

## BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

- - -

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 9:00 a.m. on Thursday,  
 May 4, 2023.

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## VOLUME III

- - -

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## CONSTELLATION EXHIBITS

## IDENTIFIED ADMITTED

5 Replacement Attachment B  
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## IDENTIFIED ADMITTED

1 DP&L's 2020 FERC Form 1

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1 Thursday Morning Session,  
2 May 4, 2023.

3 - - -

4 EXAMINER SCHABO: Good morning. We are  
5 here for day three of the evidentiary hearing in Case  
6 No. 22-900-EL-SSO, et al.

7 Unless anybody is jumping up and down, we  
8 will dispense with appearances of counsel again.

9 All right. Mr. Settineri.

10 MR. SETTINERI: Thank you, your Honor.  
11 At this time we would call Muralikrishna Indukuri to  
12 the stand.

13 EXAMINER SCHABO: Good morning. Would  
14 you raise your right hand?

15 (Witness sworn.)

16 EXAMINER SCHABO: Thank you. Please have  
17 a seat. Please turn on your microphone if it's not  
18 already on.

19 THE WITNESS: Yep.

20 EXAMINER SCHABO: Thank you.

21 - - -

22

23

24

25



1 MURALIKRISHNA INDUKURI

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

4 DIRECT EXAMINATION

5 By Mr. Settineri:

6 Q. Good Morning, Mr. Indukuri.

7 A. Good morning.

8 Q. Could you please state your name and  
9 business address for the record, please?

10 A. Yep. My name is Muralikrishna Indukuri.  
11 Business address 3010 Point Street, 8th Floor,  
12 Baltimore, Maryland.

13 Q. And if you could move the microphone a  
14 little closer to you, I think that will help the  
15 court reporter. Thank you.

16 MR. SETTINERI: Your Honor, at this time  
17 I would like to mark two exhibits. I would like to  
18 mark Constellation Exhibit 4, and I would note for  
19 the court reporters that this was originally  
20 prefiled. It had a prestamp on it Constellation  
21 Exhibit 1, but it is Constellation Exhibit 4, the  
22 direct testimony of Muralikrishna Indukuri.

23 EXAMINER SCHABO: So marked.

24 (EXHIBIT MARKED FOR IDENTIFICATION.)

25 MR. SETTINERI: And I would also like to

1 mark as Constellation Exhibit 5, this is a  
2 replacement Attachment B to Mr. Indukuri's testimony.  
3 This document is prepared just to assist the parties  
4 and help the record. What we've done -- he will  
5 present some revisions to Attachment B. Those  
6 revisions are shown highlighted in yellow in the  
7 document, but again, that is Constellation Exhibit 5.  
8 It is a replacement Attachment B to Mr. Indukuri's  
9 testimony.

10 EXAMINER SCHABO: So marked.

11 (EXHIBIT MARKED FOR IDENTIFICATION.)

12 MR. SETTINERI: Thank you.

13 Q. (By Mr. Settineri) All right.  
14 Mr. Indukuri, could you please identify what has been  
15 marked as Constellation Exhibit 4 for the record,  
16 please?

17 A. Sure. I have it with me.

18 Q. And is that your direct testimony?

19 A. Yes, it is.

20 Q. Okay. And just to help the court  
21 reporter out, you can't -- when you hold something  
22 up, the court reporter can't type it down.

23 A. Yes, I do have it with me.

24 Q. Thank you. And was that prepared by you  
25 or at your direction?

1           A.    Yes, it was.

2           Q.    Now, I would like to turn to  
3 Constellation Exhibit 5. Could you identify that for  
4 the record, please?

5           A.    Yes, I have it.

6           Q.    What is it, please?

7           A.    It is Attachment B to the direct  
8 testimony of Muralikrishna Indukuri.

9           Q.    And is this a replacement to the  
10 Attachment B that was with your prefiled testimony?

11          A.    Yes, it is.

12          Q.    And does that show revisions that you  
13 have made to that document?

14          A.    Yes, it does.

15          Q.    And those revisions would be shown  
16 highlighted in yellow; is that correct?

17          A.    Correct, yes.

18          Q.    All right. At this time do you have any  
19 changes or revisions to your testimony, including  
20 Constellation Exhibit 5 as well?

21          A.    Yes, I do.

22          Q.    If you could slowly and carefully walk  
23 through those for the court reporter, please.

24          A.    Sure. So the first change is turning to  
25 page 7, line 18. After, "Ohio currently has 160

1 active CRES suppliers," strike, "having been," and  
2 insert, "working for CEG which is."

3 MS. BOJKO: I'm sorry, your Honor. I am  
4 having trouble hearing the witness. Maybe we can  
5 pull the mic closer.

6 EXAMINER SCHABO: Move the microphone  
7 closer or just try to speak up a little bit.

8 THE WITNESS: Is this loud enough?

9 MS. BOJKO: Thank you.

10 EXAMINER SCHABO: Yes. And then you will  
11 need to repeat your correction for me, please.

12 THE WITNESS: Sure. Page 7, line 18,  
13 after, "Ohio currently has 160 active CRES  
14 suppliers," strike, "having been," and insert  
15 "working for CEG which is."

16 And the next one is page 12, line 23.  
17 After, "Those risks that are unique to Ohio are  
18 most -- municipal aggregation," open parenthesis --  
19 or rather insert open parenthesis, "which I mean to  
20 include all government aggregations," close  
21 parentheses.

22 Page 13, line 17, after, "The risk also  
23 exists by" -- strike "municipality" and replace it  
24 with "government aggregation." Page 23, line 4,  
25 replace comma with semicolon.

1           Page 24, line 1, insert, "based on peak  
2 load contribution open parenthesis, 'PLC,' close  
3 parenthesis, values" before "are."

4           EXAMINER SCHABO: I am going to ask you  
5 to repeat that one.

6           THE WITNESS: Sure. Page 24, line 1,  
7 before "are" insert, "based on peak load  
8 contribution, open parentheses, 'PLC,' closed  
9 parentheses, values."

10          EXAMINER SCHABO: Thank you.

11          A. Line 2, strike, "peak load contribution,"  
12 strike the parentheses, strike the quotes, and leave  
13 "PLC" as is -- or rather, actually -- yeah, leave  
14 "PLC" as is, and strike the quotes and the  
15 parentheses.

16          On the same page, line 16, strike, "the  
17 locational marginal," replace it with, "PJM market"  
18 and add an "s" after "price."

19          Line 18, strike, "SSO" after the word  
20 "blended" and insert "price to compare, open  
21 parenthesis, 'ETC,' closed parentheses."

22          Line 20, strike after the word, "the  
23 initial SSO price would be restored," strike, "the  
24 initial SSO price would be restored," and replace it  
25 with, "SSO load within the threshold will be served

1 by the SSO supplier at the SSO price."

2 Q. Thank you, Mr. Indukuri. Did you have a  
3 revision on line 7 of your testimony? Page 24, line  
4 7.

5 A. Oh, yes, I did. Sorry. I missed that.  
6 Thank you. Line 7, page 24, after the word "auction"  
7 insert "using PLC values." Thank you.

8 Q. Then if you could turn to -- I know we  
9 mentioned revisions -- replacement Attachment B.  
10 Just for the record, could you go through your  
11 revisions to the Attachment B which is Constellation  
12 Exhibit 5?

13 A. Sure. So page 6 under the definition of  
14 incremental load, replace "locational marginal" with  
15 "PJM market."

16 And then moving on to the next one, page  
17 45, after "based on" insert "peak load contribution,  
18 open parentheses, 'PLC,' closed parentheses, values  
19 using." And the last line on the same page, after  
20 "in megawatts," "based on PLC values."

21 And the last one is page 46, fourth line  
22 from the bottom, after "SSO supplier responsibility  
23 share," insert "multiplied by the quotient of the  
24 Base Load and the sum of the Base Load and the  
25 Incremental Load," and strike "for the Base Load."

1           Q.    And does that conclude your -- the  
2    revisions to your testimony including Attachment B?

3           A.    Yes, it does.  Thank you.

4           Q.    If I asked you the questions in your  
5    direct testimony today, would your answers be the  
6    same as you have revised today?

7           A.    Yes, they would be.

8                   MR. SETTINERI:  Okay.  Your Honor, at  
9    this time the witness is available for  
10   cross-examination, and we would move, subject to  
11   cross, Constellation Exhibits 4 and 5 into the  
12   record, please.

13                   EXAMINER SCHABO:  We will defer admission  
14   until after cross.  Thank you.

15                   Mr. Betterton.

16                                 - - -

17                                 CROSS-EXAMINATION

18   By Mr. Betterton:

19           Q.    Good morning, Mr. Indukuri.  Can you hear  
20   me okay?

21           A.    Yes, I do.  Thank you.

22           Q.    Perfect.  Just a few questions for you  
23   today, and for the sake of the court reporter, if I  
24   use the phrase or the acronym ACP, can we agree that  
25   I am talking about auction clearing prices as

1 referred to in your testimony?

2 A. Yes.

3 Q. And if I use the phrase CRES, we can  
4 agree that that's a Competitive Retail Electric  
5 Service supplier?

6 A. Correct.

7 Q. Perfect. Okay. That will just clear  
8 things up a little bit. Mr. Indukuri, power prices  
9 are nodal or regional, correct?

10 A. That's correct. And then you have  
11 multiple locations, so power prices, PJM runs a  
12 locational marginal price model, so you have prices  
13 for the loads. The loads get aggregated and you have  
14 prices at the load zones and you have prices at the  
15 hubs which are basically a simple average of the  
16 underlying node prices.

17 Q. Perfect. And I think -- I don't want to  
18 summarize what you just said, but essentially that  
19 means even within the same regional transmission  
20 organization such as PJM, you can have different  
21 power prices at different spots within that network,  
22 correct?

23 A. That is correct, yes.

24 Q. Perfect. And would you also agree that  
25 auction prices in other states may include different



1 capacity requirements than those in Ohio?

2 A. That is correct, but in my testimony I do  
3 clearly specify that when you are comparing prices  
4 across multiple jurisdictions to do an  
5 apples-to-apples comparison, you can actually  
6 estimate what the capacity price would be and net it  
7 out of the auction clearing price because you know  
8 what the PLC values are and you know what the RPM  
9 clearing price, which is basically the capacity  
10 prices.

11 Q. Perfect. In your testimony do you  
12 provide any quantitative data to show that  
13 apples-to-apples comparison between states such as  
14 Pennsylvania and Ohio?

15 A. I do not go into the details of the  
16 calculations, but I do describe how -- if an entity  
17 wanted to do the math behind how to arrive at an  
18 apples-to-apples comparison, how they would go about  
19 doing it.

20 Q. Perfect. Is it also true that government  
21 aggregations as we know them in Ohio do not exist in  
22 Pennsylvania at this time?

23 A. Yes, Pennsylvania does not have  
24 governmental aggregations, correct.

25 MR. BETTERTON: Your Honors, based on the

1 testimony I have just heard, I would move to strike a  
2 column from Figure 3 on page 21 of the witness's  
3 testimony. The column is entitled ACP in meg -- in  
4 dollars per megawatt-hour, as much as this chart is  
5 used to provide comparisons between auction clearing  
6 prices in other jurisdictions without proper support.

7 While the witness has stated that he  
8 makes broad generalizations about what's included in  
9 power prices, he's also just admitted that he  
10 provides no analysis in his testimony to show the  
11 actual differences but does say in his testimony that  
12 prices in Ohio are lower as compared to prices in  
13 Pennsylvania in the chart, which is misleading given  
14 there is no analysis of such in his testimony.

15 MR. SETTINERI: Your Honor, first of all,  
16 I missed, is he talking about Figure 3?

17 MR. BETTERTON: Figure 3 on page 21, and  
18 I am just looking at the column titled "ACP in  
19 Dollars per Megawatt-Hour." The rest of the chart is  
20 fine.

21 MR. SETTINERI: I guess I am trying to  
22 understand what the basis is for the motion to  
23 strike. I didn't hear a basis really, but I will  
24 proceed if you want, your Honor.

25 EXAMINER SCHABO: Proceed.

1 MR. SETTINERI: Yes, thank you, your  
2 Honor. The witness -- I don't think there has been a  
3 thorough examination. He has already asked questions  
4 about what the witness has done here. This chart  
5 presents data. The witness has explained in his  
6 testimony what the data means. He surely can ask the  
7 witness further questions if he would like, but to  
8 strike Figure 3, I don't see any legal basis that's  
9 been made to strike.

10 The witness prepared his testimony. He  
11 prepared this chart. He's reviewed figures. He can  
12 certainly talk about the differences in products in  
13 the various auctions. He does that in his testimony,  
14 and this chart fully supports that.

15 EXAMINER SCHABO: I think the  
16 clarification would be that it is -- the motion to  
17 strike is as to the second to last column only.

18 MR. SETTINERI: Okay. Thank you.

19 MR. BETTERTON: Yes, your Honors. And,  
20 additionally, I would also move to strike just the  
21 last sentence on page 20 of the prior page where the  
22 witness indicates using that specific column that  
23 prices in Ohio are higher than in other  
24 jurisdictions.

25 MR. SETTINERI: So let me make sure I am

1 clear, it was quick there, so we are moving to strike  
2 the last sentence, line 15 and 16 on page 20, and he  
3 wants to strike column "ACP" on Figure 3?

4 MR. BETTERTON: That's correct.

5 MR. SETTINERI: Okay. Well, your Honor,  
6 those are auction clearing prices that the witness is  
7 presenting and very much so substantive to his  
8 testimony. He testifies about those prices in his  
9 direct testimony. He provides commentary on it.

10 And as to the last sentence in Figure 20,  
11 you know, he's reflecting -- again, discussing the  
12 chart but this is all based on his experience and he  
13 is an expert here.

14 EXAMINER SCHABO: Mr. Betterton.

15 MR. BETTERTON: Again, I would just say  
16 that the witness has admitted that he provided no  
17 testimony but in his testimony did -- and on the  
18 stand has just told us that to provide a true  
19 apples-to-apples comparison, we would need to back  
20 out very specific capacity charges.

21 I think it would muddy the record a  
22 little bit if we have these prices in here that he  
23 has admitted are not comparable yet we are using them  
24 to compare auction clearing prices in different  
25 jurisdictions without the full set of data we would

1     need to compare them.

2                   MS. COHN: Your Honor, OEG supports IGS's  
3     motion to strike. We do view this as prejudicial  
4     given that it is not a true apples-to-apples  
5     comparison.

6                   MR. SETTINERI: Your Honor, I strongly  
7     object to the characterization of his testimony. He  
8     testified that he explains in here how that can be  
9     done. And they certainly can ask him as to how those  
10    prices would change today.

11                   I think the Commission can weigh the  
12    evidence here. To strike this testimony, I think,  
13    would be highly prejudicial to Constellation. And  
14    again, they can ask questions, but he said in his  
15    answer I explain in my testimony how you can do an  
16    apples-to-apples comparison. It's really just  
17    weighing the evidence.

18                   EXAMINER SCHABO: At this time I am going  
19    to deny the motion to strike and invite you to kind  
20    of flush this out a little bit in his  
21    cross-examination.

22                   MR. BETTERTON: Perfect. Thank you, your  
23    Honor.

24                   Q.     (By Mr. Betterton) Sorry for the delay,  
25    Mr. Indukuri. Let's continue so we can get those

1 cross estimates to be correct.

2 If I can have you turn, or do you know  
3 off the top of your head, page 8, line 2, of your  
4 prefiled testimony, you state that, "Ohio has a  
5 rebirth -- a robust competitive market," correct?

6 A. Yes.

7 Q. And, therefore, is it correct -- is it a  
8 correct assessment that this robust competitive power  
9 market that you refer to in your testimony exists  
10 under the current SSO framework in the state?

11 A. I would slightly disagree with that  
12 characterization. The robust -- the statement that I  
13 make in here, and I go into detail why I say there is  
14 robust competition in the power market because of the  
15 active CRES suppliers that are currently in Ohio, as  
16 well as robust government aggregation, opportunity  
17 that customers have to choose their supply from, and  
18 in terms of like relating it to SSO, I do think that  
19 the SSO procurement, as currently exists where you  
20 are basically combining all customer classes and  
21 procuring them together as a slice-of-system, in  
22 my -- I've testified to that and my testimony does  
23 not provide the appropriate price signal and that --  
24 so it could be improved and that would actually make  
25 the market -- the existing competitive market even

1 better.

2 Q. Thank you. Am I correct that your  
3 proposal is to break up the residential and  
4 commercial classes into separate auctions in Ohio?

5 A. That is correct, residential, commercial,  
6 and industrial. So you basically end up procuring  
7 supply for customers, like customers, aggregated  
8 together so that the customers who are getting the  
9 SSO price, the characteristics of that class is  
10 essentially what those individual -- the SSO price  
11 for that class.

12 Q. Thank you, Mr. Indukuri. And you mention  
13 auction clearing prices of utilities outside the  
14 State of Ohio on page 21, Figure 3, correct?

15 A. That is correct, yes.

16 Q. What states and which utility service  
17 territories do you refer to outside of the State of  
18 Ohio specifically?

19 A. Oh, in the figure?

20 Q. Correct, in the figure.

21 A. Basically all of Pennsylvania utilities.

22 Q. Thank you. And have you done any  
23 analysis of the amount of residential and commercial  
24 customers that each of those utilities serve?

25 A. I mean, we look into the customer

1 accounts as a part of participating in the auctions,  
2 yes.

3 Q. If you could turn quickly in your  
4 testimony to page 15, looking specifically at  
5 Figure 1.

6 A. Uh-huh.

7 Q. Am I correct that the figure reflects AES  
8 Ohio's overall SSO load for commercial and industrial  
9 users over time?

10 A. That is correct, yes.

11 Q. And as of October 2022, am I correct that  
12 the C&I load was approximately 80 megawatt-hours for  
13 AES Ohio's service territory?

14 A. 80 megawatts?

15 Q. 80 megawatts, sorry. My apologies.  
16 Thank you for the correction.

17 MR. SETTINERI: Could I have that  
18 question reread, please, if I may? I am sorry to  
19 interrupt.

20 MR. BETTERTON: I can read it, or Karen.

21 EXAMINER SCHABO: We'll let Karen.

22 (Record read.)

23 A. And I would add that is SSO load only  
24 that is --

25 Q. Perfect. Thank you again for the



1 correction. And would you agree that 80 megawatts of  
2 load, if that were divided into 100 tranches, would  
3 only equal .8 megawatts per tranche?

4 A. So in my direct testimony and the  
5 proposal that I put forth, I do not specify the --  
6 that the classes have to follow the same existing  
7 structure of 100 slices. The current construct is  
8 designed as a slice-of-system where basically the SSO  
9 is broken down into 100 tranches. You necessarily  
10 don't have to follow the same partitioning for that.

11 MR. BETTERTON: Your Honors, I would move  
12 to strike that answer. While I appreciate the  
13 explanation, my question was simple, that if we took  
14 the 80 megawatts and divided it into the current 100  
15 tranches, that that simple math would equal  
16 8 megawatts.

17 EXAMINER SCHABO: All right. So welcome  
18 to our hearing room. Everybody here but you knows  
19 that you get one mistake. I should strike your  
20 answer, but you get this one mistake where we go  
21 ahead and we let it stand.

22 As we go forward, please listen to the  
23 question carefully and only answer the question  
24 that's asked. If your counsel would like you to  
25 expound on that, he can bring it out on redirect.

1 THE WITNESS: Thank you.

2 Q. (By Mr. Betterton) So, Mr. Indukuri,  
3 let's go back to that question. So if we take the  
4 80 megawatts, the AES load currently is in the SSO  
5 that we just talked about, and divided that into 100  
6 tranches, regardless of that, say, legacy system or a  
7 new system, that load would only equate to  
8 .8 megawatts per tranche in a 100 tranche system,  
9 correct?

10 MR. SETTINERI: Just object, vague and  
11 ambiguous as to system. What system are we talking  
12 about, legacy and new?

13 EXAMINER SCHABO: I'm sorry. Please  
14 answer the question.

15 A. Yes. And I would add, however, that this  
16 is -- the 80 megawatts that you are quoting here is  
17 an estimate at a point in time. The number could  
18 actually change depending on how many SSO customers  
19 are in the SSO. And so, I mean, it's a variable  
20 number and that's what the chart shows here. I mean,  
21 it was as low as 20, and it's -- or rather as low as  
22 40 megawatts and it increased to 80 megawatts.

23 Q. Thank you, Mr. Indukuri. Would you agree  
24 that as far as total load is concerned, the C&I load  
25 in AES Ohio's service territory is on the smaller

1 side compared to most other utilities within PJM's  
2 service territory?

3 A. I can't really opine on that. Sorry.

4 Q. Okay. Mr. Indukuri, is it possible that  
5 fewer bidders in prior auctions would show up to bid  
6 on C&I customer load if your proposal were to be  
7 accepted?

8 A. I would disagree with that premise  
9 because we actually -- I mean, there are two things  
10 that suppliers take into account when they are  
11 looking at bidding at a potential load. And I will  
12 speak for Constellation.

13 One is the potential risk that they are  
14 underwriting when they are essentially participating  
15 in SSO procurement and the proposals that we are  
16 making, namely, to procure by customer class and also  
17 implementing the thresholds, would mitigate that  
18 risk.

