

BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

- - -

In the Matter of the Review of the
Reconciliation Rider of : Case No. 20-165-EL-RDR
The Dayton Power and Light:
Company. :

- - -

PROCEEDINGS

before Ms. Patricia Schabo, Attorney Examiner, at the
Public Utilities Commission of Ohio, 180 East Broad
Street, Room 11-A, Columbus, Ohio, called at 9:00
a.m. on Thursday, September 28, 2023.

- - -

VOLUME II

- - -

ARMSTRONG & OKEY, INC.
222 East Town Street, Second Floor
Columbus, Ohio 43215-5201
(614) 224-9481

- - -

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

APPEARANCES:

Faruki PLL
By Mr. Jeffrey S. Sharkey
and Ms. Melissa L. Watt
110 North Main Street, Suite 1600
Dayton, Ohio 45402

and

AES Ohio
By Mr. Christopher C. Hollon
1065 Woodman Drive
Dayton, Ohio 45432

On behalf of the The Dayton Power and
Light Company dba AES Ohio.

Carpenter Lipps LLP
By Ms. Kimberly W. Bojko
and Ms. Emma Y. Easley
280 North High Street, Suite 1300
Columbus, Ohio 43215

On behalf of the Ohio Manufacturers'
Association Energy Group.

Carpenter Lipps LLP
By Ms. Angela Paul Whitfield
280 North High Street, Suite 1300
Columbus, Ohio 43215

On behalf of The Kroger Company.

Ohio Consumers' Counsel
By Mr. John Finnigan
65 East State Street, 7th Floor
Columbus, Ohio 43215

On behalf of the Residential Consumers of
The Dayton Power and Light Company dba
AES Ohio.

- - -

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

APPEARANCES: (Continued)

Dave Yost, Ohio Attorney General
By Mr. Thomas Lindgren
and Ms. Ambrosia Wilson
Assistant Attorneys General
30 East Broad Street, 26th Floor
Columbus, Ohio 43215

On behalf of the Staff of the PUCO.

- - -

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

INDEX

- - -

WITNESS	PAGE
David J. Crusey	
Cross-Examination (Continued) by Ms. Bojko	166
Redirect Examination by Mr. Sharkey	199
Recross-Examination by Mr. Finnigan	214
Recross-Examination by Ms. Bojko	217
Cross-Examination by Mr. Lindgren	224
Devi Glick	
Direct Examination by Mr. Finnigan	244
Cross-Examination by Mr. Sharkey	270
Redirect Examination by Mr. Finnigan	294
Cross-Examination by Ms. Bojko	306
Recross-Examination by Mr. Sharkey	311
John A. Seryak	
Direct Examination by Ms. Bojko	325
Cross-Examination by Mr. Sharkey	333
Redirect Examination by Ms. Bojko	365

- - -

AES OHIO EXHIBITS	IDENTIFIED	ADMITTED
1 Direct Testimony of David J. Crusey	I-95	230
1C Direct Testimony of David J. Crusey (CONFIDENTIAL)	I-95	230
2 Direct Testimony of Patrick Donlon	241	243
3 Audit of the Price Stabilization Rider of Duke Energy Ohio by London Economics International LLC	275	325
4 Audit of the OVEC Power Purchase Agreement Rider of Ohio Power Company	276	324

- - -

1	INDEX (Continued)		
2	- - -		
3	AES OHIO EXHIBITS	IDENTIFIED	ADMITTED
4	5 Direct Testimony of Jeffrey	282	--
5	Malinak in Support of the		
	Amended Stipulation		
6	6 Docket Card of Case	350	--
7	No. 16-395-EL-SSO		
	- - -		
8	OCC EXHIBITS	IDENTIFIED	ADMITTED
9	3 Direct Testimony of	245	313
	Devi Glick		
10	3C Direct Testimony of	245	313
11	Devi Glick (CONFIDENTIAL)		
12	4 Unredacted Version of	253	315
13	Ms. Glick's Testimony,		
	Narrative Only		
14	- - -		
15	OMAEG EXHIBITS	IDENTIFIED	ADMITTED
16	1 Direct Testimony of John	327	373
17	Seryak Public Version		
	Unredacted		
18	2 Mr. Seryak's Errata Sheet	329	373
19	8 Direct Testimony of David	I-131	--
20	Crusey, Case No. 16-395-EL-SSO		
21	9 Opinion and Order, Case	I-132	--
	No. 16-395-EL-SSO		
22	10 Testimony of Sharon Schroder	I-138	--
23	in Support of the Stipulation,		
	Case No. 16-394-EL-SSO		
24	11 2022 State of the Market Report	I-150	314
25	for MISO		
	- - -		

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

INDEX (Continued)

- - -

OMAEG EXHIBITS	IDENTIFIED	ADMITTED
12 "State of the Market Report for PJM, Volume 2: Detailed Analysis" from Monitoring Analytics, LLC.	I-155	--
13 Table of Contents of the PJM Open Access Transmission Tariff	187	--
14 INT-04-008 Response	242	243
15 INT-05-003 Response	242	243

- - -

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Thursday Morning Session,
September 28, 2023.

- - -

EXAMINER SCHABO: Good morning. We are here for day two of hearing in Case No. 20-165-EL-RDR, being in the Matter of the Review of the Reconciliation Rider of The Dayton Power and Light Company. My name is Trish Schabo, and I am the Attorney Examiner assigned by the Commission to preside over this matter. We did take appearances of counsel on Tuesday, so we will skip that. We left off with Ms. Bojko cross-examining Mr. Crusey.

Mr. Crusey, if you would like to come back up. Get comfortable, arrange your pile of exhibits to your liking, and just remember that you are still under oath.

THE WITNESS: Yes, ma'am.

EXAMINER SCHABO: And when you are ready, we'll get started.

MS. BOJKO: Thank you, your Honor.

- - -

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

DAVID J. CRUSEY

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

CROSS-EXAMINATION (Continued)

By Ms. Bojko:

Q. Good morning, Mr. Crusey.

A. Good morning. Good morning.

Q. When we left off on Tuesday, we were
talking about independent market monitors. Do you
recall that discussion?

A. Yes, I do.

Q. And we were talking about MISO first, the
Midwest Independent System Operator, and I had marked
an exhibit titled "OMAEG Exhibit 11." Do you recall
that?

A. I do recall that. I do not have it in
front of me, but I do recall that.

Q. I believe it's the blue document right in
front of you.

A. Pardon me, I do have it in front of me.

Q. Okay. And that document is titled the
"2022 State of the Market Report for MISO"?

A. Yes.

Q. And that's performed by MISO's
independent market monitor?

1 A. Yes.

2 Q. And you stated -- just to refresh a
3 little bit, it's been two days, you stated that you
4 are familiar with these types of market reports; is
5 that correct?

6 A. In general, yes.

7 MS. BOJKO: Your Honor, we did bring
8 additional copies today of this if folks need it. It
9 looks like maybe --

10 EXAMINER SCHABO: Does anyone need a
11 copy?

12 MS. BOJKO: Did you get a copy?

13 EXAMINER SCHABO: I do have one.

14 MS. BOJKO: Did anybody else need a copy?
15 Tom, do you need a copy?

16 EXAMINER SCHABO: It's like bringing an
17 umbrella, guaranteed not to rain.

18 Q. (By Ms. Bojko) And I don't recall, did
19 you say that you did not or you do not recall whether
20 you have had -- reviewed the 2022 State of the Market
21 Report for MISO?

22 A. I do not recall reviewing -- ever
23 reviewing this document.

24 Q. Okay. I think I recall you saying that
25 you may have reviewed it. You just didn't remember

1 if you had or not.

2 A. It is possible, but I do not recall
3 reviewing it.

4 Q. And are you aware that the report looks
5 at coal resource operations and whether they run as
6 an economic dispatch or a must-run dispatch?

7 MR. SHARKEY: I am going to object, your
8 Honor. He has testified it is a document he doesn't
9 recall having seen. I don't think she can
10 cross-examine him on a document that he hasn't seen.

11 MR. FINNIGAN: Your Honor, I just -- may
12 I state that there's no requirement in the Rules of
13 Evidence that a witness has seen a document before.
14 The witness can be asked about a statement that's in
15 a document, whether they have seen it before or not,
16 and then render an opinion as to the -- whether they
17 agree with the statement in the document or perhaps
18 whether they have an opinion as to whether it might
19 be accurate or so forth. But there is no requirement
20 that the witness must have seen the document before.

21 MS. BOJKO: Your Honor, may I respond?
22 First of all, I haven't asked him any question about
23 the document. He's stated that he is an expert in
24 the area and that he in the past has reviewed these
25 types of documents. He doesn't recall whether he

1 reviewed this one or not. My question was simply did
2 he know that these documents and these reports
3 contain certain things. I haven't even asked him any
4 specifics about the report yet, so I think the
5 objection is premature. But to Mr. Finnigan's
6 report, he does hold himself out as an expert in the
7 markets and in this area. His whole testimony is
8 about markets and -- and whether the bidding strategy
9 was prudent or not, so I think I am allowed to ask
10 him the basis and the underlining knowledge that he
11 draws that conclusion which, you know, is
12 questionable and has been questioned by the auditor.

13 EXAMINER SCHABO: Can I hear the
14 question, Karen?

15 (Record read.)

16 EXAMINER SCHABO: The objection is
17 overruled. You can answer that question to your
18 ability.

19 THE WITNESS: And could you repeat the
20 question again, please?

21 (Record read.)

22 A. I am not aware of that.

23 Q. Do you have your testimony in front of
24 you, what has been marked as AES Exhibit 1?

25 A. Yes, I do.

1 Q. Let's take a step back here. You on
2 page -- starting on page 6, you talk about the PJM
3 capacity market; is that correct?

4 A. Not in Exhibit 1 but page 6 of my
5 testimony? Pardon me. I thought you said Exhibit 1.

6 Q. That is AES Exhibit 1.

7 A. Yes, I am there, on page 6.

8 Q. Okay. Yes. Your testimony was
9 identified as AES Exhibit 1, so when I refer to
10 that --

11 A. Pardon me. I have it as Exhibit 1.

12 Q. Not your attachments.

13 A. Thank you.

14 Q. And also on page 7 of your testimony, you
15 talk about the PJM energy markets; is that correct?

16 A. That is correct.

17 Q. And then you go on to talk about the
18 bidding strategies of OVEC and OVEC offering energy
19 and ancillary services into the PJM markets, correct?

20 A. That is correct, yes.

21 Q. And you also talk on page 8 about the
22 concept of unit commitment and how OVEC offers and
23 commits its units into the PJM energy market; is that
24 correct?

25 A. It talks about how OVEC offers its units

1 into the energy market. PJM is the entity that
2 commits the units to the day-ahead market but that is
3 correct. That is the topic.

4 Q. I apologize if I misspoke. I meant to
5 say that you discuss how OVEC offered and committed
6 its units into the PJM energy market.

7 A. That's correct.

8 Q. And then on page 9 you go on to talk
9 about the must-run strategy that OVEC has decided to
10 do and whether that's reasonable or not; is that
11 correct?

12 A. That is correct.

13 Q. So in -- throughout your testimony in
14 several places you talk about the bidding strategies
15 of OVEC; is that correct?

16 A. That is correct.

17 Q. So you are familiar with the bidding
18 strategies in the PJM competitive market.

19 A. I am familiar with the bidding strategies
20 in both the PJM energy market and with the PJM
21 capacity markets, correct.

22 Q. And you're also -- well, the PJM bidding
23 strategies are similar to the bidding strategies that
24 would occur in the MISO market; is that correct?

25 A. They are similar, but my experience has

1 not been actually operating and participating in
2 those markets directly, so I don't have the same
3 level of experience in MISO that I do in PJM,
4 although I am familiar with the MISO markets because
5 we do own generating assets in MISO. But I am not
6 directly responsible for that role in the -- in AES
7 for the Indiana facilities that are in MISO.

8 Q. Well, in fact, OVEC has participated in
9 the MISO market previously, has it not?

10 A. It has not for the ownership share that
11 AES or The Dayton Power and Light Company has owned.

12 Q. Previous to that OVEC has participated in
13 the MISO energy markets, has it not?

14 A. OVEC has owners that are in multiple
15 states, and those owners that are in the MISO states
16 would participate in the MISO market for their share
17 of OVEC historically.

18 Q. Well, when -- before Ohio was
19 integrated -- one of the plants is in Ohio, and one
20 of the plants is in Indiana, correct?

21 A. That is correct.

22 Q. And prior to Ohio becoming a member of
23 the PJM markets, Ohio was a member of the MISO
24 markets; is that correct?

25 A. That is not correct.

1 Q. The state of Ohio was not in MISO?

2 A. The state of Ohio -- the state of Ohio --

3 Q. Oh, let me rephrase.

4 A. Pardon me.

5 Q. Isn't it true that the distribution
6 utilities of the state of Ohio were members of MISO
7 prior to the integration into two other RTOs?

8 A. I can't speak for the other utilities in
9 Ohio. AES -- AES Ohio has not had assets in MISO.

10 Q. Right. But these aren't AES assets.
11 Were OVEC AES assets before -- strike that.

12 Okay. You did state that the utilities
13 that were members of MISO bid the OVEC output into
14 MISO, their share?

15 A. My understanding is utilities such as
16 Louisville Gas & Electric is a member or was a member
17 of MISO. I am not sure if they are now, but they
18 have been a member of MISO, and they would offer
19 their share of OVEC into the MISO markets. At no
20 time in my career do I recall DP&L or AES Ohio having
21 their -- having our share of OVEC participate in any
22 MISO market.

23 Q. Okay. But currently there -- the OVEC --
24 you are on the Operating Committee of OVEC, and some
25 of the sponsoring companies are members of MISO,

1 correct?

2 A. That is -- that is correct, yes.

3 Q. Okay. So through your participation on
4 the OVEC Operating Committee, you are aware that the
5 shares of OVEC are bid into both the MISO and PJM
6 markets.

7 A. I am aware of that, yes.

8 Q. And given your testimony about the -- and
9 as Vice President of the Commercial Operations for
10 AES, you were the President -- or as Vice President
11 of Commercial Operations for AES, you're responsible
12 for the company's energy commodities and all PJM
13 market-related functions including fuel procurement
14 and transportation contracting, correct?

15 A. I was the Vice President of Commercial
16 Operations for The Dayton Power and Light Company. I
17 am currently not in the role of Vice President of a
18 Commercial Group. I am currently Senior Director of
19 Risk for AES for both the utilities and our thermal
20 assets currently.

21 Q. Sure. But prior to that through -- you
22 have been the Vice President of Commercial
23 Operations; is that correct?

24 A. Historically that has been part of my
25 function, correct. That is correct.

1 Q. Part of your function. Your testimony --

2 A. Part of my responsibility, pardon me.

3 Q. But on page 1 of your testimony, it says
4 you were Vice President of Commercial Operations for
5 eight years; is that not accurate?

6 A. That is correct, yes.

7 Q. Okay. And it also states on page 1 of
8 your testimony that you were responsible for PJM
9 energy and capacity market bidding; is that correct?

10 A. That is correct.

11 Q. And you were also responsible for
12 generation operations, correct?

13 A. That is correct.

14 Q. Given that you have had responsibilities
15 for bidding generation into wholesale markets, you
16 have to be very familiar with the wholesale markets
17 that you are bidding that generation into; is that
18 correct?

19 A. That is correct, yes.

20 Q. And is it your understanding that the
21 markets, both capacity and the energy markets, look
22 at bidding strategies of generating units? Let me
23 rephrase. Strike that.

24 Isn't it true that the market monitor
25 monitors bidding strategies of the wholesale markets?

1 A. I believe that is a true statement, yes.

2 Q. And I'm sorry if I repeat this. I think
3 you said this before, that you agree with me that
4 MISO allows both economic and must-run commitment
5 strategies, correct?

6 A. I am not as close to the details of the
7 MISO market as I am with the PJM markets. My
8 understanding is that they would have different
9 classifications for their day-ahead energy offers.

10 Q. And it's your experience that regulated
11 utilities that receive cost recovery from ratepayers
12 operate differently than unregulated merchant
13 generators?

14 A. I don't think I agree with that
15 statement.

16 Q. So you think that they should operate the
17 same that regulated entities -- utilities should
18 operate similar to unregulated merchant generators?

19 A. In which regard?

20 Q. In bidding -- in bidding strategies into
21 the energy markets.

22 A. Into the energy markets. For which type
23 of plants?

24 Q. Generation, coal -- coal resource
25 operations.

1 A. My view is those practices should be
2 approximately the same.

3 MS. BOJKO: Your Honor, at this time I
4 would like to mark as OMAEG Exhibit 12 an excerpt
5 from the PJM State of the Market Report dated
6 March 9, 2023.

7 EXAMINER SCHABO: So marked.

8 (EXHIBIT MARKED FOR IDENTIFICATION.)

9 MS. BOJKO: May I approach?

10 EXAMINER SCHABO: You may.

11 Q. (By Ms. Bojko) Sir, do you have in front
12 of you what's been marked as OMAEG Exhibit 12, which
13 is the State of the Market Report for PJM?

14 A. Yes, I do.

15 Q. And you see that this is the State of the
16 Market Report for 2022?

17 A. Yes, I do.

18 Q. And it was published in March 9, 2023?

19 A. Yes, I see that.

20 Q. So it's fair to assume this is the most
21 recent report?

22 A. Yes, I would assume that.

23 Q. And, sir, are you familiar with this
24 report?

25 A. I'm familiar with the State of the -- I'm

1 familiar with the PJM State of the Market Report in
2 general. I have not reviewed this document.

3 Q. So you're testifying today about unit
4 commitment strategies and bidding behavior into PJM
5 and the prudence of that, and you haven't reviewed
6 the most recent PJM State of the Market Report?

7 A. I have not reviewed this document.

8 Q. And given that we were required to
9 provide these documents yesterday, your counsel did
10 not forward it to you yesterday when received from --
11 from us?

12 A. I did not receive it yesterday nor review
13 it yesterday.

14 Q. Let's turn to page 147 of this report.
15 Are you there?

16 A. I am there, yes.

17 Q. 147 is the section titled "Market
18 Behavior"; is that correct?

19 A. That is what it is titled.

20 Q. And "Generator Offers"?

21 A. Yes.

22 Q. And you in reviewing other reports,
23 previous reports, this is a section that would be
24 similar in all State of the Market Reports by PJM's
25 IMM?

