

BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

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In the Matter of the :
 Application of The Dayton :
 Power and Light Company :
 d/b/a AES Ohio for : Case No. 22-900-EL-SSO
 Approval of Its Electric :
 Security Plan. :

- - -

In the Matter of the :
 Application of The Dayton :
 Power and Light Company :
 d/b/a AES Ohio for : Case No. 22-901-EL-ATA
 Approval of Revised :
 Tariffs. :

- - -

In the Matter of the :
 Application of The Dayton :
 Power and Light Company :
 d/b/a AES Ohio for : Case No. 22-902-EL-AAM
 Approval of Accounting :
 Authority Pursuant to :
 R.C. 4905.13. :

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PROCEEDINGS

before Mr. Gregory Price and Ms. Patricia Schabo,
 Attorney Examiners, at the Public Utilities
 Commission of Ohio, 180 East Broad Street, Room 11-A,
 Columbus, Ohio, called at 10:15 a.m. on Wednesday,
 May 3, 2023.

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VOLUME II

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1 Wednesday Morning Session,
2 May 3, 2023.

3 - - -

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

6 Good morning. The Commission has set for
7 hearing at this time and place Case No.
8 22-900-EL-SSO, being In the Matter of the Application
9 of Dayton Power and Light Company d/b/a AES Ohio for
10 Approval of Its Electric Security Plan.

11 My name is Gregory Price. With me is
12 Trish Schabo. We are the Attorney Examiners assigned
13 to preside over today's hearing. We will dispense
14 with taking appearances unless there is anybody who
15 did not make an appearance yesterday.

16 Mr. Proano, do you need to make an
17 appearance for your co-counsel?

18 MR. PROANO: Erika Prouty will be joining
19 us this afternoon.

20 EXAMINER PRICE: Thank you.

21 At this time we will go ahead and take
22 our first witness of the day, and I believe it is
23 Mr. Wilson.

24 MR. SEMPLE: Your Honor, OCC would call
25 our first witness, Jim Wilson, to the stand.

1 EXAMINER PRICE: Mr. Wilson, please raise
2 your right hand.

3 (Witness sworn.)

4 EXAMINER PRICE: Nice to see you again.
5 Please state your name -- have a seat and state your
6 name and business address for the record.

7 THE WITNESS: James F. Wilson, 4800
8 Hampton Lane, Suite 200, Bethesda, Maryland 20814.

9 EXAMINER PRICE: Please turn your
10 microphone on.

11 MR. SEMPLE: Your Honor, at this time we
12 would ask that the testimony of Jim Wilson be marked
13 as OCC Exhibit 1.

14 EXAMINER PRICE: So marked.

15 (EXHIBIT MARKED FOR IDENTIFICATION.)

16 - - -

17 JAMES F. WILSON

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

20 DIRECT EXAMINATION

21 By Mr. Semple:

22 Q. Good morning.

23 A. Good morning.

24 Q. I'm right here. Good to see you. Do you
25 have before you what has been marked as OCC Exhibit

1 No. 1?

2 A. Yes.

3 Q. Do you recognize this document?

4 A. Yes.

5 Q. Was it prepared under your supervision or
6 by you?

7 A. Yes, it was.

8 Q. Do you have any changes you would like to
9 make to your testimony at this time?

10 A. Yes, one change.

11 Q. Okay. And what is that change?

12 A. On page 12 there is a Footnote 6, and the
13 second sentence should be removed, deleted.

14 EXAMINER PRICE: Does that begin with
15 "Unfortunately"?

16 THE WITNESS: Yes.

17 EXAMINER PRICE: And ending with "SSO
18 sales"?

19 THE WITNESS: Yes.

20 Q. (By Mr. Semple) And is that the only
21 change you have to your testimony?

22 A. Yes.

23 Q. Okay. Thank you.

24 MR. SEMPLE: At this time I would like to
25 make Mr. Wilson available for cross-examination.

1 EXAMINER PRICE: Thank you very much.

2 Do we have any motions to strike before
3 we proceed with cross-examination?

4 MR. PRITCHARD: Yes, your Honor.

5 EXAMINER PRICE: Mr. Pritchard.

6 MR. PRITCHARD: Yes, thank you. I would
7 move to strike the testimony of Mr. Wilson on --
8 starting on page 24, line 6 through line 18. Here
9 the witness is citing to, without further analysis,
10 description, proposals by AEP and Vitol in another
11 case on line 6 and 7, and then in question and answer
12 37 starting on line 9 and ending on line 18, he
13 describes a proposal by Vitol in that separate
14 docket.

15 Again, there's no further analysis,
16 explanation by Mr. Wilson. AEP and Vitol are not
17 parties to this case. They have not presented
18 witnesses here. They have not been subpoenaed here.
19 I don't have an opportunity to cross-examine them on
20 these hearsay statements.

21 I would also note that including this
22 standby charge issue here is unduly prejudicial. As
23 your Honors are aware, the litigation over provider
24 of last resort charges have been quite complex and
25 without any analysis or proposals here.

1 Even though Mr. Wilson's testimony is
2 brief, it may require very extensive briefing by the
3 parties on an issue that is not at issue in DPL's
4 Application, the Stipulation, and not really even
5 placed at issue in Mr. Wilson's testimony as he is
6 not himself making any proposals in this proceeding.

7 EXAMINER PRICE: Consumer's Counsel.

8 MR. SEMPLE: Your Honor, Mr. Wilson is an
9 expert testifying on proposed modifications to the
10 SSO. As such, proposals by other parties are
11 relevant to his testimony, and as an expert, he can
12 rely on reports and filings made by -- made by
13 others. Thank you.

14 EXAMINER PRICE: Don't we have a double
15 hearsay here where you have Vitol -- him citing to
16 Vitol and -- Vitol -- I'm sorry, him citing to Vitol
17 and Vitol citing summarizing proposed legislation?

18 MR. SEMPLE: Again, your Honor, we would
19 ask that since this Commission is not strictly bound
20 by the rules of hearsay that Mr. Wilson's testimony
21 on this matter not be stricken. The Commission can
22 assign his testimony on this matter the weight it
23 believes it deserves.

24 MS. COHN: Your Honor, may I also speak
25 to this? The filings by AEP are things that have

1 been referenced in other Commission proceedings
2 repeatedly. Parties refer to proposals made by
3 utilities in other proceedings, precedent from other
4 proceedings. So with respect to the AEP Standby
5 Service Charge Proposal, I think it's consistent with
6 Commission precedent to allow Mr. Wilson to refer to
7 that.

8 I won't speak with -- with respect to the
9 Vitol reference, but with respect to AEP, that's
10 pretty consistent with normal practice.

11 Also, I would say in this case a number
12 of parties have referenced the generic Commission
13 investigation on the SSO. If we are not allowed to
14 talk about proposals in that proceeding, then we are
15 really restricting the debate as far as what should
16 happen with SSO restructuring.

17 EXAMINER PRICE: Anybody else care to
18 weigh in? Well, let's see. We will come back around
19 to you, Mr. Pritchard. Anybody else?

20 Mr. Pritchard.

21 MR. PRITCHARD: I would just respond
22 briefly to those comments on it's -- this isn't
23 testimony where a witness is acknowledging something
24 else in another case and providing expert witness
25 testimony for the Commission in this case about a

1 different proposal and how it could impact this case.

2 Consumers' Counsel mentioned that he is
3 an expert on changes to the SSO, but line 6 to 18
4 don't propose -- it is not a proposal by OCC to
5 change anything. So it neither fits in with what is
6 called for in the Stipulation, what he addresses
7 earlier in the Stipulation, or it's not an instance
8 as counsel for OEG recognizes where sometimes parties
9 describe what's going on in other cases and how it
10 could apply to this case. Thank you, your Honor.

11 EXAMINER PRICE: I think that the
12 comments by counsel for OEG are persuasive. They are
13 probably a hearsay problem, but as Mr. Semple points
14 out, we are not strictly bound by the rules of
15 hearsay.

16 I am not a big fan of putting hearsay
17 things in, but it's not even clear to me this is
18 being offered for the truth of the matter asserted as
19 much as it is a proposal in front of the Commission,
20 in front of the General Assembly, so we will go ahead
21 and deny the motion to strike at this time.

22 IGS.

23 MS. CATHCART: Good morning. I have
24 three motions to strike beginning on page 14 of
25 Mr. Wilson's testimony beginning at line 21, Figure

1 JFW-2, going on to page 15, line 1, ending in "recent
2 filing."

3 Similar to Mr. Pritchard's motion to
4 strike, here Mr. Wilson is just summarizing an
5 argument made by a third party that is not part of
6 this proceeding in another Commission case. He's
7 providing no analysis on this figure and the premiums
8 over the pricing.

9 EXAMINER PRICE: When did this begin
10 again, your motion?

11 MS. CATHCART: I'm sorry. On page 14,
12 line 21.

13 EXAMINER PRICE: 21, thank you.

14 MS. CATHCART: Beginning with the word
15 "Figure," and the sentence carrying over to the
16 following page.

17 EXAMINER SCHABO: So does the motion end
18 with the graph?

19 MS. CATHCART: I was going to do the
20 graph separately.

21 EXAMINER SCHABO: Okay. So it ends on
22 page 3 -- line 3 with "suggests."

23 MS. CATHCART: Correct.

24 EXAMINER SCHABO: Thank you. Okay.

25 EXAMINER PRICE: Mr. Semple.

1 MR. SEMPLE: Your Honor, I would ask
2 that, consistent with your previous ruling, you
3 decline to strictly apply hearsay rules and find that
4 Mr. Wilson's summary of a proposal by another
5 stakeholder to modify the SSO is relevant to his own
6 proposed modifications on that topic.

7 EXAMINER PRICE: Anybody else care to
8 weigh in? Ms. Cathcart, the final word?

9 MS. CATHCART: Unlike the other
10 assertion, this time he is putting these forth as the
11 truth of the matter asserted.

12 EXAMINER PRICE: I agree. Ms. Cathcart,
13 your motion is granted.

14 MS. CATHCART: Thank you. Going on to
15 the chart on page 15, Figure JFW-2, this chart is a
16 chart that was included in -- Enel's comments in a
17 separate proceeding. Enel is not a party in this
18 proceeding, and I have not had an opportunity to
19 provide discovery or cross-examination of that
20 witness. Similar to my first motion, all they are
21 doing here is summarizing an argument made by Enel.

22 EXAMINER PRICE: Mr. Wilson, did you
23 prepare this chart?

24 THE WITNESS: I did.

25 EXAMINER PRICE: Based upon the

1 information presented in NL's comments?

2 THE WITNESS: Yes.

3 EXAMINER PRICE: Did you verify this
4 information?

5 THE WITNESS: I verified the calculations
6 of the premiums based on the forward prices and the
7 capacity price differential. I was not able to
8 verify the forward prices at the time of the
9 particular historical auctions. I didn't have that
10 data.

11 EXAMINER PRICE: Mr. Semple.

12 MR. SEMPLE: Your Honor, as an expert,
13 Mr. Wilson is entitled to rely -- rely upon
14 information beyond his direct perception. He created
15 the chart. He's adding his own analysis to it, so
16 it's not strictly hearsay.

17 EXAMINER PRICE: Ms. Cathcart?

18 MS. CATHCART: In the footnote he --
19 Mr. Wilson does state that he lacks the data to check
20 these calculations, and since Enel is not a party in
21 this proceeding, I have not been able to verify the
22 methodology used to create this chart.

23 EXAMINER PRICE: Yeah, I agree. It's a
24 fatal problem for Mr. Wilson. We will go ahead and
25 grant the motion to strike at this time.

1 MS. CATHCART: Thank you. I have no
2 further motions to strike.

3 EXAMINER PRICE: Just to be clear,
4 Footnote 7 is part of your motion, and it's been
5 stricken.

6 MS. CATHCART: Yes, please. Thank you.

7 EXAMINER PRICE: Anything else?

8 MS. CATHCART: I have no further motions
9 to strike. Thank you.

10 EXAMINER PRICE: Mr. Pritchard.

11 MR. PRITCHARD: No further motions to
12 strike. As noted off the record, I have some
13 cross-examination that may or may not lead to a
14 motion to strike.

15 EXAMINER PRICE: Thank you. Let's go off
16 the record.

17 (Discussion off the record.)

18 EXAMINER PRICE: Let's go ahead and go
19 back on the record. Mr. Pritchard, cross?

20 MR. PRITCHARD: Thank you, your Honor.

21 - - -

22 CROSS-EXAMINATION

23 By Mr. Pritchard:

24 Q. Good morning, Mr. Wilson. Will you turn
25 to page 22 of your testimony?

1 A. Yes.

2 Q. On page 22, lines 11 -- or lines 1 to 14,
3 you address potential rules that would limit
4 customers' freedom to switch into and/or out of SSO
5 service, correct?

6 A. Correct.

7 Q. You do not have any specific rule
8 proposal though, correct?

9 A. Correct.

10 Q. You have not done any specific analysis
11 of what effect these potential rules would have on
12 the competitive market, correct?

13 A. Well, I discussed that. I haven't
14 performed any quantitative analysis, correct.

15 Q. You agree that limitations on customer
16 switching could have a negative impact on the
17 competitive marketplace, correct?

18 A. Yes.

19 Q. Your testimony also does not include any
20 analysis of potential negative impact on prices for
21 shopping customers that could come from potential
22 rules limiting customer switching, have you, correct?

23 A. Correct.

24 Q. Your testimony -- your testimony also
25 does not include any analysis regarding the impact on

1 SSO prices that could occur if potential rules
2 limiting customer switching were adopted, correct?

3 A. Correct. Again, I haven't performed any
4 quantitative analysis. I provide a discussion but
5 not quantitative analysis.

6 MR. PRITCHARD: Your Honor, at this time
7 move to strike on page 22, lines 11 -- lines, sorry,
8 1 to 14. Here Mr. Wilson is addressing, in concept,
9 a hypothetical rule that could adopt. He is not
10 actually putting forth any rule proposal, and he has
11 just acknowledged on cross-examination that he has
12 done no analysis but admits that it could have a
13 negative impact on the competitive market.

14 This is an example of what I believe
15 would be unduly prejudicial to this proceeding of
16 parties having to brief nonproposals in the case.
17 There's nothing for us to brief, but it puts us in a
18 bind going -- needing to address issues that aren't
19 even in this case based on the witness's confessions
20 on cross-examination.

21 EXAMINER PRICE: Mr. Semple.

22 MR. SEMPLE: Your Honor, first, I would
23 like to clarify that Mr. Wilson didn't say he
24 conducted no analysis. He said he conducted no
25 quantitative analysis.

1 He analyzes the issue on the basis of his
2 decades of experience in this field. I also would
3 like to add that under Rule of Evidence 703, experts
4 can testify on facts or data perceived by them, not
5 just those that -- again, they have firsthand
6 experience with. So I would ask that you deny the
7 motion to strike on that basis.

8 MS. COHN: Your Honor, may I speak to
9 this as well?

10 EXAMINER PRICE: You may.

11 MS. COHN: In addition to the fact that
12 Mr. Wilson is providing an analysis, albeit not a
13 quantitative analysis, restricting the scope of what
14 issues we can talk to with respect to SSO
15 restructuring is not helpful for purposes of this
16 case.

17 So I think to the -- to -- regardless of
18 whether people agree with this or not, it is
19 informative to the extent that we are dealing with
20 SSO restructuring in this ESP case.

21 EXAMINER PRICE: I view this more --
22 Mr. Pritchard characterized this as a nonproposal. I
23 view this more as a comparing alternative proposals,
24 why he thinks this standby service is a better
25 proposal than other proposals, so we are going to go

1 ahead and deny the motion to strike.

2 MR. PRITCHARD: Thank you, your Honor.

3 Q. (By Mr. Pritchard) Mr. Wilson, may I
4 direct your attention to page 24 and 25 of your
5 testimony?

6 A. Yes.

7 Q. Specifically starting with question and
8 answer 37. You do not have a specific proposal for
9 Standby Service Charge as part of your testimony,
10 correct?

11 A. Correct. I discuss it generically.

12 Q. You have not done any specific analysis
13 as to what a Standby Service Charge rate would be,
14 correct?

15 A. No, no quantitative analysis, no estimate
16 of what that charge would be, and it would be a
17 function of the perceived -- it would need to be a
18 function of the perceived risk and potential risk
19 premiums of SSO suppliers.

20 Q. And your testimony does not include a
21 specific formula for calculating that Standby Service
22 Charge, correct?

23 A. Correct.

24 Q. And your testimony does not include any
25 analysis of what impact a Standby Service Charge

1 would have on the competitive marketplace, correct?

2 A. No -- no quantitative analysis, but to
3 the extent it could -- to the extent it could
4 effectively mitigate SSO suppliers' risks, it could
5 have a very good impact on the clearing prices.

6 Q. Mr. Wilson, do you remember being deposed
7 last week?

8 A. I do.

9 Q. And do you remember me asking you some
10 questions at your deposition?

11 A. Yes.

12 Q. Did you recall that I asked you questions
13 on this specific topic last week?

14 A. Yes.

15 MR. PRITCHARD: Your Honor, may I
16 approach the witness?

17 EXAMINER PRICE: You may.

18 MR. PRITCHARD: Your Honor, I would like
19 to reflect this is a copy of the deposition
20 transcript, and as noted on the first page of the
21 actual transcript on page 9, that this is the
22 excerpted portion that the court reporter prepared of
23 my cross-examination.

24 Q. (By Mr. Pritchard) Mr. Wilson, will you
25 turn to page 13?

1 A. Yes.

2 Q. And let me know if I read this correct,
3 starting on line 16. "And your testimony does not
4 have any analysis of a potential Standby Service
5 Charge, what effect it would have on the competitive
6 marketplace, correct?

7 "Answer: Correct."

8 A. I'm sorry. I am on page 13 of my
9 testimony. Do you want me to open up one of these
10 probably?

11 Q. Would you turn to page 13 of the
12 deposition transcript?

13 A. Is that the first thing in this pile?

14 Q. Sorry. Did I -- did I not hand you a
15 copy of this?

16 A. You didn't. There is a pile here.

17 EXAMINER PRICE: No. He will give you a
18 copy of the transcript. Here you go.

19 Q. (By Mr. Pritchard) Apologies, Mr. Wilson.
20 Would you turn to page 13 of the deposition
21 transcript?

22 A. Yes.

23 Q. All right. Will you look at line 16 and
24 let me know if I read they correctly. "Question:
25 And your testimony does not have any analysis of what

1 a potential Standby Service Charge, what effect it
2 would have on the competitive marketplace, correct?

3 "Answer: Correct." Did I read that
4 correctly?

5 A. Yes.

6 Q. Thank you.

7 MR. PRITCHARD: Your Honor, I have no
8 further questions.

9 EXAMINER PRICE: Thank you. Ms. Cohn?

10 MS. COHN: No questions, your Honor.

11 EXAMINER PRICE: OMAEG?

12 MS. EASLEY: No questions.

13 EXAMINER PRICE: Kroger?

14 MS. WHITFIELD: No questions, your Honor.

15 EXAMINER PRICE: Mr. Proano?

16 MR. PROANO: No questions, your Honor.

17 EXAMINER PRICE: Mr. Settineri?

18 MR. SETTINERI: No questions, your Honor.

19 EXAMINER PRICE: Walmart?

20 MS. GRUNDMANN: No questions.

21 EXAMINER PRICE: Questions, Mr. Dove?

22 MR. DOVE: No questions, your Honor.

23 EXAMINER PRICE: IGS?

24 MS. CATHCART: Just a few.

25 - - -

CROSS-EXAMINATION

By Ms. Cathcart:

Q. Good morning, Mr. Wilson. Stacie Cathcart with IGS.

A. Good morning.

Q. Could I direct you to page 5, lines 3 and 4, of your testimony, please.

A. Yes.

Q. In your testimony you state "The Commission has opened a case to discuss possible SSO auction modification," correct?

A. Yes.

Q. And then if I could direct you a little further down to 7 -- line 7 through 10, you also state that "The Commission directed the Ohio electric utilities to propose minimum state tariffs in respective dockets," correct?

A. Yes.

Q. Thank you. If I could turn you then to page 6 of your testimony.

A. Yes.

Q. And then lines 13 through 15. You state that, "Holding separate SSO auctions for residential, or perhaps residential and small commercial, customers, an approach many other states have

1 adopted, merits serious consideration"; is that
2 correct?

3 A. Yes.

4 Q. But in your testimony you do not have any
5 specific proposal for separate residential auctions,
6 correct?

7 A. Correct.

8 Q. Thank you. And then at lines 15 through
9 16, you say, "SSO suppliers are likely to find
10 smaller customers less likely to switch into and out
11 of SSO service"; is that correct?

12 A. Yes.

13 Q. But in your testimony you do not have any
14 specific analysis that -- that supports that
15 customers are less likely to switch; is that correct?

16 A. Well, you have the history of much larger
17 fractions of smaller residential customers remaining
18 with SSO and much larger fractions of the larger
19 customers having shopped in Ohio and elsewhere.

20 MS. CATHCART: Your Honor, I would move
21 to strike because I asked whether this analysis was
22 included in his testimony.

23 EXAMINER PRICE: Can I have the question
24 and answer back, please.

25 (Record read.)

1 EXAMINER PRICE: I think that he is just
2 trying to explain the basis for his conclusion in his
3 testimony, but we are going to go ahead and deny the
4 motion to strike.

5 MS. CATHCART: Thank you.

6 Q. (By Ms. Cathcart) If I could direct you
7 to page 6, line 17 through 19, you state that "Strong
8 rules limiting switching and/or limiting SSO
9 suppliers' quantity obligations, discussed in later
10 sections of my testimony, would also reduce SSO
11 suppliers' risk," correct?

12 A. Correct.

13 Q. And you don't have any specific proposal
14 as part of your testimony to limit customer switching
15 or supplier quantity obligations; is that correct?

16 A. That's correct.

17 Q. Thank you. If I could then turn you to
18 page 7, lines 9 through 15. In your testimony you
19 state, "And limiting customers' freedom to switch is
20 contrary to the spirit of retail competition and
21 could reduce the competitiveness of the market"; is
22 that correct?

23 A. Correct.

24 Q. And that possible rules about customers
25 switching should continue to afford customers

1 considerable flexibility to choose; is that correct?

2 A. Yes.

3 Q. Thank you. And then further down at
4 lines 21 through 24 in your testimony you state that
5 rules limiting the quantities SSO suppliers are
6 obligated to serve, that the details could become
7 complicated and controversial, correct?

8 A. Correct.

9 Q. And that part of that complication and
10 controversy is which SSO customers would end up
11 paying higher prices when the suppliers are obtaining
12 some supplies at market, correct?

13 A. Correct.

14 Q. But here in your testimony you do not
15 propose a limitation on quantities SSO suppliers are
16 obligated to serve, correct?

17 A. I didn't make a specific proposal,
18 correct.

19 Q. Thank you. If then we could jump to page
20 14, lines 20 through 21. If I could strike that. If
21 I could actually move to page 20, lines 6 through 9,
22 please. In your testimony you state that, "Smaller
23 customers with less to save by switching are less
24 likely to switch," is that correct?

25 A. Correct.

1 Q. And your testimony doesn't include any
2 data comparing switching rates of customer classes
3 after a change in SSO price; is that correct?

4 A. That's correct. There is a lot of data
5 that I reviewed but I don't have anything in my
6 testimony specifically on that.

7 Q. Thank you. And would you agree that both
8 customers, large and small, could have other reasons
9 to switch besides pricing?

10 A. I guess I can imagine other reasons. I
11 think pricing is the big one but, yes, there could be
12 other reasons.

13 Q. Thank you. And then if I could direct
14 you to page 20 --

15 EXAMINER PRICE: Before we leave that
16 page, Ms. Cathcart, I have a question for Mr. Wilson.

17 MS. CATHCART: Yes.

18 EXAMINER PRICE: At line 6 you say,
19 "Generally speaking, smaller customers with less to
20 save by switching are less likely to switch."

21 When you make that statement, are you
22 distinguishing between individual customers switching
23 and opt-out aggregation -- customers switching
24 through opt-out aggregations?

25 THE WITNESS: Well, I think the idea is

1 that if the decision maker is small -- relatively
2 small dollars to the decision maker, then he is less
3 likely to be paying attention, watching market
4 prices.

5 So individual residential customers
6 typically are looking at, you know, a bill on the
7 order of, you know 50 or 100 dollars a month, whereas
8 a commercial or industrial might be looking at
9 hundreds and thousands and more, so that's the idea.

10 If the decision maker doesn't have that
11 many dollars at stake for their decision, they are
12 probably less likely to invest the trouble to be
13 watching more prices. When they are aggregated and
14 there is an aggregator making the decision, then that
15 becomes more like a larger customer. I think I
16 answered your question.

17 EXAMINER PRICE: I think you did. So
18 from your perspective in this, you're talking about
19 smaller customers, you are talking about individual
20 customers switching, not customers who participate in
21 governmental aggregations.

22 THE WITNESS: Yeah, it's really the small
23 decision maker is the key distinction.

24 EXAMINER PRICE: Thank you. Thank you,
25 Ms. Cathcart.

1 MS. CATHCART: Thank you.

2 Q. (By Ms. Cathcart) If I could direct you
3 to page 20, lines 20 going onto page 21 to line 2,
4 here in your testimony you list off states who hold
5 separate auctions; is that correct?

6 A. Yes.

7 Q. But in your testimony you don't have any
8 pricing data from the auctions in the states you
9 listed; is that correct?

10 A. That's correct.

11 Q. And you have not included any analysis in
12 your testimony of the results of these auctions; is
13 that correct?

14 A. That's correct.

15 Q. Thank you. If we could then go to page
16 23 of your testimony, please. And I am going to
17 direct you to line 13.

18 In your testimony you state that the
19 likely structure of rules placing quantity limits on
20 SSO suppliers' sales obligations at the auction price
21 would likely include a baseline SSO quantity and a
22 threshold; is that correct?

23 A. Well, my testimony says such rules could
24 work as follows. A baseline SSO quantity and a
25 threshold are identified.

1 Q. Understood. I guess I was also
2 referring -- I should have said page 23, lines --
3 reading the header for 1 and 2 compiled with number
4 I.

5 A. Okay. The question is not in my
6 testimony.

7 Q. I'll rephrase. So in your testimony the
8 likely structure of such rules would be a baseline
9 SSO quantity and a threshold are identified; is that
10 correct?

11 A. Yes.

12 Q. And you do not propose a specific
13 baseline SSO quantity or a threshold in your
14 testimony; is that correct?

15 A. That's correct.

16 MS. CATHCART: I have no further
17 questions. Thank you, Mr. Wilson.

18 EXAMINER PRICE: Thank you.

19 MS. CATHCART: Thank you, your Honor.

20 EXAMINER PRICE: Company?

21 MS. WATT: Yes, your Honor.

22 - - -

23 CROSS-EXAMINATION

24 By Ms. Watt:

25 Q. Mr. Wilson, you suggest that the

1 residential auction could also include small
2 commercial, correct?

3 A. Yes, it often does. In some places it
4 doesn't; in some places it does, yes.

5 Q. But you don't know how AES Ohio defines
6 the small commercial class, do you?

7 A. I -- I don't know that detail, correct.

8 Q. And you would agree that customer class
9 definitions vary from utility to utility?

10 A. They do.

11 Q. And from state to state?

12 A. Yes.

13 Q. To your knowledge, no other Ohio EDU has
14 used the class-based auctions to date; is that right?

15 A. That's my understanding, yes.

16 Q. You said earlier that in -- you analyzed
17 seven states that have auctions for default
18 customers, right?

19 A. I identified seven states that are doing
20 that, yes.

21 Q. In the states that have auctions that you
22 analyzed, you don't know how many of those states
23 have adopted the use of residential only auctions,
24 one utility at a time, do you?

25 A. No. I haven't looked at that detail.

1 Q. Have you compared the Ohio auction
2 results to the results in those other states?

3 A. I haven't, no.

4 Q. And your testimony does not state the
5 forward curves that existed in those other states,
6 right?

7 A. What exactly are you asking?

8 Q. You've talked about -- in your testimony
9 about the forward curve in the Ohio auction, right?

10 A. Yes.

11 Q. But you did not state in your testimony
12 what those forward curves were in those other states
13 you looked at.

14 A. Do you mean the pricing locations for the
15 forward curves?

16 Q. The same way you talked about the forward
17 curve for Ohio in your testimony.

18 A. Yes.

19 Q. You recall discussing the forward curve,
20 right?

21 A. Yes.

22 Q. You did not include that same information
23 about the other states you looked at in your
24 testimony, right?

25 A. Yes.

1 Q. Do you know whether those premiums in the
2 other states you looked at were lower than the Ohio?

3 A. In recent auctions, or in historical
4 auction, no, I didn't evaluate those premiums.

5 Q. You are familiar with the term laddering,
6 right?

7 A. Yes.

8 Q. And you would agree that laddering helps
9 customers, right?

10 A. It has a probably very minor impact on
11 the volatility of SSO prices. It doesn't reduce them
12 on average, but it will reduce the volatility.

13 Q. So it does help customers, correct?

14 A. It's minor; but, yes, it would be -- it
15 would be helpful. I mean, there is an administrative
16 cost to it, and that has to be traded off against the
17 reduction in volatility.

18 Q. And you state in your testimony that you
19 don't believe the laddering proposed by AES Ohio in
20 the Application will be sufficient to achieve an
21 efficient auction outcome, right?

22 A. That's correct. It doesn't address the
23 risk premium issue.

24 Q. But you have not conducted any analysis
25 of the product lengths that have been offered by --

1 in AES Ohio auctions, have you?

2 A. No. It's not relevant to the main focus
3 of my testimony, which is on the risk premium.

4 Q. And you have not conducted analysis of
5 the impact of offering different product lengths in
6 auctions in the other states you looked at, right?

7 A. Correct.

8 Q. You don't know whether those seven states
9 you evaluated hold auctions with laddering, right?

10 A. I don't know those details, correct.
11 It's not relevant to the focus on risk premiums.

12 Q. I would like to jump to your rules
13 limiting customers' rights to switch. You don't
14 strongly recommend the implementation of rules
15 limiting customers' rights to switch, right?

16 EXAMINER SCHABO: Ms. Watt, could you
17 point me to where you are talking about in his
18 testimony, please?

19 MS. WATT: Which --

20 EXAMINER SCHABO: Right now, your
21 questioning.

22 MS. WATT: Oh, limiting switching. Just
23 the topic of limiting switching?

24 EXAMINER SCHABO: Whatever you are
25 referring to as you are questioning him, please.

1 MS. WATT: This is on page 22 starting at
2 line 16 where Mr. Wilson discusses rules limiting
3 switching into and out of the switching service.

4 EXAMINER SCHABO: Oh, thank you.

5 MS. WATT: Thank you.

6 Q. (By Ms. Watt) You believe a customers'
7 freedom to switch into and out of the SSO should be
8 preserved, right?

9 A. Yes, to some extent it should be
10 preserved. If there is limits, they, you know,
11 shouldn't go too far.

12 EXAMINER PRICE: Mr. Wilson, the minimum
13 stay directed by the Commission for the utilities
14 implemented, are you characterizing that as a
15 limitation of rule limiting switching?