19 And, secondly, our experience of class  
20 base procurements across all the PJM states refutes  
21 the supposition that there would be less suppliers  
22 interested in bidding on industrial loads.

23 MR. BETTERTON: Your Honors, I would move  
24 to strike that answer. While I appreciate the  
25 commentary, I merely asked if it was a possibility or

1 not.

2 MR. SETTINERI: Your Honor, if I may, he  
3 asked is it possible. It was an open-ended question,  
4 and the witness provided an answer to that question  
5 is it possible.

6 EXAMINER SCHABO: Motion to strike is  
7 overruled.

8 MR. BETTERTON: Thank you, your Honors.

9 Q. (By Mr. Betterton) Am I correct that the  
10 primary purpose of your proposal is to lower the risk  
11 for auction bidders?

12 A. No. The primary reason, or the primary  
13 objective of my proposal, is to have the procurements  
14 designed in a way that they would provide appropriate  
15 price signal to the customers of Ohio, and in the  
16 process of reducing risk to the SSO suppliers I think  
17 helps in providing that appropriate price signal.

18 Q. But it is your understanding that your  
19 proposal would reduce the risk for SSO bidders,  
20 correct?

21 A. It would only eliminate the tail risk to  
22 the extent that it exists. It does not reduce any of  
23 the risks that are inherent in serving full  
24 requirements fixed price supply.

25 Q. Is it possible that lowering the risk for

1 SSO bidders may discourage participation for  
2 nongeneration owners bidding into SSO auctions?

3 A. Can you repeat that question, please?

4 Q. Yeah. Is it possible that by lowering  
5 the risk for SSO auction bidders, that you might  
6 discourage nongeneration holding entities from  
7 bidding into the auctions?

8 A. I mean, I can speak to this from  
9 experience and most suppliers who participate in SSO  
10 auctions are sophisticated risk managers and they  
11 always look at what is the predictability of the  
12 risk, what is the certainty around the risk, and if  
13 they can model the risk.

14 To the extent you can provide that  
15 information, that should not discourage suppliers  
16 from participation.

17 And that's what I think our proposal  
18 essentially accomplishes, that it provides certainty  
19 and predictability for the SSO suppliers, thereby  
20 lowering the risk that the SSO suppliers are -- I  
21 should say lowering the uncertainty around the risk  
22 that the SSO suppliers are underwriting, and so I  
23 would expect that there would be more interest, not  
24 less, yeah.

25 Q. Thank you. Are you aware that the client

1 I represent, IGS Energy, has bid in and won tranches  
2 in SSO auctions in Ohio in the past?

3 A. I am aware, yes.

4 Q. And do you know if IGS or another  
5 similarly-situated company would choose to bid on  
6 these auctions if your proposals were to be accepted?

7 MR. SETTINERI: Objection, calls for  
8 speculation.

9 EXAMINER SCHABO: Can I hear that  
10 question again, please.

11 (Record read.)

12 EXAMINER SCHABO: He asked if he knew.  
13 He can answer the question.

14 MR. SETTINERI: All right. Thanks.

15 A. Can you clarify the question? Are you  
16 asking me about the potential behavior of bidders  
17 other than IGS and Constellation? I can speak to  
18 Constellation. I don't think I can speak to what  
19 other bidders or suppliers would do.

20 Q. And I think that was my exact question.  
21 So you do not know the correct -- or you do not know  
22 how other market participants, outside of your  
23 company, would react to your proposal, correct?

24 A. Again, going back to my answer from your  
25 earlier question that I answered, to the extent that

1 the risks are founded -- are predictable for  
2 suppliers, I would expect suppliers to actually be  
3 interested in participating in SSO procurements in  
4 Ohio based on the proposal that we are making down  
5 here.

6 Q. Thank you. Let's turn it back to where  
7 we started things off on page 21, Figure 3. Am I  
8 correct in saying that according to Figure 3,  
9 Duquesne held auctions for their SSO service period,  
10 and in those auctions the residential price for  
11 Duquesne cleared at approximately \$109 per  
12 megawatt-hour?

13 A. Correct.

14 Q. And in that same time period, the small  
15 scale C&I cleared at approximately \$100 per  
16 megawatt-hour.

17 A. Yes.

18 Q. Thank you. So in that auction example,  
19 the residential price cleared higher than the small  
20 C&I, correct?

21 MR. SETTINERI: I'll just object. I  
22 believe he is mischaracterizing the time periods  
23 there. I may be reading the table wrong, but I will  
24 object to the extent he is mischaracterizing the  
25 table values and lining up the rows.

1 EXAMINER SCHABO: I think there is some  
2 confusion there, so I will let you go ahead and  
3 clarify your question.

4 MR. BETTERTON: Perfect.

5 Q. (By Mr. Betterton) And I think there  
6 might be some confusion on my end as well. So,  
7 Mr. Indukuri, as you understand the chart you  
8 provided -- I am only speaking about things that  
9 happened during the same time periods -- there was an  
10 auction in Duquesne that procured load for  
11 residential and small C&I.

12 A. Yeah.

13 Q. And in that auction, as we just  
14 discussed, the residential cleared at \$109 per  
15 megawatt-hour, or approximately?

16 A. Yeah.

17 Q. And the small scale C&I cleared at \$100,  
18 approximately?

19 MR. SETTINERI: Objection. Objection.

20 EXAMINER SCHABO: Sustained.

21 MR. SETTINERI: Your Honor, for the  
22 record, if we are going to ask questions, it would be  
23 helpful just for the record to say for this term,  
24 identify the term, identify the price so we can all  
25 follow it along in the chart.



1 EXAMINER SCHABO: Let's go off the record  
2 and clear up this chart a little bit.

3 (Discussion off the record.)

4 EXAMINER SCHABO: We are back on the  
5 record. I had just sustained an objection.

6 MR. SETTINERI: Yes, your Honor. The  
7 objection was simply I think we are getting confused  
8 in reading this chart into the record, so I would  
9 actually ask to, as we go through and ask these  
10 questions, identify the term with the corresponding  
11 price so we all know on the record exactly what the  
12 record reflects related to the chart. I think there  
13 is some confusion.

14 EXAMINER SCHABO: Mr. Betterton, would  
15 you like to ask your question again, or move on?

16 MR. BETTERTON: I am happy to move on  
17 from that question. I apologize for misreading the  
18 chart.

19 EXAMINER PRICE: I have a follow-up. Can  
20 you describe the usage characteristics or the  
21 characteristics of the small C&I versus the medium  
22 C&I for Duquesne on your chart?

23 THE WITNESS: The -- so the first thing I  
24 point out is the term for medium C&I --

25 EXAMINER PRICE: No, I am just asking the

1 definition. There is some group of customers, small  
2 commercial -- C&I and there is some group of  
3 customers that's medium. Where is the breakpoint  
4 between the two?

5 THE WITNESS: I don't know the exact  
6 breakpoint, but I can speak in general terms like  
7 small C&I customers --

8 EXAMINER PRICE: You need to speak up.

9 THE WITNESS: Small C&I customers are  
10 your distribution level commercial customers. Medium  
11 C&I customers would be more like primary. So there  
12 would be a larger size for customers in more varied  
13 load characteristics. Small C&I customers would be  
14 similar load characteristics and smaller size but  
15 larger number of customers.

16 EXAMINER PRICE: Thank you.

17 THE WITNESS: So there is a little more  
18 predictability associated with small commercial  
19 customers and medium C&I, which is a lower round of  
20 risk from a customer's usage standpoint than large  
21 C&I has slightly more diverse usage characteristics.

22 EXAMINER PRICE: So in Duquesne the large  
23 industrial customers are paying \$182 per  
24 megawatt-hour?

25 THE WITNESS: The medium C&I customers.

1 And I would point out that that is for the winter  
2 months which generally tend to be more expensive, so  
3 they are only procuring for December through February  
4 so those are the most expensive months.

5 EXAMINER PRICE: Is there a separate  
6 group of large C&I customers?

7 THE WITNESS: Yes, there is.

8 MS. GRUNDMANN: Your Honor, before he  
9 continues to answer -- I don't know if he is pulling  
10 back or if --

11 EXAMINER PRICE: He is.

12 MS. GRUNDMANN: It's very hard to hear  
13 the witness.

14 EXAMINER PRICE: He's talking to me, and  
15 he's going outside the microphone. Pull the  
16 microphone closer between the two of us. There you  
17 go.

18 So there is a third group of customers --  
19 of C&I customers. There is small, medium, and large  
20 and you do not have large on this chart?

21 THE WITNESS: Yeah, because, their  
22 procurement is for energy passthrough. They fix the  
23 nonenergy components, and their energy is a  
24 passthrough.

25 EXAMINER PRICE: Okay. Thank you.

1           THE WITNESS: It's basically settled at  
2 real time or day-ahead prices.

3           EXAMINER PRICE: Thank you.

4           Q. (By Mr. Betterton) We'll move on. One of  
5 your recommendations is to limit wholesale auction  
6 winners' load exposure to 5 percent more than  
7 expected and 3 percent lower than expected, correct?

8           A. Correct.

9           Q. And is that 5 percent upper mitigation  
10 number that you suggest tied to customer accounts or  
11 anticipated customer load shape for those specific  
12 classes?

13          A. It is actually -- we made a clarification  
14 earlier in my testimony and it -- we actually based  
15 that off of PLC, and so PLC is directly related to  
16 customer accounts, so it's actually related to  
17 customer -- or the thresholds we are proposing are  
18 affected by the customer accounts and the associated  
19 PLC of those accounts, not the individual customer  
20 shape or the variability due to weather or any -- any  
21 other variability that could result in the usage of  
22 the customer changing.

23          Q. And when you say PLC, are you referring  
24 to peak load contribution?

25          A. That is correct, yes.

1           Q.    So under the proposal as corrected in  
2   your testimony, would that 5 percent upper mitigation  
3   number be weather normalized?

4           A.    No.  It would basically be off of -- so  
5   when you think of an auction that is held, then --  
6   and for, again, planning year, the PJM auction would  
7   have cleared for capacity and the utility would have  
8   assigned the peak load contribution for each  
9   individual customer so, you know, the PLC which  
10   essentially for any given hour, any given day, for  
11   the entire planning year is known.  So you don't have  
12   to weather normalize it.

13          Q.    Thank you.  If the wholesale market price  
14   for electricity were to increase significantly as  
15   compared to the auction clearing price in a specific  
16   utility territory, that may cause a large group or a  
17   large swath of customers to return to the SSO,  
18   correct?

19          A.    When you are referring to wholesale  
20   market prices, are you referring to the forwards?  I  
21   am seeking a clarification.

22          Q.    Yes, I believe looking at the forward  
23   prices.

24          A.    Potentially.  I can't predict what --  
25   there are many reasons when large customers -- when

1 one of the reasons -- or one of the limiting factors  
2 for large customers to move would be what their  
3 existing contract with their supplier is and what the  
4 terms and conditions of that supplier contract would  
5 be in the sense whether they could essentially  
6 terminate that contract without penalties or any such  
7 provisions. So, I mean, given all those caveats, I  
8 would say potentially.

9 Q. Potentially. Thank you. And if you  
10 would indulge me for one second, I would like to walk  
11 through just a quick hypothetical. I promise, unlike  
12 Joe Olier in the past, I have done my best to keep  
13 the numbers simple but please let me know if you  
14 would like a pen and paper to take any notes.

15 So let's assume that the total procured  
16 default service load and the utility we are making up  
17 is 200 megawatts.

18 A. Say that again, please.

19 Q. So we are just making up a utility.  
20 Let's assume that the procured default service is  
21 200 megawatts.

22 A. For?

23 Q. For a utility that we are making up for  
24 the default service, the total default service.

25 A. So it's all customer classes together.

1           Q.    Or a single customer class.  I don't  
2    think it matters for the hypothetical, but you can  
3    tell me as the expert if I am incorrect in that.

4           A.    Okay.

5           Q.    So let's assume that for that  
6    200 megawatts the ACP was \$60.

7           A.    Uh-huh.

8           Q.    And let's also assume that the current  
9    market prices, or the forwards as you have indicated,  
10   are \$120.

11          A.    Okay.

12          Q.    So let's assume that due to the  
13   disconnect in the ACP price which was set at 60 and  
14   the market price of 120, let's assume that due to  
15   those factors, 60 megawatts, or about 30 percent of  
16   additional load, returns to default service during  
17   the specified time period.

18          A.    Okay.

19          Q.    Based on this situation we have outlined  
20   above, under your proposal all but 5 percent of the  
21   additional 60 megawatts of load that have returned to  
22   the SSO would be served at the \$120 per megawatt  
23   market price, correct?

24          A.    Yes.

25          Q.    And those additional costs of

1 providing -- or buying those \$120 market forwards  
2 would be spread across all SSO customers, correct?

3 A. I think you are mischaracterizing our  
4 proposal. What we propose is -- in your example here  
5 anything -- so basically 5 percent of 200 megawatts  
6 would be roughly, say, 10 megawatts, so 210, so the  
7 50 megawatts of excess that has migrated into the SSO  
8 would essentially settle at the PJM-administered  
9 market prices, which necessarily don't have to be  
10 \$120.

11 I mean, prices vary across every single  
12 hour, every single day across, like you said, every  
13 single zone. So, I mean, forwards are just an  
14 estimate today of what the price could be in the  
15 future.

16 That necessarily does not mean that that  
17 is the price that the customer will end up paying  
18 when the load gets settled at PJM prices. You can  
19 have prices today at \$120. Just that happened in  
20 this past winter.

21 The prices were trading 100 plus dollars  
22 last spring. It didn't mean that the customers went  
23 and paid \$120 in the example here because winter  
24 prices crashed because the weather was warm this year  
25 so...



1           Q.    That's a fair clarification. But just  
2 getting back to the question, whatever the increase  
3 in price is to be to serve that additional load,  
4 whatever that additional cost may be based on the  
5 market conditions of when it's bought, that  
6 additional cost would be spread across all SSO  
7 customers, correct, under your proposal?

8           A.    Yes.

9           Q.    Thank you. Competitive Retail Electric  
10 Service Suppliers, or CRES, also face hedging risk,  
11 right?

12          A.    They face -- so I would actually seek  
13 clarification when you say hedging risk. What do you  
14 mean by hedging risk?

15          Q.    I'm just specifically saying that a CRES  
16 provider, when they provide a product or service,  
17 also have costs and risks when they are hedging, just  
18 like an SSO supplier.

19          A.    Their risks, the hedging risks --

20               MR. BETTERTON: Actually, your Honor, can  
21 I rephrase the question? I feel like I have misled.

22               EXAMINER SCHABO: Yes. Feel free.

23          Q.    (By Mr. Betterton) All I am saying is  
24 CRES suppliers are bound by the same market dynamics  
25 as bidders under the SSO, correct?

1           A.    I would disagree with that because CRES  
2           suppliers have a contract with their customer, and  
3           their contracts could have provisions that would  
4           basically mitigate some of the risks.

5                    But the thing that is unique to SSO  
6           suppliers is that customers can move in and out of  
7           SSO and the volumetric changes associated with those  
8           customer movements is a risk that is unique to SSO  
9           suppliers, which none of the CRES suppliers are  
10          exposed to.

11          Q.    Thank you.  But getting back to my line  
12          of questioning, when a CRES supplier signs a customer  
13          to a two-year or three-year fixed-price contract,  
14          typically the supplier would hedge out that contract  
15          to ensure that over the life of the contract it does  
16          not become unprofitable, correct?

17          A.    Yes.

18          Q.    And to the extent that you know in your  
19          position as an expert in the field of electric supply  
20          and portfolio management, would you agree that a  
21          thousand kilowatt-hours a month is a reasonable range  
22          of use for a residential customer, with the caveat  
23          that it obviously fluctuates and -- but is that a  
24          reasonable use for a normal residential customer?

25          A.    I would say probably.

1           Q.    Thank you.  And hopefully we can spare  
2   another hypothetical here.  Would you agree that a  
3   CRES supplier could be left with losses if a customer  
4   breaches a long-term contract and returns to the SSO  
5   or switches to a different supplier?

6           A.    I mean, this is me speaking from my  
7   experience.  So the contracts that CRES suppliers  
8   have with their customers often have provisions for  
9   contract termination such that the supplier is kept  
10  whole.

11           MR. BETTERTON:  Can I have that answer  
12  reread, Karen.

13           EXAMINER SCHABO:  Can I get the question  
14  first.

15                   (Record read.)

16           MR. BETTERTON:  Thank you.

17           Q.    (By Mr. Betterton) Would you also  
18  agree -- or would you agree that a supplier could be  
19  left with losses that exceed a cancelation fee or  
20  another provision in the contract?

21           A.    Potentially.

22           MR. BETTERTON:  Sorry, your Honor.  I got  
23  distracted by the sirens.

24           EXAMINER SCHABO:  That's okay.  As I did.

25           Q.    (By Mr. Betterton) Mr. Indukuri, I think

1 we are almost done, just a couple more questions.  
2 Turning you just very -- back to the very first page  
3 of your testimony, you indicate that Constellation  
4 bids on default service in states other than Ohio,  
5 correct?

6 A. Yes.

7 Q. One of the states you specifically  
8 identify on page 1 of your testimony is Maryland,  
9 correct?

10 A. Correct.

11 Q. Are you aware that on or about May 10 the  
12 Maryland Commission issued an order identifying the  
13 residential products for their four major utilities  
14 failed to attract acceptable offers within the RFP  
15 guidelines to fulfill their supply targets?

16 A. I am aware, yes. But I would add that  
17 the -- the procurement -- I mean, the way the  
18 procurement is designed, and every state has  
19 different designs for their procurements, and in the  
20 case of Maryland they did not end up getting -- or  
21 rather the bids which are -- this is a crucial  
22 difference. It's a sealed bid RFP, it is not a  
23 descending clock, so basically suppliers submit a  
24 price and the auction manager, or the auction itself,  
25 has a structure wherein they compare the submitted

1 bids against a threshold to make sure that the  
2 suppliers are not submitting prices that don't relate  
3 to the existing market prices.

4 And it failed to meet that threshold.  
5 The result was that they conducted a supplemental, I  
6 think it was in early May, and they were successful  
7 in procuring the supply for the residential classes.  
8 So it is -- it isn't that the procurement failed. I  
9 would actually say that the procurement was  
10 successful. It functioned exactly as it was  
11 designed.

12 Q. One last question, I believe. So would  
13 it surprise you or would you agree with that Potomac  
14 Edison has yet to actually clear sufficient bids to  
15 serve their residential default service load for the  
16 periods June 1, '24, through May 31, '25?

17 MR. SETTINERI: Object, assumes facts not  
18 in the record.

19 MR. BETTERTON: I am simply asking if he  
20 is aware of this fact.

21 MR. SETTINERI: That wasn't the way the  
22 question was framed. Maybe you can rephrase it.

23 EXAMINER SCHABO: Please rephrase.

24 MR. BETTERTON: Yeah, I am happy to  
25 rephrase.

1           Q.     (By Mr. Betterton) Mr. Indukuri, are you  
2     aware that Potomac Edison has yet to fill -- or has  
3     yet to clear sufficient bids in order to serve the  
4     residential default service for the period I  
5     defined -- or June 1, '24, through May 31, '25?

6           A.     I am not exactly aware of that utility,  
7     but I would add that the way Maryland procurements  
8     occur, because it's 2024 to 2025, they are future  
9     procurements that are still available for them to  
10    obtain a supplier.

11           MR. BETTERTON:   Thank you, Mr. Indukuri.  
12    No further questions.

13           EXAMINER SCHABO:   Thank you.   OEG.

14           MS. COHN:   Thank you.

15                   - - -

16                   CROSS-EXAMINATION

17    By Ms. Cohn:

18           Q.     Good morning, Mr. Indukuri.

19           A.     Good morning.

20           Q.     I would turn to page 10 of your  
21    testimony.  Are you there?

22           A.     Uh-huh.

23           Q.     On page 10, around line 6, you  
24    acknowledge the Commission already has a generic case  
25    opened asking for comments on modifications to the

1 SSO auctions?

2 A. Yes.

3 Q. Okay. Do you know how many stakeholders  
4 are participating in that proceeding?

5 A. I don't know the number on top of my  
6 head, but I know some of the names of the people who  
7 have submitted comments, including Constellation.

8 Q. Yeah. Can you name some of the entities  
9 that you know of?

10 A. I mean Constellation did. I know IGS  
11 did. I know Vitol, Enel. I think RESA submitted  
12 comments.

13 Q. And do you know if all those stakeholders  
14 are parties to this case?

15 A. I don't think I know the answer to that  
16 question.

17 Q. Have you read comments filed in this  
18 proceeding?

19 A. I've read Constellation's comments. I  
20 have read NL's comments and Vitol's comments.

21 Q. In preparing your testimony, were you  
22 aware that AEP Ohio has a proposal to mitigate SSO  
23 supply risk in its ESP case?

24 MR. SETTINERI: I am just going to object  
25 to the extent it assumes facts not in the record. I

1 think it's an unfair question.

2 MS. COHN: I am just asking if he was  
3 aware of it in preparation for his testimony.

4 MR. SETTINERI: That's assuming facts.

5 MS. COHN: It's not assuming facts. I am  
6 trying to know the basis for his opinion.

7 EXAMINER SCHABO: He can answer the  
8 question. He said he read comments. She's asking if  
9 he is aware of X.

10 MR. SETTINERI: Yeah. And just to  
11 clarify for the record, she's referring, I believe,  
12 to the AEP ESP, different case.

