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Case Number: 01-0393-EL-CSS

Date of Confidential Document: 10/29/2001

Release Date: 08/01/2022

Page Count: 430

Document Description: Confidential Documents Filed 10/29/01 - Part 6 of 6


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BEFORE THE PUBLIC UTILITIES
COMMISSION OF OHIO

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

01-393-EL

Complainant,

and

Case No.

FIRST ENERGY CORP.,

01-393-EL-CSS

et al.,

Respondents.

CONFIDENTIAL

- - - - -

Confidential deposition of DENISE
DINIE, 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 and Pease, 2100 One
Cleveland Center, Cleveland, Ohio on
Tuesday, April 17, 2001, at 12:00
o'clock p.m.

- - - - -

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1 APPEARANCES:

2
3 On behalf of the Complainant:

4 Vorys, Sater, Seymour

5 & Pease, LLP, by

6 BENITA KAHN, ESQ.

7 DAVID HARDYMON, ESQ.

8 52 East Gay Street

9 Columbus, Ohio 43216-1008

10 (614) 464-6400

11
12 On behalf of the Witness:

13 Thompson, Hine & Flory, by

14 JENNIFER A. LESNY FLEMING, ESQ.

15 3900 Key Center

16 127 Public Square

17 Cleveland, Ohio 44114-1216

18 (216) 566-5840

19
20 On behalf of the Respondents:

21 Jones, Day, Reavis & Pogue, by

22 PAUL T. RUXIN, ESQ.

23 901 Lakeside Avenue

24 Cleveland, Ohio 44114

25 (216) 586-3939

1 APPEARANCES, Continued

2
3 On behalf of the Respondents:

4 FirstEnergy, by

5 ARTHUR E. KORKOSZ, ESQ.

6 76 South Main Street

7 Akron, Ohio 44308

8 (330) 384-5849

9 -----

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

6 EXAMINATION OF DENISE DINIE

7 BY-MS.KAHN:

8 Q. Could you please state your
9 name?

10 A. Denise Renee Dinie.

11 Q. And Ms. Dinie, I'm counsel
12 for Enron Energy Services and
13 MidAmerican Energy and I'm here with
14 respect to a proceeding that has been
15 filed at the Public Utilities Commission
16 of Ohio related to Enron versus
17 FirstEnergy Corporation and I know that
18 you have been deposed in another pending
19 case, the City of Cleveland case, back
20 in March. While they are related and
21 have somewhat similar issues, we believe
22 that an additional deposition was
23 necessary.

24 If you do not understand
25 any questions, please say so and I will

1 assume otherwise that you've understood
2 the question that I asked unless you're
3 asking, okay?

4 A. Thank you.

5 Q. Let's start off with just
6 some basic background. Could you tell
7 me your educational background, please.

8 A. I graduated from Mount Union
9 College in 1992 with a bachelor's
10 degree.

11 Q. And did you go any further
12 from there?

13 A. Not in school, no.

14 Q. And what training do you
15 have -- who are you employed by?

16 A. I'm employed by Arthur
17 Andersen, LLP.

18 Q. And could you tell me your
19 position with Arthur Andersen?

20 A. I'm an audit assurance
21 business advisory manager.

22 Q. Could you explain what that
23 means, what your responsibilities are?

24 A. I oversee engagements for
25 clients, anything that relates to

1 assurance and business advisory type
2 engagements, and I'm the go-between
3 between the seniors and staff
4 individuals, which are on site on a
5 daily basis for the most part during
6 engagements at clients, and the partner
7 who would be my superior who I would
8 report to, he is responsible for
9 overseeing the daily activities and then
10 reporting and consulting with the
11 partner.

12 Q. Can you explain to me what
13 an assurance type of engagement is?

14 A. Audits would be considered
15 assurance type engagements, reviews,
16 anything that individuals would be
17 looking for some sort of responses or
18 information from us, whether or not
19 that's an audit opinion, whether that's
20 a review opinion, whether that's some
21 sort of an agreed upon procedures report
22 or summary.

23 Q. In your oversight of these
24 assurance agreements, I'm sorry,
25 assurance types of engagements, do you

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1 interact daily with the client?

2 A. It depends on the type of
3 engagement.

4 Q. Tell me, do you have your
5 CPA?

6 A. I am an exam-qualified
7 candidate.

8 Q. Which means?

9 A. I've passed the exam, I need
10 to take the ethics portion.

11 Q. How long have you been
12 employed by Arthur Andersen?

13 A. Since the fall of 1992.

14 Q. And that was your first job
15 out of college, I take it?

16 A. First professional job,
17 correct.

18 Q. Now, in getting ready for
19 this deposition, what did you review?

20 A. The documents that were
21 produced, the complaint and some of the
22 other information that's out on the
23 PUCO's web site. That's all I can
24 recall.

25 Q. Have you reviewed transcripts

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1 of other depositions?

2 A. I have not.

3 Q. And did you review any of
4 the attachments to the complaint?

5 A. I don't recall specifically.

6 Q. Did you go back and review
7 the stipulation that was entered into as
8 a result of the transition case for
9 FirstEnergy Corporation?

10 A. I did not.

11 Q. And when I refer to the
12 stipulation, you are aware that
13 FirstEnergy was involved in a proceeding
14 at the Public Utilities Commission in
15 order to comply with statutory
16 requirements for deregulation of
17 electricity and that the stipulation was
18 a result of those cases?

19 A. I'm aware that there is a
20 transition plan out there and a
21 stipulation out there. I have not
22 reviewed either of those in detail or
23 in total. I've seen sentences here and
24 there, but very briefly.

25 Q. And what have you reviewed

1 in the stipulation?

2 A. I don't even recall
3 specifically because it literally has
4 been just a sentence here and there.

5 Q. And is that also true with
6 the transition?

7 A. That is true.

8 MR. RUXIN: At this
9 point we would ask that the transcript
10 be noted confidential as it appears that
11 we're now going to be moving into the
12 specific nature of the work that Ms.
13 Dinie performed in this matter.

14 - - - - -

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

19 - - - - -

20 Q. Ms. Dinie, I'm going to hand
21 you what has been marked as Dinie
22 Exhibit 1. Do you recognize this
23 document?

24 A. I do.

25 Q. Could you tell me what that

1 document is?

2 A. This document is our
3 engagement letter with FirstEnergy
4 regarding the agreed upon procedures
5 that we were to perform in connection
6 with the market support generation
7 program.

8 Q. And it indicates that it has
9 been executed by I believe that is Mr.
10 Blank, is that correct?

11 A. That is correct.

12 Q. Was Mr. Blank the person at
13 FirstEnergy with whom you had
14 conversations related to preparing this
15 engagement letter?

16 A. One of the individuals, yes.

17 Q. And who else?

18 A. There were a few individuals
19 within Mr. Blank's group that from time
20 to time were involved in these
21 discussions.

22 Q. And who would that be?

23 A. I believe Dave Headings, who
24 was an individual that reports to Mr.
25 Blank, and I believe Mark Vaccaro, and

1 I'm not sure who Mark reports to, may
2 have been involved in the discussions
3 regarding this particular letter and the
4 procedures themselves.

5 Q. And Mr. Vaccaro, what does
6 he do with FirstEnergy?

7 A. I don't know his exact
8 responsibilities.

9 Q. Do you know the types of
10 responsibilities he has?

11 A. I know he is -- in
12 conjunction at least with the MSG
13 program, he was involved with some of
14 the programming and so forth as it
15 relates to the web site, but that's the
16 extent of my knowledge.

17 Q. Okay. Let's go back for a
18 moment because you mentioned the MSG
19 program, let's clarify what you mean by
20 MSG program.

21 A. As it relates to my
22 procedures, the MSG program regarding
23 claims that were submitted, my review of
24 the claims and then FirstEnergy carrying
25 out the remainder to actually go through

1 an approval process.

2 Q. And the MSG stands for
3 market support generation, is that your
4 understanding?

5 A. That is my understanding.

6 Q. And it's your understanding
7 that the MSG is a result of the
8 stipulation?

9 A. Or the transition, I'm not
10 sure which, but yes.

11 Q. And that the MSG is to be
12 made available for what purpose, do you
13 know?

14 A. In order to spark the
15 market, if you will, here in Ohio to
16 allow other marketers or brokers or
17 aggregators to come in and to be able
18 to competitively price energy in Ohio.

19 Q. And how did you come about
20 that understanding?

21 A. Through various discussions
22 and the engagement letter here with --
23 in preparation of the engagement letter
24 here with FirstEnergy.

25 Q. So those would have been

1 discussions with Mr. Blank, is that
2 correct?

3 A. And others at the
4 FirstEnergy organization.

5 Q. Okay. So it was correct
6 that some were with Mr. Blank?

7 A. That's correct, yes.

8 Q. Who prepared the engagement
9 letter?

10 A. The engagement letter is
11 actually prepared off of a template
12 that's provided by the firm and the
13 information is then tailored to be
14 specific to the exact engagement that
15 we're working on. The template would
16 be for an agreed upon procedures
17 engagement, which was what this
18 engagement was, and it's tailored.

19 Q. And my understanding is you
20 do not consider this engagement to be
21 an audit, is that correct?

22 A. That is correct.

23 Q. What do you consider it to
24 be?

25 A. It's an agreed upon

1 procedures engagement.

2 Q. And could you elaborate on
3 that in terms of what you mean by that?

4 A. There are specific procedures
5 that Arthur Anderson was asked to
6 perform. Those are the procedures that
7 we performed in connection this with
8 engagement.

9 Q. And those are the procedures
10 that are attached as an exhibit to this
11 engagement letter, is that correct?

12 A. That's correct.

13 Q. Now, with respect to the
14 engagement letter, on the first page it
15 indicates that it is the understanding
16 that the ultimate objective is to
17 determine the validity of suppliers'
18 claims in accordance with the protocol
19 outlined by FirstEnergy Corp. for the
20 suppliers, in the second paragraph in
21 the second sentence?

22 A. I see that.

23 Q. What was your understanding
24 of who the suppliers were with respect
25 to suppliers' claims?

1 A. My understanding of who the
2 suppliers were is any entity that was
3 defined as an eligible supplier in the
4 protocol.

5 Q. Okay. And let's for a
6 moment -- we'll go back to that. I
7 will hand you what's been marked as
8 Exhibit A. Who needs a copy of the
9 protocol?

10 MS. FLEMING: Sure.

11 Thank you.

12 Q. In your engagement letter in
13 that same sentence we were referring to
14 it says validity of the suppliers'
15 claims in accordance with the protocol.

16 Is Exhibit A the protocol
17 that you believe was being referred to?

18 A. It appears to be the
19 protocol. I can't say it's identical
20 for certain, but it does appear to be.

21 Q. Okay. I will tell you that
22 this was provided to us by FirstEnergy
23 if that helps, or actually by counsel
24 for FirstEnergy.

25 You had mentioned a moment

1 ago the eligible supplier and that's who
2 you believe the supplier was in your
3 engagement letter and if you'll turn to
4 page 3 of the protocol, please, section
5 4, is it your understanding that this
6 is how eligible suppliers were
7 determined?

8 A. It's my understanding based
9 on the definition of an eligible
10 supplier, yes.

11 Q. And if you look in 4.a it
12 refers to marketers, brokers or
13 aggregators not affiliated with the Ohio
14 investor owned utility. Do you know
15 what the distinctions are between
16 marketers, brokers and aggregators?

17 A. I know bits and pieces of
18 information. I don't know that I could
19 define each and every one of them.

20 Q. What's your understanding of
21 what a marketer is?

22 A. An entity or a company that
23 wished to enter the territory in order
24 to market electricity to customers.

25 Q. And market in what way? How

1 are you using the term market?

2 A. To sell electricity.

3 Q. Okay. What is your
4 understanding of what an aggregator is?

5 A. An entity or a company that
6 would have agreements with residents
7 and/or other entities and companies
8 where they would aggregate the electric
9 loads for those residents, for those
10 companies, in order to then service
11 those individuals in connection with
12 electricity.

13 Q. And what do you mean by
14 service the individuals, what would be
15 your understanding?

16 A. A contract to sell
17 electricity to those individuals, an
18 agreement to sell electricity to those
19 individuals.

20 Q. Did you have any discussions
21 with FirstEnergy or anyone from
22 FirstEnergy with respect to the
23 distinctions between marketers and
24 aggregators?

25 A. Not as it relates to the

1 definitions of what the individual
2 marketers or aggregators really means.

3 Q. So what discussions did you
4 have?

5 A. There were some discussions
6 in order to determine the procedures I
7 needed to perform in conjunction with an
8 aggregation program, for instance, for a
9 municipal aggregator, where you had an
10 opt out versus an actual written
11 agreement with the individuals that were
12 going to take part in that aggregation
13 program.

14 Q. For a nonmunicipal
15 aggregator, what conversations did you
16 have?

17 A. We didn't have any specific
18 conversations related to a nonmunicipal
19 aggregator.

20 MS. KAHN: Could you read
21 back the last part of the other answer?

22 (Record read.)

23 Q. Let me go back a moment to
24 that. When would there be an actual
25 written agreement?

1 A. My understanding of the two
2 things that we were responsible for
3 looking at in connection with the actual
4 engagement is that you either have an
5 opt out program where individuals don't
6 necessarily have a written agreement
7 with the entity that in this case would
8 be making a claim for MSG on their
9 behalf, but they go through an opt out
10 program which would be kind of a
11 negative confirmation, if you will,
12 versus an actual positive confirmation
13 as I'll call it where you do have a
14 physical written agreement where that
15 individual has actually signed on with
16 an entity that's then making a claim on
17 their behalf.

18 Q. And you were supposed to be
19 reviewing contracts that were signed
20 between the end user and what type of
21 entities in the eligible suppliers?

22 A. The entity that actually
23 made the claim for MSG.

24 Q. And what was your
25 understanding of who could make a claim

1 for MSG?

2 A. My understanding was in
3 accordance with the protocol that
4 eligible suppliers could make a claim
5 for MSG.

6 Q. Did you have any discussions
7 with FirstEnergy on specifically the
8 review process as it related to
9 aggregators versus marketers?

10 THE WITNESS: Could you
11 repeat that?

12 (Record read.)

13 A. As it related to municipal
14 aggregators, yes, there was a different
15 process that had to be identified for
16 municipal aggregators as compared to
17 marketers or what I'm assuming you are
18 referring to as a customer aggregator,
19 because municipal aggregators utilized
20 the opt out process and that process
21 could not be reviewed the same as the
22 other processes.

23 Q. Okay. When you are
24 referring to customer aggregator, you
25 were looking at section 4.d of the

1 protocol, is that correct?

2 A. That is correct.

3 Q. Actually I was referring to
4 section 4.a, aggregators, and was there
5 ever a discussion with respect to
6 distinctions in review processes between
7 marketers, brokers and aggregators
8 within section 4.a?

9 A. None of our procedures were
10 split up between which section it
11 actually related to in connection with
12 the discussion of the procedures that we
13 needed to perform with FirstEnergy.

14 Q. Let's stay with the protocol
15 a little bit longer. Section 5 is
16 titled first come first served process,
17 initial queues.

18 Was the procedure that you
19 were supposed to be performing pursuant
20 to your engagement letter, did it
21 involve anything with respect to section
22 5?

23 THE WITNESS: Would you
24 repeat the question.

25 (Record read.)

1 A. Our procedures would have
2 reviewed some of the information that's
3 discussed in section 5.

4 Q. And what would that
5 information be?

6 A. We would have reviewed some
7 of the information in 5.d in connection
8 with our engagement.

9 Q. Are you done with your
10 answer? I didn't want to interrupt.

11 A. I'm not sure, give me a
12 minute.

13 Q. Okay.

14 A. I believe that's it.

15 Q. And what in 5.d would you
16 have reviewed?

17 A. Based on the scopes
18 identified for us by FirstEnergy in
19 connection with our engagement, we would
20 have looked at names of customers, the
21 so-called service agreement, if you
22 will; count numbers for customers that
23 fell within that scope, same as the
24 names; to a limited extent the capacity
25 being claimed; to a limited extent

1 whether or not the capacity claimed was
2 claimed on a load following or a
3 capacity factor basis and the time
4 period for which the claim was made.

5 Q. Let me step back a moment.
6 You referred to the service agreement.
7 I assume what you are meaning to say is
8 the generation service agreement as it's
9 stated in the protocol?

10 A. That is what I referred to,
11 but I haven't went back and read the
12 definition of the generation service
13 agreement so I don't know if that would
14 equate to what we were looking at.

15 Q. What was your understanding
16 of the generation service agreement?

17 A. I would say the way the
18 generation service agreement is defined
19 in the protocol is an accurate
20 description of the understanding.

21 Q. And you indicated that you
22 had reviewed the stipulation. Do you
23 remember in the stipulation it referred
24 to a committed capacity sale?

25 A. I indicated that I did not

1 review the stipulation, I've only looked
2 at small sections of it in sentences of
3 the stipulation.

4 Q. I'm sorry, that's correct,
5 you said you reviewed a couple
6 sentences. Do you recall seeing the
7 phrase committed capacity sale --

8 A. I do --

9 Q. -- for MSG?

10 A. I do recall seeing that
11 phrase.

12 Q. And was that phrase
13 explained to you by anyone?

14 A. I don't recall having
15 specific discussions of exactly what a
16 committed capacity sale would have been
17 defined as, but based on the general
18 discussions that I've had with
19 individuals from FirstEnergy throughout
20 the entire engagement, I would say that
21 a committed capacity sale would be close
22 to the way that the generation service
23 agreement is defined here in the
24 protocol.

25 Q. And how would it differ if

1 it's close to?

2 A. I don't know that it would
3 differ.

4 Q. So in your view what is a
5 committed capacity sale?

6 A. A committed capacity sale
7 would be the commitment of a customer
8 within the FirstEnergy territory, within
9 the FirstEnergy home service territory
10 or base load territory that was looking
11 to or willing to purchase its
12 electricity from or through a supplier,
13 and when I say supplier, I would define
14 it as an eligible supplier within the
15 protocol.

16 Q. Wasn't part of your task
17 that you were performing to confirm
18 whether or not a committed capacity sale
19 existed?

20 A. Part of my task was to
21 review if there was a committed capacity
22 sale agreement, but we did not make any
23 type of legal determinations in
24 conjunction with that review.

25 Q. And who determined the

1 criteria for whether a committed
2 capacity sale agreement existed?

3 A. I wouldn't say that there
4 was a set of criteria, at least not to
5 my knowledge. We at Arthur Andersen
6 were responsible for identifying whether
7 or not there was some sort of an
8 agreement that would equate to a
9 committed capacity sale and looking at
10 the provisions and the terms within that
11 agreement in order to see if there's
12 anything that would cause us concern as
13 to whether or not that was a binding
14 legal document.

