accordance with the Supplemental Settlement Materials approved by the Public Utilities Commission of Ohio in its July 19, 2000 Opinion and Order in Case No. 99-1212-EL-ETP, et al.

2.31 Market-Support Generation: System-level generation made available by FirstEnergy pursuant to the terms of (1) the Stipulation and Recommendation and (2) the Supplemental Settlement Materials filed with the Public Utilities Commission of Ohio on April 17, and May 9, 2000, respectively, in PUCO Case No. 99-1212-EL-ETP.

2.32 Month: All of the days in any calendar month, or if a reservation starts on any day other than the first day of the month, the number of days remaining in the month in which the reservation commences.

2.33 NERC: The North American Electric Reliability Council, or its successor.

2.34 Off-Peak: Unless otherwise agreed by the Parties, any hour not falling within the On-Peak period.

2.35 On-Peak: Unless otherwise agreed by the Parties, any hour during the period starting 7:00 a.m. and ending 11:00 p.m. prevailing time in Akron, Ohio, of each day except all hours on Saturday and Sunday and the days on which the following holidays are generally

observed: New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day and Christmas Day.

2.36 Option Transaction: An agreement under which one Party (the "Holder") acquires for a purchase price (the "Premium") the right (an "Option"), but not the obligation, to purchase from or sell to the other Party (the "Grantor") an agreed Contract Quantity for a specified price (the "Strike Price"), duration, and Delivery Point, by exercising such right prior to a specified time on an agreed date (the "Expiration Date"). An Option Transaction under which the Buyer has the right to purchase Electric Service is a "Call Option." An Option Transaction under which the Buyer has the right to required Electric Service to be purchased is a "Put Option." For purposes of this Tariff, an Option Transaction that has been exercised shall be deemed to be a Transaction.

2.37 Out-of-Pocket Costs (OPC): As it applies to Transactions under this Tariff, all expenses incurred by FirstEnergy that would not otherwise have been incurred if the Transaction had not been arranged. Such expenses include, but are not limited to, costs associated with fuel, variable operation, variable maintenance, startup, shutdown, minimum run, taxes, minimum load, SO₂, and other emission allowances, transmission losses, charges for any Capacity and Energy purchased, or charges of a similar or dissimilar nature, which are reasonably allocated by FirstEnergy to such a Transaction. In no event shall such costs include charges for transmission services provided by FirstEnergy.

2.38 Period of Delivery: The period of time measured from the date deliveries commence under a Transaction through the date deliveries are to terminate under a Transaction.

2.39 Power: Either or both electric capacity and energy expressed in megawatts and megawatt hours.

2.40 Party or Parties: FirstEnergy and the Customer that has executed a Service Agreement under this Tariff.

2.41 Prime Rate: For any date, the per annum rate of interest announced from time to time by The Chase Manhattan Bank as its "prime" rate for commercial loans, effective for such date.

2.42 Schedule, Scheduled, or Scheduling: Communicating and confirming, with a Buyer, transmitting utilities, and Seller, that a specified amount of Electric Service is to be made available, delivered, or received and providing all such information, and satisfying all such requirements, as may be necessary, to cause such Buyer, transmitting utilities, and Seller to recognize and confirm the delivery or receipt of the Electric Service.

2.43 Seller: The Party to a Transaction that is obligated to sell Electric Service during the Period of Delivery specified for that Transaction.

2.44 Service Agreement: An umbrella agreement, forms of which are shown as Attachments B and E to this Tariff, and any amendments or supplements thereto, entered into by Customer and FirstEnergy for Transactions under the Tariff.

2.45 Tariff: This Market-Based Rate Wholesale Power Sales Tariff (MRT), including the Service Agreements and attachments appended hereto, as they may be amended from time to time.

2.46 Tolling Agreement: A Transaction under this Tariff where fuel is exchanged for Electric Service.

2.47 Transaction: Each separate arrangement for the supply of Electric Service by

FirstEnergy to a Customer under the rates, terms, and conditions of the Tariff, Service Agreement, and Confirmation Letter between the Parties. A Transaction shall not be deemed complete until the Parties have satisfied their respective obligations and responsibilities related to the Transaction arising under this Tariff.

2.48 Week: Unless otherwise agreed by the Parties, the seven day period commencing at 12:00 midnight on Sunday.

2.49 Year: Any twelve month period ending at twelve o'clock midnight on the eve of the one-year anniversary of its starting date.

ARTICLE III SERVICE AGREEMENTS

3.01 Prerequisite to Service. In order for a Customer to take Electric Service under this Tariff, a Service Agreement must be executed by FirstEnergy and the Customer and filed, as required, with FERC. The Customer will cooperate with FirstEnergy and provide information necessary for FirstEnergy to proceed with any such required filing. FirstEnergy will tender the Service Agreement for filing with FERC, as required, in accordance with FERC rules and requirements.

3.02 Effective Date. Electric Service provided under this Tariff shall become effective on the date specified in the Service Agreement, or on such other date as assigned by FERC.

3.03 Termination. A Service Agreement may be terminated by either Party upon thirty (30) days' prior written notice, provided, however, that the Service Agreement will remain in effect until all Transactions previously agreed upon or entered into are completed.

ARTICLE IV SERVICES TO BE RENDERED

4.01 Electric Service. All Transactions between the Parties other than Transactions involving sales of Market Support Generation shall be at negotiated rates, subject to Service Schedules A and B, between Buyer and Seller. Sales of Market-Support Generation shall be at rates set forth in the Form of Confirmation Letter for Market Support Generation annexed hereto as Attachment E. All Transactions shall be subject to the availability of Electric Service and of transmission service necessary to complete the Transaction. Neither Party commits, by entering into a Service Agreement, to enter into any individual Transaction with the other Party. No undertaking by one Party to the other under any provision of this Tariff or Service Agreement shall be deemed to constitute the dedication of its system or any portion thereof to the public or to the other Party, and it is agreed that any undertaking to perform a Transaction by any Party shall cease upon completion of the Transaction

4.02 Tolling Agreements. The Parties may agree to supply fuel in exchange for Electric Service. At the time the Parties enter into a Transaction, FirstEnergy and the Customer will agree on the value of the delivered fuel and a negotiated price for Electric Service. All such Tolling Agreements will be documented in a Confirmation Letter.

4.03 Option Transactions. FirstEnergy and the Customer may agree to enter into an Option Transaction. Before engaging in a particular Option Transaction, the Parties will agree upon the Strike Price, the Premium, and the date on which it is paid (which, unless otherwise agreed, will be three Business Days from the date on which the Parties enter into the Option Transaction), the Expiration Date, and the terms of the underlying Transaction. All such Option Transactions will be documented in a Confirmation Letter. Upon exercise of an Option by the

FirstEnergy Corp.

Market-Based Rate Wholesale Power Sales Tariff (MRT)

) First Revised Sheet No. 11

Superseding Original Sheet No. 11

Effective March 6, 2001

Holder, a Firm Transactions will occur between the Parties.

4.04 Terms and Conditions. FirstEnergy will sell Electric Service under this Tariff when FirstEnergy and a Customer have reached agreement on the rates, terms, and conditions, including priority and firmness of service, for a specific Transaction. Such rates, terms, and conditions shall be in conformance with any requirements of this Tariff and the Parties' Service Agreement.

ARTICLE V ELIGIBILITY FOR SERVICE

5.01 Application. Before a Customer takes Electric Service under this Tariff, it must enter into a Service Agreement with FirstEnergy. To apply for service, a Customer must complete and submit an Application, in the form attached hereto as Attachment A, to the following

Manager, Wholesale Energy Transactions
FirstEnergy Corp.
395 Ghent Road
Akron, OH 44333

or such other person as may be designated in writing by FirstEnergy from time to time.

5.02 Creditworthiness and Security. To determine the ability of the Customer to meet its obligations related to service hereunder, FirstEnergy may subject the Customer's Application to reasonable credit review procedures. In addition, FirstEnergy may require a Customer to provide and maintain in effect during the term of the Service Agreement an unconditional and irrevocable letter of credit, a parental guaranty, or an alternative form of security acceptable to FirstEnergy and consistent with commercial practices that protects FirstEnergy against the risk of the Customer's non-payment. FirstEnergy reserves the right to request the Customer to submit to FirstEnergy updated financial information to permit FirstEnergy to evaluate the Customer's creditworthiness on an on-going basis.

If the Customer fails to meet FirstEnergy's credit review standards or provide one of the payment guarantee options above, FirstEnergy may refuse to provide Electric Service or discontinue Electric Service until such time as FirstEnergy is assured of the Customer's ability to pay.

FirstEnergy may request any other information that it requires to evaluate the Customer's Application or continued eligibility for service.

5.03 Limitation. FirstEnergy is not required to enter into a Service Agreement with a potential customer and may suspend Electric Service hereunder if the Customer commits or experiences an Event of Default as defined in Article XVII of this Tariff, provided, however, that FirstEnergy may continue to provide Electric Service if the Customer pays for such Electric Service.

ARTICLE VII AVAILABILITY AND SALE OF CAPACITY AND/OR ENERGY

7.01 General. At any time during the term of an executed Service Agreement, Seller may notify Buyer that Electric Service is available for sale or exchange. The terms and conditions for any Transaction shall be in accordance with this Tariff and as otherwise agreed to by the Parties in advance of the Transaction.

7.02 Authorized Representatives. Each Party shall designate one or more Authorized Representatives who shall be authorized to act on its behalf with respect to those matters set forth herein which are the functions and responsibilities of the Authorized Representatives; within thirty days after execution of a Service Agreement, each Party shall give written notice to the other Party of its designation. All arrangements for Transactions shall be made between the Authorized Representatives of the Seller and the Buyer. Authorized Representatives shall have no authority to unilaterally modify any of the provisions of this Tariff, a Service Agreement, or a Confirmation Letter.

7.03 Confirmation of Transaction Terms and Conditions. Except as set forth in Section 7.04, the specific terms of a Transaction to be established by the Parties for each Transaction shall be documented in a written Confirmation Letter, substantially in the form annexed hereto as Attachment C or in Attachment E, as appropriate, executed by the Parties prior to commencement of the Transaction. Seller shall document in a Confirmation Letter the terms and conditions of each Transaction of more than one day in duration and telecopy it to the Buyer by the next business day after reaching verbal agreement, and prior to the commencement of the Transaction. The Confirmation Letter associated with each Transaction shall constitute an integral part of the Service

Agreement and shall be read and construed as one with the Service Agreement and this Tariff. Except with respect to sales of Market Support Generation, any conflict not reasonably capable of reconciliation, among this Tariff, a Service Agreement, and a Confirmation Letter shall be resolved in favor of the Tariff. Conflicts between this Tariff and an executed Service Agreement for Sales of Market Support Generation and Loss Free, Non-Market Support Generation that is substantially in the form annexed hereto in Attachment E shall be resolved in favor of the Service Agreement.

7.04 Short-Term Transactions. To meet the needs of the Parties, the Parties' Authorized Representatives may verbally agree on terms and conditions for Transactions which do not exceed one day (twenty-four hours). The terms and conditions of such Transactions agreed to by the authorized Representatives shall be those terms contained in a tape recording of the Authorized Representatives in which they agree to said terms and conditions. Such Transactions shall promptly be confirmed in writing by the Authorized Representatives if requested by either Party.

7.05 Recording. Each Party consents to the recording of all telephone conversations between its Authorized Representatives and agrees to obtain any necessary consent from, and give notice of such recording to, its Authorized Representatives. Any properly authenticated recordings of such telephone conversations may be introduced as evidence in any legal proceeding to establish proof of any matter relating to a Transaction under this Tariff. The Parties agree not to contest or assert any defense to the validity or enforceability of a Transaction established by properly authenticated recordings of telephone conversations under laws relating to whether certain agreements are to be in writing and signed by the Party to be bound thereby.

7.06 Emergency Curtailment or Interruption. In the event of sudden or emergency curtailment or interruption of Transactions hereunder, the Party experiencing or affected by such interruption or curtailment shall so notify the other Party's schedulers or dispatchers, and any third party involved with the delivery of Electric Service pursuant to a Transaction, in as timely a manner as possible.

the charges were incurred. Unless otherwise agreed by the Parties, bills will be electronically transmitted to the Customer, to be followed by a mailed invoice.

12.02 Payment Date. Unless otherwise agreed by the Parties, when prepayment is not required, payment will be due and payable not later than the first business day following the nineteenth day of the month (the "Payment Date"). Unless otherwise agreed in writing, all payments must be wire transferred to an account designated in writing by FirstEnergy from time to time.

12.03 Netting of Payments. Notwithstanding any provisions of the Service Agreement to the contrary, if Electric Service is sold by a Party to the other Party in the same calendar month, then at least three days prior to the Payment Date the Parties shall confer by telephone and compare and confirm amounts owed to each other. Any difference resulting after offsetting the total amount each Party owes to the other Party shall be paid by wire transfer to the Party owing the net amount. Each Party shall in good faith calculate and use best efforts to agree upon the net amount of the monthly bill.

12.04 Failure to Pay. In the event the Customer fails to make full payment of a bill rendered under the Tariff on or before the Payment Date, FirstEnergy will notify the Customer of the delinquency (by mail, fax, or e-mail), and the Customer will have five (5) days from the date of receipt of such notification to resolve its delinquency. If the Customer fails to make full payment of the delinquent amount (including interest accrued at the Interest Rate) within this five (5) day period, FirstEnergy shall have the following right: to suspend Electric Service under the Parties' Service Agreement and this Tariff; to terminate service pursuant to FERC regulations; and to pursue all available remedies for the collection of unpaid amounts owed to FirstEnergy by the Customer.

ATTACHMENT E

**FirstEnergy Corp.
Market-Based Rate Power Sales Tariff
(MRT)**

**Form of Service Agreement
For Sales of Market-Support Generation
And
Loss-Free, Non-Market Support Generation
Under the Ohio Retail Electric Program**

By e-mail

February 14, 2001

Dear Marketers:

Enclosed is the latest revision of the Form of Service Agreement for the Sale of Market Support Generation under the Market-Based Rate Tariff of FirstEnergy Corp. We have made some changes to incorporate your additional comments, and have also tried to clarify terminology used to refer to the SES Scheduling Website, Loss Free, nonMSG Power and nonMSG Power. We have also added language making it clear that the Certified Supplier is responsible for obtaining Point-to-Point Transmission Service necessary to sell MSG Power outside of the FirstEnergy control area. These changes are redlined from the previous draft.

Also attached to this message is the numerical example requested by WPS to illustrate the annual minimum bill under Appendix A, Part B, Section 3e. Please call me if you have questions about this example. In response to Bricker & Eckler's question as to whether a certified supplier may submit a single confirmation letter for batches of retail customers with the same rates and terms, the answer is yes.

While we have considered all the proposed changes, we do not believe that many of the changes are appropriate for the reasons previously stated. We intend to file the revised form of service agreement and any necessary tariff changes with FERC as soon as practical, and will request a waiver of FERC's sixty day notice period to permit an earlier effective date for the MSG program. We will serve copies of this filing on each of you. Your support of this filing with the FERC would be appreciated.

David M. Blank
Manager, Rate Department
FirstEnergy Corp.
330-384-5451



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Confidential Draft of February 14, 2001

**FIRSTENERGY CORP.
MARKET-BASED RATE WHOLESALE
POWER SALES TARIFF (MRT)**

**FORM OF SERVICE AGREEMENT
for
SALES OF MARKET SUPPORT GENERATION
under
THE OHIO RETAIL ELECTRIC PROGRAM**

THIS SERVICE AGREEMENT, made and entered into this ____ day of _____, 2001, by and between [Name of Customer] (hereinafter referred to as "Customer" or "Certified Supplier"), a [Legal/Corporate Description of Customer], and FirstEnergy Corp., as Agent for Ohio Edison Company, The Cleveland Electric Illuminating Company, Pennsylvania Power Company, and The Toledo Edison Company (hereinafter referred to as "FirstEnergy Operating Companies" or). Customer and the FirstEnergy Operating Companies are sometimes hereinafter referred to individually as "Party" and collectively as "Parties" where appropriate.

W I T N E S S E T H :

WHEREAS, Customer is a (description of Customer) and is a competitive retail electric supplier certified by the Public Utilities Commission of Ohio ("Certified Supplier") that has qualified for the purchase of Market Support Generation or Loss Free, Non-Market Support Generation under the Ohio Retail Electric Program of the FirstEnergy Operating Companies;

WHEREAS, FirstEnergy Corp., an Ohio corporation, is acting as agent for the FirstEnergy Operating Companies in administering Service Agreements pursuant to the FirstEnergy Operating Companies FERC Electric Tariff, Original Volume No. 2, Market-Based Rate Wholesale Power Sales Tariff; (Tariff) and

WHEREAS, Customer and the FirstEnergy Operating Companies desire to establish terms and conditions of Market-Based Rate Wholesale Power Sales Service upon which utility operations may be conducted under the Tariff.

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, the Parties hereto covenant and agree as follows:

ARTICLE 1
SCOPE OF SERVICE AGREEMENT

1.1 Availability - FirstEnergy Operating Companies agree to furnish Power to Customer and Customer agrees to purchase and pay for such service subject to conditions of service outlined in the Tariff and this Service Agreement.

1.2 Rate Schedule - The terms and conditions on which the Market-Based Rate Wholesale Power Service is offered and accepted are pursuant to the Tariff or as the same may be amended or superseded due to appropriate filings from time to time with the Federal Energy Regulatory Commission ("FERC") or such other agency as may have jurisdiction. The Tariff in effect at any time is hereby incorporated by this reference and made a part of this Service Agreement. Capitalized terms shall have the meaning ascribed to them in the Tariff, unless otherwise defined in this Service Agreement.

ARTICLE 2
SCHEDULING

2.1 Schedules - Scheduling of Power under this Tariff shall be conducted pursuant to the terms of the Protocol for Market Support and Non-Market Support Generation Scheduling and Billing attached hereto as Appendix A.

ARTICLE 3
TERM OF AGREEMENT

3.1 Agreement Term - This Service Agreement shall become effective upon the date of its execution, or if necessary, approval by the FERC, or any successor regulatory agency having jurisdiction. This initial term of this Service Agreement shall commence on _____

and shall terminate on _____. Thereafter, this Service Agreement shall continue for successive annual terms until terminated by either Party giving the other Party written notice of termination of this Service Agreement, but in no event shall the Service Agreement continue beyond December 31, 2005. Such written notice of termination must be given at least 30 days prior to the intended date of termination.

3.2 After Termination - The applicable provisions of this Service Agreement shall continue in effect after termination thereof to the extent necessary to provide for final billing, billing adjustments and payments.

ARTICLE 4
BILLING AND PAYMENTS

4.1 Payment of Bills – Billing and payments under this Tariff shall be conducted pursuant to the terms of Appendix B, Certified Supplier Billing Terms and Conditions.

4.2 Customer Billing Address - All billings to the Customer shall be sent to:

4.3 FirstEnergy Operating Companies Billing - All questions concerning the billings and payments of invoices under this Service Agreement shall be directed to the following:

Administrator, Supplier Support Services
FirstEnergy Corp.
76 South Main Street Attn: CAN
Akron, OH 44308
Voice (330) 437-1301
FAX (330) 437-1319

ARTICLE 5
MISCELLANEOUS

5.1 Governing Law - The validity, interpretation and performance of this Service Agreement and each of its provisions shall be governed by the laws of the State of Ohio.

5.2 Notices Relating to Provisions of Service Agreement - Any notice, request, demand, or statement which may be given to or made upon either Party by the other Party under any of the provisions of this Service Agreement shall be in writing, unless specifically provided otherwise, and shall be considered delivered when the same is either: (i) personally delivered to the representative of the Party designated below; (ii) deposited in the United States mail, by certified mail, postage prepaid; or (iii) sent by a nationally recognized overnight delivery service, such as, Federal Express and properly addressed to the Party to be served as follows:

To Customer:

[Insert Customer Language Here]

To FirstEnergy Operating Companies:

Administrator, Supplier Support Services
FirstEnergy Corp.
76 South Main Street Attn: CAN
Akron, OH 44308
Voice (330) 437-1301
FAX (330) 437-1319

5.3 Notices of an Operating Nature - Any notice, request or demand pertaining to matters of an operating nature, which matters do not include requests for additional transmission service or modified transmission service under a FirstEnergy FERC transmission tariff, may be served in person or by United States mail, messenger, telephone, telegraph, facsimile transmission or orally.

as circumstances dictate, to the person designated in writing by the Party as its representative for such purposes; provided that should the notice not be written, confirmation thereof shall be made in writing as soon as reasonably practicable thereafter, upon request of the Party being served.

5.4 Section Headings Not to Affect Meaning - The descriptive headings of the various sections of this Service Agreement have been inserted for convenience of reference only and shall in no way define, modify or restrict any of the terms and provisions thereof.

5.5 Further Assurances - From time to time after the execution of this Service Agreement, the Parties may execute such instruments, upon the request of the other, as may be necessary or appropriate, to carry out the intent of this Service Agreement.

5.6 Execution Date of Agreement - The Execution Date of this Service Agreement shall be the date appearing at the beginning of this Service Agreement.

5.7 Amendments - This Service Agreement may be amended upon mutual agreement of the Parties, which amendment shall be reduced to writing and executed by both Parties.

5.8 Severability - In the event any of the terms, covenants or conditions of this Service Agreement, or any amendment hereto, or the application of any such terms, covenants or conditions shall be held invalid as to any Party or circumstance by any Court having jurisdiction, all other terms, covenants and conditions of this Service Agreement or any amendment hereto and their application shall not be affected thereby and shall remain in full force and effect.

5.9 Computation of Time - In computing any period of time prescribed or allowed by this Service Agreement, the day of the act, event or default from which the designated period of time begins to run shall not be included. The last day of this period so computed shall be included unless it is a Saturday, Sunday or legal holiday, in which event the period shall run until the end of the next business day which is neither a Saturday, Sunday or legal holiday. For purposes of the

administration of this Service Agreement, the prevailing time in effect is the prevailing time in Akron, Ohio.