13 MS. COHN: Yes. That's what I said.

14 A. No.

15 Q. (By Ms. Cohn) When preparing your  
16 testimony, were you aware of FirstEnergy has multiple  
17 proposals to mitigate supplier risks in its recent  
18 ESP case?

19 A. I'm not aware of that.

20 Q. You are not. Were you aware the PUCO  
21 directed Ohio utilities to file minimum stay  
22 provisions for government aggregation customers in  
23 order to mitigate risk?

24 A. Yes. However, if I may add, those  
25 provisions don't really mitigate the -- like going



1 into the details of what the Commission approved, it  
2 does not -- I mean, all it restricts is for  
3 governmental aggregations that have dropped customers  
4 to SSO from not reenrolling those customers for 12  
5 months.

6           However, it does not prevent government  
7 aggregations in the first place to drop customers to  
8 SSO. It does not prevent new government aggregations  
9 from enrolling customers, and also based on one of  
10 the requests from one of the parties in that case, it  
11 also does not prevent government aggregation from  
12 dropping customers to SSO when their supply contracts  
13 have ended so...

14           MS. COHN: Your Honor, I move to strike  
15 everything beyond "Yes, I was aware."

16           MR. SETTINERI: Your Honor, if I may  
17 briefly, there have been a number of I am aware  
18 questions and he said he was aware and he explained  
19 how he was aware, so I think it's a fair answer to a  
20 series of questions that I think are unfair.

21           EXAMINER PRICE: Mr. Settineri, when you  
22 preface those comments with "and I might add," is  
23 that not a trigger for a motion to strike?

24           EXAMINER SCHABO: The motion to strike is  
25 granted. What he may add, you may ask on redirect.

1 MS. COHN: Thank you, your Honor.

2 Q. (By Ms. Cohn) Okay. On page -- I am  
3 going to page 18 of your testimony where you provide  
4 your recommendation as to auctions by customer class.

5 A. Uh-huh.

6 Q. Okay. So on this page, you recommend  
7 modifying the SSO by breaking Ohio's current -- and I  
8 am not speaking about PIPP -- non-PIPP SSO auction  
9 structure into a three auction structure. Yes?

10 A. Yes.

11 Q. And you recommend breaking it into one  
12 auction for residential and residential heating rate  
13 schedules?

14 A. Correct.

15 Q. One for the secondary and street lighting  
16 rate schedules?

17 A. Yes.

18 Q. And one with the -- a combined primary --  
19 primary substation and high voltage rate schedule?

20 A. Yes.

21 Q. Okay. For purposes of the residential  
22 auctions you're contemplating, you would put  
23 individual residential customers together with  
24 government aggregation customers, the residential  
25 government aggregation.

1           A.    Yes, yes.

2           Q.    Does the risk of migration to suppliers  
3 differ as between an individual residential customer  
4 and a residential ag -- government aggregation  
5 customer?

6           A.    To the SSO supplier, yes, it does.

7           Q.    Yes. Okay. On page 19 you -- I am going  
8 to turn to your Q and A on line 17 about what other  
9 states do. Okay. On page 19 you discuss other  
10 jurisdictions that split their SSO -- or their  
11 default service auctions in various ways.

12          A.    Yes.

13          Q.    Okay. And while I see a long list of  
14 Pennsylvania utilities here, you provide only two  
15 states that procure supply for default load by class,  
16 right?

17          A.    Uh-huh.

18          Q.    Okay. And the other states you discuss  
19 on -- in this Q and A split their auctions into two  
20 categories rather than three, right?

21          A.    New Jersey is the one that has like  
22 residential and small commercial together. Maryland  
23 actually has residential -- they call it type 2 which  
24 is with commercial load, yeah.

25          Q.    So -- so -- for purposes of New Jersey,

1     when residential and small commercial are together,  
2     are the rest of the customers bundled together for  
3     the other auction?

4             A.     So New Jersey has the RCI, and for their  
5     large customers they have a passthrough structure  
6     where you are basically fixing RECs, capacity,  
7     ancillaries, and then like energy settled at  
8     day-ahead or real-time prices.

9             Q.     Okay. Okay. So aside from what you just  
10    clarified, the other PJM states that you are  
11    referring to split their auctions into two  
12    categories.

13            A.     What I'm referring to in the testimony  
14    here, for example?

15            Q.     Yeah, for purposes of your testimony.

16            A.     I am thinking about the PJM states, so  
17    like -- which I don't mention here like District of  
18    Columbia, PEPCO, they have RCI and large commercial  
19    so.

20            Q.     So two?

21            A.     Yeah.

22            Q.     Okay. And I should have -- I did this  
23    somewhat out of order. Back to page 18, line 17,  
24    you -- here you expressly recognize there is not a  
25    small commercial customer class in AES Ohio's service

1 territory?

2 MR. SETTINERI: Just -- go ahead.

3 A. Yes.

4 Q. Okay. Do you know if AES Ohio currently  
5 has a commercial-only rate schedule?

6 A. I think -- I would say no, because I've  
7 mentioned the rate schedules where I propose how the  
8 classes could be different, yeah.

9 Q. Okay. And, likewise, do you know if AES  
10 Ohio currently has an industrial-only rate schedule?

11 A. So I guess I'll answer that when I say  
12 residential, commercial, industrial, and I think I do  
13 mention in my testimony that I'm using that as a  
14 generic term, but the philosophy underlying the  
15 proposal is that you essentially can combine  
16 customers with similar load characteristics as one  
17 class, and I am just using the general residential,  
18 small commercial and industrial.

19 Q. I understand, but I don't think that has  
20 answered my question. Is there an industrial-only  
21 rate schedule in AES Ohio's service territory?

22 A. No.

23 Q. Thank you. Are you aware that AES Ohio  
24 has reported some sales to primary and high voltage  
25 rate schedule customers as commercial sales?

1           A.     No.

2           Q.     Are you aware AES Ohio has reported some  
3     sales to secondary rate schedule customers to FERC as  
4     industrial sales?

5           MR. SETTINERI:   Again, I am going to  
6     object.   Even though this is queried as aware, it's  
7     introducing facts into the record through these  
8     questions, and they are not in the record.   It's one  
9     thing to say are you aware of an order.   These are  
10    specific facts, has an entity done something, have  
11    you made these sales.   That's much more specific so I  
12    object to that question.   It assumes facts not in the  
13    record.

14          MS. COHN:   Yes.   Your Honor, these are  
15    lead up questions to a document that I intend to  
16    introduce into evidence.

17          EXAMINER SCHABO:   Okay.   Give you a  
18    little bit more leeway.

19          MS. COHN:   Thank you.   In fact, may I  
20    approach, your Honor?

21          EXAMINER SCHABO:   You may.

22          MS. COHN:   Okay.   What I am handing the  
23    witness and the other parties and the Bench is an  
24    excerpt from DP&L's, when they were DP&L, 2020 FERC  
25    Form 1.   I have the complete record if people want

1 the complete copy.

2 But for purposes of handing it out and  
3 saving paper, I just did the excerpt. Did that side  
4 all get -- your Honor, could I have this marked as  
5 OEG Exhibit 1?

6 EXAMINER SCHABO: So marked.

7 (EXHIBIT MARKED FOR IDENTIFICATION.)

8 Q. (By Ms. Cohn) Mr. Indukuri, are you  
9 familiar with FERC Form 1s?

10 A. No.

11 Q. No. Okay. So you don't know what they  
12 are at all?

13 A. No.

14 Q. And you haven't reviewed any utility FERC  
15 Form 1s including AES Ohio's FERC Form 1?

16 A. Correct.

17 MS. COHN: Your Honor, I would ask to  
18 take administrative notice of this 2020 FERC Form 1,  
19 either in its entirety or just this excerpt. It's a  
20 certified public record. It's self-authenticating.

21 Yesterday OCC counsel was not able to ask  
22 questions of a witness because they were not familiar  
23 with the FERC Form 1 document, but yet it was  
24 admitted under administrative notice. So I would ask  
25 that the same treatment be taken here.

1 EXAMINER SCHABO: Are you going to  
2 attempt to question him on this?

3 MS. COHN: I would like to. Go for that  
4 first.

5 EXAMINER SCHABO: Yeah. Let's see how  
6 far down this road you can get.

7 MS. COHN: Okay.

8 Q. (By Ms. Cohn) Okay. Mr. Indukuri, for  
9 purposes of -- you have the excerpt, not the full  
10 document, so I am looking at line -- let me find  
11 it -- line 13 where the form specifies sales,  
12 commercial sales.

13 MR. SETTINERI: Objection. She hasn't  
14 laid a foundation the witness is familiar with this  
15 document or has seen this document.

16 EXAMINER SCHABO: Sustained.

17 MR. SETTINERI: Therefore, there should  
18 be no questions.

19 MS. COHN: Okay. Again, if I am not able  
20 to ask questions, I am going to ask to take  
21 administrative notice of this self-authenticating  
22 document.

23 MR. SETTINERI: Your Honor, I object.  
24 It's not the entire document, more so there has been  
25 no questions asked of this witness, and it's



1 inappropriate to put it into this witness's  
2 testimony. If OEG wanted to, they could have  
3 presented its own witness. It's not proper  
4 administrative notice.

5 MS. COHN: Your Honor, this -- this  
6 exhibit is highly relevant to the question of whether  
7 AES Ohio's rate schedules can be broken into  
8 commercial and residential sales. The Commission is  
9 not strictly bound by the Rules of Evidence. The  
10 Commission can give it its due weight.

11 MR. SETTINERI: Your Honor, it is not a  
12 Constellation document, this was prepared by DP&L, so  
13 it's not appropriate to take administrative notice  
14 through this witness on a document that Constellation  
15 has not prepared. There is no way to verify the  
16 authenticity of the numbers, et cetera, so --

17 MS. COHN: Your Honor, OEG would  
18 stipulate to administrative notice of the document as  
19 filed at FERC and certified by AES Ohio, at this time  
20 DP&L's, controller. I can show you the certification  
21 on page 2 of the document.

22 MS. GRUNDMANN: Your Honor, may I be  
23 heard briefly?

24 EXAMINER SCHABO: Go ahead.

25 MS. GRUNDMANN: I would note that

1 Mr. Settineri seems to be conflating the concept of  
2 whether taking administrative notice of a document at  
3 this time is the equivalent of entering an exhibit in  
4 response to Mr. Indukuri's testimony, which I think  
5 is different.

6 I think at almost any point in time a  
7 party could ask the Commission to take administrative  
8 notice of an appropriate document, whether that's an  
9 order or another document that meets the standards  
10 for administrative notice, and then all it is is a  
11 document for which administrative notice has been  
12 taken rather than an exhibit in Mr. Indukuri's  
13 testimony, or in cross for Mr. Indukuri.

14 So I think there's -- his objection to  
15 the extent it's somehow becoming an exhibit is not an  
16 accurate description of what OEG is asking be done  
17 here, which is just to take administrative notice.

18 MR. SETTINERI: Your Honor, I would note  
19 we have no way to redirect, no way to address this  
20 document. It's highly prejudicial.

21 EXAMINER SCHABO: We took administrative  
22 notice of a FERC form yesterday. We can do the same  
23 here. I will want a whole copy for purposes of  
24 context.

25 MS. COHN: Yes.

1 EXAMINER SCHABO: But to be clear, we are  
2 not questioning Mr. Indukuri on this document.

3 MS. COHN: That's my understanding after  
4 the objection was sustained.

5 EXAMINER SCHABO: Move on.

6 MS. COHN: Thank you, your Honor.

7 Q. (By Ms. Cohn) Okay. On page 21 of your  
8 testimony, I am moving to that Figure 3 that you  
9 discussed with Mr. Betterton.

10 A. Uh-huh.

11 Q. This shows the results of the Ohio -- the  
12 Ohio auctions in the fall of 2022 compared to the  
13 results of other state auctions during that period.

14 A. Correct.

15 Q. And you didn't provide this type of price  
16 comparison in the period prior to the natural gas  
17 price spike in fall 2022?

18 A. I mean, I don't have it here.

19 Q. Right, in your testimony.

20 A. Yes.

21 Q. Yes. And in your testimony you do not  
22 provide any forward-looking auction clearing price  
23 projections.

24 A. Can you repeat the question, please?

25 MS. COHN: Yeah. Karen, will you read it

1 back.

2 (Record read.)

3 A. I guess I would like to seek  
4 clarification on what you mean by forward-looking  
5 auction clearing prices.

6 Q. You didn't project the results of Ohio's  
7 SSO auction should your recommendations be adopted,  
8 correct, in a quantitative manner?

9 A. I mean, that would -- I don't think  
10 anyone can quantify that because there are multiple  
11 factors that would determine the outcome of an  
12 auction, the auction clearing price, so yeah.

13 Q. Right. So you did not.

14 A. Yes.

15 MS. COHN: Thank you. No further  
16 questions.

17 EXAMINER SCHABO: Thank you.

18 Who is next? Ms. Watt?

19 MS. WATT: Thank you, your Honor.

20 - - -

21 CROSS-EXAMINATION

22 By Ms. Watt:

23 Q. Mr. Indukuri, do your proposals in your  
24 testimony benefit Constellation Energy Generation,  
25 LLC, or Constellation NewEnergy?

1           A.     So the proposals that I am making are  
2     essentially broad outlines with details provided on  
3     how they could be implemented, and in my view they  
4     would actually result in predictable and stable kind  
5     of quantities that SSO suppliers would be able to  
6     hedge against and thereby lower -- potentially lower  
7     the auction clearing prices for Ohio customers, and  
8     they also provide the prices by class. So that would  
9     result in more transparency for customers so they  
10    could make appropriate decisions in terms of who they  
11    would choose as a supplier.

12                 So in that effect is that it promotes  
13    competition and, yes, Constellation is a market  
14    participant that would eventually benefit from that.

15           Q.     How would Constellation benefit from your  
16    proposals?

17           A.     A well-functioning competitive market is  
18    what Constellation aspires for and that is how  
19    Constellation would benefit.

20                 When the risks inherent in a market are  
21    appropriately reflected, that helps Constellation  
22    Energy Generation, LLC, which is an SSO supplier, as  
23    well as Constellation NewEnergy, which is a CRES  
24    supplier, or CRES.

25           Q.     How would your proposals benefit

1 customers?

2 A. So as the -- as I've shown in Figure 3,  
3 the auction clearing prices in Ohio have increased  
4 significantly, and the reason for that is because of  
5 the increased risks that the SSO suppliers have  
6 encountered in serving SSO load in Ohio, and the  
7 result was that, one, you had less suppliers show up  
8 in the auctions since spring of last year, and you  
9 have had higher auction clearing prices.

10 I don't think my proposals would actually  
11 result in the risks being -- like I said, the risks  
12 to the SSO suppliers being predictable, and thereby  
13 the risk incorporated into -- or the risks that the  
14 suppliers would incorporate into their pricing would  
15 be reduced, and hence the supply -- the customers  
16 would see potentially lower prices and that's how  
17 customers would benefit.

18 Q. And you said potentially lower prices; is  
19 that right?

20 A. Correct. Because we are in a commodity  
21 market and we don't know what the commodity markets  
22 would do.

23 We don't know what the auction suppliers'  
24 behavior would be, but with a high degree of  
25 probability, I could say that when the risks are

1 known and can be modeled for suppliers, that gives  
2 them the confidence to, one, participate in the  
3 procurements, and when you have more participants in  
4 procurement, that naturally results in a competitive  
5 price to the end customer.

6 Q. But would you agree that under your  
7 proposal the price could be higher?

8 A. I mean, the absolute magnitude of the  
9 price, potentially. Like I said, it's the underlying  
10 commodity, but the right way to think about it is  
11 what is the risk that the suppliers are essentially  
12 incorporating into their offers. And my proposal  
13 here, both the procurement by class and essentially  
14 having the threshold, would mitigate that, and hence,  
15 that would result in -- and that's how I say like you  
16 have to look at the -- the risk that is eminent and  
17 that risk would be lowered and that's -- your  
18 absolute commodity price could be higher or lower,  
19 but because of the risk being incorporated into the  
20 price being lower, the result is that the customers  
21 are getting a better price.

22 Q. A better price, but not necessarily a  
23 lower price; is that what you are saying?

24 A. I guess I'll ask, if I may, what you mean  
25 by lower price.

1           Q.    A price that's lower than they pay under  
2   the auctions currently.

3           A.    So, I mean, the auctions have happened in  
4   fall and the auctions have happened in spring, right?  
5   In the SSO procurements, you had the prices decrease,  
6   but that doesn't mean that the SSO customers got a  
7   better price in spring. It's just that the  
8   underlying commodity prices come down, so the result  
9   is that the suppliers gave them a lower price.

10                But that is not the right comparison when  
11   you think of prices and that's why I was asking what  
12   you mean by lower prices.

13           Q.    Do you believe that other states have the  
14   same aggregation risks that Ohio has?

15           A.    I mean, there are states that have  
16   aggregations, like New England states have  
17   aggregations, so there is risk. I don't know how --  
18   yeah, I don't know what you mean same.

19           Q.    Have you taken any steps to evaluate  
20   whether the aggregation risks in Ohio are similar or  
21   comparable to other states?

22           A.    So, I mean, I can broadly speak to PJM  
23   states. In PJM Pennsylvania has no government  
24   aggregation. Maryland currently does not have  
25   government aggregation. It would potentially be one



1 of the companies that could start an aggregation.  
2 PEPCO D.C. does not have aggregations. Delaware does  
3 not have aggregations. New Jersey does have  
4 aggregations, but they are procured by class. So  
5 that's how I would answer your question.

6 Q. In preparation of your testimony today,  
7 did you take any steps to analyze the aggregation  
8 risks in Ohio with other states?

9 A. I mean, I can speak to the aggregation  
10 market as I understand it in Ohio. It's pretty  
11 robust. You have well over 150 government  
12 aggregators currently operating in Ohio, and in Ohio  
13 you have government aggregation that can happen at  
14 county, township, or municipal level.

15 So, I mean, it -- there is -- so each of  
16 that, while it gives the customer flexibility to  
17 choose their supplier, I would say also results in --  
18 I mean, that's how I would characterize it. It's a  
19 robust government aggregation market in Ohio.

20 Q. My question is in preparation for your  
21 testimony did you take any steps to analyze how the  
22 aggregation risks in Ohio compare to other states?

23 A. So as I answered earlier, the aggregation  
24 risk does not exist in some of the PJM states, and it  
25 exists in Ohio, so yes.

1           Q.    So, yes, you did that analysis in  
2           preparation for your testimony?

3           A.    Not for this testimony, no.

4           Q.    Are you familiar with what I mean when I  
5           say the forward prices?

6           A.    I have -- forward prices means something  
7           to me. Maybe we can clarify what it means to you.

8           Q.    What do you mean by forward prices?

9           A.    So, I mean, energy prices trade, there's  
10          financial markets for energy, both power and gas, and  
11          each of them has a price that is basically for  
12          delivery of a certain quantity at some future point  
13          in time and a set price.

14          Q.    Do you believe that comparing auction  
15          clearing prices with the forward prices is an  
16          effective way to measure the risks built into an  
17          auction price by the winning bidders?

18          A.    I think I go into that in my testimony.  
19          If you actually exclude the other components that are  
20          incorporated into the auction clearing price, because  
21          it's not just energy you are procuring, right, it's  
22          the components of the product that suppliers are  
23          bidding on, so it includes capacity, ancillaries. In  
24          some cases, depending on the state, it includes  
25          transmission like an FEPA. It includes RECs in most

1 of the states.

2 So you basically have to net out all of  
3 those, and then you compare that resulting delta with  
4 the -- let's say you have to then calculate what the  
5 forward price for the term is because forwards are by  
6 month; and then, yeah, you can do a comparison, yes.

7 Q. But my question is do you think that that  
8 comparison is an effective way to measure the risk  
9 built into auction prices?

10 A. Yes.

11 Q. If you turn to page 22 of your testimony,  
12 line 14, you make a reference there to subsidies that  
13 exist. Do you see that?

14 A. Yes.

15 Q. Why do you believe that subsidies exist?

16 A. So I -- the way the SSO procurement  
17 currently is structured specifically in AES Ohio, you  
18 are basically procuring by -- you are procuring a  
19 slice-of-system which includes residential customers,  
20 commercial customers, and industrial customers who  
21 are receiving supply under default service.

22 Generally -- I mean, historically if you  
23 look at the data, the residential customers tend to  
24 be the -- most of the composition of this slice, and  
25 the commercial and industrial customers who tend to

1 shop a lot more are less -- they are not as  
2 representative, but when the customers, given there  
3 are no restrictions of customers to move in and out  
4 of SSO, then a large industrial customer moves into  
5 an SSO, he would get the SSO price, but the risk  
6 associated with that which the suppliers incorporate  
7 is now being borne predominantly by the residential  
8 customers.

9 So this is essentially like one way to  
10 think about what I referred to here as subsidy. So  
11 it's basically the -- the causer of the risk is not  
12 the one who is bearing the cost of that associated  
13 risk.

14 Q. So is it your belief that the residential  
15 class is bearing the risk of the industrial switching  
16 into and out of the SSO?