15 We then also looked at
16 the specifics within that agreement as
17 it relates to the service locations that
18 that agreement was supposed to cover and
19 some of the information as what we had
20 discussed in section 5 under 5.d here
21 just a few moments ago in order to make
22 sure that claims that were submitted and
23 the information underlying those claims
24 were then supported by the information
25 in these agreements that we were looking

1 at.

2 Q. And how did you know what to
3 look for with respect to whether there
4 were concerns with it being a binding
5 agreement?

6 A. Our procedures are outlined
7 in the work program that's attached to
8 our engagement letter, which is in Dinie
9 Exhibit 1.

10 Q. Okay. Why don't we turn to
11 that for a moment. When you say your
12 procedures are laid out there, what are
13 you referring to with respect to
14 specifically what a committed capacity
15 sale would be?

16 A. On Exhibit 1, page one,
17 number two, it discusses access to a
18 related written signed contract between
19 the supplier and the customer and then
20 it also refers to that contract in step
21 three and then it again refers to that
22 contract in step four on page two of
23 that same exhibit as it relates to the
24 specific customer information.

25 Q. Let's go back to number

1 three that you referred to on the first
2 page of Exhibit 1 to your engagement
3 letter. It indicates that you are to
4 be alert for provisions that may
5 indicate that the customer contracts are
6 not legal binding commitments, and then
7 in parentheses, a committed capacity
8 sale. It then gives some instances.

9 Can you explain what you
10 believed executory provisions would
11 mean?

12 A. I would describe executory
13 provisions as contingency type
14 provisions, something had to happen
15 before this appeared to be a legal
16 binding commitment.

17 For instance, as described
18 here, if it was simply a letter of
19 intent but the customer hadn't actually
20 committed to that particular supplier or
21 if it gave the customer an option as to
22 whether or not they wanted to commit to
23 that particular supplier versus them
24 actually committing to the supplier.

25 Q. What other types of things

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1 did you look for with respect to
2 whether or not it was a binding
3 contract?

4 A. These were examples of the
5 types of provisions we would be looking
6 for, so in reading the contracts, if
7 there was anything else that struck me
8 as being a potential concern as to
9 whether or not it was a binding
10 instrument, I would have taken note of
11 that.

12 Q. And then what would you do?

13 A. That information then would
14 have been discussed with FirstEnergy.

15 Q. Would you then get back to
16 the claimant?

17 A. It depends.

18 Q. What did it depend on?

19 A. Whether or not I was asked
20 by FirstEnergy to get back with the
21 claimant in order to obtain additional
22 documentation or to gain a further
23 understanding of what that particular
24 provision was.

25 Q. And who would you discuss

1 this with at FirstEnergy?

2 A. For the most part it was
3 David Blank. There were at other
4 times, it was discussed with individuals
5 within his group and there were at
6 least -- there was at least one
7 instance, maybe two, where art core cost
8 was in the room as well.

9 Q. On the second page of
10 Exhibit 1 to your engagement letter down
11 towards the bottom, this reads to me as
12 the scope of the review you were
13 supposed to perform, is that correct,
14 how many contracts you'll review, where
15 it starts customer contracts within the
16 following scopes have been reviewed?

17 A. That was the scope that we
18 utilized in performing our work, yes.

19 Q. Can you explain that to me a
20 little bit? When you say the scope,
21 just what exactly are you meaning?

22 A. We were asked to review
23 customer contracts that met these
24 criteria.

25 Q. And do you recall doing a

1 review of Industrial Energy Users?

2 A. I do.

3 Q. Can you tell me your
4 understanding of who Industrial Energy
5 Users is, your understanding?

6 A. My understanding is that
7 Industrial Energy Users is a member
8 organization that's acting as an
9 aggregator on behalf of its members or
10 its customers.

11 Q. Are you making a distinction
12 between members and customers there?

13 A. I would equate a member to a
14 customer as it relates to my procedures.

15 Q. And do you recall which
16 category IEU fell within in terms of
17 the scope of your review?

18 A. I'm not sure I understand
19 what you mean by which category.

20 Q. Did they fit within customer
21 contracts with capacity claims equal or
22 greater to 1,000 kilowatts so that you
23 reviewed all their contracts?

24 A. Without looking at my notes
25 I can't tell for certain, but I believe

1 Industrial Energy Users would have had
2 customers that fell within all of these
3 categories. They would have had some
4 customer contracts that fell within the
5 first bullet point, they would have had
6 some that fell within the second and
7 some that fell within the third. That
8 was the case for most suppliers.

9 Q. And when you would go out
10 and review their claims, then how would
11 you make the determination of how many
12 contracts to review?

13 A. The determination was
14 actually made based on these scopes.

15 Q. What information was given
16 to you or how did you know what claims
17 you would be reviewing when you went
18 out to a supplier?

19 A. I wouldn't say that I was
20 actually reviewing a particular claim.
21 I would say that I was reviewing the
22 information that was underlying the
23 claim, because in many instances a
24 particular claim had many customers in
25 it and I was actually looking at the

1 customer contracts that would have
2 supported the claim made on behalf of
3 those customers.

4 Q. So to better understand when
5 you say IEU had customers who fell
6 within all the categories, did IEU have
7 multiple contracts with each customer or
8 each member?

9 A. Not to my knowledge. IEU
10 had one contract with each customer or
11 each member.

12 Q. Do you know how many members
13 IEU has?

14 A. I don't know how many
15 members in total.

16 Q. Do you know if all members
17 had contracts with IEU for MSG?

18 A. I don't know that
19 information, either.

20 Q. So what I think I'm hearing
21 you say, correct me if I'm wrong, that
22 while the customers for IEU fell into
23 all these categories, each customer
24 really only had one contract with IEU,
25 so in reality you reviewed all the

1 customer contracts for each customer?

2 A. I did review all of the
3 customer contracts that IEU presented to
4 me that day that I made my visit to
5 them. In addition, I reviewed a couple
6 of other customer contracts that were
7 provided to me at a later time, but I
8 don't know if those were all of their
9 customer contracts. It was enough to
10 suffice the work that I needed to do in
11 connection with these scopes, but there
12 could be other contracts out there that
13 I didn't look at.

14 Q. If you didn't know how many
15 contracts were out there, how would you
16 know that you were in compliance with
17 the scope?

18 A. Prior to my visit to any
19 supplier, FirstEnergy provided me with a
20 listing which was called a valid claims
21 listing and is defined or described at
22 least at the top of Exhibit 1, page
23 one.

24 That listing contained
25 numerous claims of that individual

1 supplier and showed the detailed
2 accounts that were underneath any given
3 claim. So each claim could have, as it
4 says in the protocol, up to 10,000
5 accounts underneath it. The report
6 FirstEnergy gave to me was then sorted
7 in a descending order by capacity
8 claimed and that's how my selections
9 would have been made then in accordance
10 with these scopes.

11 So I had a report that
12 showed me in descending order each
13 account number that was claimed by the
14 capacity that they were claiming for
15 that particular account number. Any
16 account numbers that would have fell
17 within the capacity claim of being equal
18 to or greater than 1,000 kilowatts, I
19 would have asked to look at every
20 single contract related to that
21 particular account number.

22 Those all could have been
23 for one customer where I probably would
24 have only reviewed one contract or it
25 could have been for numerous customers

1 where I would have to have looked at
2 each one of those accounts numbers which
3 would equate to each one of those
4 customers.

5 There then would have been
6 a systematic selection to look at 33
7 percent of the customers equal to or
8 greater than 200 but less than 1,000
9 and a systematic selection for ten
10 percent of the customers that had
11 capacity claims less than 200.

12 Q. When you say systematic
13 selection, what do you mean?

14 A. Every third account number,
15 every tenth account number, it was just
16 based on the record and we would count
17 out one, two, three, let's select this
18 one, four, five, six, select this one
19 in order to get a 33 percent or every
20 tenth customer in order to get a ten
21 percent.

22 Q. I think I'm a little
23 confused so maybe you can clarify.
24 Maybe I'm having difficulty
25 understanding the distinction between

1 customer contracts and the claim because
2 when you say you're counting down one,
3 two, three, four, five, six, weren't
4 those claims?

5 A. No, those were account
6 numbers, those were customer account
7 numbers, some of which could have
8 resided within the same claim or some
9 of which could have been spread cross
10 numerous claims.

11 In the report FirstEnergy
12 provided to me, all the claims were
13 mixed together and then it was sorted
14 on a descending order by capacity
15 claimed, and so it actually contained
16 the account numbers of every single
17 account that would have been claimed
18 within all claims that had been
19 submitted as of the date that the
20 report had been run or a day or two
21 before that.

22 Q. When you're saying account
23 number, are you meaning the account
24 number of the end user customer?

25 A. Correct.

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1 Q. So you're equating account
2 numbers with customer contracts when
3 you're figuring out your scope, is that
4 correct?

5 A. That would be correct,
6 that's a fair way of stating it.

7 Q. You said earlier that you
8 had limited involvement in the capacity
9 claimed, and what was your involvement?
10 I think that was back when you were
11 discussing the protocol.

12 A. Originally my understanding
13 is that we at Arthur Andersen were
14 asked to look at the capacity claimed
15 on behalf of a customer account in
16 order to make certain that the supplier
17 had a contract for that capacity. In
18 other words, are they looking at
19 covering the full load requirements of
20 that particular customer.

21 After performing my review
22 for one or two locations, I determined
23 that most of the contracts and the way
24 that they were written don't designate a
25 specified capacity. They don't give you

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1 a number. It really would say if it
2 was a full requirements contract or an
3 interruptible contract or something
4 along those lines, but did not give a
5 specific number related to the actual
6 kilowatt capacity being claimed, and as
7 a result, I wasn't able to test that
8 information that FirstEnergy had
9 provided to me in the reports that I
10 was looking at in order to look at
11 customer contracts, and I discussed that
12 with FirstEnergy and was told that I
13 didn't need to actually test that number
14 because FirstEnergy had the ability to
15 ensure that that number was reasonable
16 with its -- within its systems.

17 Q. So therefore you no longer
18 tested whether the capacity in the
19 committed capacity sale agreement was
20 consistent with the claim?

21 A. That's correct.

22 Q. And what was your limited
23 involvement with capacity factor or load
24 following?

25 A. To the extent that a

1 contract indicated that a supplier was
2 going to claim on a load following or a
3 capacity factor basis for that
4 particular customer, then I would take
5 note of that and make sure that that's
6 the way they truly claimed, but in most
7 instances there wasn't an indication.

8 - - - - -

9 (Thereupon, Deposition
10 Exhibit-Dinie2 was
11 marked for purposes
12 of identification.)

13 - - - - -

14 Q. I think we're at Dinie 2.
15 I'm hoping this will help. I'm handing
16 you Dinie Exhibit 2 and I have redacted
17 on here the customer name and the
18 supplier, but I wanted to get a better
19 understanding of what this document is
20 and how you made use of this type of
21 document in the review procedure that
22 you were involved with.

23 A. This document appears to be
24 an error report that was generated by
25 FirstEnergy and I would have done very

1 little with this particular document
2 with the exception of to deliver it on
3 behalf of FirstEnergy to the suppliers
4 that I visited and explain to them the
5 types of errors and handed to them
6 their action steps that FirstEnergy had
7 prepared for them to tell them how they
8 needed to correct those errors.

9 Q. As we're going across the
10 top, do you know what the different
11 headings mean on this report?

12 A. I may have an idea of what
13 some of them mean, but I may not know
14 what all of them mean.

15 Q. Claim, do you know what that
16 means?

17 A. That's the actual claim
18 number that that particular account was
19 submitted in.

20 Q. So it's a number created by
21 FirstEnergy as claims came in, is that
22 correct?

23 A. I don't know how it was
24 created by FirstEnergy, but yes, it's a
25 number created by FirstEnergy.

1 Q. When you get to original
2 account number, what would be your
3 understanding of that?

4 A. My understanding of that is
5 the account number that was actually
6 submitted in the claim for that
7 particular customer.

8 Q. And what would converted
9 account number be?

10 A. My understanding of that --
11 again this is a document created by
12 FirstEnergy, the questions are probably
13 better directed to FirstEnergy, but my
14 understanding of that would be because
15 FirstEnergy had went through a
16 changeover in their customer account
17 numbers, they had to take the original
18 account numbers and then convert them to
19 the new customer account number to the
20 extent that the supplier submitted the
21 old customer account number because
22 their systems were now mostly running
23 off of the new customer account number
24 so that would be the converted or new
25 customer account number for that

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1 particular service location.

2 Q. And the contract start date,
3 do you know what that related to?

4 A. That was I believe the first
5 date for which MSG was being claimed
6 for that particular customer, the start
7 date of the MSG claim for that
8 customer.

9 Q. Do you have any idea or how
10 did you explain the error column because
11 you indicated you explained what their
12 problems were?

13 A. There was a set of standard
14 definitions that were attached to the
15 letter that this would have been
16 supplied to the supplier by myself on
17 behalf of FirstEnergy and those errors
18 were actually explained in that standard
19 definitions page.

20 Q. And do you recall if you
21 ended up having to give an error sheet
22 to IEU?

23 A. Without my notes I don't
24 recall specifically, but it was highly
25 unusual for any supplier not to have

1 any errors, so my gut reaction would be
2 is they probably did receive one.

3 Q. And you said that there were
4 standard definitions of the errors, is
5 that correct?

6 A. There were standard
7 definitions that FirstEnergy had
8 provided with these letters that were to
9 be delivered to the suppliers, yes.

10 Q. And did you always provide
11 just those standard definitions with the
12 error reports?

13 A. In my initial round of
14 reviews, I believe that it was those
15 standard definitions that would have
16 been presented to the suppliers and I
17 believe that they were identical for
18 each supplier, although I didn't sit and
19 compare each and every one of them.

20 Once suppliers had went
21 through one round of reviews and
22 additional claims continued to be made
23 that needed to be reviewed, in some
24 instances the error definitions were not
25 provided because the suppliers had

1 already seen them before. The errors
2 were now showing up on the FirstEnergy
3 web site where they had realtime
4 interaction and didn't need one big
5 cleanup process at the end, if you
6 will. And so in all instances they may
7 not have been provided each and every
8 time I had contact with a supplier
9 regarding a review.

10 Q. But you didn't see any
11 variance in the definitions that were
12 provided?

13 A. I didn't specifically pay
14 attention to whether or not there were
15 any variances.

16 Q. Okay. Let's step back a
17 moment because you have referenced in
18 the first phase -- I don't think that's
19 what you said, you called it something
20 else, the first review process --

21 A. The original round.

22 Q. Those were your words. Can
23 you just walk me through what your
24 process was during this review period
25 and when it started and what the rounds

1 were?

2 A. I won't recall specific
3 dates as to when it started. Our
4 involvement in this engagement started
5 back in late October. There were a few
6 weeks of administrative contacts between
7 myself and FirstEnergy in order to get
8 the engagement letter in place and to
9 identify the procedures that FirstEnergy
10 wanted us to perform. There were some
11 administrative contacts with numerous of
12 the suppliers that were included in that
13 original round of reviews, and
14 FirstEnergy then ran reports for each
15 one of the suppliers included in that
16 original round of reviews and those
17 reports would be the type of reports
18 outlined at the top of Exhibit 1 on
19 Dinie Exhibit 1, the very first page
20 that talks about there was a valid
21 listing, there was an error listing and
22 there was a duplicate listing, I
23 believe.

24 Q. And those error listings and
25 valid listing and duplicate listings

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1 were provided to you, is that what
2 you're indicating?

3 A. The error listings and the
4 valid listing and I believe the
5 duplicate listing were provided to me to
6 deliver to the suppliers. The duplicate
7 and the error listing and the valid
8 listing was the listing that I utilized
9 then to perform my procedures.

10 Q. And once you received those
11 FirstEnergy reports, what did you do?

12 A. Over a two and a half or
13 three week period, I don't recall
14 specifically what the time frame was,
15 but it was sometime mid to late
16 November, I visited with all of the
17 suppliers included in that original
18 round.

19 I delivered to them on
20 behalf of FirstEnergy the error reports
21 and the duplicate reports and explained
22 to them the package that contained those
23 reports and then I utilized the valid
24 listing to perform my procedures in
25 accordance with the scope we talked

1 about here a minute ago and to review
2 the agreements in conjunction with those
3 procedures.

4 Q. How was it determined what
5 suppliers were going to be in the first
6 round?

7 A. I didn't make that
8 determination. That determination was
9 made by FirstEnergy and I believe that
10 all suppliers that had submitted claims
11 as of a certain date when this process
12 started were included in that original
13 round, but I can't say that for
14 certain.

15 Q. Now, back at your engagement
16 letter again for a moment, on the
17 second page of the engagement letter it
18 references working papers. What type of
19 working papers were created as a result
20 of your engagement?

21 A. For each supplier that I
22 visited, I kept a folder of information
23 related to that supplier. That would
24 include my notes from my visit, it
25 would include some of the information

1 that FirstEnergy provided to me, in most
2 cases a copy of the error report and a
3 copy of the duplicate report that was
4 delivered to the supplier, a copy of
5 the valid listing that I worked off of
6 to show the contracts that were selected
7 or the account numbers that were
8 selected for review, contact information
9 related to that supplier, business
10 cards, just about anything that related
11 to my review of that particular supplier
12 would be included in those folders.

13 That information was then
14 all utilized to prepare a summary of my
15 review for the individual suppliers and
16 that summary was the information that
17 was then shared with FirstEnergy to
18 discuss my review of the suppliers, at
19 least for the original round.

20 The working papers
21 themselves when this project is complete
22 will probably not contain all of that
23 information, but being that this has
24 been an ongoing project since November,
25 they haven't actually been put together

1 in a filing format.

2 Q. When you said that at least
3 for the original round, were you meaning
4 that you only prepared a summary for
5 the original round? I wasn't quite
6 sure what you were referring to there.

7 A. In many instances that's the
8 case, because after the original round,
9 things came in so piecemealed because it
10 wasn't that I did one six or eight hour
11 review at an individual supplier and
12 then was able to summarize that. It
13 might have been that I took 15 minutes
14 or 45 minutes one day and looked at
15 this piece and two days later I
16 received another piece that supported
17 another account and I looked at it, so
18 those types of things were reported to
19 FirstEnergy more on a realtime basis.

20 Q. And that was a verbal
21 report?

22 A. Yes, versus actually putting
23 them in a written format.

24 Q. How would you note that you
25 had made that verbal report?

1 A. I don't know that I would
2 have noted anywhere that I had actually
3 made that verbal report other than for
4 the most part they were done in pieces,
5 that there were certain dates or times
6 that we sat down and I went through
7 everything that I had been through to
8 date no matter what supplier that it
9 related to.

10 Q. When you say at certain
11 times we sat down, who is the we?

12 A. For the most part it was
13 myself and David Blank. To a lesser
14 extent, some individuals within his
15 department, I would sit with them
16 sometimes and summarize the information
17 and they would then report it to Dave.
18 Some of those pieces would be documented
19 by individuals at FirstEnergy.
20 Sometimes they had put together
21 summaries of the discussions that we had
22 had and so forth.