1 A. I don't recall ever reviewing a page like
2 this.

3 Q. So just so I'm clear, for eight years you
4 were Vice President of the Commercial Operation Group
5 at AES, and you never reviewed -- in charge of
6 bidding strategies and bidding behavior and you never
7 review PJM's IMM's State of the Market Report
8 regarding market behavior and generator offers?

9 A. I would have in my previous role reviewed
10 this document. As I sit here today, I don't remember
11 specifically reviewing this page and information
12 included on a page like this if I read something
13 seven or eight years ago, so I don't recall the
14 information or similar information on this page.

15 Q. So is it your testimony that you have no
16 current responsibilities at AES regarding
17 participation and bidding into the PJM market for
18 AES?

19 A. Currently the only generating assets that
20 AES Ohio owns -- AES Ohio owns in PJM is the OVEC
21 resource. I am the Director of Risk Management. I
22 am currently not responsible for any energy or
23 capacity bidding for AES Ohio directly for units
24 other than -- other than my involvement with OVEC.

25 Q. So -- well, I mean, that's the question.

1 I am aware that AES only owns OVEC as a generating
2 asset because we are a deregulated state, and they
3 are not allowed to own any other generation. So are
4 you or are you not familiar -- or responsible, excuse
5 me, for bidding OVEC into the PJM markets?

6 A. As an 4.9 percent owner of OVEC, I'm
7 responsible for participating on the Operating
8 Committee who's -- who's in the operating procedures,
9 and those procedures outline how OVEC should offer
10 the units into the PJM market as an operating member.

11 Q. So I take it from that the answer is, no,
12 you are not responsible for bidding AES's share into
13 the PJM markets.

14 MR. SHARKEY: May I object, your Honor?
15 It's not clear which PJM market. There's different
16 markets and there's been testimony about how those
17 are bid differently. I would just ask you to clarify
18 which market.

19 MS. BOJKO: I am asking about both or
20 any. I mean, he's testifying to both markets. He
21 can answer the question.

22 EXAMINER SCHABO: He can answer the
23 question to his ability, and Ms. Bojko can assess it
24 out as she wants.

25 A. As outlined in my testimony, OVEC is

1 responsible for the day-to-day operations of the
2 facility, of those units in PJM. I am responsible
3 for my involvement in the Operating Committee in
4 approving the procedures as an OVEC owner for the
5 OVEC Operating Committee and the Operating Committee
6 procedures which govern OVEC's day-to-day operations.
7 That is my responsibility.

8 Q. So you have no responsibility for AES's
9 share and the participation of AES in the -- in the
10 PJM markets?

11 A. I didn't say that I have no
12 responsibility. My responsibility is as part of the
13 Operating Committee. I'm a member of the Operating
14 Committee. I participate in the meetings, and I do
15 not do the day-to-day activity of physically offering
16 the unit into PJM. That is outlined in the -- in my
17 testimony. OVEC is responsible for the day-to-day
18 operations of the facilities.

19 Q. Each sponsoring company is responsible
20 for their share of the output in what -- whether they
21 sell that output into the PJM markets, are they not?

22 A. Each owner offers its respective share of
23 capacity into the capacity market, but OVEC, as
24 consistent with the operating agreement and my
25 testimony, offers each -- offers collectively all the

1 owners' share into the PJM day-ahead energy market.

2 Q. Are you responsible for offering AES's
3 share of OVEC into the capacity market?

4 A. AES -- AES Ohio offers the unit into the
5 capacity market, yes.

6 Q. Are you responsible for that?

7 A. Yes, I am.

8 Q. And I'm sorry. I am saying AES. That
9 AES is -- I thought we talked on Tuesday that whether
10 I said DP&L or AES Ohio or AES, that we were all
11 still talking about AES, the Ohio distribution
12 utility. Does that still hold true for today?

13 A. Yes.

14 Q. I don't want you to have to keep
15 clarifying your answer.

16 A. No. Thank you.

17 Q. So you are responsible for the decision
18 of bidding the AES share of OVEC into the capacity
19 market.

20 A. That is correct, yes.

21 Q. And are you the person at AES that's
22 responsible for deciding whether to take entitlement
23 to the 4.9 percent energy output?

24 MR. SHARKEY: I am going to object. It's
25 vague.

1 EXAMINER SCHABO: He can answer if he is
2 able.

3 A. Yes.

4 Q. Okay. We talked about MISO a little bit,
5 I think. You are also familiar that -- well, you
6 state in your testimony PJM allows two commitment
7 strategies, an economic one and a must run; is that
8 correct?

9 A. In the day-ahead energy market, that is
10 correct, yes.

11 Q. And are you familiar that PJM IMM tracks
12 the dispatchable status of the day-ahead energy
13 offers by types of resources?

14 A. I'm not directly familiar that they do
15 it, but it would not surprise me if they do it.

16 Q. And are you aware that they would track
17 whether a generating plant offers in at economic
18 dispatch or must run?

19 A. It's a category that a generator has to
20 select each day when it makes its offer into the PJM
21 energy market. It's recorded electronically in the
22 PJM bidding system, so I think it would be reasonable
23 to expect that they have that information if -- and
24 then if they wanted to track it, they certainly could
25 track it.

1 Q. And isn't it true that more generators
2 offer their plants in as economic versus must run?

3 A. I don't know the answer to that.

4 Q. And isn't it true that coal plants are
5 more often offered in as economic dispatch versus
6 must-run dispatch?

7 A. I don't know that because for a coal
8 plant, it's a daily commitment, and the must-run
9 classification tells PJM what to consider in the
10 economics for a 24-hour commitment for the next day,
11 and coal plants are designed to run as baseload units
12 for long extended periods of time.

13 Q. So you would be surprised to know that
14 the PJM IMM -- IMM concluded that more often than
15 not, coal-generating plants are offered into the PJM
16 energy market as economic dispatch versus must run?

17 A. I'm not saying it would surprise me.

18 Q. You just don't have the data.

19 A. That's correct.

20 Q. And you -- AES -- well, you personally
21 did not ask the Operating Committee to analyze and
22 review whether the must-run bidding strategy was the
23 most appropriate strategy to use for OVEC plants?

24 A. I don't recall doing that.

25 Q. And AES Ohio itself has not done that

1 independent analysis, have they?

2 A. We have not done an independent analysis,
3 no.

4 Q. But it is true that OVEC did change its
5 must-run strategy at one point in time at the request
6 of Duke; isn't that true?

7 A. That is true.

8 Q. And just so the record is clear, that
9 request was to go from must-run to economic dispatch;
10 is that correct?

11 A. It was to go -- I believe it was during
12 COVID, so it was roughly four years ago, but I
13 believe that it was to go from a must-run to an
14 economic dispatch designation in the day-ahead energy
15 market. In addition, there was the discussions about
16 looking longer term and looking at the overall
17 economics of the facility and whether they should be
18 running or not running longer term because longer
19 term meaning weeks or months due to the low --
20 extremely low loads and extremely low prices that
21 were experienced during COVID.

22 Q. And isn't it true that when OVEC switched
23 to the economic dispatch for that period of time, the
24 costs were lower and the revenues were higher making
25 the plant more profitable?

1 A. I don't recall the specifics of what
2 happened during that time frame.

3 Q. Mr. Crusey, you are familiar with the PJM
4 OATT, is that correct, the Open Access Tariff?

5 A. I am familiar in general with the PJM
6 Open Access Transmission Tariff. I am not familiar
7 in any level of detail with the Open Access
8 Transmission Tariff.

9 Q. Well, the -- is the OATT the document
10 that governs the PJM markets that you participated in
11 firsthand for AES back in 2018 and before for eight
12 years?

13 A. I may be mistaken, but I believe that the
14 document that AES Ohio or DP&L would have -- that
15 document exists but my understanding that's for
16 transmission service. My memory tells me that we
17 signed an agreement when we integrated into PJM in
18 2004 that was called RAA, or the Reliability
19 Assurance Agreement, and that document with PJM
20 outlined our obligations and commitments. I am not
21 as familiar with the document the Open Access
22 Transmission Tariff, or the OATT.

23 Q. Let's just look at it.

24 MS. BOJKO: Your Honor, I wasn't
25 intending to mark this, but for ease I have a table

1 of contents for the Open Access Transmission Tariff
2 to -- to -- it might be easier if I just share it
3 with the witness.

4 EXAMINER SCHABO: Okay. Would you like
5 that marked as OMAEG No. 13?

6 MS. BOJKO: I mean, we can mark it for
7 your -- for convenience.

8 EXAMINER SCHABO: I wasn't sure. You
9 said you didn't intend to mark but you wanted to show
10 it to him.

11 MS. BOJKO: Yeah, we can mark this, sure.
12 Your Honor, at this time I would like to mark for
13 identification purposes table of contents of the PJM
14 Open Access Transmission Tariff.

15 EXAMINER SCHABO: So marked.

16 (EXHIBIT MARKED FOR IDENTIFICATION.)

17 MS. BOJKO: Make I approach?

18 EXAMINER SCHABO: You may.

19 MR. SHARKEY: Your Honor, I am going to
20 object to the using of this document as an exhibit.
21 You recall yesterday at the end of the hearing, you
22 had instructed the Intervenors to provide any
23 document they may use as exhibits after the hearing.
24 I sent e-mails to counsel for the Intervenors asking
25 them to identify any documents and providing any

1 documents they may use at this hearing. I did
2 receive e-mails from both of them, and this document
3 was not included or identified in their responses.

4 MS. BOJKO: First of all, your Honor, I
5 just said I wasn't intending to use it as an exhibit.
6 Secondly, you know, we did a little bit of research
7 yesterday after the discussion, and I think it's
8 important to have it here on the record. We sent
9 this to counsel that we strenuously object to any
10 kind of cross exhibits being required to be produced
11 under trial prep and Work-Product Doctrine. We have
12 cases where the Commission has specifically said that
13 cross-examination exhibits do not have to be, you
14 know, delivered to the parties. It ruins the whole
15 point of the surprise of cross and there was an
16 exception made during the pandemic, but all other
17 cases point that we are not required to produce
18 exhibits ahead of time.

19 But more importantly, the duty under the
20 law -- under the Commission's rules under 4901:1-16
21 is that I have to supplement my discovery within five
22 days of learning of any new material. So even
23 assuming as your Honor did on Tuesday that we knew at
24 that time what exhibits we were going to use, I did
25 not have to supplement any kind of discovery until

1 five days after that.

2 This document I just brought with me this
3 morning, so I have five days to supplement discovery
4 even assuming that's proper. But if counsel
5 requested or had a concern with our objections which
6 were clearly laid out in discovery, the proper avenue
7 for him would have been to file a motion to compel.
8 No motion to compel was filed. We're not entitled to
9 under work product or trial prep to disclose working
10 documents or exhibits that we are going to use in the
11 defense or the prosecution of our case.

12 And -- and I can sit here and read off
13 the numerous cases where both the Commission has
14 stated that as well as -- or Attorney Examiners in
15 rulings or the Ohio courts have also made those
16 rulings. So, you know, because of the Bench's ruling
17 on Tuesday, we did in good faith provide ones that we
18 knew we were going to use, but I did not even
19 contemplate it -- using this document. I didn't even
20 fathom that the witness wouldn't know about PJM
21 markets and OATT given his testimony. So this is
22 basically to challenge some of the statements he's
23 made about what is or was not in the PJM OATT.

24 EXAMINER SCHABO: Objection is overruled.

25 MS. BOJKO: Could I have my question?

1 EXAMINER SCHABO: I don't know that you
 2 got to a question but, yes, if there is one, please
 3 reread it.

4 MS. BOJKO: I don't believe I asked a
 5 question. Thank you. I'll just ask.

6 Q. (By Ms. Bojko) Sir, do you have in front
 7 of you what has been marked for identification
 8 purposes OMAEG Exhibit 13 which is the PJM OATT table
 9 of contents?

10 A. Yes, I do.

11 Q. And does this appear to be the table of
 12 contents? You can see that at the bottom -- at the
 13 top of the document it looks like it's from a
 14 website, PJM website, if you look at the top? Sorry.

15 A. Yes. The top says "PJM Tariffs Open
 16 Access Transmission Tariff."

17 EXAMINER SCHABO: I am going to interrupt
 18 just real quickly. I don't have a copy of this.

19 MS. BOJKO: Oh, your Honor, again, I
 20 didn't bring copies.

21 EXAMINER SCHABO: Okay.

22 MS. BOJKO: Sorry.

23 EXAMINER SCHABO: That's okay.

24 MR. SHARKEY: Can I interject, Kim? John
 25 gave me two documents. Is OMAEG 13 both of them?

1 MS. BOJKO: No. It's just the table of
2 contents.

3 EXAMINER SCHABO: Thank you,
4 Mr. Finnigan. Okay.

5 Q. (By Ms. Bojko) So the table of contents,
6 if you turn to page 12 of the table of contents,
7 there's also on the bottom of the page when you get
8 to page 12, you can see it says there is an effective
9 date of the tariff and that it was approved in Docket
10 ER22-1420 which is a FERC docket? Do you see that?

11 A. I am getting there.

12 Q. Okay.

13 A. Which page? Pardon me.

14 Q. 12.

15 A. What was your question, please?

16 Q. Sure. First, I want you to confirm with
17 me that this docket -- document has a FERC docket
18 number on the bottom of every page, and it has the
19 docket number where this is presumably approved
20 because it says effective date is June 1, 2023,
21 Docket No. ER22-1420-000?

22 A. Yes, it says that on page 12.

23 Q. Okay. And you are familiar that that is
24 a FERC docket number, aren't you?

25 A. Yes.

1 Q. And if you look at page 12, under
2 Attachment K, there is a heading called "Market
3 Operations." Do you see that?

4 A. Yes.

5 Q. So this document does govern market
6 operations such as cost-based offers, PJM
7 settlements, economic load response, market sellers,
8 scheduling, dispatch? Do you see that?

9 A. Yes.

10 Q. So is it your understanding that those
11 bidding-type rules would, in fact, fall under the PJM
12 OATT?

13 A. Yes. During my experience in this
14 industry, my source of information was from the PJM
15 business rules, not referring directly to this Open
16 Access Transmission -- Transmission Tariff which is
17 why I previously answered the question the way that I
18 did.

19 Q. I'm sorry. Did you say business rules?
20 I just didn't hear you.

21 A. The PJM website which contained the PJM
22 business rules.

23 Q. And the business rules were likely in a
24 tariff or a document approved by FERC; is that fair?

25 A. Yes, ma'am.

1 Q. So if you turn to page 13 here in the
2 Open Access Transmission Tariff, it specifically
3 talks in line item 6 about must run for reliability
4 generation; is that correct?

5 A. It says that, yes, Section 6, must run.

6 Q. And then let's go to page 14. Here it
7 talks about the market monitoring plan. Do you see
8 that for Attachment M?

9 A. I was -- which page, please?

10 Q. 14.

11 A. Pardon me. Yes, it says "PJM Market
12 Monitoring Plan" for Attachment M.

13 Q. And this is where the independent market
14 monitor gets its purpose and obligations and
15 responsibilities under the PJM OATT; is that correct?

16 A. I have -- I don't recall reviewing
17 Attachment M, but I would assume it outlines the
18 obligations and the purpose for PJM market monitor.

19 Q. And is it your understanding that one of
20 the roles of the PJM market monitor is to monitor the
21 market, investigate, evaluate, and report on the PJM
22 markets including to issue such a structural design
23 or operational flaws?

24 A. Based on my experience, that statement
25 sounds like an accurate representation of what the

1 responsibilities of the PJM market monitor would be,
2 yes.

3 Q. And they also make sure that they -- or
4 the market monitor is responsible to make sure that
5 sponsoring companies such as AES Ohio are following
6 the PJM market rules, correct?

7 A. Yes.

8 Q. And those are what you might have
9 referred to as business rules a few minutes ago?

10 A. That's what I refer to them as, yes.

11 Q. But they are the PJM market rules, right?

12 A. Yes.

13 Q. And you are familiar with the PJM market
14 rules.

15 A. Yes.

16 Q. Let's -- do you have the audit report in
17 front of you somewhere up there?

18 A. I have Independent Audit for
19 Reconciliation Rider of The Dayton Power and Light
20 Company, Response to RFP, Final Report, 10/1/2020.

21 Q. Yes, thank you. Yesterday -- or Tuesday
22 I think you told me that the -- you were not familiar
23 with the RFP, but you were familiar with the audit
24 report; is that correct?

25 A. That is correct. I did not -- I am not

1 familiar with the RFP referenced in here, but I did
2 review the audit report.

3 Q. Okay. Let's turn to page 2 of the audit
4 report. Are you there?

5 A. I am there, yes.

6 Q. Okay. Look at the first paragraph on
7 page 2 so it's 1a under project scope; is that
8 correct? Are you there?

9 A. Yes, ma'am.

10 Q. And 1A under Project Scope is titled
11 "Disposition of Energy and Capacity"; is that
12 correct?

13 A. That is correct.

14 Q. And here it says "The auditor shall
15 review the prudence of unit scheduling and bidding of
16 energy into PJM-administered wholesale markets,
17 including day-ahead and real-time energy markets, and
18 shall ensure that accounting procedures accurately
19 and properly allocate revenues to ratepayers"; is
20 that correct?

21 A. Yes, ma'am.

22 Q. So it's your understanding that part of
23 the scope of this audit was for the auditor to review
24 the prudence of the bidding strategies, correct?

25 A. Yes, as stated in that first sentence.

1 Q. And determining whether a unit would be
2 offered as must run or economic is considered a unit
3 scheduling issue, correct?

4 A. I would characterize it as an offer
5 strategy into the day-ahead energy market.

6 Q. But it's how the units are scheduled,
7 right, into PJM?

8 A. It's how they are offered into PJM.

9 Q. And it's what unit scheduling and bidding
10 of energy into PJM-administered wholesale markets is,
11 right?

12 A. Scheduling can mean a lot of things. It
13 could mean how outages are scheduled. It could have
14 different meanings. I would personally interpret the
15 bidding of energy into the PJM-administered wholesale
16 markets including the day-ahead and energy real-time
17 markets as the unit bidding of -- into the energy
18 market.

19 Q. Okay. So you would consider the bidding
20 part of that is whether it's must run or economic
21 dispatch?

22 A. I would, yes.

23 Q. Okay. So it's your understanding that
24 the scope of the audit was to review how OVEC was bid
25 into the PJM markets; is that right?