17 A. Under the current -- how the current  
18 procurement is structured, yes.

19 Q. Does that mean that under your proposal  
20 you expect prices to be lower for the residential  
21 class under a residential class only auction?

22 A. Again, I would answer it in -- by stating  
23 that I don't know what the commodity prices are going  
24 to do in the future, so I would certainly say that  
25 with a high probability the associated risk that the

1 suppliers would embed into the -- into the auction  
2 would be lower. I mean, I just don't know what  
3 commodity prices will do.

4 Q. I will use your term. Earlier you said  
5 it would -- you referred to the proposal resulting in  
6 a better price; is that a better term?

7 A. I would say it would result in a price  
8 that would appropriately allocate risk to the entity  
9 that is causing the risk.

10 EXAMINER PRICE: I have a question. All  
11 things being equal, hypothetically had the same  
12 auction, same day, everything is equal, except one  
13 instance you have industrial customers separated out  
14 from residential customers. Would you -- and the  
15 other hypothetical instances are normal auction  
16 system. Would you expect the industrial customers'  
17 price to be higher in the separate system than it is  
18 in the combined system today?

19 THE WITNESS: If the proposal that I have  
20 outlined in my testimony, which is basically the  
21 procurement by class and the -- the upper and the  
22 lower threshold is implemented, the upper and the  
23 lower threshold gives certainty to the suppliers, so  
24 I would say that the industrial class would actually  
25 have a price that is lower than what the current

1 auction clearing prices are.

2 EXAMINER PRICE: Let's exclude that  
3 second variable. We are just talking about  
4 separating out the classes and without risk of  
5 mitigation mechanism.

6 Would you expect in that instance the --  
7 in the separate classes, as you've laid them out,  
8 would you expect the industrial customers' prices to  
9 be higher than the status quo?

10 MR. SETTINERI: Your Honor, if I may,  
11 gentle objection. You said variable. I wasn't  
12 certain what variable you were removing.

13 EXAMINER PRICE: The risk mitigation  
14 proposal that IGS asked.

15 MR. SETTINERI: The thresholds?

16 EXAMINER PRICE: Yes.

17 MR. SETTINERI: Okay. Thank you.

18 A. So if we just did procurements by class  
19 and you procured industrial -- supply for industrial  
20 customers, I would expect, given that the industrial  
21 load is pretty diverse, and without having the  
22 knowledge of what the -- each individual underlying  
23 customer load is, that the suppliers would actually  
24 perceive that to be a riskier class to serve, and  
25 hence, yes, it would potentially result in a higher

1 price.

2 EXAMINER PRICE: Than the status quo?

3 THE WITNESS: Yes.

4 EXAMINER PRICE: How about for the  
5 commercial class which you reference as secondary and  
6 street lighting?

7 THE WITNESS: So there would be puts and  
8 takes there. I would think they may be -- it would  
9 really depend on what the underlying load shape is.

10 To the extent they are not weather  
11 sensitive, they could potentially get a lower price,  
12 or if they are weather sensitive, they could  
13 potentially get a higher price. So it depends on the  
14 underlying customer load. It's a -- it's a little  
15 harder to --

16 EXAMINER PRICE: Raise your voice.

17 THE WITNESS: It's a little harder to  
18 make a yes or no on that.

19 EXAMINER PRICE: Thank you.

20 Thank you.

21 Q. (By Ms. Watt) In your view, what happens  
22 under your proposal when a default service auction  
23 occurs and one customer class has no bidders?

24 A. So given my experience with  
25 class-by-class procurement and the added threshold

1 criteria that I have proposed in my deposition here,  
2 I see a very low probability of suppliers not showing  
3 up for any of the classes because, like I said, to  
4 the extent that we are providing enough certainty to  
5 the suppliers through the provisions that I have  
6 outlined they do, they would actually be able to  
7 quantify the risk and, hence, participate in the  
8 auctions.

9 MS. WATT: Your Honor, I would move to  
10 strike the answer. My question was what happens in  
11 the event there are no bidders, not do you think  
12 there is a circumstance where there could be no  
13 bidders.

14 EXAMINER SCHABO: Motion to strike is  
15 granted.

16 Q. (By Ms. Watt) So, Mr. Indukuri, my  
17 question is, in your view what happens under your  
18 proposal in a default service auction where a  
19 customer class has no bidders?

20 A. I mean, Ohio -- AES Ohio has the existing  
21 CBP that they have proposed, so you have basically  
22 two procurements that happen in any given year, so  
23 are you saying in both procurements no bidders show  
24 up? Because if in the first procurement the bidders  
25 don't show up, then you can basically bid out that



1 load in the second procurement. And, I mean, it's  
2 all dependent on market conditions, so maybe they  
3 didn't show up in the first time but they'll show up  
4 in the second time, so you do have the inbuilt --  
5 what do I say, the inbuilt backstop, for lack of a  
6 better word, to be able for the utility to procure  
7 supply through an SSO auction.

8 Q. But you were talking earlier about how  
9 you perceive the industrial class to be more risky  
10 for bidders, right? Yes?

11 A. Yes.

12 Q. So what happens when AES Ohio has a  
13 class-based auction and no bidders bid on that  
14 industrial class?

15 MR. SETTINERI: Just object. I think he  
16 answered that already, your Honor.

17 EXAMINER SCHABO: The objection is  
18 sustained.

19 Q. (By Ms. Watt) So if I understand your  
20 testimony, you said if an auction occurs and a  
21 customer class has no bidders, there would be a  
22 second auction; is that right?

23 MR. SETTINERI: Just object to the extent  
24 it mischaracterizes the testimony.

25 EXAMINER SCHABO: Objection overruled.

1                   EXAMINER PRICE: Could you repeat the  
2 question, please?

3                   MS. WATT: Sure.

4                   Q. (By Ms. Watt) If I understand the  
5 testimony you just provided, in the event that AES  
6 Ohio has an auction in which no bidders bid for a  
7 customer class during the auction, there would be a  
8 second auction, right?

9                   A. I mean, that's what AES Ohio currently  
10 has proposed in its CBP to have two procurements for  
11 any given planning year, so assuming that you didn't  
12 get bidders in the first one, you have the second  
13 auction to fall upon, yes.

14                  Q. Okay. So then what happens if that same  
15 customer class that doesn't receive bidders in the  
16 first auction also does not receive bidders in the  
17 second auction? So no bidders have bid on that  
18 customer class at all in either auction.

19                  A. Yeah. I mean, so if there is no supply  
20 that was procured, then the PJM market exists for  
21 that load to be served.

22                  Q. Okay. So my question is logistically how  
23 is AES Ohio under this scenario to serve the load for  
24 which no -- no bidder has bid for that customer  
25 class?

1           A.    You could do -- I mean, if there is no  
2   supplier for the load class, then basically AES Ohio  
3   would schedule that load into PJM markets, and then  
4   they would essentially collect that from the  
5   underlying SSO load. There is always -- I mean, PJM  
6   markets exist, and they are operating 24/7, so they  
7   will always get a price.

8           Q.    Do you know whether under the current --  
9   well, strike that.

10           Does your proposal provided in your  
11   testimony provide the method that you just described  
12   as part of that proposal?

13           A.    No.

14           Q.    Have you considered the impact of  
15   long-term products, such as 10 or 15 years, in your  
16   proposal?

17           A.    No.

18           Q.    Have you considered the impact of an  
19   auction that incorporates a passthrough of capacity  
20   costs?

21           A.    Not specific to this testimony, no.

22           Q.    Are you aware whether AES Ohio has  
23   already procured tranches of its load in an  
24   April 2023 auction?

25           A.    Yes.

1           Q.    Do you believe that those contracts  
2 should be honored?

3           A.    Yes.

4           Q.    Do you have a proposal for how it would  
5 work to have a portion of the load served under the  
6 slice-of-system tranches but others under the  
7 customer class approach?

8           A.    I mean, the supplier contract, like  
9 whatever the supplier won in the April auction, is  
10 governed by the SSO contract that each of us  
11 suppliers signed for that particular auction, and AES  
12 Ohio can settle -- I mean, there is slice-of-system.

13                    You have procured 40 or whatever percent,  
14 I don't remember the exact percent load that was  
15 procured in the April auction, but whatever load was  
16 procured will get settled under that SSO contract.

17                   And the remainder of the load -- and  
18 actually the SSO contemplates the quantity delta  
19 between different procurements, that -- that  
20 remainder of the load can then be served under the  
21 class by procurement and with the thresholds that we  
22 are suggesting in the SSO.

23                   So basically an SSO supplier will get  
24 paid based on the auction that has already occurred  
25 and while the SSO price was here, there would not be

1 any mitigation or any risk mitigation on that part.

2 On the second part there would be a risk  
3 mitigation and they would get paid basically the  
4 prices of each of those procurements. So you can  
5 honor the contracts that have already procured supply  
6 and implement this for future procurements and  
7 everything will work.

8 Q. Is what you just described part of the  
9 proposal that you included in your testimony?

10 A. Well, it's not specifically outlined in  
11 my testimony.

12 MS. WATT: Thank you. I have no further  
13 questions.

14 EXAMINER SCHABO: Thank you.

15 Mr. Lyons.

16 MR. LYONS: Thank you, your Honor. One  
17 moment, your Honor.

18 - - -

19 CROSS-EXAMINATION

20 By Mr. Lyons:

21 Q. Good morning, Mr. Indukuri. Are you  
22 familiar with the term black swan?

23 A. Yes.

24 Q. What does that term mean?

25 A. It's a tail risk event.

1           Q.    And would you consider the events of 2022  
2   in natural gas markets in Ohio to be a black swan  
3   event?

4           A.    No.

5           Q.    Why not?

6           A.    I mean, commodity markets in my  
7   experience have been volatile and there could be any  
8   number of factors that would essentially result in  
9   higher commodity prices and there were a few factors  
10   that were in play in spring of 2022.

11                But if I go back from my prior experience  
12   having been working in the commodity markets, I've  
13   seen unpredictable events that resulted in extremely  
14   high power prices, and weather would be one of them,  
15   but I wouldn't consider weather as a black swan.

16           Q.    Okay. Thank you. What we've discussed  
17   over the past couple of days is a premium that didn't  
18   exist prior to 2022 that now exists in these prices;  
19   is that right?

20                MR. SETTINERI: Just object. Foundation  
21   as to the last two days being discussed. I don't  
22   think the witness has been here for the last two  
23   days.

24                MR. LYONS: Okay. Your Honor, I would  
25   rephrase to this morning.

1                   MR. SETTINERI: Thank you. Could you  
2 repeat the question, please?

3                   Q.     (By Mr. Lyons) So what we've discussed  
4 this morning has to do with an increase -- a premium  
5 relating to migration risk that first became apparent  
6 in the past year; is that correct?

7                   A.     It became apparent because customer  
8 movements have essentially deviated from history.  
9 And that is the reason why there has been an increase  
10 in the risk that the suppliers have actually --  
11 suppliers have experienced increased risk and costs  
12 and that is the result why they've been incorporated  
13 into auction clearing prices.

14                  Q.     Okay. So --

15                  MR. LYONS: One moment, your Honor.  
16 Okay. Thank you.

17                  Q.     (By Mr. Lyons) So this is priced in  
18 currently. Is there a benefit to having a diverse  
19 customer portfolio as far as preventing the next  
20 event that would occur similar to the one that's  
21 happened in the past year?

22                  MR. SETTINERI: I am just going to object  
23 to the ambiguity of the event that occurred in the  
24 past year. There is just a lot of ambiguity in that  
25 question. I will object to the form of the question.

1                   EXAMINER SCHABO: Sustained -- I mean,  
2 the opposite, overruled. You can answer the  
3 question.

4           A. Could you please clarify your question  
5 when you say -- could you repeat the question and  
6 then I'll ask for clarification?

7           Q. Sure. So there is a priced in migration  
8 risk that we have newly accounted for in the past  
9 year given the rise in natural gas prices in spring  
10 of 2022; is that correct?

11          A. So the risk has two components to it.  
12 One is the price itself and then there is the  
13 quantity. And it's basically both of them work -- I  
14 mean, there is a correlation to both of them and  
15 that's what I was answering earlier to your question,  
16 that we have seen commercial and large industrial  
17 customers across Ohio basically move into SSO at much  
18 larger than what historical data suggested or was  
19 really as suppliers have modeled. So there is both  
20 quantity and price. It's not just price that is  
21 causing all the increased costs.

22          Q. Okay. But there is -- there is a price  
23 premium on the slice of tranche pricing that we did  
24 not see prior to last year.

25          A. There -- I don't know the answer to that



1 question.

2 Q. Okay. Thank you, Mr. Indukuri. So are  
3 there benefits to having a diverse portfolio of --  
4 diverse tranche that includes residential and  
5 industrial and commercial suppliers -- or, excuse me,  
6 customers?

7 A. Are you ask -- I am seeking a  
8 clarification. Are you asking me if there is a  
9 benefit to procuring residential, commercial, and  
10 industrial supply together?

11 Q. Is there a benefit to having a diverse  
12 tranche that includes all three of those classes?

13 A. As I have outlined in my testimony, the  
14 costs associated with that diversity far exceed the  
15 benefits. So that's why we are proposing what we are  
16 proposing in my testimony, that for essentially  
17 assigning the right causal relationship to both the  
18 cost and the risk, it's beneficial to procure by  
19 class and also to have the mitigation thresholds in  
20 place.

21 Q. Okay. So -- but there is some benefit to  
22 having a diverse tranche. Whether it's outweighed  
23 under your analysis or not, there is some benefit to  
24 having a diverse tranche.

25 A. When we look at the cost associated with

1 serving load, we will look at the sum total of the  
2 benefits and the cost, and my answer is that the net  
3 of that is cost; it's not a benefit.

4 EXAMINER SCHABO: Let me jump in real  
5 quick. Mr. Indukuri, in order for the cost to  
6 outweigh the benefits, there must be benefits,  
7 correct?

8 THE WITNESS: Correct.

9 EXAMINER SCHABO: What are those  
10 benefits?

11 THE WITNESS: I mean, the benefit is that  
12 you have -- the benefit is probably what I answered  
13 earlier to one of the questions asked about what --  
14 when I mentioned subsidies in my testimony, that one  
15 customer class benefits because like you have mostly  
16 residential load in SSO and a large industrial  
17 customer can move into the SSO, get the low SSO  
18 price, but that risk is essentially incorporated in  
19 the price by the suppliers. And because of that the  
20 residential customers are paying a higher price so  
21 it's -- that's how I think of it.

22 EXAMINER SCHABO: Thank you.

23 Mr. Lyons.

24 Q. (By Mr. Lyons) So you are saying that the  
25 benefit is the subsidy itself, or is there some other

1 benefit?

2 A. I only see that as the benefit.

3 Q. And why is that a benefit?

4 A. Because the -- the -- if you procured by  
5 class, then you will actually associate the  
6 appropriate risk for that particular customer class,  
7 which is actually being muted here in the SSO  
8 procurement as designed and that's why I call it a  
9 benefit.

10 EXAMINER PRICE: I have a quick question.  
11 Do you think that procuring everybody all at once  
12 improves the load shape in terms of bidding, or do  
13 you think doing it by separate customer class,  
14 everybody has got a different load shape, is more  
15 beneficial?

16 THE WITNESS: From a supplier's  
17 standpoint, we look at -- like the load shape in  
18 itself, the predictability of the load shape is what  
19 matters. So residential load is peakier, but it is  
20 rather sensitive. So we know the predominant  
21 variable that drives it so we can model it. So it  
22 would be tough for me to answer the question to what  
23 I answered earlier about small commercial customers.

24 The diversity of industrial customers is  
25 so varied that I don't exactly know unless I know who

1 the industrial customer is in that SSO tranche -- who  
2 the industrial customer is in that SSO tranche to  
3 actually answer if there is benefit associated with  
4 the load shape.

5 EXAMINER PRICE: Let me try a different  
6 way. Is there an optimal load shape that is flat?  
7 Or it doesn't matter what the load shape is, you know  
8 what it is and you can work around it?

9 THE WITNESS: To the extent that the load  
10 shape can be modeled when -- with known variables, we  
11 manage that risk all the time.

12 EXAMINER PRICE: So there is no optimal  
13 load shape?

14 THE WITNESS: The optimal load shape  
15 would be a predictable load shape.

16 EXAMINER PRICE: That's fair.

17 Thank you, Mr. Lyons.

18 MR. LYONS: Thank you, Mr. Indukuri.

19 I have no further questions, your Honor.

20 EXAMINER SCHABO: Redirect.

21 MR. SETTINERI: Well, your Honor, I would  
22 like to ask if we may have a few minutes, if we could  
23 do a break, maybe a 5-minute break and 10-minute  
24 redirect section, if that would be appropriate.

25 EXAMINER SCHABO: Yeah. Let's go off the

1 record. We'll come back in 10 minutes.

2 (Recess taken.)

3 EXAMINER SCHABO: Let's go back on the  
4 record. Mr. Settineri.

5 MR. SETTINERI: Thank you, your Honor.  
6 Just a few questions on redirect.

7 - - -

8 REDIRECT EXAMINATION

9 By Mr. Settineri:

10 Q. Mr. Indukuri, you were asked questions on  
11 Figure 3. Do you have that before you? It is in  
12 your direct testimony.

13 A. Yes.

14 Q. And you have a column of notes on the  
15 product, and in regards to that column, is that  
16 indicating the differences in the products?

17 A. That is correct. It indicates all the  
18 additional components associated with fixed price for  
19 requirements product that is being procured in each  
20 of the individual utilities.

21 Q. And for the record, can you describe what  
22 the AES Ohio default service product is compared to  
23 the ones you've listed here?

24 A. Yeah. AES Ohio, as with all SSO  
25 procurements in Ohio, procures fixed price full

1 requirements, energy, capacity, and ancillaries,  
2 while most of the Pennsylvania utilities, in addition  
3 to those, also procure RECs; and in the case of  
4 FirstEnergy utilities in Pennsylvania, they also  
5 include transmission.

6 Q. Okay. And if you were to take out the  
7 additional parts of the products, what would  
8 generally the result be on the ACP?

9 A. It would show that -- if you stripped the  
10 additional components that the ACP is -- the  
11 difference is more pronounced between Ohio  
12 procurements and the other procurements.

13 Q. In regards to that difference, can  
14 you quan -- not quantify, but lower? Higher?

15 A. Higher.

16 Q. You were asked some questions about other  
17 suppliers and I believe whether they were supportive  
18 of the proposal or would support that. Are you aware  
19 of other suppliers that support the concepts in your  
20 testimony?

21 A. Yes. In the proceeding that the PUCO  
22 initiated looking into SSO prices, I believe Enel and  
23 Vitol, which are both nongeneration-owning entities,  
24 to my knowledge have proposed something very similar  
25 to what I have proposed in my testimony.

1           Q.    Okay.  And you were asked questions -- a  
2   number of questions about bidders not showing up for  
3   auctions.  Specific to the large  
4   commercial/industrial segment that you list in your  
5   testimony on page 18, do you have any ideas or ways  
6   to incentivize bidders to show up?

7           A.    Yes.  I mean, as I mentioned in my  
8   answers to some of the questions, it's really the  
9   risk or -- that the particular class of customers  
10  poses to a supplier, so to the extent that you can  
11  define that risk and have provisions in the SSO  
12  agreements that would mitigate that risk, there would  
13  be suppliers.

14               For example, the second proposal we have  
15  where we are proposing an upper and a lower threshold  
16  does mitigate a significant part of industrial risk  
17  and that would actually incent suppliers because now  
18  their risk is predefined and they won't be exposed to  
19  tail event risk which is what most suppliers tend not  
20  to go forth with.  And descending clock auctions, I  
21  think, are actually a better procurement mechanism  
22  because basically the suppliers are seeing in real  
23  time what the interest is, and they can respond  
24  accordingly to what their risk appetite is as to how  
25  they would offer in that particular auction or

1 procurement.

2           There is other structures too. Like I  
3 said, other states have procurements for large  
4 industrial customers and we have always seen  
5 suppliers that show up and they have success for  
6 procurements where they have procured products with  
7 energy passthrough structure or with fixed price  
8 energy but for a one-year term.

9           So, yeah, I mean, you can always design,  
10 and the auction manager for AES Ohio has done such  
11 procurements in Pennsylvania and is well versed with  
12 the design of the auction such that there will be  
13 enough suppliers that would show up for the auction.

14           Q. You were also asked some questions, I  
15 believe, on the Commission's, I'll call it -- I think  
16 it was a minimum stay proceeding. Does -- have you  
17 reviewed the Commission's entry in that proceeding?

18           A. Yes.

19           Q. Okay. Do you believe that what the  
20 Commission has ordered will address the risk that the  
21 Constellation proposal is trying to address?

22           A. No, it does not because, one, the  
23 proposal for minimum stay applies to aggregators  
24 alone, and it particularly addresses when an  
25 aggregator drops customers, it prevents them from



1       reenrolling customers for a period of 12 months.

2               It, however, does not preclude government  
3       aggregators from starting government aggregation  
4       activity which in itself results in risk to  
5       suppliers, or for government aggregators from  
6       dropping the customers in the first place because  
7       it's a penalty after they drop customers that they  
8       can't reenroll, but it doesn't really preclude them  
9       from dropping customers in the first place.