23 Q. So if you didn't have the
24 discussion with Dave Blank, then you may
25 have it with someone else who would

1 make notes of your meeting or summarize
2 the meeting, is that what you were just
3 saying in terms of document?

4 A. I think the individuals that
5 I talked with, if I recall correctly,
6 had documented some information as we
7 were discussing so that they could then
8 relay that information to Dave Blank.

9 Q. Do you remember who those
10 people would have been?

11 A. The only individual I can
12 recall for sure is David Headings.
13 From time to time Mark Vaccaro may have
14 been in the room, but there was never a
15 point that I reported directly to Mark
16 without either David Headings or David
17 Blank being present that I can recall.

18 Q. Now, the impression I got is
19 that you had specific dates that you
20 sat down with Dave Blank and you went
21 over all the reviews that you had done
22 up to that point?

23 A. I wouldn't say specific
24 dates. I would say at a convenient
25 time, whenever that might have been, we

1 sat down and went through everything
2 that I hadn't previously reported but
3 that I had completed my review on up
4 until that particular point or at least
5 gave him an update as to where we were
6 at in conjunction with my review.

7 Q. Did you provide him with a
8 written summary?

9 A. For the original reviews, I
10 produced to him a written summary, which
11 he then returned to me at the end of
12 that review in order to use it as an
13 outline for that discussion.

14 Subsequent to that point
15 in time I don't recall specifically
16 providing to him written summaries,
17 although there could have been from time
18 to time things that I pointed to and
19 had him read.

20 Q. So you would bring documents
21 that he may look at, but you would take
22 those back with you, is that correct?

23 A. That's correct, because these
24 were all in process reviews and the
25 intention was that the documents would

1 continue to be added to.

2 Q. Was there an intention at
3 the end there would be a written
4 summary that would summarize each
5 supplier?

6 A. For our working papers, yes,
7 there will be a written summary that
8 will summarize each supplier.

9 Q. And will that be provided to
10 FirstEnergy?

11 A. That's FirstEnergy's option
12 as it's established in the engagement
13 letter.

14 Q. So what I believe you're
15 referring to is on the first page, the
16 first paragraph under Andersen's
17 responsibilities and limitations, the
18 last sentence, if you request a written
19 report, is that the written report you
20 were referring to that they could
21 request at the end?

22 A. That's correct.

23 Q. And without that you will
24 leave nothing in writing with them?

25 A. Unless they request specific

1 pieces in writing.

2 Q. Have you provided any
3 written report to FirstEnergy with
4 respect to IEU?

5 A. IEU's written report would
6 have been shared with FirstEnergy at the
7 time that we discussed the results of
8 my initial round of review of all of
9 the suppliers, but that would have been
10 the reports that were given to David
11 Blank to use as an outline for our
12 discussion that he then returned to me
13 at the end of that discussion.

14 Q. Do you know with respect to
15 IEU if you had conversations with others
16 at FirstEnergy who documented those
17 discussions?

18 A. I don't recall specifically
19 if IEU would have been included in any
20 of those conversations or not. I may
21 be able to better determine if I'm
22 looking at all of my notes, but I don't
23 recall specifically if they were.
24 There's a possibility they could have
25 been.

1 Q. Now, you indicated that this
2 engagement letter is sort of a form
3 letter of Arthur Andersen's that you
4 then adjust for the particular client,
5 is that correct?

6 A. That's correct.

7 Q. And what is the -- what
8 would you consider to be the normal
9 procedure -- you call these a -- tell
10 me again the phrase.

11 A. An agreed upon procedure
12 engagement.

13 Q. I'm going to write that
14 down. In an agreed upon procedure
15 engagement -- strike that. Based on
16 the description that you indicated to me
17 at the beginning of your
18 responsibilities with Arthur Andersen, I
19 assume you are regularly involved in
20 agreed upon procedure engagements, is
21 that correct?

22 A. I don't know how you would
23 define regularly. I've performed
24 several agreed upon procedures in my
25 career in various circumstances, but

1 it's not -- agreed upon procedures
2 usually are not normal recurring
3 procedures.

4 Q. And how many would you say
5 you've been involved in?

6 A. I would say somewhere in the
7 ten to 12 range.

8 Q. Is it your experience with
9 those other agreed upon procedure
10 engagements that written reports were
11 not provided?

12 A. In some cases written
13 reports were not provided and in others
14 they were.

15 MS. FLEMING: When it's
16 convenient for you, I would suggest
17 maybe a five minute break.

18 MS. KAHN: Now's fine.

19 (Recess had.)

20 BY MS. KAHN:

21 Q. Ms. Dinie, once again going
22 back to your limited role in determining
23 capacity factor and load following, what
24 was that? You may have answered that,
25 I just don't remember what your answer

1 was as to what your role was.

2 A. I did answer it. Are you
3 referring to --

4 Q. You indicated in the
5 protocol, section 5, that you had some
6 limited involvement in your procedures
7 on the load following and capacity
8 factor issue. Could you tell me what
9 that involvement was?

10 A. Yes.

11 Q. And I apologize.

12 A. To the extent that any of
13 the agreements that I was looking at
14 made specific reference that a supplier
15 was to claim on behalf of a customer on
16 a load following basis or a capacity
17 factor basis, I would take note of that
18 and exchange that information with
19 FirstEnergy or made sure that the claim
20 was made on that particular basis, but
21 for the most part there wasn't a
22 distinguishment in the majority of the
23 contracts that I looked at.

24 Q. So it was really just
25 focusing on whether the contract between

1 the supplier and the end user referenced
2 load following or capacity factor and if
3 it did, you would note that, is that
4 correct?

5 A. That's correct.

6 Q. And do you recall if any of
7 the IEU contracts indicated capacity
8 factor or load following?

9 A. I don't recall.

10 Q. When you were preparing to
11 go out and do these reviews, what did
12 you look at? Did you look at the
13 stipulation?

14 A. No.

15 Q. Did you look at the
16 supplemental materials to the
17 stipulation?

18 A. I don't know what those
19 materials would be, but probably not.

20 Q. That's probably a no. Did
21 you look at the Ohio Revised Code --

22 A. No.

23 Q. -- with respect to
24 electrical deregulation? Did you look
25 at the Public Utilities Commission's

1 rules?

2 A. No.

3 Q. Did you look at any
4 information provided by FirstEnergy
5 explaining the protocol?

6 A. I don't recall specifically
7 if any of the information explained the
8 protocol, but I did look at the
9 protocol itself and also looked at
10 several presentations that my
11 understanding was prepared by
12 FirstEnergy and shared with the
13 suppliers at various meetings that
14 FirstEnergy had with the suppliers
15 dating back to possibly July of 2000 or
16 so.

17 Q. And those presentations that
18 you reviewed, did you then get back to
19 FirstEnergy with questions?

20 A. I believe I had a few
21 questions on them.

22 Q. Do you remember what those
23 questions related to?

24 A. I don't recall specifically.

25 Q. Did you have any involvement

1 in -- let me go back. Strike that.

2 If you'll pull out your
3 protocol once again, that would be
4 Exhibit A. If you would turn to
5 section 6, approval process, and I will
6 limit this to 6.a for the moment.
7 Would you please tell me what specific
8 sections of 6.a your procedure was
9 involved with?

10 THE WITNESS: May I have
11 the question reread, please.

12 (Record read.)

13 A. I would have had some
14 involvement with the second item under
15 6.a with two little I's in identifying
16 whether or not -- not whether or not
17 the customer accounts and the customer
18 names matched, but whether or not the
19 customer name that was submitted in
20 accordance with the claim matched the
21 customer that came out of the
22 FirstEnergy customer information system.

23
24 And I would have had some
25 involvement with little I little V,

1 which is the fourth step under there in
2 reading the contract that the supplier
3 had with the retail customer and looking
4 at the duration to make sure the
5 duration in that contract matched the
6 duration that the claim was made for.

7 Q. Is that all?

8 A. That's it.

9 Q. Therefore you had no
10 involvement with respect to registration
11 of the utility, or with the utility,
12 I'm sorry.

13 A. That's correct.

14 Q. Or verification that the
15 supplier was a CRES?

16 A. That's correct.

17 Q. Certified retail electric
18 supplier, sorry. And you're saying with
19 respect to 6.a, small Roman numeral 4,
20 the only thing that you would have been
21 looking at was the duration of the
22 contract or are you saying your review
23 process actually was broader, you also
24 were making sure there was a committed
25 capacity sale?

1 A. My review process was
2 broader than that in accordance with the
3 agreed upon procedures. I was reading
4 those contracts to identify whether or
5 not there were any provision in there
6 that would cause me concern as to
7 whether there was a legal binding
8 Document.

9 Q. In 6.a small Roman numeral 4
10 there is also a parenthetical that says
11 or an alternative form of verification.
12 Can you explain what your understanding
13 of that was?

14 A. I don't have an
15 understanding of that. In my opinion
16 there wasn't any type of an alternative
17 form of verification that ever came up
18 that I needed to look at.

19 Q. Okay. Let's move to section
20 6.b of the protocol, and once again
21 would you please tell me which
22 provisions of 6.b your procedures were
23 involved with and how?

24 A. My procedures would have
25 contained limited involvement in number

1 3 under 6.b, again in looking at the
2 customer name that was submitted by the
3 supplier within a claim and comparing it
4 to the customer name that came out of
5 the FirstEnergy customer information
6 system, and I would have spoke with the
7 suppliers then regarding those to make
8 sure that they knew who they were
9 actually claiming on behalf of, but
10 would not have had any other involvement
11 under that particular number.

12 I would have looked at
13 the contract duration under little B
14 little II, which is 7 under 6.b. I
15 would not have determined if there was
16 an actual contract, though, but I would
17 have brought to FirstEnergy's attention
18 if there were any provisions that caused
19 me concern.

20 Q. Okay. Do you know who would
21 have made the determination whether or
22 not there was a contract?

23 A. FirstEnergy would have made
24 that determination.

25 Q. Do you know who specifically

1 at FirstEnergy?

2 A. I believe David Blank would
3 have made that determination initially,
4 but I don't know who all he would have
5 consulted with. I do know one instance
6 he definitely consulted with somebody
7 else at FirstEnergy.

8 Q. Do you know who that other
9 person was?

10 A. In this particular instance
11 that I'm aware of it was Leila Vespoli.

12 Q. And do you know if that had
13 to do with IEU?

14 A. It did not have to do with
15 IEU.

16 Q. Do you know whether or not
17 Mr. Blank needed to make a determination
18 on whether or not a contract existed
19 with respect to IEU's claims?

20 A. There were items that I had
21 discussed with Mr. Blank that resulted
22 from my review in connection with IEU
23 that I had brought to his attention,
24 and what kind of determinations he
25 actually made from that point, I don't

1 know.

2 Q. And what were the items that
3 you discussed with Mr. Blank with
4 respect to IEU?

5 A. I don't recall them
6 specifically. I would need to have my
7 notes in front of me.

8 Q. Okay. Going back to the
9 protocol for a moment where it says in
10 small Roman numeral 7, 6.b, small Roman
11 numeral 7, page 8 of 10, it indicates
12 if FE determines that at the time of
13 application an eligible supplier did not
14 have a contract, I assume that you were
15 involved with that aspect as well, is
16 that correct?

17 A. What are you assuming my
18 involvement would be?

19 Q. Determining whether or not
20 there was a -- not whether or not there
21 was a contract, but whether or not
22 there was a concern of the contract
23 existing at the time of application.

24 A. Yes, I would have been
25 involved in discussing with FirstEnergy

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1 if there was a concern as to whether or
2 not a contract existed.

3 Q. And what does at the time of
4 application mean to you?

5 A. My understanding based on
6 the information that FirstEnergy gave me
7 in giving me directions is that at the
8 time of application would have meant at
9 the time that the particular claim was
10 submitted for that customer or that
11 customer account.

12 Q. And do you recall whether
13 there were concerns raised with respect
14 to IEU not having a contract at the
15 time of application?

16 A. I don't recall positively
17 without having my notes in front of me.

18 Q. Okay. I want to hand you
19 Dinie Exhibit 3.

20 - - - - -

21 (Thereupon, Deposition
22 Exhibit-Dinie3 was
23 marked for purposes
24 of identification.)
25 - - - - -

1 Q. I know it's very redacted,
2 but does this -- is this a form that
3 looks familiar to you?

4 A. It does.

5 Q. And how did you make use of
6 this form?

7 A. My use of this form was only
8 to give me an idea of what suppliers
9 needed to be reviewed next and what
10 claims of those suppliers needed to be
11 reviewed next. This is a document
12 that's prepared by FirstEnergy that I
13 only had limited access to.

14 Q. This is not the document
15 that you were referring to when you
16 said you would get all the claims and
17 that's what you would count down?

18 A. No, it's not.

19 Q. Okay. And when you said you
20 would use this to determine what
21 suppliers you needed to review, how
22 would you make that determination from
23 this document?

24 A. And I should preface that by
25 saying that this was after the original

1 round of my reviews. The original
2 round of my reviews were done on a
3 first come first served basis. The
4 suppliers were all contacted by
5 FirstEnergy and told that FirstEnergy
6 was implementing its right to move
7 forward with this process, that they
8 needed to get in touch with me and
9 schedule a date with me within a
10 specified period of time and those
11 suppliers were then scheduled by
12 contacting me on a first come first
13 served basis.

14 After that initial
15 scheduling was done and the particular
16 claims were looked at in connection with
17 that original round, I then used this
18 to give me an idea of who was up next
19 in the so-called queue as it's referred
20 to to determine who was going to need
21 to be looked at next in conjunction
22 with FirstEnergy.

23 Q. So in other words, of the
24 MSG that was left after you did the
25 first round, who may be potentially in

1 line to receive that MSG, is that
2 correct?

3 A. That is correct.

4 Q. And so you used this to
5 decide going down in that order who to
6 do the next review or reviews?

7 A. Yes. The decision wasn't
8 all mine, but we used this as a
9 discussion point to say we need to do
10 this supplier next and this supplier
11 next.

12 Q. When you say the discussion,
13 who did you have those discussions with?

14 A. Between myself and
15 FirstEnergy, primarily David Blank.

16 Q. And under the column that's
17 listed as status code, do you recall
18 what would be in that column?

19 A. Without seeing what's
20 actually in that column, I don't recall
21 what that stands for.

22 Q. We're done with that one.

23 - - - - -

24 (Thereupon, Deposition

25 Exhibit-Dinie4 was

1 marked for purposes
2 of identification.)

3 - - - - -

4 Q. I'll hand you what's marked
5 as Dinie Exhibit 4. Do you recall
6 seeing this letter?

7 A. I do recall seeing this
8 letter.

9 Q. And can you explain what you
10 believe the purpose of this letter was?

11 A. My understanding is that
12 this letter was sent out to the
13 suppliers that were in my original round
14 of reviews in order to make them aware
15 of the process that FirstEnergy was
16 implementing.

17 Q. And in the second paragraph
18 at the end of the paragraph it
19 references a review of the retail
20 contracts that support your MSG claim.
21 I assume that's the committed capacity
22 sale contract in your view?

23 A. That would be correct, I
24 believe.

25 Q. And once again it would be

1 your understanding that those retail
2 contracts would be executed between a
3 buyer and a seller of MSG, is that
4 correct?

5 A. My understanding is that
6 those contracts would be executed
7 between the entity that claimed the MSG
8 and its customer or end user.

9 Q. And if you had to designate
10 them as buyer and seller, how would you
11 do that, those two entities?

12 A. I've never had to make that
13 designation, but the end user would be
14 the buyer and then you've got a
15 claimant.

16 Q. Who in your mind would be
17 the seller?

18 A. May or may not be the
19 seller. I've never had to make that
20 determination.

21 Q. Why are you hesitating with
22 the may or may not?

23 A. There are certain claimants
24 that have established a customer
25 relationship that I'm unaware of whether

1 or not they're actually the, quote,
2 seller as you're calling it. I guess I
3 would need for you to define for me
4 what you mean by seller.

5 MS. KAHN: Could you read
6 that answer back.

7 (Record read.)

8 Q. Let me just ask you, when
9 you say claimants have established a
10 customer relationship, what type of
11 customer relationships did you see in
12 your review?

13 A. You've got aggregation
14 customer relationships, you've got
15 direct contract customer relationships.
16 Those are the only two I can recall.

17 Q. What do you mean by direct
18 contract relationship?

19 A. That there's a positive
20 confirmation as I referred to it before
21 where there's an actual written
22 agreement between the claimant of the
23 MSG and the customer.

24 Q. And when you're referring to
25 aggregation, are you once again

1 referring to the municipal opt out
2 aggregation that we had discussed
3 earlier?

4 A. Yes, and there are other
5 entities that are aggregating that have
6 claims in that they wouldn't necessarily
7 have to have an aggregation with an opt
8 out for -- based on my understanding in
9 order to make that claim.

10 Q. And you see that as a
11 different customer relationship than a
12 direct contract?

13 A. That's probably a fair
14 statement.

15 Q. And where do you see the
16 distinction?

17 A. For instance, a municipal
18 aggregator could make a claim on behalf
19 of its own city load and there
20 obviously wouldn't be an opt out process
21 because that municipal aggregator was
22 the individual entity that made the
23 claim.

24 Q. Uh-huh.

25 A. And the decision would have

1 been based on budgetary reasons or
2 whatever their reasons were, but they're
3 not going to have to go through a
4 contracting stage with its own city
5 load.

6 Q. What about nonmunicipal
7 aggregators?

8 A. Nonmunicipal aggregators
9 would have had to have had something,
10 whether that be through an opt out
11 process, which I'm not aware of any,
12 but it would have had to have had
13 something in an agreement format with
14 its end use customers, not to say that
15 it couldn't be through an opt out
16 process.

17 Q. Would the aggregator as a
18 seller take title to the MSG, do you
19 know?

20 A. That I don't know.

21 Q. Okay. You indicated that
22 there was a second round and I want to
23 hand you Dinie 5.

24 - - - - -

25 (Thereupon, Deposition

1 Exhibit-Dinie5 was
2 marked for purposes
3 of identification.)

4 - - - - -

5 Q. Once again I have redacted
6 this to take out customer information.
7 Is this a letter that you sent out to
8 claimants?

9 A. This is a letter that went
10 out to one claimant, yes.

11 Q. Do you know if you sent
12 these out -- this same format out to
13 numerous claimants? Obviously the
14 customers at the bottom would be
15 different, but the first four
16 paragraphs?

17 A. For the most part as best I
18 can recollect, yes, the first four
19 paragraphs would have been very similar
20 in all situations where it went out,
21 but it did go to numerous claimants.