16 THE WITNESS: Yes.

17 EXAMINER PRICE: Or something entirely
18 different?

19 THE WITNESS: Yes.

20 EXAMINER PRICE: So you do not think the
21 minimum stay should have been implemented.

22 THE WITNESS: No, I didn't say that. I
23 just said that you don't want to go too far limiting
24 switching because you want there to be competition,
25 and at the same time limiting switching is not going

1 to be very effective in reducing the SSO suppliers'
2 risk because there will still be a lot of scope for
3 their quantity to change a lot.

4 So you don't want to go too far, and
5 however far you go probably isn't going to be all
6 that helpful is my view.

7 EXAMINER PRICE: Okay. So let's -- let's
8 stay specifically on you do not think that is going
9 to be sufficient to lower the supplier's risk
10 quantities.

11 THE WITNESS: That's -- that's not going
12 to be sufficient to give the suppliers a lot of
13 confidence that the quantity they are expecting is
14 going to be stable, that it won't increase or
15 decrease a lot.

16 It still allows them to be facing large
17 changes in the quantity.

18 EXAMINER PRICE: And you trace back this
19 increase in risk premium to NOPEC's return of its
20 customers from SSO service; is that correct?

21 THE WITNESS: Well, that's part of it. I
22 also trace it to you have had a lot of big movements
23 in energy prices, so part of it is that, too. And
24 especially the combination of increased price
25 volatility and exposure to potentially large

1 transfers in and out of SSO service creates an
2 obligation that really can't be hedged effectively.

3 EXAMINER PRICE: Nothing is monocausal,
4 right? There is never one cause, but you do think
5 these are the two primary causes for the risk premium
6 we've seen?

7 THE WITNESS: The -- the energy price
8 movements and the awareness that there can be very
9 large transfers, yes.

10 EXAMINER PRICE: Thank you.

11 Q. (By Ms. Watt) Mr. Wilson, you have not
12 conducted any analysis into what happens when
13 customers' freedom to switch into and out of the SSO
14 has been restricted, right?

15 A. So you mean like historical analysis of
16 instances where that restriction was imposed?

17 Q. I am asking whether you conducted any
18 analysis.

19 A. I'm just trying to understand what your
20 question -- okay.

21 Q. Have you conducted any kind of analysis
22 into what happens when customers' freedom to switch
23 into and out of the SSO has been limited or
24 restricted?

25 A. I haven't performed any quantitative

1 analysis. I provide discussion as an economist.

2 Q. You believe there is value in the
3 individual customer's flexibility to switch into and
4 out of the SSO, right?

5 A. Yes. The flexibility contributes to the
6 competitiveness, and it contributes to the customer
7 having control over their costs.

8 Q. And when you say competitiveness, you
9 mean the competitiveness of the market, right?

10 A. Yes.

11 Q. You have not conducted any analysis into
12 how much customers are willing to pay to retain the
13 right to switch, right?

14 A. That's correct.

15 Q. Mr. Wilson, you would not expect a bidder
16 at auction to sell generation at a below market
17 price, right?

18 A. Well, we discussed that. It's a vague
19 question. I think what you probably want to ask is
20 we should not expect a seller to offer at below the
21 prices that correspond to the obligation, so forward
22 curve.

23 EXAMINER PRICE: On my own motion I am
24 going to strike that answer. It is nonresponsive.
25 Please answer the question directly. If you do not

1 understand the question, please indicate you do not
2 understand the question.

3 THE WITNESS: Okay.

4 MR. SEMPLE: Your Honor, yesterday you
5 gave Witness Schroder a mulligan. Can we use ours
6 now?

7 EXAMINER PRICE: No. This was so
8 egregious.

9 MR. SEMPLE: Okay.

10 EXAMINER PRICE: It is her first time
11 cross-examining a witness. We need to give her a
12 break.

13 MS. WATT: It's not the first time.

14 EXAMINER PRICE: First time here, sorry.
15 My mistake.

16 Q. (By Ms. Watt) Would you like me to repeat
17 the question?

18 A. Please.

19 Q. Mr. Wilson, you would not expect a bidder
20 at auction to sell generation at below market price,
21 right?

22 A. The question I find ambiguous because
23 there's selling generation and what price. Last
24 week's price? Five years? I mean, it's just too
25 vague to answer.

1 Q. What is your understanding of the market
2 price?

3 A. That's -- that's what's ambiguous in your
4 question.

5 Q. Do you evaluate market prices when you
6 conduct -- did you evaluate market prices when you
7 conducted analysis of Ohio -- the Ohio auctions for
8 this case?

9 A. Yes.

10 Q. What -- what did you evaluate when you
11 looked at the market price?

12 A. I got the AD Hub prices in my testimony.

13 Q. So when you looked at those market
14 prices, during which time frames were you evaluating?

15 A. I show historical prices, and I discuss
16 the forward curve.

17 Q. When you say historical price, what time
18 frame are you talking about?

19 A. It's in my graph. We put the last five
20 years, wasn't it? Something like that? JFW-1. 2017
21 to January 2023.

22 Q. Which page are you referring?

23 A. Page 11, Figure JFW-1.

24 Q. So when a bidder participates in an
25 auction, you would agree they evaluate the market

1 price in some form in order to participate, right?

2 A. In some form.

3 Q. So as they evaluate that market price, in
4 order to participate in the auction, you would not
5 expect that bidder to sell generation at a price they
6 believed was below market, right?

7 A. Well, again, they are making a commitment
8 for a forward period. Are you asking me whether they
9 would sell for a year from now at a price less than
10 the price last week? Yes, they might. They very
11 well might. You have to compare to contemporaneous
12 market prices is the point that I am trying to get
13 to.

14 Q. Do you believe that a bidder at auction
15 would sell generation at a price they believed would
16 result in a loss?

17 A. I can't think of a good reason why they
18 would do that. I wouldn't expect that, under most
19 normal conditions, at a loss. Now you are talking
20 about comparing the commitment to the contempt --
21 contemporaneous forward curve.

22 Q. You believe that AES Ohio's current SSO
23 price is very high as compared to the historical SSO
24 prices that you've evaluated, right?

25 A. Yes.

1 Q. And you would agree with me that if we
2 conducted an auction in which --

3 A. Let me clarify. I think you meant in a
4 recent auction, not the one that's actually in the
5 tariff today. I think that's what I understood your
6 question to be. Again, ambiguous.

7 EXAMINER PRICE: Mr. Wilson, no
8 commentary on her questions.

9 THE WITNESS: Well, I realize -- I
10 interpreted her question to answer it, and now maybe
11 I actually should just ask to clarify it.

12 EXAMINER PRICE: Yes.

13 Q. (By Ms. Watt) You would agree with me
14 that if we conducted an auction in which the load
15 being bid on was only 10 percent of the SSO load
16 instead of the full load, you would expect the prices
17 in that auction for the 10 percent to be higher,
18 right?

19 A. It could be, not necessarily. I mean, it
20 could be. It's not necessarily. It could also be
21 lower.

22 Q. Mr. Wilson, as Mr. Pritchard asked you,
23 you remember being deposed in this case?

24 A. I do.

25 Q. And you remember I asked you questions in

1 that deposition?

2 A. Yes.

3 MS. WATT: Permission to approach?

4 EXAMINER PRICE: You may.

5 Q. (By Ms. Watt) Mr. Wilson, I have handed
6 you a copy of the transcript from your deposition,
7 right?

8 A. I'll trust you on that.

9 Q. Would you turn to page 81?

10 A. Yes.

11 Q. Starting at line 3, I am going to read
12 aloud. Please follow along. "Question: No, not as
13 a result of laddering, just if we did an auction and
14 the AES Ohio's auction, the only thing that was
15 distinct about it was the load being bid on was 10
16 percent of the SSO load instead of the full load.
17 Would you expect the prices in that auction for the
18 10 percent to be higher?

19 "Answer: They might be slightly higher.
20 I mean, to the extent you are hedging with the
21 forward curve, you know, that's scalable. So to the
22 extent a supplier has to add into their bid the
23 administrative cost of participating in the auction
24 and administering their obligations, then, you know,
25 that's going to raise the cost of a small tranche,

1 and it also depends on whether the seller thinks he
2 is going to, as a result, get a much smaller
3 quantity. If the total quantity is smaller, but the
4 seller thinks he is going to sell the same amount
5 either way, then he wouldn't be necessarily be adding
6 very much at all. So, for instance, if the total
7 quantity is 100, and I think I'm going to sell 5, and
8 then all of a sudden you told me, oops, we're not
9 going to get 100, we're only going to do 5, well, if
10 I think I'm still going to win 5, then my
11 administrative cost is unchanged."

12 I read that correctly, didn't I?

13 MR. SEMPLE: Your Honor, I object and
14 move to strike this question from the record. This
15 answer in deposition was provided in response to an
16 entirely different question than the one that is
17 currently being posed to Mr. Wilson.

18 EXAMINER PRICE: Well, both transcripts
19 will speak for themselves when we review this as we
20 prepare the Opinion and Order.

21 MR. SEMPLE: Okay. Thank you.

22 Q. (By Ms. Watt) Did I read that correctly,
23 Mr. Wilson?

24 A. Yes.

25 Q. You stated currently that you are --

1 well, let me strike that.

2 You're familiar with the Case No.

3 17-957-EL-UNC case, right?

4 A. Yes.

5 Q. And you would agree that when
6 implementing a switch to customer class based
7 auctions, the Commission should consider input from a
8 variety of stakeholders with diverse views?

9 A. Yes.

10 Q. You have not participated in that 17-957
11 matter, right?

12 A. I have not.

13 Q. But you believe the proceeding involves a
14 broad range of stakeholders and industries?

15 A. Probably does, yes.

16 MS. WATT: I have no further questions.

17 EXAMINER PRICE: Thank you.

18 Staff?

19 MR. LYONS: Thank you, your Honor.

20 - - -

21 CROSS-EXAMINATION

22 By Mr. Lyons:

23 Q. Good morning, Mr. Wilson.

24 A. Good morning.

25 Q. On page 4 of your testimony you lay out

1 two proposals; one would be dividing auctions into
2 separate groups, and the other, broadly speaking,
3 would be changing the switching rules; is that
4 correct?

5 A. Well, there -- my testimony has really
6 three categories.

7 Q. I am asking about those two though.

8 A. Okay. On page 4, the second and third
9 categories that I discussed are combined under No. 2.

10 Q. Considering those two categories, do you
11 have -- in your opinion would one of those two
12 provide a greater benefit to consumers?

13 A. Well, in my testimony of three categories
14 that I discuss, I believe that separate auctions for
15 residential, perhaps together with other small
16 customers, commercial, would be beneficial, and I
17 think that somehow limiting SSO suppliers' quantity
18 risks would be beneficial, and I think restrictions
19 on switching are probably less effective.

20 Q. Would it be fair to say that limitations
21 on switching would be potentially effective?

22 A. Well, they can provide some value, yes.
23 But I don't -- as I testify, I don't think they go
24 very far in addressing the problem.

25 Q. So getting back to the original question

1 of the two that I mentioned, would it be your opinion
2 that dividing the auctions would be the better
3 result?

4 MR. SETTINERI: Your Honor, I'll just
5 object at this time in terms of you mentioned three
6 categories; he is talking two. It would be helpful
7 for the record to know exactly what he is asking
8 about, what categories of the two that was his
9 question.

10 EXAMINER PRICE: Please rephrase.

11 Q. (By Mr. Lyons) So again, there are two
12 categories that I mentioned here. Do you have an
13 opinion as to which of those two categories -- I can
14 clear it up if you have any questions as to what
15 those two might be. Do you have any opinion as to
16 which would be better to implement to reduce the risk
17 premium we have discussed here today?

18 A. Please state the two categories.

19 Q. One would be dividing auction -- dividing
20 auctions into separate groups, and the other would be
21 changing the switching rules.

22 A. Oh, okay. Yeah, I think separate
23 auctions would be -- it's very likely they would be
24 more effective than changes to the switching rules.

25 Q. Thank you, Mr. Wilson. Now, you are

1 aware of what happened in 2022 in FirstEnergy
2 territories with regards to NOPEC; is that right?

3 A. Yes.

4 Q. Now, would you say that preventing
5 another situation like that, broadly speaking, again
6 reduces the premium on auction -- on auction prices
7 potentially saving tens of millions of dollars to
8 consumers?

9 A. I haven't quantified the potential
10 savings. But obviously large -- large amounts of
11 load coming back to SSO, whether it's residential or
12 commercial or industrial, poses a substantial risk to
13 SSO suppliers that they have to take into account in
14 their participation in the auction. So some way of
15 con -- of limiting their quantity risk is going to be
16 beneficial.

17 Q. To consumers, correct?

18 A. To first the SSO suppliers, allowing them
19 to offer more competitively and with lower premiums
20 into the auction, and that will lead to lower
21 premiums in the auction benefiting consumers.

22 Q. Okay. Thank you.

23 EXAMINER PRICE: How would you quantify
24 that premium risk?

25 THE WITNESS: Well, it was stricken, but,

1 you know, that risk -- that risk premium had been in
2 the 10 to 20 percent range over the forward curve,
3 and then starting last year, it went to numbers more
4 like 60 percent. And I made a quick calculation
5 based on the recent auction, and it was still more
6 like 60 percent premium over the forward curve and,
7 you know, that's high.

8 EXAMINER PRICE: You are aware that Ohio
9 has separate PIPP auctions, our Percentage Income
10 Payment Plan low-income customers, are you not?

11 THE WITNESS: I am. I haven't looked at
12 that data carefully.

13 EXAMINER PRICE: It's not publicly
14 available.

15 THE WITNESS: Oh.

16 EXAMINER PRICE: But if you look for the
17 same period of time and the same utility, and you
18 took the difference between the SSO auction and the
19 PIPP auction, positive or negative, would that give
20 you a rough estimate of the risk premium due to
21 migration?

22 THE WITNESS: Oh, I don't know. I would
23 have to learn a little bit more about the PIPP
24 auction and what's going on there.

25 EXAMINER PRICE: That's fair enough.

1 THE WITNESS: Yeah. Interesting idea but
2 I can't -- I can't say.

3 EXAMINER PRICE: Thank you.
4 Thank you, Mr. Lyons.

5 MR. LYONS: I have a couple more
6 questions, your Honor.

7 Q. (By Mr. Lyons) Now, you mentioned in your
8 testimony on page 6, I believe it's question 7,
9 limits on suppliers' sales obligations, and that's
10 the phrase I want to hone in on here. What do you
11 mean by limits on a suppliers' sales obligation?

12 A. Well, that's what we've been talking
13 about all through here. You go into an auction;
14 you've got -- you win some number of tranches which
15 are percentages of the SSO sales.

16 You have an idea of what that may turn
17 into in terms of megawatts. You would like to be
18 able to hedge those megawatts; either you have -- you
19 own generation and you are physically hedged, or you
20 want to go into the forward curve and hedge that.
21 And -- but if that number can double, or drop by
22 half, then there's quantity risk.

23 And as I describe, you know, you can
24 definitely incur financial losses, so that's what I
25 am talking about. It's giving the SSO suppliers a

1 little more confidence that either their obligation
2 isn't going to change much, or if it changes a lot,
3 they won't have to honor it at the auction price.
4 They will be able to rely on market prices.

5 Q. Okay. Thank you. So when you say limits
6 on suppliers' sales obligation, if the obligations go
7 up, ultimately somebody would be filling in that
8 obligation; is that right?

9 A. Well, they might fulfill the obligation,
10 but they would be free from the auction price. And
11 they would be able to fulfill it at market prices,
12 for instance.

13 Q. Okay.

14 A. Prevailing market price.

15 Q. Is it correct that you can't hedge for
16 quantity, demand?

17 A. Can you clarify your question?

18 Q. Sure. So can you go out on the market
19 and purchase a hedge for an unknown quantity of an
20 item?

21 A. I wouldn't know how that would work, so I
22 think my answer is no. If I thought about it a
23 little bit, I might figure out, but my guess is
24 anybody who is willing to try to do that for you is
25 going to charge you for it.

1 Q. But someone who would charge you for it,
2 is there insurance available on the market, is there
3 some other market available?

4 A. Yeah, it would be something like that.
5 It would be some kind of insurance-type arrangement.

6 Q. Are you aware of any such products?

7 A. I am not.

8 MR. LYONS: Okay. I have no further
9 questions, your Honor.

10 EXAMINER PRICE: I just have a couple
11 questions for you before we go on to -- I'm sorry?

12 MR. PROANO: Your Honor, may I ask just
13 two follow-up questions of the witness?

14 EXAMINER PRICE: Did I skip you?

15 MR. PROANO: You did not, but now that I
16 have heard his testimony, it has elicited questions,
17 if that's okay with the Bench.

18 EXAMINER PRICE: We talked about
19 yesterday Ms. Willis asked about counsel and a
20 mulligan. Briefly, Mr. Proano.

21 MR. PROANO: Thank you.

22 - - -

23 CROSS-EXAMINATION

24 By Mr. Proano:

25 Q. Mr. Wilson, if your proposal to bifurcate

1 the auctions among different classes is accepted by
2 the Commission, what do you think the impact will be
3 to the industrial or large commercial customers in
4 terms of SSO rates?

5 A. Okay. Well, that's a question that is
6 out there. I mean, the vast majority of commercial
7 and industrial customers are shopping, of course.
8 It's a small amount -- it's a very small quantity
9 that remains with SSO.

10 So if the residential customers were
11 having a separate auction, the auction for those
12 remaining commercial and industrial customers who
13 remain on SSO would be fairly small; and so, you
14 know, it's possible that the prices might be a little
15 higher because there might not be as much interest.
16 They might go up a bit.

17 I mean, of course, these are commercial
18 and industrial customers who we generally expect to
19 shop certainly more than residential customers. So
20 it -- it could -- they could go up.

21 MR. PROANO: Thank you. No further
22 questions.

23 EXAMINER PRICE: Thank you.

24 - - -
25

EXAMINATION

By Examiner Price:

Q. Just briefly before we go on to redirect, I have a couple of questions.

First, is it possible that this is going to end up being this period of high premium self-correcting? If the wholesale suppliers' risk premium is excessive to what it hypothetically should be, it will result in a higher SSO price; is that correct?

A. If -- if the sellers into the SSO auction are all adding a lot of risk premium, that goes right -- that goes into the auction price. That would tend to be --

Q. Right. But in that case, they are competing against CRES providers, and CRES providers, there is no limitation on coming and going from the SSO, except the minimum stay. Those CRES providers could offer products that are below the SSO price and customers could get relief from the higher prices there, wouldn't that happen?

A. Well, yes, and that's part of the problem, yes.

Q. Why is it part of the problem?

A. Well, because in the SSO auction you are

1 asking SSO suppliers to make an offer of a price that
2 they are going to be committed to over some period of
3 time and -- and the quantity is something that can
4 change.

5 So you are putting them in a very bad
6 situation where they really have to offer above the
7 forward curve, and it's easy for the CRES providers
8 to really rely on the forward curve for what they are
9 doing, switching in and out.

10 They don't necessarily have to hedge
11 longer term. They are not committed to any price
12 over time. So it's -- yes, you would expect that you
13 would have movement away from SSO under that
14 situation. But you --

15 Q. You are not solving the problem.

16 A. But you are not solving the problem. You
17 are creating an SSO that's unattractive because it
18 involves a lot of risk and a lot of risk premium.

19 Q. Second, your recommendation is that the
20 Commission look at Standby Service Charge for large
21 government aggregators, correct?

22 A. Well, I think that's a reasonable
23 approach for any customer that -- any large customer
24 that might want to come back to SSO. Maybe they
25 should either not have the right to come back to SSO

1 or should pay for that right.

2 Q. Okay. But you clearly don't have all the
3 details in your testimony.

4 A. No.

5 Q. So it's your recommendation -- I am
6 asking, is it your recommendation that this issue be
7 carved out of this proceeding and addressed in some
8 subsequent proceeding where the Commission can
9 investigate all the details that your proposal does
10 not address?

11 A. Well, I am not going to make a procedural
12 recommendation about carving out. I mean, my
13 testimony is I think this would be good. I think
14 this would be helpful, but procedurally --

15 Q. But you acknowledge there is no details.
16 There is no -- the Commission cannot take your
17 testimony and say we adopt Mr. Wilson's testimony,
18 DP&L will go out there -- AES Ohio will go out there
19 and impose a standby charge?

20 A. Correct.

21 Q. So there would have to be some process?

22 A. Yes.

23 Q. Not prejudging what it is, I am just
24 saying implicit in your testimony is this will have
25 to be addressed later in a different proceeding?

1 A. Well, I don't know if it could be
2 addressed in this proceeding or not.

3 EXAMINER PRICE: Fair. That's fair.
4 Redirect?

5 MR. SEMPLE: Can we have a 5-minute break
6 first?

7 EXAMINER PRICE: Yes. Let's go off the
8 record.

9 (Recess taken.)

10 EXAMINER PRICE: Let's go back on the
11 record.

12 Mr. Semple, redirect?

13 MR. SEMPLE: Your Honor, we have no
14 questions for Mr. Wilson. And we would again move
15 that what has been labeled as OCC Exhibit 1 be
16 admitted into evidence.

17 EXAMINER PRICE: Mr. Wilson, you are
18 excused.

19 Any objection to the admission of OCC
20 Exhibit 1, subject to the motions to strike?

21 MS. CATHCART: No objections, subject to
22 the motions to strike.

23 EXAMINER PRICE: It will be admitted.

24 (EXHIBIT ADMITTED INTO EVIDENCE.)

25 EXAMINER PRICE: At this time we will

1 recall Sharon Schroder to the stand.

2 Ms. Schroder, I would like to remind you
3 you are still under oath.

4 THE WITNESS: Yes, thank you.

5 EXAMINER PRICE: Mr. Sharkey, redirect.

6 MR. SHARKEY: Yes, your Honor. May I
7 approach?

8 EXAMINER PRICE: You may.

9 - - -

10 SHARON R. SCHRODER

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

13 REDIRECT EXAMINATION

14 By Mr. Sharkey:

15 Q. Ms. Schroder, I have handed you a
16 document.

17 MR. SHARKEY: And, your Honors, I would
18 ask that it be marked as AES Ohio Exhibit 8.

19 EXAMINER PRICE: It will be so marked.

20 (EXHIBIT MARKED FOR IDENTIFICATION.)

21 Q. (By Mr. Sharkey) Ms. Schroder, can you
22 identify what that document is?

23 A. Yes. These are the typical bills for
24 period 1, 2, and 3 for this proceeding.

25 Q. And can you describe generally how this

1 document was prepared?

2 A. Yes. As we finalized the Settlement,
3 various folks from my team, from the regulatory team,
4 would have calculated the costs as well as the RSC
5 credit and calculated those amounts and then used
6 those with -- along with the allocation and rate
7 design to calculate typical bills in a format that we
8 usually use.

9 Q. And then can you provide a high level
10 summary of what these typical bills show for
11 residential customers over the projected ESP IV
12 period?

13 A. Yes. As I state in my testimony, in the
14 first year, looking at the ESP IV components, for a
15 typical residential customer using a thousand
16 kilowatt-hours a month, there is a decrease of a
17 \$1.49, and then as I stated in response to one of the
18 questions from OCC counsel, in year two for that same
19 typical residential customer there is expected to be
20 an increase of 19 cents.

21 MR. SHARKEY: Thank you. Your Honor, may
22 I approach?

23 EXAMINER PRICE: You may.

24 MS. GRUNDMANN: Mr. Sharkey, can you
25 confirm the document you marked as AES Exhibit 8 is a

1 33-page document? I am just trying to make sure I
2 have pulled the right one from what you sent
3 electronically.

4 THE WITNESS: Yes. It's 1 of 33. Sorry,
5 I am looking at the first, page 1 of 33, yes.

6 MS. WHITFIELD: Excuse me, your Honor.
7 What was the previous exhibit that you were just
8 looking at, Ms. Schroder, marked? I thought you said
9 you marked it Exhibit 8 but her testimony --

10 MS. GRUNDMANN: Exhibit 1.

11 MR. SHARKEY: Her testimony is marked
12 Exhibit 1.

13 MS. WHITFIELD: Okay. Thank you.

14 Q. (By Mr. Sharkey) Ms. Schroder, I have
15 handed you a document.

16 MR. SHARKEY: And, your Honors, I would
17 ask that it be marked as AES Ohio Exhibit 9.

18 EXAMINER PRICE: So marked.

19 (EXHIBIT MARKED FOR IDENTIFICATION.)

20 Q. (By Mr. Sharkey) Ms. Schroder, can you
21 identify what that document is?

22 A. Yes. This is a copy of one of the
23 certifications I would have signed regarding and
24 relating to AES Ohio's regulatory assets and
25 liabilities. This one is dated October 12, 2017.

1 Q. And for a little context, can you remind
2 the Bench when AES Ohio's ESP III order was issued?

3 A. The order in ESP III was issued at the
4 end of October 2017 after this date.

5 Q. Can you describe generally -- let me step
6 back.

7 Is it common practice at AES Ohio to
8 prepare documents like this?

9 A. Yes. These are prepared each quarter.

10 Q. And do you sign off on these documents?

11 A. I do.

12 Q. Okay. And can you describe the general
13 process of how these documents are prepared?

14 A. How they are prepared?

15 Q. Yes.

16 A. Yes. The regulatory accounting team and
17 the regulatory affairs team along with regulatory
18 counsel drafts the description of each of the
19 regulatory assets and liabilities, and the regulatory
20 accounting team and the accounting team ensure that
21 the dollar amounts are correct.

22 And then there is a discussion among
23 those three teams with regards to the description and
24 the probability of recovery or the probability in a
25 liability case that we would be paying these back to

1 customers. And with that group discussion, as I
2 mentioned, I think, in prior testimony, that group
3 discussion and then it's signed by -- typically it's
4 signed by a controller, regulatory accounting leader,
5 director of regulatory affairs lead, and in some
6 cases, I am looking at this past one, it was general
7 counsel and the CFO also signed this one.

8 Q. Can you turn to the page that's page
9 No. 3. It looks like it is actually the fifth page
10 in the document. It has got a page No. 3 at the
11 bottom of it.

12 A. Yes.

13 Q. Okay. On pages 3 and 4, does this
14 document identify the status of the prior RCR
15 deferrals as of the date of this document?

16 A. Yes, it does. That prior RCR deferral
17 was made up of several individual components and
18 those are listed here.

19 The Retail Settlement System costs, the
20 Consumer Education Campaign is listed, the CSS Bill
21 Reformat is listed, and then on that next page the
22 Green Pricing Tariff Project, the Generation
23 Separation-Financing and Redemption Costs amount.
24 Those all make up the prior RCR.

25 Q. Then do you recall the Attorney Examiner

1 asking you a question about deferrals and you were
2 citing in response to his question a reference to the
3 CCEM reserves?

4 A. Yes, I do. It was when I was describing
5 the difference in my view of a reserve versus a
6 writeoff, and I gave an example in our SmartGrid case
7 where we have an amount of regulatory asset on our
8 books that has a reserve offsetting that amount.

9 Q. Okay. Is that reflected on page 3?

10 A. It is on page 3, the last description at
11 the bottom of that page CCEM of about 8.5 million,
12 CCEM reserve about 1.9 million, and then SmartGrid
13 rate case you can see expenses there.

14 Q. And was the Company collecting or in the
15 process of collecting that entire amount even though
16 there is a reserve even though a reserve was booked?

17 A. In the process of collecting it in 2017?

18 Q. Yes. No, I'm sorry, now presently.

19 A. Now we are, yes. We are collecting that
20 entire amount over time pursuant to the order
21 approving the Stipulation in this SmartGrid case.

22 Q. And then on cross-examination by OCC a
23 number of times you have referred to whether a
24 regulatory asset is probable for recovery. When you
25 use the word "probable," can you describe what you

1 mean?

2 A. Yes. Yesterday I described a number of
3 factors that the accounting group has advised me that
4 I should use, and it's a bit of a sliding scale and
5 not exactly precise, but they have given me the
6 guidance that I would typically look at 75 percent
7 more to be considered probable.

8 MR. SHARKEY: Thank you, Ms. Schroder.

9 Your Honor, I have no further questions.

10 EXAMINER PRICE: Mr. Proano, recross?

11 MR. PROANO: No, your Honor. Thank you.

12 EXAMINER PRICE: Any other counsel for
13 Intervenors on recross?

14 Mr. Lyons?

15 MR. LYONS: No, your Honor.

16 EXAMINER PRICE: Consumers' Counsel?

17 MS. WILLIS: Thank you, your Honor.

18 - - -

19 RECROSS-EXAMINATION

20 By Ms. Willis:

21 Q. Good morning, Ms. Schroder.

22 A. Good morning.

23 Q. One of the exhibits that your counsel
24 introduced or is seeking to introduce on redirect is
25 the bill impact analysis.

1 A. Yes.

2 Q. And you gave -- or you identified the
3 bill impact analysis for year one and year two of the
4 Stipulation. Using a residential customer using a
5 thousand kWh in year three would see what kind of an
6 increase?

7 A. \$2.07.

8 Q. That's \$2.07 per month.

9 A. Correct.

10 Q. And what page of your bill analysis would
11 that be found on?

12 A. Page 23 of 33.

13 MS. WILLIS: Thank you. No further
14 questions, your Honor. Your Honor --

15 EXAMINER PRICE: Hold on. I'm not done.

16 - - -

17 FURTHER EXAMINATION

18 By Examiner Price:

19 Q. Before you leave us, Ms. Schroder, a
20 couple of questions to clarify the impact of adopting
21 ESP IV. You count on your bill impacts, if I
22 understand correctly, the effect of the elimination
23 of the RSC.

24 A. Correct.

25 Q. You do not count in your bill impacts the

1 effect of elimination of the rate case freeze and the
2 implementation of your most recent rate increase.

3 A. That's correct. We saw that as a
4 different case is why I didn't have it here, that's
5 correct.

6 Q. That's fair. But neither of those issues
7 are contingent upon anything in ESP IV other than its
8 adoption; is that correct?

9 A. I believe that's right.

10 Q. In fact, if you did not adopt an ESP at
11 all and adopted and proposed -- were granted
12 authority to do an MRO, both of those instances the
13 RSC would fall off and the distribution rate case
14 would go into effect; is that correct?

15 A. You said the RSC would drop off and the
16 rate case would go into effect?

17 Q. Yes.

18 A. Yes, that's my understanding.

19 EXAMINER PRICE: Thank you. You are
20 excused.

21 THE WITNESS: Thank you.

22 EXAMINER PRICE: Mr. Sharkey.

23 MR. SHARKEY: Yes, your Honor. We do
24 have two exhibits to move in. That would be the two
25 I just handed to Ms. Schroder, Exhibits 8 and 9.

1 EXAMINER PRICE: And renew your admission
2 of her AES 1.

3 MR. SHARKEY: Yes. Thank you.

4 EXAMINER PRICE: Any objection to the
5 admission of AES 1, AES 8, or AES 9?

6 Seeing none, they will be admitted.

7 (EXHIBITS ADMITTED INTO EVIDENCE.)

8 EXAMINER PRICE: Ms. Willis.

9 MS. WILLIS: Thank you, your Honor. OCC
10 would move for the admission of Exhibits 5; 6; 7; 8;
11 9; 10; 11; 12; 14; 15 with respect to pages 10, 13,
12 and 14.

13 EXAMINER PRICE: Any objection to the
14 admissions --

15 MS. GRUNDMANN: Your Honor, I do have a
16 clarifying -- I don't have marked in my list here OCC
17 Exhibit 15. I only had through Exhibit 14. Can
18 somebody clarify?