10              And also there is a provision in the  
11       order where the suppliers can actually drop customers  
12       to SSO when the existing supply term has ended and  
13       that in itself does -- that in itself results in risk  
14       to the suppliers.

15              So, yeah, our proposal addresses all of  
16       that while the minimum stay provision does not cover  
17       the three cases that I've outlined.

18              MR. SETTINERI: Thank you, your Honors.  
19              Thank you, Mr. Indukuri. No further  
20       questions.

21              EXAMINER SCHABO: Is there any recross  
22       for Mr. Indukuri?

23              MS. COHN: I have one question.

24              EXAMINER SCHABO: Proceed.

25                               - - -



1           A.     In my other roles I have, yes.

2           Q.     Okay. Great. Can you quantify the  
3 risk -- going to Figure 3.

4           A.     Yeah.

5           Q.     Can you quantify the risk premium from  
6 government aggregation that's embedded in the prices  
7 for the Ohio utilities so that we can compare them to  
8 the Pennsylvania utilities, which I believe you said  
9 before do not have government aggregation?

10          A.     Can I quantify? Yes. I mean, it's no  
11 different from the risk that is posed by a large  
12 commercial or industrial customer because you can  
13 think of all the government aggregations as the  
14 decision being made by the aggregator on behalf of  
15 the aggregation of residential customers. So the  
16 load, while it's predictable because it's residential  
17 load and it's temperature dependent, whether those  
18 customers end up staying on a supplier contract that  
19 the aggregator chooses or they end up in SSO is very  
20 similar to behavior of a large commercial customer.

21          Q.     So roughly without -- without revealing  
22 any confidential information, what would be the rough  
23 risk premium that's embedded in the Ohio rates  
24 resulting from government aggregation?

25               MR. SETTINERI: And I would just

1 caution -- again, appreciate the caution from the  
2 Bench and I will also caution the witness, too, if  
3 there is any concern, consult with -- off the record  
4 with counsel.

5 A. Can I consult?

6 MR. SETTINERI: May we take --

7 EXAMINER PRICE: I don't want to even  
8 come close. It's not that important of an issue.

9 Q. (By Examiner Price) Let me just ask one  
10 simple question. Directionally that would lower the  
11 differences between the Ohio utility -- if we took  
12 out the risk premium from government aggregation,  
13 that would lower the differences between the Ohio  
14 utilities' bids and the Pennsylvania bids you've laid  
15 out here?

16 A. Government aggregation -- may I ask a  
17 clarification?

18 Q. Uh-huh.

19 A. Government aggregations currently exist  
20 in Ohio so I would --

21 Q. I understand. I guess maybe explain  
22 why -- where I am going. I am trying to find a way  
23 in my head to compare your numbers on Figure 3  
24 between Ohio and the other utilities.

25 I am trying to control for government

1 aggregation so that I can have a better mind -- in my  
2 mind a better comparison so at least you can say if  
3 you control for the government aggregation risks, the  
4 price to -- the difference will be smaller, and then  
5 I know I am at least somewhat on the right track.

6 A. If you're controlled for the government  
7 aggregation risk -- then again, depending on how  
8 large the aggregation is relative to the SSO load,  
9 but in general I would answer yes.

10 Q. Okay. Will lower the difference.

11 A. Yes.

12 EXAMINER PRICE: Thank you very much.  
13 That's all I have.

14 EXAMINER SCHABO: We can take up  
15 Mr. Settineri's exhibits now. He had moved for the  
16 admission of Constellation 4 and 5, I believe. Are  
17 there any objections?

18 Seeing none, Constellation 4 and 5 will  
19 been admitted.

20 (EXHIBITS ADMITTED INTO EVIDENCE.)

21 EXAMINER SCHABO: Thank you,  
22 Mr. Indukuri. You may step down.

23 MR. SETTINERI: Thank you, your Honor.  
24 If we may, your Honor, I believe there was  
25 administrative notice taken of a document that was

1 provided by OEG. There is on that document itself I  
2 just -- maybe OEG could provide it off the record,  
3 but the date -- if you look at the top, the date in  
4 here is like double printed over. I can't read that  
5 with my eyes.

6 MS. COHN: I can provide the full copy.  
7 Do you want it now?

8 MR. SETTINERI: I think they are going to  
9 provide a full copy as well, correct?

10 EXAMINER SCHABO: Yes.

11 MS. COHN: Here is the full copy.

12 EXAMINER SCHABO: Okay. I believe we are  
13 now moving on to Staff witnesses.

14 MR. LYONS: Thank you, your Honor. We  
15 would like to call Mr. Timothy Benedict to the stand.

16 EXAMINER SCHABO: If you can raise your  
17 right hand.

18 (Witness sworn.)

19 EXAMINER SCHABO: Thank you. Have a  
20 seat.

21 - - -  
22  
23  
24  
25

1 TIMOTHY W. BENEDICT

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

4 DIRECT EXAMINATION

5 By Mr. Lyons:

6 Q. Good morning, Mr. Benedict. Would you  
7 please state your name and spell you last name for  
8 the record?

9 A. Timothy W. Benedict, it's  
10 B-E-N-E-D-I-C-T.

11 Q. And what is your current position?

12 A. I'm a Utility Specialist III on the Staff  
13 at the Public Utilities Commission of Ohio.

14 Q. And you worked in this case; is that  
15 correct?

16 A. Yes.

17 Q. What was your role in this case?

18 A. I -- on behalf of Staff I analyzed the  
19 Company's Competitive Bid Process Application, and I  
20 also analyzed certain alternative bid structures that  
21 could be considered.

22 Q. Thank you.

23 MR. LYONS: May I approach, your Honor?

24 EXAMINER SCHABO: You may.

25 MR. LYONS: Your Honor, I would like to

1 mark Staff Exhibit 2.

2 Q. Mr. Benedict, can you identify the  
3 document in front of you?

4 A. This is my prefiled testimony in this  
5 proceeding.

6 EXAMINER SCHABO: So marked.

7 (EXHIBIT MARKED FOR IDENTIFICATION.)

8 Q. Did you compose this testimony?

9 A. I did.

10 Q. If I were to ask you the questions  
11 therein, would you give me the same answers today?

12 A. I would.

13 Q. Thank you. Do you have any corrections  
14 or changes you would like to make to this testimony?

15 A. I do have one minor correction. On page  
16 6, line 3, insert the word "and" between "commercial"  
17 and "industrial," so it reads, "larger commercial and  
18 industrial loads."

19 Q. Okay. Thank you, Mr. Benedict.

20 MR. SETTINERI: I'm sorry. Could I have  
21 that correction read one more time, please? And by  
22 the court reporter is fine or the witness, either/or.

23 EXAMINER SCHABO: Mr. Benedict, would you  
24 like to give us that correction one more time?

25 THE WITNESS: Sure. Insert the word



1 "and" between "commercial" -- the words "commercial"  
2 and "industrial" on page 6, line 3, so it reads,  
3 "larger commercial and industrial loads."

4 MR. SETTINERI: Thank you, Mr. Benedict.

5 THE WITNESS: You're welcome.

6 MR. LYONS: With that, your Honor, I open  
7 the witness up for questioning.

8 EXAMINER SCHABO: Thank you.

9 I can't find my notes. Who is going to  
10 go first? Ms. Walke.

11 - - -

12 CROSS-EXAMINATION

13 By Ms. Walke:

14 Q. Mr. Benedict -- Mr. Benedict, in your  
15 testimony you provide some background information  
16 regarding PJM capacity auctions and their interplay  
17 with DP&L's SSO auction, correct?

18 A. Correct.

19 Q. At page 3 of your testimony you highlight  
20 the delays that have occurred with PJM capacity  
21 auctions, correct?

22 A. That's correct.

23 Q. And you note that the PJM delays have  
24 required the PUCO to truncate SSO auction terms,  
25 correct?

1           A.    Correct.

2           Q.    In response to the PJM delays, you  
3 suggest that the PUCO should provide DP&L flexibility  
4 to seek to reschedule its SSO auctions to accommodate  
5 PJM delays as well as two alternative possibilities,  
6 correct?

7           A.    That's correct.

8           Q.    One of those alternatives was to remove  
9 capacity from the SSO auction component, correct?  
10 At -- at page 3, line 20, to page 4, line 1.

11          A.    Yes. Remove the capacity component from  
12 the --

13          Q.    Yes.

14          A.    -- product being auctioned, correct.

15          Q.    Correct. The other alternative was to  
16 price the capacity component at a proxy rate to be  
17 trued up once the actual capacity value is known  
18 prior to the start of the delivery year, correct?

19          A.    That's correct.

20          Q.    Let's start with the first of these  
21 alternatives, removing capacity. Can you provide  
22 some details on how you see this occurring?

23          A.    So I'm operating under the assumption  
24 that at some point prior to the start of the delivery  
25 year that capacity price will be known, and basically

1 it could be incorporated into the product at that  
2 time at a known level so there would be no risk to  
3 the supplier from that -- from that component not  
4 being known.

5 Q. And would PJM still bill SSO suppliers  
6 for the capacity?

7 A. I suppose it could be structured either  
8 way. So it could remain the responsibility of the  
9 SSO supplier and then billed to the SSO supplier and  
10 then compensated by the Company, or I guess we can  
11 modify the Master Supply Agreement such that the  
12 capacity component moves over being the obligation of  
13 the Company, in which case they would be directly  
14 compensated, and the SSO supplier wouldn't be  
15 involved. So in my mind I think it could work either  
16 way.

17 Q. The SSO product is outlined in the Master  
18 Supply Agreement, correct?

19 A. Correct.

20 Q. And specifically the Master Supply  
21 Agreement itself contains an attachment with all of  
22 the PJM line item costs and credits, correct?

23 A. That's correct.

24 MS. WALKE: Your Honor, I would like to  
25 mark a document as RESA Exhibit 1, and with your

1 permission approach the Bench.

2 EXAMINER SCHABO: You may approach. I  
3 will mark it once you tell me what it is.

4 MR. SETTINERI: Your Honor, could we go  
5 off the record for a minute? We didn't realize this  
6 was RESA counsel crossing.

7 EXAMINER SCHABO: We can --

8 MR. SETTINERI: I'm sorry, no. Go ahead  
9 and proceed.

10 EXAMINER SCHABO: We'll go off the record  
11 for a minute.

12 (Discussion off the record.)

13 EXAMINER SCHABO: We'll go back on the  
14 record.

15 We'll go ahead and mark this as RESA  
16 Exhibit 1.

17 (EXHIBIT MARKED FOR IDENTIFICATION.)

18 MS. WALKE: Let the record reflect I've  
19 handed Mr. Benedict a copy of Attachment G to the  
20 Master Supply Agreement that is available on DP&L's  
21 SSO auction website.

22 Q. (By Ms. Walke) Mr. Benedict, are you  
23 familiar with Attachment G to DP&L's SSO Master -- or  
24 SSO Auction Master Supply Agreement that contains the  
25 PJM line item responsibilities?

1           A.    Generally, yes.

2           Q.    And will you accept, subject to check,  
3   that this document is a copy of Appendix G to the  
4   Master Supply Agreement that is available on DP&L's  
5   SSO auction website?

6           A.    I can't confirm that, but I'll accept it,  
7   subject to check.

8           Q.    So this Appendix G identifies the  
9   specific PJM line item costs and credits and which  
10   type of entity is responsible for the specific line  
11   item, correct?

12          A.    That's correct.

13          Q.    And specifically this document identifies  
14   the specific line item costs and credits that an SSO  
15   supplier is responsible for, correct?

16          A.    Correct.

17          Q.    Now, your removal of capacity from the  
18   auction alternative proposal would not alter the  
19   responsibility of any of these PJM line items,  
20   correct?

21          A.    I'm not sure. I was under the impression  
22   that perhaps it would.

23          Q.    So if it would, can you please identify  
24   which one would change and why?

25          A.    So I -- I may be wrong, but I was under

1 the impression that line item 1600, RPM auction, was  
2 the responsibility of the SSO supplier. That may be  
3 true in a roundabout sense but I'm surprised to see  
4 that this says the responsibility is the generator.

5 Q. Switching then to your second alternative  
6 proposal, at the top of page 4 of your testimony --  
7 you can let me know when you are there.

8 A. I'm there.

9 Q. At the top of page 4 of your testimony,  
10 could you provide any additional details on how  
11 capacity as a proxy would work?

12 A. So I know a number of other jurisdictions  
13 in PJM have adopted this methodology in response to  
14 FERC-approved delays. Essentially rather than  
15 pricing capacity at a zero rate in the auctions, you  
16 would assign some proxy value to capacity based  
17 upon -- I assume you would price it at what you  
18 expected the capacity auction to ultimately clear at.  
19 And then you would true that up to the actual value  
20 once it's known.

21 Q. And would this proposal require any  
22 change in responsibility for the PJM line item costs  
23 and credits?

24 A. No, it wouldn't.

25 MS. WALKE: That's the end of our

1 questions. Thank you, Mr. Benedict.

2 EXAMINER SCHABO: Thank you.

3 Constellation?

4 MR. SETTINERI: Your Honor, if I may, if  
5 we may be the last ones to go, I would appreciate  
6 that because I know -- unless --

7 EXAMINER SCHABO: I believe --

8 MR. SETTINERI: It's only OCC beyond us,  
9 but I believe there are other parties here that are  
10 obviously not as friendly.

11 EXAMINER SCHABO: Earlier this morning  
12 RESA, Constellation were the only -- oh, and OCC were  
13 the only three that indicated there was cross. Is  
14 there anyone that has cross that I have not  
15 mentioned? Okay.

16 MR. SETTINERI: If we can go after OCC,  
17 I'd appreciate it.

18 EXAMINER SCHABO: That's amenable.

19 MR. SEMPLE: That's fine.

20 EXAMINER SCHABO: Mr. Semple, cross?

21 - - -

22 CROSS-EXAMINATION

23 By Mr. Semple:

24 Q. Good morning, Mr. Benedict.

25 A. Good morning.

1           Q.    Do you have a copy of your testimony  
2 before you.

3           A.    I do.

4           Q.    Could you do me a favor and turn to page  
5 4?

6           A.    I'm there.

7           Q.    Thank you.  And I am referencing  
8 specifically lines 6 to 12.  You testified that  
9 energy prices "increased significantly" from 2021 to  
10 2022, correct?

11          A.    I think that's a fair characterization,  
12 yes.

13          Q.    And you testified that the war in Ukraine  
14 was a cause of that increase in energy price, right?

15          A.    Yes.  I believe geopolitical uncertainty  
16 in an energy-producing region disrupted global energy  
17 markets including PJM and Ohio.

18          Q.    But just to clarify, specifically you are  
19 referencing the war in Ukraine, correct?

20          A.    Correct.  I specifically reference the  
21 war in Ukraine on line 7.

22          Q.    Okay.  Thank you.  Now, did you analyze  
23 whether energy prices were rising prior to the  
24 beginning of the war in Ukraine?

25          A.    I guess when you say energy prices, are



1 you referring specifically to PJM energy prices,  
2 capacity prices?

3 Q. I am referring to the same prices that  
4 you analyzed as having risen after the beginning of  
5 the war in Ukraine.

6 A. Okay. So I'm specifically referencing  
7 PJM energy prices in this question and answer.  
8 Natural gas is largely the marginal fuel powering the  
9 marginal unit in PJM, so PJM energy prices tend to  
10 follow natural gas prices. So to the extent -- to  
11 your question to the extent that they were increasing  
12 prior to 2022, perhaps they were, but not nearly as  
13 dramatically as what we -- what we observed in 2022.

14 Q. Okay. Thank you. Can you turn to page 3  
15 of your testimony, please. And I'm referencing  
16 specifically lines 4 to 8. You are aware that AES  
17 has proposed to hold multiple auctions in a year,  
18 correct?

19 A. Correct.

20 Q. And you testified that a consequence of  
21 that modification to the auction -- auction process  
22 would be to "diminish" rate impacts, correct?

23 A. Correct.

24 Q. Okay. So it's not your testimony that  
25 holding two auctions in a year would all together

1 prevent abrupt changes in generation rates, correct?

2 A. That's correct.

3 Q. Okay. And, further, you testified that  
4 holding multiple auctions would "hopefully" diminish  
5 rate impacts and protect against abrupt changes in  
6 rates, correct?

7 A. Yes, that's correct.

8 Q. So it's not your testimony that holding  
9 multiple auctions in a year would guarantee rate  
10 stability, correct?

11 A. That's correct.

12 Q. Okay. Thank you. At this time could you  
13 turn to page 6 of your testimony? And I'm  
14 referencing in particular the second paragraph on  
15 that page beginning at line 12. Now, you claim in  
16 your testimony that there is some risk that -- strike  
17 that.

18 One moment, please. Mr. Benedict, you  
19 claim in your testimony there is at least some risk  
20 that residential consumers will migrate on and off  
21 the default service, correct?

22 MR. LYONS: Your Honor, we object -- to  
23 the extent he is saying "you claim in your  
24 testimony," we would like to have a specific citation  
25 just so we can see the specific language.

1 EXAMINER SCHABO: Are you still at page  
2 6, line 12?

3 MR. SEMPLE: Yes, that's correct.

4 EXAMINER SCHABO: Thank you.

5 MR. SEMPLE: And to be more specific,  
6 lines -- line 18 is the beginning of the sentence  
7 that I am -- I am talking about. 12 is the beginning  
8 of the paragraph, but line 18 is the beginning of the  
9 specific sentence.

10 MR. LYONS: Thank you.

11 Q. (By Mr. Semple) I will reask the  
12 question. You claim in your testimony that  
13 residential customers "are not themselves without  
14 migration risks," correct?

15 A. Correct.

16 Q. And you claim in particular that  
17 residential consumers that participate in  
18 governmental aggregation pose a switching risk,  
19 correct?

20 A. I believe all residential consumers  
21 except, of course, PIPP customers have the right to  
22 shop and, therefore, pose a migration risk to the SSO  
23 suppliers including, of course, governmental  
24 aggregations.

25 Q. Okay. But you would agree with me, would

1 you not, that residential consumers who are not part  
2 of the governmental aggregation plan migrate to and  
3 from default service less frequently than large  
4 commercial and industrial consumers, correct?

5 A. I haven't evaluated that.

6 Q. Okay. Thank you. Could you turn now to  
7 page 8 of your testimony? And I'm referencing in  
8 particular lines 16 through 19. And you are aware  
9 of -- strike that.

10 You testified on this page that if a  
11 proposed load cap were to be instituted, during  
12 periods of severe weather, load obligations exceeding  
13 the cap would be procured at real-time wholesale  
14 prices that are potentially relatively high, correct?

15 A. I'm sorry. Where are you in my  
16 testimony? I apologize.

17 Q. I'm on page 8, and the beginning of the  
18 paragraph that I'm referencing starts at line 16.  
19 And again, I will give you a more specific  
20 sentence -- well, more specific reference would be  
21 from lines 21 to the subsequent page on line 5.

22 MR. SEMPLE: And could I have the  
23 question reread, please.

24 (Record read.)

25 A. So if a load cap were set, it's my

1 understanding that any load above that threshold  
2 would be procured at wholesale market spot prices.  
3 And that would be for all volumetric risks regardless  
4 of whether it's weather related or migration related  
5 or just simply economic growth.

6 Q. But just so we're clear, you are  
7 testifying that one circumstance in which load to be  
8 served may exceed the load cap would be in instances  
9 of severe weather, correct? Is that a correct  
10 summation of your testimony?

11 A. Yes.

12 Q. Okay. Thank you. Now, the PUCO has  
13 promulgated rules before that exclude the impacts  
14 from major weather events, correct?

15 A. Not that I am aware of, no.

16 MR. SEMPLE: Okay. No further questions.

17 EXAMINER SCHABO: Thank you.

18 Mr. Settineri.

19 MR. SETTINERI: We have no questions for  
20 this witness, your Honor. Thank you.

21 EXAMINER SCHABO: Redirect?

22 MR. LYONS: Your Honor, could we get 2  
23 minutes just to speak with the witness very quickly?

24 EXAMINER SCHABO: You can have 5. We'll  
25 go off the record.

1 (Recess taken.)

2 EXAMINER SCHABO: Go back on the record.

3 Is there any redirect for Mr. Benedict?

4 MR. LYONS: We don't have any redirect.

5 EXAMINER SCHABO: All right. Thank you.

6 Thank you, Mr. Benedict.

7 Well, wait. Judge Price, do you have any  
8 questions for this witness?

9 EXAMINER PRICE: Not at this time.

10 EXAMINER SCHABO: Thank you.

11 MR. LYONS: We would like to move Staff  
12 Exhibit -- what's been marked as Staff Exhibit 2 into  
13 evidence.

14 EXAMINER SCHABO: Any objection to the  
15 testimony of Mr. Benedict coming in?

16 Seeing none, Staff Exhibit No. 2 will be  
17 admitted.

18 (EXHIBIT ADMITTED INTO EVIDENCE.)

19 MS. WALKE: We would like to move RESA's  
20 Exhibit 1 to be admitted.

21 EXAMINER SCHABO: Any objections?

22 RESA No. 1 will be admitted.

23 (EXHIBIT ADMITTED INTO EVIDENCE.)

24 EXAMINER SCHABO: And your next witness.

25 EXAMINER PRICE: Let's take -- address

1     that other issue.