22 Q. This was for the first round
23 or the second round, do you recall?

24 A. It was not the first round.
25 It would have been the second round and

1 potentially even the third or fourth
2 round to the extent necessary. I don't
3 recall specifically which round or
4 rounds, but it definitely was not the
5 first.

6 Q. Going to the third
7 paragraph, when you are addressing the
8 contracts that you're going to review,
9 you've specifically stated that you do
10 not want them to redact the paragraph
11 headers, is that correct?

12 A. That's correct.

13 Q. And I assume you mean --
14 well, why don't you tell me what you
15 meant by that.

16 A. A paragraph header would be
17 a description similar to if you go back
18 to the protocol and it says section 1,
19 purpose of document, so it would be the
20 description of what's going to be
21 contained beneath that particular
22 provision or beneath that particular
23 section.

24 Q. And were the contracts that
25 you reviewed in this second round, did

1 they have headers in all cases?

2 A. I don't recall specifically.

3 Q. What provisions were you
4 looking for with those headers?

5 A. Since I had been through the
6 original round or the initial round of
7 my reviews and I had reviewed contracts
8 for the most part in unredacted form at
9 some point in time in connection with
10 that initial round, I was really looking
11 for consistency to see if all the
12 contracts were similar to the ones that
13 I had reviewed before or if there were
14 additional provisions that I may now
15 need to take a look at in connection
16 with the second round or the third
17 round or the fourth round.

18 Q. And were those provisions
19 that you were concerned about those that
20 might contain contingencies?

21 A. I would have been concerned
22 with provisions that again could impact
23 or could bear upon the fact of whether
24 or not there was a legal binding
25 document.

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1 Q. And what type of provisions
2 would you have focused on in that
3 regard?

4 A. Anything that would have
5 caused concern as to whether or not
6 there was a legal binding document.

7 Q. Do you recall specific
8 heading titles that concerned you?

9 A. No, I can't formulate a
10 specific title from a contract.

11 Q. Do you recall whether or not
12 there were contingencies in the IEU
13 contracts that you reviewed?

14 A. I recall what I consider to
15 be one contingency in the IEU contract.
16 That's not to say that may or may not
17 have been the only one, but it
18 specifically comes to my mind.

19 Q. What was that?

20 A. Within the contract between
21 IEU and its customers, there was a
22 provision that indicated that another
23 agreement had to be executed in
24 substantially the same form as the draft
25 that was attached to that contract

1 between IEU and its customers.

2 Q. Let me go back a minute.
3 When you were looking at the IEU
4 contract between IEU and their
5 customers, was there one form contract
6 that was used for all their members for
7 MSG?

8 A. The best that I can
9 recollect, yes, there was one form.

10 Q. And so this was the contract
11 -- the form that you reviewed had a
12 contingency, if I'm hearing you
13 correctly, that said you also have to
14 execute the agreement that's attached to
15 this form contract, is that correct?

16 A. It didn't say you, but it
17 said that the attached agreement had to
18 be executed and I don't recall who had
19 to execute it.

20 Q. And do you recall what the
21 attached agreement was?

22 A. The attached agreement was
23 an agreement between IEU and FirstEnergy
24 Services.

25 Q. Did it have a title?

1 A. I have an acronym for it and
2 I don't know if this is the exact
3 title, but I believe it was the master
4 services -- master services agreement or
5 something along those lines.

6 Q. Okay. FirstEnergy Services,
7 could you explain who that is?

8 A. FirstEnergy Services is a
9 subsidiary of FirstEnergy Corporation.

10 Q. And what does FirstEnergy
11 Services do?

12 A. Based on other knowledge of
13 the company, FirstEnergy Services --
14 based on my other knowledge of the
15 company, FirstEnergy Services is on the
16 nonregulated side of the corporation and
17 is kind of the parent company for many
18 of the nonregulated activities that
19 FirstEnergy is involved in.

20 Q. Did you review the master
21 services agreement?

22 A. I did read the master
23 services agreement.

24 MS. FLEMING: I think you
25 need to listen to the question. I'm

1 not sure she understood the question, if
2 you could read it back.

3 (Record read.)

4 MS. FLEMING: I can
5 interject here --

6 A. No. I read the draft of the
7 master services agreement that was
8 attached to one of the contracts between
9 IEU and its customer.

10 Q. Uh-huh.

11 A. But I did not review an
12 executed copy of the master services
13 agreement.

14 Q. Did you inquire with IEU as
15 to whether or not the master services
16 agreement was executed by the customer?

17 A. I did make that inquiry.

18 Q. And?

19 A. And I'll preface that by
20 saying I don't recall who the master
21 services agreement had to be executed
22 by. I don't know if it was by the
23 customer, I don't recall that, but I
24 did make the inquiry as to whether or
25 not it had been finalized and executed

1 and the answer was no, it had not at
2 that point in time.

3 Q. And were you later advised
4 that it had been?

5 A. No.

6 Q. And did you point out this
7 contingency to FirstEnergy?

8 A. I did.

9 Q. Did you also advise
10 FirstEnergy that you were unable to
11 confirm if it had ever been executed?

12 A. At the time that I reported
13 my summary to FirstEnergy, I said to
14 the best of my knowledge there was not
15 an executed document out there, yes.

16 Q. Did you request that IEU get
17 back to you to supplement whether or
18 not it was ever executed?

19 A. I did not.

20 Q. Did you review the
21 unexecuted -- the draft master services
22 agreement in your initial round?

23 A. I did.

24 Q. And was that part of your
25 summary report with respect to IEU?

1 A. I believe it was, but I
2 don't recall specifically without seeing
3 my summary report.

4 Q. Was your summary report
5 typed generally or was it handwritten?

6 A. For the initial round the
7 summary report was typed.

8 Q. Okay. Do you recall
9 discussing the master services agreement
10 with Mr. Blank?

11 A. I recall discussing the
12 concerns that I had regarding the
13 contingency that it hadn't been executed
14 and it was still in draft form and it
15 was still with FirstEnergy Services with
16 Mr. Blank. I don't know that I
17 specifically discussed any provisions
18 within the master services agreement
19 with him.

20 Q. Do you recall what Mr.
21 Blank's reaction was?

22 A. I don't recall specifically.

23 Q. Do you recall if Mr. Blank
24 gave you further instructions with
25 respect to the master services

1 agreement?

2 A. I recall two items being
3 raised that he had asked me to follow
4 up on, but I don't recall if there were
5 actually any additional instructions
6 other than those two follow-up items.

7 Q. And what were those
8 follow-up items?

9 A. I may not recall these
10 verbatim, but one was to determine the
11 exact wording within the contract
12 between IEU and its customers related to
13 the master services agreement, and the
14 second item was actually a follow-up
15 that I think FirstEnergy had made for
16 itself or Mr. Blank had made for itself
17 in connection with something along the
18 lines of customer credit arrangements.

19 (Record read.)

20 Q. Okay. With respect to the
21 exact wording, did you follow up on
22 that?

23 A. I did.

24 Q. And can you elaborate on
25 that?

1 A. I was asked to follow up on
2 something along the lines of whether or
3 not the contract between IEU and its
4 customers were worded that the master
5 services agreement had to be executed or
6 if it had to be executed in
7 substantially the same form as the
8 attached draft.

9 Q. And what was the result of
10 that?

11 A. The wording was that it had
12 to be executed in substantially the same
13 form.

14 Q. Was there any other
15 instruction with respect to follow-up on
16 wording?

17 A. I don't recall any others.

18 Q. Did Mr. Blank explain to you
19 the relevance or the distinction between
20 those two phrases?

21 A. No.

22 Q. Or why it was significant to'
23 him?

24 A. No.

25 Q. With respect to the customer

1 credit arrangements, I'm not quite sure
2 I understand what that is. Can you
3 explain that more?

4 A. I don't recall specifically
5 what it was without my notes either.

6 Q. Okay. What customer are you
7 referring to, the customer of
8 FirstEnergy or the end user customer,
9 the retail customer, do you know?

10 A. What customer am I referring
11 to --

12 Q. For the customer credit
13 arrangement, I'm sorry.

14 MR. RUXIN: I'm sorry,
15 could you read the question back? I
16 just lost the thread.

17 (Record read.)

18 A. I don't know what customer
19 it would have been.

20 Q. Did you do follow-up on the
21 customer credit arrangement?

22 A. I did not. That was a
23 follow-up point FirstEnergy had made for
24 itself.

25 Q. So it would be your

1 testimony that the only contingency in
2 the IEU contract that you reviewed for
3 committed capacity sale was the
4 requirement with respect to the master
5 services agreement, is that correct?

6 THE WITNESS: Would you
7 reread that question, please?

8 (Record read.)

9 A. That's the only contingency
10 that I can recall without my notes in
11 front of me.

12 Q. You indicated with respect
13 to Dinie Exhibit 5 that this form
14 letter went out after the first round
15 of reviews, is that correct? Let me
16 rephrase that. Did not go out for the
17 first round of reviews, is that correct?

18 A. That's correct.

19 Q. When you were preparing to
20 go out for your first round of reviews,
21 how did you advise those suppliers who
22 you were going to review what you
23 wanted to be looking at?

24 A. The suppliers were primarily
25 advised through the letter that came

1 from Mr. Blank that you've given to me
2 in Dinie Exhibit 4 that they were to
3 get in contact with me in order to
4 schedule this review and that we would
5 be looking for the written agreements or
6 the contracts between the claimants and
7 their customers.

8 Q. When you got in touch with
9 them, did you give them more detail as
10 to what you wanted to see?

11 A. I didn't specifically have a
12 prepared speech to give them, but if
13 questions were asked, I tried to answer
14 them.

15 Q. Did you have discussions
16 with IEU as to what you were going to
17 want to review?

18 A. Not that I can recall.

19 Q. And during your review at
20 IEU, who did you work with on behalf of
21 IEU?

22 A. There were two individuals
23 that I primarily worked with and there
24 was a third individual that assisted
25 with taking my coat and gathering some

1 information or collecting documents or
2 making copies or whatever.

3 Q. Who were those people?

4 A. The two that I primarily
5 worked with was Sam Randazzo and Kevin,
6 I think it's Murray.

7 Q. Okay. You're doing better
8 than I would do. Were both Mr.
9 Randazzo and Mr. Murray present at your
10 review in the initial round?

11 A. At various points in time
12 during my review they were both present.

13 Q. And did you ask questions of
14 both of them?

15 A. I don't recall specifically
16 if it was one or both of them that I
17 asked questions of.

18 Q. Did you ask questions with
19 respect to the master services
20 agreement?

21 A. I did inquire with respect
22 to the master services agreement as to
23 whether or not it had been executed and
24 finalized.

25 Q. Did you have other questions

1 with respect to the master services
2 agreement?

3 A. I don't recall without my
4 notes.

5 Q. You indicate in this format
6 letter, Dinie Exhibit 5, that you're
7 going to want to review pricing. What
8 was it that you needed to review with
9 respect to pricing arrangements?

10 A. I don't believe that I
11 specifically say in here that I'm going
12 to want to review pricing. I think it
13 says to be sure that all attachments
14 are included.

15 Q. That identified the specifics
16 of the contract such as the locations
17 covered and/or the pricing arrangements.

18 A. Right. I'm looking to make
19 sure that all attachments are included
20 in the information that's provided to me
21 so that I don't have the follow-up
22 question to have to go back and ask for
23 attachments.

24 Q. But if you wanted to make
25 sure the attachments for pricing were

1 included, I would assume you were going
2 to look at the pricing, is that
3 correct?

4 A. No, that's not correct. I
5 could care less what they're pricing the
6 electricity at, to be honest.

7 Q. So then why were you
8 concerned that the attachment with
9 respect to pricing was there?

10 A. Because in some cases there
11 were certain suppliers that the way
12 their contract was written was that the
13 contract was not a contract until the
14 pricing attachments had been signed by
15 the customers and I needed to make sure
16 I saw those attachments in signed format
17 before I could say that yes, you've --
18 there's nothing here that causes me any
19 concern.

20 Q. Do you recall if there was a
21 pricing concern with respect to IEU?

22 A. Since I wasn't interested in
23 the pricing, I don't know I would say
24 that there was a pricing concern. I
25 don't recall that IEU had any pricing

1 attachments.

2 Q. Do you recall if IEU's
3 contract was redacted?

4 A. IEU's contract between itself
5 and its customers were not redacted.

6 Q. Do you recall if the IEU
7 contracts gave the customer the right to
8 terminate?

9 A. I don't recall positively
10 without my notes.

11 Q. How many visits did you make
12 to IEU?

13 A. One physical visit to them.

14 Q. And do you recall how long
15 you were there approximately?

16 A. Somewhere in the five or six
17 hour range, maybe seven.

18 Q. And do you recall how many
19 contracts you reviewed approximately?

20 A. Probably somewhere close to
21 20.

22 Q. I'm correct that you
23 previously testified that all the
24 contracts were the same however, is that
25 correct, in terms of the form of the

1 contract between IEU and its members?

2 A. That's correct.

3 Q. So when you're saying 20
4 contracts, that would be between IEU and
5 an individual member of IEU, correct?

6 A. Yes.

7 Q. I just want to clarify that
8 each contract -- each of those 20
9 contracts would reflect an agreement
10 between IEU and one of its members?

11 A. Yes.

12 Q. Okay. In the preparation of
13 your summary reports, did you allow the
14 claimants to review those summary
15 reports?

16 A. I did not permit the
17 claimants to review those summary
18 reports unless I obtained permission
19 from FirstEnergy.

20 Q. And how would that come
21 about, the permission?

22 A. Because Arthur Andersen was
23 engaged by FirstEnergy and this is an
24 agreed upon procedures engagement, our
25 review and summary information goes to

1 FirstEnergy because they're the
2 individuals that have engaged us to
3 perform this work, so we report to
4 FirstEnergy and in accordance with firm
5 standards I'm not permitted to report
6 that information to anyone else except
7 for FirstEnergy unless I have
8 FirstEnergy's permission to do so.

9 Q. And I assume therefore
10 claimants did make the request and you
11 had requested permission, is that
12 correct?

13 A. Some claimants made the
14 request.

15 Q. Did IEU?

16 A. They did not.

17 MS. KAHN: I need about a
18 three minute break.

19 (Recess had.)

20 - - - - -

21 (Thereupon, Deposition
22 Exhibit-Dinie6 was
23 marked for purposes
24 of identification.)
25 - - - - -

1 Q. I have marked Dinie Exhibit
2 6 and for the record we are now going
3 through the documents that were produced
4 by Ms. Dinie as part of her subpoena
5 duces tecum and these were produced this
6 morning to us.

7 I have marked as Exhibit
8 6 documents that were Bates stamped one
9 through 12 if it would help, and first
10 can you explain to me what this is?

11 A. This is a document that was
12 prepared by FirstEnergy and my
13 understanding is that it was a summary
14 of all of the claims that FirstEnergy
15 had approved as of certain dates.

16 Q. And why was it provided to
17 you?

18 A. For my information.

19 Q. Did you in any way confirm
20 that these approved claims were
21 consistent with your belief that your
22 review had been completed for a claim?

23 A. I did not take this document
24 after it had been provided to me and
25 look at the claims that were on it and

1 compare to see whether or not my review
2 was completed, no.

3 But prior to this document
4 being created, I do know that there
5 were discussions that took place between
6 myself and Mr. Blank regarding numerous
7 claims.

8 (Record read.)

9 Q. And when you're indicating
10 prior to this document being created, is
11 that because you knew what was going to
12 go into the document so you were
13 concerned about specific claims?

14 A. I knew what claims we had
15 talked about. I didn't know what was
16 going to go into the document or how
17 they were going to summarize it
18 internally, no.

19 Q. So your reference to having
20 numerous conversations with Mr. Blank
21 with respect to claims, is that a
22 reference to the summaries that you
23 would provide to Mr. Blank?

24 A. Not only the summaries that
25 I would provide to Mr. Blank, but also

1 other conversations that I had had with
2 him at various times in order to
3 discuss the process and where we were
4 at and what I had completed and so
5 forth from the last time that we had
6 had such a discussion.

7 Q. So you would report to Mr.
8 Blank, as far as I'm concerned my
9 review is completed of these claims,
10 listing specific claims, is that
11 correct?

12 A. In some cases, yes. In
13 other cases, it was an inquiry that was
14 made as to looking at the queue and
15 looking at Mr. Blank or someone at
16 FirstEnergy would be looking at the
17 queue and would be looking at the next
18 claims in line and ask me, have you
19 looked at this one, where are we at
20 with this one.

21 Q. So it was somewhat of an
22 informal process that you would report
23 your conclusion of your review?

24 A. After the initial round,
25 that's correct.

1 Q. Okay. I think I need to
2 better understand the initial round.

3 A. Because the initial round
4 all took place within a short time
5 period and that's basically all I was
6 doing was jumping from one supplier to
7 another to make my visits and to
8 perform my reviews, all of that
9 information was summarized and discussed
10 with Mr. Blank in one sitting.

11 Q. Okay.

12 A. Subsequent to that point in
13 time, information was requested and was
14 gathered more on a piecemeal basis
15 because I didn't make second and third
16 visits to a lot of the suppliers and it
17 was just on an as-needed basis that
18 information was requested from them and
19 it was provided to me then based on
20 their schedules, and as a result my
21 discussions with Mr. Blank were more
22 sporadic as I had completed something or
23 as he had inquired about something.

24 Q. All I'm trying to
25 distinguish so I can understand this,

1 the first round from what I'm
2 understanding you would consider when
3 you went out to each supplier's location
4 and you did a report on all those
5 visits. The second round may include
6 follow-up information that resulted from
7 the first round or would you include
8 that as part of your first round?

9 A. It could be both. I don't
10 recall specifically whether my contacts
11 were made as it relates to follow-up
12 information from the first round.

13 In some cases it might
14 have been that the inquiries that
15 resulted from my first round that
16 FirstEnergy then asked me to go back
17 and do additional follow-ups on were
18 provided to the suppliers at the same
19 time that their listing for their second
20 round was provided, and in other
21 situations it may have been that there
22 was an interim communication that took
23 place.

24 Q. When you had this meeting
25 with Mr. Blank to go over all the

1 results of the first round, it didn't
2 necessarily mean that you had concluded
3 your review of every one of those
4 claims, is that correct?

5 A. That's correct, because there
6 were follow-up points that came out of
7 that.

8 Q. If you would turn to page,
9 what's Bates stamped as 3, do you know
10 what the numbers mean with respect to
11 IEU, the 170 and the 6.4 going across?

12 A. I do not.

13 Q. Okay. Could you turn to
14 page 6.

15 A. (Witness complies.)

16 Q. The line across for IEU that
17 starts with 170.7, do you understand
18 what the losses column at the top
19 means?