19 EXAMINER PRICE: Package of e-mails and a
20 journal entry -- I believe it starts with a journal
21 entry.

22 MS. WILLIS: That was all provided
23 electronically and I also handed out copies of --

24 MS. GRUNDMANN: I am not saying you
25 didn't. I don't have it marked here, so I didn't

1 know what it was. So I am trying to make sure I had
2 my list correct. That's correct.

3 EXAMINER PRICE: Do you want to approach
4 and see what it is?

5 MS. GRUNDMANN: He says he's got it.
6 Thank you.

7 EXAMINER PRICE: Okay.

8 MR. SHARKEY: Just for clarity, the
9 motion did not include OCC Exhibit 13?

10 EXAMINER PRICE: Did not.

11 MS. WILLIS: That's correct. That was
12 the single page spreadsheet that Ms. Schroder was
13 unable to identify.

14 EXAMINER PRICE: Any objection to the
15 admission of OCC 5, 6, 7, 8, 9, 10, 11, 12, 14, and
16 15?

17 MR. PRITCHARD: Question, your Honor. I
18 believe I heard Ms. Willis say she was only moving a
19 couple pages of 15, but I did not catch the pages.

20 MS. WILLIS: That is correct,
21 Mr. Pritchard.

22 MR. PRITCHARD: Could you share what
23 pages?

24 MS. WILLIS: Sure. 10 -- these are -- I
25 will tell you what we -- instead of saying what we

1 are not admitting, I will say what we moved to admit,
2 10, 13, and 14.

3 EXAMINER SCHABO: Those are Bates stamps,
4 correct?

5 MS. WILLIS: Yes, that is the AES Bates
6 stamping.

7 EXAMINER PRICE: Any objections?

8 MR. SHARKEY: Sorry, your Honor. No. I
9 didn't realize you were waiting for me. I was
10 looking down.

11 EXAMINER PRICE: I was making sure you
12 had a chance to get there before I called the ball on
13 that.

14 Seeing no objection, OCC 5; 6; 7; 8; 9;
15 10; 11; 12; 14; and 15 Bates stamped pages 10, 13,
16 and 14 will be admitted.

17 (EXHIBITS ADMITTED INTO EVIDENCE.)

18 MS. WILLIS: Thank you, your Honor.

19 EXAMINER PRICE: At this time we will
20 take the testimony of Mr. Fortney.

21 MR. FINNIGAN: Your Honor, one more
22 question with respect to the Schroder exhibits.
23 There was an excerpt from a FERC Form 1 that was
24 introduced yesterday and we asked that the complete
25 document be introduced into the record of the case.

1 EXAMINER PRICE: Thanks for reminding,
2 Mr. Finnigan. We were -- Mr. Settineri is going to
3 admit that. Mr. Settineri.

4 MR. SETTINERI: Thank you, your Honor.
5 Yesterday I mentioned that we had discussed
6 stipulating certain exhibits.

7 EXAMINER PRICE: Oh, no. I'm sorry, not
8 Mr. Settineri, Mr. Sharkey.

9 EXAMINER SCHABO: We will come back to
10 you.

11 EXAMINER PRICE: We'll come back to you.

12 MR. SHARKEY: Yes, your Honor. We had
13 admitted an excerpt as Exhibit 6 of AES Ohio's FERC
14 Form 1 and you had ordered us to bring and admit an
15 additional copy, which I think you off the record
16 asked me to label as Exhibit 6A. And I have provided
17 a copy already previously this morning to Mr. Fortney
18 and here it is. So we would move for the admission
19 of AES Ohio Exhibit 6A.

20 (EXHIBIT MARKED FOR IDENTIFICATION.)

21 EXAMINER PRICE: Any objections?

22 MR. FINNIGAN: Yes, your Honor. We
23 object. That does not appear to be the as-filed copy
24 with the FERC. We believe that's different than the
25 as-filed copy. We would ask that a complete as-filed

1 copy be introduced into the record as 6B.

2 MR. SHARKEY: Can I have a moment, your
3 Honor? Talk to my client.

4 EXAMINER PRICE: Let's go off the record.
5 (Discussion off the record.)

6 EXAMINER PRICE: Okay. Let's go back on
7 the record.

8 At this time we will defer ruling on the
9 admission of AES 6A.

10 Mr. Settineri.

11 MR. SETTINERI: Thank you, your Honors.
12 Yesterday we mentioned stipulating certain -- into
13 evidence certain interrogatory responses and
14 admissions provided by AES. These are the
15 interrogatory responses and admissions that were
16 attached or are attached to Mr. Indukuri's testimony.

17 I would like to mark, if I may, three
18 exhibits, Constellation Exhibits 1, 2 and 3, and
19 those would be the responses, and I can go ahead and
20 mark those. Copies were provided to the Bench, the
21 court reporter, and all parties yesterday.

22 EXAMINER PRICE: It will be so marked as
23 you described.

24 (EXHIBITS MARKED FOR IDENTIFICATION.)

25 MR. SETTINERI: If I may, just for the

1 record, I'll note that Constellation Exhibit 1 are
2 objections and responses from DP&L dated February 7,
3 2023, containing responses to Interrogatory 2-29,
4 another Interrogatory 2-29, and Interrogatory 2-30.

5 Constellation Exhibit 2, objections and
6 responses from DP&L dated February 9, 2023, and that
7 contains requests -- requests for admission with
8 responses RFA 3-1, RFA 3-2, and RFA 3-3.

9 The last is Constellation Exhibit 3,
10 objections and responses from DP&L dated February 21,
11 2023, and that includes a response to Interrogatory
12 4-2

13 I would note for the record that the
14 exhibits include the cover page with objections and
15 then with the applicable interrogatory and admissions
16 that I just went through, your Honor.

17 EXAMINER PRICE: Any objection to the
18 admission of Constellation Exhibits 1, 2 and 3?

19 Seeing none, they will be admitted.

20 (EXHIBITS ADMITTED INTO EVIDENCE.)

21 EXAMINER PRICE: Now I think we are
22 prepared to take Mr. Fortney. Mr. Fortney.

23 (Witness sworn.)

24 EXAMINER PRICE: Good to see you again,
25 Mr. Fortney. Please be seated. State your name and

1 business address for the record. State your name and
2 address for the record, please.

3 THE WITNESS: Robert B. Fortney, business
4 address is 65 East State Street, Suite 700, Columbus,
5 Ohio 43215.

6 EXAMINER PRICE: Turn on your microphone,
7 please. Thank you.

8 Please proceed.

9 MS. WILLIS: Thank you, your Honor.

10 - - -

11 ROBERT B. FORTNEY

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

14 DIRECT EXAMINATION

15 By Ms. Willis:

16 Q. Good afternoon, Mr. Fortney.

17 A. Good afternoon.

18 Q. Mr. Fortney, do you have -- or let me
19 back it up.

20 MS. WILLIS: Your Honor, at this time I
21 would ask that the Testimony For Consumer Protection
22 In Opposition To The Joint Settlement And
23 Recommendation of Robert B. Fortney on behalf of the
24 Consumers' Counsel filed April 2, 2023, be marked for
25 identification purposes as OCC Exhibit No. 2.

1 EXAMINER PRICE: So marked.

2 (EXHIBIT MARKED FOR IDENTIFICATION.)

3 Q. (By Ms. Willis) Mr. Fortney, do you have
4 before you what has been marked for identification
5 purposes as OCC Exhibit No. 2?

6 A. Yes.

7 Q. And can you identify that for me, please?

8 A. It's my testimony regarding the
9 settlement in this case.

10 Q. And, Mr. Fortney, do you have any -- let
11 me strike that.

12 Do you -- was this testimony filed on --
13 on your behalf under your direct supervision and
14 control?

15 A. Yes.

16 Q. And do you have any additions,
17 corrections, or deletions to your testimony?

18 A. No, I don't.

19 Q. And, Mr. Fortney, if I were to ask you
20 the questions that were posed in your testimony filed
21 April 2, 2023, today, would your answers be the same?

22 A. Yes, they would.

23 MS. WILLIS: Your Honor, at this time I
24 would tender Mr. Fortney for cross-examination.

25 Thank you.

1 EXAMINER PRICE: Mr. Sharkey.

2 MR. SHARKEY: Yes, thank you, your Honor.

3 - - -

4 CROSS-EXAMINATION

5 By Mr. Sharkey:

6 Q. Mr. Fortney, could you turn in your
7 testimony -- Mr. Fortney, could you turn in your
8 testimony to page 37?

9 A. I'm there.

10 Q. Page 37 onto the next page 38, questions
11 53 and 54 deal with how the IIR should be allocated
12 as to residential, commercial, and industrial
13 customers, correct?

14 A. Yes, the IIR being SmartGrid basically.

15 Q. And it's true, isn't it, that you are not
16 sponsoring your own opinions there but are instead
17 relying on opinions of OCC Witness Alvarez from the
18 SmartGrid case?

19 A. I'm relying on the testimony of Alvarez
20 in the SmartGrid case to make my recommendation.

21 MR. SHARKEY: Your Honor, we would move
22 to strike since he is relying upon the witness -- the
23 testimony of a witness who is not presented here and
24 not sponsoring his own opinions for -- to be clear,
25 the motion to strike begins on page 37, line 10, and

1 extends through page 38, line 22.

2 MS. GRUNDMANN: Your Honor, may I be
3 heard on this?

4 EXAMINER PRICE: Yes.

5 MS. GRUNDMANN: I actually have a motion
6 to strike for similar reasons but that it's more
7 expansive excerpts from his testimony, for this
8 reason and others that may necessarily be made upon
9 further cross, but I would move to strike pages 4,
10 lines 26, to page 5, line 3; page 5, lines 13 to
11 15 --

12 MS. WILLIS: Your Honor, sorry. Could you
13 slow down --

14 MS. GRUNDMANN: I'll do it again. She
15 was doing the same thing. I apologize for going so
16 fast. Page 4, line 26, to page 5, line 3; page 5,
17 line 13 to 15; and then page 37, line 10, to page 39,
18 line 13, which I believe encompasses his
19 recommendations with respect to the allocation of the
20 GridSMART 1 costs in a manner contrary to what was
21 decided by the Commission in the 18-1875 case for the
22 reasons stated by Mr. Sharkey.

23 MR. SHARKEY: I join that motion, your
24 Honor.

25 MS. WHITFIELD: And Kroger joins that

1 motion as well, your Honor.

2 MS. EASLEY: As does OMA.

3 MS. COHN: As does OEG.

4 MS. GRUNDMANN: And I would further
5 reflect for the Bench that the Commission approved
6 the allocation in the 18-1875 case, and although OCC
7 appealed numerous aspects of the Commission's
8 decision in that case, it did not appeal the adoption
9 of the recommendation from the Joint Stipulation to
10 allocate gridSMART I costs based on a percentage of
11 base D, and so to the extent that Mr. Fortney
12 attempts to collaterally attack a final Commission
13 order, I believe that testimony is improper and
14 should be stricken from the record.

15 MR. PROANO: And, your Honor, OELC joins
16 the motions for the reasons stated on the record, and
17 we would add that the settlement doesn't have
18 anything to do with the allocation. Thank you, your
19 Honor.

20 EXAMINER PRICE: Ms. Willis?

21 MS. WILLIS: Thank you, your Honor. As
22 part of the ESP IV -- and I would strenuously
23 disagree with Mr. Proano. The ESP IV includes the
24 continued use of the gridSMART Phase I allocation and
25 so in this proceeding we are looking at whether

1 this -- the settlement, which would include the
2 continued use of the gridSMART Phase I allocation,
3 satisfies, as part of the justness and
4 reasonableness, satisfies the three-part test.

5 So if the continued use of the gridSMART
6 Phase I allocation violates principles and practices,
7 that is something that is extremely relevant to this
8 proceeding and must be answered if this Commission is
9 to judge the Settlement from the three-prong
10 standard, and I think that's what we are all here to
11 talk about.

12 That's what all the testimony has been
13 about, so the fact that that -- that ESP IV requires
14 the continued use would make it extremely relevant
15 for this proceeding.

16 EXAMINER PRICE: The problem you face,
17 Ms. Willis, is that you have a direct precedent on
18 this issue that you are -- did not appeal, according
19 to Ms. Grundmann, and I have not checked that myself
20 but I am taking her representation as accurate, if
21 you did not appeal, the issue preclusion kicks in,
22 and you can't contest that.

23 MS. WILLIS: Your Honor --

24 EXAMINER PRICE: To the extent this is an
25 important regulatory principle precedent, the

1 precedent has been set and is not appealable.

2 MS. WILLIS: Your Honor, the issue, you
3 know -- and I understand res judicata and collateral
4 estoppel, and those doctrines do not apply when there
5 are different cases, different facts, and different
6 parties, and these two proceedings are very much
7 different.

8 The 18-1875 proceeding had a whole lot of
9 cases involved in there. It looked at a quarterly --
10 the quarterly review of SEET. It looked at
11 SmartGrid. It looked at all kinds of things.

12 Here we are focused on one thing and
13 that's the ESP IV and whether it violates the
14 Commission's three-prong test. Collateral estoppel,
15 res judicata don't apply.

16 EXAMINER PRICE: What facts are
17 different? They increased the amount of funding from
18 SmartGrid from 18-1875 in this Stipulation.

19 MS. WILLIS: Your Honor, I don't believe
20 that they did. However, I believe -- unless I am
21 mistaken, and that issue was yanked out of the
22 Stipulation because OCC did not -- did not sign,
23 there is a provision in the Stipulation which deals
24 with the benefits to be allocated in years beyond
25 years one through four which were addressed in the

1 SmartGrid. I may be mistaken but that was in
2 numerous -- numerous documents.

3 EXAMINER PRICE: Point that out to me,
4 please. If you might be mistaken, let's be sure.

5 MS. WILLIS: Thank you. Your Honor, I
6 don't believe that it is in there. However, that
7 does not change the fact that this ESP IV has asked
8 for the continuation of the SmartGrid rider at the
9 allocation that was approved in the prior ESP, and I
10 don't believe that the Commission can -- can decide
11 that this passes the three-prong test without
12 consideration whether or not that's a violation of
13 regulatory practices and principles because it is a
14 term of the ESP IV.

15 EXAMINER PRICE: Mr. Sharkey, care to
16 respond?

17 MR. SHARKEY: Yeah, two points, your
18 Honor. First of all, I have not heard Ms. Willis
19 respond to the argument that I made that Mr. Fortney
20 is not sponsoring his own opinions in the pieces that
21 were present but is, in fact, just sponsoring
22 opinions offered by Mr. Alvarez.

23 EXAMINER PRICE: But we -- we could, if
24 we chose to, take administrative notice of Mr.
25 Alvarez's testimony. He was cross-examined and

1 apparently had an opportunity for most, if not all
2 the parties in this case to cross-examine him in the
3 GridSMART case, right?

4 MR. SHARKEY: I suppose you could take
5 administrative notice of that. I don't believe it's
6 been the Commission's practice to take administrative
7 notice of testimony entered in other cases, but I
8 suppose you could.

9 EXAMINER PRICE: We have. Trust me.

10 MR. SHARKEY: You would obviously know
11 better than me. And -- but further, as -- in light
12 of Commission precedent in the SmartGrid case
13 approving that allocation and the fact that OCC has
14 not appealed that allocation, I can confirm that
15 that's accurate, we were working on that appeal
16 recently, it seems to me OCC is barred by principles
17 of collateral estoppel, res judicata from reraising
18 that issue in this case again.

19 EXAMINER PRICE: Ms. Grundmann.

20 MS. GRUNDMANN: I would add to that, to
21 avoid a potential redundancy in having to make a
22 future motion to strike, subsequent cross-examination
23 will reveal that at Mr. Fortney's deposition that was
24 conducted I think just last week, he testified that
25 he undertook no analysis to evaluate Mr. Alvarez's

1 prior opinions, that the amount of SmartGrid costs
2 has not changed from what was approved in 18-1875
3 and, moreover, that he is aware of nothing that has
4 fundamentally changed with respect to the SmartGrid
5 case from the final decision in 18-1875 to today.

6 And so while the Commission could
7 certainly take judicial notice or administrative
8 notice of Mr. Alvarez's testimony, they would also
9 have to reflect that nothing has changed, and as a
10 result everything upon which the Commission's final
11 order was rendered in 1875 also has not changed.

12 And so to -- in essence, I believe
13 Mr. Fortney states specifically that his argument is
14 that the Commission wrongly decided 18-1875, the cost
15 allocation in 18-1875, and so because that issue was
16 not appealed it is a final order. It is an important
17 regulatory principle to apply Commission orders and
18 so this is a collateral attack on that former
19 decision and I think it has to be stricken,
20 particularly since the purpose for which it is raised
21 is to attack the three-prong test and the violation
22 of important regulatory principle or practice.

23 EXAMINER PRICE: Can you restate on page
24 37 the scope of your motion to strike?

25 MS. GRUNDMANN: Are you talking about the

1 page and line reference?

2 EXAMINER PRICE: Yes, please.

3 MS. GRUNDMANN: Yes, I can. It's page
4 37, line 10, continuing to 37 -- I'm sorry, 39, line
5 13.

6 EXAMINER PRICE: Fair enough. Thank you.

7 At this time we are going to go ahead and
8 grant the motion to strike. I don't know of any
9 reason why res judicata, collateral estoppel would
10 not apply across cases. The facts are unchanged.
11 Ms. Grundmann represents that Mr. Fortney
12 acknowledges the facts are unchanged, therefore, we
13 find that the motions to strike should be granted.

14 MS. WILLIS: Your Honor, please note my
15 objection to that.

16 EXAMINER PRICE: Your continuing
17 objection is noted. Thank you.

18 MS. WILLIS: And can we have the specific
19 references again that are stricken?

20 EXAMINER PRICE: Correct me if I am
21 wrong, page 4, line 26, to page 5, line 3; page 5,
22 line 13 to line 15; page 37, line 10, through page
23 39, line 13 including both footnotes relating to Mr.
24 Alvarez's testimony. And, Mr. Sharkey, this includes
25 your entire motion to strike; is that correct?

1 MR. SHARKEY: Yes, your Honor, it does.

2 MS. GRUNDMANN: Thank you, your Honor.

3 EXAMINER PRICE: Thank you.

4 Mr. Sharkey, please continue.

5 Q. (By Mr. Sharkey) Mr. Fortney --

6 EXAMINER PRICE: Let me ask a question.

7 Do we have any other motions to strike Mr. Fortney's
8 testimony?

9 Okay. Please proceed, Mr. Sharkey.

10 Q. (By Mr. Sharkey) Mr. Fortney, the focus
11 of your testimony, not exclusively, but the focus is
12 the ESP versus MRO test, correct?

13 A. Correct.

14 Q. And you understand that AES Ohio Witness
15 Malinak sponsors testimony on that ESP versus MRO
16 test, correct?

17 A. That's correct.

18 Q. And in general you agree with the
19 methodology used by Mr. Malinak, right?

20 A. Yes. He followed the standard
21 methodology that has been used in other ESP filings.

22 Q. You understand right now that AES Ohio
23 provides SSO service to customers via its ESP I,
24 correct?

25 A. That's my understanding, yes.

1 Q. Okay. And the price of that SSO is
2 established through an auction process, correct?

3 A. I believe so, yes.

4 Q. And you are aware that Mr. Malinak
5 assumes that the auction price under an ESP IV and
6 under a hypothetical MRO would be the same for AES
7 Ohio, correct?

8 A. Essentially the same, yes.

9 Q. Okay. Let me ask you some questions on
10 that actually. Do you know if under the MRO statute
11 in year one if 10 percent of the load would be served
12 via competitive bidding, that would happen under the
13 MRO, and 90 percent of the load would be served at a
14 prior SSO price?

15 MS. WILLIS: May I have that question
16 reread, please?

17 EXAMINER PRICE: You may.

18 (Record read.)

19 A. I did not know that.

20 Q. If I asked you to assume that would be
21 true, do you understand what it is that I am asking
22 you to assume?

23 A. You better repeat it or have it repeated,
24 please.

25 Q. I am going to ask you to assume under the

1 MRO statute in year one of the MRO the SSO price
2 would be assumed -- would be created 10 percent based
3 upon the results of an auction that would happen
4 under the MRO and 90 percent based upon the prior SSO
5 price.

6 A. I will assume that.

7 Q. Okay. So if that's the way it would
8 work, if instead of filing ESP IV AES Ohio had filed
9 for an MRO, it's prior SSO would be ESP I, right?
10 Strike that, that's a bad question.

11 Is AES Ohio's prior SSO, whether it was
12 operating under ESP IV or a hypothetical MRO, would
13 be ESP I, its current ESP, right?

14 A. That's the ESP that AES is currently
15 operating in so I would assume that would be the
16 case, yes.

17 Q. Okay. Let me -- let me ask you to assume
18 that -- further that market prices are decreasing.
19 So just as a hypothetical, I want you to assume that
20 market prices were \$70 per kWh under ESP I and \$60
21 per kWh under bidding that happened under the
22 hypothetical MRO. Does that make sense to you?
23 Prices were decreasing.

24 A. 70 cents under the ESP, 60 cents under
25 the MRO?

1 Q. Yes, yes. I said kWh, didn't I? In any
2 event, so under that scenario, 10 percent of the load
3 would be served at the 70 cent price and 90 percent
4 would be served at the prior 60 cent price, right?

5 A. Under what you are asking me to assume,
6 yes.

7 Q. Okay. So customers would have been
8 better off if my market prices were decreasing under
9 ESP IV with 100 percent competitive bidding than they
10 would have been under an MRO where only 10 percent of
11 the price is set by competitive bidding, right?

12 EXAMINER PRICE: Mr. Sharkey.

13 MR. SHARKEY: Yes.

14 EXAMINER PRICE: I feel like you are
15 leaving out of the MRO statute relevant portions that
16 would impact the witness's answer because the
17 previous Standard Service Offer is subject to
18 adjustments for prudently-incurred costs of fuel,
19 prudently-incurred purchased power costs,
20 prudently-incurred costs to satisfy energy portfolio
21 requirements, energy resource, and prudently-incurred
22 costs to comply with environmental laws. The one I
23 would like to focus on is purchased power.

24 At this point Dayton Power and Light is
25 entirely purchasing its power, so in your

1 hypothetical why wouldn't the previous price be
2 adjusted up to whatever the current -- or down,
3 whatever it is, to whatever the current auction
4 results are and it is just a wash?

5 MR. SHARKEY: Certainly it could be, your
6 Honor. It is not entirely clear where that 90
7 percent would come from because AES Ohio doesn't have
8 generation. Perhaps it purchases on the market. The
9 statute is not very clear on that subject so...

10 EXAMINER PRICE: The prudently
11 incurred -- prudently-incurred purchased power costs,
12 that's all you do right now is purchased power.

13 MR. SHARKEY: That's true. That's true.

14 EXAMINER PRICE: Would you care to
15 rephrase your hypothetical to take into account that
16 factor, I would appreciate it.

17 MR. SHARKEY: Okay.

18 Q. (By Mr. Sharkey) Let me actually ask you
19 a -- Mr. Fortney, a different question relating to an
20 assumption that market prices are increasing, okay?
21 So we have the same 70 cent rate under ESP I, but
22 the -- but market prices have increased to 80 cents
23 under an MRO. Does that make sense?

24 A. I'm pretty lost.

25 Q. I'm assuming from ESP I into an MRO --

1 into the MRO, that market prices increased from 70
2 cents to 80 cents. Does that make sense to you?

3 A. I mean, that -- that's an assumption you
4 are asking me to make.

5 Q. Okay. If I have accurately described the
6 MRO statute, would 10 percent of the load -- 10
7 percent of the load would be served at that \$1.70 MRO
8 price and 90 percent would be served at the 80 cent
9 ESP I price.

10 MS. WILLIS: Objection.

11 EXAMINER PRICE: Grounds?

12 MS. WILLIS: I don't think you have
13 accurately described the MRO statute.

14 EXAMINER PRICE: How do you believe he
15 has not accurately described --

16 MS. WILLIS: Your Honor, we just went
17 through your assumption where, you know, the MRO
18 includes purchased power costs and that's -- those
19 purchased power costs are added to the 90 percent
20 of -- in the -- under the statute would make up
21 90 percent of the MRO price.

22 EXAMINER PRICE: Objection is sustained.

23 Q. (By Mr. Sharkey) If you were a marketer,
24 would you -- and you had the option to sell
25 generation at a market price of 80 cents per kWh or

1 at a historic price of 70 cents per kWh, which would
2 you pick?

3 MS. WILLIS: Objection. I don't know
4 what the relevance there is. I'm not following that.
5 And I don't think that it has anything to do with his
6 testimony on what is more favorable in the aggregate.

7 EXAMINER PRICE: I am sure Mr. Sharkey
8 will bring this around to his testimony at some
9 point. We will give him a little bit of leeway and
10 direct the witness to answer the question.

11 A. If I were a marketer, I would prefer to
12 sell at the higher price.

13 Q. (By Mr. Sharkey) And are you aware of any
14 statute in Ohio that would compel a generation owner
15 to sell generation in Ohio at a below market price?

16 A. None that I am aware of.

17 Q. You have heard of regulatory assets
18 before, haven't you?

19 A. Yes.

20 Q. Okay. And you understand that a
21 regulatory asset is an expense that utility has
22 reported and would later, if appropriate, be entitled
23 to recover.

24 MS. WILLIS: Objection.

25 EXAMINER PRICE: Grounds?

1 MS. WILLIS: I think that's an inaccurate
2 definition of a regulatory asset. I don't agree with
3 that. I don't think it's correct.

4 EXAMINER PRICE: On redirect you can ask
5 him a question based upon your understanding of what
6 regulatory asset is. Overruled.

7 THE WITNESS: Can I have the question
8 reread, please?

9 EXAMINER PRICE: You may.

10 (Record read.)

11 A. If appropriate, yes.

12 Q. Suppose a utility is seeking to recover a
13 \$100 million regulatory asset in an ESP through a
14 rider. Do you know -- and it was approved. Do you
15 know whether the rider would terminate once that
16 reg -- regulatory asset had been fully recovered?

17 A. There again, I am not an accountant, but
18 it makes sense to me that once the regulatory asset
19 is fully recovered and whether there were carrying
20 charges on it, if all those costs were fully
21 recovered, it would seem appropriate to me that the
22 rider would terminate.

23 Q. Then let's assume the same utility, but
24 instead of operating under an ESP it's operating in
25 an MRO and it's seeking to recover that same

1 regulatory asset in a rate case, okay?

2 In that rate case you understand that the
3 Commission would allow the recovery of the deferral
4 during an amortization period, which is an assumption
5 as to how long it would take until the utility's next
6 rate case, right?

7 A. I need the question reread.

8 EXAMINER PRICE: Yes, please.

9 (Record read.)

10 A. There again, I am not an accountant. I
11 do not know how the Commission would handle rate
12 deferral in a rate case. I don't know the answer.

13 Q. (By Mr. Sharkey) You have experience in
14 designing rates to -- and have testified regarding
15 rate design, haven't you?

16 A. Yes.

17 Q. Okay. And you're familiar with deferrals
18 of regulatory assets being recovered in rate cases,
19 correct?

20 A. I know that that has happened, yes.

21 Q. Okay. And when that happens, do you know
22 whether rates are set based upon an assumption as to
23 how long it would take to recover that regulatory
24 asset?

25 A. I think that's correct, yes.

1 Q. And suppose the assumption as to how long
2 it would take to fully recover that regulatory asset
3 was four years, but the utilities, in fact, waited
4 until eight years to file its next rate case. Does
5 that assumption make sense to you?

6 A. I would think that there would be
7 something in the rider that the Commission would
8 approve that would say once the regulatory asset is
9 fully recovered, the rider ends.

10 EXAMINER PRICE: It's not a rider,
11 Mr. Fortney. He is asking if the cost to recover the
12 asset is embedded in base rates. Can I have the
13 question back again?

14 THE WITNESS: It's embedded in base
15 rates, it would be there until the next rate case,
16 yes.

17 Q. (By Mr. Sharkey) And you in your
18 experience preparing and designing rates, have you
19 never designed a rate that would in a rate case
20 terminate at some particular period of time in
21 advance of the filing of the next rate case, correct?

22 A. Not that I recall.

23 Q. Let me change subjects and ask you
24 that -- well, step back. AES Ohio provides -- AES
25 Ohio's ESP IV, in particular the Stipulation,

1 provides for a number of riders that allow AES Ohio
2 to recover its expenditures on an accelerated basis,
3 correct?

4 A. Correct.

5 Q. The DIR would be an example of one,
6 correct?

7 A. Yes.

8 Q. Okay. And you agree with me that in the
9 ESP versus MRO test, in the long run it's a wash
10 because those same expenditures could be recovered
11 under an MRO under base rates, correct?

12 A. I believe the Commission has found in the
13 past that in the long run it is a wash. It might not
14 be the exact same numbers, but they would
15 approximately be the same.

16 Q. Okay. And, in fact, when you were a
17 member of Staff, Commission Staff, you testified to
18 that effect, didn't you?

19 A. Yes, I did.

20 Q. And now that you are working for OCC,
21 you've changed your mind?

22 A. I testified that in the long run those
23 costs would be a wash; and, yes, I have changed my
24 position.

25 Q. When did you change your position?

1 A. Pretty much the last three years.

2 Q. Let me ask you some questions about
3 reliability metrics. You are aware --

4 EXAMINER PRICE: I'm sorry, Mr. Sharkey.

5 MR. SHARKEY: Yes.

6 EXAMINER PRICE: You agreed recent --
7 with Mr. Sharkey just a minute ago that in the long
8 run that it's a wash; is that correct?

9 THE WITNESS: Yes.

10 EXAMINER PRICE: How have you changed
11 your position? That's what you testified to in the
12 FirstEnergy's ESP case, 12-1230-EL-SSO.

13 THE WITNESS: Because in the short run
14 the consumer is better off financially if he doesn't
15 have to pay extra costs until a distribution rate
16 case. If there is a rider in an ESP, the rider
17 becomes effective, and the charges start coming as
18 soon as allowed by the Commission.

19 EXAMINER PRICE: So you think regulatory
20 lag is a benefit to customers and the riders take
21 away that benefit?

22 THE WITNESS: In terms of what they pay,
23 regulatory lag is a benefit to consumers, yes.

24 EXAMINER PRICE: When you prepared your
25 testimony in 12-1230-EL-SSO, you thought long and

1 hard about your testimony before you filed it, did
2 you not?

3 THE WITNESS: That was 11 years ago, but
4 I assume I did. I thought long and hard about any
5 testimony that I filed.

6 EXAMINER PRICE: Okay. And clearly,
7 based on your testimony, you were thinking in the
8 long term; is that correct?

9 THE WITNESS: I believe the testimony
10 even says long term.

11 EXAMINER PRICE: And when you were
12 testifying on behalf of Staff, you had to balance the
13 interests of all stakeholders including Company,
14 residential customers, commercial customers,
15 industrial customers, all interested stakeholders; is
16 that correct?

17 THE WITNESS: Sure, yes.

18 EXAMINER PRICE: In preparing your
19 testimony today, you thought long and hard about this
20 testimony.

21 THE WITNESS: Yes.

22 EXAMINER PRICE: But you only are
23 thinking in the short term, not the long term.

24 THE WITNESS: I'm taking the short term
25 into consideration based upon the economic

1 conditions.