5.10 Limitation - This Service Agreement is not intended to and shall not create rights of any character whatsoever in favor of any persons, corporation, associations, or entity other than the Parties to this Service Agreement, and the obligations herein assumed are solely for the use and benefit of the Parties to this Service Agreement, their successors in interest or assigns.

5.11 No Dedication of Facilities - Any undertaking by one Party to the other under any provisions of this Service Agreement shall not constitute the dedication of the electric system, or any portion thereof, of any Party to the public or to the other Party, and it is understood and agreed that any such undertaking by any Party shall cease upon termination of this Service Agreement.

5.12 Interconnection with Other Systems - Nothing contained in this Service Agreement shall restrict or limit either Party from establishing, altering or terminating interconnection points with any entity not a party to this Service Agreement or amending or entering into such agreements.

5.13 No Partnership - Notwithstanding any provisions of this Service Agreement to the contrary, the Parties do not intend to create hereby a joint venture, partnership, association taxable as a corporation, or other entity for the conduct of any business for profit, and any construction of this Service Agreement to the contrary which has an adverse tax effect on either Party shall render this Service Agreement null and void from its inception.

5.14 Waivers - Any waiver at any time by either Party of its rights with respect to a default under this Service Agreement, or with respect to any other matter arising in connection with this Service Agreement, shall not be deemed a waiver with respect to any other or subsequent default or matter.

5.15 Entire Agreement - The Tariff and this Service Agreement constitutes the entire agreement between the Parties with respect to the subject matter hereof, and there are no other understandings or agreements between the Parties with respect thereof. No previous or contemporary representation or agreement made by an officer, agent or employee of the Customer, or the FirstEnergy Operating Companies shall be binding upon either Party unless contained herein.

5.16 Representations and Warranties - On the Execution Date of this Service Agreement and on the date of entering into each Transaction, Customer represents and warrants to the FirstEnergy Operating Companies that: (a) it is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation and is qualified by it; (b) it has all regulatory authorizations necessary for it to legally perform its obligations under this Service Agreement and any other documentation relating to this Service Agreement or such Transaction; (c) the execution, delivery and performance of this Service Agreement and any other documentation relating to this Service Agreement or such Transaction are within its powers, have been duly authorized by all necessary action and do not violate any of the terms and conditions in its governing documents, any contracts to which it is a party or any law, rule, regulation, order or similar provision applicable to it; (d) this Service Agreement and each other document executed and delivered in accordance with this Service Agreement constitutes its legally valid and binding obligations enforceable against it in accordance with its terms; (e) there are no bankruptcy proceedings pending or being contemplated by it or, to its knowledge, threatened against it; (f) there is not pending nor, to its knowledge, threatened against it or any of its affiliates, any legal proceedings that could materially adversely affect its ability to perform its obligation under this Service Agreement or any other document relating to this Service Agreement to which it is a party; (g) no Event of Default or event which, with the giving of notice or lapse of time, or both, would constitute an Event of Default with respect to it has occurred and is continuing and no such event or circumstance would occur

FirstEnergy Corp.
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as a result of its entering into or performing its obligations under this Service Agreement or any other document relating to this Service Agreement or any Transaction; and (h) it is acting for its own account, has made its own independent decision to enter into each Transaction and as to whether each such Transaction is appropriate or proper for it based upon its own judgment, is not relying upon the advice or recommendations of the other Party in so doing, and is capable of assessing the merits of and understanding and understands and accepts, the terms, conditions and risks of each such Transaction.

IN WITNESS WHEREOF, the duly authorized representatives of Customer and the FirstEnergy Operating Companies have executed this Agreement as of the date first above written.

FIRSTENERGY CORP.

Signature: _____

Name/Title: _____

Date: _____

CUSTOMER

Signature: _____

Name/Title: _____

Date: _____

Appendix A

PROTOCOL FOR MARKET SUPPORT AND NON-MARKET SUPPORT GENERATION SCHEDULING AND BILLING

PART A – SCHEDULING

The Certified Supplier must submit a separate schedule for Market Support Generation ("MSG"), Loss-Free, nonMSG/~~(Loss-Free)~~, and nonMSG Power. ~~and Regular. Regular scheduling shall be for all capacity other than claimed MSG and nonMSG and shall follow the current Open Access Transmission Tariff.~~ All scheduling must also be made through the FirstEnergy SES Scheduling Website, and is subject to the relevant provisions of the applicable Open Access Transmission Tariff.

MSG will not require the submittal of an Etag for scheduling within the Company's control area. However, an Etag will be required for a MSG Capacity Factor excess power transaction, scheduled to be sold outside the Company's control area and for Loss-Free, nonMSG ~~(Loss-Free)~~. Where MSG is sold outside of the Company's control area, the Certified Supplier is responsible for reserving and purchasing the Point-to-Point transmission service necessary to deliver MSG to the interconnection designated as the Point of Delivery.

Section 1 – Load Following

- 1.a If the approved MSG claim is for Load Following, it must be used to serve the Customer's entire load.
- 1.b Load Following will not require scheduling or load factor commitment with the Company and will be treated similar to the Company's native load.

Section 2 – Capacity Factor

- 2.a If the approved MSG claim is for Capacity Factor, it may be used to serve either the Customer's entire load or a portion of the Customer's load.
- 2.b All Certified Suppliers must submit a capacity election for the aggregate of its retail customers, by class, no later than the 25th of the month before scheduled use of the MSG capacity in the following month. This election shall be the basis for the minimum monthly and annual bills. Customer classes shall be defined as Residential, Commercial less than 30kW, All Other Commercial, and Industrial.
- 2.c All Certified Suppliers must maintain at least 12 monthly schedules on the ~~power~~ SES Scheduling Website in advance of capacity usage for each month that the Certified Supplier has an approved Capacity Factor claim. The intent of this requirement is to assist the Company in power supply planning. Therefore, the schedules submitted should reflect the projected hourly load levels of the retail customers being served as

closely as possible. The Company will audit the schedules submitted to ensure this intent is being fulfilled.

- 2.d All schedules must be submitted on a 365-day by 24-hour aggregated schedule.
- 2.e Schedules may be submitted to the tenth of a MW for each retail customer class; however, the Company will summarize the retail customer class schedules by Certified Supplier and round to the nearest whole MW for purposes of imbalance calculations.
- 2.f If Capacity Factor is elected for all or a part of the retail customer's load, the Certified Supplier may resell the scheduled MW per hour if the retail customer does not take all the Ppower. The Certified Supplier shall pay the same price for the MW per hour, whether taken by the retail customer or not.
- 2.g If the Certified Supplier decides to sell excess Power outside the Company control area, a sale schedule through the Company's SES Scheduling Website and an Etag must be submitted. The Certified Supplier is also responsible for reserving and purchasing the Point-to-Point transmission service necessary to deliver MSG to the interconnection designated as the Point of Delivery.
- 2.h The Certified Supplier will be required to schedule between 0 and 100% of the elected capacity by retail rate class.

Section 3 – Loss-Free, NonMSG - ~~Loss-Free~~

- 3.a All scheduling of approved claims for Loss-Free, nonMSG/~~(Loss-Free)~~ shall be made through the FirstEnergy SES ~~Power~~ Scheduling Website, and in accordance with the ~~company's~~ applicable Open Access Transmission Tariff. An Etag must be submitted.

Section 4 – Company Approval of the Schedule

4.a MSG Schedules

The Company shall review the Certified Supplier's schedule for MSG and take the following actions if the schedule is not in compliance with this Service Agreement:

4.a.1 ~~If the Certified Supplier does not have an approved MSG claim for any one retail customer, the Certified Supplier's entire schedule shall be deemed a Regular nonMSG schedule, and an Etag schedule must be submitted.~~ In any one hour, if the Certified Supplier's monthly election and schedule exceeds the aggregated retail customers' historic peak load for any month in the same season from the historic year, the Company will not allow the schedule to be submitted.¹ If there is no historic usage available for the retail customers that are included in the schedule, the Company shall proceed to the step below for approval.

4.a.2 In any one hour, if the Certified Supplier's monthly election and schedule exceeds the approved MSG claimed amount, the Company will not allow the schedule to be submitted.

¹ A season shall be defined as follows in any given year: Summer – June, July, August; Fall – September, October, November; Winter – December, January, February; Spring – March, April, May

4.a.3 If, any one hour, the Certified Supplier's schedule exceeds that particular month's election then the Company will not allow the schedule to be submitted.

The Company shall review all schedule changes and not accept the changes if they do not comply with this Service Agreement as specified below:

4.a.4 The percentage change of capacity scheduled daily during off-peak periods must be the same percentage change of capacity scheduled daily during on-peak periods, except for increases in capacity for the off-peak period only.² On and off-peak periods shall have the same definition as provided for in the applicable Open Access Transmission Tariff, which specifies that on-peak hours are 7am to 11pm Monday through Friday except legal holidays listed in the Open Access Transmission Tariff. Off-peak hours are all hours not designated as on-peak.

4.a.5 The hourly schedule may be changed on a day ahead basis, as long as the minimum and maximum capacity percentages are maintained.

4.b Loss Free, NonMSG Schedules – ~~Loss Free~~

The Company shall review the Certified Supplier's schedule for Loss Free, nonMSG and take the following actions if the schedule is not in compliance with this Service Agreement (Note: Etags must always be submitted).

4.b.1 If the Certified Supplier does not have an approved Loss Free, nonMSG claim for any one retail customer, the Certified Supplier's entire schedule shall be deemed as a regular nonMSG schedule.

4.b.2 If the Certified Supplier's monthly schedule exceeds the approved Loss Free, nonMSG claim amount, the Company will not allow the schedule to be submitted.

PART B- BILLING

Section 1 – Load Following

- 1.a The Company shall bill the Certified Supplier for all kWh measured at the meter and used by the Certified Supplier, at the MSG price up to the aggregated retail customer's historic annual peak load. For all usage above the aggregated retail customer's historic annual peak (aggregated by Certified Supplier), load following imbalances shall apply.
- 1.b The Company shall bill the Certified Supplier in accordance with Appendix B of this Service Agreement.

² In the event that the original schedule for either period is zero, the change for that period must be equal to the incremental amount that was added to the alternate period. If the alternate period was adjusted downward, the zero period shall remain zero.

Section 2 – Loss Free, NonMSG – ~~Loss-Free~~

- 2.a The Company shall bill the Certified Supplier for imbalances as specified in the Company's applicable Open Access Transmission Tariff taking into account the treatment of losses for Loss Free, non-MSG as specified in this Service Agreement.

Section 3 – Capacity Factor

- 3.a The Company shall bill the Certified Supplier for all scheduled MW per hour in accordance with its existing Certified Supplier billing practices and at the MSG price. All imbalances shall apply for Power used in excess of or less than the scheduled MW per hour. Imbalances shall be billed in accordance with the relevant provisions of the applicable Open Access Transmission Tariff.
- 3.b For Capacity Factor schedules that include more than one of the FirstEnergy Operating Companies, MW per hour shall be allocated to each FirstEnergy Operating Company at the same percentage as the Certified Supplier's allocation in its original claim.
- 3.c The Certified Supplier shall be obligated to take or pay for at least the monthly minimum capacity factor and imputed annual usage specified below.
- 3.d On a monthly basis, the schedule must be between the minimum and maximum capacity factor multiplied by the number of hours in the month (i.e. elected capacity x capacity factor between min and max x hours in the month). Minimum capacity factor shall be used to determine a minimum bill. Minimum MW per hour measured monthly shall be 60% of the elected capacity for residential and small commercial customers, 70% for commercial customers, 80% for all other retail customers. Maximum MW per hour measured monthly shall be 100% of the elected capacity for any rate class.
- 3.e Additionally, an annual minimum bill (broken down by rate class) shall be determined based on the following:
- 3.e.1 compare the peak hourly load elected in any summer month with the historic peak measured load in that same month;³
- 3.e.2 determine the MSG Percentage Factor by dividing the elected summer peak MW by the historic peak MW measured load for that same month;
- 3.e.3 this MSG Percentage Factor shall be multiplied by the monthly historic peak recorded for retail customers enrolled and served by the Certified Supplier during that month. This Factor will only apply to those months in the year that the Certified Supplier is serving the retail customer to determine the imputed minimum peak MW for each month in the year. The imputed monthly minimum peak will not be retroactively increased for the months before a Supplier begins serving a retail customer;
- 3.e.4 the minimum capacity factor shall be applied to the monthly imputed minimum peak MW in order that a minimum monthly usage may be imputed and summarized for an annual minimum billed usage.

³ Summer months are defined as June, July, and August

Part C – Enrollment

Section 1 – Intent

- 1.a. The purpose of offering 1120 MW of MSG at fixed prices is to “jump start” the market for retail competition in Ohio. It is in the best interest of retail customers for Certified Suppliers to enroll them as soon as possible following approval of the MSG claim. Therefore, if a Certified Supplier fails to enroll a retail customer within sixty days of the start date of an approved claim or by March 1, 2001, whichever is later, the retail customer will be dropped from the claim. The power associated with retail customers dropped from the claim will be returned to the MSG queue for assignment to another claim within the same queue. The sixty day period may be extended by the Company for good cause shown.

Part D – Environmental Disclosure

On request of the marketer, the Company will provide the marketer with information about MSG reasonably necessary for the marketer to meet its environmental disclosure requirements under Ohio law.

Appendix B

Certified Supplier Billing Terms and Conditions

A. Netting of Customer Payment and Certified Supplier Charges Billed by the Company

If the Certified Supplier defaults on payments due the Company, and the Company is performing Consolidated Billing of retail customers for the Certified Supplier, the Company reserves the right to retain the payments collected from the retail customers and apply the payments to the amounts due the Company.

B. Certified Supplier Payment of Obligations to the Company

A Certified Supplier shall pay all Charges it incurs hereunder in accordance with the following provisions:

1. **Billing Procedure.** Each month, the Company shall submit an invoice to the Certified Supplier for all Charges provided under this Tariff. Such invoice shall be submitted to the Certified Supplier not earlier than the fourth banking day following electronic or other submission of a pre-bill that contains the billing quantities and amounts anticipated by the Company to be included in the invoice. The invoice may be transmitted to the Certified Supplier by any reasonable method requested by the Certified Supplier. A Certified Supplier shall make payment for Charges incurred on or before the due date shown on the bill. The due date shall be determined by the Company and shall not be less than three (3) banking days from the date of transmittal of the bill. The Company may submit monthly bills for Load Following MSG on a cycle bill basis, but shall not submit such bills more frequently than once per week for any individual Certified Supplier.
2. **Manner of Payment.** The Certified Supplier shall make payments of funds payable to the Company by wire transfer to a bank designated in Section 3 below.
The Company may require that a Certified Supplier that is not Creditworthy tender payment by means of a certified, cashier's, teller's, or bank check, or by wire transfer, or other immediately available funds. If disputes arise regarding a Certified Supplier bill, the Certified Supplier must pay the undisputed portion of disputed bills under investigation.

- 3. Wire Transfer.** Payment to the Company by the Certified Supplier must be made by electronic wire transfer or such other means as will cause payment to be available for the use of the Company on the due date. All payments shall be wire transferred to the bank designated by the Company.
- 4. Late fee for Unpaid Balances.** If payment is made to the Company after the due date shown on the bill, accrued interest will be added to the unpaid balance at the Interest Rate until the entire bill is paid.
- 5. Certified Supplier's Failure to Pay.** In the event the Certified Supplier fails, for any reason other than a billing dispute as described below, to make payment to the Company on or before the due date as described above, and such failure of payment is not corrected within five (5) business days after the Company notifies the Certified Supplier to cure such failure, a breach by the Certified Supplier shall be deemed to exist. In the event of a billing dispute between the Company and the Certified Supplier, the Company will continue to provide service pursuant to this Tariff as long as the Certified Supplier continues to make all payments not in dispute.
- 6. Certified Supplier Offset.** In the event a Certified Supplier is deemed to be in Default under Section 17.01(a) of the Tariff, the Company, may at its sole discretion, reduce the reimbursement to the Certified Supplier for amounts collected by the Company by the amount owed to the Company that is not in dispute.

**FirstEnergy Corp.
Market-Based Rate Wholesale
Power Sales Tariff (MRT)**

Form of Confirmation Letter

Market Support Generation and Non-Market Support Generation

This letter shall confirm the terms and conditions of the Parties' agreed-upon Transaction under the Tariff as follows:

Date of Transaction: _____

Buyer: _____

Seller: _____

Type of Transaction _____
(Market Support Generation or Non-Market Support Generation)

Quantity: _____
(Amount of Market Support Generation or Non-Market Support Generation allotted to the buyers' claims, in Megawatts)

Price: See Attachment 1

Delivery Points: Network service

Delivery Period: _____

Specific Terms: This transaction is being conducted pursuant to the terms of (1) the Stipulation and Recommendation and (2) the Supplemental Settlement Materials filed with the Public Utilities Commission of Ohio (PUCO) on

FirstEnergy Corp.
FERC Electric Tariff, Original Volume No.2
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April 17, and May 9, 2000, respectively, and as approved by the PUCO
on July 19, 2000.

This Transaction shall be governed by the Service Agreement entered into between the Parties, which Service Agreement is incorporated herein by reference.

Please confirm that the foregoing correctly sets forth the terms of our agreement with respect to this Transaction by signing this confirmation and immediately returning a copy of the executed confirmation to: Administrator, Supplier Support Services at facsimile number (330) 437-1319. If you disagree with this confirmation, notify us by facsimile within two business days. Failure to notify us within this time period will constitute binding and conclusive evidence of the transaction. We look forward to receiving your prompt reply.

FirstEnergy Corp.

Name/Title: _____

Address: _____

Phone: _____

Fax: _____

Customer

Name/Title: _____

Address: _____

Phone: _____

Fax: _____

**FirstEnergy Corp.
 Market-Based Rate Wholesale
 Power Sales Tariff (MRT)**

Form of Confirmation Letter, Attachment 1

Pricing for Market Support Generation – \$ per MWh

	<u>2001</u>	<u>2002</u>	<u>2003</u>	<u>2004</u>	<u>2005</u>
<u>Ohio Edison</u>					
Residential	31.19	32.98	33.22	35.66	37.69
Commercial	30.83	32.89	32.75	34.98	37.19
Industrial	26.23	27.73	27.98	30.04	31.88

	<u>2001</u>	<u>2002</u>	<u>2003</u>	<u>2004</u>	<u>2005</u>
<u>CEI</u>					
Residential	31.64	33.46	33.70	36.18	38.24
Commercial	30.83	32.89	32.75	34.98	37.19
Industrial	26.23	27.73	27.98	30.04	31.88

	<u>2001</u>	<u>2002</u>	<u>2003</u>	<u>2004</u>	<u>2005</u>
<u>Toledo Edison</u>					
Residential	30.03	31.75	31.98	34.33	36.28
Commercial	30.83	32.89	32.75	34.98	37.19
Industrial	26.23	27.73	27.98	30.04	31.88

The pricing stated above includes losses to the retail customer's meter.

For Market Support Generation delivered under the Capacity Factor option, the provisions of Section B.3 of Appendix A, Protocol for Market Support and Non-Market Support Generation Scheduling and Billing also apply.

Loss Free, Non-Market Support Generation

1,120 MW of non-Market Support Generation was made available on a first-come first-served basis. This capacity is measured at the retail customer's distribution meter during the months of September through May; that is, no distribution losses need be supplied for this capacity during the stated time. All appropriate losses shall apply to non-Market Support Generation during the months of June, July and August.

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FirstEnergy Corp.
FERC Electric Tariff, Original Volume No.2
Service Agreement No. _

[47706]

**QUESTIONS TO AND ANSWERS FROM FIRSTENERGY CORP.
TO PREPARE STIPULATED FACTS**

1. **Please identify who at FirstEnergy retained and directed the actions of the independent accounting firm ("Auditor") to evaluate compliance with the Protocol and Stipulation.**

ANSWER: David M. Blank. (3/9/01)

2. **Please set forth the specific instructions given to the Auditor to enable the Auditor to understand its role and function in the process specified in the Protocol and the Stipulation. (Including, without limitation, specific instructions given to determine if the Stipulation requirement of "committed capacity sales" was met; e.g. the percentage of contracts the Auditor was to review to determine compliance with committed capacity sales).**

ANSWER: The only instructions or guidelines given to the Auditor, other than in occasional conversations between the Auditor and Mr. Blank, which were not memorialized and the details of which Mr. Blank does not specifically recall, are in the November 9, 2000 letter to David M. Blank, Attachment CLE-I-8 to the responses of FirstEnergy Corp. and CEI to the first set of discovery requests for the City of Cleveland and WPS Energy Services, Inc. (3/9/01)

3. **Please set forth any guidelines or instruction or definition given to the Auditor with respect to dealing with a power broker or power marketer or "CRES provider" as defined in the Ohio Administrative Code §4901:1-21(A)(10); 4901:1-21(A)(27) and 4901:1-21(A)(29).**

ANSWER: See Response to Question 2. (3/9/01)

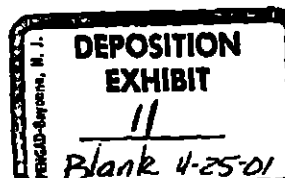
4. **Please set forth any guidelines or instruction or definition given to the Auditor with respect to dealing with a government aggregator as defined in the Revised Code Section 4928.01(A)(13).**

ANSWER: See Response to Question 2. (3/9/01)

5. **Please set forth any guidelines or instruction or definition given to the Auditor with respect to dealing with a non-governmental aggregator as defined in Ohio Administrative Code §4901:1-21-03(A)(2).**

ANSWER: See Response to Question 2. (3/9/01)

6. **When claims were submitted for Market Support Generation ("MSG") by the Industrial Energy Users of Ohio ("IEU") please describe what documents were reviewed by the Auditor to determine compliance with the terms of the Protocol.**



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ANSWER: The Auditor reviewed a document produced by FirstEnergy that verified the active accounts included in the claim, and the contracts between IEU and the members of the aggregation group. (3/20/01)

7. **What documents or rationale supported a claim the IEU had "committed capacity sales" at the time of the audit?**

ANSWER: The contracts between IEU and the members of the aggregation group. (3/20/01)

8. **Does IEU or any IEU member have a contract with any EDU affiliated with FirstEnergy?**

ANSWER: Yes. (3/9/01)

If so, is it a contract for MSG?