20 A. This was prepared by
21 FirstEnergy. It's probably a question
22 better directed to them.

23 Q. Okay. Do you recall whether
24 or not this was broken out by operating
25 company?

1 A. I believe it was, but I'm
2 not positive.

3 Q. Okay. Bates number 7,
4 please. I assume once again this was a
5 FirstEnergy prepared document, is that
6 correct?

7 A. That is correct.

8 Q. There is down at the bottom,
9 approval subject to FirstEnergy
10 registration, FES question mark. Do you
11 know what that means?

12 A. I don't know positively.

13 Q. Do you have any idea?

14 A. The approval subject to FE
15 registration I'm guessing is that
16 FirstEnergy needed to make sure that IEU
17 had registered with them.

18 My understanding is that
19 FirstEnergy required a separate
20 registration process in order for
21 suppliers to submit claims and I'm
22 guessing that that's what that means.

23 FES is an acronym that is
24 used for FirstEnergy Services, but why
25 it has the question marks and why it's

1 there, I'm not positive.

2 Q. Going over where it says
3 subsequent claims subject to auditor
4 review, megawatt values subject to
5 review, do you know those two phrases
6 mean?

7 A. Again, I don't know
8 positively, but I do know that at
9 various times when they put together
10 these summaries, the claims that were
11 being listed here for approval weren't
12 necessarily the only claims that any
13 particular supplier had in at that given
14 point in time, but they were only the
15 claims that I had been through my
16 process and FirstEnergy had been through
17 all of its processes on and plus those
18 were the only claims that they were
19 ready to approve is my understanding at
20 that point in time. So there were
21 subsequent claims that would have come
22 in that I needed to go through my
23 process on and that FirstEnergy
24 potentially maybe needed to go through
25 their process on.

1 Q. And their process would be
2 the approval process?

3 A. Their process was more than
4 just the approval process and I don't
5 know what all was entailed in their
6 process, but their process started at
7 the very beginning in looking to make
8 sure that customers that were submitted
9 within a claim was actually a
10 FirstEnergy customer, that it was
11 submitted within a claim under a
12 FirstEnergy company that serviced that
13 customer, that it was a valid customer
14 account number, that it was an active
15 customer account, the capacity that was
16 claimed matched what they had in their
17 system as being a reasonable amount for
18 that capacity that was claimed, whether
19 or not there were any duplicates.

20 It was kind of an ongoing
21 process all the way from beginning to
22 end. So their additional review after
23 I performed mine, they had to take
24 additional steps to make sure if there
25 were any follow-ups that they needed to

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1 take care of and any additional
2 administrative items that needed to be
3 taken care of before they approved
4 claims. That was my understanding of
5 how they went about it.

6 Q. Do you have any idea what
7 the 8.933 remains in queue due to
8 megawatt limit means?

9 A. I could guess what that
10 means, but I don't know positively.

11 Q. What would your guess be?

12 A. My guess would be that after
13 one of these claims, and I'm guessing
14 it would be the OE one since it stands
15 next to it, after that claim was
16 approved, that that was the amount that
17 was remaining in the queue at that
18 point in time based on these figures
19 due to the fact that there was a
20 limitation on the megawatts that each
21 subsidiary company of FirstEnergy was
22 offering in conjunction with the
23 transition or stipulation.

24 MS. KAHN: Okay. I know
25 this is somewhat out of order, but it

1 is Bates stamped number 90 through 101.

2 - - - - -

3 (Thereupon, Deposition
4 Exhibit-Dinie7 was
5 marked for purposes
6 of identification.)

7 - - - - -

8 MS. KAHN: For your
9 records, it's Dinie No. 7 now.

10 Q. Ms. Dinie, do you recall
11 receiving this email from Mr. Blank?

12 A. There's a couple of them,
13 and yes, I recall receiving them,
14 although I'm not sure how or where 100
15 and 101 fit in.

16 Q. Okay. We might be better
17 off if we broke this up, for 90 and 91
18 to be Dinie Exhibit 7, Bates stamp 90
19 and 91.

20 Just to make this easier,
21 is it your understanding that Bates
22 stamps number 92 through 99 go together',
23 that that was the attachment to the
24 email?

25 A. I believe that's the case,

1 yes.

2 Q. Why don't we mark that as
3 Dinie 8, Bates stamps 92 through 99.

4 - - - - -

5 (Thereupon, Deposition
6 Exhibit-8 was
7 marked for purposes
8 of identification.)

9 - - - - -

10 Q. With respect to Dinie 7, it
11 is dated December 21st of 2000, is that
12 correct?

13 A. That's correct.

14 Q. And this had an attachment
15 showing MSG claims that had been
16 approved, is that your understanding?

17 A. Or subject to approval based
18 on the email.

19 Q. And where it says subject to
20 approval pending PUCO certification/FE
21 registration, what would be your
22 understanding of those requirements?

23 A. Probably better addressed to
24 FirstEnergy because I don't know what
25 specifically they were looking with

1 there, or looking at there.

2 Q. Is it your understanding
3 that once something showed up on the
4 attached table that would be an
5 indication that your review process had
6 been completed?

7 A. I don't know that I can say
8 that for certain because I did not see
9 these attachments prior to the time that
10 they were distributed.

11 Q. Do you recall if you were
12 still involved in a review process with
13 IEU at the time that this approved
14 claim attachment was provided, so as of
15 December 21st?

16 A. I would have completed my
17 initial round of my review of IEU as of
18 this date, at least I believe that I
19 would have. There could have been
20 second or third rounds that may or may
21 not have been completed, I don't recall
22 the specific timing, and I don't know
23 what claims specifically that these
24 particular lists would entail for IEU
25 and whether or not they were included

1 in my first or second round.

2 Q. Do you recall that you
3 mentioned there were two follow-up items
4 raised with the IEU contract? Had
5 those been resolved by December 21st
6 that you're aware of?

7 A. The first item, which would
8 have been the item that I was asked to
9 follow up on, would have been resolved.
10 The second item I'm not certain because
11 I believe that was a FirstEnergy
12 follow-up.

13 Q. On Dinie 6 the very first
14 page --

15 MS. FLEMING: Bates one
16 through 12.

17 Q. -- at the top it indicates
18 IEU approved claims with CEI, claim
19 number 1756.

20 When you turn to Bates
21 stamp number 2, does that indicate the
22 amount of IEU claim number 1756 in
23 terms of megawatts, do you know?

24 A. I don't know that
25 positively. I didn't prepare this.

1 Q. Okay. Can you turn back to
2 page 7 again, the Bates stamp?

3 A. (Witness complies.)

4 Q. And you'll note that that's
5 claim numbers 55, 61 and 68 for IEU.
6 Would that reflect that there are other
7 claims within there such as 1756, do
8 you know?

9 A. Other claims within where?

10 Q. Within those claim numbers.
11 That the total megawatts, for instance,
12 for CEI is 30.055, yet the megawatts on
13 page 1 of the Bates stamp for IEU and
14 CEI is .762. Do you know how those two
15 numbers work together by any chance?

16 A. I don't know and I don't
17 know that they do work together.

18 Q. Okay. So you don't know if
19 these .76 is incorporated within the
20 30.055?

21 A. I don't know.

22 Q. Okay. Bates stamp number
23 101.

24 - - - - -

25 (Thereupon, Deposition

1 Exhibit-9 was
2 marked for purposes
3 of identification.)

4 - - - - -

5 Q. Up at the top it says
6 summary of claim review with Denise
7 Dinie 11/11/2001. One would have to
8 assume that's a typo?

9 MR. RUXIN: This is
10 Bates stamp --

11 MS. KAHN: 101.

12 MR. RUXIN: And it's
13 Dinie No. 9?

14 MS. KAHN: Eight.

15 MS. FLEMING: Isn't it 9?

16 MS. KAHN: It is 9, sorry.

17 Q. Do you recall why this
18 document was provided to you?

19 A. I can guess that it was for
20 my information.

21 Q. And the November 11, 2001,
22 do you recall if you had a review
23 meeting November 11th of 2000?

24 A. I doubt there would have
25 been a review meeting November 11th of

1 2000 because if I recall correctly, that
2 would have been before any of my visits
3 would have even taken place.

4 Q. And this would have been
5 provided to you for what reason, do you
6 remember?

7 A. For my information,
8 FirstEnergy provided it. It wasn't
9 something that I asked for. I don't
10 know why they would have.

11 Q. Did you use it at all in
12 your review process?

13 A. No.

14 Q. Did you put it in the file
15 for the claimant?

16 A. It would have contained
17 numerous claimants, and no, it just
18 would have went in my general file.

19 Q. Okay.

20 A. If I even had a hard copy.
21 It might have just been saved in an
22 email.

23 - - - - -

24 (Thereupon, Deposition

25 Exhibit-Diniel0 was

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1 marked for purposes
2 of identification.)

3 - - - - -

4 Q. Let me mark as Dinie Exhibit
5 10 Bates stamps number 112 through 117.
6 Can you identify what these documents
7 are?

8 A. I believe these documents
9 are copies of the ASCII files that were
10 uploaded into the FirstEnergy web site,
11 but I don't recall for which supplier.

12 Q. And these were ASCII files
13 that you obtained when you were out
14 doing the review, is that correct?

15 A. That's correct.

16 Q. So what would the numbers
17 designate on this?

18 A. I don't know that
19 positively. My guess would be it's the
20 capacity claimed.

21 - - - - -

22 (Thereupon, Deposition
23 Exhibit-Diniell was
24 marked for purposes
25 of identification.)

1
2 Q. Dinie Exhibit 11, which is
3 Bates stamped number 118, do you recall
4 how this document was provided to you?

5 A. This was also a document
6 prepared by FirstEnergy. I believe I
7 was copied on an email that contained
8 this document.

9 Q. And it indicates problems
10 identified during audit. Would those be
11 problems that you identified in your
12 review process?

13 A. That would be correct,
14 although I don't know that it would be
15 limited to that, if I were to see all
16 the unredacted information or all of the
17 redacted information.

18 Q. What else could be on here?

19 A. I don't remember.

20 Q. Okay. Let me step back a
21 moment. When you were redacting, what
22 were you focusing on with respect to
23 your redaction?

24 MS. FLEMING: I can
25 interject and say that we redacted other

1 suppliers and customer names and account
2 numbers.

3 MS. KAHN: Okay. So
4 anything having to do with IEU was not
5 redacted, is that correct?

6 MS. FLEMING: Correct.

7 Q. And this indicates that IEU
8 is clean but subject to the FES MESA.
9 Would you believe that is the MSA that
10 you were referring to earlier?

11 A. That was the acronym that I
12 used for the master services agreement,
13 yes, and I don't remember if there's a
14 word that stands for the E.

15 Q. But you actually used MESA?

16 A. I think I used MSA.

17 Q. Okay. And did you have a
18 discussion with Mr. Blank with respect
19 to this identified problem once you
20 received this document?

21 A. This I believe, and this is
22 all out of context for me, but I
23 believe this document was actually
24 created after I had a discussion with
25 someone at FirstEnergy. I don't recall

1 if that was with Mr. Blank or if that
2 was with Mr. Headings. I have a
3 feeling that it was with Mr. Headings
4 who then summarized it in order to
5 present it to Mr. Blank, but because
6 it's taken out of context and I don't
7 know what came before it and what after
8 it, I don't know that positively.

9 Q. That's okay. We don't
10 either.

11 (Discussion off record.)

12 Q. Mr. Headings, can you tell
13 me what his role was with your review
14 process?

15 A. Mr. Headings was primarily
16 responsible for running the various
17 reports that I required in order to
18 complete my reviews, which would be the
19 valid claims listing and the error
20 reports to deliver to suppliers and so
21 forth and so on.

22 I also made inquiries of'
23 Mr. Headings from time to time on
24 account number matches. If I had an
25 old customer account number from

1 FirstEnergy's system that was provided
2 to me by the supplier and as a result I
3 couldn't identify that it was the
4 correct account number for that
5 particular location, I would inquire of
6 him and he could run an inquiry through
7 the system to get me the match for the
8 new customer account number that related
9 to that same location.

10 From time to time Mr.
11 Blank asked me to sit and discuss my
12 results with Mr. Headings who would then
13 summarize them for Mr. Blank. Mr.
14 Headings was involved in various other
15 discussions on the front end as it
16 related to the types of reports that I
17 would be using and the scope of the
18 engagement and so forth and I don't
19 recall what else, what other involvement
20 he may have had.

21 Q. Do you recall whether or not
22 your concern with respect to the MSA
23 was addressed with Mr. Headings rather
24 than Mr. Blank?

25 A. I believe that my concerns

1 were discussed with both of them at
2 various times.

3 Q. So you had several
4 conversations with respect to the MSA,
5 is that correct?

6 A. I would have had several
7 conversations based on when claims came
8 up for my review.

9 Q. I'm not sure I followed
10 that.

11 A. And I guess the answer to
12 your question is yes, that there very
13 well could have been and I do
14 specifically recall at least two
15 conversations as it related to my
16 initial review of IEU. There then
17 would have been additional conversations
18 as additional claims came up for review
19 that were not included in the initial
20 or the original round that I would have
21 then had additional conversations on.

22 Q. Specifically with respect to
23 the MSA?

24 A. I would have to look at my
25 notes positively, but I believe that

1 that's true, that each time that I
2 would have discussed a claim with them,
3 I probably would have brought it back
4 up to their attention knowing that it
5 was an unresolved item that I had
6 brought up to their attention
7 previously, or at least unresolved from
8 my knowledge.

9 Q. Before I mark these, if you
10 could look at Bates numbers 71 through
11 76. Do these all go together or are
12 these separate? It would appear there
13 are two different --

14 A. It appears as there were
15 actually three different emails there.

16 - - - - -

17 (Thereupon, Deposition
18 Exhibit-Daniel2 was
19 marked for purposes
20 of identification.)

21 - - - - -

22 Q. 12 is Bates number 71. This
23 is an October 30th email from you to
24 Mr. Blank, is that correct?

25 A. That is correct.

1 Q. In the second paragraph you
2 indicate that as others become available
3 such as internal auditing's documents
4 and your lists of those companies that
5 have requested reserves, along with your
6 concerns, please forward them to me so
7 we may be prepared at any time.

8 Can you tell me what is
9 -- what were you expecting from internal
10 auditing's documentation?

11 A. My understanding was that
12 the day that the web site went live,
13 which was somewhere in the middle of
14 October, I don't know the specific date,
15 that FirstEnergy had one or two
16 representatives from their internal
17 auditing department that actually were
18 setting there in the room where the web
19 site was being run from, whatever you
20 want to describe it as, and were
21 documenting the process that took place
22 from the point in time that it went
23 live and I don't know how long that
24 documentation continued for.

25 Q. Why did you want a copy of

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1 that documentation?

2 A. My understanding was that
3 there were several difficulties that
4 took place that day and I don't know
5 all of the difficulties, but my
6 understanding is the web site went down
7 for a period and so forth and not being
8 present and not knowing exactly what
9 happened, I thought that it might be
10 helpful for us to get internal
11 auditing's documentation and gain an
12 understanding of how they saw things
13 progressing in order to determine what
14 our involvement was going to be. This
15 was on the very front end of our
16 involvement prior to the time that an
17 engagement letter or our procedures were
18 even drafted.

19 Q. Did you get that
20 documentation from internal auditing?

21 A. I did not, I never received
22 it.

23 Q. And why not?

24 A. It was never forwarded to me
25 by FirstEnergy and after we had been

1 through the discussions and gained a
2 further understanding, I don't know that
3 it would have been necessary for me to
4 perform the procedures at FirstEnergy
5 wanted me to perform.

6 - - - - -

7 (Thereupon, Deposition
8 Exhibit-Diniel3 was
9 marked for purposes
10 of identification.)

11 - - - - -

12 Q. Dine Exhibit 13, Bates
13 number 72. This is an email from David
14 Blank to you in which he indicates that
15 he has some more information on timing
16 ideas.

17 Could you give me a
18 little bit more detail in what he was
19 discussing with respect to more
20 information?

21 A. I do recall that this
22 message was in response to the previous
23 email that we've marked now as Exhibit
24 No. 12, but I don't recall specifically
25 what that more information was.

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1 Q. Okay. And timing ideas, do
2 you recall what that referred to?

3 A. I don't know specifically.
4 My question is that the timing of when
5 they were hoping my reviews were going
6 to take place.

7 - - - - -

8 (Thereupon, Deposition
9 Exhibit-Diniel4 was
10 marked for purposes
11 of identification.)

12 - - - - -

13 Q. Dinie Exhibit 14 and that
14 would be Bates stamps 73 through 76.
15 At page 75 Bates page, is that your
16 handwriting up at the top?

17 A. That is.

18 Q. I can almost read all of it,
19 Dave's beginning of an audit --

20 A. Work program.

21 Q. Thank you. Was this the
22 beginning of what was going to be your
23 scope of work?

24 A. I think this is what Dave
25 originally had in mind until we gained

1 a further understanding of what
2 FirstEnergy's system was actually able
3 to do and how FirstEnergy wanted to
4 proceed in connection with my scope of
5 work.

6 Q. So this was -- this document
7 was revised as reflected in your
8 engagement letter?

9 A. It's probably a question
10 better asked to Dave. I think again
11 this document is what he had in mind
12 initially until we had further
13 conversations on it and then it was
14 determined that some or all of this may
15 not work.

16 Q. Okay. Did you accept any
17 affidavits from suppliers?

18 A. I did not.

19 Q. So in reviewing this, you
20 would not -- in reviewing pages 75 and
21 76 in particular, you would not say
22 that this reflects the criteria for your
23 engagement?

24 A. Absolutely not. The
25 criteria of my engagement are reflected

1 in the engagement letter and the
2 attachments to that letter that shows
3 the agreed upon procedures.

4 - - - - -

5 (Thereupon, Deposition
6 Exhibit-Dinie15 was
7 marked for purposes
8 of identification.)

9 - - - - -

10 Q. Can we mark as Dinie Exhibit
11 15, this will be Bates stamps number 14
12 through 70. Ms. Dinie, does this
13 reflect the documents that were provided
14 to you as a way of helping to explain
15 the protocol?

16 A. I don't know that I would
17 say these documents were all provided to
18 me to help explain the protocol, but
19 they were all provided to me to help
20 explain the entire MSG program and I
21 believe the protocol is actually one of
22 these documents --

23 Q. And did you review --

24 A. -- with the exception of
25 Bates number 70.

1 Q. And what is the exception
2 with number 70?

3 A. I don't know for sure why
4 number 70 was provided to me. The only
5 thing that I can think of is that
6 because I had numerous contacts with
7 suppliers, suppliers would sometimes ask
8 questions of me that were probably more
9 appropriately directed to FirstEnergy,
10 and if suppliers had difficulty finding
11 the web site because the name had
12 changed, that's maybe one of the
13 questions that would have been coming my
14 way. So I think FirstEnergy was
15 anticipating that I could help field
16 that if I knew where the site had
17 changed to, but that was provided well
18 after the fact of my understanding of
19 the MSG process.