1 A. That is what the sentence -- that is how
2 I interpret this sentence in 1a, disposition of
3 energy, yes.

4 Q. And you were -- you said you were present
5 for the auditor's testimony on Tuesday; is that
6 correct?

7 A. I was here Tuesday, yes.

8 Q. And you are aware that the auditor for
9 Vantage stated that they did not review the bidding
10 decisions made by OVEC and whether those bidding
11 decisions were reasonable because AES did not provide
12 the cost data, correct?

13 A. I believe he said something to that
14 effect.

15 Q. Is it your understanding that in
16 approving the OVEC cost recovery, are you aware that
17 the Commission stated that the cost recovery may be
18 disallowed as a result of the annual prudency review
19 if the output from the units was not bid in a manner
20 that is consistent with participation in a broader
21 competitive marketplace comprised of sellers
22 attempting to maximize revenues?

23 A. I am not aware of that statement.

24 MS. BOJKO: Your Honor, that's all the
25 questions I have. Thank you, Mr. Crusey.

1 THE WITNESS: Thank you.

2 EXAMINER SCHABO: Thank you, Ms. Bojko.

3 Kroger, do you have any cross-examination
4 for this witness?

5 MS. WHITFIELD: No additional questions,
6 your Honor.

7 EXAMINER SCHABO: Thank you.

8 Staff, do you have any cross-examination?

9 MR. LINDGREN: No, thank you, your Honor.

10 EXAMINER SCHABO: Mr. Sharkey?

11 MR. SHARKEY: Could I meet with the
12 witness briefly?

13 EXAMINER SCHABO: You may. We will take
14 a 5-minute break, and we will come back at
15 10 o'clock.

16 Off the record.

17 (Recess taken.)

18 EXAMINER SCHABO: Let's go back on the
19 record.

20 Mr. Sharkey, do you have any redirect for
21 your witness?

22 MR. SHARKEY: Yes, your Honor, briefly.

23 EXAMINER SCHABO: Okay. Proceed.

24 - - -

25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

REDIRECT EXAMINATION

By Mr. Sharkey:

Q. Mr. Crusey, could you turn to what was designated as Staff Exhibit 2. It's the independent audit report prepared by Vantage.

A. I just had it. Yes, I have it.

Q. Could you turn to page 14.

A. I am on page 14.

Q. I apologize. I have a wrong page number. Give me a moment. Page 15.

MS. BOJKO: I'm sorry, 15?

MR. SHARKEY: Page 15, yes.

A. I am there.

Q. Okay. Towards the top of the page under -- under subheading III-F7, do you recall that counsel for OMAEG asked you some questions in this document regarding the statement there that the "DPL has provided no evidence that OVEC is currently participating in any ancillary service markets"?

A. Yes.

Q. Turn, if you would, then to the prior page, page 14. Do you see there there is a quote that says Vantage had sent DPL a request? It was VEC-52?

A. Yes.

1 Q. And you see that that's asking for
2 information including information about ancillary
3 service markets?

4 A. Correct.

5 Q. Okay. And do you see that in the
6 response quoted there from DPL to Vantage that DPL
7 had told the auditor that OVEC participates in a
8 spinning reserve market within PJM?

9 MS. BOJKO: Objection.

10 EXAMINER SCHABO: Grounds?

11 MS. BOJKO: He is leading the witness.
12 He hasn't asked him one question. He is reading from
13 an audit report and he keeps giving some leeway and
14 this is like the sixth question that's reading from
15 the audit report.

16 EXAMINER SCHABO: Mr. Sharkey?

17 MR. SHARKEY: Your Honor, a leading
18 question is a question that suggested its own answer.
19 I am just asking him so that's a -- these aren't
20 leading questions, is this what the document says.

21 MS. BOJKO: Then he is testifying.

22 EXAMINER SCHABO: The document says what
23 the document says, Mr. Sharkey. Do you have a
24 question what the document says?

25 MR. SHARKEY: I do have a question. It's

1 leading to and setting up the substantive questions.

2 EXAMINER SCHABO: Let's get there,
3 please.

4 Q. (By Mr. Sharkey) Do you have an
5 understanding what the spinning reserve market is?

6 A. Yes, I do.

7 MS. BOJKO: Objection.

8 THE WITNESS: I'm sorry.

9 MS. BOJKO: Objection.

10 EXAMINER SCHABO: He's answered it.

11 THE WITNESS: Pardon me.

12 EXAMINER SCHABO: Continue.

13 A. Yes, I have an understanding what the
14 spinning or synchronized reserves or an ancillary
15 market is in PJM.

16 Q. What is it?

17 A. It is an ancillary service where the
18 generator, if it is not fully loaded but it is online
19 and spinning but it is not at a maximum load, PJM can
20 provide and will provide that resource with revenue
21 because there is space, if you will, available on
22 that to ramp up to full load, so it's online and
23 spinning but not fully loaded.

24 Q. During the audit period, did AES Ohio
25 receive revenue from PJM associated with providing

1 that ancillary service?

2 A. Yes, we did.

3 Q. Next topic, could you take a look at
4 Staff Exhibit 3 which was the corrected chart that
5 was testified to yesterday.

6 A. I have Staff Exhibit 3 in front of me.

7 Q. Okay. Does that document show whether
8 during the audit period there were times when PJM's
9 revenues -- I'm sorry, there were times when the
10 revenues AES Ohio received from PJM associated with
11 the OVEC energy exceeded the costs that were charged
12 to AES Ohio by OVEC?

13 A. Yes, it does.

14 MS. BOJKO: Objection.

15 A. Staff Exhibit 3 shows --

16 MS. BOJKO: Objection.

17 EXAMINER SCHABO: Hold on just a second.

18 What's the basis of the objection?

19 MS. BOJKO: I think he is misrepresenting
20 the testimony that was provided on Tuesday. He
21 actually said the opposite, that there -- the revenue
22 did not exceed because of all the charges to
23 customers.

24 EXAMINER SCHABO: I am going to allow him
25 to answer. The transcript will tell us what the

1 transcript tells us. That's the downside of putting
2 a day in between testimony.

3 MS. BOJKO: Sure. Thank you.

4 THE WITNESS: I apologize. I couldn't
5 hear you. I couldn't hear you if I spoke too soon.
6 Pardon me.

7 EXAMINER SCHABO: I don't have my
8 microphone. You may proceed.

9 A. The exhibit tells me -- Staff Exhibit 3
10 tells me that in November 2018, the PJM revenues that
11 AES Ohio received for its share of OVEC in
12 November 2018 were greater than the cost that the
13 company received in the first column from OVEC for
14 the cost for our same share of OVEC in November 2018,
15 that the revenues were greater than the costs.

16 MS. BOJKO: Your Honor, may I have one
17 moment, please?

18 MS. WHITFIELD: My copy of the chart
19 actually got put up there.

20 MS. BOJKO: Yeah. Everything got moved.

21 MS. WHITFIELD: Because the witness --
22 the auditor walked away with them.

23 EXAMINER SCHABO: No. You keep that.

24 MS. WHITFIELD: You need it. We are
25 trying to find another copy.

1 MR. LINDGREN: I have extra copies.

2 MS. BOJKO: Can I have the question and
3 answer reread, please?

4 EXAMINER SCHABO: You may.

5 (Record read.)

6 EXAMINER SCHABO: Mr. Sharkey.

7 MR. SHARKEY: Thank you, your Honor.

8 Q. (By Mr. Sharkey) What does that tell you
9 about whether the Reconciliation Rider operated as a
10 hedge during the audit period?

11 A. That information -- information in
12 November 2018 that PJM revenues column were greater
13 than the costs. The PJM revenues that were greater
14 than the costs from OVEC tells me that the
15 Reconciliation -- Reconciliation Rider did and can
16 serve as an effective hedge.

17 MR. FINNIGAN: Your Honor, I am going to
18 move to strike that testimony. That was beyond the
19 scope of any cross-examination. Neither I nor
20 Ms. Bojko asked any questions about whether the
21 Reconciliation Rider would serve as a hedge, and so
22 this cross-examination or redirect examination by
23 Mr. Sharkey is improper. This is testimony he should
24 have incorporated into the direct testimony of his
25 witness, and as we didn't ask him anything about this

1 during our cross, it's improper for him to try to
2 bring that in now.

3 EXAMINER SCHABO: Mr. Sharkey, your
4 response?

5 MR. SHARKEY: Your Honor, whether they
6 asked him about a hedge or not two days ago, I can't
7 say that I recall, but they certainly asked him
8 plenty of questions regarding whether there were
9 benefits to customers and the fact that provided net
10 costs, so I think this -- they asked him certainly
11 about this document and whether in total it provided
12 charges to customers, and I think pointing out that
13 there is -- and asking him whether it's a hedge is
14 within the scope of that, I believe.

15 MS. BOJKO: Your Honor, may I ask to
16 respond?

17 EXAMINER SCHABO: You may.

18 MS. BOJKO: I specifically tried and
19 attempted to ask questions about his testimony in
20 16-395, and the witness had no recollection of that
21 testimony and no recollection of Ms. Schroder's
22 testimony, and he said he did not discuss the --
23 anything with regard to this issue in his 16-395
24 testimony. So I was not allowed to ask questions
25 about this very issue, and so I don't think it's

1 appropriate on redirect.

2 MR. SHARKEY: May I respond to that, your
3 Honor?

4 EXAMINER SCHABO: You may.

5 MR. SHARKEY: Ms. Bojko introduced as an
6 exhibit Mr. Crusey's testimony in 16-395. I don't
7 recall her asking any substantive questions about it.
8 She wasn't prohibited at all from asking questions
9 about his testimony in that case.

10 EXAMINER SCHABO: He could not recall his
11 testimony in that case which precluded her from
12 asking questions about it. I disagree with you,
13 Mr. Sharkey. I am looking through my notes quickly.
14 I am going to overrule the objection. It is noted.
15 He did entertain questions -- or answers from
16 Mr. Crusey regarding Staff Exhibit 3 and what the
17 negative numbers indicated. You do have an
18 opportunity to recross on this issue.

19 MS. BOJKO: Thank you.

20 EXAMINER SCHABO: As well as you,
21 Mr. Finnigan. So I can't recall if we have an answer
22 or if we just have a question. If you could redirect
23 us, Karen, I would appreciate it.

24 MS. BOJKO: He answered. Mr. Finnigan
25 moved to strike it.

1 EXAMINER SCHABO: Okay. Thank you.

2 Motion to strike is denied.

3 MR. SHARKEY: Thank you, your Honor.

4 Q. (By Mr. Sharkey) Next topic, if you could
5 turn to your testimony. I am looking at the public
6 version, Exhibit 8.

7 A. I am there.

8 Q. Do you recall being asked about Exhibit 8
9 during cross-examination by Ms. Bojko?

10 A. Yes.

11 Q. And this document provides fuel cost
12 history for the OVEC plants in tons of coal and
13 dollars per MMBtu for five years, correct?

14 MS. BOJKO: Objection, your Honor. We
15 are now asking questions about testimony that he
16 couldn't recall and he said it was seven years ago
17 and he couldn't recall what was in his testimony and
18 now we are asking specific questions about it.

19 EXAMINER SCHABO: Give me just a moment.

20 MS. BOJKO: So we are reading from it.
21 If he couldn't recall it on Tuesday.

22 EXAMINER SCHABO: Let me hear the
23 question again, Karen, and if you all will just give
24 me a minute to find Exhibit 8.

25 (Record read.)

1 EXAMINER SCHABO: You can answer that
2 question.

3 THE WITNESS: Pardon me?

4 EXAMINER SCHABO: You may answer that
5 question.

6 A. Yes, it says that at the top.

7 Q. (By Mr. Sharkey) Can you explain what
8 MMBtu is?

9 MS. BOJKO: Excuse me. I'm sorry. What
10 page are you on, Mr. Sharkey, that you are looking at
11 that says it at the top?

12 MR. SHARKEY: I am on Exhibit 8 to his
13 testimony. It's one page.

14 MS. WHITFIELD: Oh, you are on --

15 MS. BOJKO: OMAEG Exhibit 8?

16 EXAMINER SCHABO: Exhibit 8 to his
17 testimony.

18 MS. BOJKO: That's why we were confused.

19 MR. SHARKEY: Tell me when you are ready,
20 Kim.

21 MS. BOJKO: I'm sorry. All right. Wait.

22 MS. WHITFIELD: Yeah. Go ahead.

23 MS. BOJKO: Thank you.

24 Q. (By Mr. Sharkey) Can you -- I'm sorry. I
25 think the question was -- I will just reask it

1 instead of having it read.

2 A. Please.

3 Q. Can you explain what MMBtu is?

4 A. Yes. MMBtu is a measure of the energy
5 content that's in coal. Coal suppliers price coal in
6 dollars per ton, but purchasers and users of coal
7 convert that price to a dollar per MMBtu measure
8 because you are measuring the energy content in the
9 fuel which is what the power plant actually burns and
10 converts to electricity, and it provides an
11 apples-to-apples comparison of coal as opposed to
12 dollars per ton.

13 Q. And we're looking at the public version,
14 but the confidential version with actual numbers was
15 provided to the auditor in this case in response to
16 this request, correct?

17 MS. BOJKO: Objection.

18 A. That's correct, yes. Oops.

19 EXAMINER SCHABO: What's the basis of
20 your objection?

21 MS. BOJKO: We are going way beyond
22 cross-examination. Not one of the Intervenors that
23 crossed this witness asked about MMBtu energy content
24 or specifically this exhibit.

25 MR. SHARKEY: Can I respond, your Honor?

1 Ms. Bojko specifically asked about this exhibit.

2 EXAMINER SCHABO: You may -- if you
3 didn't answer the question, you may continue -- the
4 objection is overruled. You may continue with the
5 questioning.

6 Q. (By Mr. Sharkey) Next topic, during the
7 audit period, did AES receive revenue from PJM
8 regarding sales of providing capacity into the PJM
9 markets?

10 MS. BOJKO: Objection. He's leading the
11 witness. He's asking -- he's putting all the facts
12 in his question and then asking him to confirm it.

13 MR. SHARKEY: Can I respond, your Honor?
14 That's absolutely not a leading question. He can say
15 yes or no. There is no suggestion as to whether it
16 should be yes or no.

17 MS. WHITFIELD: He should be asking what
18 type of revenue did you receive.

19 EXAMINER SCHABO: May I hear the question
20 again?

21 (Record read.)

22 MR. FINNIGAN: Your Honor, I object. We
23 had no questions during my questioning or Ms. Bojko's
24 about capacity market bidding. All of our questions
25 related to bidding into the energy markets as must

1 run or economic.

2 EXAMINER SCHABO: I note that objection
3 is overruled. You may answer this question.
4 Mr. Sharkey, please be careful of your form in the
5 future.

6 MR. SHARKEY: Okay, your Honor.

7 EXAMINER SCHABO: You may answer the
8 question.

9 A. Yes. The company received capacity
10 revenue during the audit period from PJM for its
11 share ownership, share of OVEC, yes.

12 Q. What obligations does AES Ohio have
13 having received revenue from PJM for capacity during
14 the audit period?

15 A. A generation -- a generation resource in
16 PJM that clears the capacity market and receives
17 capacity revenue from PJM has a daily must-offer
18 obligation in the PJM energy market.

19 Q. Can you explain whether or not the OVEC
20 plants were operated economically when they were
21 designated as must run in PJM energy markets?

22 MS. BOJKO: Objection. Objection, form,
23 totally leading and the result is what we'll hear.

24 MR. SHARKEY: Two things, your Honor. I
25 asked him to explain, and as we all learned in law

1 school, a leading question is it's true, isn't it.
2 You can say the exact same thing.

3 MS. BOJKO: No, it's not.

4 MR. SHARKEY: I would like to speak
5 uninterrupted, your Honor. You can always avoid a
6 leading question by saying is it true or not which is
7 why you really rarely see those leading objections
8 based on leading because a -- by definition a
9 question is not leading if you say is it true, can
10 you tell me whether or not.

11 MS. BOJKO: Your Honor, that's not the
12 definition and we clearly went to different law
13 schools. It's the definition is if it has any
14 indication of the outcome or the result or the answer
15 that you would like to elicit from the witness.

16 EXAMINER SCHABO: Can I hear the question
17 again?

18 (Record read.)

19 EXAMINER SCHABO: Objection overruled.
20 You may answer the question.

21 A. Yes, yes. The OVEC units were operating
22 economically in the PJM energy market even though
23 they were offered into the day-ahead market as a
24 must-run category because in the real-time intraday
25 energy market, the OVEC units follow PJM's economic

1 dispatch signal. For example, in the evening on
2 prices -- when loads are low and prices are low, PJM
3 will send an economic dispatch signal to generators,
4 and they will reduce their dispatch consistent with
5 PJM's energy signal.

6 The same thing happens during peak
7 periods when loads are up and prices are up. The
8 OVEC units follow that economic signal throughout the
9 day, and dispatch at different levels based on the
10 market economics.

11 MS. BOJKO: Your Honor, at this time I am
12 going to move to strike that answer. When I tried to
13 ask the witness questions about the PJM market and
14 even the MISO market, he didn't recall tariffs,
15 didn't recall specifics about any kind of market
16 monitoring reports, didn't have general knowledge of
17 the PJM markets, or more specific in my view couldn't
18 answer some of the questions that I asked; and now on
19 redirect he has all this new-found knowledge about
20 the PJM markets and how they work which we were not
21 able to elicit on cross-examination.

22 EXAMINER SCHABO: You will have the
23 opportunity to elicit that on recross.

24 MS. BOJKO: Thank you, your Honor.

25 Q. (By Mr. Sharkey) Next topic, Mr. Crusey,

1 are you aware of any data that AES Ohio maintains or
2 that OVEC maintains regarding whether the units
3 should be designated as must run or economic that AES
4 Ohio did not provide to the auditor?

5 A. I am not aware of any, no.

6 MR. SHARKEY: Your Honor, I have no
7 further questions.

8 EXAMINER SCHABO: Thank you.

9 Mr. Finnigan, do you have recross?

10 MR. FINNIGAN: Yes, your Honor, I have a
11 few questions.

12 - - -

13 RE CROSS-EXAMINATION

14 By Mr. Finnigan:

15 Q. Mr. Crusey, good morning, sir.

16 A. Good morning.

17 Q. Do you recall when you were asked moments
18 ago by Mr. Sharkey about whether the company derives
19 revenues from the PJM market for spinning reserve as
20 an ancillary service?

21 A. Yes, for spinning or synchronized
22 reserves, correct.

23 Q. How many different types of ancillary
24 services are provided in the PJM market?

25 A. I don't know exactly but there's

1 approximately eight. It might be seven. It might be
2 nine, I believe.