ANSWER: No. (3/9/01)

9. **Who is the supplier in the transaction for each IEU member? Is the supplier certified to provide Retail Electric Generation Service (as defined in the Commission's rules)? Was there a supplier agreement in place prior to IEU's submission of its MSG reservation?**

ANSWER: For purposes of applying the Protocol, IEU was considered to be the supplier. IEU was certified by the Commission as a Competitive Retail Electric Service Provider. Before submitting its claim for MSG, IEU had entered into contracts with the members of the aggregation group. (3/20/01)

10. **Who were the parties in the contract(s) the Auditor reviewed with respect to MSG approval and allocation to IEU and/or its members.**

ANSWER: IEU and the members of the aggregation group. (3/20/01)

11. **Is there a contractual relationship for CRES (as defined in the Revised Code) services or services ancillary thereto between IEU and FirstEnergy?**

ANSWER: No. (3/9/01)

Is there a contractual relationship for CRES (as defined in the Revised Code) services or services ancillary thereto between IEU and FirstEnergy Services?

ANSWER: Yes, but not for MSG. (3/9/01)

)

Is there a contractual relationship for CRES (as defined in the Revised Code) services or services ancillary thereto between IEU and the EDUs?

ANSWER: No. (3/9/01)

- 12. Does FirstEnergy Corp. assert that an EDU may provide competitive services directly to a non-governmental aggregator after 1/1/01? (as amended in letter dated 3/15/01).**

ANSWER: Yes, but not with respect to retail electric generation service. (3/20/01)

- 13. Does FirstEnergy contend that providing MSG is a competitive service (as amended in letter dated 3/15/01)?**

ANSWER: No. (3/20/01)

- 14. Please state whether or not FirstEnergy's "utility services unit" may provide services at other than tariffed rates after 1/1/01. (as amended in letter dated 3/15/01).**

ANSWER: Yes. (3/20/01)

- 15. If your answer to 14 above is "yes", please set forth specifically what service may be provided and what rate may be charged for that service. (as amended in letter dated 3/15/01).**

ANSWER: The Utilities Services Unit may provide, at negotiated rates, unregulated "Special Customer Services," regulated services pursuant to special contracts, and services to the United States, to the State of Ohio, or to any political subdivision of the state. (3/20/01). Another service that may be provided by the Utilities Services Unit at other than tariffed rates is MSG, which may be provided at the rates set out in the Stipulation adopted by the Commission in Case Nos. 99-1212-EL-ETP, et al. (3/23/01).

- 16. Describe the comments with respect to the Protocol that were submitted to FirstEnergy by non-affiliated entities.**

ANSWER: Comments on the Protocol were made by various entities, in various forms. Some comments were made in writing -- by fax, e-mail, and surface mail -- and some by telephone or in other personal communications. No record of the comments was prepared, although all comments were considered. The written comments retained by FirstEnergy are being provided to you. (3/21/01)

Which of these comments were implemented prior to the 10/19 version?

ANSWER: We assume the reference to the "10/19" version of the Protocol is to the version of the Protocol on the FirstEnergy website, which was operational as of October

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19, 2000. The Protocol is actually dated October 5, 2000. Because not all of the comments were recorded, the following list of modifications to the Protocol is based on the information available. It is not purported to be exhaustive. The list includes a description not only of changes made in the October 5 version from earlier versions, but also of how some of the sections have been implemented. A number of the concerns raised in the comments were addressed in the Scheduling Protocol, issued for comment in 2001, and included in the Service Agreement filed with FERC.

- a. Concerns were raised that claims would be restricted to a single billing cycle. No limits were established regarding billing cycles on claims.
- b. The need for "signed contracts" was expanded to include any agreement sufficient for CRES purposes.
- c. In section 6.a., specific identification of the approval process replaced "will take into account" language.
- d. Section 6.b.viii. was modified to include the 1% threshold levels for claim rejection, replacing specific numbers of contracts as the threshold.
- e. Footnote 5 was modified to have peak demand based on the most recent 12 months. In response to concerns raised, Suppliers were given the opportunity, after the Protocol was issued, to use the highest recorded peak for the customer, as long as evidence could be shown. This opportunity was taken advantage of a number of times.
- f. Footnote 11 was changed to 12 days to match the Supplier Tariff.
- g. Section 5.e. was added to provide a two-step process for claiming residential MSG. The modification allowed suppliers additional time to provide account numbers, amount of capacity claimed for each customer, and identification of load following or capacity factor. The requirement to identify at the time of the claim customers with Generation Service Agreements and the claim duration continued.
- h. The Supplemental Stipulation required relinquishment of FE affiliate claims in favor of other suppliers' claims. Although this was not specifically included in the Protocol, in practice no MSG claims by FE affiliates were considered for processing.
- i. Section 4.b. has been implemented on a "relative basis," taking size into account as opposed to absolute numbers.
- j. Regarding Section 6.b.vii, as Eligible Suppliers identified that they did not have a contract for the duration of the claim for 1% or more customers (or

load), Eligible Suppliers were permitted to withdraw claims for such accounts so the need for the remedy was not triggered.

- k. Concerns were raised about unnecessary disclosure of supplier-customer contract terms to FirstEnergy. That has been addressed by having the outside auditor enter into confidentiality agreements, allowing her to see what she needed for her fact-gathering, without disclosure to FirstEnergy of matters unrelated to the allocation of MSG.
- l. Pursuant to issues raised by suppliers, contracts with the condition precedent of MSG allocation to the supplier for that customer were permitted for a supplier to enter a claim and establish a place in the queue.
- m. Concerns were raised about Section 6.d. Although the section was not changed, the impact is alleviated by the ability to select Load Following, in which case the section has no meaning.
- n. Concerns were raised regarding the submission of individual claims for residential customers. Section 5.c. addresses this issue; up to 10,000 accounts can be included on each claim. That limit was established to assure that data processing issues can be minimized.
- o. Concerns were raised regarding balancing and settlement issues. The Scheduling Protocol permits aggregation of all of supplier's MSG accounts for purposes of application of the balancing and settlement procedure.
- p. In response to supplier concerns, FE did permit suppliers to test "sample claims" to assure that the claiming system worked as intended.
- q. A number of clerical and typographical adjustments were made in response to supplier comments.

(3/21/01)

- 17. Describe the modifications to the Protocol from the 9/26 version to the 10/19 version.**

ANSWER: We are aware of versions of the Protocol dated September 25 and October 5. The changes are shown on Exh. B.2.A from Mr. Blank's March 7, 2001 deposition, except that Modification 4 shown on that page was not made. (3/9/01)

- 18. To obtain approval of an MSG claim was a contract between a Commission-certified supplier of the MSG and the retail customer required? If so, when did such contract need to be in place?**

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ANSWER: Yes. In order to file a claim, a supplier has to have a commitment from retail customers to purchase generation from or through the supplier. (3/20/01)

19. Describe the meaning of "supplier" and "Supplier" when used in the Protocol.

ANSWER: As indicated in Section 1.b. of the Protocol, a "supplier" can be a marketer, broker, or aggregator, including a municipal aggregator. There is no separately defined "Supplier," only an "Eligible Supplier." (3/20/01)

20. Under the Protocol, is the Eligible Supplier required to be registered with FirstEnergy?

ANSWER: Yes. (3/9/01)

Is the Supplier required to be registered?

ANSWER: Yes, as an Eligible Supplier. (3/9/01)

Identify the proper entity to which a claimant must submit its registration?

ANSWER: Supplier Services Department of FirstEnergy Corp. (3/9/01)

Identify the timing needed for approval.

ANSWER: Before approval of the claim. (3/9/01)

21. FirstEnergy has indicated that it hired the Auditor in part because of submitted "claims without associated committed capacity sales". Please provide the standards upon which FirstEnergy categorized a claim as being "without associated committed capacity sales".

ANSWER: A claim by or on behalf of a municipal aggregator is "without associated committed capacity sales" if the opt-out procedure has not been completed. For all other claims, there are no committed capacity sales if there is no commitment by retail customers to purchase generation from or through the claimant. (3/9/01)

22. Is IEU registered with FirstEnergy to sell electricity in CEI, TE or OE service areas?

ANSWER: No. IEU is, however, registered under the Protocol to be an Eligible Supplier in order to file a claim for MSG. (3/20/01)

If so, when did IEU apply and when was IEU's registration finalized?

)

ANSWER: IEU registered with FirstEnergy under the Protocol to be an Eligible Supplier on October 10, 2000; that registration was complete as filed. (3/20/01)

What certification status (e.g. marketer, broker, aggregator) did IEU have with the PUCO at the time its registration with FirstEnergy was submitted?

ANSWER: It's CRES application for "certification as an aggregator" was pending on October 10, 2000. (3/20/01)

What certification status (e.g. marketer, broker, aggregator) did IEU have with the PUCO at the time its registration with FirstEnergy was approved?

ANSWER: A registration under the Protocol to be an Eligible Supplier in order to file a claim for MSG is not "approved." IEU's CRES application for "certification as an aggregator" was pending on October 10, 2000. (3/20/01)

23. Please list all requirements to become registered with FirstEnergy as a supplier. Are there different categories of suppliers? If there are different categories of suppliers, please state what they are.

ANSWER: The minimum requirement for every supplier to be registered under the Protocol to be an Eligible Supplier in order to submit a claim for MSG is to submit a copy of its application to the Commission to be certified as a Certified Retail Electric Supplier. Aggregators and municipal aggregators have to meet only that minimum requirement. Marketers and brokers also have to file credit information. (3/20/01)

***The answers provided to questions 22 and 23 are also designated as answers by FirstEnergy to the following questions posed on 3/14/01: When was IEU's registration finalized and approved?; What security was provided to FirstEnergy by IEU for its registration?; Were there different categories of registrants? If so, what are the categories?; How are the categories "differentiated in terms of authorization to obtain services from the operating companies?; For what category has IEU's registration been approved?*

24. Other than the FirstEnergy website, how else was information regarding registration with FirstEnergy made publicly available?

ANSWER: Information regarding registration under the Protocol to be an Eligible Supplier was provided at the October 2, 2000 MSG Protocol meeting. (3/20/01)

If there was another means to obtain information, did the registration requirements differ between the website requirements and this other means?

ANSWER: We are not aware of any differences. (3/20/01)

If there is a difference, describe the difference in the requirements?

ANSWER: N/A (3/20/01)

25. Are IEU members receiving MSG from CEI, TE or OE pursuant to a special contract approved by the Commission under R.C. 4905.31?

ANSWER: No. (3/9/01)

26. Has FirstEnergy Services, CEI, TE or OE released MSG to unaffiliated marketers or brokers since the MSG has been fully subscribed as a result of the Supplemental Settlement Materials, Section 1 requirements ?

ANSWER: No. FirstEnergy Services, CEI, TE and OE had no MSG to release. (3/9/01)

27. Describe the materials reviewed by FirstEnergy (including materials submitted by the Auditor) to demonstrate that IEU had complied with all provisions of the Stipulation and Protocol required for approval of a claim.

ANSWER: The materials reviewed were: a document produced by FirstEnergy that verified the active accounts included in the claim, IEU's CRES application to the Commission, and the certificate issued by the Commission. (3/20/01)

28. Describe the materials reviewed by the Auditor and described or provided to FirstEnergy that demonstrated IEU had complied with the Stipulation requirement of a committed capacity sale.

ANSWER: The document produced by FirstEnergy that verified the active accounts included in the claim, and the contracts between IEU and the members of the aggregation group. (3/20/01)

29. Identify who submitted the MSG reservation claims on behalf of IEU.

ANSWER: Kevin Murray. (3/9/01)

30. Set forth any specific instructions given to the Auditor with respect to her review of IEU's compliance the Protocol and Stipulation (including instructions given prior to, during or after the review of IEU).

ANSWER: No specific instructions were given to the Auditor with respect to IEU. (3/9/01)

31. Have any special contracts been submitted for approval that include MSG?

ANSWER: No.

32. **At the time of IEU's application for MSG, who was the supplier certified to provide Retail Electric Generation Service that had a Generation Services Agreement with IEU or any IEU member?**

ANSWER: At the time of IEU's application for MSG, none was needed. (3/9/01)

33. **Have any of the IEU members been enrolled to receive MSG?**

ANSWER: Yes. (3/20/01)

34. **Has MSG begun to flow to any IEU member?**

ANSWER: Power is flowing to IEU members, as it did before January 1, 2001, although, due to a processing error, the power is not currently characterized as MSG. This error will be corrected, and the power will be characterized as MSG retroactively. (3/20/01)

35. **Have confirmation notices (as described in 4901:1-10-29 Sec. (F)(1)) been mailed to any IEU members who are to receive MSG? If yes, please state the supplier or Supplier that is listed in the notice?**

ANSWER: Confirmation notices have been mailed to IEU members who have been enrolled to receive MSG. Due to the processing error referenced in the response to question 34, FirstEnergy Services is incorrectly named in the notice as the supplier. (3/20/01)

36. **Were any notices of non-compliance provided by the Auditor, FirstEnergy, CEI, TE or OE to parties submitting MSG claims? If so, were such parties given an opportunity to correct the non-compliance? If correction was allowed, what types of non-compliance were allowed to be corrected?**

ANSWER: Parties submitting MSG claims have been notified of non-compliances. Where non-compliance resulted from a mistake in the information submitted in making the MSG claim, claimants have been allowed to correct the mistake. The types of mistakes that have been corrected include: accidentally submitting a claim for the wrong company's MSG or for the wrong customer category; accidentally canceling a claim; and classifying a claim as "load following" that should have been "capacity factor." Where the non-compliance was a failure to comply with a requirement for approval of a claim under the Protocol, the non-compliance cannot be corrected. (3/20/01)

Question raised in 3/14/01 letter:

Who is executing the FERC-filed MSG contract with the FirstEnergy operating companies on behalf of IEU?

ANSWER: A copy of the FERC-filed MSG contract has been sent to IEU for execution.

David M. Blank
Manager, Rate Department

330-384-5451

January 16, 2001

Ms. Sally W. Bloomfield
Bricker & Eckler
100 South Third Street
Columbus, Ohio 43215-4291

Dear Sally:

This letter is in response to your letter of January 8, 2001, in which you have made a number of requests for action by FirstEnergy with respect to Market Support Generation.

Your requests for action and the FirstEnergy responses are as follows:

Marketer request 1.: Ascertain whether any of the MSG claimed by nongovernmental aggregators is being supplied by FES by the close of business on Wednesday, January 10th. We believe that this is information that should either already be in your possession or be easily retrievable.

Response: No MSG claimed by nongovernmental aggregators is being supplied, directly or indirectly, by FES. It is true that FirstEnergy affiliates are associated with three entities which presented claims for MSG—Parma, Industrial Energy Users, and National City Bank. In all three cases, however, none of the FirstEnergy affiliates, including FES, ever acquire any rights to the MSG power and none acts as a supplier. The Market Support Generation is delivered by the FirstEnergy utility to the MSG claimant or to the claimant's supplier.

Marketer request 2: To the extent that there is MSG reserved by nongovernmental aggregators who have chosen FES as their supplier, FirstEnergy should release the MSG made available to those entities so that the next customers in line who are served by nonaffiliated marketers can have their claims approved.



)

Response: Since no MSG has been reserved by nongovernmental aggregators who have chosen FES as their supplier, there is no MSG to release.

Marketer request 3: A mechanism, such as posting the allocations on the web, should be promptly established in order to monitor the allocation of MSG to suppliers and their customers.

Response: The staff of the Public Utilities Commission has been informed of the MSG allocations, including the name of the claimant and the amount of the claim allocated to the claimant. As you know, the MSG Reservation Protocol indicates that the names of the parties to which MSG allocations are made will not be publicly disclosed. Should all suppliers consent to the disclosure, we would be willing to release the list.

If you have questions regarding this information, please contact me.

Best regards,



David M. Blank
Manager, Rate Department

cc : Doug Maag
Ed Hess
Carl Evans
Dan Johnson
Chris Kotting

FirstEnergy.76 South Main Street
Akron, Ohio 44308David M. Blank
Manager, Rate Department

330-384-5451

February 6, 2001

Ms. Elizabeth H. Watts, Esq.
Bricker & Eckler
100 South Third Street
Columbus, Ohio 43215-4291

Dear Elizabeth:

This letter is in response to your letter dated January 8, 2001, commenting both on my January 16, 2001, letter to Sally Bloomfield and on discussions at a meeting we attended on January 17, 2001, at the Public Utilities Commission of Ohio. I received your letter by e-mail after the close of regular business hours on January 29, 2001.

You request that we verify that the several items recited in the letter accurately portray the facts as I represented them in the January 17 meeting. In addition you request that should there be anything in your recitals that is factually incorrect, you want us to correct any inaccuracies.

Your letter appears to be an obvious attempt to set up litigation and short cut the normal procedure of legal discovery without going through the standard procedure and without notification to all the parties in interest. Nevertheless, we will respond, and will docket this response and your letter in the restructuring case docket (99-1212-EL-ETP) at the PUCO.

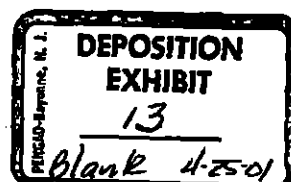
In the material that follows, the "Recitals" reflect your characterization of the issues as stated in your letter. We do not necessarily agree with the characterization.

Recital No. 1

No MSG claimed by nongovernmental aggregators is being supplied, directly or indirectly, by FES.

Response to Recital No. 1

We agree with the statement.



)

Letter to Elizabeth Watts February 6, 2001

Recital No. 2

FirstEnergy affiliates are associated with three entities, which presented claims for MSG-Parma, Industrial Energy Users, and National City Bank.

Response to Recital No. 2

We agree with the statement, subject to the recognition that (1) the "association" is limited to a contract to provide services (2) the Recital implicitly refers only to the non-EDU affiliates, and (3) Recital No. 3 further elaborates on this issue.

Recital No. 3

In all three cases identified in Recital No. 2, none of the FirstEnergy affiliates, including FES, ever acquire any rights to the MSG power and none acts as a supplier.

Response to Recital No. 3

We agree with the statement, again with the recognition that the Recital implicitly refers only to the non-EDU affiliates.

Recital No. 4

The marketers questioned whether IEU was receiving power from FirstEnergy Services (FES) and was told that FES was not supplying power to the IEU or its customers.

Response to Recital No. 4

We agree with the statement.

Recital No. 5

The utility's generation assets have been transferred to FES which in turn has entered into an agreement with the electric distribution companies to sell power directly to them for distribution to their customers.

Response to Recital No. 5

Control of the fossil generation plants has been transferred to FirstEnergy Generation Corp., an exempt wholesale generator and subsidiary of FES, via an operating lease. The nuclear plants are operated by FirstEnergy Nuclear Operating Company. Output of all FirstEnergy generation plants is sold to FES. FES supplies power to the EDU's under a full requirements contract, which requirements include electric load of customers that have not chosen an alternative supplier, certain wholesale obligations and the Market Support Generation obligations. These transactions are undertaken pursuant to the Corporate Separation Plan approved by the Public Utilities Commission.

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Letter to Elizabeth Watts February 6, 2001

Recital No. 6

With respect to the MSG allocated to IEU, that power is being delivered from the electric distribution company directly to the individual IEU customers in the aggregation group.

Response to Recital No. 6

The power is being delivered from the electric distribution company directly to the individual IEU customers in the aggregation group.

Recital No. 7

Thus, it is the distribution company and not FES or the IEU as aggregator that is delivering the power.

Response to Recital No. 7

See response to Recital No. 6.

Very truly yours,

David Blank
Manager, Rate Department
FirstEnergy Corp.

cc: Christine Pirik, PUCO
Doug Maag
Dan Johnson
Chris Kotting
Ed Hess
Joe Buckley
P.U.C.O. Docketing Division

FIRSTENERGY CORP.
MSG AUP
NOVEMBER 2000

INDUSTRIAL ENERGY USERS - OHIO

MILEAGE - Cleveland to Columbus - 290 miles (start 1143; end 1433)
PARKING - Downtown Columbus - paid by IEU via ticket validation

On November 15, 2000, at 11:00 a.m. (until 5:30 p.m.), I met with Sam Randazzo and Kevin Murray of IEU in order to perform the MSG claims review process. I presented Mr. Randazzo and Mr. Murray with the Error Reports and explained to them the contents of the package containing those reports. I also explained to them that the 5 day "correction" period, as outlined in the MSG Protocol provided by FirstEnergy, began as the following day, November 16, 2000.

I then discussed with the above individuals the review process for the "valid" claims. Upon completion of my explanation of the review process, IEU presented to me its contracts for my review. I began my review based upon the procedures agreed to by FirstEnergy, as outlined in Attachment A.

There were several items that I noted recurred throughout most of the contracts that I reviewed. These items are as follows:

- As IEU is an aggregator, IEU entered into a draft Master Service Agreement with FirstEnergy Services (FES) on September 30, 2000. As of the date of my visit to IEU, this Master Service Agreement had not been finalized and executed. All contracts between IEU and the customers are subject to the Master Service Agreement that had not been executed (i.e., FES must accept the customers of IEU as parties to the Master Service Agreement and the customers of IEU must accept the terms of the Master Service Agreement).

The Master Service Agreement draft contains the pricing terms.