2                   EXAMINER SCHABO:  Oh, I will leave this  
3     to you.

4                   EXAMINER PRICE:  Mr. Margard, you have  
5     something for the Bench?

6                   MR. MARGARD:  I do, thank you, your  
7     Honor.  Your Honor had asked Staff to consult with  
8     OCC with respect to the matter that they raised at  
9     the beginning of the hearing.  We have done that, and  
10    I believe we have a satisfactory resolution to that  
11    issue.  And so I will yield the floor to Ms. Willis.

12                   MS. WILLIS:  Thank you, Mr. Margard.

13                   Your Honor, based on the information  
14    shared with OCC to date, and subject to any  
15    information that may later be shared with us in the  
16    future, we are not proceeding further at this time.  
17    Thank you.

18                   MR. MARGARD:  Your Honor, if I may, I  
19    have a little additional information I would like to  
20    offer.  In the first instance, as part of her  
21    presentation Tuesday morning, Ms. Willis referred to  
22    counsel for Staff inadvertently, I'm certain.  In  
23    actuality, the initial contact with Exeter was made  
24    by general counsel for the Commission, so I wanted to  
25    clarify that no one from the office of the Ohio

1 Attorney General had any contact with Exeter or  
2 anyone employed or engaged by Exeter.

3 Secondly, we have -- and I would like to  
4 offer, mark for purposes of identification as Staff  
5 Exhibit No. 5, the e-mail string correspondence  
6 beginning with the initiation of the contact by  
7 general counsel for the Commission, and the various  
8 responses to and fro with principals of Exeter, and  
9 including a letter that was provided by Exeter to the  
10 general counsel explaining the circumstances. Those  
11 essentially being that the purpose of the contact was  
12 to identify any possible conflicts of interest and to  
13 ensure that procedures were in place to ensure that  
14 those conflicts were sufficiently managed.

15 I would like to offer that exhibit and  
16 move for its admission at this time.

17 EXAMINER PRICE: I would like to see it.

18 MR. MARGARD: I am happy to provide it. I  
19 don't have them all marked with an exhibit number.

20 EXAMINER PRICE: I can write that in.

21 MR. MARGARD: I appreciate that.

22 EXAMINER PRICE: It will be so marked as  
23 Staff Exhibit 5.

24 (EXHIBIT MARKED FOR IDENTIFICATION.)

25 MR. MARGARD: Your Honor, I will



1 represent that this information was provided to OCC  
2 last evening. Once again, your Honor, I respectfully  
3 move for admission of Staff Exhibit 5.

4 EXAMINER PRICE: I don't think we need to  
5 admit, but I think it's helpful that it's in the  
6 record.

7 MR. MARGARD: Very good. Thank you. And  
8 I should note, your Honor, to the extent that this  
9 document reflects the assertion of any privilege,  
10 that it is explicitly waived for purposes of  
11 submitting this document.

12 EXAMINER PRICE: Ms. Willis, the e-mail  
13 string indicates that a letter was being sent to you.  
14 Did you receive a letter?

15 MS. WILLIS: Yes, your Honor, we did.

16 EXAMINER PRICE: Care to share with the  
17 Bench?

18 MS. WILLIS: No, your Honor. At this  
19 time we will not be sharing that.

20 EXAMINER PRICE: Are you withdrawing your  
21 motions that you made on our first day of hearing?

22 MS. WILLIS: No, your Honor, I am not  
23 prepared to do that.

24 EXAMINER PRICE: Are you withdrawing  
25 claims and allegations you made regarding Staff's

1 general counsel at the hearing on the first day?

2 MS. WILLIS: No, you Honor, my statement  
3 stands.

4 EXAMINER PRICE: Well, we will take this  
5 under advisement and see whether any additional steps  
6 need to be taken. Thank you.

7 MR. MARGARD: Thank you.

8 MS. WILLIS: Thank you.

9 MS. BOJKO: Your Honor, I guess I'm  
10 confused then. I don't understand. OCC made a  
11 comment that they are not pursuing something. Could  
12 we maybe have clarification on what they are not  
13 pursuing if the motions are still pending?

14 MS. WILLIS: I said we are not  
15 proceeding, Ms. Bojko.

16 MS. BOJKO: Not -- not proceeding with  
17 what? Because the motions are still pending. I took  
18 that to mean you were withdrawing your motions.

19 MS. WILLIS: No. We expressly did not  
20 withdraw. The statements stand as I presented on the  
21 record, Ms. Bojko.

22 MS. BOJKO: So you are seeking a ruling  
23 on your motions?

24 MS. WILLIS: No, I am not.

25 EXAMINER PRICE: I'm as confused as you

1 are, Ms. Bojko.

2 Again, we'll take it under advisement. I  
3 don't guarantee we won't have questions regarding  
4 this from tomorrow's witness.

5 MS. GRUNDMANN: Your Honor, did you  
6 indicate -- I think Staff had marked this as  
7 Exhibit 5. Is it going to be put into the record in  
8 light of the nonwithdrawal of the motion?

9 EXAMINER PRICE: Staff has asked to put  
10 this into the record. It's -- we are not admitting  
11 it as evidence, but it's in the record for the --  
12 just to close -- attempt to close the loop on OCC's  
13 nonpursuing their nonwithdrawn motions.

14 Well, with that --

15 MR. SHARKEY: Your Honor, one point. I  
16 am a little puzzled by the letter, the fact the first  
17 page the last sentence refers to Mr. Morgan, and says  
18 "Mr. Morgan does not share an office with Exeter  
19 Staff," that's pretty plain, "nor does he have any  
20 involvement in...22-900-EL-SSO."

21 EXAMINER PRICE: I think it's apparent  
22 they meant 22-391-EL-RDR.

23 MR. SHARKEY: That is my supposition as  
24 well. I just kind of wanted to raise -- it was  
25 unclear.

1 EXAMINER PRICE: That's the way I  
2 interpret it, but again, the words say what they say.

3 MR. SHARKEY: They do.

4 EXAMINER PRICE: We all -- I assume  
5 Mr. Morgan is going to have involvement in  
6 22-900-EL-SSO.

7 MR. SHARKEY: Seems like it.

8 EXAMINER PRICE: I guess the one factual  
9 question raised in the letter, and I am curious if  
10 OCC disputes that fact -- two facts. Do you dispute  
11 that Exeter's involvement in the other case began on  
12 September 20 -- September 14, 2022?

13 MS. WILLIS: Your Honor, I have no basis  
14 one way or another to comment on that.

15 EXAMINER PRICE: Okay. Do you dispute  
16 that Exeter's involvement in this case began on  
17 January 30, 2023?

18 MS. WILLIS: At this time I can't confirm  
19 or deny that.

20 EXAMINER PRICE: Well, I guess your  
21 witness will be able to tomorrow.

22 MR. MARGARD: Maybe.

23 EXAMINER PRICE: If necessary. Again, we  
24 will take this under advisement and consult with the  
25 Legal Directors how to proceed. Ms. Messenger.

1                   Let's go off the record before we take  
2 Ms. Messenger.

3                   (Discussion off the record.)

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

6                   (Witness sworn.)

7                   EXAMINER PRICE: Please be seated and  
8 state your name and business address for the record.

9                   THE WITNESS: Natalia Messenger, 180 East  
10 Broad Street, Columbus, Ohio 43215.

11                   - - -

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

15                   DIRECT EXAMINATION

16 By Mr. Lyons:

17                   Q. Good morning, Ms. Messenger. You work  
18 for the Commission; is that correct?

19                   A. Yes.

20                   Q. What's your position with the Commission?

21                   A. I am a Public Utilities Administrator in  
22 the Rates and Analysis Department.

23                   Q. Thank you. And you worked on the case at  
24 bar?

25                   A. I did.

1 Q. What was your role in this case?

2 A. I was the Staff lead, the case manager on  
3 the case.

4 MR. LYONS: May I approach, your Honor?

5 EXAMINER PRICE: You may.

6 MR. LYONS: Your Honor, I have what we  
7 would like to mark as Staff Exhibit 5.

8 EXAMINER PRICE: 6.

9 MR. LYONS: Excuse me.

10 EXAMINER PRICE: Not a problem.

11 (EXHIBIT MARKED FOR IDENTIFICATION.)

12 Q. (By Mr. Lyons) Ms. Messenger, can you  
13 identify the document you have in front of you?

14 A. It's my prefiled direct testimony.

15 Q. Thank you. Was this prefiled testimony  
16 prepared by you or at your direction?

17 A. Yes.

18 Q. If I were to ask you the same questions  
19 today that are contained in here, would your answers  
20 be the same?

21 A. Yes.

22 Q. Do you have any changes that you would  
23 like to make to your testimony here today?

24 A. I do not.

25 MR. LYONS: With that, your Honor, I open

1 the witness up to questioning.

2 EXAMINER PRICE: Any Intervenors other  
3 than the Office of Consumers' Counsel have any  
4 cross-examination for this witness?

5 Company?

6 MR. SHARKEY: No questions from the  
7 Company.

8 EXAMINER PRICE: Please proceed.

9 MS. WILLIS: Thank you, your Honor.

10 - - -

11 CROSS-EXAMINATION

12 By Ms. Willis:

13 Q. Good morning, Ms. Messenger.

14 A. Good morning.

15 Q. You state in your testimony that you are  
16 a Public Utilities Administrator in the Accounting  
17 and Finance Division of the Rates and Analysis  
18 Department, correct?

19 A. Yes.

20 Q. Who do you report to?

21 A. I report to Tamara Turkenton.

22 Q. And who does Ms. Turkenton report to?

23 A. The Interim Chief of Staff.

24 Q. And who would that individual be?

25 A. Susan -- Susan Patterson, I believe.

1           Q.    Thank you.  Now, you say on page 1 in  
2   your answer on line 16 through 18 that you supervise  
3   a team of analysts in conducting financial audits of  
4   electric distribution utilities; is that correct?

5           A.    Correct.

6           Q.    And how many people do you supervise?

7           A.    Four.

8           Q.    And who is on that team?

9           A.    Jason Mumma, Jen Cheng, Brenen Riggs, and  
10   Avery Cunningham.

11          Q.    Thank you.  And what kind of cases would  
12   involve the financial audits that you were -- you  
13   would be supervising activities in?

14          A.    We reviewed the Vegetation Management  
15   Riders, the Storm Cost Recovery Riders, Uncollectible  
16   Riders.  Trying to think off the top of my head.  We  
17   also review Auction Cost Riders.  I think currently  
18   that's what we -- my section reviews.

19          Q.    Does your section review accounting  
20   applications that are filed by utilities?

21          A.    Members of my team might.

22          Q.    Okay.  And would members of your team  
23   review deferral -- applications to defer expenditures  
24   or create regulatory assets?

25          A.    Yes.  I have a CPA on my team.



1           Q.    And is -- is part of your team -- would  
2 part of your team have responsibilities to evaluate  
3 proposals on decoupling?

4           A.    No.

5           MR. LYONS:  Objection, your Honor.

6           I retract it.

7           Q.    (By Ms. Willis) And you also say you are  
8 a case manager for Standard Service Offer  
9 applications filed under 4928.141, correct?

10          A.    Correct.

11          Q.    Can you tell me what you do as a case  
12 manager in that role?

13          A.    Sure.  I review the application, make  
14 assignments to our subject matter experts.  I lead  
15 negotiations, help with drafting testimony, reviewing  
16 stipulations.

17          Q.    And in that role do you -- who do you  
18 supervise?  The same team?

19          A.    My team members had assignments in the --  
20 as part of this SSO case, but I had oversight of  
21 those subject matter experts working on this case.

22          Q.    Okay.  Do you have any responsibility in  
23 any respect related to Standard Service Offer  
24 applications filed under 4928.142, the Market Rate  
25 Offer statute?

1           A.    If such an application were filed, I  
2 might.

3           Q.    Have you had any responsibilities in the  
4 past with regard to any applications filed by  
5 utilities for a Market Rate Offer?

6           A.    No.

7           Q.    Now, prior to your position as a Public  
8 Utility Administrator, you worked as a Staff attorney  
9 in the PUCO's Legal Department, correct?

10          A.    I did.

11          Q.    And how long did you work in the Legal  
12 Department?

13          A.    From 2017 to 2022.

14          Q.    Thank you. And who did you report to in  
15 that position?

16          A.    I reported initially to Theresa White and  
17 then to Don Lemming.

18          Q.    And what was your responsibilities in  
19 your role as Public Utilities Administrator?

20          A.    Public Utilities Administrator?

21          Q.    I'm sorry. What was your role as -- when  
22 you worked as a Staff attorney in the PUCO's Legal  
23 Department?

24          A.    I assisted staff with legal issues in the  
25 cases that they were -- mostly in the Rates Analysis

1 Department in cases they worked on.

2 Q. And can you identify any cases that you  
3 worked on that you assisted the Staff with?

4 A. I -- in those five years any case that  
5 went to hearing in the Rates Analysis Department I  
6 likely worked on.

7 Q. Okay. Do you know during that time  
8 period, if you can recall, whether you worked on any  
9 ESP cases?

10 A. I did.

11 Q. And which ones would those have been?

12 A. I worked on Duke's ESP case in the 2017  
13 filing.

14 Q. Any other one that you can recall?

15 A. No.

16 Q. Okay. And then you say you worked as an  
17 Assistant Attorney General representing the PUCO,  
18 correct?

19 A. I did.

20 Q. And what period of time was that?

21 A. From to 2015 to 2017.

22 Q. And who did you report to in that role?

23 A. I reported to Bill Wright, Section Chief.

24 Q. And what kind of cases did you work on  
25 when you had that role?

1           A.    Anything I was assigned to representing  
2   Staff.

3           Q.    And do you recall if you worked on any  
4   Electric Security Plan proceedings?

5           A.    I think on the tail end of my job with  
6   the Attorney General's, I was shadowing Tom McNamee  
7   on the AES ESP application.

8           Q.    And in that role did you work on any  
9   accounting applications that utilities might have  
10   filed?

11          A.    No.

12          Q.    Now, your testimony today is on the  
13   three-part test and on the statutory more favorable  
14   in the aggregate test; is that right?  Let me strike  
15   that.

16                Your testimony today is on the  
17   Commission's stipulation criteria and on the more  
18   favorable in the aggregate test, correct?

19          A.    Yes.

20          Q.    Is this the first time you've testified  
21   on the Commission's settlement criteria?

22          A.    Yes.

23          Q.    And is this the first time you've  
24   testified on the more favorable in the aggregate  
25   test?

1 A. Yes.

2 Q. Is this the first time you've testified?

3 A. It is.

4 Q. Now, are you testifying as an attorney  
5 giving a legal opinion, or are you testifying as a  
6 Staff member?

7 A. I am not testifying as an attorney. I am  
8 testifying as a Staff member.

9 Q. Let's go to your testimony at question  
10 11. And there you begin to describe the benefits of  
11 the settlement. Do you see that?

12 A. Yes.

13 Q. Did you look at the costs of the  
14 settlement to consumers?

15 A. Yes.

16 Q. And are you aware of the costs of the  
17 settlement to all the different customer classes?

18 A. Yes.

19 MS. WILLIS: Your Honor, may I approach?

20 EXAMINER PRICE: You may. Care to share  
21 it with the Bench?

22 MS. WILLIS: It's already been admitted  
23 into evidence as OCC Exhibit 8, but if you would like  
24 an extra copy, I certainly have one.

25 Q. (By Ms. Willis) Ms. Messenger, we just

1 spoke about the costs of the Stipulation to the  
2 different customer classes, and you said you are  
3 aware of those costs. So now I am showing you what  
4 has been admitted into the evidence as OCC Exhibit  
5 No. 8 and ask if you can take a look at that for a  
6 moment.

7 A. I've reviewed it.

8 Q. Thank you. And so have you seen this  
9 document before?

10 A. I have.

11 Q. And when -- when did you see this  
12 document?

13 A. When the Company responded to OCC's  
14 request.

15 Q. And do you know what time that the  
16 Company responded to OCC's request?

17 A. I don't -- I mean, to be clear, it was  
18 when my counsel e-mailed it to me, so I don't recall.

19 Q. Thank you. So would you accept, subject  
20 to check, that -- let me strike that.

21 Is it fair to say then that you would not  
22 have obtained -- or you would not have had this cost  
23 information during the settlement process?

24 EXAMINER PRICE: Ms. Willis, I am unclear  
25 whether you are asking whether she had the contents

1 of the document during the settlement process or the  
2 document itself.

3 MS. WILLIS: Well, we can start -- I  
4 think both actually. I'll ask about both.

5 EXAMINER PRICE: If you could be clear  
6 then.

7 MS. WILLIS: Thank you.

8 Q. (By Ms. Willis) So, Ms. Messenger, do you  
9 know that during the settlement process prior to the  
10 Staff signing the settlement, whether you had a copy  
11 of this document which would show the costs of the  
12 settlement to the different customer classes?

13 A. I don't recall.

14 Q. And, Ms. Messenger, do you know whether  
15 you would have during the course of the settlement --  
16 or prior to Staff signing the Settlement, whether you  
17 would have had the information contained on OCC  
18 Exhibit No. 8?

19 MR. SHARKEY: I am going to object, your  
20 Honor. It's calling for settlement communications.

21 EXAMINER PRICE: Mr. Margard, care to  
22 weigh in? Or, Mr. Lyons, care to weigh in?

23 MR. LYONS: Your Honor, all of these  
24 questions are asking in relation to settlement. We  
25 object to that. She can ask when she saw the

1 document or what she thinks of the contents of the  
2 document.

3 MS. WILLIS: And, your Honor, if I may be  
4 heard?

5 EXAMINER PRICE: You may.

6 MS. WILLIS: Yes, your Honor. Under Ohio  
7 Administrative Code 4901-1-26, it specifically --  
8 it's really a mirror of Ohio Rule of Evidence 408,  
9 but that -- that section of the Code says that  
10 evidence of compromise, and it goes into two -- two  
11 categories, is not admissible to prove liability for  
12 or invalidity of the dispute, rather evidence of  
13 conduct or statement made in compromise negotiation  
14 is likewise not admissible.

15 Here is the key language. The rule does  
16 not require the exclusion of any evidence otherwise  
17 discoverable merely because it is presented in the  
18 course of compromise negotiations. This rule also  
19 does not require exclusion when the evidence is  
20 offered for another valid purpose.

21 So consistent with Ohio Administrative  
22 Code 4901-1-26, I would -- I would state that it is  
23 perfectly proper and that it is not precluded from --  
24 this cross-examination is not precluded by the rules  
25 that govern PUCO proceedings.



1 EXAMINER PRICE: Mr. Lyons.

2 MR. LYONS: Your Honor, we've already  
3 gotten to the point where Ms. Messenger can talk  
4 about the document. She is okay talking about the  
5 document, but speaking about how it relates to  
6 Settlement proceedings under that rule is not  
7 permissible.

8 MR. SHARKEY: Can I add?

9 EXAMINER PRICES: Mr. Sharkey.

10 MR. SHARKEY: Yes, your Honor. At the  
11 beginning of every settlement -- every case when we  
12 start settlement negotiations, we start, the Company,  
13 by me standing up and saying everybody who is  
14 participating in settlement negotiations, one  
15 understanding we need to have in common is nothing  
16 used in any settlement negotiations will be used for  
17 any purpose other than in settlement negotiations and  
18 I ask everybody if they agree to that and I did that  
19 here.

20 Nobody disagreed with that, so initially  
21 I think our agreement was that this -- that any  
22 settlement communications wouldn't be used for any  
23 purpose.

24 In addition, the Commission has a  
25 longstanding practice of prohibiting the use of

1 settlement communications in hearings.

2 EXAMINER PRICE: Any other parties care  
3 to weigh in?

4 MS. GRUNDMANN: Yes, your Honor, just  
5 briefly. I pulled up Rule 408, and it says the rule  
6 also does not require exclusion when the evidence is  
7 offered for another purpose such as proving bias or  
8 prejudice of a witness, negating a contention of  
9 undue delay, or proving an effort to obstruct a  
10 criminal investigation prosecution.

11 So I think the question is you have to go  
12 to the initial predicate of the rule which is that it  
13 is not permissible to offer confidential  
14 communications to dispute either the validity or  
15 amount, and it's not admissible to prove liability  
16 for or invalidity of the claim or its amount.

17 And so I think the essence of that rule  
18 is to say if you are attempting to argue that the  
19 settlement in this case is somehow invalid based on  
20 things that occurred in settlement, that would be  
21 contrary to Rule 408, whereas, by contrast if it were  
22 for some unrelated purpose other than to invalidate  
23 the settlement, I think you could certainly use it  
24 under the exception.

25 But the way I understand the questions as

1 being posed are in an attempt to undercut the  
2 Settlement and the compromises that led to it, so I  
3 do think it's covered by Rule 408 and the prohibition  
4 against such discovery.

5 MS. WILLIS: Your Honor --

6 MR. LYONS: Your Honor, if I may, OCC has  
7 cited to the rule, but they haven't cited to the  
8 specific provision that they think provides an  
9 exception here. It would be good to hear what they  
10 think the exception to the rule actually is.

11 MS. WILLIS: If I may briefly respond.

12 EXAMINER PRICE: I am not sure if  
13 everybody who wants to weigh in has had an  
14 opportunity to weigh in. Then we will give you a  
15 chance to respond.