2 EXAMINER PRICE: So short term is
3 outweighing the long term in your mind.

4 THE WITNESS: Yes.

5 EXAMINER PRICE: And you are only taking
6 the perspective of the residential consumer; you are
7 no longer balancing the interests of all interested
8 stakeholders?

9 THE WITNESS: I'm not sure it's just the
10 residential consumer. I think all consumers --

11 EXAMINER PRICE: But you are not here
12 representing all consumers. You are here
13 representing residential consumers.

14 THE WITNESS: That's true, yes.

15 EXAMINER PRICE: So that's who you were
16 thinking of. That's who you were thinking of,
17 residential consumers?

18 THE WITNESS: Yes, yes.

19 EXAMINER PRICE: So it's not so much
20 you've changed your mind; you've changed how you
21 approach the case?

22 THE WITNESS: Yes.

23 EXAMINER PRICE: And now you are asking
24 the Commission to overturn a precedent that's been in
25 effect for 11 years that the Commission relied upon

1 your testimony to set the precedent?

2 THE WITNESS: Lots of things have changed
3 in 11 years, Examiner Price.

4 EXAMINER PRICE: The economist says I've
5 changed my mind as the facts changed. That's what
6 you do, sir; is that right?

7 THE WITNESS: I think, as I said, I
8 changed my mind or my point of view in the last three
9 years based upon the economic hardships of whatever,
10 COVID, inflation, rising fuel costs that --

11 EXAMINER PRICE: Have you done a study of
12 the impact of economic trends on Dayton's
13 metropolitan physical area or the City of Dayton or
14 Montgomery County?

15 THE WITNESS: No.

16 EXAMINER PRICE: Nationally unemployment
17 is at near post war low; is that not correct?

18 THE WITNESS: Excuse me. Say what?

19 EXAMINER PRICE: Nationally the
20 unemployment rate is at a near post war low or is at
21 a post war low; isn't that correct?

22 THE WITNESS: The unemployment rate is
23 very low, yes.

24 EXAMINER PRICE: Whereas, do you know if
25 it is lower in Montgomery County than it was at the

1 height of COVID?

2 THE WITNESS: I do not know.

3 EXAMINER PRICE: Do you assume it's lower
4 in Montgomery County than it was at the height of
5 COVID? If the national employment rate has come
6 down, don't you assume Montgomery County has come
7 down as well?

8 THE WITNESS: I think it would be fair to
9 assume that, yes.

10 EXAMINER PRICE: When you say rising fuel
11 costs, you would agree the price of gasoline has come
12 down significantly since last spring.

13 THE WITNESS: But it's up significantly
14 from three years ago.

15 EXAMINER PRICE: Adjusted for inflation;
16 is that true? Have you looked at the numbers
17 adjusted for inflation, the price of gasoline in real
18 dollars, not nominal dollars? Have you done a study
19 as to whether the price of gasoline has gone up in
20 the last three years?

21 THE WITNESS: I haven't done a study, but
22 I buy gas. I know that three years ago I was paying
23 \$2 a gallon, and now I am paying \$4.69, or whatever
24 it is.

25 EXAMINER PRICE: You quote Gunsmoke in

1 your testimony, which was my grandmother's favorite
2 T.V. show. Sadly she passed away in 1979. What was
3 the price of gasoline in real dollars compared --
4 1979 compared to today?

5 THE WITNESS: I don't know.

6 EXAMINER PRICE: Would you assume it
7 would be higher?

8 THE WITNESS: I don't know what the price
9 of gasoline was in 1979.

10 EXAMINER PRICE: We would be coming off
11 the Iranian revolution which interrupted deliveries
12 of gasoline to the United States and crude oil to the
13 United States. 1979 were we not engaged in a period
14 of extremely high inflation?

15 THE WITNESS: When was Carter elected,
16 '76?

17 EXAMINER PRICE: Yes.

18 THE WITNESS: The inflation was very high
19 in the late '70s.

20 EXAMINER PRICE: Do you believe inflation
21 is lower today, even though it is certainly higher
22 than it has been in the last 10 years, lower today
23 than it was in '79?

24 THE WITNESS: Is lower today than it was
25 in that time frame? Yes.

1 EXAMINER PRICE: Do you know --

2 THE WITNESS: Inflation was like

3 20 percent in the late '70s.

4 EXAMINER PRICE: Have you studied whether
5 the median per capita income for the Dayton
6 metropolitan statistical area has -- is going up,
7 trending upwards?

8 THE WITNESS: I don't know that answer.
9 I can make that assumption.

10 EXAMINER PRICE: I am not asking you to
11 assume. I am asking if you studied it.

12 THE WITNESS: No.

13 EXAMINER PRICE: Because you are saying
14 you are looking at current trends, I am asking what
15 have you looked at regarding current economic trends?
16 I will --

17 THE WITNESS: I read -- we get Quips. I
18 don't know if the Commission still does that or not.

19 EXAMINER PRICE: We certainly do.

20 THE WITNESS: There isn't a day that goes
21 by that in those Quips there are people hurting.

22 EXAMINER PRICE: Absolutely. I don't
23 question that, but I guess it leads to the next
24 question, you are saying this right now time is not a
25 good time for a rate increase; is that right?

1 THE WITNESS: Yes.

2 EXAMINER PRICE: So my question is
3 since -- in the last 20 years when was a good time
4 for a rate increase from a customer's perspective?

5 THE WITNESS: During the Reagan years.

6 EXAMINER PRICE: That's not the last 20
7 years, Mr. Fortney.

8 THE WITNESS: I didn't hear --

9 EXAMINER PRICE: The last 20 years.
10 Let's go back to dawn of the deregulation, 2001.
11 When was a good time for a rate increase for
12 customers since 2001?

13 THE WITNESS: There is -- from a
14 consumer's perspective there is probably no good time
15 for a rate increase.

16 EXAMINER PRICE: Thank you. Thank you,
17 Mr. Sharkey, for your tolerance of my tangent.

18 MR. SHARKEY: Thank you, your Honor.

19 Q. (By Mr. Sharkey) Mr. Fortney, you are
20 aware that AES Ohio's reliability metrics have been
21 deteriorating, correct?

22 A. That's my understanding, yes.

23 Q. And you do know that AES Ohio has been
24 investing less and spending less on O&M than other
25 Ohio utilities, correct?

1 A. That's in Mr. Malinak's testimony,
2 spending less per kilowatt -- or per kilowatt-hour
3 than other Ohio utilities.

4 Q. Okay. And Mr. Malinak --

5 A. Except for Toledo Edison.

6 Q. And Mr. Malinak opines that one of the
7 benefits of the Stipulation in this case is that the
8 Stipulation will lead to improved reliability for AES
9 Ohio's customers, right?

10 A. Mr. Malinak, that's his -- in general,
11 yes, that's what he says.

12 Q. And it's his opinion that the improved
13 reliability will result from accelerated recovery of
14 investments through things like the DIR and the
15 SmartGrid Rider -- I'm sorry, and accelerated
16 recovery of expenses through things like the PRO and
17 the Storm Rider -- Storm Recovery Rider, correct?

18 A. I believe that's Mr. -- that's an
19 accurate representation of Mr. Malinak's opinion.

20 Q. And if you turn to page 30 of your
21 testimony, on lines 5 through 12, you -- you state
22 your disagreement with Mr. Malinak's opinions,
23 correct?

24 A. Well, the question is what the question
25 is. Even if Mr. Malinak's comparisons were relevant,

1 do they support a finding that the increased
2 investment contemplated by the programs proposed
3 under ESP IV will benefit customers, and my answer is
4 no.

5 Q. And, in fact, you say that your Exhibit
6 RBF-1 shows that, "There does not seem to be any
7 direct one-to-one connection between spending and
8 safety and reliability," correct?

9 A. Correct.

10 Q. Okay. Turn then, if you would, to RBF-1.
11 Are you there?

12 A. Yes.

13 Q. Okay. And for the six Ohio utilities, it
14 shows their SAIFI and CAIDI standards and their
15 actual performances compared to those standards,
16 correct?

17 A. Correct.

18 Q. And the footnotes to those charts show
19 that you obtained that data from various cases that
20 have been filed in front of the PUCO, correct?

21 A. That's correct.

22 Q. And you've bolded the instances in which
23 each utility's actual performance fell below the
24 applicable standard, correct?

25 A. Correct.

1 Q. And for AES Ohio over the period you've
2 showed, 2017 through 2021, there were four instances
3 in which it failed to achieve its CAIDI performance
4 metric, right?

5 A. Yes, it appears -- it appears so, yes.

6 Q. Okay. And if you look at the other five
7 Ohio utilities over the same period, there are a
8 total combined of only seven times that those
9 utilities failed to achieve their applicable
10 performance metrics, right?

11 A. That appears to be correct. Toledo
12 Edison had zero, so four other companies there are
13 seven.

14 Q. So if you take those seven violations and
15 divide by the five other utilities, that resulted in
16 an average of 1.4, correct?

17 A. I'm not sure what relevance that has but,
18 yes, 7 divided by 5 is 1.4.

19 Q. And that compares to AES Ohio's four
20 violations, right?

21 A. I don't understand the relevance of the
22 comparison, but -- but 1.4 is less than 4.

23 Q. So AES Ohio is missing its reliability
24 metrics more than every other Ohio utility and has
25 been spending less on reliability than all but one

1 Ohio utility, correct?

2 A. That's correct. And the other Ohio
3 utility is Toledo Edison, which spends less on
4 capital expenditures and maintenance and operation --
5 operation and maintenance expenses than Dayton/AES
6 Ohio, and has had zero instances where they have not
7 met the standard, which leads me to believe that
8 there is no relevance in comparing AES with other
9 Ohio utilities.

10 All Ohio utilities are different, and you
11 would expect the amount spent per kilowatt and per
12 kilowatt-hour to be different.

13 Q. If AES Ohio were able to improve -- I'm
14 sorry. If AES Ohio was able to increase its spending
15 on reliability, you would expect its reliability
16 performance and metrics to improve, wouldn't you?

17 A. One would hope that by spending more
18 money on capital expenditures and O&M that the
19 reliability standard, reliability results would
20 improve.

21 Q. And as we've discussed, the Stipulation
22 in this case includes riders that will allow AES Ohio
23 to recover its reliability expenditures on an
24 accelerated basis, right?

25 A. Yes.

1 Q. Okay. And MROs don't include that type
2 of rider so that under an MRO those costs could only
3 be recovered through a distribution rate case, right?

4 A. A distribution rate case or an emergency
5 filing.

6 Q. And you would expect reliability
7 improvements that would happen under an ESP to occur
8 faster than they would under an MRO due to the
9 accelerated recovery under an MRO -- under an ESP,
10 correct?

11 A. Well, that's -- I have said I'm not sure
12 there's a real relevance between spending and
13 improving the safety and reliability standards. As I
14 said, one would hope that they would.

15 Q. And to the extent they do, those benefits
16 would come faster under an ESP than they would under
17 an MRO, right?

18 A. In theory.

19 Q. In the ESP versus MRO test, the
20 Commission should compare the ESP to a hypothetical
21 MRO that would be approved on the same day, right?

22 A. Where does it say that?

23 Q. I am asking how you perform the test and
24 how you believe the test should be performed. Do you
25 believe that the Commission should compare the ESP to

1 a hypothetical MRO that would be approved on the same
2 day?

3 A. That's not in the statute, on the same
4 day. And I have been -- learned many times in the
5 past by trying to interpret a law. The statute says
6 what the statute says.

7 MR. SHARKEY: Your Honor, may I approach?

8 EXAMINER PRICE: You may.

9 MR. SHARKEY: Your Honor, I thought I had
10 copies of his deposition, but as it turns out, I
11 grabbed the wrong folder, but would I be allowed to
12 approach the witness and read to him from my copy of
13 the deposition?

14 EXAMINER PRICE: You may. Ms. Willis, if
15 you care to approach and read over Mr. Sharkey's
16 shoulder, you are welcome to.

17 MS. WILLIS: I'm sorry, I missed that.

18 EXAMINER PRICE: If you care to approach
19 and read over Mr. Sharkey's shoulder while he reads
20 the deposition.

21 MS. WILLIS: I have got my own copy so I
22 can follow along.

23 EXAMINER SCHABO: Mr. Sharkey.

24 MS. GRUNDMANN: Mr. Sharkey, I have a
25 copy, it does have some highlighting on it, but you

1 are welcome to have my copy if you would like it.

2 MR. SHARKEY: Thank you.

3 EXAMINER PRICE: Plenty of copies.

4 MS. WILLIS: Did you say page 40?

5 MR. SHARKEY: I apologize, page 39.

6 MS. WILLIS: 39, thank you.

7 EXAMINER PRICE: Mr. Sharkey, at some
8 point you will get a copy for the Bench?

9 MR. SHARKEY: I absolutely will. I think
10 we could give you the copy that Mr. Fortney has.

11 EXAMINER PRICE: It's fine for the next
12 seven minutes.

13 Q. (By Mr. Sharkey) So turn to page 39 of
14 your deposition, would you, please?

15 A. 39?

16 Q. Yes, please.

17 A. All right.

18 Q. Okay. Line 9 there is a question that I
19 posed to you, "But in ruling on the Companies' ESP IV
20 Application in this case and applying the ESP versus
21 MRO test, the Commission should be comparing ESP IV
22 to a hypothetical MRO that it would have approved on
23 the same day, correct?

24 "Answer: That would be the comparison,
25 yes, I believe that's correct." Did I read that

1 accurately?

2 MS. WILLIS: Objection. Your Honor, I
3 would ask that the preceding question that he asked
4 Mr. Fortney on cross-examination be read into the
5 record before ruling on whether or not this is proper
6 impeachment. I believe the words were not the same.

7 EXAMINER PRICE: Let's go ahead and read
8 the question -- preceding question aloud, please, for
9 the record -- for the benefit of the Bench.

10 (Record read.)

11 MS. WILLIS: And, your Honor, based upon
12 that question being different --

13 EXAMINER PRICE: How is it materially
14 different, counsel?

15 MS. WILLIS: Because it was premised by a
16 phrase believe -- how you believe the test to be
17 performed. I think there is several words in there,
18 if you could repeat that, Ms. Karen, the very
19 beginning of that question.

20 EXAMINER PRICE: Just read the whole
21 question again.

22 (Record read.)

23 MS. WILLIS: Your Honor, he asked how you
24 performed or how you should be performed, and that's
25 different than how the Commission should be. So I

1 think it's a different question. It's a nuance, but
2 it's clearly a different question, so I believe it's
3 improper cross or improper impeachment, and I would
4 move to strike the question and answer.

5 EXAMINER PRICE: I don't think there is
6 any material difference, No. 1. No. 2, yesterday you
7 did not repeat exactly the question from the
8 deposition, and we did not strike those, so we are
9 not going to strike Mr. Sharkey's. So overruled.

10 MR. SHARKEY: Thank you, your Honor.

11 Q. (By Mr. Sharkey) And, Mr. Fortney, new
12 question, in ruling on the Company's ESP IV
13 Application in this case and applying the ESP versus
14 MRO test, the Commission should be comparing ESP IV
15 to a hypothetical MRO that it would have approved on
16 the same day, correct?

17 EXAMINER PRICE: Mr. Fortney, please do
18 not look at your deposition transcript.

19 A. I don't know whether you are repeating a
20 previous question or asking a new question so --

21 Q. (By Mr. Sharkey) I am reading the exact
22 words I asked you at your deposition to --

23 EXAMINER PRICE: Read him a new question.

24 Q. There is -- so the question is -- strike
25 that. I am just going to move on.

1 Please turn to page 20 of your testimony.

2 EXAMINER PRICE: Before you go on,
3 Mr. Sharkey, I have a couple follow-up questions.

4 Mr. Fortney, put your deposition aside.
5 You won't need it now.

6 You, in your testimony, indicate that you
7 expect the Commission would take six months to rule
8 on an application for an MRO filed by Dayton Power
9 and Light; is that right?

10 THE WITNESS: I think that was an
11 estimate in my testimony, yes. It was going to come
12 up with a number.

13 EXAMINER PRICE: Now, the statute,
14 4928.142, directs the Commission rule in 90 days;
15 isn't that correct?

16 THE WITNESS: That may be correct. I
17 don't know.

18 EXAMINER PRICE: Well, Ms. Willis, if you
19 would like to look at this while he does, I will give
20 you a copy, an authenticated copy of 4928.142.

21 MS. WILLIS: If you give me a moment, I
22 know I have my own copy.

23 EXAMINER PRICE: I thought you might want
24 to see what I am giving him.

25 MS. WILLIS: Sure. May I approach?

1 EXAMINER PRICE: You may.

2 MS. WILLIS: Are you going to have that
3 marked as an exhibit?

4 EXAMINER PRICE: No. I am hoping it
5 refreshes his recollection. Page 2, highlighted in
6 green, last paragraph, does this refresh your
7 recollection it is a statutory requirement for the
8 Commission to rule in 90 days?

9 MS. WILLIS: We'll stipulate to that,
10 that's what the law says, your Honor.

11 EXAMINER PRICE: And the law does not
12 require the Commission to hold a hearing, does it,
13 Mr. Fortney?

14 THE WITNESS: Well, 90 days after the
15 application's filing date.

16 EXAMINER PRICE: Yeah.

17 THE WITNESS: Six months to take into
18 consideration how long it is going to take.

19 EXAMINER PRICE: Subject to rule 90 days
20 after the filing date, so the statute requires us to
21 rule within 90 days.

22 THE WITNESS: After the application's
23 filing.

24 EXAMINER PRICE: Yeah. They can file an
25 application tomorrow. Mr. Sharkey has got one in his

1 briefcase perhaps, for all we know.

2 MS. WILLIS: But they didn't. They
3 didn't file it.

4 EXAMINER PRICE: The future, tomorrow is
5 tomorrow, there is no requirement the Commission hold
6 a hearing for an MRO, is there?

7 THE WITNESS: I don't know that answer.
8 I would --

9 EXAMINER PRICE: In order to have an MRO
10 according to statute, there are three provisions,
11 correct? The utility must demonstrate that it is a
12 member of an RTO; is that correct?

13 THE WITNESS: I don't have the statute in
14 front of me.

15 EXAMINER PRICE: Yes, you do.

16 THE WITNESS: Where are we at?

17 EXAMINER PRICE: I just gave it to you.
18 An application shall detail the utility proposed
19 compliance with Division (A)(1) and demonstrate that
20 all the following requirements are met. The EDU
21 belongs to an RTO; is that correct?

22 THE WITNESS: Where are you reading from?

23 EXAMINER PRICE: (B)(1).

24 THE WITNESS: (B)(1).

25 EXAMINER PRICE: (B)(1). Let's set that

1 aside. The statute is what it is. I will ask a
2 different question.

3 Is there any reason the Commission could
4 not approve an application for an MRO in as few as 60
5 days given the statutory requirements for an MRO with
6 nothing more than a notice and comment period?

7 THE WITNESS: Within 90 days?

8 EXAMINER PRICE: 60.

9 THE WITNESS: 60?

10 EXAMINER PRICE: 60, if we did not hold a
11 hearing.

12 THE WITNESS: And -- in my testimony
13 instead of six months, it would be two months.

14 EXAMINER PRICE: And it will be at least
15 two months before we rule on this case, so it will
16 start on the same day, wouldn't they?

17 THE WITNESS: You have more faith in the
18 Commission approving an application in 60 days than I
19 do.

20 EXAMINER PRICE: I think if somebody
21 filed an MRO, we would approve it quite rapidly.

22 Thank you, Mr. Sharkey.

23 THE WITNESS: Do you want my deposition?

24 EXAMINER PRICE: No.

25 Thank you, Mr. Sharkey. You may proceed.

1 MR. SHARKEY: Thank you, your Honor.

2 EXAMINER PRICE: Actually, we are now at
3 20 after, which is our hard stop for the Commission
4 meeting at 1:30.

5 So we will go off the record at this
6 time.

7 (Thereupon, at 1:19 p.m., a lunch recess
8 was taken.)

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1 Tuesday Afternoon Session,
2 May 3, 2023.

3 - - -

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

6 Mr. Sharkey, please continue.

7 MR. SHARKEY: Thank you, your Honor.

8 - - -

9 ROBERT B. FORTNEY

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

12 CROSS-EXAMINATION (Continued)

13 By Mr. Sharkey:

14 Q. Mr. Fortney, could you turn in your
15 testimony to page 20?

16 A. 20?

17 Q. 20. Are you there?

18 A. I am there.

19 Q. Starting on line 11, you stated that two
20 things would happen if a new SSO or an MRO is
21 authorized, one of those being that the RSC will be
22 removed and the second is that rates from AES Ohio's
23 2020 rate case will be implemented, correct?

24 A. Yes.

25 Q. Okay. So let's start with the first one,

1 the RSC would be eliminated. That would happen
2 whether the PUCO approves ESP IV or a hypothetical
3 MRO, right?

4 A. Well, I had to ask that question to my
5 lawyers because I think the order in the distribution
6 rate case says that the RSC will go away once an ESP
7 is approved by the Commission. I don't think the
8 order in that distribution rate case says an MRO, but
9 I assume that it is true also for an MRO, yes.

10 Q. And if your assumption is correct, then
11 the elimination of RSC is a wash in the ESP versus
12 MRO test, right?

13 A. The --

14 Q. I will ask it again. If your assumption
15 is correct and that the RSC goes away, whether the
16 Company is under an MRO or an ESP, then that doesn't
17 affect the ESP versus MRO test in any way, right?

18 A. No, it shouldn't.

19 Q. And then as to the new distribution
20 rates, those would also be implemented whether the
21 Company was operating under ESP IV or an MRO, right?

22 A. Correct.

23 Q. Okay. So those -- that change doesn't
24 affect the ESP versus MRO test, correct?

25 A. Only when you start talking about bill

1 impacts, and then because the rate, as I have
2 indicated, for a thousand kilowatt-hour residential
3 consumer, the increase, due to the distribution case,
4 is greater than the RSC that would go away so there
5 is a bill -- bill impact.

6 Q. There is --

7 EXAMINER PRICE: But that bill impact has
8 nothing to do with ESP IV. It has to do with the
9 function of the new SSO being adopted.

10 THE WITNESS: That's true, yes.

11 EXAMINER PRICE: So my discussion with
12 Ms. Schroder earlier today was correct, right?

13 THE WITNESS: Yeah, but it doesn't -- no,
14 it doesn't have anything to do with the ESP versus
15 the MRO but it --

16 EXAMINER PRICE: It doesn't have to do
17 with the ESP at all.

18 THE WITNESS: Increased costs to a
19 customer as a result of the ESP or an MRO being
20 approved.

21 EXAMINER PRICE: But that has nothing to
22 do with an ESP. It has to do with the new Standard
23 Service Offer.

24 THE WITNESS: And I don't think I said
25 that it had anything to do with the ESP.

1 EXAMINER PRICE: But you count the bill
2 impact.

3 THE WITNESS: Pardon?

4 EXAMINER PRICE: But you do count the
5 bill impact.

6 THE WITNESS: Well, the bill impact has
7 to do with what you were questioning me about before,
8 is our residential customers are really hurting.

9 EXAMINER PRICE: Mr. Sharkey.

10 MR. SHARKEY: Thank you.

11 Q. (By Mr. Sharkey) Same page, Mr. Fortney,
12 starting on line 16, you do an analysis regarding
13 what would happen to the Company's rates as a result
14 of the distribution rates going into effect, correct?

15 A. Yes.

16 Q. And you conclude, starting at line 20 --
17 on line 21 that there would be an increase of
18 30.9 percent as a result of the distribution rates
19 going into effect, correct?

20 A. Yes.

21 Q. And it's true, isn't it, that in that
22 calculation you don't account for the fact that the
23 RSC was going to be eliminated, right?

24 A. The requirement is in base distribution
25 rates. So, no, it doesn't account for the RSC is

1 going to be eliminated.

2 Q. Turn, if you would, to page 14 of your
3 testimony.

4 A. Okay.

5 Q. Starting on line 16, you say, "Based on
6 the advice of counsel, these past generation costs
7 could not be collected in an MRO."

8 And I'm correct that you personally are
9 not sponsoring an opinion about whether OVEC costs
10 could be calculated under an MRO, and you are relying
11 in that sentence upon advice of counsel?

12 A. That's correct.

13 MS. WILLIS: Mr. Sharkey, can I have a
14 reference to the testimony? I'm sorry, I got lost.

15 MR. SHARKEY: Sure. It was page 14, line
16 16.

17 MS. WILLIS: Thank you.

18 MR. SHARKEY: You're welcome.

19 Q. (By Mr. Sharkey) I'm sorry. I didn't
20 hear the answer.

21 A. Yes, I am not expressing my own opinion.
22 I am just expressing what I was advised by counsel
23 of.

24 Q. And then the next sentence says, "And
25 past generation costs cannot be collected through a

1 distribution case."

2 Again, although that doesn't say based on
3 the advice of counsel, that sentence is also on the
4 advice of counsel and you are relying on counsel, not
5 yourself, for that conclusion, correct?

6 A. Yes.

7 Q. Turning to page 31 of your testimony.

8 A. 31?

9 Q. Correct. Are you there?

10 A. Yes.

11 Q. Okay. On line 24, you say, "The PUCO
12 should also not include any purported benefits from
13 the IIR Rider, as that Rider already exists." Did I
14 read that accurately?

15 A. Yes.

16 Q. Okay. You understand that the IIR may be
17 approved under ESP IV, but riders like the IIR are
18 not available under an MRO, correct?

19 A. Actually, that was not my understanding.
20 My understanding is that the IIR was approved in the
21 SmartGrid case and that it would continue under an
22 MRO.

23 Q. What's the basis of that understanding?

24 A. Again, based on advice of counsel.

25 Q. Turn, if you would, to page 32 of your

1 testimony. Line 11 you state, "In other words, the
2 difficult-to-quantify benefits of AES's ESP 4 that
3 have already been considered in other proceedings
4 cannot be double-counted for purposes of this
5 Electric Security Plan."

6 And then you go on to say, "Therefore,
7 any benefits resulting from the transmission" --
8 transition cost recovery rider -- "Transmission Cost
9 Recovery Rider," excuse me, I misspoke -- "the Energy
10 Efficiency Rider, the Economic Development Rider, the
11 Tax Savings Credit Rider, and the Storm Cost Recovery
12 Rider," which already -- "(which are all existing
13 Riders that are proposed to be continued) should not
14 be considered for the ESP IV more favorable in the
15 aggregate test." Did I read that correctly?

16 A. You read it correctly, yes.

17 Q. Is it your belief that all four of those
18 Riders could be approved if the Company was operating
19 under an MRO?

20 A. Yes, that's what the IIR -- it was my
21 understanding that those -- these were riders that
22 were approved in cases other than an ESP and that
23 they would be continued under an MRO.

24 Q. And what are the benefits that you think
25 are subject to being double-counted? And if you need

1 to go rider by rider, that's fine.

2 A. I am just saying that the Commission,
3 if -- if there are benefits to those riders, the
4 Commission should not consider them as a benefit of
5 an ESP.

6 Q. Turn, if you would, to page 34 of your
7 testimony.

8 A. 34?

9 Q. Yes, please. On lines 1 through 6, you
10 discuss that the MFA test should not be focused on
11 whether the ESP is more favorable to AES Ohio but
12 should be also -- which should be focused on whether
13 it is more favorable to consumers, correct?

14 A. Correct.

15 Q. Okay. You agree with me that Mr. Malinak
16 was applying the test from a consumer perspective,
17 not a utility perspective, right?

18 A. I agree that Mr. Malinak was applying the
19 test from -- in his opinion from a -- in the
20 aggregate which would include the Company as well as
21 consumers, yes.

22 Q. You're familiar with the fact that the
23 Commission uses a three-part test to evaluate
24 stipulations?

25 A. Yes.

1 Q. And the first part is whether there was
2 serious bargaining among knowledgeable, capable
3 parties?

4 A. The first part, yes, No. 1.

5 Q. And you agree the Stipulation was the
6 product of serious negotiations among knowledgeable,
7 capable parties, right?

8 A. I have no reason to doubt that.

9 Q. Let me ask you about the economic
10 development incentives in the Stipulation. You have
11 worked before in your career on cases where utilities
12 have asked for reasonable arrangements to provide
13 economic development incentives to customers,
14 correct?

15 A. Yes.

16 Q. Okay. And you do not recall one of those
17 cases lasting less than six months, right?

18 A. I don't know that for a fact.

19 Q. You are not aware of any that lasted less
20 than six months?

21 A. I couldn't name you a case that lasted
22 less than six months.

23 Q. Okay. You would agree with me that
24 businesses would prefer a response to a request for
25 economic development incentives quicker than six

1 months, right?

2 MS. WILLIS: Objection.

3 EXAMINER PRICE: Grounds?

4 MS. WILLIS: I don't know how he could
5 know what businesses would prefer. You know,
6 businesses would prefer what businesses are. He is
7 not a business, and so you are asking him to
8 speculate as to what businesses would prefer.

9 EXAMINER PRICE: Please rephrase.

10 MR. SHARKEY: Okay.

11 Q. (By Mr. Sharkey) How many of these -- how
12 many of the Economic Development Incentive cases have
13 you worked on during your career? A rough estimate.

14 A. I have no idea. When I first came to the
15 Commission in 1985, there were -- they were just
16 called applications to enter contracts and there were
17 hundreds of them.

18 Q. Okay. Were the businesses who were
19 wanting the economic development incentives eager to
20 resolve those cases quickly when you were working on
21 them?

22 A. Sure. To the degree that they were going
23 to get a decrease in their electric bill, they were
24 interested in having the contracts approved as soon
25 as possible.

1 Q. And if a business is preparing to make
2 significant investments, it would be advantageous
3 that those investments be made sooner rather than later,
4 right?

5 MS. WILLIS: Mr. Sharkey, advantageous to
6 whom? If you could clarify.

7 EXAMINER PRICE: Can I have the question
8 back again?

9 (Record read.)

10 EXAMINER PRICE: Are you posing an
11 objection?

12 MS. WILLIS: Yes.

13 EXAMINER PRICE: Overruled.

14 A. I guess I have the same question though,
15 advantageous to whom?

16 Q. (By Mr. Sharkey) Fair enough. When
17 businesses make investments, that can lead to greater
18 economic activity within the utility service
19 territory, right?

20 A. It should, yes.

21 Q. And that could lead the business itself
22 to be hiring more people and creating more jobs,
23 correct?

24 A. It should, yes.

25 Q. And one of the reasons that the

1 Commission approves economic development incentives
2 is to lead to increased economic development which
3 will benefit customers within a utility service
4 territory, correct?

5 A. As long as they met all the requirements
6 of an economic development contract.

7 Q. Let me ask you some questions about the
8 benefits the Stipulation provides. The Stipulation
9 provides for SSO auctions twice a year, correct?

10 A. I believe so, yes.

11 Q. Okay. And you agree that providing
12 auctions more regularly will mitigate risk, right?

13 A. I believe that's the goal.

14 Q. And you believe that's good, right?

15 A. Less risk is always better, yes.

16 Q. And do you understand that the
17 Stipulation con -- includes certain provisions that
18 would implement, or at least review, providing
19 pricing on -- at peak and offpeak prices?