3 Q. And of those seven, eight, or nine types
4 of ancillary services, how many of those ancillary
5 services does OVEC participate in the PJM market for?

6 A. Currently, one.

7 Q. Is that the spinning reserve or
8 synchronized reserve that you mentioned?

9 A. Yes.

10 Q. So I guess the -- it would be true then
11 that OVEC does not participate in the ancillary
12 services market at PJM for the other seven or eight
13 ancillary services.

14 A. They don't currently participate, but I
15 believe, as I stated on Tuesday, that evaluation is
16 ongoing for those ancillary services, but you are
17 correct, currently the only one that we are receiving
18 revenue for is synchronized or spinning reserves.

19 Q. During the audit period did OVEC
20 participate in the ancillary services market at PJM
21 for the seven or eight other types of ancillary
22 services besides the spinning reserve or synchronized
23 reserve?

24 A. My understanding we did not receive any
25 revenue for the other ancillary services other than

1 that synchronized or spinning reserve product.

2 Q. You testified in response to some
3 questions on redirect exam that there's a requirement
4 that when a unit clears the capacity auction, then it
5 has an obligation to make a daily must offer into the
6 energy markets?

7 A. It has a daily obligation to offer its
8 unit into the energy market.

9 Q. Okay.

10 A. If I said must offer, I misspoke. The
11 requirement is that the generator must make an offer
12 into the day-ahead energy market.

13 Q. Okay. Excuse me. That offer can be made
14 with either an economic commitment status or a
15 must-run commitment status.

16 A. That is true.

17 Q. The fact that a power plant clears the
18 capacity market is no indication whether the plant is
19 operating at a profit.

20 A. It is -- the revenue received from the
21 PJM capacity market would be one input or factor into
22 the overall profitability.

23 Q. What would be the other factors?

24 A. All of the costs and revenues associated
25 with the generating facility.

1 Q. And when you factor those two items
2 together, all the costs and all the revenues, how did
3 that work out for OVEC?

4 A. I'm not sure I understand the question.

5 MR. FINNIGAN: Well, I'll strike that.

6 I'm through with my questions. Thank
7 you, your Honor.

8 Thank you, Mr. Crusey.

9 EXAMINER SCHABO: Thank you, Mr. Sharkey.

10 THE WITNESS: Thank you.

11 EXAMINER SCHABO: Ms. Bojko?

12 MS. BOJKO: Thank you.

13 - - -

14 RE-CROSS-EXAMINATION

15 By Ms. Bojko:

16 Q. Mr. Crusey, could you get out what's been
17 marked as OMAEG Exhibit 11.

18 A. There's no number on it but I'm assuming
19 it's the MISO report.

20 Q. Yes, it is, the MISO report, the MISO
21 State of the Market Report. And could you turn to
22 page 52 of the report. And let's look at Table 8 of
23 the report. This table is "Coal-Fired Resource
24 Operation and Profitability"; is that correct?

25 MR. SHARKEY: I am going to object to

1 questions about this document, your Honor. He has
2 already testified it is a document he doesn't recall
3 reviewing.

4 MS. BOJKO: Your Honor, I am going to
5 impeach a couple of his statements that Mr. Crusey
6 just stated in response to redirect. He testified to
7 the economic ability of OVEC.

8 EXAMINER SCHABO: Proceed with caution.

9 Q. (By Ms. Bojko) Did you answer my
10 question, sir? Is this a table about coal-fired
11 resource operation and profitability for 2017 to
12 2022?

13 A. Yes, it is.

14 Q. And 2017 to 2022 is the -- during the
15 period that OVEC audit occurred; is that correct?

16 A. That is correct.

17 Q. Or excuse me, the audit didn't occur
18 then. It's the costs occurred during that period,
19 that the audit did not; is that correct?

20 A. That is correct.

21 Q. If you look at the merchant plants, and
22 which is the second part, and it states that the
23 plants that were offered as an economic dispatch
24 model were 70 percent, is that correct, for the years
25 2017 to 2020? Sorry.

1 A. 70 percent under the category that says
2 merchant. There's two -- there's two offered
3 economically numbers, one for regulated utilities in
4 the first section says offered economically. I
5 believe this says 39 percent to be consistent and the
6 offer -- and the section below is for merchants.

7 Q. My question was about the merchant
8 plants.

9 A. Was about the merchant --

10 Q. Second part of the table, the merchant
11 plants.

12 A. Which I hear that it says 70 percent,
13 yes.

14 Q. And for the merchant plants which are --
15 merchant plants are plants that are not regulated by
16 a Public Utilities Commission and they are operating
17 as a competitive unit; is that correct?

18 A. That is correct.

19 Q. Okay. So for the competitively operated
20 plants that do not receive costs recovery from retail
21 customers; is that correct?

22 A. That is correct.

23 Q. So for those plants, 70 percent were
24 offered in as an economic dispatch strategy, correct?

25 A. In MISO, correct.

1 Q. Right. And for the years '17 through
2 2020, the must-run profitable plants was 27 percent
3 for the merchant generation plants, correct?

4 A. Correct.

5 Q. And for 2021, 100 percent of the merchant
6 generation plants were offered economically and zero
7 percent was -- were offered on a must-run basis,
8 correct?

9 A. Correct.

10 Q. And then for 2022, 100 percent of the
11 merchant competitive plants were offered economically
12 and zero were offered in a must-run dispatch
13 strategy, correct?

14 A. That is correct.

15 Q. And, Mr. Crusey, in response -- I want to
16 go back to a couple of questions you -- your counsel
17 asked you on redirect. Can you get out Staff
18 Exhibit 3, please. This is Exhibit 3-2 which was an
19 amended table that is now deemed public attached to
20 the audit report. Do you see that?

21 A. Yes, I have it in front of me.

22 Q. Okay. So you were referring to net
23 costs, and the number that you said was -- you know,
24 the revenues were so much greater is \$35,000; is that
25 correct?

1 A. I stated that the amounts in November of
2 2018, the PJM revenues were greater than the costs in
3 the first column from OVEC.

4 Q. And that greater than number is \$35,000.

5 A. That is correct. That is the difference
6 for the month of November 2018, yes.

7 Q. Okay. Now look at the rider revenue.
8 The amount collected from customers in November 2018
9 was still \$681,789, correct?

10 A. That is correct.

11 Q. And from December 2018 through
12 December 2019, no other month were the net costs
13 greater -- excuse me, were the PJM revenues greater
14 than the OVEC costs, correct?

15 A. I do not see any, no. You are correct.

16 Q. And for the entire audit period, so all
17 of the months from November 2018 to December of 2019,
18 there is a charge to customers, correct?

19 A. For the rider itself based on Exhibit 3,
20 that is correct, yes.

21 Q. And the rider itself is what you referred
22 to as the Commission said it should be a hedge; is
23 that correct?

24 A. That is correct.

25 Q. So for the rider itself, there has been a

1 charge during the audit period; is that correct?

2 A. That is correct.

3 Q. And that -- those -- the rider revenue
4 amount, so the amount that has been collected from
5 customers during the audit period, is \$10.8 million;
6 is that correct?

7 A. It looks approximately correct. I have
8 not added these numbers up but 12 times 8 -- 12 times
9 .8 is approximately 10; so, yes, I would say that's
10 the number.

11 Q. And your counsel in his question he said
12 how many times. It has been one time during the
13 audit period where the revenue exceeded the costs,
14 correct?

15 A. That is correct. During the audit period
16 one time the PJM revenues did exceed the costs from
17 OVEC.

18 Q. And isn't it true that OVEC has already
19 collected over \$420 million from customers for the --
20 from customers?

21 A. I don't know that number.

22 Q. Okay. Let's go back to the audit report.
23 Your counsel referred you to page 15.

24 A. I'm there.

25 Q. The finding III-F7, OVEC is not currently

1 participating in the PJM ancillary services market.

2 Do you see that?

3 A. Yes, I see that.

4 Q. Based on the questions that your counsel
5 asked you, you believe that statement is incorrect.

6 A. I do believe that statement is incorrect.

7 Q. And you also believe the auditor -- the
8 auditor testified that they did not receive -- on
9 Tuesday the auditor testified that they did not
10 receive cost data from Dayton Power and Light, AES,
11 correct? That's your recollection?

12 A. They said something of that nature, yes.

13 Q. Okay. And you dispute -- you do not
14 believe that that was an accurate statement, correct?

15 A. Yes.

16 Q. So you believe the audit report and the
17 auditor are wrong; is that correct?

18 A. I believe we -- that we provided the
19 information that the auditor would have needed.

20 Q. So the auditor was wrong in concluding
21 that they did not receive data from AES in order to
22 render their findings.

23 A. The information provided about
24 spinning -- the spinning and synchronized reserves
25 was on the PJM statements that the company receives

1 from PJM for its share of OVEC.

2 Q. In response to your counsel, he
3 specifically asked you if there was any AES data that
4 would help the auditor that you did not provide, and
5 you said no; is that correct?

6 A. I am not aware of any, correct.

7 MR. SHARKEY: I object. Very, very much
8 is not the question that I asked.

9 EXAMINER SCHABO: He already answered it.
10 The objection is overruled.

11 MS. BOJKO: I have no further questions.
12 Thank you.

13 EXAMINER SCHABO: Kroger, I will offer
14 you an opportunity.

15 MS. WHITFIELD: No questions, your Honor.

16 EXAMINER SCHABO: Okay. Staff, you also
17 the opportunity.

18 MR. LINDGREN: Yes, thank you, your
19 Honor. I just want to clear up one thing.

20 - - -

21 CROSS-EXAMINATION

22 By Mr. Lindgren:

23 Q. Mr. Crusey, could you turn to Staff
24 Exhibit 3, the amended Exhibit 3 on the audit report.

25 A. I have it in front of me.

1 Q. Thank you. And I believe you were asked
2 about the November 2018 period where the revenues
3 exceeded the costs for that period; is that right?

4 A. Yes, sir.

5 Q. And then if you look at the column on the
6 far right that says "Rider Revenue," there is the
7 number shown there for that period is negative
8 \$681,789. Can you explain why this number would
9 be -- would be negative even though the revenues
10 exceeded costs for that period?

11 A. I'm not directly accountable or
12 responsible for preparing the Reconciliation Rider,
13 but my understanding is the Reconciliation Rider
14 covers different time periods and there are different
15 true-ups in it that can go into that calculation. I
16 was -- I was referencing only the PJM revenue versus
17 the PJM costs in my statement.

18 MR. LINDGREN: Thank you. Thank you. No
19 further questions.

20 EXAMINER SCHABO: Mr. Crusey, I have no
21 questions for you. Thank you very much.

22 THE WITNESS: Thank you.

23 EXAMINER SCHABO: Take your documents
24 with you. If you could leave -- your personal
25 documents that you brought with you, you can take

1 those. Leave all the rest.

2 THE WITNESS: Thank you.

3 EXAMINER SCHABO: Thank you for your
4 time.

5 Mr. Sharkey, we'll start with your
6 exhibits.

7 MR. SHARKEY: Yes, your Honor. We would
8 move for the admission of AES Exhibit 1 and which is
9 the public version of Mr. Crusey's testimony and for
10 the admission of AES Exhibit 1C which is the
11 confidential version of his testimony.

12 EXAMINER SCHABO: Are there any
13 objections?

14 MS. BOJKO: Yes, your Honor. I object.
15 I object to the admission of the portions of his
16 testimony from page 6, line 8, to page 8, line 16.

17 EXAMINER SCHABO: Grounds?

18 MS. BOJKO: Yes. Your Honor, the grounds
19 are this witness is not an expert in PJM capacity and
20 energy markets. Many questions asked of him were
21 not -- he did not recall the rules of PJM or where
22 the rules were located in FERC-approved documents.
23 The witness was unable to testify to particular
24 questions about the capacity and energy markets, and
25 so even though he's worked in the field over eight

1 years ago, he's not currently an expert in this
2 capacity, and his testimony should be struck and not
3 admitted into the record.

4 EXAMINER SCHABO: Mr. Sharkey. Or
5 actually does anyone want to piggyback on that before
6 I go to Mr. Sharkey?

7 Okay. Mr. Sharkey.

8 MR. SHARKEY: Yes, your Honor.
9 Mr. Crusey testified that he was not familiar with a
10 PJM market report that was dated 2022. So that's
11 outside the audit period. The fact he hadn't read a
12 document dated 2022 outside the audit period does not
13 establish that Mr. Crusey was not an expert. He, in
14 fact, testified to both his experience with the
15 company where he was responsible for -- when the
16 company-owned generating assets, bidding them into
17 the energy and capacity markets. And he also
18 explained his familiarity with the OVEC bidding
19 processes in his capacity as a designated rep of the
20 company on the OVEC's Operating Committee, so he
21 certainly has had and has expertise regarding the
22 ex -- the operation of the PJM markets.

23 I would also note that he was asked some
24 questions about MISO that he testified he wasn't as
25 familiar with as PJM but that's irrelevant here.

1 These are all about the PJM markets so he certainly
2 is well qualified to offer both fact and expert
3 testimony here, some of these fact and opinion, so he
4 is well qualified.

5 MS. BOJKO: Your Honor, may I respond and
6 clarify my motion to strike?

7 EXAMINER SCHABO: Yes.

8 MS. BOJKO: I did not mean to strike
9 OVEC. He is on the OVEC, the Operating Committee.
10 He can testify to what OVEC did or did not do.

11 And I -- I also wanted to speak that the
12 MISO is not relevant. The witness did testify that
13 sponsoring companies do offer OVEC into the OVEC
14 capacity into the MISO markets and they do
15 participate -- OVEC does participate in both the MISO
16 and PJM markets, so I think that's an incorrect
17 statement.

18 My objection is to him holding himself
19 out as an expert in the PJM capacity and energy
20 markets that are on the pages that I designated.
21 He's not an expert. He wasn't familiar with the PJM
22 Open Access Transmission Tariff which sets forth the
23 generation rules, the bidding rules, the independent
24 market monitor, and the rules associated with
25 participating in the PJM market, the thing that he is

1 testifying upon.

2 So I am questioning his ability to offer
3 that piece of his testimony with regard to the PJM
4 capacity and energy markets. He does satisfy the
5 requirement of an expert witness under -- and I will
6 get you a rule in one second. Under -- under 601, he
7 is not competent to sit as an expert and, thus, this
8 testimony should not be -- here it is, I'm sorry. It
9 was 701, your Honor. The rule is 701 is the lay
10 witness opinion which he can offer. 702, the expert
11 opinion is inadmissible if he does not meet the
12 following requirements: He is not a subject
13 matter -- familiar with the subject matter beyond
14 ordinary knowledge of a layperson; he is not
15 qualified to be an expert; and his testimony is not
16 based on reliable scientific technical or specialized
17 information. So he cannot use these facts to form an
18 expert opinion because he is not an expert under Rule
19 702. Thank you.

20 EXAMINER SCHABO: Mr. Sharkey, you want
21 to respond to that?

22 MR. SHARKEY: Yes, I do, your Honor. If
23 you recall during Ms. Bojko's examination of him,
24 he -- his resume reflects that for approximately
25 eight years he was the Vice President of Commercial

1 Operations and had direct responsibility for the
2 company's bidding into the PJM energy and capacity
3 markets. He -- that certainly qualifies him as an
4 expert. He also qualifies as an expert again based
5 upon his experience working on the Operating
6 Committee and learning how PJM -- I'm sorry, how OVEC
7 bid its energy into the PJM markets.

8 I would also say that Ms. Bojko said he
9 said he was not familiar with the PJM bidding rules.
10 He said he was familiar with the PJM bidding rules
11 during his testimony.

12 EXAMINER SCHABO: Okay. At this time I
13 am going to deny the motion to strike. Ms. Bojko,
14 you are welcome to challenge the weight and
15 credibility of the evidence that he -- that he
16 provided in your brief.

17 MS. BOJKO: Thank you, your Honor.

18 EXAMINER SCHABO: Subject to that
19 objection -- or, I'm sorry, to that motion to strike
20 and the ruling on it. Are there any other objections
21 to the admission of AES Exhibit 1 or AES Exhibit 1C?

22 Hearing none, they will be admitted.

23 (EXHIBITS ADMITTED INTO EVIDENCE.)

24 EXAMINER SCHABO: Ms. Bojko, let's move
25 on to OMAEG exhibits.

1 MS. BOJKO: Yes, your Honor. I would
2 like to ask the Bench to take administrative notice
3 of the Commission's Opinion and Order in 16-395,
4 administrative notice of the 2022 State of the Market
5 Report for MISO, and administrative notice -- I'm
6 sorry. I should tell you numbers. I would like to
7 take administrative notice of OMAEG Exhibit 9, OMAEG
8 Exhibit 11, OMAEG Exhibit 12, and then I would also
9 ask that instead of OMAEG Exhibit 13 which was just
10 the table of contents of the PJM OATT, I would ask
11 that the Bench take administrative notice of the
12 FERC-approved PJM OATT that was discussed in his
13 testimony and that was approved in FERC No. -- Docket
14 No. ER10-2710-000. So just administrative notice,
15 your Honor. I am not asking for any exhibits to be
16 admitted.

17 EXAMINER SCHABO: Any objection?

18 MR. SHARKEY: As to OMAEG Exhibit 9,
19 which is the Commission's Opinion and Order in the
20 16-395 ESP III case, no objection.

21 As to the exhibits -- I'm sorry, Kim.
22 You moved for the admission of Exhibit 11 and, I'm
23 sorry, administrative notice of 11 and 12?

24 MS. BOJKO: Just 11, 12, and the full
25 copy of 13 which is the entire OATT.

1 MR. SHARKEY: Your Honor, I don't think
2 Exhibits 11 or 12 are appropriate for administrative
3 notice. First of all, they are outside the period,
4 and they are also not documents that have been
5 authenticated, so we don't know what these are, where
6 they came. They are certainly not something that is
7 not subject to reasonable dispute outside of the
8 Commission without someone testifying as to what they
9 are. So I don't believe they are appropriate for
10 administrative notice.

11 MS. BOJKO: Your Honor, thank you. First
12 of all, the document -- the MISO document was used to
13 impeach the witness and directly contradicts
14 statements he said. But more importantly, if the
15 argument -- I didn't hear this word, but if the
16 argument is that it's hearsay, Rule 803(17) is an
17 exception to hearsay if it's a market report,
18 commercial publication. Market quotations,
19 tabulations, lists, directories, or other published
20 compilations generally used and relied upon by the
21 public or by persons in particular occupations is an
22 exception to the hearsay rule.