16 MR. DOVE: Your Honor.

17 EXAMINER SCHABO: Mr. Dove.

18 MR. DOVE: Is the rule in question Ohio  
19 Admin Code 4901:1-26-01?

20 MS. WILLIS: No. No.

21 MR. DOVE: Okay. I just wanted to check.  
22 Sorry. I am trying to clarify what you are relying  
23 on.

24 MS. BOJKO: Your Honor, I didn't hear the  
25 citation either. Could you maybe provide the

1 citation?

2 MS. WILLIS: 4901-1-26.

3 MS. BOJKO: Can we have just a minute,  
4 your Honor?

5 MS. WILLIS: And we have further legal  
6 citations if we want -- if this is going to be a  
7 prolonged discussion, we can certainly provide those.

8 EXAMINER PRICE: Oh, I think it will be a  
9 very short discussion.

10 MS. BOJKO: 4901-1-26.

11 MS. WILLIS: Prehearing conferences,  
12 Section (E).

13 MS. BOJKO: Well, we are not in a  
14 prehearing conference.

15 MS. WILLIS: Understood.

16 EXAMINER PRICE: What is Section (E),  
17 Ms. Bojko?

18 MS. BOJKO: I'm sorry. You want me to  
19 tell you what it is?

20 EXAMINER PRICE: Yes.

21 MS. BOJKO: "Evidence of (1) furnishing  
22 or offering or promising to furnish, or (2) accepting  
23 or offering or promising to accept a valuable  
24 consideration in compromising or attempting to  
25 compromise a disputed matter in a commission

1 proceeding is not admissible to prove liability for  
2 or invalid -- invalidity of the dispute, excuse me.  
3 Evidence of conduct or statements made in compromise  
4 negotiations is likewise not admissible. This rule  
5 does not require the exclusion of any evidence  
6 otherwise discoverable merely because it is presented  
7 in the course of compromise negotiations. This rule  
8 also does not require exclusion when the evidence is  
9 offered for another valid purpose." And all of this  
10 is under prehearing conferences.

11 EXAMINER PRICE: Thank you.

12 MR. LYONS: Your Honor, we don't believe  
13 that the document should be excluded -- excuse me.  
14 Sorry. May I, your Honor?

15 EXAMINER PRICE: Go ahead.

16 MR. LYONS: Yeah. We are not saying that  
17 the document should be excluded. We are saying the  
18 questions that relate to settlement and circumstances  
19 surrounding the settlement are off limits, and this  
20 rule doesn't say otherwise.

21 MS. BOJKO: Your Honor, OMAEG would like  
22 to be heard on this issue. I don't think the rule  
23 cited by counsel does provide an exception.

24 It clearly says that the con -- "evidence  
25 of conduct or statements made in compromise

1 negotiations is likewise not admissible."

2 We think that the information she's  
3 attempting to solicit is about compromises made in  
4 the course of negotiations and that is inappropriate  
5 even assuming this rule applies to hearings because  
6 it is under -- recognizing titles don't always stand  
7 as evidence, that it's under the -- it's in the  
8 context of prehearing conferences and what happens  
9 prior to a trial.

10 MS. COHN: Your Honor, also with respect  
11 to the discoverable mere -- it's not excluded merely  
12 because it is presented in the course of compromise  
13 negotiations, that could be a discovery response.  
14 That could be information that's also in a discovery  
15 response. That could be information that's --

16 EXAMINER PRICE: Which they could receive  
17 through discovery.

18 MS. COHN: Right. So I think what the  
19 rule is speaking to is just because a document that  
20 is otherwise findable in the public record is -- is  
21 raised in settlement, it doesn't mean that it can't  
22 be shown in the course of the trial. So this -- that  
23 doesn't speak to settlements that aren't otherwise  
24 discoverable.

25 EXAMINER PRICE: Anybody else?

1 Ms. Willis.

2 MS. WILLIS: Thank you, your Honor. With  
3 respect to Walmart's counsel, Rule 408 is the Ohio  
4 Rule of Evidence, and I would believe that the Ohio  
5 Administrative Code rules would be more applicable,  
6 although the Ohio Administrative Code is fairly --  
7 follows that rule. So really what is controlling is  
8 the 4901-1-26, contrary to Walmart's arguments.

9 In terms of whether or not this is  
10 entitled the prehearing conferences, the rule  
11 specifically states and refers to a -- in a  
12 Commission proceeding, so rather -- you know, we're  
13 not bound or -- you know, it's not inapplicable  
14 because this is not a prehearing conference. That --  
15 I think that argument is not valid.

16 It does state that -- that the rule does  
17 not require exclusion when the evidence is offered  
18 for another valid purpose. One of the purposes here  
19 of providing -- of asking about this information goes  
20 to the first prong of this settlement standard. That  
21 is, are the parties knowledgeable? Are the parties  
22 knowledgeable in this proceeding?

23 And perhaps if the parties did not -- if  
24 the parties knew what the cost -- the total cost of  
25 the Stipulation was, the 160 million, they may not

1 have entered into this Settlement.

2 So those -- those questions go to whether  
3 there is a -- whether all parties were  
4 knowledgeable --

5 EXAMINER PRICE: The word is  
6 knowledgeable.

7 MS. WILLIS: -- and all the numbers were  
8 on the table at the time that the settlement  
9 negotiations were going forward.

10 EXAMINER PRICE: The word is  
11 knowledgeable. It's not do they have specific  
12 knowledge of specific facts that you find  
13 interesting.

14 MS. WILLIS: I would say it's more than  
15 interesting. It is the cost of that settlement to  
16 all the parties. I think it's highly relevant, and I  
17 think it's permitted by the rules.

18 Additionally, your Honor, under the Ohio  
19 Consumers' Counsel versus Public Utilities  
20 Commission, 111 Ohio St. 3d 300, the Ohio Supreme  
21 Court has held expressly that the Commission and  
22 Intervenors have cited no Ohio statute or case law  
23 that expressly creates a settlement privilege  
24 pertaining to information sought at the discovery  
25 stage. So, your Honors, I --



1                   EXAMINER PRICE: That's pertaining to  
2 information sought in the discovery stage, which we  
3 are not at right now.

4                   MS. WILLIS: Agreed. Agreed. But I do  
5 think there is an acknowledgement and there is  
6 further case law that really questions whether or not  
7 there is essentially a settlement privilege in Ohio.

8                   MR. LYONS: If I may, your Honor?

9                   EXAMINER PRICE: No. Just --  
10 Ms. Willis's argument is totally contrary to the  
11 argument made in the hearing room by Angela O'Brien  
12 from Consumers' Counsel on November 16, 2022, where  
13 Ms. O'Brien stated ELPC, in that case, was allowed to  
14 ask how many settlement meetings were held, were all  
15 parties invited to attend, were there other meetings  
16 between other parties, technical parties, things of  
17 that nature.

18                   Getting into the actual substance of  
19 settlement negotiations is improper. And it just is.  
20 It's privileged information.

21                   The rule that you cite has not changed  
22 since November 16, 2022. And in the Columbia case  
23 the Commission upheld the exclusion of questions  
24 related to settlement privilege.

25                   Therefore, consistent with our ruling in

1 Columbia which -- which supported OCC's claim for a  
2 broad settlement privilege, your question is -- or  
3 the objection is sustained. The question is  
4 improper.

5 MS. WILLIS: Your Honor, I would note my  
6 objection. I'd also note that I am not aware of the  
7 context of which that argument was made and whether  
8 that argument was made with respect to the first  
9 prong of the settlement standard.

10 I believe it's directly applicable to the  
11 first prong of the settlement standard; and,  
12 therefore, perhaps Ms. O'Brien was not -- that  
13 argument was not clear on that point, so I would  
14 distinguish that. Thank you.

15 EXAMINER PRICE: But actually it was made  
16 with respect to the first prong ironically, so that  
17 would be incorrect.

18 Let's go with the next question.

19 MS. WILLIS: What was -- can I have the  
20 last question reread so I don't ask it again?

21 EXAMINER PRICE: Yes, please.

22 (Record read.)

23 EXAMINER PRICE: Don't answer that  
24 question.

25 THE WITNESS: Right.

1 EXAMINER PRICE: Making sure.

2 Q. (By Ms. Willis) Now, with respect to the  
3 OCC Exhibit No. 8, can you tell me when -- the date  
4 that you received this document?

5 A. I don't recall the date.

6 Q. Would you -- would you believe that that  
7 would -- the date would have been after the  
8 settlement was signed in this proceeding?

9 A. I believe it was.

10 Q. Now, you also said earlier that you  
11 considered the cost of the Stipulation in doing your  
12 analysis; is that correct?

13 A. Yes.

14 Q. And what cost did you consider?

15 A. We considered the cost of the riders in  
16 this case so an -- any charges that would have come  
17 out of this case.

18 Q. And did you quantify the costs of the  
19 riders that were coming out of this case?

20 A. So what -- what I reviewed was the  
21 monthly bill impact of the charges.

22 Q. Did you review anything else to -- when  
23 you were reviewing the cost of the riders in this  
24 case besides the monthly bill impacts?

25 A. So in the course of the Staff review, you

1 know, each subject matter expert would have asked  
2 questions and looked into the cost of each -- of each  
3 charge.

4 Q. And those are the costs of the riders,  
5 right?

6 A. Correct.

7 Q. Okay. Now, the monthly bill impacts of  
8 the Settlement changes, when did you receive that  
9 information?

10 A. That -- I would have received that before  
11 the Stipulation was filed.

12 Q. Now, you -- you -- I had asked you if you  
13 quantified the cost of the riders, and you responded  
14 you reviewed the costs of the riders, but I don't  
15 think you really responded to my question. My  
16 question was did you quantify the costs of the  
17 settlement in this proceeding?

18 A. We looked at every charge that would be  
19 made to customers in this proceeding.

20 Q. Did you quantify on an aggregate basis,  
21 for instance, what the Settlement would cost  
22 residential -- the residential customer class over  
23 the -- the ESP period?

24 A. The total over the entire three years?

25 Q. Yes.

1           A.    I don't recall.

2           Q.    You don't recall whether you quantified  
3 it, or you don't recall the costs that you looked at?

4           A.    So, you know, each rider individually we  
5 looked at the costs of that rider, the charges to  
6 customers. You know, whether we looked at it in  
7 this -- whether I saw -- I just don't recall whether  
8 I saw this quantification specifically in the course  
9 of my review.

10          Q.    And what quantification would you have  
11 seen, if any, during your review?

12               MR. SHARKEY: I am going to object, your  
13 Honor, to the extent it calls for any settlement  
14 communications. I don't know if it is asking for  
15 settlement communications or internal analysis.

16               EXAMINER PRICE: I believe all of these  
17 questions right now -- correct me if I'm wrong, I  
18 believe all these questions are now directed at the  
19 time she prepared her testimony; is that correct?

20               MS. WILLIS: Yes. It's with respect to  
21 her analysis of the more favorable in the aggregate.

22               EXAMINER PRICE: Yes.

23               MS. WILLIS: Which I think is perfectly  
24 proper.

25               MR. SHARKEY: I will just -- to the -- I

1 would ask to the extent it is seeking settlement  
2 communications, I object. If it's not, then I have  
3 no grounds to object.

4 MS. WILLIS: I think there is a pending  
5 question.

6 EXAMINER PRICE: I believe so.

7 THE WITNESS: Can I have it read back?

8 EXAMINER PRICE: Let's have the question  
9 back, please.

10 (Record read.)

11 A. Can you -- can you clarify when you are  
12 talking about quantification during my review what  
13 you mean?

14 Q. Yes. As part of the MRO versus ESP  
15 analysis, did you quantify the cost of the ESP to  
16 consumers as part of that exercise?

17 A. So to the extent there were provisions of  
18 the ESP that contained charges to consumers, yes,  
19 that's quantified.

20 Q. And where would we find that  
21 quantification? Is it in your testimony?

22 A. No.

23 Q. So if I asked you today on a quantifiable  
24 basis whether -- what the cost of the ESP to  
25 consumers is, what would be your answer?

1           A.    I think -- there are different ways to  
2 quantify the cost to consumers. So I did not  
3 perform, you know, the cost on -- you know, this  
4 aggregate cost over three years is not something that  
5 I recall seeing.

6           Q.    Do you recall seeing the aggregate cost  
7 of the ESP in year one?

8           A.    So I just -- I want to be clear that my  
9 testimony today is that the ESP, in comparison to the  
10 MRO, does not add any costs that the MRO wouldn't --  
11 that wouldn't also be charged under an MRO.

12          Q.    So --

13          A.    So to the extent your questions are going  
14 to a quantification in the ESP of a charge that would  
15 occur under the ESP and not the MRO, that is not  
16 my -- my testimony today is that there are no  
17 additional costs to customers.

18          Q.    So understanding that you did not  
19 quantify -- just to be clear, you did not quantify  
20 any costs associated with the ESP because you  
21 believed all the riders that created those costs  
22 would be allowed under an MRO?

23               EXAMINER PRICE: That's not what she  
24 said. She did not say anything about riders nor an  
25 MRO. She said that there would be no additional

1 costs in the ESP as opposed to a hypothetical MRO.

2 MS. WILLIS: Let me back it up then.

3 Q. (By Ms. Willis) I am not trying to  
4 confuse you. I am just trying to understand. Before  
5 you talked about costs, and you said you reviewed the  
6 costs of riders under the settlement. Did you review  
7 any other costs besides riders that the settlement  
8 imposes on consumers as a result of the settlement?

9 A. In addition to the riders?

10 Q. Yes. Were there any costs other than  
11 rider costs in the settlement?

12 A. No.

13 Q. So you do not know what the aggregate  
14 cost of the ESP in year one, year two, or year three  
15 is to consumers under the settlement; is that  
16 correct?

17 MS. BOJKO: Your Honor, may I have that  
18 question reread, please?

19 EXAMINER PRICE: You may.

20 (Record read.)

21 MS. BOJKO: Objection, mischaracterizes  
22 her prior testimony.

23 EXAMINER PRICE: Ms. Willis?

24 MS. WILLIS: I think it's a fair  
25 question. I don't think it mischaracterizes her



1 testimony, and certainly the witness can tell me that  
2 that's a mischaracterization. I am sure she will if  
3 it is a mischaracterization.

4 EXAMINER PRICE: Overruled.

5 A. So, you know, your questions are based on  
6 this spreadsheet, this document you have before me,  
7 and I did not look at this and I did not, you know --  
8 I don't recall seeing this specific document.

9 We did review bill impact statements and  
10 the costs of the ESP. I do not -- off the top of my  
11 head, I could not tell you if this is the exact  
12 number that I reviewed. But, yes, we -- Staff  
13 reviewed the cost of the ESP to consumers.

14 Q. Would the bill impact statements that you  
15 reviewed to look at the costs, would they have  
16 reflected, for instance, the total charges to the  
17 residential consumers under the settlement as this  
18 document does?

19 A. I mean, without seeing the document right  
20 now, I couldn't tell you. We reviewed, you know, a  
21 lot of spreadsheets in that time so I --

22 Q. I'm sorry. I was referring to bill  
23 impacts.

24 A. Yes.

25 Q. You said you looked at the bill impacts.

1 My question specifically is does -- when you looked  
2 at the bill impacts, could you tell, for instance,  
3 that residential customer classes as a whole in year  
4 one of the settlement paid \$24 million under the  
5 settlement?

6 MR. LYONS: Objection, your Honor. It  
7 makes it sound as though that's the number. We  
8 haven't established that is the number. So if she's  
9 going to ask a hypothetical, maybe leave a specific  
10 number out. Or if there is a specific number, say  
11 where she is getting it from.

12 EXAMINER PRICE: Would you rephrase your  
13 question?

14 Q. (By Ms. Willis) Ms. Messenger, you keep  
15 referring to the bill impacts, that that's what you  
16 reviewed to look at the cost to consumers of the  
17 settlement. My question is when you looked at the  
18 bill impacts to review the cost to consumers, could  
19 you tell from the bill impacts, for instance, what  
20 the total charge to residential customer class would  
21 be in, for instance, year one, year two, year three,  
22 or on a cumulative basis? Could you tell any of that  
23 information from the bill impacts that you reviewed?

24 A. I would have to look at -- I would have  
25 to look at the document again.

1           Q.    And if I ask you that same question with  
2   respect to the different customer classes like the  
3   secondary customer class, the primary customer class,  
4   could you tell me whether when you looked at the bill  
5   impacts you could tell from those bill impacts what  
6   the charge to those specific customer classes would  
7   have been in year one, year two, year three, or the  
8   total ESP period?

9           A.    Again, I would have to look at the  
10  document again.

11          Q.    Now, let's go to your testimony where you  
12  talk about benefits of the settlement. And you  
13  identify as a benefit of the settlement the  
14  Distribution Investment Rider. Do you see that?

15          A.    Yes.

16          Q.    Now, that's a direct -- direct charge to  
17  consumers, correct?

18          A.    Under the rider, yes.

19          Q.    Yes. And do you know the direct costs of  
20  that rider to consumers for each year of the ESP plan  
21  and cumulatively how much it would cost over the  
22  three-year ESP term?

23          A.    So I did review the charge to customers,  
24  and the Stipulation states the revenue caps for the  
25  DIR.

1           Q.    I understand it states the revenue caps,  
2 but do you know the charges to customers under that  
3 rider?

4           A.    Well, it would be based on the revenue  
5 caps, what is spent by the Company and what's  
6 recovered.

7           Q.    Can you pull to the Stipulation? Do you  
8 have a copy of the Stipulation?

9           A.    Yes.

10          Q.    Can you pull to the section on the DIR,  
11 please?

12          A.    I'm there.

13          Q.    And what page is that? Starting on page  
14 6?

15          A.    Yeah.

16          Q.    So are you referencing on page 7 the --  
17 the items listed under E1, 2, 3, and 4?

18          A.    Yes.

19          Q.    Thank you. Now, when you talk about the  
20 Proactive Reliability Optimization Rider as a  
21 benefit, and that's on lines -- I think it's on page  
22 5 -- your testimony is not numbered, but I think it's  
23 on page 5, lines 2 to 5, response to question 11. Do  
24 you see that?

25          A.    Yes.

1           Q.    And that's a direct charge to consumers,  
2 correct?

3           A.    Yes.

4           Q.    And do you know what the direct cost of  
5 that rider is to consumers for each year of the plan  
6 and cumulatively over the three-year ESP term?

7           A.    Yes.

8           Q.    And can you identify that charge?

9                   EXAMINER PRICE:  Can I have the last  
10 question -- not the question she just asked but the  
11 last question before that back, please.

12                   (Record read.)

13                   EXAMINER PRICE:  You are flipping between  
14 cost and charge, and it's confusing to me.  I can't  
15 imagine what it is doing to the witness.

16                   MS. WILLIS:  I don't mean to flip.

17           Q.    And certainly, Ms. Messenger, if you do  
18 not understand my questions, please let me know.  And  
19 if you are having difficulty because I am flipping  
20 terms, that would be great to know.  Thank you.

21           A.    I'm fine.

22           Q.    So do you know what the cost of that  
23 Proactive Reliability Optimization Rider is to  
24 consumers during the term of the settlement?

25           A.    Yes.

1           Q.    And can you identify that cost of that  
2 rider to consumers for each year of the plan and  
3 cumulatively over the three-year ESP term?

4           A.    There isn't a cumulative amount listed in  
5 the Stipulation. But what the rider is recovering is  
6 stated in there.

7           Q.    When you say stated in there, are you  
8 talking about the Settlement?

9           A.    In the Stipulation.

10          Q.    Yes.

11          A.    Yeah. In paragraph B under the -- under  
12 the Proactive Reliability Optimization Rider.

13                   EXAMINER PRICE: Page reference, please.

14                   THE WITNESS: Page 13.

15          Q.    (By Ms. Willis) So it says "All prudently  
16 incurred vegetation management expenses authorized  
17 for deferral on an annual basis with no carrying  
18 charges up to the caps identified by the Commission  
19 in Case No. 15-1830 and 20-1651"; is that right?

20          A.    Correct.

21          Q.    And do you know what the -- those caps  
22 are at this point?

23          A.    The cap in the '20 rate case, in the  
24 20-1651 rate case, I believe, is \$7.5 million.

25          Q.    Per year?

1           A.    I believe that's right, which the rate  
2 case order specifies.

3           Q.    And the cap identified in 15-1830?

4           A.    I don't recall that number. I do know  
5 that it is specified in that rate case order as well.

6           Q.    Thank you. And you mention on the same  
7 page on line 7 the Customer Programs Rider.

8           A.    Yes.

9           Q.    And that's paid for solely by residential  
10 consumers?

11          A.    Yes.

12          Q.    And is that an approximately \$15 million  
13 program over the three-year ESP term?

14          A.    Approximately, I think that's correct.

15          Q.    Now, you speak on the same page to the  
16 settlement provision that proposes Economic  
17 Development Incentive, and I am looking at line 16  
18 through 18. Do you see that?

19          A.    Yes.

20          Q.    And you state that the -- this provision  
21 of the Stipulation allows for efficient -- an  
22 efficient process for developing business to enter  
23 into a service agreement. Do you see that?

24          A.    Uh-huh.

25          Q.    Isn't there already a process for doing

1 so under the Administrative Code?