20 Q. Okay. That's right, it's
21 January. Did you review all these
22 documents that are part of Dinie Exhibit
23 15?

24 A. I read all these documents.
25 I don't know that I would have reviewed

1 them in detail.

2 Q. Did you contact some of the
3 authors of these documents to ask
4 follow-up questions?

5 A. Any follow-up questions that
6 I would have had would have went to Mr.
7 Blank at that time.

8 Q. Do you recall follow-up
9 questions that you had?

10 A. I believe I did have a
11 couple of questions.

12 Q. Do you recall what those
13 are?

14 A. I don't recall what those
15 are.

16 Q. Is there a reason that they
17 provided information to you on the
18 registration process?

19 A. I don't know of a specific
20 reason other than for me to gain an
21 understanding of the entire MSG program.

22 Q. Would that be the same
23 answer with respect to scheduling
24 information?

25 A. That would be correct.

1 MS. FLEMING: Do you have
2 an idea as to how much longer you're
3 going to be?

4 MS. KAHN: Hopefully half
5 an hour.

6 MS. FLEMING: I need to
7 make just a quick call. I'll be back
8 in just a minute.

9 (Recess had.)

10 - - - - -

11 (Thereupon, Deposition
12 Exhibit-Diniele 6 was
13 marked for purposes
14 of identification.)

15 - - - - -

16 Q. It's marked as Dinie Exhibit
17 16, it will be Bates numbers 77 through
18 80.

19 Ms. Dinie, could you
20 explain who Mr. Noel is?

21 A. Mr. Noel is an experienced
22 manager in Andersen's business
23 consulting practice.

24 Q. And why did you want him to
25 review the scope of work?

1 A. Mr. Noel has been involved
2 in the entire FirstEnergy customer
3 choice process and because MSG was in
4 some way, shape or form a portion of
5 customer choice and the entire
6 FirstEnergy settlement, we wanted to
7 make sure that there weren't any
8 concerns or thoughts that Mr. Noel might
9 be able to provide to us in conjunction
10 with the procedures that we were being
11 asked to perform.

12 Q. Did he give you any input,
13 he being Mr. Noel?

14 A. He had inquiries more than
15 input to the best that I can recall.

16 Q. Do you recall if you revised
17 the procedures based on Mr. Noel's
18 input?

19 A. I don't believe the
20 procedures were revised based on his
21 input, no.

22 Q. Could you turn to Bates
23 stamp number 79? Number 4 appears to
24 be different than what was actually
25 executed. That would be Dinie Exhibit

1 1.

2 Am I correct that it is
3 different than what was actually
4 executed?

5 A. That's correct.

6 Q. Do you recall why it was
7 changed?

8 A. I don't recall positively
9 why it was changed, although the copy
10 that you're looking at was provided to
11 Mr. Noel prior to -- I believe is prior
12 to our final discussions with
13 FirstEnergy, so it's very possible that
14 there could have been some revisions
15 made in finalizing the document.

16 Q. For example, the quantity of
17 generation claimed has been deleted in
18 the final executed agreement. Do you
19 know why?

20 A. I don't recall positively,
21 no.

22 Q. Did Mr. Noel give any input
23 on section 3 with respect to your
24 review of customer contracts?

25 A. I don't recall specifically

1 if he gave any input to that. I do
2 know that he said that the types of
3 things that we've listed here under
4 whether or not there's any executory
5 types of provisions were things that he
6 had also heard that FirstEnergy was
7 concerned with.

8 Q. Did he suggest additional
9 examples?

10 A. Not that I can recall.

11 Q. Dinie number 17, Bates
12 stamped number 85. Strike that. We
13 already discussed this.

14 - - - - -

15 (Thereupon, Deposition
16 Exhibit-Dinie17 was
17 marked for purposes
18 of identification.)

19 - - - - -

20 Q. Now we're going to do Dinie
21 Exhibit 17, which would be Bates number
22 122. There's a phrase on this exhibit
23 stating that all of these are pending
24 waiting for the choice of a supplier.

25 I want to focus on that,

1 but first let me ask you, the claims
2 pending say TOL. In your mind is that
3 Toledo?

4 A. My understanding that's the
5 supplier code for Toledo.

6 Q. And that would be for the
7 City of Toledo?

8 A. That's my understanding.

9 Q. And do you recall if this is
10 nonresidential?

11 A. I'm pretty confident it's
12 nonresidential because I don't believe
13 that even to date Toledo has submitted
14 any residential claims, but I don't know
15 that positively.

16 Q. Okay. And do you know what
17 the phrase all of these are pending
18 waiting the choice of a supplier, what
19 that means?

20 A. I do not know this. This
21 was not a document prepared by me.

22 Q. Are you aware of whether
23 Toledo was told they have to have a
24 supplier in place to get MSG claims?

25 A. I don't know that.

1 - - - - -
2 (Thereupon, Deposition
3 Exhibit-Diniele8 was
4 marked for purposes
5 of identification.)
6 - - - - -

7 Q. Dinie Exhibit 18 is Bates
8 stamped number 124. Ms. Dinie, this is
9 an email from, I believe, Kevin Murray.

10
11 Would that be Kevin Murray
12 at the top as far as you're aware?

13 A. I believe that is Kevin
14 Murray, but it doesn't appear to be
15 from him.

16 Q. I'm sorry, it's to him from
17 Mr. Vaccaro at FirstEnergy?

18 A. That appears to be correct.

19 Q. Do you know if there is a
20 reason why you received this or what
21 the reason was?

22 A. I have no idea why I was
23 copied on this.

24 Q. Do you recall claim number
25 55?

1 A. Not specifically, I couldn't
2 give you the details of what customers
3 were under that claim or even what
4 company that claim was made under.

5 Q. Do you recall claim number
6 2652 having to be revised?

7 A. Again, not specifically.

8 Q. Do you know what a partial
9 power adjustment situation is?

10 A. I do not.

11 Q. Did this creation of claim
12 2652 issue result from your review of
13 IEU?

14 A. No.

15 - - - - -

16 (Thereupon, Deposition
17 Exhibit-Dinie19 was
18 marked for purposes
19 of identification.)

20 - - - - -

21 Q. Dinie Exhibit 19 is Bates
22 stamped 125 through 128. Ms. Dinie,
23 once again you were carbon copied on
24 this email from Mr. Vaccaro to Mr.
25 Blank. This email indicates that

1 pursuant to Mr. Kevin Murray's
2 instructions, Mr. Vaccaro has
3 successfully removed the suggested
4 customers from a previously approved IEU
5 claim.

6 Was this ever discussed
7 with you, the removal of customers?

8 A. Not to my knowledge.

9 Q. When customers were dropped
10 from a claim, were you asked to go out
11 and do an additional review?

12 A. Not on the claim that they
13 were being dropped from. It could have
14 provided additional capacity that then
15 would have become available that I
16 probably would have been asked to review
17 for whoever was next in line.

18 Q. Okay. Were you asked to
19 assist in a process for dropping
20 customers from a claim, in developing a
21 process?

22 A. No.

23 - - - - -

24 (Thereupon, Deposition

25 Exhibit-Dinie20 was

1 marked for purposes
2 of identification.)

3 - - - - -

4 Q. Dinie Exhibit 20, Bates
5 stamp numbers 131 through 133. Ms.
6 Dinie, I'm correct that this is an
7 email from you to Kevin Murray?

8 A. That's correct.

9 Q. You indicate in your email
10 that his voice mail and fax concerning
11 the second round claims being reviewed
12 was exactly what you needed.

13 Do you remember what that
14 voice mail and fax indicated?

15 A. I would have to have my
16 notes in front of me to say for sure,
17 but I'm sure it related to the
18 additional claims that were up for
19 review in the second round and being
20 able to review the agreements and so
21 forth for those claims.

22 Q. So are you indicating that
23 he had faxed you the agreements?

24 A. That's correct.

25 Q. And do you recall if that

1 was the same agreement that you had
2 reviewed in the first round for IEU
3 customers with IEU?

4 A. It appeared to be the same
5 template, if that's what you're
6 referring to.

7 Q. Did it also have the MSA
8 attached to it?

9 A. It did not.

10 Q. So there was no requirement
11 in the second round of contracts for
12 execution of the MSA, is that correct?

13 A. I inquired as to whether or
14 not the status of the MSA had changed,
15 meaning had it actually been executed,
16 and the response was no and as a result
17 there was no reason for me to have to
18 review another copy or to have another
19 copy sent to me.

20 Q. But the contract that was
21 sent to you did still make reference to
22 the MSA, is that correct?

23 A. That's correct.

24 Q. Okay. And it still required
25 execution of the MSA?

1 A. In substantially the same
2 form as I recall, yes.

3 Q. And was that an issue that
4 you once again would have pointed out
5 to FirstEnergy?

6 A. I would have to go back and
7 look at my notes, but I would have to
8 believe yes, that that would have been
9 something I would have pointed out
10 again.

11 - - - - -
12 (Thereupon, Deposition
13 Exhibit-Dinie21 was
14 marked for purposes
15 of identification.)

16 - - - - -
17 Q. Dine 21, I believe, is Bates
18 stamps 134 through 140. Ms. Dinie, at
19 the top of Bates stamp 135 you have a
20 handwritten note. I assume that's your
21 handwriting?

22 A. It is.

23 Q. Anything before November 18th
24 need to get ASCII files, is that
25 correct?

1 A. That's correct.

2 Q. And why November 18th?

3 A. My understanding was that
4 for some reason there was a glitch in
5 the FirstEnergy systems that claims that
6 were submitted prior to November 18th,
7 there was a chance that not every
8 single account number that would have
9 been uploaded for that claim was picked
10 up by the FirstEnergy system and that
11 that glitch was fixed on November 18th.

12
13 And so FirstEnergy
14 requested that I get the ASCII files
15 for all claims submitted prior to
16 November 18th so they could then do a
17 comparison of the ASCII files that the
18 supplier said they were submitting into
19 the web site as to what the FirstEnergy
20 system actually picked up and to make
21 sure if there were any discrepancies
22 that they got them corrected.

23 Q. The ASCII file for
24 clarification was what was actually
25 submitted when a claim was made, is

1 that correct?

2 A. That's my understanding. It
3 was the actual data information that was
4 uploaded into the web site by the
5 suppliers.

6 Q. The documents attached to
7 your cover email at 135 through 140,
8 would this reflect the list that you
9 were talking about earlier as to how
10 you identified what claims in the scope
11 of your review?

12 A. First off, the documents
13 attached to the email Bates number 134
14 are not these documents, or at least
15 should not be these documents. I don't
16 know where the document is that's
17 actually attached to or should be
18 attached to 134, although I know I saw
19 a copy of it in here elsewhere.

20 Q. It's the second round letter
21 that we were talking about earlier, I
22 believe?

23 A. That's correct.

24 Q. All right.

25 A. But the answer to your

1 question is the documents that are Bates
2 numbers 135 through 140 are not the
3 list that I was referring to, no.

4 Q. What are these?

5 A. This is a list that I
6 prepared and sent to FirstEnergy as a
7 request for them to run the lists that
8 I was working off of and that I needed
9 to give to the suppliers for the claim
10 numbers that were up in line for the
11 second and the third rounds of reviews.

12 Q. And how did you prepare this
13 list?

14 A. It was based on reviewing
15 the most recent queue that I had in my
16 hand, which was the document that we've
17 marked as Exhibit -- Dinie Exhibit 3,
18 to see what the next claims were in
19 line.

20 Q. First in, first out, is that
21 Dinie Exhibit 3?

22 A. Yes, that's correct.

23 - - - - -

24 (Thereupon, Deposition

25 Exhibit-Dinie22 was

1 marked for purposes
2 of identification.)

3 - - - - -

4 Q. Let's mark as Dinie 22 Bates
5 stamps 142 through 144. Do you know if
6 the information request that is
7 referenced at the top of page 142 is
8 the information requested at page 144?

9 A. It is.

10 Q. Page 144, it indicates that
11 there are some issues with contract
12 dates. Do you recall how that was
13 resolved?

14 A. As I recall, I was provided
15 information that would have supported
16 the fact that the contract information
17 was in place prior to the date of the
18 claim.

19 Q. And what type of information
20 would you be looking for in that
21 regard?

22 A. I don't recall what was
23 specifically provided to me in these
24 cases.

25 Q. If you could pull out Bates

1 stamps number 147 through 153. Before
2 I mark it, when you get it back if you
3 could just tell me if these all go
4 together.

5 A. I don't believe these go
6 together. I believe the first two
7 pages do, but the attachments on the
8 second page are attachments that I can
9 never open. They give me a fatal error
10 on my computer.

11 Q. Okay. Can you explain to me
12 -- we don't really need to mark this --
13 why claims would need to be revalidated?

14 A. I don't know positively why
15 claims would need to be revalidated
16 other than if claims were submitted that
17 had an error, if it was an invalid
18 account number or an ineligible customer
19 status that kicked out from the
20 FirstEnergy system when the supplier
21 went in to correct that, if they made
22 the corrections, my understanding was
23 that the web site would not
24 automatically make those corrections in
25 FirstEnergy's system, that it had to go

1 through a validation process before
2 FirstEnergy's system would be able to
3 produce properties that would actually
4 show those corrections. My
5 understanding is that validation process
6 at some point in time started to take
7 place on a nightly basis.

8 Q. Do you know why all of IEU's
9 claims would have to be revalidated?

10 A. I don't recall positively
11 why all of IEU's claims would have to
12 be revalidated.

13 Q. And I think I do want to
14 mark 147 and 148 as Dinie Exhibit 23.

15 - - - - -

16 (Thereupon, Deposition
17 Exhibit-Dinie23 was
18 marked for purposes
19 of identification.)

20 - - - - -

21 Q. It says down in the second
22 paragraph this is an email that you got'
23 from Mr. Vaccaro, is that correct?

24 A. That's correct.

25 Q. That due to the inherent

1 nature of the application, the supplier
2 would not be able to modify any
3 cancelled contract. Do you know what
4 that means?

5 A. Based on my reading of the
6 context provided here, it appears as if
7 it means that after the five-day
8 correction period expired for individual
9 suppliers to go in and correct errors,
10 whether it be invalid accounts or
11 inactive customer statuses, that those
12 account numbers if they were not
13 corrected after that five-day period
14 would be cancelled, and due to the
15 inherent nature of the application, the
16 supplier would not be able to go in and
17 modify any cancelled accounts, just the
18 ones that were new errors that happened
19 after that cancellation process took
20 place.

21 Q. So would your view be that
22 the inability to modify cancelled
23 contracts would be good?

24 A. If my understanding of that
25 is correct, yes, because once it's

1 cancelled, it means that the five-day
2 period has expired and the supplier
3 failed to correct it appropriately so
4 you wouldn't want them to be able to go
5 back in and to touch it again.

6 Q. And is there a reason why
7 there's a discussion of the IEU
8 revalidated claims at the same time
9 there is a discussion of the cancelled
10 contracts?

11 A. That I don't know.

12 MS. KAHN: Okay. If you
13 redacted, it was because it was not
14 IEU, is that correct?

15 MS. FLEMING: Or Toledo.

16 THE WITNESS: Or it was
17 customer names or accounts.

18 MS. FLEMING: Right.

19 MS. KAHN: For IEU
20 possibly?

21 THE WITNESS: Or Toledo.

22 Q. When you were doing your
23 review, did you collect copies of the
24 contracts that you relied upon for the
25 committed capacity sale?

1 A. I did not do that for my
2 initial round of reviews.

3 Q. And did you for later
4 reviews?

5 A. Only as needed in order to
6 facilitate the process because the hopes
7 was that I would not have to make trips
8 to all of the suppliers again and that
9 the review would be done by way of
10 email, fax, mail, overnight delivery,
11 whatever was easiest.

12 Q. And what would you do with
13 those contracts once you had reviewed
14 them?

15 A. For the most part, most of
16 those contracts I still have with the
17 intention of destroying them upon the
18 completion of this engagement.

19 Q. And if a claimant asked you
20 to destroy them, would you do that as
21 soon as you had reviewed them or did
22 you hold them for a while?

23 A. I did not do it as soon as I
24 reviewed them for fear that questions
25 would come back or that I would need to

1 refer back to them. Upon completion of
2 the engagement is usually when we purge
3 our files.

4 Q. Can we marked Bates stamps
5 164 to 165 as number 24.

6 - - - - -

7 (Thereupon, Deposition
8 Exhibit-Dinie24 was
9 marked for purposes
10 of identification.)

11 - - - - -

12 Q. Okay. I'll direct your
13 attention to the first paragraph, sorry
14 for the delay in responding, this is
15 from Mr. Murray to you. Do you recall
16 which contract was being provided?

17 A. For which customer? No, I
18 don't.

19 Q. Do you recall whether or not
20 you've destroyed that contract?

21 A. I don't believe I have. I
22 believe I still have copies.

23 Q. And would this be the
24 contract that was sort of the standard
25 IEU member contract with the MSA

1 attached?

2 A. This would be the contract
3 that is the standard IEU contract
4 between itself and its customer, but the
5 MSA would not have been attached because
6 I didn't request it a second time.

7 - - - - -

8 (Thereupon, Deposition
9 Exhibit-25 was
10 marked for purposes
11 of identification.)

12 - - - - -

13 Q. Bates stamp 184. Ms. Dinie
14 could you explain the handwritten notes
15 at the bottom of the page with respect
16 to Toledo? Specifically you have the
17 comment, Is there even a contract.

18 A. As I recall, the first two
19 items there, do by phone and fax and is
20 there even a contract, were based on a
21 discussion that between Mr. Blank and
22 myself had regarding the claim that the
23 City of Toledo had in at that point in
24 time, or claims, which was -- which
25 were actually for the City of Toledo's

1 city loads and the question was being
2 as that they're claiming on behalf of
3 themselves is there even going to be
4 any type of a contract there.

5 Q. And was there any discussion
6 with respect to the need for a
7 supplier?

8 A. There was not any discussion
9 with respect to the need for a
10 supplier.

11 Q. Do you know if they had a
12 supplier?

13 A. I don't know if they had a
14 supplier.

15 - - - - -

16 (Thereupon, Deposition
17 Exhibit-Dinie26 was
18 marked for purposes
19 of identification.)

20 - - - - -

21 Q. Bates stamp 187, number 26.
22 These appear to be to handwritten notes'.
23 Are these your notes?

24 A. They are.

25 Q. And you're discussing

1 contract contingencies, FirstEnergy
2 Services involvement. Was that
3 specifically with respect to IEU?

4 A. Those two items were
5 specifically with respect to IEU, yes.

6 Q. And what were those notes
7 reflecting?

8 A. These were notes to myself
9 of items that I needed to bring to Mr.
10 Blank's attention the morning following
11 my visit to IEU.