23 The PJM report and the MISO report are
24 both exceptions to the general hearsay rule as they
25 are both market reports and the commercial

1 publications by an entity that has been FERC approved
2 and that is established by a FERC order and that's
3 established in the both PJM and MISO Open Access
4 Transmission Tariff. These market reports are
5 generally used by people in the industry, and they
6 are relied upon by people in the industry and people
7 in the financial investment community and the
8 publicly-traded companies.

9 State of the Market Reports are produced
10 to provide information such as the extent to which
11 prices in the PJM/MISO markets reflect competitive
12 outcomes. The structural of competitiveness of the
13 markets and the effectiveness of the bid mitigation
14 rules as well as the effectiveness of signaling
15 infrastructure investment, all of which are very
16 important to the industry and result in a market
17 report that's a commercial publication that is a
18 hearsay exception under Rule 803(17)(b).

19 EXAMINER SCHABO: So are you moving for
20 their admission or for administrative notice?

21 MS. BOJKO: No, just administrative
22 notice which is even a lesser standard than the
23 admissibility of the documents. They are admissible,
24 but administrative notice is the lesser standard. I
25 would also argue that these are learned treatise

1 under 803(18).

2 MR. FINNIGAN: Your Honor, may I be heard
3 on this?

4 EXAMINER SCHABO: You may.

5 MR. FINNIGAN: Your Honor, I join with
6 Ms. Bojko's motion, and in addition I would also move
7 that OMAEG Exhibit 11 be admitted into evidence as a
8 cross-examination exhibit. Mr. Crusey was asked
9 during Ms. Bojko's questioning various questions
10 about a chart that was contained on page 52 of that
11 document, and he responded to those questions. He
12 also testified that he had knowledge of the
13 independent market monitor's functions and their role
14 to monitor whether the markets were following
15 competitive practices. So I believe that Exhibit 11
16 would be admissible both as a cross-examination
17 exhibit and through administrative notice.

18 In addition to what Miss Bojko mentioned,
19 I believe that the IMM report would be admissible as
20 an exception to the hearsay rules under 803(6) which
21 is a report of regularly conducted activity. That
22 rule allows for admission of reports by public
23 agencies that are reporting on matters within their
24 domain or what they are required to report upon.

25 And the Exhibit 11 states that -- and I

1 am referring now to page I of the report, the
2 executive summary, the very first sentence says "As
3 an Independent Market Monitor for MISO, we evaluate
4 the competitive performance and efficiency of MISO's
5 wholesale energy markets," and this is provided for
6 in the tariffs for both MISO and PJM that are
7 approved. Those tariffs are approved by orders at
8 FERC that are cited in the tariffs as Ms. Bojko
9 pointed out during her questioning about the PJM
10 tariff.

11 The Commission's practice is to take
12 administrative notice of matters that have been filed
13 in either Commission dockets or FERC dockets as these
14 matters have, and this report by the MISO independent
15 market monitor is reporting on a matter that -- that
16 they are required to report on by law of the
17 regularly conducted activity and that is the bidding
18 into the MISO market and whether it's done in a
19 competitive fashion or not and for that reason would
20 be admissible under 803(6).

21 EXAMINER SCHABO: Mr. Sharkey?

22 MR. SHARKEY: Sure, your Honor. These
23 are documents that -- these are documents that either
24 OCC or OMAEG, if they had authenticated copies, could
25 have attached to the testimony of their witnesses.

1 That's the type of way these things are used. Right
2 now Mr. -- the state of the record is Mr. Crusey
3 hasn't seen these. They haven't been authenticated.
4 There is, you know, something to qualify as for
5 judicial notice, it must be a fact that is not
6 subject to reasonable dispute, and it is either
7 generally known within the territory jurisdiction or
8 be capable of accurate and ready determination by
9 reports whose sources cannot be reasonably
10 questioned.

11 At this point they haven't satisfied
12 either of those standards for something to be taken
13 administrative notice of. Things typically
14 administrative notice are taken of are things like
15 Commission orders that everybody in the room knows
16 what they are. This is not the type of thing that is
17 not subject to reasonable dispute because they --
18 they haven't laid proper foundation for what it is.
19 That's how you get in documents like this is by
20 having a witness to testify about.

21 EXAMINER SCHABO: We will take
22 administrative notice of OMAEG Exhibit 9 which is the
23 Opinion and Order in AES III. I will not take
24 administrative notice of OMAEG 11 or 12. Have we
25 argued about OMAEG 11 yet?

1 MR. SHARKEY: I have not. My first
2 question, I am not sure what documents Miss Bojko is
3 asking administrative notice to be taken of. I would
4 ask if she could clarify that. Is it the documents
5 you handed out or something in addition to it?

6 MS. BOJKO: I'm sorry. I thought I said
7 OMAEG Exhibit 13 was merely a table of contents, and
8 I am asking that the entire tariff, out of fairness
9 and completeness, the entire tariff needs to be
10 allowed to be taken administrative notice of. It was
11 attached to a FERC order. It's a FERC-approved
12 tariff, and I think it falls under the similar PUCO
13 order. It's a FERC order and it's a tariff and it's
14 well known in the industry, is the rules of which the
15 PJM has to operate by, and any witness or expert
16 testifying to the PJM capacity markets or the PJM
17 energy markets should be well aware of the PJM Open
18 Access Transition Tariff.

19 EXAMINER SCHABO: Mr. Sharkey?

20 MR. SHARKEY: Your Honor, we don't have
21 an objection to taking administrative notice of FERC
22 orders, their attachments, but at this point it is
23 not clear to me what exactly the document is. We
24 don't have a copy of it in front of us, so if she
25 could provide a copy to us, we would be in a better

1 position to address.

2 EXAMINER SCHABO: Do you have an
3 objection to the admission of the PJM Open Access
4 Transmission Tariff that was adopted in Docket
5 ER10-2710-000 in its entirety?

6 MR. SHARKEY: If it's the current version
7 that was attached to a FERC order, we have no
8 objection to it being taken administrative notice of
9 it, your Honor.

10 MS. BOJKO: Your Honor, I can't testify
11 it was attached to a FERC order. It's approved --

12 MR. SHARKEY: Attached or approved.

13 MS. BOJKO: It was approved by a FERC
14 order, and I am happy to provide the link. I think
15 it would be unnecessary to provide the entire paper
16 copy of this very large document, but I think a link
17 would suffice.

18 MR. SHARKEY: We would be happy with a
19 link, your Honor.

20 EXAMINER SCHABO: We will take
21 administrative notice of the current Open -- current
22 current -- sorry. Just so we are clear, to the
23 degree that any part has been changed since the audit
24 period, are we just talking about the current Open
25 Access Tariff?

1 MS. BOJKO: Your Honor, I think that's
2 appropriate. It was -- the effective date of the
3 current Open Access Transmission Tariff I believe is
4 September 17, 2010. So it would cover both.

5 MR. SHARKEY: Page 2 of what was marked
6 OMAEG Exhibit 13 has an effective date June 1, 2023,
7 your Honor.

8 EXAMINER SCHABO: I guess that's my
9 question. There is a lot of different effective
10 dates in this document. You have got a different
11 effective date for the table of contents. You have
12 got a different effective date for whatever is on
13 page --

14 MS. BOJKO: Sure. Fair enough, your
15 Honor. Just like the PUCO tariff, like AES's tariff,
16 they update the pages as a new Commission order is
17 approved, so I think that the only thing that would
18 be publicly available through a link is the current
19 tariff which would be a compilation of what their
20 tariff is at the time, and it would have different
21 effective dates as pages are updated, but I doubt
22 that it goes -- just like the Dayton's tariff, I
23 couldn't go back and get all previous copies unless I
24 went back to each case and pulled the document. It's
25 a link to the current tariff.

1 EXAMINER SCHABO: Just wanted to be amply
2 clear on the record that we will be taking
3 administrative notice of the current OATT as approved
4 by FERC.

5 MS. BOJKO: Thank you, your Honor. And
6 we will send that link out.

7 EXAMINER SCHABO: Thank you. And provide
8 it either via a letter to the docket or through
9 Karen, please, so that the link is also public.

10 MS. BOJKO: Okay.

11 EXAMINER SCHABO: Thank you. All right.
12 That covers all of your marked exhibits?

13 MS. BOJKO: Yes, your Honor.

14 EXAMINER SCHABO: Thank you.

15 MS. BOJKO: Well, the only ones I intend
16 to move or request admission.

17 EXAMINER SCHABO: I'm sorry. I could
18 have been more clear. You are not moving anything
19 regarding No. 8.

20 MS. BOJKO: No, your Honor.

21 EXAMINER SCHABO: Or No. 10.

22 MS. BOJKO: No, your Honor.

23 EXAMINER SCHABO: Thank you. We are
24 going to go off the record for a minute, and when we
25 come back, we will take up Ms. Glick.

1 (Recess taken.)

2 EXAMINER SCHABO: Back on the record.

3 Mr. Sharkey, your next witness.

4 MR. SHARKEY: Yes, your Honor. We would
5 move for the admission of the testimony of Patrick
6 Donlon as filed. As I have advised you off the
7 record, we have stipulated with the Intervenors that
8 he not -- he need not appear and that his testimony
9 could be admitted without cross, subject to our
10 agreement that there's two documents that has been
11 provided to me by Ms. Bojko that we agreed to
12 stipulate to could be admitted into the record, so I
13 will leave her to address the two additional
14 documents that we stipulated could be admitted into
15 the record.

16 EXAMINER SCHABO: Okay.

17 MS. BOJKO: Do you want me to mark them?

18 EXAMINER SCHABO: Yes, but did we
19 designate Mr. Donlon and I missed it?

20 MR. SHARKEY: I did not, thank you. We
21 would designate his testimony as AES Exhibit 2.

22 EXAMINER SCHABO: So marked.

23 (EXHIBIT MARKED FOR IDENTIFICATION.)

24 EXAMINER SCHABO: Ms. Bojko.

25 MS. BOJKO: Thank you, your Honor. At

1 this time I would like to mark OMAEG Exhibit 14, a
2 data response. It's Interrogatory INT-04-008.

3 EXAMINER SCHABO: That is from who to
4 who?

5 MS. BOJKO: Oh, I'm sorry. It doesn't
6 say, you're right. But it is a data response from
7 the Company. I think OCC was probably the original
8 requester, but it is data response from Patrick
9 Donlon is the witness responsible. May I approach,
10 your Honor?

11 EXAMINER SCHABO: You may.

12 MS. BOJKO: Your Honor, also at this time
13 I would like to mark for identification purposes as
14 OMAEG 15, it is a data response from AES. The
15 witness responsible is Patrick Donlon and the number
16 is INT-05-003.

17 EXAMINER SCHABO: We will mark as you
18 requested.

19 (EXHIBITS MARKED FOR IDENTIFICATION.)

20 MS. BOJKO: May I approach?

21 EXAMINER SCHABO: You may.

22 All right. So the parties have agreed to
23 stipulate into the record AES Ohio Exhibit 2, to
24 OMAEG Exhibits 14 and 15; is that correct?

25 MR. SHARKEY: Yes, your Honor.

1 MS. BOJKO: Yes, your Honor.

2 MR. FINNIGAN: Yes, your Honor.

3 EXAMINER SCHABO: They will be so
4 admitted.

5 (EXHIBITS ADMITTED INTO EVIDENCE.)

6 EXAMINER SCHABO: Mr. Sharkey, your next
7 witness.

8 MR. SHARKEY: We have no further witness,
9 your Honor.

10 EXAMINER SCHABO: Sorry. I had it
11 mislabeled.

12 Mr. Finnigan, your first witness.

13 MR. FINNIGAN: Thank you, your Honor.
14 Your Honor, we would like to call Ms. Devi Glick as
15 our first witness.

16 EXAMINER SCHABO: Come on up. Go ahead,
17 put your things down, stay standing.

18 (Witness sworn.)

19 EXAMINER SCHABO: Thank you. Have a seat
20 and get comfortable.

21 - - -

22

23

24

25

1 DEVI GLICK

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

4 DIRECT EXAMINATION

5 By Mr. Finnigan:

6 Q. Good morning, Ms. Glick. Could you state
7 your full name for the record?

8 A. Yeah. My name is Devi Glick.

9 Q. And what is your business address,
10 please?

11 A. 485 Massachusetts Ave, Cambridge,
12 Massachusetts.

13 Q. And how are you employed?

14 A. I am a Senior Principal for Synapse
15 Energy Economics.

16 MR. FINNIGAN: Your Honor, I would like
17 to have two documents marked for identification at
18 this time. OCC Exhibit 3 is the public version of
19 Ms. Glick's testimony and OCC Exhibit 4 as the
20 confidential version of Ms. Glick's testimony.

21 EXAMINER SCHABO: So marked.

22 MS. BOJKO: I'm sorry. What number was
23 that?

24 MR. FINNIGAN: 3 is the public version,
25 and 4 is the confidential version.

1 MS. BOJKO: Oh, 4. You are not doing 3C?

2 MR. FINNIGAN: That's fine if -- is that
3 the protocol we've done for the other ones? Okay.
4 Your Honor, let me switch that and 3 would be the
5 public version and 3C would be the confidential
6 version.

7 EXAMINER SCHABO: All right. We'll mark
8 Ms. Glick's public version as OCC Exhibit 3, and we
9 will mark the confidential version as OCC Exhibit 3C.

10 (EXHIBITS ADMITTED INTO EVIDENCE.)

11 Q. (By Mr. Finnigan) Ms. Glick, do you have
12 before you two documents, OCC Exhibit 3 and 3C? Can
13 you identify what those are?

14 A. OCC 3 is the public version of my direct
15 testimony, and OCC 3C is the confidential version.

16 Q. Were those two documents prepared by you
17 or under your control?

18 A. Yes, they were.

19 Q. If I asked you the same questions today,
20 would your answers be the same?

21 A. Yes, they would.

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

24 A. Yeah. I have just a few small
25 corrections. On page 18, I noticed that on Table 2

1 the total line for the columns in the middle, so the
2 one labeled "OVEC (\$/MWh)", that total the formula
3 got messed up. That should say where it says
4 "355.66," that should instead say "58".06.

5 And then the next column directly to the
6 right where it says "Energy and Capacity Market Value
7 (\$/MWh)," that total once again where it says
8 "232.91," that should say "38.90."

9 And then going to page 27, which is
10 Table 3, after the deposition, I realized the table
11 contains numbers that are proportional to Indiana
12 Michigan's share of OVEC instead of DP&L which is
13 quite confusing, I admit. So I would like to correct
14 the numbers so that they reflect DP&L's shares or
15 these reflect the original numbers from the studies.
16 So on Table 3, this is on page 27, the first row that
17 says "April, 2019" and the column next to it says
18 "FirstEnergy Solutions," if you go to the column on
19 the right where it says "Finding," it says
20 "Forward-looking analysis of OVEC Agreement through
21 2040; found," and right now it says "267 million."
22 That number should be changed to "268 million in
23 losses relative to market for" and where it says
24 "I&M's share," that should be crossed out, that set
25 of I&M, that should say First -- "FES, FirstEnergy

1 Solutions and Allegheny," so those are the numbers
2 from the original document. And then to add to this,
3 it should say "For DP&L that is 167 million in
4 losses." Anyone need me to repeat any of that?

5 EXAMINER SCHABO: So the "For DP&L that
6 is 167," et cetera, that's a new sentence?

7 THE WITNESS: Correct. That is -- that
8 is clarifying the losses for DP&L which are scaled
9 from the original reported values which were for
10 FirstEnergy and Allegheny.

11 EXAMINER SCHABO: Okay.

12 A. Going to the second row that says
13 "December, 2018, Moody's Analytics," currently reads
14 under "Finding," "Assessment of the OVEC Agreement;
15 found annual losses of \$16 to \$20 million." That
16 should say "Assessment of the OVEC Agreement; found
17 annual losses of \$10 to \$13 million for FES," and
18 then to add to that, it should say "For DP&L's share,
19 that is virtually the same."

20 And then going down to the next row under
21 "March, 2017, ICF International, for Duke Energy
22 Ohio," it says "Forward-looking analysis of OVEC
23 Agreement; 2018 to 2025; found 67 million." Where it
24 says "67 million," that should instead say
25 "77 million in losses relative to the market for Duke

1 Ohio's share," and to add to that, it should say
2 "That is equivalent to 42 million for DP&L's share."

3 And, finally, under footnote No. 1 for
4 the sources, there is a second source that I omitted
5 to -- from the same bankruptcy proceeding that I
6 omitted to include here. It is this under "Source,"
7 right now it says "2," I'm sorry. The first one
8 where it says "Expert declaration of Judah Rose
9 (Document 46)," I also relied on "Document 44" from
10 this bankruptcy proceeding.

11 And those are all the edits.

12 Q. So subject to those changes and
13 corrections, if I asked you the same questions in
14 your testimony today that are contained in the
15 prefiled written testimony, would your answers be the
16 same?

17 A. Yes, they would.

18 MR. FINNIGAN: Your Honor, at this time I
19 would like to spend a moment going through the public
20 version of Ms. Glick's testimony where there were
21 some redactions. Mr. Sharkey and I had a
22 conversation during the last break, and I believe we
23 might be able to stipulate that some of the
24 information is public and possibly all of the
25 information, and so I would like to just go through

1 page by page. There are just a few pages that would
2 come into play here but if we could get that done on
3 the record on a line by line basis, I think the
4 record would be clearer as to which portions are
5 now -- could be public.

6 EXAMINER SCHABO: We can do that.

7 Q. (By Mr. Finnigan) Ms. Glick, if you would
8 take your testimony and please turn to page 6, line
9 12, there is a redaction there with a dollar amount.

10 MR. FINNIGAN: And is that a -- that a
11 number that can be made public?

12 MR. SHARKEY: Yes, it is, your Honor.

13 EXAMINER SCHABO: Thank you.

14 MR. FINNIGAN: Next, I'll turn to page
15 23, line 24. This is a redaction there.

16 MR. SHARKEY: Yes, that --

17 EXAMINER SCHABO: I'm sorry. Can you
18 repeat that reference?

19 MR. FINNIGAN: Page 23, line 24.

20 MR. SHARKEY: And, yes, your Honor, that
21 can be made public.

22 MR. FINNIGAN: And next, your Honor, on
23 page 24, there are several redactions, lines 1 and 2,
24 lines 5, 14, 15, and 16.