The duration of the Master Service Agreement draft (MSA) covers the market support period. The MSA is subject to early cancellation by FES but not before the end of the market support period. The MSA is subject to cancellation by any given customer (which would ultimately cancel the contract between IEU and the customer also) with twelve months written notice.

- The duration of the contracts between IEU and the customers is for a period of time "at least as long as the duration of IEU's MSG claim."

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- The contracts between IEU and the customers are contingent upon the Master Service Agreement between IEU, FES and the customers being executed in substantially the same form as the draft.
- The contracts between IEU and the customers specify that IEU will request MSG on a "load-following" basis. *all claims on LF basis*
- For the most part, I was unable to determine that the customers had agreed to the locations to be covered by the contracts, as the customer information (account number, etc.) regarding the locations covered was contained in an attachment to the contracts. A provision within the contracts referred to the fact that the locations to be covered by the contract were identified in the attachment to the contract. The attachments were in the form of spreadsheets. The customers did not sign the attachments. I was not able to verify all customer account information as provided to me by FirstEnergy in the "valid" claims listing, as all of the customer account information was not contained in these attachments. However, in all instances, I was able to verify at least one piece of the customer account information (either the account number, the customer name, or the service address).

Upon discussion of the above with Mr. Murray, I was informed that the attachments were primarily prepared by IEU from the information obtained from the customers. The customers sent information via facsimile and e-mail regarding their accounts. As this information was sent piecemeal, IEU summarized each customer's accounts into the spreadsheets that were used as the attachments to the contracts. Mr. Murray provided me copies of the e-mails and facsimiles from two of the customers and I ensured that there were no accounts included in the attachments for these customer contracts that were not included in the information provided to IEU by these customers.

- I did not specifically note provisions in any of the contracts to permit IEU to claim non-MSG on behalf of the customers in the event IEU does not receive a MSG allocation on behalf of the customers. The "valid" claims listing provided to me by FirstEnergy contains only MSG claims.

Upon review of the individual contracts, I noted the following inconsistencies between the "valid" claims listing provided to me by FirstEnergy and the contracts and/or I noted the following notable items.

- For the most part, I was unable to verify the date on which the customers signed the contracts, as the contracts were not manually dated, nor were there date fields to be completed by the customers' signatures. However, for the most part, I was able to identify dates via the customers' facsimile headers on the signed contracts or via the date that was inserted into the contract as the date that the customers had provided their account information to IEU. Of the 14 contracts that I reviewed, I was unable to determine any date for 2 of the contracts. For the remainder of the contracts, the dates (based on the above mentioned sources) were on or before October 19, 2000.

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- The following customer names as per the claims do not appear to be related to the customer names as per CIS, as listed on the "valid" claims listing provided to me by FirstEnergy.

Account Number	Customer Name per Claim	Customer Name per CIS
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REDACTED

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]

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BEFORE THE PUBLIC UTILITIES
COMMISSION OF OHIO

IN THE MATTER OF THE
COMPLAINT OF ENRON
ENERGY SERVICES, INC.,

Complainant,

and

Case No.

FIRST ENERGY CORP.,
et al.,

01-393-EL-CSS

Respondents.

- - - - -

Continued deposition of DAVID
BLANK, called for examination under the
statute, taken before me, Julie A.
Hascher, a Notary Public in and for the
State of Ohio, at the offices of Vorys,
Sater, Seymour & Pease, 2100 One
Cleveland Center, Cleveland, Ohio, on
Wednesday, April 25, 2001, at 10:00
o'clock a.m.

- - - - -

VOLUME II

- - - - -

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1 APPEARANCES:

2
3 On behalf of the Complainant:

4 Vorys, Sater, Seymour &

5 Pease, LLP,

6 by, DAVID W. HARDYMON, ESQ.

7 BENITA KAHN, ESQ.

8 52 East Gay Street

9 Columbus, Ohio 43216-1008

10 (614) 464-6400

11
12 On behalf of the Respondents:

13 Jones, Day, Reavis & Pogue,

14 by, PAUL T. RUXIN, ESQ.

15 901 Lakeside Avenue

16 Cleveland, Ohio 44114

17 (216) 586-3939

18 -and-

19 FirstEnergy,

20 by, ARTHUR E. KORKOSZ, ESQ.

21 76 South Main Street

22 Akron, Ohio 44308

23 (330) 384-5849

24 - - - -

1 MR. HARDYMON: This is
2 a continuation of Mr. Blank's deposition
3 which I believe was begun on the 17th
4 and counsel and Mr. Blank have been
5 kind enough to come back today by
6 agreement to continue the deposition, so
7 Mr. Blank is still under oath and I am
8 still asking questions.

9 CONTINUED EXAMINATION OF

10 DAVID BLANK

11 BY-MR. HARDYMON:

12 Q. Are you all ready, Mr.
13 Blank?

14 A. I'm ready, yes, sir.

15 Q. Mr. Blank, have you reviewed
16 the transcript that we began on the
17 17th?

18 A. No.

19 Q. Have you reviewed anything
20 in preparation for today's session
21 between the 17th and today?

22 A. I haven't reviewed anything,
23 no.

24 Q. Okay. When IEU submitted
25 its application for MSG, did they also

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1 submit a registration to be registered
2 with FirstEnergy?

3 Let me rephrase that.
4 Did they also submit an application to
5 be registered with FirstEnergy?

6 A. I don't have firsthand
7 knowledge of that. I know that Mr.
8 Burnell has advised me.

9 Q. And his advice to you was
10 what?

11 A. That the registration
12 requirements, whatever the registration
13 requirements were were taken care of.

14 Q. And I believe that we
15 touched on this in our first session
16 together, but it's my understanding that
17 you are not aware of any publication of
18 what the registration requirements would
19 be for an aggregator as opposed to a
20 marketer and broker, is that true?

21 A. I'm not aware.

22 Q. Do you know who would know
23 where we might find a description of
24 the registration process for an
25 aggregator?

1 A. I don't know if there's one
2 written down, I just don't know that.

3 Q. Would Mr. Burnell be the
4 person who would be best suited to
5 answer that question?

6 A. I don't know that.

7 Q. Do you know who developed
8 the separate registration requirement
9 for aggregators?

10 A. I don't understand what you
11 mean by separate registration
12 requirement.

13 Q. It's my understanding from
14 our earlier session that the
15 requirements for an aggregator to become
16 registered with FirstEnergy were not the
17 same that they were for a marketer.
18 Did I understand your testimony
19 correctly?

20 A. There is a registration
21 requirement for the retail supplier
22 tariff and a registration -- there's a
23 registration issue in the protocol. The
24 registration in the protocol is what's
25 different than the registration in the

1 retail supplier tariff.

2 Q. And one of the ways it's
3 different is that the registration in
4 the retail supplier tariff requires
5 information about credit worthiness,
6 does it not?

7 A. Yes, it does.

8 Q. And is it true --

9 A. Pardon me. I know the
10 retail supplier tariff says something
11 about creditworthiness.

12 Q. And it is also true that
13 marketers applying for registration
14 under the protocol had to comply with
15 that creditworthiness requirement, is
16 that not also true?

17 A. I believe that's correct.

18 Q. And it is also true that
19 aggregators on the other hand did not
20 have to comply with that
21 creditworthiness?

22 A. If there was never going to
23 be a credit exposure, there was never
24 going to be a credit requirement so
25 that would have been an unnecessary

1 burden for everyone involved, and if
2 there is a credit exposure, then there
3 is a credit requirement.

4 Q. And did you or members of
5 your staff make a judgment as to which
6 aggregators would have a credit exposure
7 and which aggregators would not?

8 A. I know I was consulted on
9 that. I don't know whether any of my
10 other staff members, by that I mean the
11 members of the rate department, I don't
12 know whether they were.

13 Q. What was the process for
14 making that inquiry?

15 A. I don't know that I recall
16 the process. I just can't recall the
17 process, Mr. Hardymon.

18 Q. Do you know who would have
19 been in charge of making the decision
20 with regard to whether the
21 creditworthiness of an aggregator ought
22 to be investigated?

23 A. Well, I know that if Mr.
24 Burnell wasn't satisfied with -- that he
25 had the authority to do so, he would

1 come to me and if I thought I needed to
2 go to somebody, I would have gone to
3 someone.

4 Q. Can you identify any
5 aggregators from whom FirstEnergy
6 required the submission of credit
7 information?

8 A. I would have to consult Mr.
9 Burnell.

10 Q. Did FirstEnergy require the
11 submission of credit information from
12 IEU?

13 A. I don't believe so, because
14 I don't believe there was a credit
15 exposure.

16 Q. And by that you mean IEU
17 would not be in a position of having to
18 pay for MSG?

19 A. IEU would never owe -- as I
20 understood it, would never owe the
21 FirstEnergy utilities any money.

22 MR. RUXIN: Could we
23 clarify all these past questions when
24 you talked about aggregators, you were
25 talking about nonmunicipal aggregators?

1 MR. HARDYMON: That's
2 correct. Thank you, Paul.

3 THE WITNESS: I had made
4 that assumption in my responses because
5 there were lots of municipal aggregators
6 obviously.

7 Q. I understand and I believe I
8 said at the outset I when say
9 aggregator, I mean nonmunicipal
10 aggregators.

11 A. Thank you for clarifying, I
12 was assuming that.

13 Q. Would IEU under its receipt
14 of MSG ever be in a position of owing
15 the utilities any money?

16 A. I don't believe that it was
17 ever in the position of owing utilities
18 money and hence there was no credit
19 requirement.

20 Q. All right. Excuse me a
21 moment.

22 (Discussion off record.)

23 Q. Let me ask you, would IEU
24 under the circumstances of receiving MSG
25 ever be in a position of owing

1 FirstEnergy Services any money?

2 A. I don't know.

3 Q. Do you know who would know
4 the answer to that question?

5 A. I expect there might be
6 someone at FirstEnergy Services who
7 would know whether they did or not, but
8 I don't know who it is.

9 Q. Who's that?

10 A. Maybe Mr. Randazzo would
11 know, I don't know.

12 Q. Was that not an important
13 thing for you to know in connection
14 with making the decision about whether
15 IEU ought to submit information about
16 its creditworthiness before its MSG
17 application was approved?

18 A. What I knew is that IEU was
19 not going to be in a position where
20 they would owe money to the utilities
21 and as a result there would be no
22 credit requirement for IEU because there
23 was no credit exposure, but that's all
24 I had to know. I didn't have to know
25 anything else about that.

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1 Q. And you didn't feel that you
2 had to have any information about
3 whether IEU would be in a position of
4 owing money to FirstEnergy Services?

5 A. I didn't have to know
6 anything about whether IEU owed -- would
7 they ever owe money to FirstEnergy
8 Services.

9 Q. Why was that not a
10 consideration?

11 A. It had nothing to do with
12 the administration of the MSG program.

13 Q. In connection with
14 considering IEU's application for MSG,
15 did anyone review whether IEU had
16 completed EDI testing?

17 A. You would have to talk to
18 Mr. Burnell about that. He didn't
19 bring any exceptions to my cognizance.

20 Q. Okay. Was he the person who
21 would have been responsible for insuring
22 that EDI testing was complete by IEU?

23 A. You're making an assumption
24 there had to be EDI testing and if --
25 I'm sure there were situations where

1 there didn't have to be EDI testing.

2 Q. Was IEU's situation one
3 where EDI testing was not required?

4 A. I don't know the answer to
5 that.

6 Q. Would you give me an example
7 of a situation where an aggregator would
8 not be required to complete EDI testing?

9 A. I know of at least a
10 situation where there's a municipal
11 aggregator that itself didn't have to do
12 any EDI testing.

13 Q. Putting aside municipal
14 aggregators and let's confine our
15 discussion today to just nonmunicipal
16 aggregators, can you give me such an
17 example?

18 A. I don't know that there were
19 any other examples. There certainly
20 could have been. There was no
21 restriction one way or another about
22 that.

23 Q. What's the purpose of EDI
24 testing?

25 A. Again, Mr. Burnell could

1 give you the more precise requirements
2 for that, but it's to make sure that in
3 very general terms that whatever
4 scheduling arrangements had to be made
5 would be made electronically.

6 Q. Okay. And IEU as an
7 aggregator in line as an applicant for
8 MSG would have to be in a position to
9 make those arrangements, would they not?

10 A. My recollection is that
11 IEU's request for MSG was for load
12 following MSG and for load following
13 there is no scheduling requirement.

14 Q. Okay.

15 A. So the answer is no, I don't
16 think there was a requirement to do
17 that.

18 Q. That would be of every
19 aggregator who applied for MSG on a
20 load following basis?

21 A. I think that would have
22 depended upon a number of considerations
23 and that would have been one of them.

24 Q. What other considerations?

25 A. I think one would have to do

1 -- is there ever any possessory rights
2 to the power that in the -- for the
3 claimant.

4 Q. And if there were possessory
5 rights, the claimant would be required
6 to go through EDI testing and if there
7 were not --

8 A. I would have to go talk to
9 Mr. Burnell about that. We're too far
10 from my knowledge at this point.

11 Q. So you can't give us any
12 others?

13 A. I can't give you a
14 definitive answer.

15 Q. All right. Mr. Burnell
16 however would be the one who had the
17 definitive word on whether EDI testing
18 were required?

19 A. If he would have had
20 questions about it, he would have
21 brought them to me or to somebody else
22 in his department.

23 Q. Did he bring such questions
24 to you?

25 A. I don't recall that there

1 were any with respect to -- with
2 respect to this claimant.

3 Q. Okay. Was there any mention
4 in the protocol about possible
5 exceptions to the requirement concerning
6 EDI testing?

7 A. I think that the protocol
8 speaks to the need for there to be EDI
9 testing in order for approval, but
10 obviously that only has to happen when
11 there has to be EDI testing to make the
12 program work to begin with or else it
13 becomes a moot point.

14 Q. You can look at the protocol
15 if you like, but my recollection is
16 that there's no specific discussion of
17 any such exceptions. Do you recall
18 any?

19 MR. RUXIN: I guess
20 I'll object, the protocol is an exhibit,
21 it says what it says.

22 MR. HARDYMON: It says
23 what it says, okay. It's a point well
24 taken.

25 Q. Let me ask you this. You

1 attended sessions in October of 2000
2 where the protocol was explained to
3 potential applicants for MSG, did you
4 not?

5 A. Yes.

6 Q. And you in fact were a
7 presenter at those sessions?

8 A. Yes.

9 Q. As was Mr. Burnell?

10 A. Yes.

11 Q. During those sessions did
12 you or Mr. Burnell explain to the
13 potential applicants that there might be
14 exceptions to the requirement for EDI
15 testing?

16 A. I don't recall whether there
17 was that discussion by Mr. Burnell. I
18 know I said nothing about EDI testing
19 one way or another.

20 Q. All right. How about the
21 possible exception to the
22 creditworthiness requirement, did you
23 explain that to the applicants during
24 these meetings?

25 A.. I had nothing to do with

1 explaining credit requirements at that
2 meeting.

3 Q. Did Mr. Burnell explain
4 that?

5 A. I don't recall whether he
6 did or not.

7 Q. Do you know if anyone did?

8 A. I don't know.

9 Q. I gather that the IEU
10 application for MSG was ultimately
11 approved, is that true?

12 A. Yes, it was.

13 Q. And who was it who gave the
14 final approval to IEU's application?

15 A. After consulting with various
16 people, I did.

17 - - - - -

18 (Thereupon, Deposition
19 Exhibit-10 was marked
20 for purposes of
21 identification.)

22 - - - - -

23 Q. Mr. Blank, let me hand you a
24 document that's been marked as Blank
25 Deposition Exhibit No. 10. It bears

1 the caption at the top of the page
2 FirstEnergy Corp. market based rate
3 wholesale power sales tariff. Do you
4 have that document in front of you?

5 A. Yes, I do.

6 Q. Are you familiar with this
7 document?

8 A. I don't recall that I am
9 familiar with it.

10 Q. Did you assist in its
11 preparation?

12 A. I may have, but I don't
13 recall it at this point.

14 Q. Are you called upon to
15 administer any activities that fall
16 under the purview of this tariff?

17 MR. RUXIN: David, do
18 you want to take a minute to look
19 through this?

20 THE WITNESS: I would
21 like to look at this.

22 MR. HARDYMON: Take all
23 the time you want.

24 THE WITNESS: Thank you.
25 I have glanced through it now.

(

- - - - -

(Thereupon, Deposition
Exhibit-10A was marked
for purposes of
identification.)

- - - - -

Q. You glanced through it? Let
me hand you what I've marked as Blank
Deposition 10A and take all the time
you want to look through that as well.

You've looked through it?

A. I've looked through there.

Q. For the record, Exhibit 10A
is a multi-page document, the first page
of which appears to be an email dated
February 14, 2001, beginning dear
marketers and bearing your name and
title at the bottom, is that true?

A. That's correct.

Q. And attached to that email
is a document which bears the heading
FirstEnergy Corp. market based rate
wholesale power sales tariff followed by
form of service agreement for sales of
market support generation under the Ohio.

1 retail electric program, correct?

2 A. With the addition that at
3 the very top of the page it's marked as
4 a confidential draft of February 14,
5 2001.

6 Q. Yes. This form service
7 agreement was transmitted with your
8 cover email of February 14, 2001, to a
9 group of marketers, is that true?

10 A. I believe it went to
11 everyone on the Public Utilities
12 Commission list server who was involved
13 with our company.

14 Q. Would that include
15 aggregators as well as marketers?

16 A. I think it went to everyone
17 on the list server, as I said. If
18 they're on the list server, yes. If
19 they're not, no.

20 Q. Do you know whether they
21 were or not?

22 A. No.

23 Q. Do you know whether IEU
24 received a copy of your email and
25 attached form service agreement?

1 A. I do not know with
2 exactitude.

3 Q. Did you intend this form
4 service agreement and your form cover
5 letter to be circulated only to
6 marketers under the MSG program?

7 A. I intended this to go out to
8 parties on the list server that Mr.
9 Burnell deals with in sending
10 information to -- for comment to -- for
11 any parties who have an interest.

12 Q. And this is a list server
13 created and maintained by the Public
14 Utilities Commission of Ohio?

15 A. I believe maybe I'm
16 misunderstanding. It's something which
17 I know we have, and we being Mr.
18 Burnell in this case, with parties who
19 have been, I believe, certified in one
20 way, shape or form by the Public
21 Utilities Commission.

22 Q. And this is a list server?

23 A. Or pending certificate --
24 they might have pending certifications
25 rather than approved certifications.

1 Q. And this is a server that is
2 created and maintained in connection
3 with the transition cases, is that true?

4 A. I believe that's true,
5 but --

6 Q. Okay.

7 A. -- that's just a belief at
8 this point.

9 Q. All right. But we shouldn't
10 take any particular meaning from the
11 fact that your letter is addressed to
12 dear marketers?

13 A. That's not intended as a
14 technical term in the form of the
15 statutory marketer definition.

16 Q. So that could include
17 anybody on that server list including
18 aggregators, municipal aggregators,
19 brokers, marketers, et cetera?

20 A. Or parties that have
21 requested to be on the list server.

22 Q. All right. Let me ask you
23 to look at Exhibit 10. Is Exhibit 10
24 the market based rate wholesale power
25 sales tariff that is the subject of the

1 form service agreement that is attached
2 to your email of February 14th?

3 A. I don't know.

4 Q. Well, let me ask you to turn
5 to Article 3 of Exhibit 10, which is
6 the wholesale power sales tariff, and if
7 you look at paragraph 3.01 which is
8 captioned prerequisite to service, the
9 first sentence refers to a requirement
10 that a service agreement must be
11 executed by FirstEnergy and the customer
12 and filed with the FERC. Do you see
13 that reference?

14 A. Yes, I do.

15 Q. And was Exhibit 10A the form
16 service agreement that FirstEnergy
17 proposed to submit to the FERC for
18 approval in order to implement the
19 requirements of paragraph 3.01 of the
20 tariff?

21 A. I don't know.

22 Q. Let me ask you to take a
23 look at Exhibit 10A, the third full
24 paragraph this would be on the front
25 page, Mr. Blank, and this is the email

1 that you sent -- are you the author of
2 this email?

3 A. I'm not the sole author of
4 this email.

5 Q. It was sent over your name,
6 though?

7 A. That's correct.

8 Q. And you read it and approved
9 it before it went out with your name on
10 it, didn't you?

11 A. Yes.

12 Q. Okay. Let me ask you to
13 look at the third paragraph, the second
14 sentence. It indicates that FirstEnergy
15 is going to file this revised form of
16 service agreement with the FERC as soon
17 as practical, does it not?

18 A. Yes.

19 Q. And this --

20 A. Among other things, but yes.

21 Q. Yes, okay. And this service
22 agreement is the one that FirstEnergy
23 filed with the tariff before the FERC,
24 is that correct?

25 MR. RUXIN: I object.

1 He's answered that question already. He
2 said he didn't know.

3 A. You recall that Exhibit 10A
4 is a draft?

5 Q. Yes.

6 A. And I believe that our
7 attorneys made some additional
8 modifications to the February 14th
9 document before it was filed.

10 Q. Okay.

11 A. So I don't believe that this
12 is the one that was filed.

13 Q. All right. So when you said
14 to the recipients that you intend to
15 file the revised form of service
16 agreement and any necessary tariff
17 changes with FERC as soon as practical
18 or as soon as practical, in fact that
19 didn't happen, correct?

20 A. As I said, I believe there
21 was some additional language changes
22 subsequent to this one, to this February
23 14th document, but I don't recall the
24 detail of the language changes.

25 Q. Did you send another email

1 or communication to the list of
2 recipients advising them that what you
3 sent them on February 14th wasn't the
4 agreement you were going to submit to
5 FERC and that there had been other
6 changes?

7 A. I believe we sent a copy of
8 what we filed with FERC to that list
9 server. I don't know whether it was
10 accompanied by an explanatory memo. I
11 recall having some discussion about
12 that, but I don't know whether it
13 occurred or not.