20 A. Yes.

21 Q. You believe that's good too, don't you?

22 A. It should be, yes.

23 Q. Okay. And you are aware that the
24 Stipulation requires AES Ohio to solicit input
25 regarding its distribution maintenance plan and it

1 will focus expenditures on improving reliability and
2 promoting equity for low-income customers?

3 MS. WILLIS: May I have that question
4 reread, please?

5 EXAMINER PRICE: You may.

6 (Record read.)

7 A. That would be a benefit.

8 Q. (By Mr. Sharkey) And you are aware that
9 the Company has asked to defer certain decoupling
10 amounts that were -- in a case that's not this case,
11 but in another case.

12 A. I'm vaguely aware that they have asked
13 for decoupling deferrals, yes.

14 Q. Okay. And are you aware of whether,
15 under the Stipulation, the Company has agreed to
16 withdraw that request for deferrals and not seek to
17 recover the amounts at issue in that case?

18 A. No. I was -- I was under the
19 understanding that the Stipulation says there will be
20 no decoupling in the future, and it may have come
21 away with some of the past decoupling deferrals but
22 there are -- it's my understanding there are still
23 decoupling deferrals in the Stipulation.

24 Q. Okay. I want to focus on the part where
25 you say it may have gotten rid of some past

1 decoupling deferrals. What do you know about those
2 past decoupling deferrals?

3 A. Nothing.

4 Q. You are aware that the Stipulation
5 includes a green energy alternative for commercial
6 customers to acquire power via green energy, right?

7 A. Yes.

8 Q. And you believe that's good for
9 participating customers?

10 A. I think it's good if a customer is
11 interested in those things that that opportunity is
12 there, yes.

13 Q. And you don't see any harm from that
14 initiative to other customers, correct?

15 A. No.

16 Q. You are aware that the Tax Savings Credit
17 Rider refunds certain amounts related to the Tax Cuts
18 and Job Act to customers, right?

19 A. That would go to what we talked about a
20 while ago, that is not a benefit of the ESP, but it
21 was something that was previously approved in another
22 proceeding so the Commission shouldn't consider that
23 benefit as part of the ESP versus MRO comparison.

24 Q. Whether you are right about that or not,
25 you do agree that providing those refunds to

1 customers is a good thing?

2 A. Refunds are always good, yes.

3 Q. You are aware that the Stipulation --
4 step back.

5 You consider distributed generation to be
6 cogeneration or solar power, I believe; is that
7 right?

8 A. Do I consider?

9 Q. Yes.

10 A. Those two things would certainly be part
11 of distributive -- distributed.

12 Q. And you understand that if a commercial
13 customer implements distributed generation, that
14 could lower the need for the utility to make
15 additional distribution investments, correct?

16 THE WITNESS: Could I have that reread,
17 please?

18 EXAMINER PRICE: You may. Please.

19 (Record read.)

20 A. Yes.

21 Q. (By Mr. Sharkey) And that's a good thing
22 too, right?

23 A. Yes.

24 Q. You agree that educational outreach for
25 low-income customers regarding energy efficiency

1 programs is a good thing, right?

2 A. Yes.

3 Q. Do you agree that it's a good thing that
4 if upon receiving customer consent, AES Ohio provides
5 customer data to third-party aggregators so customers
6 can save money by participating in PJM ancillary
7 services markets, right?

8 A. Probably a good thing if the customer
9 agrees that that information be provided.

10 Q. You agree that eliminating a \$25 fee for
11 customers to be reconnected remotely is a good thing,
12 right?

13 A. A good thing and the right thing.

14 Q. And you agree that AES Ohio funding
15 shareholder dollars bill payment assistance for
16 low-income customers is a good thing, right?

17 MS. WILLIS: May I have that question
18 reread, please?

19 EXAMINER PRICE: Yes, please.

20 (Record read.)

21 MS. WILLIS: Thank you.

22 A. Yes.

23 Q. And you agree that it's good to eliminate
24 fees for customers to switch to or from a CRES
25 provider, right?

1 A. It's good for customers, yes.

2 MR. SHARKEY: Your Honor, I have no
3 further questions.

4 EXAMINER PRICE: Thank you. AES Ohio --
5 Ohio Energy Leadership Counsel.

6 MS. PROUTY: Your Honor, I didn't have
7 any questions, but I did want to enter my appearance
8 on behalf of --

9 EXAMINER PRICE: Mr. Proano did it for
10 you this morning.

11 MS. PROUTY: Great. Thank you.

12 EXAMINER PRICE: Mr. Settineri?

13 MR. SETTINERI: No, your Honor, thank
14 you.

15 EXAMINER PRICE: Mr. Dove?

16 MR. DOVE: No questions, your Honor.

17 MS. WALKE: Avery Walke. No questions.

18 EXAMINER PRICE: Sorry.

19 MR. BETTERTON: No questions for IGS.

20 EXAMINER PRICE: Ms. Grundmann?

21 MS. GRUNDMANN: Yes, your Honor, briefly.

22 - - -

23 CROSS-EXAMINATION

24 By Ms. Grundmann:

25 Q. Good afternoon, Mr. Fortney. How are

1 you?

2 A. I'm ready to go home.

3 Q. Me too. I'll try -- I'll try to be
4 pretty quick. Can you hear me okay?

5 A. Yes.

6 Q. Perfect. I want to go -- I want to
7 address just a couple of items in your testimony.
8 The first is at -- bear with me. I am trying to find
9 my notes. On page 9, lines 1 through 9.

10 I think you've had some questions both
11 from the Bench and from Mr. Sharkey, so I am just
12 going to try to address this fairly quickly. Is your
13 argument on page 9, lines 1 through 9, really focused
14 on the very unique fact that the Commission's final
15 order in the Company's distribution rate case delays
16 implementation of the rate increase until the ESP is
17 implemented? I can ask it again if you need me to.

18 A. No. I think I heard and I -- and I think
19 you stated it. What I am trying to say correctly is
20 it's OCC's opinion that delaying a starting date for
21 the distribution rate case would be a benefit to
22 customers under an -- under an MRO.

23 Q. The MRO and sort of the statutory test
24 for comparing an MRO versus the ESP, you understand
25 that that's codified by statute, correct?

1 A. Yes.

2 Q. You would agree with me that that statute
3 predates the Commission's order on the Company's
4 distribution rate case, the 20-1651, correct?

5 A. I didn't -- I'm not following that
6 question.

7 Q. What I am trying to establish is that
8 when that statutory provision was in place, that was
9 done years before the Commission issued its order in
10 20-1651.

11 A. That's correct, yes.

12 Q. And then, Mr. Fortney, I want to turn
13 back -- I know again you have already discussed it
14 some, but I want to discuss the Economic Development
15 Incentive with you again.

16 A. All right.

17 Q. Did you review the Stipulation in this
18 case prior to filing your testimony?

19 A. Yes. Certainly.

20 Q. Do you have a copy of the Stipulation up
21 there with you?

22 A. I do. That's the only other thing other
23 than my testimony that I have.

24 Q. Oh, you do have it with you?

25 A. I do have the Stipulation with me.

1 Q. Okay. Perfect. And in your testimony I
2 think that we are looking at page 39, and I am going
3 electronic here so I am toggling back and forth, but
4 if you could turn to page 39 of your direct
5 testimony.

6 A. Yes, I'm there.

7 Q. And I am going to direct you to two
8 different references there where you are talking
9 about the Economic Development Incentive,
10 specifically line 24. And then on page 40 at line 3.
11 Do you see that in both of those references you
12 describe the Economic Development Incentive as
13 applying for a term of three years?

14 A. Yes, and -- and as I realized in my
15 deposition, the definition of the Economic
16 Development Incentive in my question and answer 56
17 comes from the Application. As a matter of fact, it
18 reaches -- Footnote 25 references -- references
19 Inman's testimony.

20 Q. So I want --

21 A. And I understand that the Stipulation has
22 changed some of the terms of the Economic Development
23 Incentive, one of them being reducing the three years
24 to two years.

25 Q. Okay. So I want to kind of tease this

1 out because I believe you -- I was somewhat confused.
2 Your counsel asked you when you first took the stand
3 whether you had any corrections or revisions to your
4 testimony, and you indicated that you did not,
5 correct?

6 A. Correct.

7 Q. So you did not revise the testimony that
8 you filed in this case to accurately reflect that the
9 length of incentive provided under the EDI is for a
10 period of two years rather than three?

11 A. No, but it doesn't make any difference in
12 my ultimate recommendation whether we are looking at
13 the Application or the Stipulation.

14 Q. And it's your testimony that --

15 MS. WILLIS: Your Honor, can the witness
16 finish his answer? If you would please allow him to
17 finish it. Thank you.

18 EXAMINER PRICE: Let him finish his
19 answer.

20 MS. GRUNDMANN: Then I can move to strike
21 it. That's fine.

22 EXAMINER PRICE: Yes. Please finish.

23 Q. (By Ms. Grundmann) If you want to finish
24 your answer, that's fine.

25 A. The OCC position is that there should not

1 be any economic development program as described in
2 either the Application or the Stipulation.

3 MS. GRUNDMANN: Your Honor, I move to
4 strike everything after the witness said, "but it
5 doesn't make a difference," is I believe the
6 phraseology he used, I am simply trying to confirm
7 that he did not correct an error in his testimony
8 that he acknowledged at his deposition despite having
9 an opportunity to do so, and that's reflected and
10 should be recognized, but the rest of his answer is
11 not responsive.

12 EXAMINER PRICE: As I indicated
13 yesterday, it is my propensity to give everyone one
14 warning, and Mr. Fortney just used his. I should
15 strike that testimony, but I will not.

16 THE WITNESS: I used up my warning.

17 EXAMINER PRICE: You used up your
18 warning. Please listen carefully to counsel, answer
19 the question fully, but only that question. If there
20 is additional information you need to present, I am
21 sure Ms. Willis will ask you questions on redirect to
22 provide that information.

23 THE WITNESS: Yes, sir.

24 Q. (By Ms. Grundmann) Turning to page 40 of
25 your testimony at question 57. You describe the

1 reasonable arrangement process set out in Section
2 4901:1-38 of the Ohio Administrative Code. Do you
3 see that there?

4 A. Yes.

5 Q. And you state that each arrangement --
6 presumably each reasonable arrangement -- or let me
7 strike that.

8 It seems to me that your testimony here
9 is suggesting that customers taking advantage of the
10 Economic Development Incentives set forth in the
11 Stipulation somehow defeats the safeguards that are
12 contained in the reasonable arrangement statute. Is
13 that your testimony?

14 MS. WILLIS: Objection. That's a
15 mischaracterization.

16 EXAMINER PRICE: Why do you believe
17 that's a mischaracterization?

18 MS. WILLIS: Because she is stating that
19 you believe that customers would take advantage of
20 the situation. It does not say that in the
21 testimony. It says a streamlined process that would
22 not require PUCO approval, each arrangement would
23 defeat the purpose of the safeguards provided in the
24 law. So nothing about customers taking advantage of
25 economic development arrangements.

1 EXAMINER PRICE: Please rephrase.

2 Q. (By Ms. Grundmann) Okay. Tell me what
3 you mean by the statement a streamlined process that
4 would not require PUCO approval of each arrangement
5 would defeat the purpose of the safeguard provided in
6 that law.

7 A. It's my understanding that the program --
8 the customer and AES Ohio would come to an
9 agreement -- I believe it says that they, AES Ohio,
10 would provide on a confidential basis to the Staff
11 the agreement. But it's my understanding other than
12 that, that agreement would go -- become effective and
13 the -- I don't know what they call it any more, delta
14 revenues would start accruing for other customers to
15 pay.

16 Q. So let me direct your attention to the
17 Stipulation which I think you said you have in front
18 of you, correct? Can you turn to page 31 of the
19 Stipulation?

20 A. I'm there.

21 Q. And looking at paragraphs 1A through 1E
22 that appear on page 31. Do you see those?

23 A. Yes.

24 Q. If the Economic Development Incentive is
25 approved, you agree that we will know definitively

1 how much money a customer must invest or how much it
2 must grow its load in order to qualify for an
3 incentive under the Economic Development Incentive,
4 correct?

5 A. Who is we?

6 Q. Everyone in this room, everyone who might
7 have any interest in this particular incentive.

8 A. Well, I'm -- that's part of my problem.
9 I'm not sure when we would know that. Would we know
10 that up front, or would we have to wait until they
11 file for a change in their Economic Development
12 Rider?

13 Q. My question wasn't one of timing. It was
14 merely that we know very specifically how much money
15 must be invested or how much load must grow to
16 qualify for the incentive because it is specified in
17 subparagraphs A through E of the Stipulation on page
18 31. Do you agree with that?

19 A. Maybe I'm misunderstanding what you are
20 asking me.

21 Q. This --

22 A. Yes. Certainly in approving a contract,
23 the Company and the customer would know what level of
24 investment or what level of load growth is taking
25 place. But do -- my question is do other customers

1 and consumers know that until AES files for a change
2 in their -- in their Economic Development Rider?

3 Q. So you don't understand that a
4 \$10 million investment wouldn't be sufficient to
5 qualify for the Economic Development Incentive?

6 A. I understand that.

7 Q. So you understand --

8 MS. WILLIS: Your Honor.

9 Q. You understand that this sets forth very
10 specifically the level of investment and/or the
11 amount of load growth that must occur to qualify to
12 take advantage of the Economic Development Incentive.

13 A. I'm still having a disconnect on your
14 question. Certainly the Company and the customer are
15 going to know those facts, but does the rest -- I am
16 unclear as to other consumers and other customers
17 know that.

18 MS. GRUNDMANN: Your Honor, I would ask
19 that you direct the witness -- I have asked him three
20 times. He's continuing to answer the question of
21 when someone may or may not become aware of a
22 specific arrangement. Mine is more broadly that as
23 we sit here today, we know very specifically what a
24 customer must do to qualify. It is written in
25 subparagraphs A through E. He is answering the

1 question of when he may become aware that a specific
2 customer has elected to take advantage of the
3 incentive which is not the question I have asked him
4 three times.

5 EXAMINER PRICE: Mr. Fortney, you agree
6 that the specific thresholds for how much of a
7 discount you can get are hardwired into the
8 Stipulation, based upon the amount of investment or
9 load growth?

10 THE WITNESS: Yes. I thought I said that
11 but, yes.

12 EXAMINER PRICE: But your point is that
13 we will not know which level any individual customer
14 fits into at the time the customer applies.

15 THE WITNESS: Staff may know because they
16 are going to get --

17 EXAMINER PRICE: Consumers' Counsel will
18 not know.

19 THE WITNESS: Consumers' Counsel will not
20 know.

21 MS. WILLIS: I'm sorry. You are trailing
22 off, Mr. Fortney. You said Consumers' Counsel will
23 not know that; is that what you said?

24 EXAMINER PRICE: That's what he said.

25 MS. WILLIS: Thank you.

1 Q. (By Ms. Grundmann) What interest does
2 Consumers' Counsel have in the terms of the service
3 agreement between the Company and the customer?

4 A. At some point they are going to pay for
5 the lost revenue.

6 Q. So is it your concern whether the moneys
7 that are being allocated exceed the thresholds that
8 are set forth in the Stipulation or are somehow too
9 high? What's the relevance of the terms of the
10 service agreement itself?

11 A. At some point AES is going to apply to
12 the Commission for a change in their Economic
13 Development Rider. Now, I will also say that the
14 Stipulation provides what are probably very
15 reasonable caps to the amount customers will pay.
16 Now I lost my train of thought because I don't know
17 what the question was.

18 Q. What is the relevance -- why does OCC
19 need to have a right to review the specific service
20 agreements?

21 A. Because residential customers are going
22 to be paying something for the incentive that is
23 given to the customer.

24 Q. And you agree that you will be able to
25 participate in a proceeding where those dollars

1 sought for recovery will be at issue.

2 A. At some point, yes.

3 Q. And you will be able to challenge whether
4 those dollars should be recoverable.

5 A. At some point, yes.

6 Q. And --

7 EXAMINER PRICE: I don't think that's a
8 fair question. How often does AES Ohio update its
9 Economic Development Rider?

10 THE WITNESS: They have very few, if
11 any -- I don't know if they have any customers left.
12 I mean, they may have one or two customers left so --
13 and I don't know the answer. Annually, I would
14 think, but I don't know the answer.

15 EXAMINER PRICE: Could be annually, could
16 be biannually.

17 Q. (By Ms. Grundmann) Would you accept,
18 subject to check, that it's twice per year?

19 A. Sure.

20 Q. You also understand that the level of
21 benefit to any customer taking advantage of the
22 Economic Development Incentive is spelled out in the
23 Stipulation?

24 A. The benefits in terms of reduced rates?
25 Yes.

1 Q. What I mean, we may not know the specific
2 dollar, we know exactly how it will be calculated.

3 A. Yes, I agree.

4 Q. And that that will fluctuate on an
5 increasing level, looking at page 31, paragraphs 1A
6 through 1E, but corresponding to the level of
7 investment and/or load growth?

8 A. I agree.

9 Q. And you understand that in the case of a
10 reasonable arrangement, that there is far broader
11 opportunities to propose arrangements for Commission
12 approval.

13 A. Yes, there are different reasonable
14 arrangements with different terms and so, yes.

15 Q. Whereas the Economic Development
16 Incentive would be one specific set of incentives
17 under one specific set of terms?

18 A. That's true.

19 MS. GRUNDMANN: Thank you. Those are all
20 the questions that I have.

21 EXAMINER PRICE: Ms. Cohn?

22 MS. COHN: Your Honor, I actually have
23 just short cross. Should I use this? I am pretty
24 loud.

25 - - -

CROSS-EXAMINATION

By Ms. Cohn:

Q. Mr. Fortney, hey, how you doing? Okay.
Do you think as part of considering whether to locate
in Ohio versus another state a company might look
into whether Ohio has tariff economic development
incentives?

A. Sure, a company would -- would be wise to
do so.

Q. Yeah. So do you believe a tariffed --
tariffed Economic Development Incentives like
proposed in the Stip could make Ohio more competitive
in attracting companies to the state?

A. It could, yes.

MS. COHN: Thank you. That's all I have.

EXAMINER PRICE: OMAEG?

MS. EASLEY: No cross.

EXAMINER PRICE: Kroger?

MS. WHITFIELD: No cross, your Honor.

EXAMINER PRICE: Staff?

MR. LYONS: Yes, your Honor.

- - -

CROSS-EXAMINATION

By Mr. Lyons:

Q. Good afternoon, Mr. Fortney. How are you

1 doing?

2 A. I'm all right. Thank you.

3 Q. So in your testimony you mentioned that
4 you worked for Staff of the PUCO, is that right, up
5 until 2012?

6 A. From 1985 to 2012, yes.

7 Q. Okay. Thank you. And then you worked at
8 OCC beginning in 2015; is that correct?

9 A. It doesn't seem possible, but that's
10 correct.

11 Q. Thank you, Mr. Fortney. Now, in your
12 experience with both of those organizations, do both,
13 would it be fair to say, consider residential
14 consumers in making decisions?

15 A. Sure. When I was with the Commission, we
16 certainly considered -- tried to consider all
17 customer classes including residential. OCC focuses
18 on residential class.

19 Q. Thank you, Mr. Fortney. I would like to
20 direct your attention to testimony -- to your
21 testimony to question 6 on page 3. I see here you
22 say that "The purpose of my testimony is to explain
23 and support OCC's position and recommendations
24 protecting residential customer -- consumers as it
25 relates to the Joint Stipulation and Recommendation."

1 Now, is it correct that your own position
2 and recommendations are reflected entirely in the
3 testimony here and in your testimony today?

4 A. Can you just run the question past me?

5 Q. So when you say your position and
6 recommendations -- your position and recommendations
7 are reflected in your testimony; is that correct?

8 A. Uh-huh.

9 Q. And then OCC's broader position and
10 recommendations are reflected in other testimony; is
11 that right?

12 A. That's correct, yes.

13 Q. Okay. Are there any other sources of
14 position and recommendations that OCC has submitted
15 in this case as to what they believe the proper
16 resolution of this case would be?

17 A. Well, Mr. Morgan's testimony certainly
18 addresses the OVEC deferral costs.

19 Q. Okay.

20 A. Other than that, I am not aware of
21 anything outside of settlement discussions which
22 were -- OCC has presented their positions.

23 Q. Understood. Thank you, Mr. Fortney.
24 Now, when you did work for Staff, I guess in your
25 experience with OCC as well, you say you worked on

1 rate and tariff-related filings. Does that include
2 any ESP cases?

3 A. Any what?

4 Q. ESP cases.

5 A. Yes.

6 Q. Now, in those cases were you aware that
7 you can have competing stipulations in a case?

8 A. I'm sorry. I don't hear very well. Was
9 I aware of what?

10 Q. Of the fact that there can be multiple
11 stipulations filed on the docket in a case and the
12 Commission is under no obligation to approve just one
13 of those stipulations.

14 A. Yes. I believe there are occasionally
15 more than one stipulation filed in a case.

16 Q. Okay. Thank you. Would it be fair to
17 say that was an option in this case for OCC to
18 reflect its recommendations?

19 MS. WILLIS: Objection.

20 EXAMINER PRICE: Grounds?

21 MS. WILLIS: Relevance.

22 MR. LYONS: Your Honor, we think it's
23 relevant to the prong two of the three-part test as
24 well as the ESP versus MRO. I think it should be
25 evaluated in context.

1 EXAMINER PRICE: We will give Mr. Lyons
2 some leeway.

3 Answer the question, please.

4 THE WITNESS: I have no idea what the
5 question was. I need it reread.

6 Q. (By Mr. Lyons) Are you aware that it
7 would be an option to OCC, your employer, to file an
8 alternate stipulation in a case as a way of both
9 communicating its recommendations in the case and
10 seeing if other parties would join with its proposal?

11 A. I had never thought of that, but I -- I
12 think you're right. Yes, they could.

13 Q. Okay. Thank you, Mr. Fort -- thank you,
14 Mr. Fortney. Now, I would like to get here to the
15 more favorable in the aggregate test. That's one of
16 the main subject matters of your testimony today; is
17 that correct?

18 A. Yes. Yes.

19 Q. Okay. Now, I see here in your testimony
20 you say outright it is your conclusion that in this
21 instance the -- the ESP is less favorable in the
22 aggregate; is that correct?

23 MS. WILLIS: Mr. Lyons, could you give us
24 a specific reference?

25 MR. LYONS: Sure.

1 MS. WILLIS: Thank you.

2 MR. LYONS: One moment, your Honor. So
3 question 13 on page 6 at lines 11 and 12 in bold.

4 Q. (By Mr. Lyons) You say "I conclude that
5 the ESP produces results that are less favorable in
6 the aggregate for consumers than the expected MRO
7 results"; is that correct?

8 A. Yes, that's -- that was my overall
9 conclusion, yes.

10 Q. Okay. So that's different from saying
11 that the Company's ESP versus MRO test is incorrect;
12 is that right?

13 A. I'm sorry. I'm not following.

14 Q. So is that -- is that a different -- is
15 that a different statement than saying that
16 Mr. Malinak got the ESP versus MRO test incorrect?

17 THE WITNESS: I need the question reread.

18 (Record read.)

19 A. In part, I agree with Mr. Malinak and his
20 conclusions, but his overall conclusion that the ESP
21 was more favorable in the aggregate than the MRO I am
22 disagreeing with.

23 Q. So let me rephrase. Are you saying that
24 he performed the analysis and got it incorrect or
25 that you performed the analysis and you got it

1 correct?

2 A. I guess I am saying that he got it
3 incorrect because he includes unquantifiable benefits
4 to show that the ESP would be better than the MRO.

5 Q. Okay. Thank you, Mr. Fortney. This has
6 been discussed earlier but you mentioned on page 7
7 that one of the problems with ESP recovery is that
8 its recovery during the short term. I think this is
9 on -- well, page 7, lines 10 and 11 and then line 15.
10 You say "collecting added costs, more quickly from
11 customers is not a wash from their perspective."

12 A. That's my testimony, yes.

13 Q. Okay. Could I get you to just briefly
14 explain why that's the case?

15 A. Because under -- under an ESP with
16 riders, the rates are -- go into effect on an
17 accelerated basis. Under an MRO they would not go
18 into effect until there was a distribution rate case.

19 Q. So all else being equal, why is only a
20 rate case recovery preferable to sooner -- taking
21 into account the time value of money?

22 A. Well, I guess that goes back to my
23 discussion with Examiner Price on -- for residential
24 customers they -- the sooner they have to pay an
25 increased rate the worse off they are in the short

1 term.

2 Q. I think that answer is a bit circular.
3 You are saying in the short term, and I am saying why
4 is the short term more important than the long term
5 when it comes to this analysis taking into account
6 again the time value of money?

7 A. That goes to -- there again, that goes to
8 my discussion with Examiner Price as to our
9 residential customers suffering economic hardship
10 because of whatever, COVID, inflation, anything else.
11 I believe that in the short term the residential
12 customer would be better off not paying today, and
13 we'll just have to see what happens when the rate
14 case is filed in -- whenever.

15 Q. Thank you, Mr. Fortney. I would like to
16 turn your attention to page 8, question 3. You claim
17 that "safety and reliability benefits in the
18 utility's ESP as a result of its ability to collect
19 distribution costs from a rider under an ESP are
20 hypothetical and thus should be discounted as a
21 benefit of an ESP." What's the difference between
22 the term hypothetical and qualitative in this
23 instance?

24 A. What's the difference between a
25 hypothetical and quantitative --

1 Q. And qualitative which is a part of the
2 MRO test.

3 A. Qualitative.

4 Q. Yes.

5 A. Qual -- I don't know that I have said
6 there is a difference between hypothetical and
7 qualitative.

8 Q. Okay. So they are synonymous?

9 A. I could agree to that, yes.

10 Q. Okay. Thank you, Mr. Fortney. Looking
11 at page 14, line 12 -- actually line 17, excuse me.
12 Now, this relates to the OVEC deferral costs. You
13 call these costs past generation costs; is that
14 correct?

15 A. Based on the advice of counsel.

16 Q. Okay. Thank you. So is the source of
17 that statement entirely the advice of counsel, or can
18 you summarize something beyond the advice of counsel?

19 A. I think that Mr. Morgan describes that in
20 his testimony and in conjunction with Mr. Morgan and
21 counsel is where that statement comes from.

22 Q. Okay. Thank you. So you do believe that
23 these are past generation costs?

24 A. On the advice of counsel.

25 EXAMINER PRICE: So you have no

1 independent opinion as to whether these are -- these
2 costs are past generation costs.

3 THE WITNESS: I don't know enough of the
4 specifics of the deferral to answer that question.

5 EXAMINER PRICE: Thank you.

6 THE WITNESS: The whole OVEC concept is
7 that OVEC sells their generation into the market and
8 then whether that -- the price that they receive
9 recovers their costs or not --

10 MR. LYONS: Your Honor --

11 EXAMINER PRICE: I'm not sure he is done
12 yet.

13 MR. LYONS: Okay.

14 THE WITNESS: -- is how OVEC costs are
15 created for consumers. So it seems to me they are
16 generation-related costs.

17 EXAMINER PRICE: But I think I asked you
18 a bad question.

19 EXAMINER SCHABO: Hold on. Nobody can
20 hear Mr. Fortney so if -- Karen, could you read back
21 his answer, please.

22 (Record read.)

23 EXAMINER PRICE: I think I asked him a
24 bad question. I think I truncated my question. It
25 happens.

1 You have no independent knowledge or
2 opinion whether these past generation costs can or
3 cannot be collected through an MRO.

4 THE WITNESS: No, I have no opinion.

5 EXAMINER PRICE: Thank you.

6 MR. LYONS: Your Honor, we would move to
7 strike the statements here that relate to these being
8 past generation costs and whether past generation
9 costs are recoverable because he can't say whether
10 they are generation costs or not.

11 MS. WILLIS: Your Honor, the OVEC
12 deferrals, clearly Mr. Fortney understands the nature
13 of the OVEC deferrals. He may not understand what
14 period of time they came from, but he's -- as he
15 explained to you, they are generation costs. Yes, he
16 does not necessarily have knowledge of what periods
17 those were recovered and why they weren't recovered.
18 That is covered by our witness Mr. Morgan.

19 So he did express an opinion that these
20 are OVEC -- that he understands how OVEC generation
21 costs are created. Maybe not these ones but he knows
22 how they are created and he knows that those are
23 generation costs. I think that's good enough.

24 EXAMINER PRICE: But he said he does not
25 know when they can be collected through an MRO.

1 MS. WILLIS: That's based on advice of
2 counsel and my understanding is it's very -- very
3 much accepted practice at this Commission to allow a
4 non-attorney to give -- give his testimony based on
5 advice of counsel.

6 EXAMINER PRICE: But Mr. Lyons cannot
7 cross-examine the underlying basis of that advice
8 because you object because it's legal counsel.

9 MS. WILLIS: I think Mr. Lyons is
10 perfectly qualified to ask the questions he has been
11 asking. He has been answering them.

12 EXAMINER PRICE: I mean of you.

13 MS. WILLIS: He cannot ask them of me,
14 no, he cannot, that's correct.

15 EXAMINER PRICE: So whatever the basis
16 for your legal advice to Mr. Fortney, Mr. Lyons is
17 not -- is hamstrung, his ability to cross-examine on
18 that basis.

19 MS. WILLIS: Your Honor, this has come up
20 in many -- on many occasions including when you were
21 presiding over the Bench, and it has not been my
22 experience that that has been struck from the record
23 because a non-attorney gives -- gives an opinion
24 based on the advice of counsel.

25 EXAMINER PRICE: And you know what, I

1 have always found it odd. In all of the time I have
2 been on the Bench, I found it odd.

3 Nonetheless we will deny Mr. Lyons'
4 motion to strike, and we will give Mr. Fortney's
5 testimony its due weight when considering the record.

6 MS. WILLIS: Thank you.

7 MR. LYONS: Thank you, your Honor.

8 Q. (By Mr. Lyons) Mr. Fortney, I do have
9 some follow-up questions on the generation costs,
10 whether or not -- we can sidestep the definitional
11 issue for a moment here. Is it -- are these
12 generation costs to OVEC?

13 A. I don't have any idea what you are asking
14 me.

15 Q. So are these -- are these costs for
16 generation for OVEC?

17 A. OVEC generates electricity and sells
18 them -- sells it on the market. To produce that
19 electricity, OVEC has costs just like any other
20 generation plant.

21 Q. Okay.

22 A. If the market rate exceeds their costs,
23 then customers benefit. If the market rate is less
24 than their costs to generate, then customers pay.

25 Q. But customers of OVEC; is that right?

1 A. No, customers of utilities, the Ohio
2 utilities, AEP, Duke, AES, I've never been sure about
3 FirstEnergy, own a share of OVEC.

4 Q. Okay. Thank you, Mr. Fortney. So your
5 answer was -- okay. Understood. Mr. Fortney, you're
6 familiar with the OVEC plants being designated by the
7 Ohio legislature as something there is a national
8 security interest in. Are you aware of that?

9 MS. WILLIS: Objection.

10 EXAMINER PRICE: Grounds?

11 MS. WILLIS: Relevance.

12 EXAMINER PRICE: Overruled.

13 A. Yes, I am generally aware of OVEC,
14 although it's been a long time, but I was involved
15 with the Commission when OVEC was considered and the
16 mechanics of how customers would pay or be credited.