25 MR. SHARKEY: All of which can be made

1 public, your Honor.

2 EXAMINER SCHABO: Asset redactions can be
3 made public.

4 MR. SHARKEY: Yes. Everything on the
5 page that is indicated that is redacted can be made
6 public.

7 EXAMINER SCHABO: Thank you.

8 MR. FINNIGAN: And then next page 25,
9 there's a table that's redacted, along with two
10 lines, 10 and 11, on that page.

11 MR. SHARKEY: Those can be public, your
12 Honor.

13 MR. FINNIGAN: The next one is page 36.

14 MS. WHITFIELD: Can I ask a quick
15 question?

16 EXAMINER SCHABO: Hold on a second.

17 MS. WHITFIELD: Is the Figure 4 -- you
18 have that as confidential.

19 MR. SHARKEY: Yes, the Figure 4 and the
20 lines 10 and 11 can both be made public.

21 MS. WHITFIELD: Okay. Sorry, I missed
22 that. Thank you.

23 MR. FINNIGAN: Next, your Honor, on page
24 36, lines 14 through 16, there are some redactions.

25 MR. SHARKEY: Those can be made public.

1 EXAMINER SCHABO: Let me catch up.

2 MR. FINNIGAN: And, your Honor, that
3 concludes Ms. Glick's testimony, so going through in
4 line-by-line fashion, I think now it appears that all
5 of the information contained in her testimony is
6 public.

7 MR. SHARKEY: I believe that is correct,
8 your Honor, but some of her exhibits remain
9 confidential.

10 MR. FINNIGAN: That's correct, your
11 Honor. There are two attachments to her testimony
12 that are confidential attachments and those would
13 remain confidential and I would like to thank
14 Mr. Sharkey for walking through and, you know,
15 cooperating in terms of the information that could be
16 made public.

17 MR. SHARKEY: You're welcome.

18 MS. BOJKO: Your Honor, may I request
19 that -- I'm assuming that the copy of the public
20 version that was designated as OCC Exhibit 3 still
21 contains redactions, and I would request that maybe
22 Mr. Finnigan do a late-filed exhibit of a new OCC
23 Exhibit 3 that would be the public version without
24 redactions so that that's in the record and that it
25 could be used in briefs.

1 MR. FINNIGAN: And, your Honor, I am
2 willing to do that and I agree with Ms. Bojko that
3 would make all of our jobs simpler in that we could
4 refer to everything publicly and it might eliminate
5 any need for any confidential information at the
6 briefing stage.

7 EXAMINER SCHABO: Okay. Are we keeping
8 it OCC Exhibit 3, or are we making this --

9 MR. FINNIGAN: Let me suggest, your
10 Honor, we could mark this as OCC Exhibit 3D or 4 just
11 to designate that it's a different document so not to
12 substitute what's already there because I think the
13 record might not be clear. I think it's important to
14 keep the one that we have OCC 3 which shows the
15 redactions, and now we have a record as to line by
16 line which things are now public and then as the
17 late-filed exhibit, let's call it OCC Exhibit 4 will
18 be, as Ms. Bojko said, where it will be the same
19 version as her public testimony. It will not contain
20 the attachments. It will just be the narrative
21 portion, and it will have all the redactions removed.

22 MS. BOJKO: Call it unredacted?

23 EXAMINER SCHABO: Just call it the
24 unredacted version of Ms. Glick's testimony,
25 narrative only. And that will be marked as OCC

1 Exhibit 4.

2 (EXHIBIT MARKED FOR IDENTIFICATION.)

3 MR. FINNIGAN: I'll file that in the
4 docket of the case next week sometime.

5 EXAMINER SCHABO: Thank you.

6 MS. BOJKO: Thank you, your Honor.

7 MR. FINNIGAN: Your Honor, with that and
8 subject to cross-examination, I would like to move
9 those two documents into evidence.

10 EXAMINER SCHABO: Okay. We'll come back
11 to admission, but we do now have those marked.

12 OMAEG, do you have any cross for this
13 witness?

14 MS. BOJKO: Oh, no, thank you, your
15 Honor, I do not.

16 EXAMINER SCHABO: Kroger, do you have any
17 cross for this witness?

18 MS. WHITFIELD: No, thank you, your
19 Honor.

20 EXAMINER SCHABO: Mr. Sharkey, do you
21 have cross for this witness?

22 MR. SHARKEY: Yes, I do, your Honor. I
23 also have motions to strike. Would you like me to
24 take those up at the beginning or the end?

25 EXAMINER SCHABO: Oh, definitely the

1 beginning.

2 MR. SHARKEY: Okay. My first motion to
3 strike is on page 27. Are you ready for me, your
4 Honor?

5 EXAMINER SCHABO: Not quite yet.

6 MR. SHARKEY: Okay.

7 EXAMINER SCHABO: All right. Page 27.
8 Begin with your motion to strike, please.

9 MR. SHARKEY: Thank you, your Honor.
10 Page 27, Table 3, we move to strike the first row
11 that has the "April, 2019" date, "FirstEnergy
12 Solutions," everything in that row, we move to
13 strike. In the next row, "December, 2018," the
14 "Moody's Analytic" row. We move to strike the
15 additional sentence to that row that Ms. Glick added
16 during her initial direct examination.

17 Then we also move then to strike the
18 remainder of the last two rows, the "March, 2017" one
19 with the "ICF" and 2006 -- "2016" one for the AEPSC.

20 So basically we are moving to strike
21 everything except for the Moody's Analytics line and
22 we don't move to strike her correction to the numbers
23 10 and 13 correction, but the other additions. And
24 there is two bases for the motions to strike, your
25 Honor. The first bases is that as the sources

1 reflect and as are cited below, the -- most of those
2 documents are testimony of other witnesses in other
3 cases that have been copied here. Those people,
4 Judah Rose and -- has not -- has not appeared, for
5 example, here to testify. These other pieces of
6 testimony that were filed in other proceedings are
7 not appropriate for admission here.

8 And then in addition, your Honor, the
9 additional sentence -- let me step back. We don't
10 move to strike the Moody's Analytics information.
11 That's the type of information the company has relied
12 upon in the past, and we think it's appropriate given
13 its source. We don't object to that, but we do move
14 to strike the additional sentence simply because it
15 could have and should have been included in her
16 original testimony. This is more than -- that
17 additional sentence is more than a typical correction
18 to testimony. It's adding additional substance.

19 EXAMINER SCHABO: Mr. Finnigan.

20 MR. FINNIGAN: Your Honor, we do not
21 object to striking the two rows at the bottom, the
22 ICF and the AEPSC entries. We do object to the
23 motion to strike the Moody's -- the sentence from the
24 Moody's Analytics Report. If the witness's
25 conclusion or summary of what's in the Moody's

1 Analytics Report is proper, there's no motion to
2 strike the Moody's Analytics Report information
3 itself, so the fact that she's drawn a conclusion
4 from the data is proper for her to do.

5 Going back to the first row, we do object
6 to the motion to strike the FirstEnergy Solutions
7 data. This is responding to an item that Mr. Crusey
8 raised in his testimony, I believe on page 16, where
9 he brought up the FirstEnergy Solutions' bankruptcy
10 and discussed the impact of the bankruptcy on the
11 Reconciliation Rider. And this is part of the same
12 bankruptcy proceeding as can be shown from the
13 footnote to this table where Ms. Glick cites the case
14 number, and certainly this information was available
15 to the company since the time that Ms. Glick
16 submitted her prefiled testimony, so they could have
17 had -- they had plenty of time to respond to it. But
18 it's in response to information that Mr. Crusey
19 raised in his testimony about the FirstEnergy
20 Solutions' bankruptcy.

21 MS. BOJKO: Your Honor, may I be heard on
22 this issue?

23 EXAMINER SCHABO: Yes.

24 MS. BOJKO: I think that the entirety of
25 the motion to strike should be denied. The

1 Commission has noted in several of its OVEC orders
2 and OVEC audit proceeding orders some of the auditors
3 have been the same and the Commission has
4 consistently issued the same RFP and the Commission
5 has stated in its Duke ESP IV order that these riders
6 are all similar. They are all collecting OVEC costs
7 for the various EDUs and that the auditor is to
8 determine the prudently incurred costs and the
9 reasonableness of the generation revenue for all
10 three jurisdictional EDUs in a uniform manner
11 pursuant to controlling law which affords parties of
12 interest with due process.

13 So the audits and the costs are supposed
14 to be viewed collectively and that was in the
15 Commission's ESP IV order in the Duke case at
16 paragraph 139. Additionally, the Commission has
17 stated in its order that these PSRs are very -- PSR
18 and the RR and the AEP's version are all very similar
19 riders collecting the same OVEC costs for different
20 utilities' shares and that these are similar rider
21 proposals.

22 And, lastly, in the Duke case at --
23 excuse me, in the AEP OVEC case at transcript No. V,
24 Volume V, page 1300, the Attorney Examiners denied a
25 motion to strike very similar information stating

1 that the OVEC charges and costs are the same for all
2 three utilities and the riders are similar and that
3 that information is appropriate for the other
4 utilities' dockets. And also I would agree that
5 Mr. Crusey as regard to FirstEnergy Solutions did
6 specifically cite to that in his testimony so that
7 should remain in as well.

8 EXAMINER SCHABO: Mr. Sharkey, you have
9 moved -- this is what I have written down, tell me,
10 confirm one way or the other, in row 1 I have written
11 down that you are just moving to strike the extra
12 sentence.

13 MR. SHARKEY: No. Row 1, we are moving
14 to strike the entirety of it.

15 EXAMINER SCHABO: Okay. Row 2 was just
16 the extra sentence?

17 MR. SHARKEY: Just the extra sentence.
18 That we don't move to strike any of it and we don't
19 move to strike the correction which she corrected a
20 figure from 16 -- it was 16 to 20 and she corrected
21 it to 10 to 13. We don't move to strike that either.
22 That seems like a typical correction you would see
23 when a witness takes the stand.

24 EXAMINER SCHABO: What about 3 and 4?

25 MR. SHARKEY: We move to strike all of

1 line 3 and all of line 4.

2 EXAMINER SCHABO: Entirety. Okay. Thank
3 you for that clarification. Now, do you have a
4 response to Mr. Finnigan and Ms. Bojko?

5 MR. SHARKEY: Sure, your Honor. As to
6 line 1, there is a calculation of a \$268 million
7 amount that was apparently calculated in an expert
8 declaration by Judah Rose in a bankruptcy proceeding.
9 I am not sure if Judah Rose is a male or female. I
10 don't know the person but that person is not here to
11 support that expert testimony. I can't cross-examine
12 them. It's hearsay, and it's unfair for that typical
13 information to be introduced into the record when
14 it's not a calculation that is subject to reasonable
15 cross-examination. The same is true for lines 3.
16 That information is cited to also Judah L. Rose. And
17 then for the last line, Ms. Glick is citing to
18 testimony she's prepared in another case but that
19 hasn't been admitted here. It seems her testimony
20 given in other cases should not be admitted here. So
21 for those reasons we do believe that those -- the
22 entirety of those should be stricken.

23 And then, finally, that the extra
24 sentence in line 2 should be stricken, your Honor,
25 because that is more than just a correction. That's

1 an addition of new analysis that I wasn't given
2 advance notice of, so we would maintain those motions
3 to strike. And that's mostly in response to
4 Mr. Finnigan.

5 In response to the arguments -- I can't
6 remember if Mr. Finnigan made it, but certainly
7 Ms. Bojko made it regarding the fact that there was a
8 reference to the FirstEnergy Solutions' bankruptcy in
9 Mr. Crusey's testimony. That's true. He was there
10 and able and subject to cross-examination regarding
11 his statements. Judah Rose is not here.

12 EXAMINER SCHABO: I am going to deny the
13 motion to strike row 1. I am going to deny the
14 motion to strike row 2, the extra sentence. And I
15 will grant 3 and 4 because the sponsor of the witness
16 agreed to it.

17 MR. SHARKEY: Thank you, your Honor. My
18 next motion to strike is page 37 -- it's on page 37.

19 MR. FINNIGAN: Your Honor, before we move
20 to the next one, what I would like to do in response
21 to this motion is I would like to ask the Bench to
22 take administrative notice of prior testimony that
23 was filed in the 18-1004 docket and that's the ruling
24 that Ms. Bojko cited. So Ms. Glick testified in that
25 case and, as Ms. Bojko pointed out, submitted a table

1 that was substantially similar to this. And as
2 that's part of a record filed at the Commission in
3 another case, it was -- we're a party in that case.
4 It was AEP had the opportunity to cross-examine the
5 witness and had the same interests that AES has in
6 this case. I would ask that you take administrative
7 notice of the information from Ms. Glick's testimony
8 that's in the 18-1004 docket which contains a similar
9 table to this one.

10 EXAMINER SCHABO: What was that docket?

11 MR. FINNIGAN: 18-1004.

12 MS. BOJKO: EL-RDR, right?

13 EXAMINER SCHABO: Mr. Sharkey.

14 MR. SHARKEY: Yes, your Honor. For much
15 the same reasons that lines 3 and 4 should have been
16 struck from Ms. Glick's testimony, I have even less
17 of an opportunity to cross-examine or be prepared to
18 address testimony that apparently Ms. Glick filed as
19 to another utility in another case. We don't even
20 have the document in front of us as we sit here
21 today. So I think it's certainly not the type of
22 document you could take administrative notice of as
23 in the contents of it are not subject to reasonable
24 question. To be clear, it may have been filed but
25 that doesn't mean that it should be taken

1 administrative notice of and entitled to evidentiary
2 weight in this case. It was evidence in that case.

3 EXAMINER SCHABO: Come back to that one.
4 I will come back to a ruling on whether or not we
5 will take administrative notice of Ms. Glick's
6 testimony in 18-1004-EL-RDR.

7 So moving on to your motion to strike on
8 page 37.

9 MR. SHARKEY: Yes, your Honor. The
10 motion to strike is page 37, the information on lines
11 4 through line 9 and the associated exhibit which is
12 Attachment DG-5 to Ms. Glick's testimony. Your
13 Honor, that's a response to a discovery request that
14 Duke Energy provided in its RDR case. That is not a
15 response from AES Ohio. The fact that Duke Energy
16 has made responses to the discovery requests
17 shouldn't be admissible here. That's not something
18 that -- the Duke witnesses aren't subject to
19 cross-examination. They haven't -- they haven't
20 appeared.

21 EXAMINER SCHABO: Mr. Finnigan.

22 MR. FINNIGAN: Your Honor, we believe
23 this information is admissible. Duke is one of the
24 other owners of OVEC and also has a seat on the
25 Operating Committee. This Data Request, the response

1 dealt with what the OVEC procedures are, and the
2 information was prepared by someone with a similar
3 interest in this type of proceeding, that is, to
4 review the reasonableness of the OVEC costs that AES
5 Ohio has here. They had a duty to respond to the
6 discovery requests accurately and truthfully and this
7 is part of the record in this case. And having the
8 same interest in the case and the obligation to
9 provide the information truthfully, this has the same
10 effect as a prior testimony which would be admissible
11 under Rule 804(b)(1) as a hearsay exception, so we
12 believe this information should be admitted.

13 EXAMINER SCHABO: Anyone else want to be
14 heard?

15 MS. BOJKO: Your Honor, yes, may -- yes,
16 I was going to ask if I could be heard on this.
17 Similar to my prior statements that the Commission
18 has clearly indicated that the OVEC riders now have
19 different acronyms, different names, but the OVEC
20 riders are the same through -- for the three
21 jurisdictional Ohio utilities that collect costs from
22 ratepayers, from customers to support the operations
23 of OVEC.

24 The data that is being referred to here
25 is not Duke data. It is actually OVEC data. And

1 OVEC is what is at issue here, and it is during the
2 audit period, so it checks that box. So this
3 information is very relevant to the case before us.
4 If you recall, I objected to Mr. Crusey talking about
5 other sponsoring companies and their decision-making
6 authority or their intent, and I was overruled so
7 this is very similar to that, but it is OVEC data.
8 It is not Duke data. I think that was a misstatement
9 by Mr. Sharkey. It is about OVEC, and I think this
10 testimony as well as the exhibit should stand. Thank
11 you.

12 EXAMINER SCHABO: As for Mr. Sharkey?

13 MR. SHARKEY: Yes, your Honor.

14 Mr. Finnigan referred to Rule 804 of the hearsay. I
15 understand that rule applies to witnesses who are
16 unavailable. They have not established that Mr. Swez
17 is unavailable who was the witness who was
18 responsible for sponsoring that Data Request. And if
19 this was -- this is Duke's -- these are statements by
20 Duke, not by OVEC regarding information. If this
21 was -- if instead this was regular recap data that
22 OVEC capped, I wouldn't be objecting. These are
23 statements by Duke describing OVEC information which
24 are by definition hearsay, and it's inappropriate
25 because Mr. Swez isn't here subject to

1 cross-examination.

2 MS. WHITFIELD: Your Honor, could I just
3 quickly be heard?

4 EXAMINER SCHABO: You may.

5 MS. WHITFIELD: This actual excerpt
6 references the very decision that Mr. Crusey spoke
7 about Duke making in 2020, so I think it is -- I
8 mean, just as he could speak on behalf of the
9 other -- was allowed to speak on behalf of the other
10 utilities on the Operating Committee, this answer
11 from one of the other utilities on the Operating
12 Committee should also stand and be admitted.

13 EXAMINER SCHABO: Mr. Finnigan, can you
14 tell me in which of the four volumes DG-5 is located?

15 MR. FINNIGAN: I'm sorry?

16 EXAMINER SCHABO: Which of the many
17 volumes of Ms. Glick's testimony I can find the
18 Exhibit DG-5?

19 MR. FINNIGAN: Oh, I do not know offhand,
20 your Honor.

21 EXAMINER SCHABO: Does anyone know?

22 MS. BOJKO: Yes, your Honor. It is --
23 it's Attachment E, I believe, to her -- it's
24 attached -- that doesn't help you. Would you like me
25 just to show you the attachment?

1 EXAMINER SCHABO: Yes, please.

2 MS. BOJKO: It's -- may I approach?

3 EXAMINER SCHABO: Yes, please. Oh, come
4 back, please. Thank you.

5 Motion to strike is denied. Do you have
6 another motion to strike, Mr. Sharkey?

7 MR. SHARKEY: Yes, I do. Your Honor, it
8 starts on page 38, line 7, with -- starting with the
9 word "OVEC co-owners." So the motion to strike would
10 start there, extend to page 39, line 3, with the
11 phrase "unit commitment decisions." And then it
12 would also cover the bottom of page 39 the following
13 phrase, "This is the standard practice followed by
14 AEP and Duke, as described in the testimony of
15 Mr. Stegall and Mr. Swez, which I described earlier,"
16 that sentence.