14 Q. And you doesn't know whether
15 that revised version was circulated to
16 this list of recipients prior to its
17 being submitted to FERC?

18 A. I don't believe that it was
19 submitted to -- for additional comment
20 if that's what you're speaking about.
21 I don't think that the changes which
22 were made were of that substance. I
23 believe they were relatively minor
24 editorial or typographical types of
25 things.

1 Q. Okay. Well, let me ask you
2 this, Mr. Blank. The sale of MSG is
3 intended to be a wholesale transaction,
4 is that not true?

5 A. I don't know if that's true
6 or not.

7 Q. Okay. Do you believe it is
8 a retail transaction?

9 A. I believe it's a sale of
10 MSG. I don't categorize it between
11 retail or wholesale.

12 Q. Well, you would agree with
13 me that the tariff evidently
14 characterizes it as a wholesale power
15 sale, does it not?

16 A. Can you point me to a
17 reference?

18 Q. If you look at the tariff,
19 Exhibit 10, the tariff, the front page
20 of it, it's identified as a market
21 based rate wholesale power sales tariff,
22 is it not?

23 A. Yes.

24 Q. And it further states that
25 it is to implement sales of market

1 support generation, correct?

2 A. Yes, but that doesn't
3 necessarily mean that all market support
4 generation must be provided under this
5 document. It certainly can be if it's
6 wholesale and I just don't recall
7 whether we regard that as wholesale or
8 not in its entirety.

9 Q. Can you give me some
10 examples of market support generation
11 that is provided on a nonwholesale
12 basis?

13 A. No.

14 Q. All of the instances with
15 which you are familiar are wholesale
16 transactions, correct?

17 A. I haven't categorized them
18 as retail or wholesale, so I can't
19 answer that.

20 Q. IEU is receiving MSG, is
21 that not true?

22 A. IEU received an allocation
23 of MSG and I have to go back to the
24 definitions in the protocol which I do
25 not have in front of me.

1 Q. Let me try to make this a
2 little -- go a little more quickly.

3 - - - - -

4 (Thereupon, Deposition
5 Exhibit-11 was marked
6 for purposes of
7 identification.)

8 - - - - -

9 Q. Mr. Blank, I'll hand you a
10 document marked as Deposition Exhibit
11 No. 11. It bears the caption,
12 Questions To and Answers From
13 FirstEnergy Corp. to Prepare Stipulated
14 Facts. Take all the time you like to
15 look through that.

16 Mr. Blank, could I
17 interrupt you just a moment?

18 A. Of course.

19 Q. I intend to ask you about
20 just a couple of the questions in this
21 document, but I want you to -- when I
22 ask about those questions, I want you
23 to take all the time you want to read
24 them and the responses, okay? But if I
25 may, can we just ask you a few

1 questions generally about the document
2 at this point?

3 A. Certainly.

4 Q. Did you assist in the
5 preparation of the answers that are
6 given in this document?

7 A. At least some of them, yes.
8 This is Exhibit 11 you're referring to?

9 Q. Yes, I am.

10 A. Yes.

11 Q. Let me ask you to look at
12 page 9, the last question on the bottom
13 of page 9.

14 MR. RUXIN: Which
15 question number is that?

16 MR. HARDYMON: Well; it
17 appears to be unnumbered. Is it
18 question 36? It's the last question in
19 the document.

20 MR. RUXIN: Okay.

21 Q. I'll read it for the record.
22 It says, Question raised in March 14,
23 2001, letter: Who's executing the
24 FERC-filed MSG contract with the
25 FirstEnergy operating companies on

1 behalf of IEU. Do you see that
2 question, Mr. Blank?

3 A. I see that question.

4 Q. Did you assist in the
5 formulation of the answer that's given
6 here?

7 A. I don't recall whether I did
8 or not.

9 Q. All right. And for the
10 record, the answer is, begin quotes, A
11 copy of the FERC-filed MSG contract has
12 been sent to IEU for execution. Did I
13 read that correctly?

14 A. Yes, sir.

15 Q. Mr. Blank, when was that
16 FERC-filed MSG contract sent to IEU for
17 execution?

18 A. I don't know the answer to
19 that.

20 Q. Do you know who would have
21 sent it to IEU for execution?

22 A. No.

23 Q. Do you know who made the
24 decision that it ought to be sent to
25 IEU for execution?

1 A. No.

2 Q. Do you know the criteria on
3 which the decision was made to send the
4 MSG contract to IEU for execution?

5 A. No, I do not.

6 Q. Mr. Blank, the contract
7 referred to in -- on page 9 of Exhibit
8 11 is the contract attached to your
9 email of February 14, 2001, to the
10 marketers which is marked as Exhibit
11 10A, is that not correct, or at least
12 one in substantially the same form?

13 A. It may be. I don't know
14 that as a fact, either.

15 Q. Who at FirstEnergy would be
16 the person of whom we should inquire
17 about these matters?

18 A. I don't know that, either.

19 Q. Is there a department that
20 has responsibility for contracts such as
21 the MSG contract?

22 A. My suspicion is that it
23 would be with the supplier services
24 activity, but maybe it's not. It might
25 be with our legal group. I just don't

1 know.

2 Q. Who is the manager of the
3 supplier services activities department?

4 A. That is not headed by a
5 manager. It's headed by a director and
6 her name is Christine Prieto, P R I E T
7 O.

8 Q. Did you ever speak with Ms.
9 Prieto about the need to have IEU
10 execute the FERC-filed MSG contract?

11 A. No.

12 Q. Did you ever participate in
13 any discussions on that subject?

14 A. I participated in discussions
15 related to the service agreement if
16 that's what you mean, but they weren't
17 with Ms. Prieto.

18 Q. Okay. Let me ask you to
19 take a look at the service agreement
20 marked as Exhibit 10A.

21 Now, if we look at the
22 third whereas clause on the first page
23 of the form agreement, does it not
24 establish that one of the purposes of
25 the agreement is to establish the terms

1 and conditions of market based rate
2 wholesale power sales service to be
3 conducted under the FERC tariff?

4 A. That's what it says.

5 Q. And if you turn to page 8 of
6 this agreement, it indicates that it's
7 going to be executed by FirstEnergy
8 Corp. and a customer, correct?

9 A. That's what it says.

10 Q. Let me ask you to turn to
11 page 2. This agreement indicates that
12 FirstEnergy operating companies agree to
13 furnish power to a customer and the
14 customer agrees to purchase and pay for
15 such service, correct?

16 A. That's what it says.

17 Q. And is that in fact what
18 happens under the MSG program to your
19 understanding?

20 A. I know about the allocation
21 of MSG. I don't know whether that
22 happens or not, but -- I just don't
23 know.

24 Q. Let me ask you this. If
25 this contract has been sent to IEU for

1 execution, would you agree with me that
2 IEU is to be the customer under this
3 agreement?

4 A. I don't know, I don't know
5 whether it is or not.

6 Q. Okay. Let me ask you this.
7 If it is true that IEU is to be the
8 customer under this agreement, then IEU
9 would be incurring an obligation to make
10 payment, would you agree with that?

11 A. I don't know whether IEU is
12 the customer of this agreement, so I
13 would have to speculate and I'm not
14 inclined to do that.

15 Q. Do you know if anyone
16 inquired as to whether IEU was to be a
17 customer under this agreement in
18 connection with considering IEU's
19 application for MSG?

20 THE WITNESS: Could I
21 have the question repeated, please.

22 (Record read.)

23 A. The approval of IEU's
24 application for MSG occurred before this
25 agreement was developed and sent out to.

1 anyone, so I expect that the answer is
2 it wasn't considered because it didn't
3 exist at the time.

4 Q. How then was --

5 A. In fact, that's true for
6 very many of the recipients of MSG.
7 It's not limited to IEU.

8 Q. But at the time that IEU's
9 application was considered, isn't it
10 true that FirstEnergy was simultaneously
11 preparing the tariff and this form
12 agreement for submission to the FERC so
13 that this wholesale power transaction
14 could take place?

15 A. Preparation of the tariff
16 was in a list to be done. I don't know
17 if it was simultaneously being prepared,
18 but it was certainly on the list that
19 had to be accomplished.

20 Q. Knowing that that was part
21 and parcel of implementing the MSG
22 program, did anyone make an inquiry as
23 to whether IEU would be a customer
24 under this agreement and therefore incur
25 an obligation to pay?

1 A. I don't know the answer to
2 that. I wasn't -- I was involved in
3 the allocation of the MSG, that was my
4 purpose.

5 Q. I guess what I'm getting
6 back to is why your department made a
7 distinction between marketers and
8 aggregators in terms of the registration
9 with FirstEnergy that was required.

10 I understood your
11 testimony to be that where there wasn't
12 a payment obligation, there was no point
13 in making the creditworthiness
14 assessment. Did I misunderstand?

15 A. I don't know whether you
16 misunderstood or not.

17 Q. But that's your answer?

18 A. Yep, right.

19 Q. Okay. And you don't know
20 whether anybody made any inquiry into
21 whether or not IEU would be incurring a
22 payment obligation when its application
23 was considered?

24 A. I recall being advised that
25 IEU was not going to be incurring a

1 payment obligation.

2 Q. Okay. Let me ask you to
3 look at page 9 of Exhibit 11 again. If
4 IEU is going to be executing the MSG
5 contract, is FirstEnergy going to
6 reconsider its application for MSG and
7 require creditworthiness information?

8 A. I don't know that, either.

9 Q. Has IEU applied to become
10 certified by the PUCO as an entity
11 other than -- I'm sorry, as a CRES
12 other than an aggregator?

13 A. I believe so.

14 Q. When did that occur?

15 A. There was some recent
16 activity related to that. I don't know
17 any more than that, any more details
18 about it.

19 Q. How did you find out about
20 it?

21 A. I believe I was advised by
22 one of my attorneys.

23 Q. And you believe this was
24 within the last two weeks?

25 A. Yes.

1 Q. And what is your
2 understanding of why IEU has applied for
3 status other than aggregator?

4 A. I don't have any
5 understanding of why they did what they
6 did.

7 Q. Do you know if anyone at IEU
8 including IEU's attorneys discussed this
9 application with any representatives of
10 IEU prior to IEU making the application
11 that you've just described?

12 MR. RUXIN: I'm sorry,
13 could we have that read back?

14 (Record read.)

15 Q. Let me try that again.

16 A. Thank you.

17 Q. Do you know if anyone at
18 FirstEnergy discussed with anyone at IEU
19 IEU's making this application for a
20 different status prior to IEU going
21 ahead and filing the application?

22 THE WITNESS: Could I
23 have that reread, please.

24 (Record read.)

25 A. I don't know whether anyone

1 at FirstEnergy discussed filing this
2 particular application with anyone at
3 IEU. I am aware that there has been a
4 question raised at some point, I don't
5 know when this was, whether IEU had any
6 intentions to make any revisions to its
7 earlier filings, but I don't remember
8 the timing on any of that.

9 Q. Who raised that question?

10 A. I don't know with precision
11 who raised that question.

12 Q. Okay. Do you know with
13 imprecision who raised that question?

14 A. Yes.

15 Q. Who?

16 A. I believe it was Mr.
17 Alexander, but I don't know for sure.

18 Q. Who's Mr. Alexander?

19 A. I believe he's the president
20 of FirstEnergy.

21 Q. Do you know why that
22 question was raised?

23 A. I believe that that question
24 was raised following the filing of this
25 complaint and that an inquiry was made

1 whether there was any reaction that IEU
2 was going to be making with respect to
3 any change in certification.

4 Q. After the filing of the
5 complaint with the Public Utilities
6 Commission in this case?

7 A. I believe that was the
8 timing, yes.

9 Q. And who was making the
10 inquiry about whether IEU was going to
11 be amending its applications?

12 A. As I thought I testified,
13 that I don't know with precision. You
14 went on to say would you know with
15 imprecision and I said with imprecision
16 I believe Mr. Alexander had that
17 question.

18 Q. How did you find out that he
19 had that question?

20 A. I was in a meeting with him
21 when he said he was going to ask that
22 question.

23 Q. And tell us, please, what
24 the discussion was in the meeting just
25 prior to his making that statement.

1 A. I don't recall how that
2 arose. I don't recall that.

3 Q. Who was at the meeting?

4 A. I only recall the identity
5 of one other person at the meeting,
6 although I know there was more than the
7 one other person, and that would be Ms.
8 Vespoli, V E S P O L I.

9 Q. What is her job?

10 A. Vice president and general
11 counsel.

12 Q. How many people were at the
13 meeting?

14 A. My recollection is five or
15 six, but I don't recall that with
16 precision.

17 Q. You would be one?

18 A. Yes.

19 Q. Ms. --

20 A. Vespoli.

21 Q. Ms. Vespoli would be two.
22 Mr. Alexander?

23 A. Was in briefly.

24 Q. And you believe there were
25 two or three other people involved?

1 A. At least, yes.

2 Q. And you don't remember who
3 they were?

4 A. Not with precision.

5 Q. Well, tell me what you
6 remember as best you can.

7 A. As I said, I don't remember
8 who was there or not there. I could
9 imagine a panoply of people who might
10 have been there, but that's different
11 than who was there. I just don't know.

12 Q. Yes, it is. Fine. Who
13 called the meeting?

14 A. I don't recall that, either.

15 Q. How did you get notified of
16 the meeting?

17 A. I don't recall that.

18 Q. Where did the meeting occur?

19 A. On the 18th floor conference
20 room at the FirstEnergy headquarters in
21 Akron.

22 Q. Where is Mr. Alexander's
23 office located?

24 A. Pardon me, I misspoke. It
25 was in the 19th floor conference room.

1 Next to the 19th floor conference room.
2 I don't believe he called the meeting,
3 though.

4 Q. And what was the purpose of
5 the meeting?

6 A. I don't recall that, either.

7 Q. How long did it last?

8 A. I don't recall that.

9 Q. Did anyone make minutes of
10 this meeting?

11 A. I did not. I don't know
12 whether anyone else did. It would be
13 unusual for that to have happened.

14 Q. Did you take any notes
15 yourself?

16 A. I might have.

17 Q. Still have them?

18 A. I don't know. I don't
19 recall taking any notes. Nothing formal
20 in terms of a document that said
21 minutes of such and such a meeting or
22 ideas from such and such a meeting.

23 Q. What decisions were made, if
24 any, in the course of this meeting?

25 A. My recollection is that

1 there weren't any decisions. It was --
2 I don't recall that there were decisions
3 at this meeting.

4 Q. Were you directed to take
5 any action as a result of this meeting?

6 A. Not that I recall.

7 Q. Was anyone directed to take
8 any action as a result of this meeting?

9 A. Other than what I've
10 testified already, no, not that I
11 recall.

12 Q. Okay. Other than making the
13 inquiries about whether IEU intended to
14 amend its application?

15 MR. RUXIN: If I might,
16 I think this is the second time you've
17 said inquiries with respect to IEU's
18 intention to amend its application,
19 although the record will show I think
20 Mr. Blank's testimony was that Mr.
21 Alexander said he would inquire as to
22 what IEU might do in reaction to the
23 filing of the complaint with respect to
24 their application, words different than
25 amend their application.

1 MR. HARDYMON: Okay. I'll
2 accept that.

3 MR. RUXIN: I'm not
4 arguing because the record says what it
5 says.

6 MR. HARDYMON: That's fine.

7
8 Q. Nothing beyond that that you
9 can recall?

10 A. I recall nothing beyond
11 that.

12 Q. And you don't recall when
13 this meeting took place?

14 A. I only recall that I believe
15 it was after the filing of the
16 complaint.

17 Q. How long after?

18 A. That I do not recall.

19 Q. Do you know if the inquiry
20 raised by Mr. Alexander was completed?

21 A. No.

22 Q. Do you know who was going to
23 undertake that inquiry?

24 A. I believe Mr. Alexander was
25 going to undertake that. He's not in

1 the habit of reporting to me,
2 fortunately I might add.

3 Q. Did you receive any
4 directive from Mr. Alexander or others
5 that would suggest to you that that
6 inquiry had been made?

7 A. No.

8 Q. I apologize if I asked you
9 this before, Mr. Blank, but do you know
10 who sent the FERC-filed MSG contract to
11 IEU for execution?

12 A. No.

13 Q. And you don't have any idea
14 why it was sent?

15 A. Lots of ideas, but I don't
16 know with precision why it was sent.

17 Q. Well, I don't want you to
18 just guess and speculate, but if you
19 have been told something or have learned
20 something in the course of your
21 employment that would suggest a reason
22 why it was sent to IEU, I would like to
23 have that answer.

24 A. I don't have an answer for
25 that. I don't have any additional

1 information, let's say it that way.

2 Q. All right. While we're
3 here, would you please look at Exhibit
4 11?

5 A. Yes, sir.

6 Q. Let me invite your attention
7 to question 34 on page 9. For the
8 record the question is, begin quotes,
9 has MSG begun to flow to any IEU
10 member, question mark, end of quote.
11 Are you with me, Mr. Blank?

12 A. Yes.

13 Q. And you see the answer
14 indicated by FirstEnergy is that power
15 is flowing to IEU members.

16 A. I see that.

17 Q. But it's not currently
18 characterized as MSG, correct?

19 A. That's what the document
20 says. I don't know the date of this
21 document.

22 Q. Well, if you see -- if you
23 look at the end of the answer, the date
24 in parentheses is March 20, 2001. I
25 took that to be the date of the answer,

1 is that correct or do you know?

2 A. I don't know.

3 Q. Okay. Can you tell us,
4 please, the nature of the processing
5 error that is referred to in the answer
6 to question 34 that caused the power to
7 not be characterized as MSG?

8 A. I recall that I was advised
9 about that, but I don't recall what the
10 nature of the processing error was.

11 Q. Who advised you about it?

12 A. Mr. Burnell.

13 Q. What did he tell you?

14 A. I've had many, many
15 conversations with Mr. Burnell and I
16 don't recall the details of what he
17 said in this conversation. I recall
18 that there was an administrative issue
19 associated with this that was our
20 problem and we had to correct it.

21 Q. And you don't know what the
22 nature of the administrative issue was?

23 A. I don't recall. I probably
24 knew at the time, but I don't recall.
25 It didn't seem to be of vast importance.

1 having to do with the allocation of
2 market support generation.

3 Q. This was an administrative
4 issue within your department, correct?

5 A. I don't think it was within
6 my department, no.

7 Q. Whose department was it in?

8 A. I think it was within the
9 supplier services activity, but there
10 again I don't recall with precision.

11 Q. Okay. And does Mr. Burnell
12 work in supplier services activity?

13 A. Yes.

14 Q. And I take it you did not
15 receive an email or a written notice of
16 any kind from Mr. Burnell that would
17 describe this problem?

18 A. No, he didn't -- no, this
19 was all by telephone.

20 Q. Just a telephone
21 conversation?

22 A. Yes.

23 Q. Do you know when that
24 occurred?

25 A. No. Probably before March

1 20, 2001, if your supposition about the
2 date is correct.

3 Q. Do you know when MSG began
4 to flow to any IEU member?

5 A. Sometime after December of
6 2000, but precisely when it began I
7 don't know.

8 Q. Who would know the answer to
9 that?

10 A. Mr. Burnell. Pardon me, I
11 believe Mr. Burnell might know. I
12 don't know with precision that he knows.

13 Q. Okay. Do you know if the
14 error has been corrected?

15 A. I do not -- I do not know
16 with precision that it has been, but I
17 believe it has been.

18 Q. Do you believe Mr. Burnell
19 was the person who corrected the error?

20 A. It was corrected under his
21 direction, yes. I don't know if he did
22 it himself.

23 Q. Okay. Who is the supplier
24 of the MSG flowing to the IEU members?

25 A. Well, IEU is certainly a

1 supplier as an aggregator under -- for
2 the purposes of the market support
3 generation program.

4 Q. Okay. Who is the seller of
5 the MSG flowing to the IEU members?

6 A. I do not know that in terms
7 of who is the seller to the individual
8 members of the IEU. I do not know
9 that.

10 Q. Who is the wholesale
11 provider of the MSG flowing to IEU
12 members?

13 A. I don't think I know that,
14 either.

15 Q. To whom are the bills for
16 the MSG power sent with respect to IEU?

17 A. I don't know the answer to
18 that.

19 Q. Let me ask you to look at
20 question 35 and the answer, and again
21 we're on page 9 of Exhibit 11.

22 A. I see that.

23 Q. The indication is that
24 confirmation notices were mailed to IEU
25 members who were enrolled to receive

1 MSG, but due to a processing error,
2 FirstEnergy Services was incorrectly
3 named in the notice as the supplier.

4 Do you see that answer?

5 A. I see that.

6 Q. Okay. Who is the supplier
7 if it is not FirstEnergy Services?

8 A. I don't know the answer to
9 that.

10 Q. Do you know what kind of
11 processing error caused FirstEnergy
12 Services to be incorrectly named in the
13 notice as the supplier?

14 A. No.

15 Q. Was this error ever brought
16 to your attention by anyone?

17 A. I've already testified that
18 Mr. Burnell brought it to my attention.

19 Q. And I gather that your
20 understanding is that that error has
21 been corrected by now?

22 A. That's my understanding, yes.

23 Q. And that would have been
24 done by either Mr. Burnell or someone
25 acting at his direction?

1 A. That's my understanding.

2 Q. And you don't know who is
3 named as the supplier to the IEU
4 members as of this moment in time?

5 A. I do not know that. I know
6 who isn't.

7 Q. FirstEnergy Services is not,
8 correct?

9 A. That's correct.

10 MR. HARDYMON: We have
11 been going about an hour and a quarter,
12 Mr. Blank. I propose a quick break if
13 you don't mind. Is this a good time
14 for you?

15 THE WITNESS: Yes, it is.

16 (Recess had.)

17 Q. Mr. Blank, let me ask you to
18 look again at Deposition Exhibit 10A.
19 Did you have any part in negotiating
20 any portion of this agreement?