17 Q. Thank you, Mr. Fortney. Now, at OCC do
18 you make some general determinations about the
19 relative value of various provisions in the
20 Stipulation in order to -- for one ESP versus MRO
21 test but also to make internal decisions about a
22 stipulation?

23 A. Yes. Can you give me a reference to my
24 testimony?

25 Q. No, Mr. Fortney. I am just asking

1 your -- your personal knowledge.

2 A. There is a section in my testimony where
3 it talks about the bill impacts of various riders,
4 yes.

5 Q. Including shadow billing?

6 A. No.

7 Q. Okay. So -- so do you make
8 determinations about the value of various provisions?
9 Would shadow billing be one of them?

10 A. No.

11 MS. WILLIS: Objection.

12 EXAMINER PRICE: Grounds?

13 MS. WILLIS: Relevance.

14 EXAMINER PRICE: Mr. Lyons?

15 MR. LYONS: Yes, relevant to the ESP
16 versus MRO test.

17 MS. WILLIS: It's not part of the
18 Stipulation, your Honor. How could it be relevant?

19 EXAMINER PRICE: I don't recall the
20 shadow billing provision in the stipulation.

21 MR. LYONS: Okay. Your Honor --

22 EXAMINER PRICE: I could be wrong. I am
23 saying I don't believe.

24 MS. WILLIS: Your Honor, we would love it
25 if shadow billing was in the Stipulation. We would

1 have been on the Stipulation.

2 EXAMINER PRICE: But then we would have
3 lost the marketers.

4 MS. WILLIS: Choose your poison.

5 EXAMINER PRICE: Please continue,
6 Mr. Lyons.

7 Q. (By Mr. Lyons) Yeah. Mr. Fortney, on
8 pages 24 to 26, I'm finding the lines because we came
9 up with this question mid-cross here. You say here
10 on lines 2 through 4, "distribution rate increase to
11 customers would be delayed, and consumers would save
12 approximately \$36 million" if the ESP is rejected.
13 What's your basis for saying that?

14 A. I think the base rate increase was
15 approximately \$72 million so six months would be
16 \$36 million which would equate to \$6 million a month.

17 MR. LYONS: No further questions, your
18 Honor.

19 EXAMINER PRICE: Thank you.

20 - - -

21 EXAMINATION

22 By Examiner Price:

23 Q. Mr. Fortney, I have a couple of
24 questions. Unfortunately I am struggling to find
25 them. It means I will take as much time as I can to

1 find them.

2 You indicated that the six riders -- you
3 fault Mr. Malinak on page 12 and 13. You fault
4 Mr. Malinak's treatment of six riders, the Standard
5 Offer Rate, Transmission Cost Recovery Rate, Energy
6 Efficiency Rider, Economic Development Rider, Tax
7 Savings Credit Rider, and Regulatory Compliance
8 Rider.

9 You indicate in your testimony that
10 Mr. Malinak includes the charges and benefits under
11 those six riders, would be the same under both ESP IV
12 and hypothetical MRO, and there are no quantifi --
13 material quantifiable price differences related to
14 those riders. Is that what you say -- that's --
15 that's what Mr. Malinak says. And then in question
16 23 you are asked "Do you agree with his conclusion?"
17 You say no. The six riders in the utility's electric
18 security plan are to be collected from consumers on
19 an expedited basis under the three-year term of AES's
20 ESP. Riders are not permitted under an MRO. Is that
21 correct?

22 A. That's what it says, yes.

23 Q. And what was your basis for your
24 conclusion that riders are not permitted under an
25 MRO?

1 A. I guess that would be on the advice of
2 legal too except for riders that were previously
3 approved in a rate -- in a case other than an ESP.

4 Q. Let's be clear, line 17 you do not say
5 upon advice of counsel; is that correct?

6 A. That's correct.

7 Q. So in your experience as an expert on
8 regulatory matters, would you agree that riders that
9 have a separate statutory authority could be
10 collected under an MRO, statutory separate from the
11 ESP statute?

12 A. I don't know.

13 Q. Do you know whether there is a separate
14 statutory provision for recovery outside of the ESP
15 statute of transmission costs?

16 A. I believe there is, but I couldn't quote
17 you.

18 Q. I am not asking you to cite it. I am
19 just saying you believe there is.

20 A. Yes.

21 Q. So transmission costs recovery would be
22 the same under the ESP as the MRO.

23 A. Yes.

24 Q. Do you know whether the MRO statute
25 permits a utility to cover all costs of providing the

1 Standard Service Offer?

2 A. I do not know.

3 Q. But if there was such a statute, then the
4 costs that are Standard Offer Rate, SOR, would be the
5 same under an ESP as they are in the MRO.

6 A. The cost of what would be the same?

7 Q. The cost of providing the Standard
8 Service Offer would be currently collected under
9 Standard Offer Rate, SOR --

10 A. Yes, those costs would be the same. I
11 believe that's what Mr. Malinak said and that's what
12 I agree with, they cost -- the cost of providing --

13 Q. No. You don't agree on page 13. Lines
14 13 to 15 you say the six riders in the ESP are to be
15 collected on an expedited basis during the three-year
16 term. Then you say riders are not permitted. Then
17 you go on to say, rather, in an MRO cost -- MRO,
18 costs are assumed to be collected from consumers
19 through a base rate proceeding. And then you discuss
20 the 15-month period as opposed to three years. So
21 for at least two of those riders, Transmission Cost
22 Recovery Rider and the Standard Offer Rate, your
23 testimony today is different from what your
24 testimony -- prefiled testimony is.

25 A. Well, what I meant to say and I -- is

1 that six riders would be the same under an MRO or an
2 ESP.

3 Q. So the answer to your question 23 is
4 simply yes.

5 A. I -- probably so because those six riders
6 that are mentioned are not collected on an expedited
7 basis.

8 Q. Thank you. One more topic and then I
9 will let you go. Keep going back to your previous
10 testimony. When you testified in 12-1230-EL-SSO, you
11 were actually testifying regarding FirstEnergy's
12 Delivery Capital Recovery Rider; is that correct?

13 A. Yes, I think so, yes.

14 Q. For the purpose of your testimony today,
15 are there any material differences between AES Ohio's
16 proposed Distribution Investment Rider and the
17 Delivery Capital Recovery Rider proposed by
18 FirstEnergy?

19 A. I don't really remember what the
20 FirstEnergy rider --

21 Q. It was -- do you recall it was a
22 distribution?

23 A. There were probably -- no material
24 differences, same concept.

25 Q. Thank you. Just different initials.

1 A. Hum?

2 Q. Just different initials. Utilities do
3 this to drive us crazy, name everything differently.
4 And the Delivery Capital Recovery Rider had a cap on
5 it, annual caps; is that right? Do you recall?

6 A. I don't recall but that -- yes, I believe
7 it did.

8 Q. And the DIR proposed today has caps.

9 A. Yes, they do. In the Stipulation they
10 have a cap.

11 Q. So do you believe that in comparison --
12 and there is no cap in the statute under what can be
13 requested in a distribution rate case; is that
14 correct?

15 A. Not to my knowledge.

16 Q. Okay. So do you recall that the
17 Distribution Investment Rider provides rate
18 certainty?

19 A. Rate certainty, yes. It would provide
20 rate certainty, yeah.

21 Q. Do you believe it provides
22 predictability, the distribution rider provides
23 predictability?

24 A. Yes.

25 Q. Do you believe it -- the Rate

1 Distribution Investment Rider provides stability?

2 A. Yes.

3 Q. Do you believe the IIR which collects the
4 SmartGrid costs provides rate certainty?

5 A. I forget whether there is caps on the IIR
6 or not. To the degree there are caps, it would
7 provide rate certainty.

8 Q. And predictability?

9 A. And predictability and stability.

10 Q. And stability. And would you agree that
11 rate certainty is an important regulatory principle?

12 A. Sure.

13 Q. Would you agree that predictability is an
14 important regulatory principle?

15 A. Sure.

16 Q. Would you agree stability is an important
17 regulatory principle?

18 A. Sure.

19 EXAMINER PRICE: Thank you for your time.
20 Redirect? Would you like to go off the
21 record and consult?

22 MS. WILLIS: Yeah. I would like about 10
23 minutes, please.

24 EXAMINER PRICE: Let's go off the record
25 for 10 minutes.

1 (Recess taken.)

2 EXAMINER PRICE: Okay. Let's go back on
3 the record.

4 Ms. Willis.

5 MS. WILLIS: No further questions, your
6 Honor. Thank you.

7 Thank you, Mr. Fortney.

8 EXAMINER PRICE: Thank you, Mr. Fortney.
9 You are excused.

10 MS. WILLIS: Your Honor, at this time I
11 would move for OCC Exhibit No. 2.

12 EXAMINER PRICE: Any objections to the
13 admission of OCC Exhibit No. 2, subject to the
14 motion -- subject to the motions to strike?

15 MS. GRUNDMANN: No objection.

16 THE WITNESS: Whose deposition is this?

17 EXAMINER PRICE: I'll take it.

18 Hearing no objection, the exhibit will be
19 admitted.

20 (EXHIBIT ADMITTED INTO EVIDENCE.)

21 EXAMINER PRICE: Mr. Lyons, call your
22 next witness.

23 MR. LYONS: Thank you, your Honor. We
24 would like to call Jonathan Borer to the stand.

25 EXAMINER PRICE: Mr. Borer, please raise

1 your right hand.

2 (Witness sworn.)

3 EXAMINER PRICE: Please have a seat and
4 state your name and address for the record.

5 THE WITNESS: My name is Jonathan Borer.
6 My address is 180 East Broad Street, Columbus, Ohio
7 43215.

8 EXAMINER PRICE: Proceed, Mr. Lyons.

9 MR. LYONS: Thank you.

10 - - -

11 JONATHAN BORER

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

14 DIRECT EXAMINATION

15 By Mr. Lyons:

16 Q. Mr. Borer, can you please state your
17 position with the Public Utilities Commission?

18 A. I am a Utility Specialist.

19 Q. Okay. And you worked in the case at bar?

20 A. Yes.

21 Q. What was your role in the case at bar?

22 A. Reviewing the Regulatory Compliance
23 Rider.

24 MR. LYONS: Okay. Your Honor, may I
25 approach?

1 EXAMINER PRICE: You may.

2 Q. (By Mr. Lyons) Mr. Borer, do you
3 recognize the document in front of you?

4 A. Yes. This is my testimony.

5 Q. Can you identify it for me?

6 A. Yes. The testimony filed in this case.

7 Q. Thank you. Was this testimony prepared
8 by you or at your direction?

9 A. Yes.

10 Q. And if I were to ask you the same
11 questions in this testimony today, would your answers
12 be the same as what's contained therein?

13 A. Yes.

14 Q. Do you have any changes you would like to
15 make to this today?

16 A. No.

17 MR. LYONS: With that, your Honor, I open
18 the witness up to questioning.

19 EXAMINER PRICE: How would you like it
20 marked, Mr. Lyons?

21 MR. LYONS: Excuse me. Staff Exhibit 1,
22 your Honor.

23 EXAMINER PRICE: It will be so marked.

24 (EXHIBIT MARKED FOR IDENTIFICATION.)

25 EXAMINER PRICE: Any Intervenor's other

1 than Ohio Consumers' Counsel have questions for this
2 witness?

3 Mr. Sharkey?

4 MR. SHARKEY: No questions, your Honor.

5 EXAMINER PRICE: Mr. Finnigan.

6 MR. FINNIGAN: Thank you, your Honor.

7 - - -

8 CROSS-EXAMINATION

9 By Mr. Finnigan:

10 Q. Good afternoon, Mr. Borer.

11 A. Good afternoon.

12 Q. Mr. Borer, I would first like to turn
13 your attention to the prior RCR deferral.

14 A. Okay.

15 Q. In particular could you please take a
16 look at question and answer 8 on page 3 of your
17 testimony.

18 A. I'm there.

19 Q. Okay. Have you had a chance to review
20 that Q and A?

21 A. I have.

22 Q. Was the prior RCR deferral part of the
23 regulatory compliance writing which was approved in
24 the ESP III case?

25 A. I believe it was the previous RCR.

1 Q. And that's why you have the reference at
2 line 6 through 8 in your testimony that these amounts
3 were deemed appropriate for recovery and partially
4 recovered in the Company's former Regulatory
5 Compliance Rider. Were you referring to the ESP III
6 case when you said that?

7 A. Yes.

8 Q. Was there also a Regulatory Compliance
9 Rider that was part of the ESP I case?

10 A. I'm not aware of one.

11 Q. When the -- or strike that.

12 Are you aware that at some point the
13 Company withdrew from ESP III?

14 A. Yes.

15 Q. Approximately when did that occur?

16 A. Late December 2019.

17 Q. And what's your understanding of how that
18 impacted the Company's ability to collect the prior
19 RCR costs when it withdrew from the ESP III?

20 A. I assume that the rider itself
21 terminated.

22 Q. What would the impact have been on the
23 accounting deferral on the Company's books?

24 A. I think that might be unknown. I don't
25 know if it would have necessarily had an impact on

1 the deferral on the Company's books.

2 Q. When the Company withdrew from ESP III,
3 did that make its collection of the prior RCR cost in
4 the deferral less probable than 75 percent?

5 A. I think that would necessarily be true
6 because it would go from 100 percent probability of
7 recovery or thereabouts to something less than that.

8 Q. In fact, zero at that point, right?

9 A. I don't know if I would agree with that.
10 I don't know if it didn't prohibit future recovery of
11 the amounts, so I don't know if it would necessarily
12 have gone to zero. It would have gone to 100 percent
13 to something less than 100 percent is what I can say.

14 Q. Less than 75 percent?

15 A. I can't quantify it.

16 Q. What factors would have existed at the
17 time the Company withdrew from the ESP III that might
18 have made its recovery of the prior RCR costs
19 probable even though it lost that collection
20 mechanism?

21 A. Perhaps recovery was authorized. There
22 was no prohibition to future recovery.

23 Q. When you say recovery was authorized,
24 what do you mean?

25 A. That as part of the order in the ESP case

1 and then subsequent order in the rider filing that I
2 cite, that the Company was permitted to recover those
3 amounts.

4 Q. Okay. But it lost its ability to collect
5 it when the collection mechanism went away when it
6 withdrew from ESP III; isn't that correct?

7 MR. LYONS: Objection, your Honor. These
8 call for a legal conclusion about the ability to
9 collect the commission.

10 Q. (By Mr. Finnigan) Based on your
11 understanding.

12 EXAMINER PRICE: I'm sorry. I thought
13 you were asking questions regarding accounting
14 standards.

15 MR. FINNIGAN: Yes, your Honor.

16 EXAMINER PRICE: Not legal conclusions.

17 MR. FINNIGAN: That's correct.

18 EXAMINER PRICE: Overruled.

19 A. I characterize it as they lost the
20 mechanism to recover it but not necessarily the
21 ability to recover it.

22 Q. Okay. What ability did they have at that
23 time when the mechanism went away?

24 MR. LYONS: Objection, your Honor. This
25 definitely calls for the PUCO -- it does not -- it is

1 not asking about accounting principles now.

2 EXAMINER PRICE: Can I have the question
3 back, please.

4 (Record read.)

5 EXAMINER PRICE: He can answer to the
6 extent he knows.

7 A. I don't know.

8 Q. If the Company's ability to collect the
9 prior RCR costs was less than 75 percent certainty at
10 that time, what would have been the proper accounting
11 treatment?

12 A. In what context? Are you referring to
13 U.S. GAAP accounting or regulatory accounting?

14 Q. Regulatory accounting.

15 A. It would be conceivable they could keep
16 the asset on their books in the context of regulatory
17 accounting.

18 Q. Isn't there a principle under Accounting
19 Standards Codification 980 that a deferral must have
20 a 75 percent or greater probability of recovery to be
21 considered a regulatory asset?

22 A. So that's U.S. GAAP and technically the
23 Accounting Standards Codification don't dictate a
24 percentage. It's generally understood to be
25 75 percent, but they don't -- so I disagree that they

1 prescribe 75 percent specifically.

2 Q. And is there a standard promulgated under
3 ASC 450 which is generally accepted to create a
4 75 percent or greater probability of recovery as the
5 threshold requirement for recognizing a regulatory
6 asset?

7 A. So I don't have it memorized, but I don't
8 believe that they -- it's characterized as a
9 percentage anywhere. I think it's more probable than
10 not is the terminology they use, but it's generally
11 understood to mean 75 percent. I might be nitpicking
12 this right now.

13 Q. Okay. So within the accounting community
14 75 percent is generally accepted as the threshold for
15 determining whether an expense can be treated as a
16 regulatory asset.

17 A. Where that regulatory asset can be
18 recorded as an asset on their financial reporting for
19 U.S. GAAP purposes.

20 Q. And doesn't the Commission Staff also
21 follow the standards of ASC 980 in reviewing
22 accounting deferrals when utilities ask for approval
23 to record a deferral?

24 A. It's hit or miss. I wouldn't say we --
25 it's the first thing we evaluate. When evaluating a

1 request for a deferral, we look at the application
2 and do a six-part test. We don't exactly consider
3 the Accounting Standards Codification on whether or
4 not to recommend approving or denying the deferral.

5 Q. Is ASC 980 one of the accounting
6 standards the Commission Staff typically applies when
7 evaluating to recommend approval for a regulatory
8 asset?

9 A. Typically, no.

10 Q. Assume there's a utility which has a
11 regulatory asset recorded on its books and at some
12 point in time the --

13 MR. LYONS: Objection, your Honor. Calls
14 for an assumption.

15 EXAMINER PRICE: He hasn't finished his
16 question yet.

17 MR. LYONS: Okay. Well.

18 EXAMINER PRICE: Finish your question,
19 Mr. Finnigan.

20 Q. (By Mr. Finnigan) Mr. Borer, under
21 Generally Accepted Accounting Principles, what is
22 your understanding as to how a company should treat a
23 regulatory asset on its books once the possibility of
24 recovery goes below 75 percent?

25 A. We would need to determine if perhaps an

1 impairment or a reserve or some action would need to
2 be taken to account for reporting or disclosing the
3 less than 75 percent probability in its financial
4 reports to shareholders.

5 Q. And would another action be to charge the
6 cost off as an expense, as a current expense, as
7 opposed to continuing to capitalize it as an asset?

8 A. It can be charged to expense for a
9 variety of ways. I believe that with -- you could
10 write it off and charge it to expense, or you can
11 recognize it as an expense by creating a reserve
12 against it, so a writeoff is not necessarily the only
13 option.

14 Q. Okay. Now, I would like to turn your
15 attention to the decoupling deferral. And in
16 particular could you take a look at question 5 and Q
17 and A 13 of your prefilled testimony.

18 A. You said question 5.

19 Q. Question 13 on page 5.

20 A. I'm there.

21 Q. There you say that the decoupling
22 deferral amount consisting of two components, one of
23 which is deferred revenues; is that correct?

24 A. I do use the term revenues.

25 Q. I'm sorry. What did you say?

1 A. I use the term revenues.

2 Q. Yes. Okay. And the amount of the
3 deferred revenues is \$13,054,188?

4 A. That's the amount that I label as
5 deferred revenues.

6 Q. And what is the time period covered by
7 those deferred lost revenues?

8 A. So I don't call them lost revenues, but
9 the time period is identified there, January 1, 2019,
10 through December 18, 2019.

11 Q. Now please turn your attention to Q and A
12 15 on the same page.

13 A. I'm there.

14 Q. There you describe decoupling of revenues
15 from another case; is that correct?

16 A. I describe a decoupling deferral in
17 another case.

18 Q. And that case is 20-140-EL-AAM?

19 A. Correct.

20 Q. One distinction between the two cases is
21 the time period covered by the deferral; isn't that
22 right?

23 A. What are the two cases?

24 Q. The present case and then the case that
25 we just mentioned in your testimony, the

1 20-140-EL-AAM. Just trying to find out whether those
2 cases both involve decoupling revenue deferrals but
3 different time periods.

4 A. I'm sorry. Could you repeat the
5 question?

6 Q. Sure. I want to ask you the difference
7 between the decoupling deferral in the present case
8 and the decoupling deferral in Case No.
9 20-140-EL-AAM. What's your understanding of the
10 differences between the decoupling deferrals in both
11 cases?

12 A. So the simple answer -- or one simple
13 difference is that they deal with different time
14 periods. They also deal with different
15 circumstances, that the 20-140 case deals with
16 deferred amounts after the withdrawal from ESP III
17 where there was no decoupling rider in place at that
18 time. Off the top of my head, those are two of the
19 big differences I can think of.

20 Q. Would one similarity between the two
21 cases be that in both instances the decoupling
22 deferral dealt with deferred revenues?

23 A. I think there is some nuance to the
24 deferred or as you label them -- I guess label them
25 deferred revenues that's at issue, that the amounts

1 from the \$13 million from January 1, 2019, through
2 December 18, 2019, I see those as a deferral of an
3 undercollection of what would have been otherwise
4 recovered during the Company's decoupling rider. So
5 I do think that it isn't quite as simple to say that
6 they both deal with the same deferred revenues, or
7 the nature of those deferred revenues is the same.

8 Q. Okay. And keep in mind I am not asking
9 you how the deferred revenues arose or how they were
10 created or came into existence. I am simply asking
11 you the subject matter of the deferral in both cases
12 had to do with deferred revenues; is that right?

13 MR. LYONS: Objection, asked and
14 answered.

15 EXAMINER PRICE: Can I have the question
16 back.

17 (Record read.)

18 EXAMINER PRICE: Overruled.

19 A. I think it is important to identify the
20 nuances and the differences because it's -- I
21 wouldn't simply say they deal with the same -- I
22 guess I wouldn't simplify it. They do both deal with
23 deferred revenues. I think the nuance is important.

24 Q. Well, please do explain what the nuances
25 are but before you do that, just answer my question,

1 if you would, please, that were deferred revenues
2 involved in both cases, that is, the present case and
3 the 20-140 case.

4 A. Yes.

5 Q. And then please explain what the nuances
6 were.

7 A. I believe I already did.

8 Q. Have you reviewed the file in the 20-140
9 case?

10 A. Yes.

11 Q. Did you work on the case?

12 A. Yes.

13 Q. At the time it was in progress?

14 A. Yes.

15 Q. What was your role?

16 A. I assisted in evaluating the Company's
17 request in reviewing responses to Data Requests and
18 helping develop Staff's recommendation, helped with
19 developing testimony, things like that.

20 Q. You mentioned in your prefiled testimony
21 you are a Utility Specialist in the Accounting and
22 Finance Department of the Rate Analysis Department.
23 Is that the same position you held during the time
24 that the 20-140 case was in progress?

25 A. I was promoted since then.

1 Q. What was your position at that point?

2 A. Utility Specialist I. I am a Utility
3 Specialist II now so.

4 Q. In the same department?

5 A. Yes. That was -- yes.

6 Q. And when you worked on the 20-140 case,
7 to whom did you report?

8 A. At the time David Lipthratt. I can't
9 remember. We had a higher in between then who -- if
10 he was there or not, but I believe at the time it was
11 David Lipthratt.

12 Q. And you were talking about the work you
13 performed on the 20-140 case. Was one of those
14 things that you did to help develop the Staff's
15 recommendation on the Company's Application?

16 A. Yes.

17 Q. And are you -- do you recall that there
18 was a Staff review and recommendation filed in that
19 case?

20 A. Yes.

21 Q. Did you have any role in preparing that?

22 A. Yes.

23 Q. What role did you play?

24 MR. LYONS: Objection, your Honor. I
25 think the typical practice is the Staff Report speaks

1 for itself, kind of how the sausage is made isn't
2 relevant so much as what the Staff Report says
3 itself.

4 EXAMINER PRICE: Well, actually the
5 practice is that they could subpoena anybody who
6 worked on a Staff Report but that's not necessary
7 here because he is right here. So overruled.

8 A. I worked with a team to develop the
9 recommendation, analyze the Company's request, look
10 at the numbers, and brainstorm what to recommend.

11 Q. You said you worked with a team. Who was
12 the leader of the team?

13 A. David Lipthratt.

14 Q. And did you mention he was your
15 supervisor at that time?

16 A. Correct.

17 Q. Yeah. Did you agree with the
18 recommendations that were made in that Staff review
19 and recommendation?

20 EXAMINER PRICE: Don't answer that
21 question. That's going too far, Mr. Finnigan. They
22 presented a Staff Report that was a result of a team
23 effort.

24 Q. (By Mr. Finnigan) Did the Staff Review
25 and Recommendation in that case reflect what the

1 Staff's usual practices and policies were in
2 reviewing deferral requests?

3 MR. SHARKEY: I am going to object, your
4 Honor. I don't know how the Staff Report in that
5 case is relevant. The Company in -- in the
6 Stipulation has agreed -- has agreed not to seek to
7 recover the -- has agreed to withdraw and not to seek
8 to recover the decoupling amounts that were sought to
9 be deferred in the case. I would move to strike as
10 entirely irrelevant.

11 EXAMINER PRICE: Mr. Finnigan.

12 MR. FINNIGAN: Your Honor, we feel it is
13 highly relevant. Both cases involve deferred
14 revenues, and so the question is what was the Staff's
15 customary practice and policy in dealing with
16 deferrals that involved deferred revenues as a -- as
17 opposed to deferred costs. We believe the treatment
18 of the two is somewhat different, and we think that
19 there is a line of questioning here that is important
20 to this case to determine whether the Staff followed
21 its usual practices and principles in handling the
22 deferral in this case as compared to the one in that
23 case.

24 EXAMINER PRICE: We'll give Mr. Finnigan
25 some leeway but not too much.

1 MR. FINNIGAN: May the last question be
2 read back, please?

3 EXAMINER PRICE: Yes, please.

4 (Record read.)

5 A. So typically with a deferral application,
6 the Staff Review and Recommendation would include
7 a -- an evaluation of the deferral within the context
8 of a six-part test. As part of the Staff review in
9 that case, we do not do the six-part test.

10 Q. You did not do it?

11 A. As part of the Staff Review and
12 Recommendation, I don't believe we did. I don't have
13 exact recommendations. I know the six-part test did
14 come up at some point during that case, but I don't
15 believe it was a part of the Staff Review and
16 Recommendation.

17 Q. Did Mr. Lipthratt refer to it in his
18 testimony in that case?

19 A. I believe he did.

20 Q. Did you help prepare that testimony?

21 A. Yes.

22 Q. Did his testimony reflect what Staff's
23 usual practices and policies were in reviewing
24 deferral applications at that time?

25 MR. SHARKEY: Your Honor, I would renew

1 my relevancy objection. I don't think any of this is
2 relevant to this case, what Mr. Lipthratt said in
3 that other case, given that Company's withdrawn its
4 request to defer those amounts and recover them.

5 EXAMINER PRICE: I believe Mr. Finnigan's
6 position is Staff's position -- Mr. Finnigan's claim
7 is that Staff's position is inconsistent in the
8 Stipulation vis-a-vis what happened in that other
9 case. He is certainly entitled to explore prior
10 inconsistent statements.

11 MR. FINNIGAN: Thank you, your Honor.

12 Q. (By Mr. Finnigan) Mr. Borer, would you
13 like me to reask the question?

14 A. Yes, please.

15 Q. Did the position taken in the Staff
16 Review and Recommendation in that case reflect the
17 Staff's policies and practices for reviewing deferral
18 applications at that point in time?

19 A. Could you clarify what you mean by
20 policies and practices?

21 Q. Sure. I am just asking whether at the
22 time you reviewed the deferral application in that
23 case, the 20-140, you applied whatever the Staff's
24 usual practices were, your accounting practices in
25 reviewing that deferral request.

1 A. I believe so.

2 Q. Has the Staff's usual practices for
3 reviewing accounting deferrals changed since the time
4 of that case to the present date?

5 A. I wouldn't say there has been material
6 changes.

7 MR. FINNIGAN: Your Honor, may I approach
8 the witness?

9 EXAMINER PRICE: You may.

10 MR. FINNIGAN: Your Honor, I would ask
11 that the document I placed before the witness be
12 marked as OCC Exhibit 16 for identification purposes.

13 EXAMINER PRICE: So marked.

14 (EXHIBIT MARKED FOR IDENTIFICATION.)

15 Q. (By Mr. Finnigan) Mr. Borer, you have a
16 document that's been placed before you, and it's
17 marked as OCC Exhibit 16. Could you explain what
18 that is, please?

19 A. I don't have a document in front of me.

20 Q. That was the most important part. Sorry
21 about that. Can you identify that document OCC
22 Exhibit 16 as the Staff Review and Recommendation
23 from the 20-140 case?

24 A. That does appear to be the case.

25 Q. Now, please turn to page 3 of that

1 document. Read the first four or five paragraphs at
2 the top of the page.

3 A. Okay. I've read them.

4 Q. Does this indicate to you whether Staff
5 did follow Accounting Standards Codification or ASC
6 980 in reviewing this deferral request?

7 A. We had used that code section in
8 evaluating that deferral request.

9 Q. You did, correct?

10 A. I'm sorry. What was the question?

11 Q. Does this indicate to you on page 3 that
12 Staff did follow ASC 980 in reviewing the deferral
13 request in that case?

14 A. We used and tried applying that code
15 section in that case.

16 Q. Now, ASC 980 is promulged by the
17 Financial Accounting Standard Board; is that correct?

18 A. That's correct.

19 Q. And it's sometimes referred to as FASB
20 980 or ASC 980; is that correct?

21 A. I generally have seen it referred to as
22 ASC 980.

23 Q. But sometimes some people refer to it as
24 FASB 980? Have you ever seen anybody use that
25 reference?

1 A. I haven't that I recall.

2 Q. And explain what ASC 980 is.

3 A. It's specific standards generally. So
4 980 is actually a bigger code section for entities'
5 specific rules and regulations. There's ASC 980
6 specifically for regulated operations. There's ASC
7 980 for airlines and entertainment industries. But
8 this -- I guess I would say that this is for
9 regulated operations.

10 Q. Like utilities?

11 A. Correct.

12 Q. And what kind of accounting practices
13 does ASC 980 provide guidance for for regulated
14 utilities?

15 A. I maybe summarized it as how to -- or
16 spot recognize and respond to rate actions of
17 regulators, for example, if and how to record
18 regulatory assets.

19 Q. Now, do you see the section of the report
20 on page 3 that says "Staff Review"?

21 A. Yes.

22 Q. Now, dropping down to the middle of the
23 page, see the three bullet points there?

24 A. Yes.

25 Q. It says "Per ASC 980-605, the regulated

1 utility shall recognize the additional revenue if all
2 of the following conditions are met," and then it
3 lists three bullet points; is that right?

4 A. That's correct.

5 Q. The last bullet point is that "The
6 additional revenues will be collected within 24
7 months following the end of the annual period in
8 which they were recognized"; is that correct?

9 A. That's correct.

10 Q. When were the deferral amounts recognized
11 in the present case?

12 A. This deals with revenue recognition and
13 the timing of the recognition of revenues, not the
14 timing of recognition of a deferral. That I would
15 put the emphasis on the utility shall recognize the
16 additional revenues and not recognize the deferral of
17 additional revenues.

18 Q. Didn't the Staff take this into account
19 in determining whether to recommend the creation of
20 the deferral in that case?