17 And then we would also move to strike
18 what is Exhibit 6 which is testimony filed in other
19 cases by Mr. Stegall and Mr. Swez upon which these
20 statements are based. Those individuals aren't here.
21 They are not subject to cross-examination. Testimony
22 they filed in other cases is plainly hearsay, and
23 it's unfair to intro -- to have it introduced here
24 when those people are not subject to
25 cross-examination, your Honor.

1 EXAMINER SCHABO: Mr. Finnigan.

2 MR. FINNIGAN: Your Honor, we believe
3 this information should be admissible. This is filed
4 testimony under oath in other Commission proceedings
5 in other states, so the indicia is it is reliable,
6 and it's offered for the purpose of showing what the
7 industry standard is with regard to bidding practices
8 and this is the type of information that expert
9 witnesses typically rely on is their knowledge of
10 industry practices.

11 So we have a lot of evidence in this
12 record already from the auditor, from Mr. Crusey,
13 from Ms. Glick, and then Mr. Seryak regarding what
14 the industry standards are for bidding into the PJM
15 market, and this information simply is one source
16 that she derives her opinion from along with the
17 other sources that she recites in her testimony. But
18 the information itself, the testimony by Mr. Stegall
19 and Mr. Swez, the other -- these are other co-owners
20 of the OVEC units, and Mr. Sharkey can ask Ms. Glick
21 about her opinion of what the industry standards are
22 for committing plants into the energy markets and
23 that's really the issue in the case.

24 This is simply one source of information
25 that has all the indicia of reliability because it's

1 sworn testimony in a Commission proceeding from
2 another state as to what those practices are.

3 I will note that the Commission on many
4 occasions has taken administrative notice of filed
5 testimony in other dockets. So that's a standard
6 practice and there are many cases where that has
7 happened and that's what we are doing here is
8 providing this sworn testimony from these other
9 Commission dockets in other states.

10 EXAMINER SCHABO: Ms. Bojko or
11 Ms. Whitfield?

12 MS. BOJKO: Yes, thank you, your Honor.
13 Similar, the exact same reasons that we just
14 discussed in the last motion to strike. The data is
15 about OVEC. There are multiple sponsors. If
16 Mr. Crusey was considered an expert and can talk
17 to -- about the PJM market and the industry practices
18 and standards as well as sponsoring companies'
19 decisions regarding OVEC, then so can this expert.
20 She can talk about the standard industry practices
21 under Rule 702. The standard industry practices in
22 this regard go beyond the knowledge or experience
23 possessed by a layperson, and she's qualified as an
24 expert in this personalized area of knowledge, skill,
25 and experience, and the witness is also relying on

1 scientific and technical or other specialized
2 information which includes the expert testimony,
3 sworn testimony, of other witnesses.

4 So her -- her statements in her testimony
5 are not hearsay. She is using her knowledge as an
6 expert. She is explaining what she determined and
7 what she concludes based on the industry information
8 that is out there. And that's what the statements in
9 her written testimony are.

10 As for the attachments, that's a
11 different issue and should be considered separately.
12 The attachments are prior sworn statements by
13 sponsoring companies that have participated and are
14 related to OVEC, so it's all related to OVEC in this
15 case, and just as the last one could stand, this
16 testimony should be able to stand as well. Thank
17 you.

18 EXAMINER SCHABO: Mr. Sharkey.

19 MR. SHARKEY: Yes, briefly, your Honor.
20 Again, the witnesses who have offered these
21 statements are not here. They could have been
22 subpoenaed. They could have been deposed. This is
23 not the type of information that is, you know,
24 indisputable, and so we should have the opportunity
25 to cross-examine this evidence before -- sponsor

1 evidence before it came in, and we haven't;
 2 therefore, they should be stricken.

3 EXAMINER SCHABO: Motion to strike is
 4 denied.

5 Mr. Sharkey, do you have another motion
 6 to strike?

7 MR. SHARKEY: I do not, your Honor.

8 EXAMINER SCHABO: Okay. Please proceed
 9 with your questions.

10 MR. SHARKEY: I will. Thank you.

11 - - -

12 CROSS-EXAMINATION

13 By Mr. Sharkey:

14 Q. Ms. Glick, as you know, my name is Jeff
 15 Sharkey. I represent AES Ohio in this matter. So
 16 much for my estimate that you would be on the road a
 17 couple hours ago. In any event it's true, isn't it,
 18 you are not an engineer?

19 A. I am not an engineer.

20 Q. You are not an accountant?

21 A. Not an accountant.

22 Q. You never worked at a coal-fired plant?

23 A. No, I have not.

24 Q. Never had any responsibility for power
 25 plant operations?

1 A. I have not.

2 Q. And you have no -- in particular you have
3 no experience dispatching a power plant.

4 A. No, I have never dispatched a power
5 plant.

6 Q. Okay. You were a witness in the Duke
7 OVEC case for the 2019 audit period, correct?

8 A. Yes. I was a witness for I think that
9 would have been 21-67. Is that the Duke one, I
10 believe? Yeah.

11 Q. And in that case, as here, you
12 recommended that certain amounts be found to be
13 imprudent.

14 A. Yes, I believe I did recommend
15 disallowances.

16 Q. And you understand both the Duke audit
17 period and the AES Ohio audit period covered all of
18 2019?

19 A. Yes, including 2018 also. It wasn't just
20 2019.

21 Q. Yes. I will come to that. 2019, they
22 both cover all of 2019.

23 A. Yes, I believe so.

24 Q. AES Ohio covers two additional months in
25 2018 that were not included in the Duke audit period.

1 A. Yeah, that sounds right.

2 Q. And it's true, isn't it, that you can't
3 identify any specific action that Duke took in 2019
4 that AES Ohio should have taken but failed to take?

5 A. Can you rephrase the question? I don't
6 have any Duke testimony in front of me, so I am not
7 sure what you are asking.

8 Q. Okay. Well, as you understand -- as you
9 sit here today, are you aware of any specific actions
10 that Duke took in 2019 that AES Ohio should have
11 taken in 2019 but failed to do?

12 A. I don't believe that my testimony made
13 any statements about specific things that AES should
14 have done. My testimony reviewed the economics of
15 the decisions. I believe I do discuss AES's role on
16 the Operating Committee and the power that it has to
17 exercise control in -- over operating decisions, so
18 I'm not entirely clear on the exact nature of the
19 question you are asking. It's a little bit
20 confusing. If you wouldn't mind rephrasing in a less
21 confusing manner, I would be happy to answer. I
22 don't want to answer incorrectly because I am getting
23 caught up in the language that you are using there.

24 Q. You -- is there anything that any Duke
25 employee did in 2019 of which you are aware that

1 someone who is an AES Ohio employee failed to do and
2 that you think is material?

3 A. So I did not have, you know, any insights
4 into the exact actions of every individual Duke
5 employee. I don't have insights into the exact
6 actions of AES's employees. I think that generally
7 my conclusions are similar in terms of the position
8 that Duke has, the position that AES has on the
9 Operating Committee's things, that power that both
10 companies have. If you are asking whether I think
11 that there's a distinction or a difference between
12 what Duke did versus what AES did, I don't have
13 criticisms for AES that are, I guess, different or
14 necessarily unique to AES for this specific audit
15 period.

16 Q. And regarding AES Ohio's conduct during
17 November and December of 2018, comparing that to the
18 2019 period, are you aware of any material
19 differences as to what happened in those two months
20 in 2018 as opposed to all of 2019?

21 A. So 2018 I believe was the only --
22 November of 2018 was the only month out of the 14 in
23 the audit period where the OVEC plants made any sort
24 of revenue so that was the 1 month out of 14 which is
25 a pretty bad record.

1 Q. Any other differences comparing the
2 November 2018 -- November and December 2018 period to
3 the 2019 period?

4 A. No. If there is a specific thing you
5 have in mind that you want me to comment on, I am
6 happy to. But there have been a lot of things that
7 happened in 2018 that didn't happen in 2019.

8 Q. Did you read the audit report in this
9 case?

10 A. Yes, I did.

11 Q. Okay. You don't have any reason to doubt
12 that the auditor was impartial?

13 A. I don't make any statements about that.
14 That's not within the scope of my analysis.

15 Q. You also don't have any analysis
16 regarding whether the auditor was qualified to
17 perform the work that was performed?

18 A. No. My analysis spoke on the economics
19 of the power plant and the numbers. I don't make any
20 comments or assessments of the auditor's
21 impartiality. I did comment that the auditor had
22 errors in one of its tables which was concerning,
23 Table 2, but it looks -- Exhibit 2 but it looks like
24 those might have been corrected on the stand
25 yesterday or Tuesday.

1 Q. Turn, if you would, then to page 5 of
2 your testimony.

3 A. Yep.

4 Q. Okay. And in that testimony you -- the Q
5 and A that's question 9, you're identifying
6 information that you relied upon to form your
7 opinions, correct?

8 A. Yes, that's correct.

9 Q. Okay. And the second item are audit
10 reports from London Economics in the Duke and AEP
11 Ohio OVEC audit cases for 2019, correct?

12 A. Yes. I was the expert in those cases so
13 that information will naturally feed into any
14 analysis that I do in this case since it's the same
15 set of power plants.

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

17 EXAMINER SCHABO: You may.

18 MR. SHARKEY: Your Honor, I have handed
19 the witness and distributed a copy of the audit
20 report in the Duke case. I ask that it be designated
21 as AES Ohio Exhibit 3.

22 EXAMINER SCHABO: So marked.

23 (EXHIBIT MARKED FOR IDENTIFICATION.)

24 Q. (By Mr. Sharkey) And, Ms. Glick, have you
25 had a chance to look at AES Ohio Exhibit 3?

1 A. Yeah. I haven't reviewed it in a little
2 while since that testimony was filed a year ago, but
3 I see the document in front of me.

4 Q. Okay. This is the public version so it
5 contains some redactions but is it otherwise the
6 document that you were relying upon? Does it appear
7 to be?

8 A. It does appear to be, yes.

9 MR. SHARKEY: May I approach again, your
10 Honor?

11 EXAMINER SCHABO: You may.

12 MR. SHARKEY: Your Honor, I have handed
13 the witness an audit of OVEC purchase power rider
14 by -- of Ohio Power Company, excuse me. I would ask
15 that be designated as AES Ohio Exhibit 4.

16 EXAMINER SCHABO: So marked.

17 (EXHIBIT MARKED FOR IDENTIFICATION.)

18 Q. (By Mr. Sharkey) Ms. Glick, have you had
19 a chance to look AES Ohio Exhibit 4?

20 A. Yes. It is the public version of the AEP
21 it looks like -- yeah, AEP audit.

22 Q. Okay. And does this appear to be one of
23 the documents you relied upon to prepare your
24 testimony?

25 A. Yeah. I don't think I cite it, but given

1 that this audit is covering the same time period, I
2 thought it was reasonable to cite all the information
3 that was probably fresh in my brain or kind of used
4 to drive some of that, so I am not accused of
5 omitting anything from my list of sources.

6 Q. Okay. When you say you didn't cite it, I
7 believe that that was cited on page 5, line 11 of
8 your testimony?

9 A. Oh, okay. So maybe I did then.

10 Q. Tell me if I am wrong.

11 A. Page 5, I don't have any cites on page 5.

12 Q. There is not a footnote but in item 2 --

13 A. Oh, right, yes.

14 Q. You have those documents that you are
15 listing.

16 A. The basis of my knowledge that I used to
17 form my opinions and my expert analysis in this
18 report.

19 Q. And can you identify -- strike that.

20 Can you describe at a high level how
21 those documents helped you to form your opinions in
22 this case?

23 A. Well, I filed the testimony in those two
24 cases prior to filing this testimony, so I think it's
25 generally just information that I had as context

1 going in, so the auditors -- I mean, the auditor
2 relies on, for example, the OVEC bills. Those are
3 the exact same billing statements that cover the --
4 they cover 2019. It's the same exact billing
5 statement. The conclusions that the table -- the
6 auditors present on the total dollar amounts for the
7 entire OVEC, those are identical. Does not matter
8 whether it's AEP, whether it's AES, whether it's
9 Duke. Those are all the same. Advantage did not
10 include quite the same scope of analysis and
11 documentation of some of the numbers, so some of the
12 data in here I think is comprehensive and covers the
13 same time period, especially for the OVEC plant as a
14 whole, so I relied on it to the extent that it is
15 information on the operation and economics of the
16 OVEC power plants during the exact same time period
17 as this audit.

18 Q. Do you know what the ICPA is?

19 A. The Inter-Company Power Agreement, yes.

20 Q. Did you review it preparing your
21 testimony?

22 A. I reviewed parts of it, yes.

23 Q. Okay. Your testimony does not address
24 the decision by AES Ohio to enter that agreement,
25 correct?

1 A. No. I don't believe I talk about that.

2 Q. You understand that the ICPA requires AES
3 Ohio to make certain payments to OVEC?

4 A. AES Ohio, absolutely. I don't dispute
5 that AES Ohio has to make those payments. It's just
6 simply not necessarily reasonable that they pass
7 those costs onto the ratepayers through a hedge.

8 Q. As to the specific costs that have been
9 included in the RR, you do not dispute that OVEC
10 actually incurred those costs, right?

11 A. No, I don't dispute that.

12 Q. Okay. And you don't dispute that AES
13 Ohio has accurately paid and calculated the amounts
14 of those costs that were included in the RR, correct?

15 A. No. Yeah. I don't have any qualms about
16 any of the accounting or the numbers that are passed
17 on. Those are accurate to my understanding.

18 Q. It's safe then you understand AES Ohio
19 receives certain revenues from PJM associated with
20 its ownership share in OVEC, right?

21 A. Yeah. And to be clear, I didn't review
22 those so I am not an accountant so I am not saying
23 they are right or wrong. I am saying I don't dispute
24 that. That was not within the scope of my analysis
25 to assess whether on an accounting basis they were

1 correct.

2 Q. And it's true, isn't it, you are not
3 aware of any rights that AES Ohio had under the ICPA
4 that AES Ohio should have but failed to exercise?

5 A. So I believe in my testimony I discuss
6 AES's role on the Operating Committee and its ability
7 to influence how the units are committed into the
8 market, so I understand from the witness that was up
9 here earlier talking about dispatch versus
10 commitment. So, I mean, they are different things,
11 and so I understand that AES and OVEC dispatch plants
12 economically. They don't necessarily commit it
13 economically. They don't decide to start it up or
14 shut it down economically. And that is a decision
15 that is within the purview of the Operating Committee
16 that AES is on and, therefore, should exercise its
17 right to change the operating procedures and the
18 economic commitment of the unit.

19 Q. You believe that the Reconciliation Rider
20 did not provide value to AES Ohio -- I'm sorry.
21 Strike that.

22 You believe that the Reconciliation Rider
23 did not provide value to customers as a hedge, right?

24 A. Yeah. I don't consider something that
25 only passes along costs to provide value.

1 Q. It's true, isn't it, you have never
2 worked on a transaction you considered to be a hedge?

3 A. No, I have not.

4 Q. Okay. You understand that the
5 Reconciliation Rider compares OVEC's costs to PJM
6 revenues that AES Ohio recovers, and it would operate
7 as either a charge or credit to customers depending
8 on which amount was higher?

9 A. Yeah, that's correct. Although when the
10 original docket or the rider was approved, there was
11 no projection that it would ever be a credit, so it
12 was definitely projected to be a loss from the start
13 and that's what happened. I don't think anyone is
14 surprised.

15 Q. Turn, if you would, in your testimony to
16 page 25. I'm sorry, page 23.

17 A. 23. Yes, I am on page 23.

18 Q. Okay. Starting on line 23, you discuss
19 projections that Mr. Malinak included regarding the
20 Reconciliation Rider that it would be around 7 to
21 9 million dollars per year to recover DP&L's
22 investment in the OVEC facilities; is that correct?

23 A. Yes, I see that there.

24 Q. And that was in Case No. 16-395?

25 A. Yes. That's my understanding.

1 Q. Okay. We refer to as ESP III, so if I
2 refer to ESP III, that is what I am referring to.

3 A. Correct.

4 Q. And again, the citation in footnote 21
5 was testimony Mr. Malinak filed in that case,
6 correct?

7 A. Yes, that's correct.

8 Q. And then similarly you -- strike that.

9 MR. SHARKEY: May I approach?

10 EXAMINER SCHABO: You may.

11 MR. SHARKEY: Your Honor, I have handed
12 Ms. Glick a document that is the Direct Testimony of
13 Jeffrey Malinak in Support of the Amended
14 Stipulation, and we would ask that be marked as AES
15 Ohio Exhibit 5.

16 EXAMINER SCHABO: So marked.

17 (EXHIBIT MARKED FOR IDENTIFICATION.)

18 Q. (By Mr. Sharkey) Ms. Glick, have you had
19 a chance to take a look at that testimony?

20 A. Yes.

21 Q. Okay. Does that appear to be the
22 testimony in which you were reciting in your
23 footnote?

24 A. Yeah, although in the one I was looking
25 at, RJM was confidential, but it's not marked as

1 confidential in here.

2 Q. It is a confidential testimony. I can
3 tell you if you look at RJM-1, the -- it was admitted
4 as confidential. I can tell you that you can -- in
5 the public record there is a line that says
6 Reconciliation Rider and there is a series of numbers
7 there, we have agreement by the company that those
8 can be released into the public record.

9 A. Okay.

10 Q. They were filed as confidential. The
11 rest -- other pieces of this document remain
12 confidential, but to that particular Reconciliation
13 Rider line it can be public.

14 A. I thought that was the only thing
15 confidential about this particular exhibit.

16 Q. It's not. There is a lot that's
17 confidential --

18 A. On this one page? Okay.

19 MS. BOJKO: Your Honor, we have been
20 given a confidential document that's not marked. I
21 mean, it has no indication of what's confidential,
22 what's not. And this is a public section. I mean, I
23 guess I would ask we know what's confidential and
24 what's not confidential, and now we are being told
25 certain aspects are no longer confidential.

1 MR. SHARKEY: I think for our
2 proceedings, your Honor, I believe the only
3 information that would be relevant we've just
4 stipulated could be made public. If there is other
5 pieces of it, we can determine as we go. And I can
6 later provide to the parties a version of this
7 identifying anything else that is confidential.