21 A. I don't understand the use
22 of the word negotiating.

23 Q. Did you have any discussions
24 with marketers or other people on the
25 server list that you described earlier

1 about what ought to be the terms of
2 this agreement and what ought not to be
3 the terms of this agreement?

4 A. I recall that parties asked
5 to have input into what should go into
6 the service agreement. We agreed that
7 we would submit a draft for comment. I
8 believe there was an earlier draft to
9 this which we submitted for comment. I
10 believe we got comments back and that I
11 discussed those comments with my
12 attorneys who were drafting this
13 material. If that's what you mean by
14 negotiating, I was involved in that.

15 Q. Okay. How many drafts of
16 this agreement do you recall existing
17 before the final one was submitted to
18 the FERC?

19 A. There were a number of
20 drafts which we put together prior to
21 the draft which was sent out to the
22 suppliers, which I believe was
23 predecessor to the February 14th draft.
24 Then there's a February 14th draft, then
25 I believe there was a final draft which

1 was submitted to FERC.

2 Q. Let me focus for a moment on
3 those drafts that were put together
4 prior to the first one that was
5 submitted for comment to the marketers
6 and others, all right?

7 A. I used the word suppliers.

8 Q. Okay, suppliers. How did
9 the process of drafting work? Did the
10 legal department prepare the first
11 document for discussion purposes?

12 A. With some input from me,
13 yes.

14 Q. And who else would have been
15 involved, if anyone, other than yourself
16 and lawyers in the legal department?

17 A. I would have to check my
18 email records to see who else it would
19 have gone to. I just don't know the
20 names with precision.

21 Q. Do you know if it was other
22 people within your department?

23 A. There's a possibility it
24 went to one person at my department.

25 Q. Who would that be?

1 A. Mr. Headings, but it's a
2 guess.

3 Q. Okay. Were the heads of
4 other departments involved?

5 A. I don't believe so.

6 Q. So to your recollection it
7 was the legal department and your
8 department?

9 A. I'm off in the realm of
10 speculation to answer any further. My
11 expectation and speculation is that the
12 customer choice activity may have had
13 its hand in this, too, but I don't
14 recall that with any -- I don't recall
15 with precision whether they did.

16 Q. All right. And you provided
17 input to the legal department about the
18 terms that ought to be included in this
19 contract?

20 A. Some of them, yes.

21 Q. Do you remember what
22 specific terms you addressed?

23 A. Attachment 1 on page 18.

24 Appendix B. Section C. Pardon me,
25 it's called part C on page 13. Part B

1 on page 11 and 12. Part A on page 9,
2 10, 11.

3 Q. Is that it?

4 A. I may have had some comments
5 in the -- in the other articles, but I
6 don't recall.

7 Q. Okay. Did you draft
8 portions of appendix A?

9 A. It was -- appendix A was
10 drafted under my supervision, yes.

11 Q. By people in your
12 department?

13 A. Yes.

14 Q. Okay. And then that draft
15 would be sent to the legal department,
16 is that a correct statement of the
17 process?

18 A. When we drafted appendix A,
19 initially drafted appendix A, it was
20 intended as a companion to the protocol
21 for allocating market support
22 generation. It was intended to cover
23 scheduling and billing and as the
24 decisions were made to file a FERC
25 filing, it was decided that appendix A,

1 scheduling and billing material, should
2 be included in that filing.

3 Q. Okay. And I assume that as
4 the protocol changed, appendix A would
5 change to reflect the same --

6 A. Which protocol do you mean?

7 Q. If appendix A was drafted
8 originally as a companion to the
9 protocol, am I correct in assuming that
10 if the protocol changed through time,
11 then appendix A would be revised
12 periodically to reflect those changes?

13 A. No.

14 Q. That didn't happen?

15 A. That's correct.

16 Q. Okay. Appendix A was
17 substantially drafted after the protocol
18 had been completed?

19 A. I believe the early versions
20 of appendix A were drafted in the
21 summer of 2000, but they were in no
22 way, shape or form in any stage of
23 completion at the time that we had the
24 protocol for the reservations completed.

25 Q. When was the protocol

1 completed?

2 A. We haven't changed it since
3 October 5, 2000, so I guess I would
4 call that completed at this point.

5 Q. And it was further along in
6 the drafting process during the summer
7 of 2000 than appendix A was?

8 A. It wasn't called appendix A
9 at the time, as I recall. I don't know
10 that I could answer your question yes
11 or no. They had differing schedules
12 and appendix -- what became appendix A
13 to this form of service agreement became
14 less important on a day by day basis
15 than the reservation protocol. Until
16 the reservation protocol was completed,
17 then we had to refocus on appendix A
18 again.

19 Q. Did you or others working at
20 your direction also draft part B in its
21 original form?

22 A. Yes.

23 Q. And would the same be true
24 of part C?

25 A. Yes.

1 Q. And the same would be true
2 of appendix B?

3 A. The question was whether I
4 or someone in my department drafted
5 that?

6 Q. Yes.

7 A. The answer is yes.

8 Q. And the information that
9 appears on page 18 originated with your
10 department as well, I take it?

11 A. That originated in the
12 stipulation. The numbers came out of
13 my department, however, from -- that
14 went into the stipulation, except for
15 the 1,100 to 20, which came from
16 somebody else.

17 Q. When this form service
18 agreement was placed in its final form
19 for submission to FERC, was it
20 circulated to you for approval before it
21 was actually submitted to FERC?

22 A. I would use the word comment
23 rather than approval.

24 Q. All right.

25 A. It was submitted to me for

1 comment.

2 Q. Okay. How long did this
3 whole process take of -- that is of
4 drafting this form service agreement
5 from beginning until it was submitted to
6 the FERC?

7 A. Are you distinguishing the
8 drafting of appendix A and B from
9 drafting the form of service agreement?

10 Q. All parts of the form
11 service agreement from the earliest time
12 that any part of it began the drafting,
13 in the drafting stage until it was
14 finally completed, is this a year-long
15 project?

16 A. The form of service
17 agreement -- pardon me. The attachments
18 to the form of service agreement,
19 particularly attachment B is -- the
20 source is in the retail supplier tariff
21 which was drafted in 1999.

22 It wasn't drafted
23 originally to be part of the form of
24 service agreement. It was drafted as
25 part of the restructuring case, but so

1 if I answer your question, I have to
2 say sometime in 1999 until when this
3 was filed. But it didn't take that
4 long to draft the form of service
5 agreement.

6 Q. I understand. Putting aside
7 the appendices and the attachments, can
8 you tell us how long the form of
9 service agreement was under preparation,
10 if you can give me an approximate time
11 frame?

12 A. Approximately from sometime
13 in December until when it was filed
14 with FERC I believe in early March.

15 Q. Do you recall seeing any
16 drafts of the form service agreement
17 with the exception of the appendices
18 prior to December of 2000?

19 A. No, I do not.

20 Q. Do you know who drafted the
21 portions of the form service agreement
22 other than the ones that you've
23 identified for us as having been created
24 in your department?

25 A. I know under whose

1 supervision it was drafted.

2 Q. Who supervised the process?

3 A. It was one of the lawyers in
4 our legal department.

5 Q. Which lawyer?

6 A. Mr. Beiting, B E I T I N G.

7 Q. Mr. Blank, can you tell us
8 who at FirstEnergy might be able to
9 answer an inquiry as to who is the
10 supplier who is now named in the notice
11 to IEU that was referenced in question
12 35 of Exhibit 11?

13 A. No.

14 Q. Is it your testimony, Mr.
15 Blank, that at some point during the
16 MSG application process for IEU, you
17 were informed that IEU would not be
18 incurring a payment obligation in
19 connection with the supply of MSG?

20 A. Yes.

21 Q. Do you remember who informed
22 you of that? Was that Mr. Burnell?

23 A. No.

24 Q. Who was it?

25 A. One of the lawyers in the

1 legal department.

2 Q. A name?

3 A. Ms. Bell, B E L L.

4 Q. And how did it come to pass
5 that she was informing you of that
6 fact?

7 A. I don't recall how it came
8 to pass.

9 Q. Did you go to her with an
10 inquiry of that nature or did someone
11 come to you? Do you recall anything of
12 the circumstances?

13 A. I recall odd bits and
14 pieces.

15 Q. Tell us what they are.

16 A. I was aware that there was
17 some sort of discussion going forward
18 between IEU and FirstEnergy Services,
19 the details of which I didn't know and
20 really had no interest in, but I was
21 aware that such was going on.

22 I was aware that --
23 obviously that the stipulation had
24 certain terms relating to the allocation
25 of market support generation to

1 FirstEnergy Services and the obligation
2 to effectively have FirstEnergy Services
3 displaced if there were alternative
4 claimants.

5 So the question obviously
6 would arise, is there anything that I
7 should be concerned about in the
8 allocation of market support generation
9 to FirstEnergy Services in connection
10 with this claimant or any other
11 claimant.

12 The response is, again as
13 I say, odd bits and pieces and I don't
14 remember sequence particularly, was that
15 there was no -- market support
16 generation was never going to
17 FirstEnergy Services, but at the same
18 time that there was going to be no
19 payment obligation from IEU to the
20 utility.

21 Q. What was your understanding
22 of where the MSG for IEU members was
23 going if it wasn't going to FirstEnergy
24 Services?

25 A. Ultimately it's going to the

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1 customers.

2 Q. All right. And was it
3 passing through a wholesaler or retailer
4 before it reached the customers?

5 A. It was going through the
6 aggregator, through IEU.

7 Q. And when you say customer,
8 do you mean IEU members?

9 A. I mean IEU members, yes.
10 That's the ultimate user of that power.

11 Q. And it was your
12 understanding that IEU was not incurring
13 a payment obligation in connection with
14 that MSG power going to its members?

15 A. That's correct.

16 Q. And was it your
17 understanding that the IEU members were
18 paying for the MSG?

19 A. Ultimately the IEU members
20 are paying for the MSG, I'm sure.

21 Q. And who is it that you
22 understood the IEU members to be paying
23 for the MSG?

24 A. I don't know the answer to
25 that.

1 Q. And can you suggest to us a
2 person who would know the answer to
3 that?

4 A. Somebody at IEU I expect
5 would know the answer to that.

6 Q. And you didn't have any
7 understanding of that at the time of
8 this discussion with Ms. Bell, correct?

9 A. There was no reason I needed
10 to know that.

11 Q. When did you learn about
12 there being discussions between
13 FirstEnergy Services and IEU?

14 A. In the latter half of the
15 year 2000.

16 Q. Who was it who told you
17 about these discussions?

18 A. I don't recall.

19 Q. Was it someone at
20 FirstEnergy?

21 A. I don't recall.

22 Q. At some point, however, you
23 ended up in a conversation with an
24 attorney named Bell?

25 A. Yes.

1 Q. And the question that was on
2 your mind was whether IEU would incur a
3 payment obligation?

4 A. The primary question on my
5 mind, was there market support
6 generation going to FirstEnergy
7 Services.

8 Q. All right. Why was that
9 question on your mind at this point in
10 time?

11 A. I've already testified to
12 that.

13 Q. I'm sorry, refresh my
14 recollection.

15 A. The stipulation calls for
16 the potential to reallocate market
17 support generation away from FirstEnergy
18 Services to the extent that an
19 allocation is made to FirstEnergy
20 Services and to the extent there are
21 other claimants for that market support
22 generation.

23 Q. Did you understand that an
24 allocation for IEU or its members was
25 going to be made to FirstEnergy Services.

1 at the time you made this inquiry of
2 Ms. Bell?

3 A. No, I already told you that
4 I did not know what the situation was
5 is how I inquired about what the
6 situation was.

7 Q. I guess that's what I'm
8 getting at. What led you to make that
9 inquiry?

10 A. First, the knowledge of what
11 was in the stipulation. Second, that I
12 became aware that there were discussions
13 between IEU and FirstEnergy Services, so
14 I thought I should find out because I
15 thought it might have an effect on
16 allocation of market support generation.

17 Q. What was it about the
18 discussion that you heard about between
19 FirstEnergy Services and IEU that led
20 you to believe that there would be an
21 issue about market support allocation?

22 THE WITNESS: Could you
23 repeat the question, please.

24 (Record read.)

25 A. Knowing what's in the

1 stipulation about the -- really the
2 supplemental materials to the
3 stipulation, I believe where FirstEnergy
4 Services is required to be moved to the
5 end of the line in the event of
6 alternative claimants, knowing that
7 there's a limited amount of MSG, knowing
8 that there's a lot of interest in MSG
9 and knowing that or at least hearing
10 there has been some discussions, I
11 thought it was incumbent upon me to
12 know the facts about that situation as
13 it related to was there going to be any
14 MSG going to FirstEnergy Services,
15 because if there was, I was going to
16 have to do something about it in terms
17 of displacement potentially if there
18 were enough claimants.

19 Q. Okay. The nature of the
20 discussions that you heard about, that's
21 what I'm asking about. Did you hear
22 that some of the MSG was going to be
23 going to FirstEnergy Services?

24 A. No, I did not. I heard
25 there were discussions.

1 Q. They weren't talking about
2 baseball, I take it?

3 A. I have no idea what they
4 were talking about. I understood there
5 were discussions. I thought I should
6 inquire about them, so I did.

7 Q. What were you told about the
8 nature of the discussions?

9 A. I think I've already
10 testified to that, that there was not
11 going to be any market support
12 generation going to FirstEnergy
13 Services.

14 Q. Is that what IEU and
15 FirstEnergy Services were discussing?

16 A. I don't know what they were
17 discussing.

18 Q. Well, when you made inquiry
19 about those discussions, what did you
20 learn?

21 A. I told you what I learned.

22 Q. You learned that they --
23 there wouldn't be MSG going to
24 FirstEnergy Services?

25 A. That's correct.

1 Q. And did you learn any more
2 about the subject matter of the
3 discussions between FirstEnergy Services
4 and IEU that led you to make the
5 inquiry?

6 A. I already told you why I
7 made the inquiry. Did I learn anything
8 else in addition to that that led me to
9 make the inquiry? I told you why I
10 made the inquiry, so I find the
11 question incomprehensible, pardon me.

12 Q. At some point someone who
13 you can't recall now told you there
14 were discussions between FirstEnergy
15 Services and IEU, yes?

16 A. Yes.

17 Q. And something in what you
18 heard from this person led you to be
19 concerned about whether there was going
20 to be an allocation issue, is that
21 correct?

22 A. I was aware that IEU was
23 interested in market support generation.
24 I do not recall why I became aware of
25 that, but I was aware that they were

1 interested.

2 Obviously IEU is a
3 participant in the stipulation
4 discussions. I was aware that
5 FirstEnergy Services could be awarded
6 market support generation, but if there
7 were other claimants in line,
8 FirstEnergy Services would have to be
9 displaced and I would have to go to the
10 precise line which in the stip, I don't
11 remember what it was, and I thought I
12 better find out if there was a
13 situation there I was going to have to
14 deal with in terms of the allocation.

15 Q. Was it your understanding
16 that IEU and FES were talking about
17 FirstEnergy Services supplying MSG to
18 IEU?

19 A. No, there was not any
20 understanding whether -- of such. I
21 was making a supposition that because on
22 one hand IEU was interested, I knew IEU
23 had been interested in market support
24 generation, I knew that FirstEnergy
25 Services had to be displaced under

1 certain circumstances. I thought I
2 better find out whether there was
3 anything I was going to have to deal
4 with.

5 Q. By whom is Attorney Bell
6 employed?

7 A. FirstEnergy.

8 Q. Not FirstEnergy Services?

9 A. I don't believe so, but I
10 can't -- I don't know precisely who
11 she's employed by.

12 Q. How did you come to be
13 talking to her about this situation?
14 Did someone direct you there?

15 A. I don't recall that.

16 Q. Mr. Blank, if it is your
17 understanding that IEU did not incur a
18 payment obligation, who was incurring
19 the payment obligation for the MSG?

20 A. I don't know that.

21 Q. And to this day you don't
22 know that?

23 A. I still don't know that.

24 Q. And can you tell us who
25 might know the answer to that question?

1 A. I expect if I wanted to know
2 the answer to that question I would go
3 to someone from IEU.

4 Q. And there's no one at
5 FirstEnergy who would know the answer to
6 that question?

7 A. I don't know that answer.

8 Q. When you were engaged in the
9 drafting of the MSG service agreement
10 that was ultimately submitted to the
11 FERC, did you receive any instruction or
12 input from anyone as to what the goal
13 of the process would be?

14 A. I'm not sure I should
15 dignify it by calling it instruction,
16 but I had lots of suppliers telling me
17 what to do.

18 Q. What was your understanding
19 of the purpose of preparing this MSG
20 service agreement for submission to
21 FERC?

22 A. Your question makes some
23 assumptions that I'm not sure I agree
24 with.

25 Q. Okay. Which ones?

1 A. First is we were preparing
2 appendix B. No one had invented market
3 support generation at all, so that
4 was --

5 Q. I understand that.

6 A. -- that was the supplier
7 tariff for the retail side of the
8 business. As we were preparing the
9 majority of appendix A, we knew that
10 there was going to have to be a
11 scheduling arrangement and some sort of
12 other similar arrangements as a
13 different process than the allocation of
14 MSG, so we knew we had to prepare some
15 sort of guidelines about how that should
16 work.

17 At that time I had no
18 thought at all, positive or negative or
19 pro or con, any participation by the
20 FERC in this process at all. So
21 preparation of those two items, the
22 appendix B and appendix A, were not
23 done in contemplation of the form of
24 service agreement.

25 Q. I understand. Now, in

1 addition to drafting those portions, you
2 drafted other original parts of the
3 agreement or at least people working at
4 your direction did, and in addition, as
5 I understand it, you were also given
6 the opportunity to comment on various
7 drafts of the agreement.

8 What was your
9 understanding of why the agreement was
10 being prepared?

11 A. I was advised it was going
12 to become appropriate to at least file
13 the market support generation rates with
14 the FERC.

15 Q. What does the FERC do in all
16 of this? Do they regulate wholesale
17 power sales?

18 A. That's covered by a number
19 of provisions in the United States code
20 and I don't know precisely what the
21 FERC does on this.

22 Yes, there's some general
23 regulatory powers over wholesale
24 transactions, but I'm sure they would
25 have a far expanded definition than

1 that.

2 Q. Government agencies always
3 do.

4 A. I don't know.

5 Q. But your understanding was
6 that the agreement you were
7 participating in drafting was going to
8 be appended to a tariff submitted to
9 the FERC relative to a wholesale power
10 transaction, is that a fair statement?

11 A. No, not one we drafted; the
12 original versions of it.

13 Q. I understand, but before the
14 final one was submitted to the FERC,
15 you understood that to be the purpose,
16 did you not?

17 A. Yes.

18 Q. Give me just a moment. Let
19 me ask you to look again at the form of
20 service agreement marked as Exhibit 10A?

21 If you look at page 16,
22 please, page 16 appears to be the form
23 of a confirmation letter that would be
24 sent in connection with market support
25 generation. Are you with me?

1 A. Yes.

2 Q. Was this form of
3 confirmation letter or one like it sent
4 to IEU?

5 A. I can only answer by
6 inference in that you brought to my
7 attention the answer to the last
8 question on page 9 of Exhibit 11, which
9 says we have sent one to IEU for
10 execution and perhaps this form of
11 confirmation letter was what was sent to
12 IEU, but I don't really know.

13 Q. Do you know if any form of
14 confirmation was sent to IEU in
15 connection with the flow of MSG to its
16 members?

17 A. Only by inference.

18 Q. Who would know the answer to
19 that?

20 A. I don't know.

21 Q. Can you think of anyone at
22 FirstEnergy who would have that
23 information?

24 A. I would have to find out why
25 we answered the question at the bottom

1 of page 9 the way we answered it and
2 inquire of them who -- if they know who
3 the person was who sent that document
4 to IEU and what document it was.

5 Q. Beyond referring to Exhibit
6 11, you don't personally have any idea
7 who we would ask a question like that
8 of?

9 A. I have lots of ideas, Mr.
10 Hardyman. I don't know who did it,
11 though.

12 Q. Okay. Let me ask you to
13 look at page 11 of Exhibit 10A. Can
14 you tell us the identity of the
15 certified supplier as that term is used
16 in section 1, paragraph 1.a on page 11
17 for the MSG flowing to IEU members?

18 A. Do you have a copy of the
19 reservation protocol? I do not.

20 Q. I'll hand you what was
21 marked earlier as Exhibit B1. Is that
22 what you had in mind?

23 A. Yes, thank you.

24 Q. Okay.

25 THE WITNESS: Now can I

1 have the question read, please.

2 (Record read.)

3 A. No.

4 Q. Would you turn to page 14 of
5 Exhibit 10A, please?

6 A. (Witness complies.)

7 Q. I would invite your
8 attention to appendix B, paragraph b.1,
9 captioned billing procedure. Are you
10 with me?

11 A. Yes.

12 Q. Can you tell us the identity
13 of the certified supplier as that term
14 is used in the second line of that
15 paragraph with respect to the MSG that
16 is flowing to IEU members?

17 A. No.

18 Q. Do you have an understanding
19 of what a DARS is?

20 A. You mean a DASR?

21 Q. Yes, that's what I mean.
22 You have a better understanding than I
23 do.

24 A. I believe it's a direct
25 access supply request. Direct access is

1 correct, I don't know what the last two
2 nouns are.

3 Q. A direct access service
4 request?

5 A. There you go.

6 Q. Okay. Let me just -- that's
7 a term that comes out of the supplier
8 tariff, is it not?

9 A. Not originally.

10 Q. Where did it come from
11 originally?

12 A. I have no idea, but it was
13 -- it's been used by the industry for a
14 number of years.

15 Q. I'll let you read along with
16 me here. I think we must have marked
17 this at the deposition previously.

18 (Discussion off record.)

19 Q. Mr. Blank, do you have in
20 front of you the CEI supplier tariff
21 issued January 1, 2001, effective that
22 same day?