12 Q. So do you remember the date
13 of this?

14 A. Without knowing the date
15 that I visited IEU, no.

16 Q. Okay. And availability of
17 contract provisions, re: legal binding
18 document, a letter was sent, what does
19 that note mean?

20 A. That note actually refers to
21 a different supplier and that's why
22 there's a redaction off to the left as
23 does the one below it.

24 Q. Bates 191. Never mind,
25 changed my mind. Okay. 193 through

1 194, this is number 27.

2 - - - - -

3 (Thereupon, Deposition
4 Exhibit-Dinie27 was
5 marked for purposes
6 of identification.)

7 - - - - -

8 Q. Ms. Dinie, this is dated
9 November 1st and it says D. Blank below
10 that. Was that an indication this was
11 a phone conversation or some
12 conversation with Mr. Blank?

13 A. Some conversation with him,
14 yes.

15 Q. Do you remember whether it
16 was in person?

17 A. I don't recall positively.

18 Q. Okay. And these are your
19 notes from that conversation?

20 A. That's correct.

21 Q. About halfway down it says
22 Industrial Energy Users-Columbus. Do
23 you know what the conversation was with
24 respect to Industrial Energy Users?

25 A. If I recall correctly, Dave

1 was giving to me the suppliers that he
2 was aware of that had claims out there
3 that would be included in the initial
4 round that we were looking at and he
5 was giving me the locations of where
6 those reviews would probably have to
7 take place so I could get an idea of
8 what kind of travel was going to be
9 involved to set my schedule.

10 Q. There seems to be a one and
11 a circle. Do you know what that is?

12 A. I don't recall.

13 Q. Okay. On the next page it
14 says, Expect this will result in a
15 legal process. Do you remember what
16 the conversation was with respect to
17 that note?

18 A. I don't recall positively.

19 - - - - -

20 (Thereupon, Deposition
21 Exhibit-Dinie28 was
22 marked for purposes
23 of identification.)

24 - - - - -

25 Q. Bates number 201, this is

1 28. Are these your handwritten notes?

2 A. They are.

3 Q. Do you recall when you made
4 them?

5 A. I don't recall the specific
6 date.

7 Q. Do you recall if this was a
8 result of your visit to IEU?

9 A. Based on the notes that are
10 here, I would say that it was after my
11 visit with IEU.

12 Q. You indicate that you need
13 to check on the credit arrangements
14 between IEU and FirstEnergy Services, is
15 that correct?

16 A. That's correct.

17 Q. And can you explain to me
18 what you were trying to check?

19 A. I don't recall positively.

20 Q. Do you recall what it was
21 that you reviewed that made you write
22 that note?

23 A. I think it was a result of
24 the discussions that I had with
25 FirstEnergy after my entire initial

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1 round was completed when I said there
2 was kind of one day where we discussed
3 everything that was in the initial
4 round.

5 Q. And this credit arrangement
6 came up in that discussion?

7 A. I believe that's the case.

8 Q. And here you indicate it's a
9 credit arrangement between IEU and
10 FirstEnergy Services. Is there a reason
11 why you believe that's who the credit
12 arrangement was between?

13 A.. I don't recall positively.

14 Q. The next line says, And
15 customer in accordance with MSA. Who
16 are you referring to with respect to
17 the customer there?

18 A. I think that whole line goes
19 together because I think that's all
20 under the first dash.

21 Q. Okay.

22 A. I should say the first two
23 lines go together.

24 Q. So you needed to check the
25 customer in accordance with the MSA, or

1 is it credit arrangements between
2 IEU/FirstEnergy Services and the
3 customer?

4 A. I think that's the way it's
5 meant to be.

6 Q. And who do you refer to as
7 customer there?

8 A. I don't recall. We talked
9 about this at the beginning and I don't
10 recall what the customer is without
11 going back through the agreements.

12 - - - - -

13 (Thereupon, Deposition
14 Exhibit-Dinie29 was
15 marked for purposes
16 of identification.)

17 - - - - -

18 Q. Bates stamps 203 through
19 233, this is number 29. Ms. Dinie, is
20 that your handwriting on the left of
21 Bates 203?

22 A. It is.

23 Q. And I believe that says on
24 12 -- is that 21?

25 A. Correct.

1 Q. Or 26?

2 A. I think it's 21.

3 Q. You indicated that it was
4 subject to FirstEnergy Services MSA
5 which has not been finalized, and was
6 that with respect to all the IEU
7 claims?

8 A. All the IEU claims that I
9 had looked at as of that point in time.

10 Q. And you also say some not
11 subject to initial process. Does that
12 indicate that some of the IEU claims
13 were in the second round on this list?

14 A. That would indicate that
15 there were specific customer account
16 numbers within these IEU claims, this is
17 all one claim as you'll see for the
18 first three pages is all the same claim
19 number, but there were certain account
20 numbers that because of the way the
21 scopes were set and the selection
22 process was made, that those account
23 numbers would not have been subject to
24 my testing, if you will.

25 Q. So this is where you got

1 into the you would only do 33 percent?

2 A. That's correct.

3 Q. This is the list that you
4 would have been looking at to make that
5 determination?

6 A. No, that's not correct.

7 Q. We're going to get that
8 list.

9 A. It's in there.

10 Q. It's probably one I didn't
11 check. So if you indicate on a page
12 that it's subject to the FES MSA, for
13 instance page 213, you're saying for all
14 the claims in number 61, is that
15 correct?

16 A. I'm saying for all of the
17 accounts in claim number 61 that they
18 would be subject to that, yes, or at
19 least all of the claims that were
20 subject to my process. To the extent
21 that one of them wasn't subject to my
22 process, I obviously wouldn't have
23 looked at that.

24 Q. When you say not subject to
25 your process, that goes to the issue of

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1 the scope of what you reviewed again?

2 A. That's correct.

3 - - - - -

4 (Thereupon, Deposition
5 Exhibit-Dinie30 was
6 marked for purposes
7 of identification.)

8 - - - - -

9 Q. Dinie Exhibit 30 and it is
10 Bates 311. Ms. Dinie, this does not
11 indicate who the email was from. Do
12 you have any idea?

13 A. I believe that that
14 information has actually been redacted
15 because it's from one of IEU's customers
16 and it had customer identifying
17 information in it.

18 MS. FLEMING: And I can
19 confirm that that was the case.

20 Q. Do you know what this
21 FirstEnergy IEU pool load data logo
22 stands for by any chance?

23 A. I believe that was the name
24 of the attached file.

25 Q. Do you know why you had this

1 in your files?

2 A. In performing my review at
3 IEU, the contracts between IEU and its
4 customer or customers referred to
5 attachments that indicated what service
6 locations were to be covered under that
7 contract and these were the documents
8 that I was presented with as the
9 attachments in order to identify which
10 service locations were to be covered.

11 Q. The 5410, it's in the third
12 line, see attachment with the update on
13 5410.

14 A. Um-hmm.

15 Q. Do you know what the 5410
16 refers to?

17 A. I don't know what it refers
18 to.

19 Q. Is it a claim number?

20 A. I doubt that, but I don't
21 know that positively.

22 Q. And why do you doubt that?

23 A. Just based on the date of
24 this particular document, I don't think
25 that there were claim numbers that high.

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1 Q. And once again this was
2 provided to you with the attachment?

3 A. I believe so. And they
4 don't appear to be in order, but I
5 believe so.

6 Q. And the purpose of it being
7 provided to you was to confirm the
8 locations for a particular claim?

9 A. To confirm the locations for
10 a particular customer.

11 Q. So this was a document that
12 was part of the review materials when
13 you visited IEU or provided to you
14 later?

15 A. I don't recall specifically,
16 but based on the date of this, this was
17 probably part of the review materials on
18 my initial review that I collected at
19 the end of the day because they were
20 trying to get me out of there before
21 rush hour hit, I'm almost embarrassed to
22 say.

23 Q. It's a good thing in
24 Columbus. Okay. Let me also mark 312
25 as -- why don't we mark 311 and 312

1 both as number 30. I think that would
2 be easier, I think they're similar.

3 Can you explain why you
4 have this particular email?

5 A. It's the same as the one
6 that we just discussed.

7 Q. And so the purpose was to
8 help explain the locations for a
9 particular customer?

10 A. The purpose was for me to be
11 able to identify what locations the
12 particular customer wanted covered under
13 the contract that it had or the
14 agreement that it had with IEU.

15 Q. Let's go to Bates number 302
16 through 307. This is 31.

17 - - - - -

18 (Thereupon, Deposition
19 Exhibit-Dinie31 was
20 marked for purposes
21 of identification.)

22 - - - - -

23 Q. Why don't you take a moment
24 to look through all of these if you
25 would because I have some general

1 questions.

2 Ms. Dinie, would these
3 reflect your notes on the master
4 services agreement?

5 A. Some of these would reflect
6 notes on the master services agreement.

7 Q. And are these notes with
8 respect to your review of IEU's claim
9 in the initial round?

10 A. I believe they're all
11 related to the initial round, yes.

12 Q. And this was your actual
13 visit to IEU?

14 A. That's correct.

15 Q. Okay. At page 302 you have
16 a note, number one, What other
17 agreements are anticipated between the
18 member and IEU. Could you explain what
19 that means?

20 A. If I recall correctly, as I
21 was going through the agreement between
22 IEU and its member, there was a
23 provision in there that said other
24 agreements may have to be executed and
25 I inquired as to what types of other

1 agreements they were expecting to be
2 executed.

3 Q. And this was the form
4 agreement that we've discussed earlier
5 had a reference to other agreements that
6 would have to be executed?

7 A. Other agreements that may
8 have to be executed, that's correct.
9 This is the form template.

10 Q. And what other agreements
11 were designated?

12 A. Upon inquiry of the
13 individuals representing IEU and I don't
14 remember who I specifically spoke to, it
15 was either Mr. Randazzo or Mr. Murray,
16 they indicated that they were not
17 intending any specific agreements to be
18 executed other than the master services
19 agreement and that this was just kind
20 of a catch-all in case they had missed
21 something.

22 Q. Okay. And number two you
23 indicate that not all members claimed
24 and I think that's a question mark.

25 A. Correct.

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1 Q. And then you have not true,
2 disconnect, could you explain that?

3 A. In reviewing the contracts
4 that IEU had presented to me, I was
5 unable to find in the listings that
6 FirstEnergy had provided to me names or
7 at least I thought I was unable to find
8 names related to those customers that
9 were in that contract in some instances.
10

11 And I was curious as to
12 IEU had made a decision not to make
13 claims on behalf of certain customers
14 and that's what my question was and it
15 was explained to me no, that's not
16 true, and that's how the glitch in the
17 FirstEnergy system was discovered,
18 because when I reported that back to
19 FirstEnergy and said, hey, I've seen
20 contracts out here that they're saying
21 they've claimed and I'm not seeing those
22 on my listings, that's when it was
23 discovered that there was the glitch in
24 the system and I needed to get the
25 ASCII files so that FirstEnergy could

1 run that check to make sure they picked
2 up everything that had been claimed.

3 Q. And this was the November
4 18th issue that we discussed earlier,
5 that while you were asking --

6 A. November 18th, that's
7 correct, yes.

8 Q. So as a result of this
9 inquiry, it is your testimony that IEU
10 was claiming for all of its members, is
11 that correct?

12 A. I wouldn't say all of its
13 members because I don't know if its
14 membership is more extensive than the
15 contracts that I looked at, but it was
16 claiming for all of the customers for
17 which I reviewed contracts.

18 Q. Okay. And once again you
19 said that was about 20, is that
20 correct?

21 A. About 20 contracts, 20
22 customers, yes.

23 Q. And number four, I can't
24 quite read what that note is.

25 A. Time period indicated by

1 some members.

2 Q. Could you explain what you
3 meant by that?

4 A. On some of the attachments
5 that identified the service locations
6 that the members wanted covered under
7 the agreement, they had indicated a time
8 period on there and I was trying to
9 decipher what that meant and that was
10 my inquiry.

11 Q. And what did it mean?

12 A. In my discussions again with
13 either Mr. Randazzo and/or Mr. Murray,
14 they indicated to me that that was
15 actually the period for which that
16 particular customer had listed its
17 historic capacity or historic load for
18 that particular account.

19 MS. KAHN: Could you read
20 that back again.

21 (Record read.)

22 Q. On Bates 303 you indicate
23 what other agreements must be executed.
24 Is this the same reference as you had
25 on 302?

1 A. It is.

2 Q. Okay. And not all customers
3 listed on attachments claimed, is that
4 what we've already discussed?

5 A. Yes.

6 Q. And you have once again the
7 time periods and a question mark. Is
8 this the time periods that we were just
9 discussing?

10 A. Yes.

11 Q. And you have time period for
12 Ohio, GGC Electric, and I'm not sure
13 about the rest of it. Can you explain
14 what you've written there and what it
15 means?

16 A. I believe that there was a
17 time period indicated under like that
18 particular column or that particular row
19 that referenced Ohio GGC Electric. I
20 don't know what that last word is, term
21 or team maybe, but I don't know for
22 sure what it means. It was just a
23 reference for me to be able to identify
24 where that was at so that I could show
25 it to them and ask them what this time

1 period meant.

2 Q. For a particular claim --

3 A. For --

4 Q. -- or customer?

5 A. For a particular customer or
6 maybe more than one customer, I don't
7 recall specifically.

8 Q. And you have that contracts
9 were not found but claimed. Can you
10 explain that?

11 A. There were a couple of
12 contracts or there were a couple of
13 accounts that I saw on the listing that
14 FirstEnergy had provided to me that I
15 could not identify a contract for upon
16 my initial review.

17 Q. And how was that resolved?

18 A. I had inquired about that
19 and the contracts were provided to me.
20 I think one was provided actually that
21 day that they had just mistakenly left
22 it out and I think another one was sent
23 to me.

24 Q. And Bates stamp 304, do you
25 recall who the parties were to the

1 master service agreement or is it in
2 your notes anywhere?

3 A. I believe the master
4 services agreement based on my notes was
5 between FES and IEU. I don't recall if
6 there were any other parties.

7 Q. And do you recall what
8 services FES is offering or providing
9 under the master services agreement?

10 A. I don't recall positively.

11 Q. Can you look through your
12 notes and see if that can be
13 determined?

14 A. I can't determine based on
15 my notes what services would be
16 provided.

17 Q. Do you know, do you recall
18 if it was power procurement?

19 A. I don't remember positively.

20 Q. Scheduling or supplying?

21 A. I don't recall.

22 Q. Okay. But you do recall
23 that FirstEnergy Services was going to
24 be the supplier of those services?

25 A. I don't recall that, either.

1 I don't know what services they were.

2 Q. Okay. You have in your
3 notes that -- a reference to assured
4 pricing pooled energy. Do you recall
5 what the assured pricing pooled energy
6 is?

7 A. I don't recall offhand what
8 that is or how it was defined.

9 Q. And your notes don't reflect
10 other than saying it's definition number
11 four, 2000 megawatts. Do you know what
12 that means?

13 A. I would guess that
14 definition number four is where assured
15 pricing pooled energy was either found
16 or was defined and I don't recall
17 specifically what the 200 megawatts
18 relates to.

19 Q. It says IEU must receive the
20 assured pricing pooled energy. Do you
21 know what that means in your notes?

22 A. Again, I don't remember
23 positively. I think, if I recall
24 correctly, that IEU, exactly as stated
25 here, had to receive this assured

1 pricing pooled energy and I don't know
2 for sure what that relates to though or
3 why they had to receive that.

4 Q. And do you know who they
5 were receiving it from?

6 A. I don't know what the
7 assured pricing pooled energy is, so no,
8 I don't know who it was being received
9 from.

10 Q. Do you know how the assured
11 pricing pooled energy is related to the
12 MSG?

13 A. I don't know that.

14 Q. Do you know or recall who
15 was handling the billing --

16 A. I don't recall.

17 Q. -- under the MSA?

18 A. I don't recall that, either.

19 Q. Okay. It appears that you
20 indicated a ten-year term in your notes.
21 Do you know what that commitment was
22 for ten years?

23 A. I believe that was the
24 duration of the MSA.

25 Q. And what was to occur --

1 what was the commitment for those ten
2 years?

3 MS. FLEMING: Objection,
4 asked and answered.

5 Q. You can still answer.

6 A. I don't know what services
7 were provided under the MSA.

8 Q. Okay. You have a note here
9 with respect to if FirstEnergy Services
10 can source at a lower price for a
11 calendar year, then FES and IEU will
12 take efforts to maximize resale revenue
13 of MSG.

14 Do you know, do you
15 recall what that was about?

16 A. I believe that that was a
17 provision from the contract. Whether
18 it's a direct quote or whether it was
19 revised into my notes, I don't know.

20 Q. Do you recall if they were
21 going to be reselling the MSG that IEU
22 was obtaining?

23 A. Other than what's written
24 here, I don't recall any additional
25 pieces of information that would have

1 surrounded that.

2 Q. Do you recall anything with
3 respect to how FES is going to source
4 at a lower price?

5 A. No, I don't.

6 Q. Was there anything with
7 respect to who would be delivering the
8 source at a lower price?

9 A. I don't know.

10 Q. A couple lines down you have
11 price set and then will negotiate, the
12 price is set from 1/1/01 to 12/31/05.
13 Do you know what price that is that's
14 being set?

15 A. It's a price for industrial
16 and commercial customers. That's what
17 the I&C stands for.

18 Q. A price for generation?

19 A. I don't recall.

20 Q. And it's going to be a
21 negotiated market price from 06 through
22 ten. Do you recall what that price is
23 being set for?

24 A. It relates to the same price
25 as above because it's a subbullet, but

1 I don't recall what it was for.

2 Q. You have a note that IEU is
3 eligible for five to 20 percent of
4 savings to a customer. Can you explain
5 that?

6 A. I don't recall the
7 specifics.

8 Q. Do you recall who the
9 customer is there?

10 A. I don't know.

11 Q. Okay. What is the SSA? I
12 believe it's at the top of 304.

13 A. That's the service and
14 supply agreement.

15 Q. And what was that?

16 A. Those would be the
17 agreements between IEU and its customers
18 and members.

19 Q. Okay. So it was referred to
20 as the services and supply agreement and
21 that's what the MSA was attached to, is
22 that correct?

23 A. That's correct.

24 Q. Okay. And as far as you
25 know, the MSA has not been executed

1 yet?

2 A. To the best of my knowledge,
3 but I haven't made that inquiry anytime
4 recently.

5 Q. Okay. In reviewing this
6 MSA, could you get a sense of what the
7 role of FirstEnergy Services would be?

8 A. I might have at that time,
9 but I don't recall now.

10 Q. Okay. You have down here a
11 note on limitation of liability clause
12 and then I think it's FAS 133, is that
13 right?

14 A. That's correct.

15 Q. What does that mean?

16 A. There must have been some
17 sort of limitation of liability clause
18 in the MSA that limited the liability
19 of FES and that was kind of a note to
20 myself to see if that create any FAS
21 133 issues for FirstEnergy.