2 MS. COHN: Objection, calls for a legal  
3 conclusion.

4 EXAMINER PRICE: She is a regulatory  
5 expert. She can answer an Administrative Code  
6 question.

7 A. There is an Administrative Code section  
8 that deals with reasonable arrangements. This would  
9 be a tariff so I guess the focus in that sentence is  
10 the more -- it's an efficient process.

11 Q. Do you consider the process currently  
12 that the Commission uses under the Administrative  
13 Code to be inefficient?

14 A. No. I do think though that having --  
15 being able to enter into a service agreement based on  
16 a tariff versus having specific Commission approval  
17 of every service agreement is more efficient.

18 Q. Now, in your testimony question 12 you  
19 state that the Staff believes that the Stipulation  
20 supports Ohio policy because it's -- proposes a just  
21 and reasonable resolution that allows AES to continue  
22 to provide safe and reliable service to its customers  
23 in its territory. Do you see that?

24 A. Yes.

25 Q. Without the provision in the Stipulation,



1 do you believe that AES is in jeopardy of providing  
2 safe and reliable service to the customers in its  
3 territory?

4 A. Without which provision of the  
5 Stipulation?

6 Q. Without the entire settlement provision,  
7 because I think you are talking about the  
8 Stipulation, right?

9 A. Yes.

10 Q. So --

11 A. So --

12 Q. Go ahead. I'm sorry. I don't mean to  
13 interrupt.

14 A. Yes. So my testimony is that the  
15 Stipulation allows AES to continue to provide a safe  
16 and reliable service.

17 Q. And without all the provisions in the  
18 Stipulation, do you believe that AES is in jeopardy  
19 of providing safe and reliable service to customers  
20 in its territory?

21 A. That's not my testimony.

22 Q. So that would be no?

23 A. No. That is not something that I am  
24 testifying to. I am testifying to the Stipulation  
25 which I believe does allow AES to continue to provide

1 safe and reliable service.

2 Q. So you haven't done an analysis to  
3 determine whether or not if the provisions in the  
4 stipulation are not adopted, AES would be in jeopardy  
5 of providing safe and reliable service to its  
6 customers; is that correct?

7 A. Can you repeat the question, please?

8 MS. WILLIS: Can the question be reread,  
9 please. Thank you.

10 (Record read.)

11 A. My analysis was based on the Application  
12 that was filed and whether it would allow them to  
13 continue to provide safe and reliable service, so  
14 I -- I guess, no, I didn't do an analysis of whether  
15 absent an application, you know, they wouldn't be  
16 able to.

17 Q. Is it your understanding that a utility  
18 has a statutory obligation to provide safe and  
19 reliable service to customers in its territory?

20 A. Yes.

21 Q. Now, you testify in the more favorable in  
22 the aggregate test, and you state that the stipulated  
23 ESP is more favorable in the aggregate than a  
24 hypothetical MRO; is that right?

25 A. Yes.

1           Q.    And you state on page 7, lines 5 through  
2   6, and again, it's in response to question 15, I  
3   believe, you say that the benefits -- benefits added  
4   by the ESP outweigh any added costs. Do you see  
5   that?

6           A.    Yes.

7           Q.    And when you mention added costs there,  
8   what costs are you referring to?

9           A.    I don't believe that there are any added  
10   costs of the ESP that would not be present under an  
11   MRO to customers.

12                   Should the Commission find that any of  
13   those provisions are not also eligible for recovery  
14   from customers under an MRO, to the extent that the  
15   Commission rules that there are added costs, the  
16   benefit would outweigh that.

17           Q.    Now, when you did your analysis of ESP  
18   versus MRO, did you look at specifically -- did you  
19   solely look at the MRO statute when you did your  
20   analysis, or were you considering an MRO in addition  
21   to other proceedings?

22           A.    What other proceedings?

23           Q.    I -- when you did your analysis, were you  
24   looking at an MRO plus a distribution rate case?

25           A.    No.

1           Q.    So you were just looking at the  
2 provisions of 4928.142 and comparing those provisions  
3 with what could be offered in an ESP; is that right?

4           A.    So -- no, I think that's not right.  I  
5 looked at --

6           EXAMINER PRICE:  Did you look at past  
7 precedent for doing the ESP-MRO test?

8           THE WITNESS:  Past precedent?

9           EXAMINER PRICE:  Yes.

10          THE WITNESS:  Yes.

11          EXAMINER PRICE:  So in addition to the  
12 MRO statute, you looked at previous cases where Staff  
13 witnesses applied the ESP-MRO test.

14          THE WITNESS:  Yes.

15          EXAMINER PRICE:  And you applied the test  
16 consistent with the way Staff witnesses had in the  
17 past.

18          THE WITNESS:  Yes.

19          EXAMINER PRICE:  I wanted to ask, while I  
20 had the floor, roll back one spot, and that's the  
21 Customer Programs Rider provides weatherization and  
22 bill assistance programs.

23                 If the Commission were to determine that  
24 that is not -- that particular program is not a  
25 program that could otherwise be offered under an MRO,

1 would you still say the benefits to customers  
2 outweigh the costs of that program to customers?

3 THE WITNESS: If it was specifically an  
4 added cost of the ESP?

5 EXAMINER PRICE: Yes.

6 THE WITNESS: Yes, I would.

7 EXAMINER PRICE: Because it's beneficial  
8 to assist low-income customers.

9 THE WITNESS: Yes.

10 EXAMINER PRICE: And customers struggling  
11 to pay their bill.

12 THE WITNESS: Yes.

13 EXAMINER PRICE: And because Ohio Revised  
14 Code policy requirements indicate we should have  
15 policies that target at-risk populations.

16 THE WITNESS: Yes.

17 EXAMINER PRICE: Thank you.

18 MS. WILLIS: Are you finished?

19 EXAMINER PRICE: I'm done. Yes.

20 Q. (By Ms. Willis) What -- Ms. Messenger,  
21 what did you -- what previous cases did you look at  
22 for precedent on the ESP versus MRO analysis, if you  
23 can recall?

24 MR. LYONS: Objection, your Honor, to the  
25 term precedent. That calls for a legal conclusion.

1 She can ask what she looked at to understand the  
2 case, but it kind of establishes a precedent, and we  
3 don't think it does.

4 EXAMINER PRICE: I used precedent, so I  
5 think the word is perfectly fine.

6 MS. WILLIS: Maybe we should strike part  
7 of his question then.

8 EXAMINER PRICE: We are not going to  
9 strike the other question. She is -- even as a  
10 regulatory expert, she understands the identification  
11 of precedent.

12 THE WITNESS: I can't recall which cases  
13 specifically I looked at, but I -- while I am  
14 generally aware of this test and how the Commission  
15 has applied it, and I know that in the course of this  
16 case I reviewed, and in developing my testimony, I  
17 reviewed Commission precedent on this.

18 Q. (By Ms. Willis) Did you look at prior  
19 Staff testimony on this issue, if you know?

20 A. I did.

21 Q. You did?

22 A. I did.

23 Q. And can you recall any testimony in  
24 particular you would have looked at?

25 A. Yes.

1 Q. And what would that have been?

2 A. I looked at Patrick Donlon's testimony in  
3 the Duke ESP case, and I looked at Tamara Turkenton's  
4 testimony in one of the many cases that she has  
5 testified in.

6 EXAMINER PRICE: Was it 10-388-EL-SSO?  
7 Was it FirstEnergy?

8 THE WITNESS: It may -- I think it was  
9 FirstEnergy.

10 EXAMINER PRICE: You don't recall whether  
11 it was 10-388?

12 THE WITNESS: I don't.

13 Q. (By Ms. Willis) Did you review the  
14 testimony of Mr. Malinak in this case?

15 A. I did.

16 Q. Okay. And did the testimony of  
17 Mr. Malinak influence your opinion in this case?

18 A. Yes.

19 Q. Did you review the testimony of OCC  
20 Witness Fortney?

21 A. Yes.

22 Q. Now, you identify one quantitative  
23 benefit of the ESP and that relates to withdrawing  
24 the 20-140-EL-AAM case, and I am looking at line --  
25 question 16, lines 12 through 15. And you say that

1     there is one quantitative benefit and that's the  
2     withdrawal of the 20-140-EL-AAM case, eliminating the  
3     risk of customers paying the \$51 million for past  
4     decoupling amounts, right?

5             A.     Yes.

6             Q.     And then you also state that the ESP also  
7     includes \$150,000 worth of funding for the AEP Ohio  
8     Gift of Power Program. Do you see that?

9             A.     Yes.

10            Q.     And you state that those benefits would  
11    not be present in an MRO. Can you explain to me why  
12    they would not be present in an MRO if, in fact, an  
13    MRO would include a distribution rate case  
14    application or proceeding?

15            A.     Yeah. I think that it -- you know, if  
16    the Company were under an MRO and filed a  
17    distribution rate case, I don't think they would file  
18    for withdrawal of 20-140. I think that was a bargain  
19    for exchange in this case that was provided by the  
20    flexibility in the ESP statute.

21            Q.     And could the Company in an MRO and  
22    distribution case come to a settlement, let's say in  
23    a distribution case, where withdrawal of a case like  
24    the \$51 million worth of past decoupling could be  
25    part of the settlement in a distribution rate case?



1 MS. BOJKO: Objection.

2 A. Well --

3 MS. BOJKO: Calls for speculation.

4 EXAMINER PRICE: Sustained.

5 Q. You state, Ms. Messenger, the benefits  
6 would not be present in an MRO. Is your statement  
7 true with respect to the benefits would not be  
8 present in an MRO and a distribution rate case,  
9 coupled with a distribution rate case?

10 A. Correct.

11 Q. And is it your understanding that under a  
12 distribution rate case it is not possible to have a  
13 withdrawal of a proposal or provision in -- in Case  
14 No. 20-140-EL-AAM?

15 A. One of the reasons I specifically listed  
16 this as a benefit in this case is because it -- that  
17 case is still pending an order, so I think it's  
18 unique in that if we waited for a rate case, the  
19 Commission may have already ruled on that specific  
20 case which may have granted the Company the authority  
21 to defer a large amount of money, which would have  
22 been recovered or able to be recovered through base  
23 rates.

24 Q. But in that case the Staff recommended --  
25 or filed testimony against the recovery of that -- a

1 large amount of that decoupling deferral; isn't that  
2 correct?

3 A. That is correct.

4 EXAMINER PRICE: But your testimony is  
5 there is a litigation risk; is that correct?

6 THE WITNESS: Yes.

7 EXAMINER PRICE: And there is a  
8 litigation risk on the Commission decision.

9 THE WITNESS: That's correct.

10 EXAMINER PRICE: And there is litigation  
11 risk in case the Commission rules in favor of the  
12 Staff and AES Ohio were to appeal.

13 THE WITNESS: Yes.

14 EXAMINER PRICE: And there's also a  
15 litigation risk that the Commission could rule in  
16 favor of the AES Ohio and the Office of Consumers'  
17 Counsel would appeal.

18 THE WITNESS: Yes.

19 EXAMINER PRICE: But now all those risks  
20 are gone.

21 THE WITNESS: That's true.

22 Q. (By Ms. Willis) With respect to the AES  
23 Ohio Gift of Power Program, that benefit could be --  
24 could be present, could it not, in an MRO and a  
25 distribution rate case?

1 EXAMINER PRICE: Ms. Willis, there is no  
2 provision in Ohio in 4909 which would require  
3 shareholder funding of anything.

4 MS. WILLIS: That's correct, your Honor,  
5 but a distribution rate case can be settled, and  
6 clearly we've seen settlements including shareholder  
7 contributions. I mean, this is not a one-off here.

8 EXAMINER PRICE: I think it's a  
9 three-off. It's a hypothetical MRO which involves a  
10 hypothetical distribution rate case and a  
11 hypothetical settlement of the hypothetical  
12 distribution rate case compared with a hypothetical  
13 MRO. You can compare anything. You can say isn't it  
14 true that in a future distribution rate case MRO,  
15 Dayton will agree to a 20 percent decrease in its  
16 distribution rates.

17 MS. WILLIS: Your Honor, you are exactly  
18 right, and that's why the Commission is wrong about  
19 the fact that you are comparing the ESP to an MRO and  
20 any other case. The statute says ESP versus MRO. It  
21 doesn't say ESP versus MRO plus distribution plus  
22 accounting -- accounting cases. It does not say  
23 that. That is -- the Commission has wrongly applied  
24 that statute and that's my point exactly.

25 EXAMINER PRICE: The Commission has --

1 MS. WILLIS: You know, we could compare  
2 it to anything and the comparison becomes ridiculous.

3 EXAMINER PRICE: It has been upheld at  
4 the Supreme Court on this statute so.

5 MS. WILLIS: It's just a wrong  
6 interpretation so but, you know, that can wait until  
7 briefing so.

8 I think -- is there a question pending?

9 EXAMINER PRICE: If there is a question  
10 pending, I instruct the witness not to answer it.

11 Q. (By Ms. Willis) Ms. Messenger, if the  
12 benefits you describe in your testimony as  
13 quantitative benefits are benefits that could be --  
14 let me strike that.

15 Now, you state in your testimony in  
16 response to question 17, page 7, that you looked at  
17 qualitative factors in your analysis. Do you see  
18 that reference?

19 A. Yes.

20 Q. Can you identify all of the qualitative  
21 factors you looked at beyond those that you -- the  
22 few that you mentioned in your testimony?

23 A. Sorry. I was just going back to the  
24 benefits I listed. So the DIR and the PRO Rider have  
25 qualitative benefits in providing improved

1 reliability and resiliency. The Storm Cost Recovery  
2 Rider I think there is also a benefit to.

3 I guess -- so generally I think that  
4 there is a qualitative benefit to having rider  
5 mechanisms in place. Having riders allows Staff to  
6 audit the cost annually and reconcile what the  
7 Company is actually spending with what it's  
8 recovering, which is not present if deferrals are  
9 recovered in base rates.

10 The Stipulation withdraws the Company's  
11 proposal for a decoupling rider. I think it's  
12 beneficial when -- as I state in my testimony when  
13 companies come in to update their base rates with  
14 more regularity.

15 Q. Are you -- are you still --

16 A. I am still flipping through.

17 Q. Sure.

18 A. Yeah, the Stipulation also allowed Staff  
19 and the parties to resolve outstanding issues from  
20 the Company's rate case to the benefit of customers.

21 Q. And what were those outstanding issues?

22 A. On page 35 of the Stipulation, the --  
23 those rate case items are listed.

24 Q. Thank you. Now, you state in response to  
25 question 17 that -- and I believe it carries over to

1 the next page, "To the extent that the different  
2 provisions contained in the ESP provide added costs,  
3 they are outweighed by the benefits provided." Can  
4 you identify what provisions in the ESP provide added  
5 costs?

6 A. Yes. So I would answer similarly to how  
7 I answered your previous question about Q and A 15 to  
8 the extent that the Commission would find that any  
9 costs were added, the benefits of that provision  
10 would outweigh the costs, the CPR rider being an  
11 example that Greg Price -- or, sorry, Examiner  
12 Price --

13 EXAMINER PRICE: It's fine.

14 A. -- used.

15 Q. So are you suggesting a cost/benefit  
16 analysis on those riders?

17 A. Yeah. The riders provide benefits.

18 Q. And the benefits that you are speaking of  
19 are your expectation that the reliability of service  
20 for DP&L consumers will improve on the basis of the  
21 expenditures provided under the riders?

22 A. That's one of them.

23 Q. And can you tell me what the other is  
24 or --

25 A. I just walked through the benefits that

1 I -- some of the benefits that I considered as part  
2 of the Stipulation, and my testimony provides a list  
3 of benefits as well.

4 Q. Sure. I was just -- I was focusing on  
5 the Vegetation Management Rider and the DIR Rider.

6 A. Okay.

7 Q. My question really is in -- in saying  
8 that the -- even though they provide added costs,  
9 they are outweighed by the benefits provided, so you  
10 are saying your expectation is that through the  
11 expenditures on the DIR Rider and the Vegetation  
12 Management Rider that the -- DP&L's service will  
13 become more reliable; is that correct?

14 A. Yes. I expect that investments made  
15 through the DIR and the PRO would help improve  
16 reliability.

17 MS. WILLIS: Thank you, Ms. Messenger.

18 I have no further questions, your Honor.

19 EXAMINER PRICE: Redirect?

20 MR. LYONS: Your Honor, we would like 10  
21 minutes to confer?

22 EXAMINER PRICE: Let's go off the record  
23 for 10 minutes.

24 (Recess taken.)

25 EXAMINER PRICE: Back on the record.

1 MR. LYONS: Your Honor, we don't have any  
2 questions on redirect.

3 EXAMINER PRICE: I have like two more  
4 questions.

5 - - -

6 EXAMINATION

7 By Examiner Price:

8 Q. There were some questions raised earlier  
9 by counsel for OCC about Staff's state of knowledge  
10 and whether Staff was knowledgeable at the time that  
11 they signed the Settlement Agreement. Do you have a  
12 copy of the Stipulation in front of you?

13 A. I do.

14 Q. So at the time -- according to the last  
15 whereas paragraph, at the time the Stipulation was  
16 settled, AES had responded to 1,043 interrogatories,  
17 163 requests for production of documents, and 36  
18 requests for admission, all including subparts.

19 All of those -- all of that discovery was  
20 available to the Staff at the time you signed this  
21 Settlement Agreement; is that true?

22 A. That's correct.

23 Q. And I do not see here listed amongst the  
24 parties Staff Data Requests. You also engaged in  
25 your own Data Requests in this case?



1           A.     We did.

2           Q.     And can you give me a rough idea of how  
3 many Data Requests you sent out?

4           A.     Maybe about 15, maybe less than that.

5           Q.     Okay. All of those were answered to your  
6 satisfaction?

7           A.     Yes.

8           EXAMINER PRICE: Okay. Thank you.  
9 That's all I have.

10          Mr. Lyons.

11          MR. LYONS: Your Honor, we would like to  
12 move Ms. Messenger's testimony into evidence as Staff  
13 Exhibit 7.

14          EXAMINER PRICE: Any objections?

15          EXAMINER SCHABO: I'm sorry. I thought  
16 it was Staff Exhibit 6.

17          EXAMINER PRICE: I have 6.

18          MR. LYONS: Oh, perhaps it is. Okay.  
19 Yes.

20          EXAMINER PRICE: It will be admitted as  
21 Staff Exhibit 6.

22          (EXHIBIT ADMITTED INTO EVIDENCE.)

23          EXAMINER PRICE: I believe that's all we  
24 have for today.

25          MR. LYONS: Your Honor -- oh, go ahead.

1 MS. BOJKO: No, please.

2 EXAMINER SCHABO: Mr. Nicodemus.

3 MR. LYONS: That's what I was going to  
4 bring up. We stipulated to admitting that. We would  
5 like to move for its admission as Staff Exhibit 7.

6 EXAMINER PRICE: Let's mark  
7 Mr. Nicodemus's testimony as Staff 7.

8 (EXHIBIT MARKED FOR IDENTIFICATION.)

9 EXAMINER PRICE: Any objections to the  
10 admission of Staff Exhibit 7?

11 Hearing none, it will be admitted.

12 (EXHIBIT ADMITTED INTO EVIDENCE.)

13 EXAMINER PRICE: Now, do we have any  
14 other issues we need to address today?

15 MS. GRUNDMANN: May I ask a clarifying  
16 question? What were Staff Exhibits 3 and 4?

17 MR. LYONS: So we have testimony of  
18 Borer, Benedict were 1 and 2, and then there was a  
19 letter that was Staff Exhibit 3. And 4 and then 5  
20 is -- again, this is why I'm -- one moment, your  
21 Honor. Let me check on that.

22 MS. GRUNDMANN: I just don't have any  
23 notes for a Staff Exhibits 3 and 4, and I wanted to  
24 make sure I wasn't missing something in my list.

25 EXAMINER PRICE: I did, so let me find my

1 notes.

2 EXAMINER SCHABO: I have got 1, 2, 5 --

3 MR. LYONS: That's my confusion. The  
4 testimony of Mr. Benedict, I think we called it 4.  
5 It should be 3.

6 EXAMINER PRICE: No. Don't change it.  
7 Let the record reflect that there are no Staff  
8 Exhibits 3 and 4 that have been marked in this  
9 proceeding.

10 MR. LYONS: Okay.

11 MS. GRUNDMANN: Thank you. I wanted to  
12 make sure I wasn't missing anything before I left.

13 EXAMINER PRICE: That was very helpful.  
14 Thank you.

15 Okay. At this time we will adjourn. We  
16 will resume again tomorrow at 9 o'clock on Webex. I  
17 trust counsel all -- let's go off the record.

18 (Discussion off the record.)

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

21 Thank you all. We will adjourn until  
22 tomorrow at 9 o'clock. Parties are invited to  
23 participate in the technical conference at 8:45.

24 Thank you. We are off the record.

25 (Thereupon, at 1:25 p.m., the hearing was

1 adjourned.)

2 - - -

3 CERTIFICATE

4 I do hereby certify that the foregoing is  
5 a true and correct transcript of the proceedings  
6 taken by me in this matter on Thursday, May 4, 2023,  
7 and carefully compared with my original stenographic  
8 notes.

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Karen Sue Gibson, Registered  
12 Merit Reporter.

13 (KSG-7458)

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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  
05/04/23 - Volume III electronically filed by Mr. Ken Spencer on behalf of Armstrong  
& Okey, Inc. and Gibson, Karen Sue Mrs..