23 A. Yes.

24 Q. If you would, please, turn
25 to page 3 of 54.

1 A. I have that.

2 Q. If you look at the bottom,
3 there is a definition of an acronym,
4 DASR, and in parens, direct access
5 service request. Do you see that?

6 A. Yes.

7 Q. The indication in the tariff
8 is that it is, begin quotes, an
9 electronic form of communication that
10 shall be exchanged between the company
11 and a certified supplier, is that
12 correct?

13 A. Yes.

14 Q. And the company in this
15 instance refers to the utility, is that
16 right?

17 A. Refers to Cleveland Electric
18 Illuminating Company.

19 Q. Okay. Do you know who made
20 the DASR on behalf of IEU members in
21 connection with the MSG that's flowing
22 to them?

23 A. No.

24 Q. Looking at the supplier
25 tariff again, the definition of DASR,

1 there is a reference to a capitalized
2 certified supplier?

3 A. I see that.

4 Q. And I take it that -- well,
5 if you turn back to the preceding page,
6 page 2, there is a definition of
7 certified supplier.

8 A. Yes.

9 Q. And I take it that you do
10 not know the identity of the certified
11 supplier for IEU members with respect to
12 the MSG that is flowing to them as that
13 term is used in this tariff?

14 A. I know that IEU is a -- is
15 certified as an aggregator. I don't
16 know whether that is what's meant here
17 or not.

18 Q. Well, let me ask you. Is it
19 not --

20 A. I don't know if there's
21 anybody else involved either. I just
22 don't know.

23 Q. Who else would be involved?

24 A. I don't have any idea.

25 Q. Is it not true that under

1 the definition of certified supplier in
2 the supplier tariff, the certified
3 supplier must receive written
4 notification of registration pursuant to
5 section 5.e of the tariff in order to
6 become a certified supplier?

7 A. That's what it says.

8 Q. And section 5.e is the
9 registration process that we reviewed
10 briefly in the first session of this
11 deposition, if you'll recall?

12 A. 5.e has to do with
13 registration under the electric
14 generation supplier coordination tariff.

15 Q. Yes. And that requires
16 among other things submission of credit
17 information, doesn't it?

18 A. I don't recall. It might.

19 Q. Well, you can take a look,
20 page 13 of the tariff which is in front
21 of you, at the bottom of the page there
22 is a subparagraph seven?

23 MR. RUXIN: We stipulate
24 that this document says what it says,
25 Mr. Hardyman.

1 Q. Do you see that?

2 A. It says it must be delivered
3 to the company, credit history forms.

4 Q. Would you agree with me that
5 under the definition of certified
6 supplier on page 2 of this tariff, IEU
7 could not be a certified supplier if
8 they did not submit the necessary
9 materials to complete registration under
10 section Roman numeral five?

11 A. I don't know. Perhaps
12 you're correct, I don't know.

13 Q. Okay. Do you know if --
14 before we put this document away, sorry,
15 let me ask you to look at page 15 of
16 54.

17 A. All right.

18 Q. There is a subparagraph E at
19 the top of the page captioned approval
20 of registration. Are you with me?

21 A. Yes.

22 Q. Can you tell us whether IEU
23 ever received notice of an approval of
24 registration under a supplier tariff?

25 A. I don't know whether IEU had

1 to receive such approval in order to be
2 -- pardon me, in order to be awarded or
3 allocated MSG, I don't think this
4 document, the supplier tariff, really
5 came into play.

6 Q. Okay. But the answer to my
7 question is you don't know whether they
8 ever received any kind of a notice
9 under paragraph E on page 15 of this
10 supplier tariff?

11 A. I don't know. I'm not sure
12 I would have a reason to know.

13 Q. Okay. Would that be
14 something that would fall within Mr.
15 Burnell's scope of responsibilities, to
16 know that kind of information?

17 A. I expect that would be
18 somewhere within the supplier services
19 activity. I don't know whether it's
20 his or not.

21 Q. Does he work in that
22 department?

23 A. Yes.

24 Q. Okay.

25 A. But so do other people.

1 Q. Can you suggest anyone for
2 us to inquire of if not Mr. Burnell?

3 A. No.

4 - - - - -

5 (Thereupon, Deposition
6 Exhibit-12 was marked
7 for purposes of
8 identification.)

9 - - - - -

10 Q. Mr. Blank, I've handed you
11 what's been marked for identification
12 purposes as Blank Deposition Exhibit No.
13 12. Is this a letter dated January 16,
14 2001, from you to an attorney named
15 Sally Bloomfield?

16 A. You've given me a three page
17 document. The first two pages are as
18 you identified. The third page is a
19 piece of stationary that has a bunch of
20 flowers on it which I haven't been --

21 Q. I have for the record
22 removed the blank page with the flower
23 border to save Mr. Blank's dignity.

24 A. It had nothing to do with
25 dignity, I enjoy flowers very much.

1 Q. Now that we've removed the
2 flowered page, the exhibit marked number
3 12 before you is a copy of a letter
4 that you sent to Ms. Bloomfield, is
5 that correct?

6 A. It is in response to a
7 letter which she had sent me.

8 Q. Okay. You are the author of
9 this letter, I take it?

10 A. Yes.

11 Q. And that is your signature
12 that appears on the second page?

13 A. Yes.

14 Q. Okay. Let me ask you if you
15 would please to review the item on the
16 first page indicated as marketer request
17 number one and the response that you
18 gave.

19 A. I've reviewed it.

20 Q. Okay. Let me ask you to
21 look at the last sentence of the
22 response, which reads, begin quotes, The
23 market support generation is delivered
24 by the FirstEnergy utility to the MSG
25 claimant or the claimant's supplier.

1 Did I read that correctly?

2 A. Yes.

3 Q. In the case of IEU, is IEU
4 the claimant or the claimant's supplier
5 within the meaning of this sentence?

6 A. I'm thinking of the words in
7 the eligible supplier definition of the
8 protocol where we talk about delivery
9 from or through and that's the purpose
10 of or that's the intent of that
11 statement, the from or through, and if
12 it's from or through, it's delivered to
13 the MSG claimant, in this case which is
14 IEU.

15 Q. Okay. And there is no
16 claimant supplier in the transaction?

17 A. I don't know whether there
18 is or not. My reference with respect
19 to IEU goes to the claimant, but it's
20 in conjunction with delivery from or
21 through.

22 Q. Then taking that meaning the
23 MSG is flowing from a FirstEnergy
24 utility to IEU, is that correct?

25 A. Well, it goes to the

1 customers from or through IEU. I don't
2 remember the precise language in the
3 protocol. We had that discussion many
4 times in the last deposition.

5 - - - - -

6 (Thereupon, Deposition
7 Exhibit-13 was marked
8 for purposes of
9 identification.)

10 - - - - -

11 Q. Let me hand you what's been
12 marked as Blank Deposition Exhibit 13
13 and for the record this appears to be a
14 copy of a letter dated February 6,
15 2001, from yourself to a lawyer named
16 Elizabeth Watts, is that correct?

17 A. That's what it appears to
18 be.

19 Q. Are you, in fact, the author
20 of this letter?

21 A. With advice, yes.

22 Q. With advice from whom?

23 A. Attorneys.

24 Q. All right. Would you please
25 look at the top of the second page? In

1 response to recital number six, you
2 indicate, begin quotes, The power is
3 being delivered from the electric
4 distribution company directly to the
5 individual IEU customers in the
6 aggregation group, end of quotes. Did
7 I read that correctly?

8 A. Yes.

9 Q. And when you say electric
10 distribution company in that sentence,
11 are you referring to the FirstEnergy
12 utilities?

13 A. Yes, but there's a from or
14 through relationship, from or through
15 the aggregator relationship in that
16 chain as well.

17 Q. Well, I was going to ask you
18 about that. There's no mention of a
19 from or through in your response to
20 recital number six to Ms. Watts?

21 A. It should have been in
22 there. It's not there.

23 MR. RUXIN: Excuse me.

24 MR. HARDYMON: Go ahead,

25 Paul.

1 MR. RUXIN: This is a
2 discovery deposition. You're certainly
3 entitled to explore this and my only
4 interest is in having the transcript be
5 clear. Could I talk to you out in the
6 hall for a minute?

7 MR. HARDYMON: Sure.

8 (Discussion off record.)

9 Q. Mr. Blank, let me just say
10 that I understand your earlier answer
11 that the responses you prepared for Ms.
12 Bloomfield were prepared with the
13 assistance of others, including counsel.

14
15 Is that also true with
16 respect to the letter that you wrote to
17 Ms. Watts?

18 A. Yes.

19 Q. Okay. And I will assume
20 that the precise wording of these
21 responses may not in all cases be your
22 own, is that a fair assumption?

23 A. And I have a lot of editors.

24 Q. Okay. I don't want to
25 quibble with you about the precise

1 wording. My interest today is
2 ascertaining how MSG power is flowing.

3 With that said, you may
4 have already answered my inquiries, but
5 let me just quickly try to review. Is
6 it true that MSG is flowing from
7 FirstEnergy utilities directly to IEU
8 members?

9 A. It's flowing through the
10 aggregator. Ultimately it goes to the
11 IEU members.

12 Q. And other than the
13 aggregator, there is no other entity
14 that is in between the utility and the
15 MSG recipient in IEU's case as far as
16 you know?

17 A. I don't know whether IEU has
18 involved anybody else in that process.

19 Q. Let me ask you this. Who
20 else would IEU involve in that process?

21 A. You would have to ask IEU.

22 Q. Well, why would IEU involve
23 anybody else in that process?

24 A. I don't know.

25 Q. It's not necessary in your

1 view, is it, for anyone else to be
2 involved in that process?

3 A. Not particularly.

4 Q. Well, for any reason is it?

5 A. I don't know that it is.

6 Q. You don't have any opinion
7 on that?

8 A. I've given you my opinion.

9 Q. Do you have any knowledge of
10 any discussions between FirstEnergy and
11 IEU about whether it might be necessary
12 for IEU to have another entity involved
13 in the transaction?

14 A. No.

15 Q. Looking back at Exhibit 12,
16 in the case of IEU, the MSG is
17 delivered by a FirstEnergy utility to
18 whom?

19 MR. RUXIN: Excuse me.
20 I wonder if we could clarify for the
21 record.

22 MR.. HARDYMON: Sure.

23 MR. RUXIN: You've
24 inquired of Mr. Blank about how the
25 power flows and the letters that we

1 have referred to talk about delivery.

2 Could you just in
3 inquiring of him specify whether you're
4 using these words in the sense of the
5 transaction as opposed to the physically
6 delivery of electrons?

7 MR. HARDYMON: I'm talking
8 about the transaction. Thank you.

9 MR. RUXIN: Thank you.

10 Q. Do you understand what I'm
11 talking about, Mr. Blank?

12 A. I believe so. Obviously the
13 electrons are over the utility company
14 lines. I don't know that anybody else
15 is interposed in that process
16 physically.

17 Q. Well, let me -- maybe this
18 -- let's go back to Exhibit 11 for a
19 moment. If you look at question 34 on
20 page 9, the answer that's given there
21 begins, Power is flowing to IEU members,
22 end of quotes. Do you see that?

23 A. Yes.

24 Q. In what sense is the word
25 flowing being used there. Is that

1 meant to describe the transaction or the
2 actual travel of the electrons?

3 A. Now I'm confused by the
4 parenthetical or the clause as it did
5 before January 1, 2001, because that
6 would have to be physical.

7 Transaction-wise I believe
8 power is flowing to IEU members. I
9 don't know when it began. I know it
10 began after December 31, 2000, so
11 there's probably a combined meaning in
12 that sentence.

13 Q. Why is it that prior to
14 January 1, 2000, would necessarily imply
15 that flowing means the actual movement
16 of electrons through a conduit?

17 A. The answer to that is that
18 market support generation transactions
19 don't begin until January 1, 2001.

20 Q. All right. I understand.
21 Let me ask you to look back at Exhibit
22 12 if you would. We're talking about
23 in the transactional sense, MSG going
24 from a FirstEnergy utility to the IEU
25 members. I believe my question to you

1 was whether there is any entity involved
2 in that transaction other than IEU
3 acting as an aggregator and I think
4 your answer was you didn't know.

5 I'm sorry, I don't want
6 to answer for you. Go ahead and
7 answer.

8 A. Mr. Hardyman, you asked so
9 many questions in so many ways in that
10 same thing, I don't precisely recall
11 what I said. I attempted to be very
12 consistent in the answers obviously -- I
13 know that question was asked and
14 answered and I'm going to stand by what
15 I already said.

16 Q. Whatever you said, you said,
17 okay. As you sit here today, you are
18 not aware of any requirement under the
19 law or under the protocol or under any
20 administrative procedure or policy at
21 FirstEnergy that there be another entity
22 involved in the transaction whereby MSG
23 goes from a FirstEnergy utility to IEU
24 members other than the aggregator which
25 is already in place, is that a true

1 statement?

2 A. The stipulation requires that
3 there has to be a marketer, broker or
4 aggregator involved in the transaction.
5 That's all that it requires. It
6 doesn't specify anything further than
7 that.

8 Q. So your answer to the
9 question would be you're not aware of
10 any requirement?

11 A. Well, you limited your
12 question to IEU members.

13 Q. Yes.

14 A. I think you need to broaden
15 that to say any potential ultimate
16 receiver of market support generation,
17 meaning a customer which is consuming
18 the electricity. I think you have to
19 broaden it to include that. IEU's not
20 singled out in this as separate and
21 apart from anybody else, so I object to
22 your focusing in on that one entity to
23 the exclusion of others.

24 Q. Okay. I understand the
25 point you're making, but my question did

1 concern IEU and that's the question I
2 would like answered. I think I
3 understood that you are not aware of
4 any such requirement, is that true?

5 A. The requirement in the
6 stipulation is market support generation
7 is made available to marketers, brokers
8 and aggregators. That's what we're
9 attempting to do with the protocol and
10 with the administration of the program
11 is effectuate that.

12 Q. So you're not aware of any
13 law, rule or requirement in the program
14 that would mandate the presence of
15 another entity in this transaction
16 beyond the aggregator that is already
17 there?

18 A. What is mandated is there
19 must be a marketer, broker or aggregator
20 in the process.

21 Q. Not all three, correct?

22 A. I used the word or.

23 Q. And not two out of the
24 three, correct?

25 A. I don't think you need two

1 out of the three. I think you need a
2 marketer, a broker or an aggregator.

3 Q. And is it your understanding
4 that an aggregator by definition is an
5 entity which assists in purchasing
6 power?

7 A. I know there's a statutory
8 definition or maybe it's a rule, a
9 public utilities rules definition, I
10 don't remember which, for an aggregator
11 and I don't recall precisely what that
12 says, but what you indicated could be
13 one of the things which an aggregator
14 does.

15 Q. Mr. Blank, is it your
16 understanding that an aggregator would
17 be permitted by law or rule to make a
18 wholesale sale of power?

19 A. I would have to look into
20 that. I don't know that right now.

21 Q. You don't have any
22 understanding of that?

23 A. I don't have a precise
24 understanding of that right now. I
25 would have to do some reference work.

1 Q. When IEU made its
2 application, was that an issue that you
3 looked into to determine whether they
4 were going to be in a position of
5 making a wholesale sale of power?

6 A. What I was concerned about
7 was whether the claimant was a marketer,
8 broker or an aggregator.

9 Q. So you didn't look into
10 that?

11 A. They were an aggregator.
12 They qualified as a potential allocatee
13 of market support generation.

14 Q. As an aggregator, could IEU
15 make a retail sale of power?

16 A. I don't know the answer to
17 that either. I would have to go back
18 and research the law on that.

19 Q. Is that an inquiry that you
20 made at the time that IEU submitted its
21 application?

22 A. What I looked at is whether
23 IEU was a marketer, broker or
24 aggregator, which is a requirement of
25 the stipulation.

1 Q. To your knowledge did anyone
2 look into these other questions at the
3 time that application was pending?

4 A. I don't know. I'm sure --
5 pardon me, I do know. Obviously other
6 suppliers have been concerned about
7 that. They must have looked into this
8 and they have their own opinions.

9 Q. The other suppliers do?

10 A. A number of other suppliers
11 do, yes. They've filed complaints.

12 MR. RUXIN: Are you
13 contemplating a lunch recess?

14 MR. HARDYMON: Actually, I
15 wasn't. Why don't we take a break and
16 let me talk with Benita a little bit
17 and maybe we can either move this along
18 or decide on a short lunch break.

19 (Recess had.)

20 BY MR. HARDYMON:

21 Q. Mr. Blank, if a marketer
22 were engaged in only load following
23 transactions, would they be excused from
24 EDI testing under the protocol?

25 A. I don't know.

1 Q. The reason I ask is that
2 earlier today I believe you indicated
3 that one circumstance under which an
4 aggregator might be excused from EDI
5 testing is if they were engaged only in
6 load following transactions?

7 A. I said load following didn't
8 require any scheduling, any of the other
9 related matters associated with
10 scheduling, and that would be one of
11 the reasons for EDI testing.

12 Q. So if a marketer were
13 engaged in the same sort of transaction,
14 I assume your reasoning would apply
15 equally to --

16 A. If a marketer were acting as
17 an aggregator and not as a party who
18 was taking possession of the power,
19 there's no reason to distinguish between
20 IEU as an aggregator and the marketer
21 as an aggregator.

22 Q. Again, so the record is
23 clear, when you say take possession of
24 the power, you mean incur an obligation
25 to pay?

1 A. That would be one of the
2 indicia.

3 Q. Are there others?

4 A. I'm sure.

5 Q. Do you have any in mind?

6 A. Not at the moment. I know I
7 could come up with several, but I don't
8 have any at the top of my head.

9 Q. Okay. Would your answers be
10 the same if I phrased the question in
11 terms of load following MSG?

12 A. I was only referring to load
13 following MSG. I don't know about load
14 following other than MSG.

15 Q. Okay. This is a document
16 that was marked during the deposition of
17 Denise Dinie as Dinie Deposition Exhibit
18 14. I'll hand you a copy on which the
19 exhibit label isn't real easy to read.
20 For the record, that's what it is.

21 Let me ask you to turn to
22 -- first of all, let's stay on the
23 first page for a moment. This appears
24 to be a communication in the form of an
25 email with an attached file and

1 definitions, is that correct?

2 A. It is an email, it says
3 there's an attached file.

4 Q. Okay. And before we move on
5 through the body of the exhibit, this
6 is an email from you to Denise Dinie,
7 is it not?

8 A. Yes, it is.

9 Q. Dated October 31, 2000,
10 correct?

11 A. That's correct.

12 Q. Okay. And can you tell us,
13 please, what it is that you are
14 transmitting to Ms. Dinie with this
15 email?

16 A. Now I have to spend a minute
17 or two going through this.

18 Q. Please do.

19 THE WITNESS: Could I
20 have the question, please?

21 (Record read.)

22 A. Looks like there are two
23 general types of things we're dealing
24 with here. One has to do with
25 identification of either mechanical or

1 administrative concerns which we had
2 detected about two weeks into the
3 program. The other part of that is
4 some of the inventiveness of some of
5 the suppliers. And the second part is
6 on what's marked as at the bottom right
7 000075, 000076, which goes toward some
8 of the audit concepts which we
9 discussed.

10 Q. Okay. Let me focus on pages
11 Bates stamped 75 and 76, all right?

12 A. Yes.

13 Q. These are your instructions
14 to Ms. Dinie about how, among other
15 things, she is to conduct the audit?

16 A. First, note this says draft
17 on the top of it and I don't recall
18 whether there was a subsequent document
19 or whether this was to be considered by
20 her in her creation of the work scope
21 document. They weren't instructions at
22 this point. We were trading ideas on
23 appropriate ways to conduct an audit
24 with such things as what sort of
25 sampling process should we use, things

1 like that, which I was relying on her
2 expertise and her firm's expertise.

3 Q. Beginning at the bottom of
4 page 75 under item three, the facts to
5 the audit did include, colon, and on
6 the following page, 76, there are
7 several bullet points. This is
8 information that you are providing to
9 Ms. Dinie, correct?

10 A. I don't think so.

11 Q. Do you think that Ms. Dinie
12 is the person who generated the bullet
13 points at the top of page 76?

14 A. I misunderstood your
15 question. I thought you meant were we
16 providing a customer name and account
17 number to her for example. That isn't
18 what you meant, I guess.

19 Q. No, I'm taking this at face
20 value. Item number three begins, quote,
21 the facts to be audited include, colon,
22 and then on 76 there are four bullet
23 points of facts to be audited?

24 A. I drafted that language and
25 sent it to her if that's what you

1 meant.

2 Q. That's all I'm asking. Let
3 me ask you to look at the fourth bullet
4 point at the top of page 76. One of
5 the facts that you indicate must be
6 audited is, begin quotes, the fact of a
7 binding contract between the parties,
8 end quotes.

9 Did I read that correctly?

10 A. Yes.

11 Q. And then following that
12 sentence there is an explanation about
13 some conditions or one condition that
14 would be acceptable and that is, begin
15 quotes, conditioned upon approval of MSG
16 or nonMSG capacity, with no further
17 conditions, shall be considered binding
18 unless otherwise shown not to be
19 binding, end of quotes. Did I read
20 that correctly?

21 A. You read that correctly.

22 Q. Is it correct then that the
23 only contingency that Ms. Dinie was
24 supposed to permit in this fact-finding
25 audit was a contingency based upon the

1 approval or the obtaining of MSG?

2 A. I would object to the word
3 permit because that wasn't why we hired
4 the auditor. The auditor didn't permit
5 or not permit. The auditor was looking
6 for facts and what we are trying to
7 sort out was are there any things that
8 have to happen in the future which
9 would bear upon whether a contract or
10 -- pardon me, a committed capacity sale
11 existed today. And as we've discovered,
12 there's a lot of inventiveness going on
13 out there by your client and others in
14 dealing with these things and we were
15 trying to sort that out and this is a
16 draft document which may have gone
17 further. I don't recall the total
18 scope of the document.