22 Q. Could you complain FAS 133?

23 A. Financial Accounting
24 Standards Board 133, which relates to
25 derivative and hedging activities.

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1 Q. And did you check further
2 into that?

3 A. In conjunction with my work
4 on the FirstEnergy audit.

5 Q. And what was your
6 conclusion?

7 A. I don't recall specifically.

8 Q. So this is for your audit
9 versus this review procedure?

10 A. Yes, it's for a separate
11 engagement.

12 Q. And that's why you wrote
13 that note because you were concerned
14 with respect to your other engagement?

15 A. I wanted to make sure that I
16 understood -- being that this was a
17 contract that FirstEnergy Services had
18 out there, I wanted to make sure that I
19 had understood what that limitation of
20 liability was in conjunction with FAS
21 133.

22 Q. Did you discuss that with
23 anyone?

24 A. I don't believe I did. I
25 don't recall positively. No, I think I

1 had asked a question of one of the
2 individuals at FirstEnergy that was
3 responsible for the FAS 133
4 implementation, or maybe responsible
5 isn't a good word, but was kind of
6 spearheading the 133 implementation and
7 I think I inquired as to whether it
8 looked at FirstEnergy Services and the
9 contracts that it had.

10 Q. And who was that?

11 A. There's a couple of point
12 persons and I don't recall specifically
13 who it was.

14 Q. And do you recall what their
15 answer was as to whether or not they
16 had reviewed that FirstEnergy Services
17 contracts?

18 A. I do know that they had
19 looked at the FirstEnergy Services
20 contracts.

21 Q. And who are the couple point
22 persons?

23 A. Oh, there's an individual by
24 the name of John Sommers or Sommer.
25 There's an individual by the name of

1 Elke, I think it's Becker. There was
2 an individual by the name of Jeff
3 Kalata.

4 Q. Are you indicating that
5 whoever it was you spoke to responded
6 by stating they had reviewed the MSA?

7 A. I don't know that I
8 specifically asked about the MSA. I
9 think I asked in general, because
10 FirstEnergy Services does have other
11 contracts out there, as to whether or
12 not appropriate individuals were
13 involved over at FirstEnergy Services
14 and if the contracts over at FirstEnergy
15 Services had been reviewed.

16 Q. Were there any other
17 agreements between FirstEnergy Services
18 and IEU members when you were out doing
19 your review that you recall?

20 A. Not that I'm aware of.

21 Q. Page 305, about two-thirds
22 of the way down, capacity needs, you
23 indicate load following. Is that an
24 indication that the IEU claim and then
25 you have option claim -- strike.

1 Your reference to capacity
2 needs, load following and option claim,
3 could you explain that to me?

4 A. If I recall correctly, I
5 believe that it specified in the SSA
6 agreements that claims would be made on
7 a load following basis.

8 Q. And what is the option claim
9 reference?

10 A. That they chose the load
11 following option versus the capacity
12 factor.

13 Q. Below that you have in
14 quotes, Member understands that the
15 exact structure of the IEU-OH
16 aggregation program will be controlled
17 by definitive agreements that shall be
18 executed by FirstEnergy Services, IEU
19 and member."

20 Was that part of the SSA?

21 A. I believe it was.

22 Q. And do you know what
23 agreements were going to be executed by
24 FirstEnergy Services?

25 A. If I recall correctly, the

1 only one that was brought to my
2 attention by Mr. Randazzo and Mr. Murray
3 was the fact that the MSA had not been
4 actually executed.

5 Q. So the MSA was going to
6 control the aggregation program, is that
7 correct?

8 A. That appears to be correct
9 based on this statement.

10 Q. And it's going to be
11 executed by the members as well as
12 FirstEnergy Services and IEU, is that
13 correct from what you're stating?

14 A. That also appears to be
15 correct based on this statement.

16 Q. Did you question anybody
17 about that?

18 A. Question regarding what?

19 Q. Who would be executing it.

20 A. Who would be executing --

21 Q. The definitive agreement.

22 A. I don't know that the
23 definitive agreement was a defined term.
24 I think it's just definitive agreements
25 and I don't know that I specifically

1 asked who would be executing the
2 definitive agreements.

3 Q. But I believe you just
4 testified when you asked about the
5 definitive agreements you were told was
6 the MSA, is that correct?

7 A. Only as it relates to the
8 document that was to be executed between
9 FirstEnergy Services and IEU. This I
10 believe -- if I recall correctly, this
11 was actually the quote that drove my
12 first question that we talked about back
13 on Bates number 302, which says what
14 other agreements are anticipated.

15 And when I inquired of
16 that, I was told that aside from the
17 MSA, that there weren't any specific
18 that they had in mind, but that that
19 was kind of a catch-all for others that
20 needed to be or potentially could need
21 to be executed in the future.

22 Q. You have a question right
23 below that, Can IEU allocate the assured
24 pricing pooled energy among customers.
25 Did you get that question answered?

1 A. Yes, I believe I did.

2 Q. And what was the answer?

3 A. I believe that answer
4 actually came from FirstEnergy. I think
5 I inquired of FirstEnergy of that answer
6 and the answer was yes, essentially they
7 can allocate.

8 Q. What do you mean by
9 allocate?

10 A. Amongst different customers.
11 The context -- if I recall correctly
12 the context of this question is that if
13 there's not -- within the SSA agreement
14 I think that was a provision that said
15 if there's not enough MSG to suffice
16 the entire IEU claim or claims which
17 contained numerous customer accounts
18 from various customers, then IEU could
19 allocate the amounts, the assured
20 pricing pooled energy amongst those
21 customers.

22 Q. So what are you saying the
23 assured pricing pooled energy is?

24 A. I would believe it's the
25 MSG, but I don't know that positively

1 because I don't recall the definition of
2 it.

3 MS. FLEMING: I should
4 tell you at this point that I have got
5 to leave in 15 minutes.

6 MS. KAHN: Okay.

7 Q. So on your notes at 304
8 where it says IEU must receive assured
9 pricing pooled energy, 200 megawatts,
10 that would be once again MSG?

11 A. I don't know that
12 positively. That would be my belief,
13 but I don't know that positively.

14 Q. When you said that you
15 checked with FirstEnergy on allocation,
16 who did you check with?

17 A. I don't recall that for
18 sure, either. I think I probably would
19 have discussed that with Dave Blank.

20 Q. So you're referring to
21 FirstEnergy Corp. or FirstEnergy
22 Services?

23 A. FirstEnergy Corp.

24 Q. On page 306 you indicate
25 about midway down, the MSA, I think

1 that may be between IEU-Ohio and
2 FirstEnergy is entered into in
3 substantially the same form as the draft
4 document contained in appendix A.

5 A. That's correct.

6 Q. You say is entered into. Is
7 that your understanding -- what was
8 explained to you?

9 A. No, I believe this is a
10 direct quote or as direct as I could
11 possibly write it straight out of the
12 SSA agreement.

13 Q. This is the language with
14 respect to that the MSA has to be
15 entered into in substantially the same
16 form as the draft?

17 A. That's correct.

18 Q. And at the very bottom you
19 have, No prices here but in MSA for
20 pooled customers. Can you explain that?

21 A. If I recall correctly, there
22 were no prices stated in the SSA
23 agreements, but there were pricings in
24 the MSA for whatever pooled customers
25 is.

(Recess had.)

MS. KAHN: I'm not sure that we're going to be able to conclude, so I would like to leave it open and then leave open the possibility of concluding later if we need to.

What we'll do is I have a few more questions to ask that I hope will maybe get us to a point where we won't actually have to come back, but I do need to look at these documents more thoroughly and make sure we've covered the issues that were in here previously. I think we have but I would like to compare it to the transcript and make sure and get back to you and let you know.

MS. FLEMING: We wouldn't want to come back again since we've already been here over five hours. If that can be curtailed or perhaps even we can agree that these are her notes or you know, whatever, we would be happy to do that in writing.

MS. KAHN: We might be

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1 able to do that. We might be able to
2 do some of it with interrogatories.
3 We'll try to figure out something, but
4 I do have a few more questions.

5 BY MS. KAHN:

6 Q. Ms. Dinie, in a letter that
7 I received from your counsel it is
8 indicated that you had copies of IEU's
9 member contingent participation
10 agreement and that you were not going
11 to produce that document. Is the
12 member contingent participation
13 agreement related to the MSA?

14 A. No.

15 Q. Is it the SSA?

16 A. It is.

17 Q. It is the SSA? Okay. And
18 that is the criteria that you looked at
19 to make the determination -- not to
20 make the determination; to advise
21 FirstEnergy whether there were issues
22 with respect to a committed capacity
23 sale, is that correct?

24 A. That's correct.

25 Q. And this is the template

1 document that we've been discussing a
2 fair amount for the last several hours?

3 A. Between IEU and its member
4 customers, correct.

5 Q. Did you discuss the SSA with
6 Mr. Blank?

7 A. I would have discussed my
8 concerns with the SSA with Mr. Blank.

9 Q. Did you provide Mr. Blank a
10 copy of it?

11 A. I did not.

12 Q. Okay. Did you provide Mr.
13 Blank a copy of the MSA?

14 A. I never had a copy of the
15 MSA. I reviewed a copy of the MSA, but
16 I've never had a copy of the MSA in my
17 possession.

18 MS. KAHN: Thank you. I
19 believe we can at least not close the
20 deposition, but put it on --

21 MS. FLEMING: I can go
22 another couple minutes if you have a
23 couple more questions.

24 MR. HARDYMON: Mr. Ruxin
25 is being left out of this discussion.

1 Is that okay with you, Paul?

2 MR. RUXIN: Yes, it is.

3 I encourage it.

4 BY MS. KAHN:

5 Q. Let me do one more item,
6 Dinie Exhibit 32, 377 and I believe it
7 goes to 385.

8 - - - - -
9 (Thereupon, Deposition
10 Exhibit-Dinie32 was
11 marked for purposes
12 of identification.)

13 - - - - -
14 Q. Do you have that document in
15 front of you? Am I correct this is all
16 one document?

17 A. That's not correct.

18 Q. Am I correct that one
19 document consists of 377 through 379?

20 A. That's correct.

21 Q. Okay. Why don't we do that,
22 first. Can you identify this document,
23 please?

24 A. This is my written summary
25 of my review related to Industrial

1 Energy Users.

2 Q. And did you provide this
3 written summary to Mr. Blank?

4 A. I provided it to him to read
5 and review with me as we went paragraph
6 by paragraph with the items that I had
7 noted, but then he returned it at the
8 end of that conversation that day.

9 Q. And on the left side you
10 have some handwritten notes. Those are
11 the two items that you've discussed
12 earlier with respect to the follow-up?

13 A. That would be correct.

14 Q. And it's your understanding
15 that MSG is flowing to the IEU members?

16 A. It's my understanding that
17 MSG was claimed on behalf of the IEU
18 members so they would ultimately be the
19 recipients, yes.

20 Q. Do you know if they're
21 actually receiving MSG yet?

22 A. I don't know that
23 positively.

24 Q. Okay. At page 378 you have
25 a note that you are unable to determine

1 that the customers had agreed to the
2 locations to be covered because the
3 customers did not sign the attachments.
4 How was that resolved?

5 A. The very last sentence there
6 however, in all instances I was able to
7 verify at least one piece of customer
8 information.

9 Q. Were you able to verify that
10 they had designated their locations
11 prior to October 19th?

12 A. I believe that would be the
13 case, if I recall correctly. I would
14 have to go back to my notes to be sure,
15 but if I recall correctly, the
16 information that I was provided didn't
17 concern me from a date issue.

18 Q. And you have in the next
19 paragraph that Mr. Murray provided you
20 copies with emails and faxes from two
21 of the customers. Was that because
22 there were only two customers with which
23 you had concerns?

24 A. I don't recall positively.
25 I would have to go back to my notes.

1 Q. And you indicate in your
2 summary that the customer sent
3 information via fax and email regarding
4 their accounts. Did you have proof of
5 that?

6 A. I think I now understand.
7 The attachments to the contracts in some
8 times were spreadsheets that gave me no
9 indication as to who had prepared them
10 or how the information was obtained and
11 so forth, and upon inquiry of that, Mr.
12 Murray indicated to me that in some
13 cases IEU had actually prepared that
14 information from information that the
15 customers had sent to them piecemeal
16 through emails, faxes and so forth.

17 I asked to see a couple
18 of those emails and faxes in order to
19 make sure and to verify that what he
20 was telling me was truly the situation
21 and I believe that's the couple of
22 emails and faxes that he had provided.

23 Q. And you felt that reviewing
24 two of those was a sufficient review --

25 A. In finding --

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1 Q. -- or a sufficient sample?

2 A. In finding no discrepancies,
3 I thought that was at least enough to
4 support his statement, yes.

5 Q. And also at 378 at the
6 bottom it references 14 contracts that
7 you reviewed and I believe I've seen
8 elsewhere today that there were 18
9 contracts that you reviewed I think in
10 your handwritten notes. Is there a
11 reason for a discrepancy here?

12 A. As you also probably recall
13 that you had seen earlier today, because
14 of the scope that was set for my
15 procedures, it wasn't necessary that I
16 review every single contract that was
17 out there. It depended upon which
18 specific accounts were selected in
19 conjunction with the scope that was laid
20 out, so although there might have been
21 18 contracts in total, the scope of my
22 procedures might have only required me
23 to look at 14.

24 Q. So while 18 contracts were
25 presented, is what you're saying you

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1 only reviewed 14 of the 18 contracts?

2 A. I only looked at 14 in
3 conjunction with the procedures that
4 were laid out to me.

5 MS. KAHN: I think the
6 best we can do is go into recess with a
7 continuance, but we will attempt to
8 avoid that if we can.

9 MS. FLEMING: Okay. And
10 we don't waive signature. We'll want
11 to review it.

12 (Deposition adjourned at
13 5:18 p.m.)

14 (Signature not waived.)

15 - - - - -
16
17
18
19
20
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1 CEFARATTI GROUP FILE NO. 4750

2 CASE CAPTION: ENRON ENERGY SERVICES VS.
3 FIRSTENERGY CORP., ET AL.

4 DEPONENT: DENISE DINIE

5 DEPOSITION DATE: APRIL 17, 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 DENISE DINIE 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

ERRATA SHEET

<u>PAGE</u>	<u>LINE</u>	<u>CORRECTION</u>
-------------	-------------	-------------------

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CERTIFICATE

State of Ohio)

SS.:

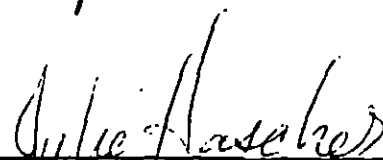
County of Cuyahoga)

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 30th 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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DEPOSITION OF DENISE DINIE

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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 - 393-FL-ESS

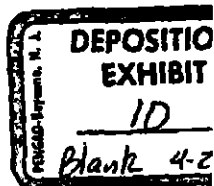


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ATTACHMENT E: Form of Service Agreement for Sales of Market-Support Generation and Loss Free, Non-Market Support Generation Under the Ohio Retail Electric Program

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



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

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 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

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]

**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)

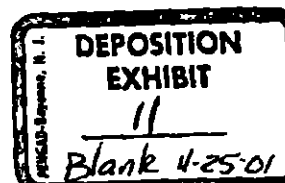
4. **Please set forth any guidelines or instruction or definition given to the Auditor with respect to dealing with a government aggregator as defined in the Revised Code Section 4928.01(A)(13).**

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.**



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

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?**

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.

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.

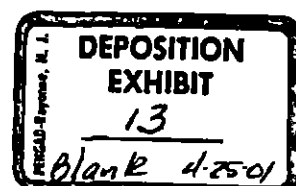
In the material that follows, the "Recitals" reflect your characterization of the issues as stated in your letter. We do not necessarily agree with the characterization.

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.



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.

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 Kotling
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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Date: April 30, 2001

C-G File No: 4750

To: JENNIFER A. LESNY FLEMING, ESQ.
127 PUBLIC SQUARE
CLEVELAND, OHIO 44114-1216

RE: IN THE MATTER OF THE COMPLAINT OF ENRON ENERGY SERVICES,
INC., AND FIRST ENERGY CORP., ET AL.
DEPOSITION OF: DENISE DINIE

____ The attached transcript(s) is/are being sent to you for filing with the Court, please return a time stamped copy of the enclosed title page in the enclosed self-addressed stamped envelope.

____ Signature of the Deponent is required and must be signed and notarized on the Certificate where indicated; the Errata sheet must be completed, if necessary, signed and returned, along with the original executed, notarized Certificate within 7 days 30 days from the date of this memorandum. When returning the original errata sheet to C-G, please copy all counsel.

XXXX Please contact our office to arrange a date and time for the Deponent to read and sign his/her deposition transcript here in our office. (WITHIN 30 DAYS OF RECEIPT OF THIS LETTER.)

____ Enclosed please find the transcript of your deposition. The Errata sheet must be completed, if necessary, signed and returned, along with the original executed, notarized Certificate within 7 days 30 days from receipt of this letter, or it may be filed without signature.

Cc: BENIT KAHN, ESQ.
DAVID W. HARDYMON, ESQ.
PAUL T. RUXIN, ESQ.
ARTHUR E. KORKOSZ, ESQ.

BEFORE THE PUBLIC UTILITIES
COMMISSION OF OHIO

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

01-393-EL

and Case No.
FIRST ENERGY CORP., 01-393-EL-CSS
et al.,
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

- - - - -

1 APPEARANCES:

2
3 On behalf of the Complainant:

4 Vorys, Sater, Seymour &

5 Pease, LLP,

6 by, DAVID W. HARDYMON, ESQ.

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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 - - - -

25

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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. Hardyman.

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.

1 - - - - -
2 (Thereupon, Deposition
3 Exhibit-10A was marked
4 for purposes of
5 identification.)

6 - - - - -
7 Q. You glanced through it? Let
8 me hand you what I've marked as Blank
9 Deposition 10A and take all the time
10 you want to look through that as well.

11 You've looked through it?

12 A. I've looked through there.

13 Q. For the record, Exhibit 10A
14 is a multi-page document, the first page
15 of which appears to be an email dated
16 February 14, 2001, beginning dear
17 marketers and bearing your name and
18 title at the bottom, is that true?

19 A. That's correct.

20 Q. And attached to that email
21 is a document which bears the heading
22 FirstEnergy Corp. market based rate
23 wholesale power sales tariff followed by
24 form of service agreement for sales of
25 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?

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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

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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.

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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.

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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.

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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

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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?

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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?

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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.

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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

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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

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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

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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 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?

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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

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

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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

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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

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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

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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.

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1 Thank you, Mr. Blank.

2 MR. RUXIN: Thank you.

3 (Deposition concluded at

4 1:43 p.m.)

5 (Signature not waived.)

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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: 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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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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