21 A. We did.

22 Q. Okay. Now, turning to the bottom of the
23 page -- well, strike that.

24 I want to turn now to Mr. Lipthrott's
25 testimony in that case.

1 MR. FINNIGAN: Your Honor, may I approach
2 the witness with another exhibit?

3 EXAMINER PRICE: You may.

4 MR. FINNIGAN: Your Honor, I would ask
5 that that document be marked as Exhibit 17 for
6 identification purposes.

7 EXAMINER PRICE: So marked.

8 (EXHIBIT MARKED FOR IDENTIFICATION.)

9 MR. FINNIGAN: And, your Honor, may I
10 just make a statement for the record? This is an
11 excerpt from the testimony in that 20-140 case. The
12 hearing transcript was filed in the docket of the
13 case. However, our intention was only to get the
14 testimony of Mr. Lipthratt. The hearing involved
15 other witnesses. However, we did not want to include
16 those witnesses' testimony in our exhibit here.

17 So what this document represents is it
18 represents Mr. Lipthratt's direct prefiled testimony
19 and then the cross-examination of Lipthratt as well
20 as the introductory remarks by the Attorney Examiners
21 and the closing remarks.

22 So that's what the document represents.
23 I just wanted to make clear for the record that we
24 are not purporting that this is a complete transcript
25 of the one that's on file in the Commission's docket.

1 MS. GRUNDMANN: May I ask a clarifying
2 question I have in terms of what was produced
3 electronically? I have a document that's entitled
4 "20-140 Lipthratt Prefiled Testimony 3-19-21." And
5 then I have a separate document that's "20-140-EL-AAM
6 Lipthratt Testimony Excerpted."

7 MR. FINNIGAN: Okay.

8 MS. GRUNDMANN: Can you tell me what
9 exhibit or whether you have provided both of those
10 documents as a single exhibit to the -- I am just
11 trying to understand what I should be marking in my
12 records as what you provided to the witness.

13 MR. FINNIGAN: We provided two separate
14 documents. One was the prefiled testimony of
15 Mr. Lipthratt as a stand-alone document. However, we
16 don't intend to mark that or use that. This is
17 another document that I believe was provided to
18 everyone either yesterday or possibly -- well,
19 yesterday. And it would have come in an e-mail from
20 Tracy Greene of our office, and it's a copy of the
21 transcript of the hearing from that case with
22 Mr. Lipthratt's testimony excerpted from all the
23 testimony that was given in the case. The same
24 document is on file in the Commission's records for
25 the hearing which took place on May 4 of 2021.

1 MS. GRUNDMANN: So you're offering as the
2 excerpt a compilation document that starts with an
3 excerpt from the transcript in that case and then
4 Mr. Lipthrott -- what appears to be his seven pages
5 of prefiled direct testimony --

6 MR. FINNIGAN: That's correct.

7 MS. GRUNDMANN: -- together as a single
8 exhibit.

9 MR. FINNIGAN: Yes. That's correct.

10 MS. GRUNDMANN: Thank you.

11 Q. (By Mr. Finnigan) Now, Mr. Borer, do you
12 have a document before you -- or do you have a
13 document before you marked as Exhibit 17?

14 A. I do this time.

15 Q. Okay. Can you identify what that is,
16 please?

17 A. It appears to be the transcript from the
18 hearing in Case No. 20-140.

19 Q. Did you attend the hearing when it took
20 place?

21 A. Yes.

22 Q. Could you take a moment to just leaf
23 through that document to verify that it contains
24 Mr. Lipthrott's prefiled testimony along with the
25 questions and answers he gave upon cross-examination.

1 A. It appears it does.

2 Q. And does that have the appearances of the
3 other attorneys that are listed on page 2 and 3 of
4 that document?

5 A. Yes.

6 Q. Was Mr. Sharkey one of the attorneys
7 listed in the appearances?

8 A. He is listed.

9 Q. And do you recall from the hearing that
10 he had several questions of Mr. Lipthratt at that
11 hearing?

12 A. I would probably say more than several,
13 but I do remember questions.

14 Q. And his motive at that time -- well,
15 strike that.

16 The Company at that time was applying for
17 approval of the decoupling deferral that was at issue
18 in that case, was -- isn't that true?

19 A. Correct.

20 Q. And here the Company is applying for
21 approval to collect a decoupling deferral that's part
22 of the Regulatory Compliance Rider; isn't that
23 correct?

24 A. It's requesting recovery of that amount,
25 yes.

1 Q. Okay. Now, I would like you to turn to
2 the prefiled testimony of Mr. Lipthratt which I
3 believe was toward the end of the document.

4 A. Okay.

5 Q. And could you take a look at page 6.

6 A. I'm there.

7 Q. I want to direct your attention to Q and
8 A 9 at lines 12 and 13 of the page. The question is
9 "Question: Does Staff generally support deferral of
10 revenues?

11 "Answer: Generally, Staff does not
12 support deferral of revenues." Have I read that
13 correctly?

14 A. You have.

15 Q. Now, I want to ask you about the time
16 period for which you reviewed the balances in the
17 deferral accounts in this case. Now, please turn to
18 your direct testimony in this case at pages 2 and 3
19 and in particular Q and A 7.

20 MR. SHARKEY: I'm sorry, John. Can I
21 have the reference again?

22 MR. FINNIGAN: Q and A 7 on page 2 and 3.

23 MR. SHARKEY: Thank you.

24 Q. (By Mr. Finnigan) And let me know when
25 you have had a moment to re-review your Q and A

1 there.

2 A. I have reviewed it.

3 Q. Now, in that answer you describe what the
4 four deferrals were that you reviewed as part of your
5 work in this case; is that correct?

6 A. Correct.

7 Q. And did that work include verifying what
8 the balance was in each of those four deferral
9 accounts?

10 A. Yes. It also involved reviewing the
11 amounts beyond just the -- for example, the --
12 reviewed more than the 13.79 million of decoupling
13 deferrals. We went through, I believe, July 2022, so
14 it's -- the review went beyond just these dollar
15 amounts listed here.

16 Q. And you reviewed those deferral balances
17 on the Company's books as of what date?

18 A. So there were several different dates
19 involved. I believe July 2022 was the -- what we
20 requested in one of our Data Requests, but it wasn't
21 just one single date we reviewed the deferral
22 balances.

23 Q. What was the latest date for which you
24 reviewed the deferral balances for each of the four
25 different accounts?

1 A. I believe we -- July 2023, I believe, for
2 estimating carrying costs on OVEC so that would be
3 the latest date that came up.

4 Q. And what about the other three deferral
5 balances? What's the latest date for which you did
6 the review for those balances?

7 A. I can't recall the exact dates.

8 Q. Do you recall whether it was after July
9 of 2023?

10 A. No, given that that was the latest date
11 that we evaluated.

12 Q. Okay.

13 EXAMINER PRICE: Can I have that question
14 and answer back, please.

15 (Record read.)

16 EXAMINER PRICE: Mr. Finnigan, July 2023
17 hasn't happened yet.

18 MR. FINNIGAN: Thank you, your Honor. I
19 am a year ahead of myself. I meant July 2022.

20 EXAMINER PRICE: I think Mr. Borer
21 understood you too, that's the funny thing.

22 Q. (By Mr. Finnigan) And I assume you
23 assumed that in your answers too, that my question
24 was in error by asking July of 2023. I was wanting
25 to ask you what was the latest date in 2022 that you

1 reviewed these deferral balances?

2 A. I can't recall exactly. I believe that
3 it would -- we did look through the end of the
4 calendar year of 2022.

5 Q. Okay.

6 A. And that was --

7 Q. I'm sorry. I didn't mean to interrupt.

8 A. Oh. I just can't recall exactly.

9 Q. Okay. But you didn't review the OVEC
10 deferrals through the end of 2022. You reviewed that
11 as of July of 2022; is that correct?

12 A. July 2023.

13 Q. Oh.

14 A. So the latest date we were projecting
15 carrying costs so that we reviewed it through July of
16 2023.

17 Q. Okay. Did it ever come to your attention
18 that the balance of the OVEC deferral on the
19 Company's books might have changed after July of
20 2023?

21 A. Yes.

22 Q. How did that come to your attention?

23 A. So there was discussion of -- during this
24 hearing that there was -- so maybe I take issue
25 with -- I guess I think it might have changed. I

1 know there was discussion of probability of recovery,
2 but am I aware did it change, no.

3 Q. Okay. Have you ever reviewed any annual
4 reports filed by the Company with the SEC which
5 discussed a change in the balance of the OVEC
6 deferral?

7 A. I don't recall seeing that in annual
8 reports. I reviewed annual reports, but I don't
9 recall seeing that specifically.

10 Q. Did you ever review a FERC Form 1 for
11 DP&L for 2022 which discussed a change in the balance
12 of the OVEC deferral?

13 A. No. I believe that was only just
14 recently filed, but no.

15 Q. So it was just recently filed, but have
16 you reviewed it recently since it's been filed?

17 A. I looked for it on the Commission website
18 yesterday, and I couldn't find it.

19 Q. Okay. Now, I want to direct your
20 attention to the time period covered by the OVEC
21 deferral. As I understand your testimony, the OVEC
22 deferral covers three years, 2014 through 2017, and
23 then a few days towards the end of 2019; is that
24 correct?

25 A. I don't know if I used dates in my

1 testimony, but I believe those to be the correct
2 dates.

3 Q. And what's your understanding of at what
4 point in time the Company concluded that the OVEC
5 deferral would be probable of recovery?

6 A. At what point in time it became probable
7 for recovery?

8 Q. Yes.

9 A. I don't know.

10 Q. Okay. Under the accounting principles
11 for deferrals that the Staff follows, what is the
12 proper starting date for when the Company can begin
13 to record the costs associated with a deferral? Is
14 it as of the date that the Company concludes that
15 there is a 75 percent or greater likelihood of
16 recovery?

17 A. In evaluating deferrals we don't exactly
18 look at probability of recovery. I wouldn't say we
19 take specifically a U.S. GAAP lens to it. That's why
20 we apply the six-part test, so generally I would say
21 we evaluate the Company's request based on the time
22 period they are requesting to include in the
23 deferral.

24 Q. Can a company establish a deferral
25 without seeking Commission approval to change its

1 accounting methods?

2 A. I don't know.

3 EXAMINER PRICE: Mr. Borer, is there any
4 reason under the accounting standards that the
5 utility would need to get our permission to change
6 the -- establish a deferral?

7 THE WITNESS: I don't believe the
8 accounting standards specifically require Commission
9 approval. It mostly deals with, I guess, rate
10 actions of a regulator dealing with probability of
11 recovery, but I don't believe they specifically say
12 you need approval from a regulator before you can
13 defer.

14 EXAMINER PRICE: And as to the legality,
15 you are not a lawyer, and you are not here to present
16 a legal opinion.

17 THE WITNESS: Correct.

18 MR. FINNIGAN: Your Honor, may I approach
19 the witness with another exhibit?

20 EXAMINER PRICE: You may.

21 MR. FINNIGAN: Your Honor, I would like
22 to have marked as Exhibit 18 the document which I
23 just handed the witness and ask him to identify it
24 for the record.

25 EXAMINER PRICE: So marked.

1 (EXHIBIT MARKED FOR IDENTIFICATION.)

2 Q. (By Mr. Finnigan) Mr. Borer, do you have
3 before you a Form 10-K for Dayton Power and Light
4 Company for 2022?

5 A. Yes.

6 Q. And have you seen this before?

7 A. I re-reviewed this as part of the case.
8 I have seen it before. I wouldn't say I have an
9 extensive or a familiarity with it, but I am
10 generally aware of it, and I have seen it before.

11 Q. What was your purpose in reviewing this
12 document?

13 A. Gleaning information, no real purpose
14 other than just getting information.

15 Q. Did you obtain any information from this
16 to be the -- this document about the balance of the
17 OVEC deferral account?

18 A. Not that I recall.

19 Q. Could you please turn your attention to
20 page 113 of 222 going by the numbering system in the
21 bottom left-hand corner of the page.

22 A. I'm there.

23 Q. Do you see the section?

24 MR. LYONS: Excuse me, your Honor. Could
25 we go off the record for just a moment?

1 (Discussion off the record.)

2 EXAMINER PRICE: Back on the record.

3 MR. FINNIGAN: Thank you, your Honor.

4 Q. (By Mr. Finnigan) Mr. Borer, could you
5 take a moment to review that page 113 of 222 of that
6 document under the section entitled "Unrecovered OVEC
7 Charges" and let me know when you have had an
8 opportunity to read that over.

9 A. I've read it.

10 Q. Okay. I want to direct your attention to
11 the last three lines of that -- that section. It
12 says "During the third quarter of 2022, AES Ohio
13 recorded a 28.9 million reduction to this regulatory
14 asset as a charge to net purchased power costs in the
15 condensed consolidated statements of operations in
16 accordance with the provisions of ASC 980." Have I
17 read that accurately?

18 A. Yes.

19 MR. FINNIGAN: Your Honor, may I approach
20 with another exhibit?

21 EXAMINER PRICE: You may.

22 MR. FINNIGAN: Your Honor, I would ask
23 that the last document be marked for identification
24 purposes as OCC Exhibit 19.

25 EXAMINER PRICE: So marked.

1 (EXHIBIT MARKED FOR IDENTIFICATION.)

2 Q. (By Mr. Finnigan) Mr. Borer, do you have
3 a document before you that's been marked as OCC
4 Exhibit 19?

5 A. Yes.

6 Q. Can you identify what that is?

7 A. It appears to be the 2022 FERC Form 1.

8 Q. For Dayton Power and Light Company?

9 A. Yes.

10 Q. And you were stating a few moments ago
11 that you were looking for this document on the FERC's
12 website and were unable to find it but is this the
13 document you were looking for, the annual report or
14 the FERC Form 1?

15 A. I looked for it on the Commission
16 website, not FERC's website, but this does appear to
17 be the FERC Form 1.

18 Q. And the reason you were looking for it
19 was because there was discussion in the testimony of
20 other witnesses about what the proper balance was in
21 this account, right?

22 A. No.

23 Q. What was your purpose in looking for the
24 document?

25 A. I was looking for the Ernst & Young

1 letter.

2 Q. Okay. And have you attended the hearing
3 to hear the testimony of the other witnesses up to
4 this point?

5 A. Yes.

6 Q. Could you please turn to page 53 of 218
7 going for the -- from the numbering system in the
8 bottom right-hand corner of the page.

9 MS. GRUNDMANN: Can we please go off the
10 record for just a minute?

11 EXAMINER PRICE: Yes.

12 (Discussion off the record.)

13 EXAMINER PRICE: Let's go on the record.
14 Please proceed, Mr. Finnigan.

15 MR. FINNIGAN: Your Honor, while we were
16 off the record, we had a brief discussion about the
17 FERC Form 1 that's been placed before the witness at
18 this time. And I would like to explain for the
19 record that this initially came up in -- in the
20 Company's case. It was Company Exhibit 6 and the
21 Company asked to have admitted a two-page excerpt
22 from this report and we said that we don't object as
23 long as the complete report is introduced. And the
24 Company then introduced 6A purporting to be a
25 complete copy of the FERC Form 1, and we believe that

1 this is a different version, that the version we have
2 now is the as-filed version. And there are important
3 language differences between the version that the
4 Company tendered earlier today and the one I am going
5 to ask the witness about now.

6 EXAMINER PRICE: Let's ask the witness a
7 couple of questions. I am going to ask him
8 questions.

9 Mr. Borer, you said you looked for FERC
10 Form 1 and didn't find it.

11 THE WITNESS: Correct.

12 EXAMINER PRICE: Have you ever seen FERC
13 Form -- this particular FERC Form 1 before?

14 THE WITNESS: This one, no.

15 EXAMINER PRICE: I don't know,
16 Mr. Finnigan, how you are going to ask him questions
17 about a document he has never seen before.

18 Q. (By Mr. Finnigan) Mr. Borer, are you
19 familiar with what FERC Form 1s are?

20 A. I am.

21 Q. And do they contain the financial
22 statements of the utility companies that the
23 Commission regulates?

24 A. Yes.

25 Q. And is your -- in your job as a

1 regulatory accountant for the Commission, are you
2 required to occasionally review the FERC Form 1s that
3 the different utilities file with the Commission?

4 A. I wouldn't say I am required to, but I do
5 review them.

6 Q. Yeah. And are you -- are you used to
7 reviewing the types of information that are presented
8 in these FERC Form 1s?

9 A. Yes.

10 Q. What do you understand a FERC Form 1 to
11 be?

12 A. It's a report of accounting data within
13 the context of the Uniform System of Accounts for
14 FERC. I don't know I have a right way to really
15 define what a FERC Form 1 is.

16 Q. Does it also contain the Company's annual
17 financial statement?

18 A. Like it's 10-K?

19 Q. Yes.

20 A. Sometimes.

21 Q. And do utilities file these documents on
22 the Commission's website?

23 A. Yes.

24 Q. Is that where you typically go when you
25 want to access one of the FERC Form 1s for a utility?

1 A. Yes.

2 Q. Is it common that even though you have
3 not seen a FERC Form 1 for a particular company at
4 any point in time that you might have need to go and
5 pull it to investigate what information is reported
6 in the document?

7 A. Yes.

8 MR. FINNIGAN: Your Honor, may I proceed
9 with some questions?

10 EXAMINER PRICE: You can ask the
11 question. We'll see what happens next.

12 Q. (By Mr. Finnigan) Mr. Borer, could you
13 please review the section entitled "Unrecovered OVEC
14 Charges" in the middle of that page 53 of 218.

15 MR. SHARKEY: I am going to object, your
16 Honor. Mr. Borer has already testified he hasn't
17 reviewed this document previously. I think it's
18 inappropriate to be cross-examining him about its
19 specifics.

20 EXAMINER PRICE: Mr. Finnigan?

21 MR. FINNIGAN: Your Honor, this is part
22 of Mr. Borer's job is that he regularly deals with
23 this FERC -- these FERC Form 1 reports. They are
24 filed with the Commission on the Commission's
25 website, and he testified that what he does as part

1 of his job duties is he will occasionally go on the
2 Commission's website, retrieve one of these
3 documents, not having ever seen it before, but review
4 the document to glean whatever important accounting
5 information he determines that he needs from the
6 document. So he's --

7 MR. LYONS: Your Honor -- go ahead, John.
8 Sorry.

9 MR. FINNIGAN: He's used to navigating
10 them. He is familiar with them. He knows the
11 information that's reported in the document. He uses
12 them as part of his everyday job duties regardless of
13 whether he has seen one previously or not.
14 Therefore, we believe this is a question that is
15 within his knowledge and expertise as a person who is
16 knowledgeable in the field of regulatory accounting.

17 EXAMINER PRICE: Mr. Lyons.

18 MR. LYONS: Your Honor, all that being
19 the case, Mr. Borer has stated that he is not
20 familiar with the document. This is not a record of
21 the PUCO. It's not a business record. It's not
22 anything that is prepared by or that is known to
23 Mr. Borer.

24 EXAMINER PRICE: Mr. Borer, did you rely
25 upon this document in preparing your testimony for

1 today's hearing?

2 THE WITNESS: No.

3 EXAMINER PRICE: Objection sustained.

4 MR. FINNIGAN: I'm sorry. Your Honor, am
5 I allowed?

6 EXAMINER PRICE: No. I sustained the
7 objection to this line of questioning. He has not
8 seen the document before. You can't ask a witness a
9 question about a document that they have never seen
10 before.

11 MR. FINNIGAN: Your Honor, let me note an
12 objection on the record. The nature of my objection
13 is that this is part of cross-examination, and
14 cross-examination of a party is allowed wide latitude
15 to ask about the general topic of a matter that's
16 brought up on direct examination.

17 EXAMINER PRICE: You are allowed wide
18 latitude, but it's manifestly unfair to cross-examine
19 a witness on a document that he has never seen
20 before. But your objection is noted.

21 Q. (By Mr. Finnigan) Mr. Borer, are you
22 aware that the Company made a statement in a FERC
23 filing recently that it does not plan to record a
24 regulatory asset for the OVEC deferral until approval
25 of the Stipulation by the Commission?

1 MR. SHARKEY: Objection, your Honor. He
2 is attempting to, I believe, circumvent your ruling
3 he can't be crossed about the document. He is
4 reading from it.

5 EXAMINER PRICE: Sustained.

6 Q. (By Mr. Finnigan) Mr. Borer, are you
7 aware of whether the Company has made any statements
8 in any recent SEC or FERC filings to the effect that
9 it either does not have a regulatory asset on its
10 books for the OVEC deferral at the present time, or
11 if it does, that the balance of that account is zero?

12 A. I am not aware of that specific language.

13 MR. FINNIGAN: Your Honor, may I approach
14 with another exhibit? I think this is my last one.
15 I am almost done with this witness.

16 EXAMINER PRICE: You may.

17 MR. FINNIGAN: Your Honor, I would ask
18 that the document that I just handed out be marked as
19 Exhibit 20 for identification purposes.

20 EXAMINER PRICE: It is so marked.

21 (EXHIBIT MARKED FOR IDENTIFICATION.)

22 Q. (By Mr. Finnigan) Mr. Borer, do you have
23 a document that's been marked as Exhibit 20 -- OCC
24 Exhibit 20?

25 A. I do.

1 Q. Can you identify what that is?

2 A. This is a Data Request, an e-mail I
3 issued in this case as well as what I vaguely recall
4 to be the Word document response and a spreadsheet.

5 Q. Did you request this information as part
6 of your review of the deferral balances that are at
7 issue in the Regulatory Compliance Rider in this
8 case?

9 A. I did.

10 MS. GRUNDMANN: Your Honor, I would like
11 to lodge an objection to this document. On its face
12 I'm confused as to how it was compiled. If you
13 notice in the bottom right-hand corner of the first
14 approximately five pages of the document, it bears
15 indicia of its production by AES because it's Bates
16 stamped AES 34 to 38, but the subsequent page is the
17 document that the OCC previously used yesterday that
18 was marked as OCC Exhibit 13 but wasn't moved into
19 the record. Neither it nor the last page bear a
20 Bates labeled document, so it's confusing to me how
21 it could be produced as a single set of a response to
22 a discovery response but not all have consecutively
23 numbered Bates numbers.

24 EXAMINER PRICE: Mr. Finnigan.

25 MR. FINNIGAN: Your Honor, this is how

1 the document was produced to us so we're producing it
2 in the form that we received it. The witness
3 testified that he recognized the document as I
4 understood his answer. That should be the litmus
5 test. And it was -- he identified it as information
6 that he requested in a Data Request along with the
7 response that was produced by the Company.

8 It does -- I think it's generally known
9 that when people print Excel spreadsheets, sometimes
10 there's a label on the Excel spreadsheet that appears
11 electronically, but it doesn't always print out
12 depending on what size paper is used or the type of
13 print request that's made which may explain why there
14 is no labeling on this document on the Excel
15 spreadsheet. However, this is the form in which the
16 document was produced to us. The witness seemed to
17 recognize it in --

18 EXAMINER PRICE: I think that's the key.
19 I think he has answered. Your question got cut off
20 by the objection. So why don't you reask your
21 question. Maybe Mr. Borer can get to the bottom of
22 this for us.

23 Q. (By Mr. Finnigan) Mr. Borer, do you
24 recognize the document that's been placed before you
25 as OCC Exhibit 20?

1 A. Yeah. I have a very vague recollection
2 of the -- what I recall to be the Word document
3 response which I think is pages 3 and 4 -- 4 and 5.
4 I have more familiarity with the Excel document.
5 This looks like support for the OVEC deferral we
6 requested, although I don't have all the numbers
7 memorized.

8 EXAMINER PRICE: Let me finish. But you
9 did -- you do recall receiving an Excel spreadsheet
10 with this Data Request?

11 THE WITNESS: Correct.

12 EXAMINER PRICE: And this is the Excel
13 spreadsheet to the best of your knowledge?

14 THE WITNESS: One of the Excel
15 spreadsheets that we received to the best of my
16 knowledge.

17 EXAMINER PRICE: Thank you.

18 Thank you, Mr. Finnigan.

19 Q. (By Mr. Finnigan) And, Mr. Borer, you
20 said this was a Data Request. This was a Data
21 Request that you sent to the Company?

22 A. Correct.

23 Q. And you received the response from the
24 Company?

25 A. Correct.

1 Q. And the information that's contained in
2 this document shows both your discovery request -- or
3 your Data Request along with the information that the
4 Company produced in response to your Data Request.

5 A. A sub-selection of a response.

6 Q. I'm sorry. What was that answer?

7 A. A portion of the response. The data
8 asked for more than just support of the OVEC costs.

9 Q. Now, one of the items you asked for in
10 this Data Request was information about the OVEC
11 deferral; is that correct?

12 A. Yes.

13 Q. And the question on page 1, do you see
14 the question that asks for "Please provide detailed
15 support"?

16 A. Yes.

17 Q. And then it says "with associated
18 transactional data dumps." What is a transactional
19 data dump in laymen's terms?

20 A. Generally it's a listing of all
21 transactions included in some account, whether it be
22 if you are looking at an overall expense account or
23 the transactions and all expenses included in that,
24 all transactions that make up the overall larger
25 dollar amount.

1 Q. Okay. And that would be all transactions
2 that happened over the term for which the regulatory
3 asset balance was recorded?

4 A. Could you clarify what you mean with the
5 term where it was recorded?

6 Q. What I am asking for is that we are going
7 to your question where you asked for detailed support
8 along with transactional data dumps. And what I am
9 getting at is that was the information you were
10 seeking, the monthly recording of individual monthly
11 amounts to get to the total OVEC deferral balance for
12 the term that's at issue in this case here of 2014
13 through 2017 and a few days in 2019?

14 A. Yes.

15 Q. And then you indicated that the
16 spreadsheet was one of the pieces of information that
17 the Company provided to you in response to that
18 question?

19 A. One piece, correct.

20 Q. And please explain what these
21 spreadsheets represent on the last two pages.

22 MR. LYONS: Objection, your Honor. Yeah,
23 this isn't a document that was provided by Staff or
24 that the witness has said that he is familiar with --
25 or, excuse me, it was prepared by the witness. It's

1 not -- it is not his document.

2 EXAMINER PRICE: He can give his
3 understanding.

4 A. Generally it's a summary of the costs
5 that were -- the net costs that were included in the
6 OVEC deferral on a monthly basis.

7 Q. Okay. And that's for the period of 2014
8 through 2017, along with the few days that were
9 included in 2019?

10 A. Including the correction made in February
11 of 2018.

12 Q. Does it show the amount that was recorded
13 on -- in the deferral balance each month during that
14 time period?

15 A. Yes.

16 Q. This information was supplied by the
17 Company?

18 A. Yes.

19 Q. What was your purpose in asking for this
20 detailed accounting information?

21 A. This specifically was to understand for
22 OVEC what was included in the balance, looking at the
23 accounting entries, looking at support for the actual
24 dollar amounts.

25 Q. Did you rely on this information received

1 from the Company in doing your review of the OVEC
2 deferral balance?

3 A. In part.

4 Q. Mr. Borer, I would like you to kind of
5 walk me through some of the detail on this page. And
6 now please turn to the first of the two Excel
7 spreadsheets. And do you see the entry at the top
8 where it says "October 2014 through December 2015"?

9 A. Yes.

10 Q. Why is that presented as one amount for
11 that entire period while the other amounts are done
12 on a monthly basis after that?

13 A. Why was it done that way? I don't know.
14 But the -- that line item is summarized by the next
15 page, but why they did it that way, I don't know.

16 Q. Did the Company ever supply any monthly
17 accounting data for the time period of October '14
18 through 2015?

19 A. Yes.

20 Q. Is that the information on the second
21 page of the Excel spreadsheet?

22 A. In part.

23 Q. Okay. Now, let me ask you about the
24 different categories of information. Can you just
25 walk through what the different columns are and what

1 they're intended to represent?

2 EXAMINER PRICE: I don't think you can
3 ask -- I don't think he can answer what they are
4 intended to represent. He can answer what his
5 understanding is of what they represent, but he has
6 no understanding what the Company's intent was.

7 MR. FINNIGAN: Thank you, your Honor.

8 Q. (By Mr. Finnigan) Let me withdraw that
9 question. Mr. Borer, what's your understanding of
10 what the different columns on this document
11 represent?

12 A. Generally being costs, revenues, and then
13 net deferral amount and then the accumulated balance
14 of the deferral.

15 Q. All right. Are the costs of billings
16 from OVEC to AES Ohio?

17 A. If I remember correctly, yes.

18 Q. Okay. And the revenues represent what?

19 A. I believe they were revenues recovered
20 through PJM. I can't remember specifics, but it was
21 associated revenues.

22 Q. Do you know whether the OVEC plants were
23 used to supply electricity to customers at any time
24 during the 2014 to 2017 time period?

25 A. I would assume they would be if they are

1 recovering; revenues, they are providing energy or
2 something to someone, but I don't know with
3 certainty.

4 Q. There's a column that says "E-4 Capacity
5 Penalties" and then there is a number there,
6 \$660,616.36. What does that represent?

7 A. I can only explain it to -- how it's
8 described here, that it is a capacity-related
9 penalty.

10 Q. Penalty from whom?

11 A. I can't remember who it was assessed by.
12 Actually, scratch that. I believe it was PJM. I
13 think I included that specifically in my testimony.

14 Q. And can you direct your attention to the
15 Stipulation --

16 EXAMINER PRICE: He is trying to answer
17 your last question.

18 MR. FINNIGAN: Oh, I'm sorry.

19 EXAMINER PRICE: Page 4.

20 THE WITNESS: Yeah, it was assessed by
21 PJM.

22 Q. (By Mr. Finnigan) And is there a
23 reference to it in your direct testimony?

24 A. There is, yes.

25 Q. What page is that on?

1 A. 4.

2 Q. Then --

3 EXAMINER PRICE: In fact, Mr. Borer, you
4 disallowed this penalty.

5 THE WITNESS: Yes, we did.

6 Q. (By Mr. Finnigan) And then moving on
7 towards the right-hand columns, the second one from
8 the right hand states, "Estimate recorded in PM."
9 What does that mean?

10 A. I can't give you an answer. I don't
11 know.

12 Q. What does PM stand for?

13 A. Post meridian. I don't know. In this
14 context I don't know.

15 Q. And the last column, "Difference recorded
16 in CM," what does that stand for?

17 A. I don't know.

18 Q. Did you rely on the information in these
19 two spreadsheets in OCC Exhibit 20 in completing your
20 review of the OVEC deferral balance in this case?

21 A. In part we more heavily relied on the
22 underlying invoices and actual support for the
23 journal entries that support these notes. I think
24 this is kind of a summary of the actual documents we
25 relied on; but, yes, we relied on it in part.

1 EXAMINER PRICE: How many documents would
2 you estimate you relied upon?

3 THE WITNESS: Well over a thousand pages.
4 It's journal entries for each and every month as well
5 as the invoices for each and every month.

6 EXAMINER PRICE: Thank you.

7 Q. (By Mr. Finnigan) Now, Mr. Borer, were
8 you involved in the prudence review in this case?

9 A. I would characterize it as that.

10 Q. Okay. Let me ask that you turn to
11 question 10 on page 4 of your testimony. Let me know
12 when you have had a moment to review that question
13 and answer.

14 A. I have.

15 Q. Now you say that you reviewed -- strike
16 that.

17 You say that Staff reviewed over a
18 thousand pages of accounting entries and underlying
19 invoices; is that correct?