19 Q. Well, looking at the fourth
20 bullet point, the last sentence, your
21 words to Ms. Dinie read, begin quotes,
22 a contract conditioned upon the
23 performance of other executory events as
24 of the date of the claim will not be
25 considered binding, end of quotes?

1 A. You read it correctly. That
2 language though is referring to other
3 executory events as to the existence of
4 a contract at the time of the
5 application. There could be other
6 executory events which didn't relate to
7 the existence of a committed capacity
8 sale at the time of the application for
9 MSG.

10 Q. I'm interested in your
11 choice of words in this bullet point.
12 I don't see the words committed capacity
13 sale.

14 MR. RUXIN: There's no
15 question.

16 Q. Are you saying that the
17 criteria under which you were operating
18 at the time was committed capacity sale
19 or binding contract between the parties?

20 A. What we're looking for is a
21 committed capacity sale.

22 Q. Is there any reason why you
23 didn't use that phrase in the fourth
24 bullet point?

25 A. Mr. Hardyman, this is a

1 draft document. We were discussing back
2 and forth, she wanted some ideas in
3 writing, I gave her some ideas in
4 writing. The fact of the matter is
5 that the committed capacity sale is one
6 of the criteria in the stipulation which
7 governs the allocation of market support
8 generation. That's what the whole
9 process has been directed toward and I
10 can't impose additional -- additional
11 terms on the stipulation other than
12 those which are absolutely essential to
13 manage this program.

14 Q. Isn't it true, Mr. Blank,
15 that as of October 31, 2000, your
16 interpretation of committed capacity
17 sale was that it be a, begin quotes,
18 binding contract between the parties,
19 end of quotes?

20 A. No.

21 Q. That was not your
22 understanding?

23 A. A binding contract could
24 certainly serve as a committed capacity
25 sale, but whether binding contract and

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1 committed capacity sale are identical is
2 really not something which I have an
3 opinion about then or now.

4 Q. Did you make this
5 differentiation in any of your written
6 communications to Ms. Dinie?

7 A. I don't recall. If you have
8 something, I'm sure you'll put it in
9 front of me.

10 Q. I don't.

11 A. I don't recall of any.

12 Q. Okay.

13 A. I know we had discussions
14 about it and discussions and
15 discussions.

16 Q. All right. Let me hand you
17 what's been previously marked as Dinie
18 Deposition Exhibit 32.

19 MR. RUXIN: Do you want
20 this back?

21 MR. HARDYMON: I'm not
22 going to ask him anymore questions about
23 it.

24 Q. Mr. Blank, for the record,
25 this is a document that was identified

1 by Ms. Dinie and bears the heading
2 FirstEnergy Corp. MSG AUP, November
3 2000, Industrial Energy Users-Ohio.

4 My question to you is
5 whether you ever reviewed this document
6 with Ms. Dinie?

7 A. I don't recall having read
8 this document previously. She had
9 undoubtedly had this document with her
10 when she discussed her findings. I
11 seem to recall she was reading from
12 something when we discussed her
13 findings. Maybe this wasn't the
14 document.

15 Q. Okay. This document appears
16 to relate to her findings with respect
17 to IEU, does it not?

18 A. I would agree with that.

19 Q. And do you recall a meeting
20 with Ms. Dinie where she discussed her
21 findings with respect to IEU?

22 A. Yes, several.

23 Q. All right. And is it your
24 testimony that you were never given an
25 opportunity to read the document that's

1 been marked as Dinie Exhibit 32?

2 A. As I said, I don't recall
3 whether I read it or not. Today I do
4 not recall seeing it. She may have
5 offered it to me. She never said I
6 couldn't read one of her documents. I
7 understood she prepared documents like
8 this for her own files.

9 Q. Do you recall Ms. Dinie
10 sitting down with you and going through
11 this document paragraph by paragraph?

12 A. If we can say perhaps item
13 by item rather than paragraph by
14 paragraph, we had discussions about
15 these items.

16 Q. Okay. Let me ask you to
17 look at the first bullet point on page
18 one. It appears in Ms. Dinie's report
19 that she is advising you that the
20 contracts between IEU and the customers
21 are subject to a master service
22 agreement that has not been executed.
23 Do you see that reference in the middle
24 of the paragraph?

25 A. This document is Ms. Dinie's

1 report to herself. It is not an advice
2 document to me.

3 Q. Did she advise you of the
4 fact reflected in that paragraph?

5 A. I recall that we had
6 discussions about that, yes.

7 Q. Did she tell you that as of
8 the date of her visit to IEU on
9 September 30, 2000, the master service
10 agreement had not been either finalized
11 or executed?

12 A. As I recall something about
13 execution in substantially the same form
14 or something like that as a critical
15 point and I do recall a follow-up
16 discussion that she became satisfied
17 that in fact there was a committed
18 capacity sale between the IEU members
19 and the IEU.

20 Q. And that happened in a
21 meeting sometime after September of 2000
22 between you and her?

23 A. After September of 2000?

24 Q. Yes.

25 A. We didn't engage Ms. Dinie

1 to do the work she did until sometime
2 in -- late in October, I don't believe,
3 so that would happen after September of
4 2000.

5 Q. And it would have happened
6 after November 15, 2000, when she
7 evidently met with representatives of
8 IEU, I take it, is that your
9 recollection?

10 A. Time escapes me at this
11 point on this matter. I understand the
12 inference, it's a logical inference, but
13 I don't know precisely the dates.

14 Q. Do you recall her advising
15 you that the master service agreement
16 which had not been executed contained
17 the pricing terms?

18 A. I had no interest in the
19 pricing terms. That wasn't part of --
20 in fact that was something which your
21 client in particular was adamant about.
22 We had no right to have any knowledge
23 of the pricing terms, so I agreed with
24 that and I stayed away from pricing
25 terms.

1 Q. But did she tell you that
2 the master service agreement draft had
3 the pricing terms and the master service
4 agreement had not been finalized or
5 executed?

6 A. I don't recall whether she
7 did or not. I recall that Ms. Dinie
8 became satisfied that the committed
9 capacity sale conditions were --
10 existed.

11 Q. And you had accepted her
12 judgment on that?

13 A. We talked a lot about it.
14 It wasn't a situation she said this is
15 okay and I said good for you, okay?
16 That didn't happen. There was a lot of
17 discussion about various pieces of it.
18 I don't recall the components of it, I
19 just recall there was a lot of
20 discussion about it, that I had a lot
21 of questions, she had some questions and
22 she followed up on them and she became
23 satisfied and that's what we asked her
24 to do.

25 Q. And who made the decision

1 that there was a committed capacity
2 sale?

3 A. I recall discussing this
4 matter with my counselors, my attorneys
5 as well, but with Ms. Dinie's advice
6 and my attorney's advice, I decided
7 there was a committed capacity sale for
8 the purposes of administering the MSG
9 program.

10 Q. And it's your testimony that
11 you asked Ms. Dinie to render that kind
12 of advice to you?

13 A. I asked her advice whether
14 there was anything that would indicate
15 there wasn't a committed capacity sale
16 in her expert viewpoint as a financial
17 professional, not as a lawyer, yes.

18 Q. Her viewpoint was there was
19 a committed capacity sale?

20 A. There was nothing that would
21 indicate that there wasn't a committed
22 capacity sale, and in fact there were
23 indicia that there were -- there was a
24 committed capacity sale.

25 Q. If you would look at the

1 left hand margin, there are some
2 handwritten notes on the first page and
3 on the bottom of the left hand margin
4 there is a double check mark with the
5 words credit arrangement appearing
6 afterwards, do you see that?

7 A. Yes, I do.

8 Q. And I believe that you and I
9 discussed some of Ms. Dinie's concerns
10 in the first session of your deposition
11 and you identified for us that one of
12 her concerns was a credit arrangement,
13 do you recall that testimony?

14 A. Barely.

15 Q. Well, let me ask you. Do
16 you recall discussing credit concerns
17 that Ms. Dinie had?

18 A. Briefly.

19 Q. And those were concerns
20 about a credit arrangement involving
21 who?

22 A. My recollection is very
23 faint on that at this point. It would
24 be speculation at this point.

25 Q. Well, it evidently involved

1 IEU, is that consistent with your
2 memory?

3 A. Well, that's obvious because
4 it's on the IEU document.

5 Q. Is it your testimony you
6 don't recall whether it was a credit
7 arrange -- strike that. You recall it
8 was a credit arrangement involving IEU,
9 but you don't know who else may have
10 been involved?

11 A. What I would have been
12 concerned about is whether there was a
13 credit arrangement with the utilities.

14 Q. And do you recall any
15 discussions with Ms. Dinie on that
16 point?

17 A. My only recollection on this
18 is she was satisfied that there was a
19 committed capacity sale arrangement
20 between IEU and the IEU members.

21 Q. Okay. And your memory is
22 that her concerns about credit involved
23 IEU and some entity other than
24 FirstEnergy Services, correct?

25 A. I believe so, although it's

1 very faint, Mr. Hardyman, it's very
2 faint.

3 Q. You don't know who it was
4 with then?

5 A. I can make inferences, but I
6 don't recall with any precision.

7 Q. Mr. Blank, was it
8 FirstEnergy's responsibility to
9 investigate the concerns that Ms. Dinie
10 raised about this credit arrangement or
11 was that something that you assigned to
12 Ms. Dinie to investigate?

13 A. I didn't ask Ms. Dinie to
14 look into any credit arrangements that I
15 recall.

16 Q. Did you undertake to look
17 into any credit arrangements?

18 A. We've already talked about
19 how I ascertained how there was ever a
20 credit situation which would be
21 occurring between IEU and the utility.

22 Q. That's what I was wondering
23 about. Is the meeting with Ms. Dinie
24 that is reflected on Exhibit 32 what
25 ultimately led you to be having the

1 discussion with Attorney Bell that you
2 described for us earlier?

3 A. I don't think so.

4 Q. You think that was a
5 separate issue?

6 A. Clearly.

7 Q. All right. Can you tell me
8 what if anything was done to resolve
9 the credit issue that's reflected on
10 Exhibit 32?

11 A. I don't recall.

12 Q. You don't recall doing
13 anything yourself?

14 A. I see there's a double check
15 mark, that means something. I'm not
16 quite sure what it means, but it means
17 something. So I don't know why Denise
18 puts double check marks by things. I
19 just don't recall.

20 Q. Did you instruct anyone on
21 your staff or anyone else at FirstEnergy
22 to look into a credit situation as it
23 pertains to IEU?

24 A. I instructed no one on my
25 staff to do anything having to do with

1 credit with IEU. And this is obviously
2 in the realm of is there anything
3 related to registration, we already
4 concluded that -- concluded in our
5 discussion earlier today, Mr. Hardyman,
6 that there wasn't any exposure from IEU
7 to the utility. Given that, I'm not
8 sure that there was any -- I don't know
9 why there was any other reason to do
10 anything else.

11 Q. Was there any exposure from
12 IEU to FirstEnergy Services?

13 A. I don't know.

14 Q. And you're not aware of
15 anyone investigating that question?

16 A. It had nothing to do with
17 the allocation of market support
18 generation, so I wouldn't have been
19 responsible for it. I don't know
20 whether anybody did it or not.

21 Q. Mr. Blank, let me ask you to
22 look at page 7 of the protocol and I'll
23 hand this to you, paragraph (v). Have
24 you read that?

25 A. Yes.

1 Q. Can you tell us who executed
2 the item described in this paragraph on
3 behalf of IEU?

4 A. No, I do not know.

5 Q. Has it been executed?

6 A. I don't know.

7 Q. Can you suggest anyone of
8 whom we might make that inquiry?

9 A. I would go to IEU.

10 Q. Anyone at FirstEnergy who
11 might know?

12 A. I really don't know.

13 MR. HARDYMON: If we could
14 take a break for five minutes and I'll
15 tell you, Dave, what I want to do is
16 just go through my notes. I think I've
17 concluded, but I want to be sure of
18 that. It's been 25 minutes.

19 (Recess had.)

20 BY MR. HARDYMON:

21 Q. Mr. Blank, I have one more
22 question that concerns EDI testing. I'm
23 trying to make sure that we all
24 understand the point that you made
25 earlier about an aggregator being

1 excused from that. Let me ask you
2 this.

3 If a marketer were not
4 engaged in a transaction that involved
5 scheduling or any of the activities
6 related to scheduling, would the
7 marketer be excused from EDI testing?

8 A. I think we already had a
9 question and answer very similar to
10 that, if not identical to that.

11 Scheduling I believe is
12 part of the purpose for EDI testing,
13 but to the extent that a marketer ends
14 up with possession of the power and
15 such that the process is -- which has
16 been established as you go through the
17 EDI testing. To the extent that
18 they're not engaged in something that --
19 strike that. Strike from to the extent
20 that.

21 Q. Are you starting over?

22 Okay.

23 A. I'm not going to start over.
24 I think I completed that answer.

25 MR. HARDYMON: Could you

1 read the answer back, please.

2 (Record read.)

3 MR. HARDYMON: I'm afraid
4 I don't understand your answer.

5 MR. RUXIN: I'm afraid
6 I didn't, either.

7 THE WITNESS: That may
8 make all of us. Can I have the
9 question again then.

10 (Record read.)

11 A. I believe what I said
12 previously is if a marketer -- if a
13 party who had been certified as a
14 marketer was not operating as a marketer
15 but only as an aggregator, then I don't
16 know why there would be a reason for
17 the EDI testing.

18 But if a marketer doesn't
19 make such a distinction and is looking
20 to go through the MSG process, they
21 would have to tell us more than, here I
22 am, I'm ready to get my market support
23 generation, what else do I have to do,
24 I'm following your list. They really
25 would have to go through some more

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1 inquiry about that whole process.

2 Q. But if they were not going
3 to be engaged in a transaction that
4 required scheduling or its related
5 activities, would they have to go
6 through the EDI testing?

7 A. You're making a distinction
8 about scheduling. I'm making a
9 distinction about is it only an
10 aggregator and you used the word
11 marketer.

12 If the marketer would act
13 as an aggregator, I'm thinking about
14 this in sort of a future tense because
15 I don't think we've had that situation,
16 if a marketer would tell us we're not
17 going to act as a marketer, we're going
18 to act as an aggregator, what would we
19 ask them to do with respect to EDI, and
20 you of course put in the scheduling
21 situation. I think the distinction has
22 to do with are they acting as an
23 aggregator or acting as a marketer.

24 Q. What is it about being an
25 aggregator as opposed to a marketer that

1 changes the EDI requirement?

2 A. I think I said I don't
3 believe there's possession of the power.
4 I don't believe -- it's a from and
5 through relationship rather than any
6 other relationship. It's a scheduling
7 issue, potentially dealing with losses,
8 I suppose, although load following
9 doesn't require -- there's no
10 compensation for losses otherwise, I
11 guess. Those are the things I'm
12 thinking about.

13 Q. What does possession have to
14 do with EDI testing?

15 A. I'm looking for
16 distinguishing characteristics between
17 an aggregator and a marketer and those
18 are a couple of them.

19 Q. So am I.

20 A. Those are a couple of them.

21 Q. What does possession have to
22 do with EDI testing? Why would that
23 excuse or not excuse an entity from EDI
24 testing?

25 A. I don't have an answer to

1 that other than what I said.

2 Q. Well, okay. If a marketer
3 informed FirstEnergy that all of its
4 customers were going to be load
5 following, all of their customers would
6 be load following, in your view would
7 they be excused from EDI testing?

8 A. I think if a marketer would
9 have said I know we're a marketer, but
10 we're not going to act as a marketer,
11 and I thought that -- thought that part
12 of the definition of a marketer involved
13 the possession and redelivery of power,
14 but says we're not going to act as a
15 marketer, we're only going to act as an
16 aggregator, we want you to consider this
17 transaction as an aggregator
18 transaction, I don't know why we would
19 have required anyone to go through an
20 EDI arrangement at that point, but I
21 don't know that we had any situations
22 like that.

23 Q. The situation you're
24 describing is?

25 A. Someone who's certified as a

1 marketer saying I'm not going to act as
2 a marketer, I'm only going to act
3 affirmatively as an aggregator.

4 Q. When you say act as a
5 marketer, the distinguishing
6 characteristic that you intend to mean
7 is take possession and then redeliver
8 the power?

9 A. Well, of course you always
10 -- I suppose you have the ability as a
11 marketer to redesignate the power from
12 load following to capacity factor at
13 some point and if that would ever
14 happen, then you would want to have had
15 the scheduling arrangements taken care
16 of already and not have to go through
17 it at that point.

18 Q. Let me return to the
19 original question here and I understand
20 that you haven't had to deal with this
21 yet and I understand I'm asking you to
22 make an assumption, but here is the
23 assumption I want you to make.

24 A marketer comes to
25 FirstEnergy and says I'm a marketer, I

1 shall always be a marketer, I will
2 never change my spots and be an
3 aggregator, but all of my customers now
4 and forever are going to require load
5 following only.

6 Under those circumstances,
7 would the marketer be excused from EDI
8 testing?

9 A. I don't know the answer to
10 that.

11 MR. HARDYMON: That's a
12 fair response. I thank you for your
13 time.

14 MR. RUXIN: I wonder if
15 you would permit me to just ask Mr.
16 Blank -- this has been a lengthy
17 deposition, I think. What I would like
18 to do is ask him if he could clarify an
19 answer that he gave.

20 MR. HARDYMON: Go ahead.

21 MR. RUXIN: This is the
22 record we're making here. I just want
23 to simplify it.

24 EXAMINATION OF DAVID BLANK

25 BY-MR. RUXIN:

1 Q. Mr. Blank, a few moments ago
2 Mr. Hardyman asked you several questions
3 involving establishing whether or not
4 there was a committed capacity sale in
5 the IEU situation.

6 I believe I heard in your
7 response that you talked about
8 establishing the existence of a
9 committed capacity sale between IEU and
10 its members.

11 If I heard you say that,
12 is there anything you would want to
13 feel appropriate to add to clarify that
14 answer?

15 A. Yes, I would. When I was
16 speaking about the committed capacity
17 sale, what I was referring to is the
18 committed capacity sale in that there is
19 in fact a known destination in the form
20 of a retail customer for that market
21 support generation power. The committed
22 capacity sale does not have to be
23 between, in this case, IEU and the IEU
24 member per se. The committed capacity
25 sale exists in that there is a party on

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1 a -- a retail party who's going to be
2 taking the power and using the market
3 support generation as it was intended as
4 a jump start to the market.

5 MR. RUXIN: Nothing
6 else.

7 FURTHER EXAMINATION OF
8 DAVID BLANK

9 BY-MR. HARDYMON:

10 Q. And who is the retail
11 customer in the context of the IEU
12 application at the time that it was
13 approved?

14 A. The retail customer would
15 have been those account numbers which
16 the IEU submitted to the utility as the
17 -- those parties with which a committed
18 capacity sale for the market support
19 generation would exist.

20 Q. And who would be the seller
21 to these customers who are purchasing
22 the MSG at retail?

23 A. I didn't have to know that,
24 so I didn't know that. I don't know
25 that in this case.

1 Q. Today you don't know that?
2 Right now you don't know that?

3 A. I know that the power
4 originates with the FirstEnergy utility,
5 it goes through the aggregator and ends
6 up with the retail customer.

7 Q. Did you understand, Mr.
8 Blank, that the contract by which these
9 retail sales to these IEU accounts were
10 to occur had appended to it a second
11 contract that Ms. Dinie has referred to
12 as a master service agreement? Are you
13 aware of that?

14 A. I am now.

15 Q. You were not at the time?

16 A. She brought it to my
17 attention.

18 Q. At the time?

19 A. Yes.

20 Q. Okay. Ms. Dinie brought it
21 to your attention prior to IEU's
22 application for MSG being approved?

23 A. Yes.

24 MR. HARDYMON: I believe
25 those are all the questions we have.

1 Thank you, Mr. Blank.

2 MR. RUXIN: Thank you.

3 (Deposition concluded at

4 1:43 p.m.)

5 (Signature not waived.)

6 -----

1 CEFARATTI GROUP FILE NO. 4750

2 CASE CAPTION: ENRON ENERGY SERVICES AND
3 FIRST ENERGY CORP., ET AL.

4 DEPONENT: DAVID BLANK.

5 DEPOSITION DATE: APRIL 25, 2001

6
7 (SIGN HERE)

8 The State of Ohio,)

9 County of Cuyahoga) SS:

10 Before me, a Notary Public in and
11 for said County and State, personally
12 appeared DAVID BLANK who acknowledged
13 that he/she did read his/her transcript
14 in the above-captioned matter, listed
15 any necessary corrections on the
16 accompanying errata sheet, and did sign
17 the foregoing sworn statement and that
18 the same is his/her free act and deed.

19 IN TESTIMONY WHEREOF, I have
20 hereunto affixed my name and official
21 seal at _____, this _____
22 day of _____, A.D. 2001.

23
24 _____
25 Notary Public

Commission Expires

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ERRATA SHEET

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CERTIFICATE

State of Ohio)

SS.:

County of Cuyahoga)

I, Julie A. Hascher, a Notary Public within and for the State of Ohio, duly commissioned and qualified, do hereby certify that the within named witness, was duly sworn to testify the truth, the whole truth and nothing but the truth in the cause aforesaid; that the testimony then given by the witness was by me reduced to stenotypy in the presence of said witness; afterwards transcribed, and that the foregoing is a true and correct transcription of the testimony so given by the witness.

I do further certify that this deposition was taken at the time and place in the foregoing caption specified.

I do further certify that I am not a relative, counsel or attorney for either party, or otherwise interested in the event of this action.

IN WITNESS WHEREOF, I have hereunto set my hand this May 17 day of May, 2001.



Julie A. Hascher, Notary Public
within and for the State of Ohio

Commission expires November 3, 2004.

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