20 A. That's correct.

21 Q. What was the purpose of your review?

22 A. Broadly speaking, to evaluate the costs
23 being deferred. It was really looking at it from
24 taking the same approach as we would for, say, like a
25 storm rider or vegetation rider where we get support

1 for the -- to show the -- to support the occurrence
2 of the amounts that were being deferred, as well as
3 substantiating them with invoices, and in this case
4 we got all of the invoices.

5 Q. So would it be fair to say that your
6 review of the OVEC deferral balance was more in the
7 nature of a financial audit where you were reviewing
8 the amount of individual charges to the account to
9 make sure that it added up to the correct balance,
10 and you also reviewed all of the underlying
11 documentation and supporting invoices to make sure
12 that the charges that were recorded were tied to
13 invoices that existed to support the charges?

14 A. I wouldn't characterize it as just a
15 financial audit. I would characterize it as we would
16 audit for any of the Company's riders, whether it be
17 the storm rider, the vegetation rider. It -- we
18 approached it like we would any audit cost being
19 recovered for companies.

20 EXAMINER PRICE: One word description of
21 your audit would be prudence.

22 THE WITNESS: Yes.

23 Q. (By Mr. Finnigan) Now in the present
24 case, did the Commission issue any entry which
25 defined the scope of the prudence review that you

1 would do for the OVEC deferral?

2 A. No, not that I am aware of.

3 Q. In the present case did -- did anyone
4 file a written report in the docket of the case which
5 contained the findings from this prudence review for
6 the OVEC deferrals?

7 A. No.

8 Q. In the course of the present case, or at
9 any prior time, did Staff investigate OVEC's
10 operations on an hourly basis during the 2014-2017
11 time period to determine whether OVEC could have
12 purchased power on the open market at a lower cost
13 than its cost to produce the power during that time?

14 A. Not that I am aware of.

15 Q. Okay. In the present case, or at any
16 prior time, did Staff investigate whether AES Ohio's
17 purchases of power from OVEC on an hour-by-hour basis
18 during the 2014 to 2017 time period were less costly
19 than purchases which AES Ohio could have made on the
20 open market?

21 A. Not that I am aware of.

22 MR. LYONS: Objection, your Honor. He
23 hasn't established that this is something that a
24 member of Staff has actually worked on.

25 EXAMINER PRICE: No. He is asking what

1 they didn't work on actually.

2 MR. LYONS: Okay. Well, the subject in
3 general --

4 EXAMINER PRICE: It's a fair question.

5 MR. LYONS: Even the time period so.

6 Q. (By Mr. Finnigan) In the present case, or
7 at any time prior, did Staff investigate whether AES
8 Ohio's purchases of power from OVEC, on an overall
9 basis during the 2014 through 2017 time period, were
10 less costly than power purchases it could have made
11 on the open market?

12 A. I don't know.

13 Q. In the present case, or at any prior
14 time, did Staff investigate what proportion of OVEC's
15 coal supply contracts covering 2014 through 2017 were
16 purchased under long-term contracts versus short-term
17 contracts?

18 A. I don't know.

19 Q. Are you -- are you familiar with the
20 concept of laddering in the field of energy
21 procurement?

22 A. No.

23 Q. Do you know whether the Commission
24 requires companies to use laddering practices in
25 connection with the wholesale competitive bid process

1 for the SSO auction?

2 EXAMINER PRICE: That is not why he is
3 here to testify. He is here to testify as to
4 accounting issues related to a number of deferrals.
5 Mr. Benedict will be more than happy to answer any
6 questions you have about laddering, staggering, and
7 the wholesale auction process.

8 Q. (By Mr. Finnigan) Okay. In the present
9 case, or at any prior time, did Staff investigate
10 whether OVEC used any laddering practices in its coal
11 supply purchases?

12 A. I don't know.

13 Q. In the present case, or at any prior
14 time, did Staff investigate the practices OVEC
15 followed to determine whether the heat content of the
16 coal it received was the same as the heat content in
17 the coal that it contracted for?

18 A. I don't know.

19 Q. In the present case, or at any prior
20 time, did Staff investigate the practices that OVEC
21 followed during 2014 through 2017 to determine
22 whether the sulfur content of the coal delivered to
23 the power plants was of the same quality specified in
24 the contracts?

25 A. I don't know.

1 Q. In the present case, or at any prior
2 time, did Staff investigate whether OVEC procured its
3 coal for 2014 through 2017 using competitive bidding
4 processes?

5 A. I don't know.

6 Q. During the 2014 through 2017 time period,
7 was the coal delivered to the OVEC plants by rail, by
8 barge, or both?

9 A. I don't know.

10 Q. During the -- strike that.

11 Did Staff investigate, in the course of
12 this case or any prior time, whether the prices paid
13 by OVEC for transporting coal to the plants during
14 2014 through 2017 were reasonable in comparison to
15 market prices?

16 A. I don't know.

17 Q. Did Staff investigate whether OVEC used
18 competitive bidding processes for transportation
19 services during 2014 through 2017?

20 A. I don't know.

21 Q. In the present case, or at any prior
22 time, did Staff investigate OVEC's environmental
23 compliance activities during the 2014 through 2017
24 period to determine whether OVEC operated the plants
25 in accordance with all applicable environment laws

1 and regulations?

2 A. I do not know.

3 Q. In the present case, or at any prior
4 time, did Staff investigate the practices that OVEC
5 followed to obtain emission allowances for the plants
6 during the 2014 through 2017 time period?

7 A. I don't know.

8 Q. Did OVEC use a competitive bidding
9 process to obtain those emission allowances?

10 A. I do not know.

11 Q. In the present case, or any prior time,
12 did OVEC -- or did Staff investigate whether there
13 were any significant plant outages during the 2014
14 through 2017 period at the OVEC plants which may have
15 been caused by OVEC's own poor operation and
16 maintenance practices?

17 A. I don't know.

18 EXAMINER PRICE: Don't answer that.
19 Assumes facts not in evidence.

20 MR. FINNIGAN: That's all the questions I
21 have. Your Honor, I would like to move into evidence
22 some exhibits but --

23 EXAMINER PRICE: We'll do that at the
24 conclusion of redirect and recross.

25 Mr. Lyons, redirect?

1 MR. LYONS: Yes, your Honor. We would
2 like 10 to 15 minutes to regroup and talk about our
3 questions.

4 EXAMINER PRICE: 10 minutes, Mr. Lyons.

5 MR. LYONS: Okay.

6 EXAMINER PRICE: Go off the record for 10
7 minutes.

8 (Recess taken.)

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

11 Mr. Lyons.

12 MR. LYONS: Thank you, your Honor.

13 - - -

14 REDIRECT EXAMINATION

15 By Mr. Lyons:

16 Q. Mr. Borer, I have a few questions for you
17 here. OCC mentioned that recovery under GAAP
18 standards can only be deferred -- excuse me, a
19 deferral can only be recorded if there is a
20 75 percent chance of recovery. Is that an
21 analysis -- is that an analysis that the Company
22 does?

23 A. That's correct. That's -- that's an
24 analysis the Company does.

25 Q. Okay. Thank you. Now, it was mentioned

1 that case 20-140 also contained deferral for some
2 OVEC costs. Can you -- excuse me, for decoupling
3 costs. That case was withdrawn; is that correct?

4 A. If the Stipulation is approved as filed,
5 yes, that case will be withdrawn.

6 Q. Okay. Thank you. So in that case there
7 was a recommendation of a denial of a deferral. It
8 was mentioned earlier under ASC 980-605. Was that
9 denial made pursuant to that rule, or was it made in
10 light of that rule?

11 A. It was made in part with that rule. I
12 think we generally did look at a bigger picture with
13 that request, but I would say that was part of the
14 outcome, but not the only part.

15 Q. Okay. And are there other ways of
16 distinguishing that case, those costs?

17 A. Yes.

18 Q. Can you -- can you explain?

19 A. I think the biggest difference was those
20 were the decoupling amounts that were accrued, or
21 would have been deferred while the Company didn't
22 have a decoupling rider at all. Unlike the
23 decoupling amounts included in the Stipulation, they
24 kind of line up with the life of the Company's
25 decoupling rider.

1 Q. Okay. Thank you.

2 EXAMINER PRICE: One more time so I
3 understand it correctly. The deferrals in this case
4 cover the period of time when the Company had a
5 decoupling rider. The deferrals in 20-140 covered a
6 different time period.

7 THE WITNESS: Correct. They were -- they
8 covered the time period exclusively after the
9 withdrawal from ESP III.

10 EXAMINER PRICE: Are there any other
11 distinguishing facts between the one set of deferrals
12 and the other set of deferrals?

13 THE WITNESS: I do think that the
14 deferrals in the Stipulation are -- can be
15 characterized as an underrecovery of decoupling
16 amounts, whereas, the -- it's much harder, if not
17 impossible, I think, to make that argument during --
18 for the 20-140 amounts given that there was no
19 riders, so it can't really be underrecovery since
20 nothing existed at the time to recover them.

21 EXAMINER PRICE: Okay. Did the Company
22 have authority for -- for the deferrals that are
23 being recovered today in this case, it's for
24 recovery, correct?

25 THE WITNESS: Correct.

1 EXAMINER PRICE: They are asking for
2 recovery. Did the Company have authority from the
3 Commission to defer those balances previously to the
4 best of your knowledge?

5 THE WITNESS: To the best of my
6 knowledge, I think that could venture into somewhat
7 of a legal argument on what the language in the
8 Commission order meant by defer the over- or
9 underrecovery through that rider. I forget the
10 specific language, but I think it does sort of tread
11 into legal argument territory.

12 EXAMINER PRICE: But in 20-140 the
13 Company was seeking deferral authority, not seeking
14 to recover the assets.

15 THE WITNESS: Correct.

16 EXAMINER PRICE: Thank you.

17 Mr. Lyons.

18 Q. (By Mr. Lyons) Mr. Borer, is there any
19 rule that requires that the Commission apply ASC
20 980-605?

21 A. No, not that I am aware of.

22 Q. Do you consider applying that rule to be
23 an important regulatory principle or precedent?

24 A. ASC 980-605?

25 Q. That's correct.

1 A. I think it can be in limited context. I
2 think that there's been -- that the 20-140 case, as
3 well as the set of COVID 19 deferrals, was the only
4 times I can think of that we referenced that specific
5 code section. I would say I guess in -- when
6 relevant, it could be useful but I -- I don't know if
7 I would quite say it's anything consistent or a
8 practice of sorts.

9 Q. Just -- okay. Thank you, Mr. Borer.
10 Now, with regards to the prudence review that you
11 engaged in, can you explain what that prudence review
12 entailed?

13 A. Evaluating the -- the costs that were
14 supported that -- really it's the -- when we in the
15 Accounting and Finance in the Rates and Analysis
16 Department, when we think of a prudency review, we
17 think, okay, we have got to dive in and look at the
18 amounts that are supported on the invoices.

19 That is really where we are going to get
20 for the occurrence of the costs is evaluating the
21 invoices and that's what I think we precisely did
22 here, among other things, but I think that's probably
23 the key aspect of what I consider to be our prudence
24 review.

25 EXAMINER PRICE: Mr. Borer, due to the

1 nature of a decoupling rider, the Company is always
2 chasing the previous year's revenue; isn't that
3 correct?

4 THE WITNESS: Correct.

5 EXAMINER PRICE: So they are always going
6 to be lagging behind a year.

7 THE WITNESS: Correct.

8 EXAMINER PRICE: So there is always going
9 to be an underrecovered balance if the Commission has
10 authorized them to defer.

11 THE WITNESS: Unless for some reason they
12 sold a lot of electricity one year, but I would say
13 most frequently it will be --

14 EXAMINER PRICE: Or overrecovery.

15 THE WITNESS: There will always be a
16 difference, yes.

17 EXAMINER PRICE: Thank you.

18 Q. (By Mr. Lyons) Mr. Borer, I have one last
19 question. With regards to 980, ASC 980-605, why
20 didn't you apply that principle here in this case?

21 A. I believe it deals more with revenue
22 recognition, more -- it more appropriately is
23 dealt -- handles revenue recognition, not necessarily
24 whether or not revenue deferrals are permitted, and
25 also for the variety of reasons that -- the

1 differences I described earlier between the amounts
2 at stake in the 20-140 versus now.

3 MR. LYONS: I have no further questions,
4 your Honor.

5 EXAMINER PRICE: Any recross from
6 Intervenors?

7 Mr. Sharkey?

8 MR. SHARKEY: No questions, your Honor.

9 EXAMINER PRICE: Mr. Finnigan?

10 MR. FINNIGAN: Your Honor, just a few
11 questions.

12 - - -

13 RECROSS-EXAMINATION

14 By Mr. Finnigan:

15 Q. Mr. Borer, during the time you have
16 worked at the Commission, are you aware of any cases
17 where a utility has sought to collect deferrals that
18 go back to 1999?

19 A. Yes.

20 Q. What cases would those be?

21 A. Off the top of my head, Columbia Gas of
22 Ohio recovering deferred MGP cost, which I believe go
23 back to 1999, subject to check. I know those go back
24 quite some time.

25 Q. Is that the only example?

1 A. I know Duke Gas of Ohio had an MGP case
2 that they sought to recover. I don't recall the time
3 period for that.

4 Q. Do those -- both of those cases involve
5 environmental liabilities associated with the plants
6 in those cases?

7 A. Yes.

8 Q. Okay. And do you know if any of the
9 other electric utilities in Ohio have deferrals on
10 their books today from their transition to Customer
11 Choice dating back to 1999?

12 A. I have no idea.

13 Q. Okay. Going back to ASC 980, you say
14 that it deals more with revenue recognition or
15 deferrals?

16 A. AES 980 deals with regulated operations.

17 Q. Okay. But you would apply it in terms of
18 determining whether a deferral should be approved?

19 A. No, not from Staff's perspective. I
20 mean, ASC 980-340, I forget the subsection that deals
21 with deferrals, but Staff wouldn't -- Staff looks at
22 deferral requests generally in the context of a
23 six-part test.

24 Q. Okay. What is your understanding of when
25 Staff does employ ASC 980 in reviewing deferral

1 requests?

2 A. Other than 20-140 we generally don't. I
3 wouldn't say we are required to follow what the ASC
4 spells out for how deferrals are presented on the
5 financial statements.

6 We can approve a deferral absent what the
7 ASC says. That's just how you report things for U.S.
8 GAAP purposes, if you can put an asset on your books
9 or not, not whether or not we should approve or
10 recommend denial or approval of a deferral.

11 Q. But you have cited it in a couple of
12 cases. One is the Staff Review and Recommendation in
13 the present case. Another one you mentioned is the
14 Staff Review and Recommendation in the COVID-19 lost
15 revenue case. So what are the factors that determine
16 whether Staff will follow ASC 980 in reviewing
17 deferral requests?

18 A. It probably depends on the specific facts
19 and circumstances. It's -- more often than not we
20 don't reference it because I do think that that code
21 section, especially with respect to deferrals, is a
22 bit more reactionary to Commission actions.

23 Q. What are the facts and circumstances that
24 might lead you to rely on that standard?

25 A. Off the top of my head, I can't think of

1 a specific example.

2 Q. Would it have to do with whether a
3 company is requesting to defer revenues like the
4 decoupling revenues involved in this case and like in
5 the COVID-19 cases, the lost revenues for
6 reconnection fees, and other lost fees?

7 A. Are you asking a perspective basis, or
8 have we looked at this?

9 Q. Have you used ASC 980 in past cases when
10 you're reviewing a request to approve a deferral for
11 lost revenues as opposed to lost costs?

12 MY LYONS: Objection, your Honor, asked
13 and answered. I believe he already said that he's
14 only seen it used the one time in the 2020 case.

15 EXAMINER PRICE: Sustained.

16 Q. (By Mr. Finnigan) Going back to the
17 example of the MGP plants, did that involve deferred
18 plant costs or revenues?

19 EXAMINER PRICE: Mr. Finnigan, the
20 questions that you asked before were related to the
21 Regulatory Compliance Rider; is that correct?

22 MR. FINNIGAN: Yes, your Honor.

23 EXAMINER PRICE: And this question
24 related to the Regulatory Compliance Rider?

25 MR. FINNIGAN: No. He brought up he was

1 familiar with other examples of longstanding deferral
2 account --

3 EXAMINER PRICE: Right, but the
4 Regulatory Compliance Rider was not addressed on
5 recross -- on redirect, so you are outside of the
6 scope of redirect. You are asking questions related
7 to Regulatory Compliance Rider, but you are outside
8 the scope of redirect.

9 MR. FINNIGAN: Well, all the deferrals
10 have to do with the Regulatory Compliance Rider.
11 They are all collected under that rider so...

12 EXAMINER PRICE: But the 1999 ones you
13 were talking about were the ones related to the ETP.
14 That's the source of your 1999 date.

15 MR. FINNIGAN: Those are --

16 EXAMINER PRICE: The deferrals related to
17 OVEC are 2014 to 2017 and some number of days in
18 2019.

19 MR. FINNIGAN: One category of the
20 deferrals under the RCR Rider are the prior RCR costs
21 from other --

22 EXAMINER PRICE: He didn't ask about
23 those on redirect. You are outside the scope of
24 redirect. He stayed within the OVEC deferrals, and
25 you have gone beyond. Now, he let it slide when you

1 asked the first questions, but you are going beyond
2 the OVEC deferrals. That was not a source of
3 questions in redirect.

4 MR. FINNIGAN: I withdraw the questions.
5 That's all I have, your Honor.

6 EXAMINER PRICE: Thank you.

7 Mr. Borer, I have no further questions.
8 You are excused. Thank you.

9 Mr. Lyons.

10 MR. LYONS: No questions.

11 EXAMINER PRICE: Your exhibit.

12 MR. LYONS: Oh, excuse me. Yes, your
13 Honor. We'll move Mr. Borer's testimony in as
14 Exhibit 1, please.

15 EXAMINER PRICE: Any objection to the
16 admission of Jonathan Borer's testimony? That was
17 Exhibit No. 1.

18 Hearing none, it will be admitted.

19 (EXHIBIT ADMITTED INTO EVIDENCE.)

20 EXAMINER PRICE: Mr. Finnegan.

21 MR. FINNIGAN: Your Honor, at this time I
22 would like to move into evidence OCC Exhibits 16
23 through 20. 16 and 17 are the Staff Review and
24 Recommendation and the testimony of Mr. Lipthratt
25 from the 20-140 case.

1 These are relevant to this case because
2 they go to the point of whether the Staff and the
3 Commission would be following important regulatory
4 principles and practices in reviewing the Stipulation
5 before it because that case, the 20-140, dealt with
6 decoupling deferrals, and that's also an issue in
7 this case.

8 Those documents are documents for which
9 the Commission has taken administrative notice in
10 that those are filings that are made in the docket of
11 Commission cases.

12 Also Mr. Borer said he worked on both of
13 those documents. He helped prepare the Staff Review
14 and Recommendation. He helped prepare
15 Mr. Lipthrott's testimony. He attended the hearing
16 in the 20-140 case, so he is familiar with the
17 testimony that was presented there.

18 So, your Honor, also we would submit that
19 these are not hearsay documents.

20 EXAMINER PRICE: They are not hearsay.
21 You don't have to argue that. They are not hearsay.

22 MR. FINNIGAN: Okay.

23 EXAMINER PRICE: Anything else on those
24 documents? Anything else on those?

25 MR. FINNIGAN: Not on those two.

1 EXAMINER PRICE: Let's handle these one
2 at a time. We are not going to admit them. We will
3 consider taking administrative notice of OCC 16 and
4 17. Is there any objection to the taking
5 administrative notice of OCC 16?

6 Okay. We will take administrative notice
7 of that one.

8 The issue, Mr. Finnigan, I am having with
9 OCC 17 is at the prehearing conference we said that
10 you would have an opportunity to cross-examine
11 Mr. Borer on any prior inconsistent statements
12 between Mr. Lipthratt's testimony and his testimony.
13 And we have here a lengthy document of which you
14 asked some questions, about one Q and A and that was
15 it.

16 And I'm very reluctant to take
17 administrative notice -- notwithstanding the rule of
18 completeness, I am reluctant to take administrative
19 notice of a massive document where no questions were
20 asked -- where only one question was asked of the
21 witness.

22 MR. FINNIGAN: Your Honor, may I respond
23 to that?

24 EXAMINER PRICE: Please.

25 MR. FINNIGAN: Your Honor, we would be

1 willing to -- well, we would be able -- we would be
2 willing to withdraw that document if we get a
3 Stipulation from the other parties that the statement
4 that Mr. Lipthratt made in his testimony was part of
5 the testimony made by Mr. Lipthratt in that case.

6 And that's important because, again, it
7 goes to whether the Staff is following important
8 regulatory practices and principles in this case in
9 it's review of the decoupling deferral because that
10 was the point in Mr. Lipthratt's testimony at the
11 hearing, that Staff generally disfavors revenue
12 deferral amounts.

13 EXAMINER PRICE: So you are talking about
14 Q and A No. 8; is that right?

15 MR. FINNIGAN: That may be right, your
16 Honor. If I may have a moment to check. And, your
17 Honor, my recollection is that this was not a Q and A
18 in his prefiled testimony, but it may be, and I may
19 have overlooked it but --

20 EXAMINER PRICE: I think that you
21 referenced his prefiled testimony, Q 9 and A 9.

22 MR. FINNIGAN: No, your Honor. The
23 testimony that I cited from the transcript was
24 different and Mr. Lipthratt stated in response to a
25 question that Staff's position is to disfavor --

1 EXAMINER PRICE: I don't recall a
2 question in the transcript from the cross-examination
3 at all.

4 MR. FINNIGAN: Your Honor, I could point
5 it out if that would help.

6 EXAMINER PRICE: In our transcript? I am
7 saying I don't recall a question of the witness
8 related to the cross-examination. The only question
9 I recall, and I made a note of it, was question Q and
10 A 9. You asked him a question about that.

11 MR. FINNIGAN: Your Honor, I -- I take
12 that back and you are correct, that it was page 6 of
13 Mr. Lipthratt's prefiled testimony. Let me just take
14 a moment to verify that.

15 EXAMINER PRICE: Let me make you an
16 offer, Mr. Finnigan. Rather than trying to get a
17 stipulation from all the other parties, I am happy to
18 take administrative notice of questions and answers
19 related to the biographical information, 1, 2, 3, 4,
20 5, and then Q and A 9.

21 MR. FINNIGAN: That would be satisfactory
22 to us, your Honor. Thank you.

23 EXAMINER PRICE: Any objections to
24 administrative notice of those questions?

25 MS. GRUNDMANN: I do have a question,

1 your Honor.

2 EXAMINER PRICE: Yes.

3 MS. GRUNDMANN: I recall that under oath
4 the witness indicated that one of the differences
5 between this former case and the current case is the
6 difference between when a decoupling mechanism was in
7 effect at the time the recoveries were sought.

8 And I -- so I guess I am just curious in
9 this particular Q -- question 8 talks about how the
10 Staff recommends deferral authority be denied in part
11 because the amount sought for deferral occurred after
12 terminating ESP III, which appears to me to be
13 relevant and on point to the distinction between the
14 request for decoupling authority in this 20-140 as
15 compared to the decoupling request set forth in the
16 Stipulation here since it covers amounts for which I
17 understood Staff Witness Borer to say that he
18 believed there was a recovery mechanism in place.

19 So I feel like in order to allow parties
20 to argue that they are distinct, question 8 may need
21 to be included in what's marked as the exhibit.

22 EXAMINER PRICE: I am happy to include
23 question 8 and 9 and take administrative notice. Any
24 objections?

25 We will take administrative notice of

1 Mr. Lipthrott's testimony questions 1, 2, 3, 4, 5, 8,
2 and 9.

3 Okay. Now, Mr. Finnigan, 18, 19, and 20.

4 MR. FINNIGAN: Thank you, your Honor. 18
5 and 19 are both official records prepared by the
6 Company or on behalf of the Company. 18 is the Form
7 10-K that the Company filed -- files every year. 19
8 is the FERC Form 1, same thing, the official form
9 that the Company files every year.

10 As I understand, the Company provides
11 both of these reports to the Commission on a regular
12 basis. These documents contain important information
13 about the Company's financial condition that the
14 Commission Staff relies on in reviewing applications
15 by the Company for cost recovery.

16 These are documents that the Commission
17 typically takes administrative notice of in other
18 proceedings. These are all indicia that these are
19 trustworthy, reliable documents.

20 In fact, there are legal penalties that
21 apply in case the information is submitted
22 inaccurately, so all the indicia would be that this
23 is reliable information for this case. This goes to
24 an important issue in the case and that is the issue
25 of retroactive ratemaking and here we have a

1 situation where --

2 EXAMINER PRICE: We don't need to argue
3 the merits. Let's stick to the documents here.

4 MR. FINNIGAN: We submit it's relevant.

5 EXAMINER PRICE: Any objection to OCC
6 Exhibits 18 and 19?

7 MR. LYONS: We object, your Honor.

8 MR. DOVE: Go ahead.

9 MR. LYONS: We object, your Honor. These
10 fall outside of the scope of administrative notice.
11 What's filed in the Commission, Commission precedent
12 allows for administrative notice.

13 Beyond that here, this is a voluminous
14 document, hasn't been interrogated by anybody. It
15 has been brought into evidence by OCC. It's not the
16 sort of document that administrative notice is
17 appropriate for.

18 MS. WHITFIELD: And, your Honor, Kroger
19 would also object to the admission of those
20 documents, particularly with respect to Exhibit 19.

21 This witness said he had never seen it,
22 hadn't -- couldn't find it, so they didn't lay a
23 foundation with this witness for that document.

24 Moreover, as a party to this case, I
25 don't even have the document. The one that was

1 provided to us as Exhibit 19 is, I think, for
2 Potomac.

3 EXAMINER PRICE: Mr. Finnigan is going to
4 cure that.

5 MS. WHITFIELD: Yeah. Then there is a
6 Word document that appears to be self-created. I
7 don't know if it's accurate or not because I don't
8 have the document from which that Word document was
9 pulled. So I just think there is a lack of
10 foundation for this -- for these documents with this
11 particular witness.

12 EXAMINER PRICE: I don't know that you
13 need to have a foundation for taking administrative
14 notice and these are documents that are on the FERC
15 and SEC websites. They are more or less
16 self-authenticating. Any other objections?

17 MR. DOVE: Actually I just had a
18 question.

19 EXAMINER PRICE: Company wants in its
20 FERC Form 1.

21 Mr. Dove.

22 MR. DOVE: I was trying to determine, was
23 the FERC Form being offered because it was contesting
24 that the one DP&L was trying to introduce was
25 incorrect? Because I don't have either copy, so I

1 can't tell and --

2 EXAMINER PRICE: We haven't had any
3 questioning of a witness on that.

4 MR. DOVE: Well, just is it necessary to
5 take administrative notice if they can resolve that
6 issue between them?

7 EXAMINER PRICE: Mr. Sharkey, will you
8 accept OCC 19 in lieu of AES 6A?

9 MR. SHARKEY: Yes, your Honor.

10 EXAMINER PRICE: Okay. Well, let's go
11 ahead and take administrative notice then of the
12 10-K, OCC 18 and OCC 19. And certainly we've had
13 questions of the witness of the FERC Form 1.

14 MR. SHARKEY: I would like to clarify for
15 the record, your Honor, that Mr. Finnigan had
16 suggested that Exhibit 6A to which we tendered was
17 not an accurate copy of the FERC Form 1. It is, in
18 fact, an accurate copy of the FERC Form 1.

19 Mr. Finnigan identified for me specific
20 language that he claimed was in Exhibit 19 that it
21 was not in 6A; but, in fact, it is in Exhibit 6A.
22 Exhibit 6A was as filed and sometimes pagination may
23 change and it may look a little different, but
24 Exhibit 6A was the as-filed version. The exhibit
25 that you have --

1 EXAMINER PRICE: But we'll accept OCC
2 Exhibit 19 in lieu of the -- Mr. Finnigan asked for
3 all of 6A to be put in there, so if you are willing
4 to accept that in lieu of 6A, and I understand you
5 disagree with the representations that there is a
6 difference, let's go ahead and take administrative
7 notice of that.

8 MR. SHARKEY: That's acceptable to the
9 Company.

10 EXAMINER PRICE: Mr. Finnigan, OCC 20.

11 MR. FINNIGAN: Your Honor, this is a Data
12 Request the Staff submitted as part of their
13 investigation in the case.

14 Mr. Borer indicated that he relied on
15 this information. As an expert witness in the
16 Commission accounting practices, this is something
17 that he is entitled to do as an expert is rely on
18 information from the Company.

19 He said he did use this in reviewing the
20 accounting deferrals for the OVEC deferral, and for
21 that reason we believe it's relevant and
22 authenticated through the testimony of Mr. Borer.

23 EXAMINER PRICE: Any objection to OCC 20?

24 MS. GRUNDMANN: I would just note this is
25 not the complete discovery response. This is OCC's

1 excerpt and I believe that's what Staff Witness Borer
2 testified to, that there were other documents
3 produced other than those and those haven't been
4 included.

5 EXAMINER PRICE: And I understand that.
6 And so we will go ahead and admit OCC 20 at this
7 time, but I do want to make sure that Mr. Finnigan on
8 OCC 19 will get copies out to all the counsel since
9 there was a service problem.

10 (EXHIBITS ADMITTED INTO EVIDENCE.)

11 MR. FINNIGAN: Yes, your Honor.

12 EXAMINER PRICE: Anything else we need to
13 address today?

14 We start tomorrow at 9 o'clock with
15 Constellation's witness and the two remaining Staff
16 witnesses.

17 Ms. Schabo.

18 EXAMINER SCHABO: On OCC 18, is that the
19 whole Form 10-K, or just the two pages you had
20 intended, page 1 of 201 and 113 of 201?

21 MR. FINNIGAN: I'm sorry, your Honor.
22 Was this on the excerpted document, the SEC filing?

23 EXAMINER PRICE: Yes.

24 EXAMINER SCHABO: Yes.

25 MR. FINNIGAN: We supplied the complete

1 document as an attachment to Mr. Morgan's testimony.
2 It's Attachment LM-4.

3 EXAMINER SCHABO: Correct, but are we
4 talking about the fact that we just took
5 administrative notice of two pages of that entire
6 form, or are we taking administrative notice of the
7 entire form?

8 MR. FINNIGAN: I would request that you
9 take administrative notice of the entire form.

10 EXAMINER PRICE: We will. Thank you.
11 Thanks for the clarification.

12 Anything further? Once again, we kick
13 off tomorrow at 9 o'clock, start with Constellation's
14 witness, then the two Staff witnesses, and then we
15 will only have one witness left for Friday date
16 certain. Anything else?

17 We are adjourned for the evening. Thank
18 you all.

19 (Thereupon, at 6:11 p.m., the hearing was
20 adjourned.)

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25

1 CERTIFICATE

2 I do hereby certify that the foregoing is
3 a true and correct transcript of the proceedings
4 taken by me in this matter on Wednesday, May 3, 2023,
5 and carefully compared with my original stenographic
6 notes.

7
8
9 Karen Sue Gibson, Registered
10 Merit Reporter.

11 (KSG-7457)

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Case No(s). 22-0900-EL-SSO, 22-0901-EL-ATA, 22-0902-EL-AAM

Summary: Transcript of The Dayton Power and Light Company hearing held on
05/03/23 - Volume II electronically filed by Mr. Ken Spencer on behalf of Armstrong
& Okey, Inc. and Gibson, Karen Sue Mrs..