8 MS. BOJKO: Your Honor, I don't think we
9 have determined what may or may not be relevant yet,
10 so I am not sure that's a good indicator.

11 EXAMINER SCHABO: Well, I will note that
12 I don't see any redactions, excuse me, in the
13 narrative, of the testimony itself.

14 MR. SHARKEY: Yeah. I printed off the
15 confidential version that we have and to which she
16 cites. She cites on page 23, line 21, the
17 confidential version which is what this is.

18 EXAMINER SCHABO: And you are
19 representing Exhibit RJM-1, the only piece of
20 confidential information on that exhibit had been the
21 numbers throughout the row marked Reconciliation
22 Rider?

23 MR. SHARKEY: No, your Honor. I believe
24 more -- I believe more on that page and perhaps
25 everything was designated as confidential and filed

1 under seal. I don't have that in front of me here.
2 I am representing that the line that says
3 Reconciliation Rider that was formerly filed under
4 seal can be released publicly.

5 EXAMINER SCHABO: All right. Let's
6 proceed with questioning but if -- when we come to
7 admission of anything, we will have to have a serious
8 discussion.

9 MR. SHARKEY: Okay.

10 MR. FINNIGAN: What page is that?

11 MR. SHARKEY: RJM-1. I don't have a page
12 number on it. It's the first exhibit.

13 Q. (By Mr. Sharkey) Okay. So as your
14 testimony, in fact, reflects, AES Ohio's projections
15 for the Reconciliation Rider range between 7 to
16 9 million dollars of charges to customers?

17 A. It looks like, yeah, 9.2 in one year.

18 Q. Okay. And you understand these are
19 the -- this is the testimony that was filed and upon
20 which the Commission relied when it approved the
21 reconciliation rider?

22 A. Yes, that's my understanding.

23 Q. Okay. And you, in fact, conclude on page
24 24, line 16, of your testimony that AES's projections
25 were very close to the actual costs that have been

1 passed through?

2 A. Tell me where you are looking exactly.
3 It sounds familiar but.

4 Q. Page 24, line 16.

5 A. Yes. Yep, that's correct. Yeah, so my
6 criticism was not that they -- it's projected. It's
7 that they projected they would lose money, and they
8 did lose money.

9 Q. Let me ask you about must run and
10 economic distinctions. It's your view that the OVEC
11 plants should be operate -- should be offered into
12 PJM's day-ahead energy markets as economic instead of
13 as must run, correct?

14 A. So it is my opinion they should be
15 offered as economic, or if they are going to be
16 offered as must run, then OVEC and the sponsoring
17 companies should be required to document the analysis
18 that was done to make the must-run decision, the
19 projected costs, the projected revenues, and the
20 decision that was made to commit the plant and
21 whenever there -- the companies' commitment decision
22 so decision to start up the plant and turn the plant
23 off deviates from what the economic analysis shows,
24 so if their economic analysis in the morning shows
25 the project to lose money and they turn the plant on

1 anyway, they should be required to document that and
2 justify why they still made that decision.

3 So I understand that utilities sometimes
4 choose not to operate economically. I heavily
5 encourage economic operation, but in the absence of
6 economic operation, there needs to be transparency in
7 documentation of why those decisions were made and
8 then what resulted.

9 Q. If plants were offered into PJM's
10 day-ahead market with an economic designation, that
11 would reduce the amount of power that was available
12 from the plants, right?

13 A. No.

14 Q. Do you believe that the plants would
15 operate less if they were offered into the PJM's
16 markets as economic?

17 A. There could be less energy that comes
18 from the plants if they are operated economically but
19 that decision would be made by the market because
20 other resources are lower costs and the energy can
21 come from those resources at a lower cost there, it's
22 in the best interest of ratepayers throughout the
23 states to not have the plants operate when it's
24 higher costs than the market.

25 Q. And that would reduce the amount of

1 available power from those plants, right?

2 A. Just -- that would reduce the amount of
3 energy that those plants are outputting.

4 Q. Turn, if you would, to page 30 of your
5 testimony. On line 4 you say "Generators operating
6 within the PJM market generally commit their
7 available units as either economic or must-run." And
8 then skipping down, same page, to line 14 you say
9 "While economic commitment and dispatch tends to be
10 the norm for dispatchable power plants, for units
11 such as OVEC's coal-fired power plants with long
12 start-up and shut-down times, utilities sometimes
13 instead elect to maintain control of unit commitment
14 decisions and utilize a must-run commitment status."
15 First of all, did I read that correctly?

16 A. I think so, yeah.

17 MS. BOJKO: I'm sorry, your Honor. What
18 page did he read that from?

19 EXAMINER SCHABO: Page 30.

20 MR. SHARKEY: Page 30, lines 4 and 14.

21 MS. BOJKO: Got it. Thanks.

22 Q. (By Mr. Sharkey) So it's true, isn't it,
23 that coal-fired plants are more likely to be
24 designated as must run than gas-fired peakers within
25 PJM?

1 A. I don't have the data in front of me, but
2 I think coal-fired power plants tend to be committed
3 as must run because they have long start-up times,
4 long shut-down times. It's expensive. They are not
5 very nimble, and so plant operators, utilities
6 tend -- regulated utilities are more likely to do
7 that. Merchant generators are not necessarily more
8 likely to do that because they have to recover their
9 full costs from the market. They don't have
10 ratepayers as a backstop. And that's what the MISO
11 State of the Market Report that was being discussed
12 heavily earlier had a report that clearly outlined
13 the data. You can't argue with the data that
14 merchant generators were more -- less likely to must
15 run their plants and lose money than regulated
16 utilities were.

17 Q. You are aware that cycling a coal-fired
18 generation facility can increase the risks of
19 equipment failures?

20 A. Yes.

21 Q. Okay. And you -- let me ask you, are you
22 familiar with PJM capacity markets?

23 A. Yes.

24 Q. Okay. So you are aware that in 2019 AES
25 Ohio received revenue associated with the OVEC

1 capacity, correct?

2 A. Yes, that's correct.

3 Q. Okay. And so when would that PJM auction
4 have occurred?

5 A. Several years in advance so the auctions
6 happen a couple years prior. Sometimes they get
7 delayed which has happened recently, but ideally they
8 happen, I think, two or three years in advance of the
9 actual auction date.

10 Q. Okay. And as a winning bidder in a PJM
11 auction, what were AES Ohio's obligations?

12 A. The plant has to be available to be
13 committed and dispatched into the market. They
14 don't -- it does not obligate AES to must run the
15 plant, but it obligates it to have the plant
16 available for the market to at least operate.

17 Q. And your testimony doesn't address AES
18 Ohio's decisions regarding bidding in the PJM
19 capacity markets, correct?

20 A. No.

21 Q. When you say no, you are agreeing with me
22 it's not in your testimony?

23 A. I don't -- I don't discuss their decision
24 to bid the energy. If they own the energy, they are
25 likely to bid -- they own the capacity, they are

1 likely to bid it into the market.

2 Q. On page 12 of your testimony, you discuss
3 the bankruptcy of FirstEnergy Solutions, correct?

4 A. Yes.

5 Q. Do you understand that AES Ohio's
6 customers were not adversely impacted by the
7 bankruptcy of FirstEnergy Solutions?

8 A. So to the extent that the units were
9 committed and dispatched uneconomically and AES did
10 pay for the energy costs and did receive the energy
11 market revenues, I understand that FES's demand
12 charges were not spread to the other parties, but any
13 uneconomic plan, any negative impact from that would,
14 in fact, be incurred in part by AES customers, so I
15 don't agree with that statement.

16 MR. SHARKEY: May I approach, your Honor?

17 EXAMINER SCHABO: You may.

18 Q. (By Mr. Sharkey) You recall that you were
19 deposed in this matter, Ms. Glick?

20 A. Yes. That was about a week ago.

21 Q. And if you could turn in the deposition
22 transcript to page 60.

23 A. Page 60?

24 Q. Page 60.

25 A. You are talking about the number that

1 says pages, not the number.

2 Q. Correct.

3 A. I'm sorry. Okay. Yes.

4 Q. Okay. Do you see starting on line 16 I
5 asked you a question?

6 A. Yes.

7 Q. "Do you know whether?"

8 A. Yep.

9 Q. Okay. Question, "Do you know whether, at
10 the end of the day, AES Ohio's customers were in any
11 way injured as a result of the FirstEnergy Solutions
12 bankruptcy?"

13 And then we clarify in response to an
14 objection by Mr. Finnigan that the question is about
15 the audit period, and your answer starting on page
16 61, line 2, "So during the audit period, they
17 incurred -- they incurred the costs associated with
18 the energy and incurred the -- earned the revenues
19 associated with the energy. So they would have been
20 injured to the extent that AES Ohio's customers were
21 also injured by the uneconomic commitment practices
22 of the power plant.

23 "But those -- my understanding is that
24 when the bankruptcy was rejected, those costs were
25 refunded. So during the audit period, they might

1 have seen those charges, but that was subsequently
2 refunded. So on that, customers shouldn't be
3 impacted by that FirstEnergy share." Did I read that
4 correctly?

5 A. Yeah.

6 MS. BOJKO: Objection, your Honor. I
7 think it's improper impeachment. She said the exact
8 same thing on the stand. She said that it was -- if
9 there was an uneconomic decision, that that decision
10 would negatively affect customers. Mr. Sharkey asked
11 her nothing about refunds and the conclusion of the
12 FirstEnergy bankruptcy, so I think her statement
13 stands, and it was an improper impeachment attempt.

14 MR. FINNIGAN: Your Honor, I would also
15 object that the scope of this case is the audit
16 period for 2019, so to the extent that any refunds
17 were paid during different time periods is irrelevant
18 to this case. What we are trying to do is reconcile
19 the amounts that were charged and collected by the
20 utility during this audit period.

21 EXAMINER SCHABO: Okay. Well, the
22 transcript will show whether or not she was
23 impeached. I am not going to strike any answers.

24 MR. SHARKEY: Your Honor, a may be done.
25 I would like 5 minutes to consult with my client.

1 EXAMINER SCHABO: Absolutely. We will
2 take a 5-minute break.

3 THE WITNESS: Am I allowed to answer?

4 EXAMINER SCHABO: You did answer.

5 THE WITNESS: Oh, okay.

6 (Recess taken.)

7 EXAMINER SCHABO: Back on the record.

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

9 And, your Honor, I have no further
10 questions.

11 EXAMINER SCHABO: All right. Staff, do
12 you have any questions for this witness?

13 MS. WILSON: None for Staff.

14 EXAMINER SCHABO: Okay. Mr. Finnigan, I
15 presume that during this break you made a decision on
16 whether or not you have redirect?

17 MR. FINNIGAN: Yes, your Honor. I will
18 have a brief redirect.

19 EXAMINER SCHABO: Please proceed.

20 MR. FINNIGAN: Thank you, your Honor.

21 - - -

22 REDIRECT EXAMINATION

23 By Mr. Finnigan:

24 Q. Ms. Glick, do you recall when you were
25 being questioned by Mr. Sharkey and you testified

1 that merchant generators are less likely to run their
2 plants as must run during periods when they would
3 lose money?

4 A. Yes, I do.

5 Q. Are you aware of reports by the PJM and
6 MISO independent market monitors that report on
7 competitive activities in their markets?

8 A. Yes. So I think it was being discussed
9 earlier the MISO market monitor did a study that
10 looked at the behavior and results for merchant
11 generators versus regulated utilities and found that
12 merchant generators were significantly less likely to
13 uneconomically commit their units into the market and
14 then lose money than regulated utilities.

15 Q. Let me ask you if you would look at that
16 document before you that's been marked OMAEG
17 Exhibit 11.

18 A. This one?

19 Q. Yes. And can you identify what that
20 document is?

21 A. Oh, yeah. This is the 2022 State of the
22 Market Report for the MISO electricity markets by
23 Potamic Energy -- Potamic Economics.

24 Q. Did you review that report after it came
25 out?

1 A. I have -- yes, I have reviewed this one.

2 Q. And what -- what is the nature of the
3 report or what's the purpose of this type of report?

4 A. So these are annual reports that the
5 market monitor puts out to review energy market,
6 capacity market, operations, economics. There are
7 sometimes individual studies on specific issues. I
8 think in this case they look at commitment issues and
9 economics. If you look at the table of contents,
10 transmission congestion, resource adequacy. There
11 are sections that tend to be like repeated every
12 year, so the market monitor kind of does the same
13 kind of analysis every year.

14 Q. Are the MISO and PJM RTO markets
15 substantially similar to one another in terms of how
16 the energy, capacity, and ancillary services market
17 operate, or are they substantially different from one
18 another?

19 A. There are some differences. I would say
20 the energy markets are relatively similar but there
21 are definitely differences between the two.

22 Q. Are the energy markets substantially
23 similar or substantially different between the PJM
24 and MISO?

25 A. I would say like fundamentally on the

1 issues that are -- we are discussing here in terms of
2 making commitment decisions and dispatch decisions,
3 they are similar.

4 Q. Now, what -- what does the independent
5 market monitor do?

6 A. They review basically all of the bidding
7 behavior, the results, what actually happened in the
8 market. They essentially have access to all of the
9 market data, all market information in ways that, you
10 know, other people don't to basically do a full
11 review of market behavior and market outcomes.

12 Q. Do they have information on what the
13 market prices are for the energy in the energy
14 markets?

15 A. Yeah; yes, they do.

16 Q. And do they have that information on an
17 hour-by-hour basis for every day of the year?

18 A. That they should.

19 Q. Do they have information about the prices
20 at which units are bid into the energy market?

21 A. Yeah. They should have all of that
22 information.

23 Q. Do they also have that information
24 available hour by hour for every day of the year?

25 A. I mean, I would imagine. I don't

1 actually see exactly the data they have; but, I mean,
2 that's the kind of data they would need to do their
3 jobs, so I believe they have all of that.

4 Q. Do they have information about what types
5 of units are bidding into the market, whether they
6 are coal, gas, or renewable?

7 A. Yeah.

8 Q. Do they have information about what
9 economic -- what -- strike that.

10 Do they have information about what
11 commitment status is used to bid the units into the
12 energy markets, whether it's economic status or
13 must-run status?

14 A. Yeah.

15 Q. Could you please turn to page 52 of that
16 document.

17 A. Yes. I am on page 52.

18 Q. Could you explain what that table is at
19 Table 8 on page 52?

20 A. Yeah. So Table 8 is labeled "Coal-fired
21 Resource Operation and Profitability," and I believe
22 they've done this review prior years as well and
23 essentially what this table breaks down between
24 regulated utilities and merchant utilities the number
25 of annual starts and the percentage of the starts

1 where the units were profitable versus unprofitable.
2 And just looking at the bottom row in red for the
3 merchant utilities, there were four unprofitable
4 must-run starts which is 3 percent. That number is
5 much higher for regulated utilities; that's
6 13 percent. So, I mean, this is showing that the
7 merchant utilities do not uneconomically must run
8 their units as a practice because they don't have the
9 backstop of ratepayers to pay for that uneconomic
10 decision.

11 Q. Now, if the Commission were to review
12 this table with a view towards deciding whether the
13 OVEC units were committed in the same manner that an
14 operator who was participating in a broader
15 competitive marketplace with a goal of maximizing
16 profits was bidding their units, would the Commission
17 look to the merchants category or the regulated
18 utilities category of that table?

19 A. So in this case because these units the
20 costs are recovered by regulated utilities, they
21 would look in the regulated utilities area.

22 Q. But if the Commission were to evaluate
23 how merchant plants are committed, what does this
24 table tell us about the bidding practices of merchant
25 utilities?

1 A. This table tells us, that's the bottom
2 half, merchant utilities as a practice do not -- do
3 not uneconomically must run their units.

4 Q. Okay. Were the OVEC units bid in a
5 manner that's consistent with what this table shows
6 how merchant plants were bid in?

7 A. I'm sorry. What was the question?

8 Q. Strike that. I will rephrase it. What
9 does this table lead you to conclude in terms of
10 whether the OVEC plants were bid into the market the
11 same way that merchant plants would be bid?

12 A. So because the OVEC plants are -- the
13 costs are recovered through regulated utilities, I
14 would -- I would conclude that they are likely being
15 must-run uneconomically operated a portion of the
16 time, and this table, it's 13 percent of the time
17 and, therefore, losing money a portion of the time.

18 Q. Now, you were shown the audit reports
19 from two other Commission cases involving Duke and
20 AEP. Do you recall that?

21 A. Yes, I do.

22 Q. Do you recall any testimony in the AEP
23 case about the auditor changing her conclusion from
24 what was in the final version of the audit report?

25 MR. SHARKEY: I am going to object, your

1 Honor. I don't believe the changes to the AEP audit
2 are relevant in this case.

3 MS. WILSON: Staff joins that objection.

4 MR. FINNIGAN: Well, your Honor, if they
5 are not relevant to the case, why did he give her two
6 audit reports from those cases and ask questions
7 about them? I mean, he --

8 EXAMINER SCHABO: I will allow the
9 question to stand. Objection overruled.

10 A. Yeah, I understand one of OCC's
11 witnesses, another witness, had testimony on that
12 topic.

13 Q. Now, you were asked some questions about
14 whether running the plants less would result in lower
15 revenues for the plants. Do you recall that?

16 A. Yes.

17 Q. Now, are you aware of any times when the
18 OVEC plants -- strike that.

19 Are you aware of any times where the PJM
20 revenues from the energy markets did not cover the
21 OVEC plants' variable operating costs?

22 A. Yeah. And to look --

23 MR. SHARKEY: I am going to object, your
24 Honor. That's beyond the scope of my
25 cross-examination.

1 EXAMINER SCHABO: Mr. Finnigan, what is
2 your response to that?

3 MR. FINNIGAN: Your Honor, Mr. Sharkey
4 asked during his cross-examination would running the
5 plants less result in lower revenues. And this
6 responds to that and the point is that -- well, I
7 will leave it at that.

8 EXAMINER SCHABO: The objection is
9 overruled. Go ahead and answer the question.

10 Q. (By Mr. Finnigan) Okay. Were there any
11 times during 2019 when the revenues from the PJM
12 energy market for the OVEC plants failed to cover the
13 variable operating costs?

14 A. Yeah, there were. So when you operate
15 less, you incur less costs in addition to earning
16 less revenues. And if your costs are higher than
17 your revenues, it's better not to run, so I did -- I
18 looked at the PJM revenues and the OVEC costs for
19 each month of the audit period and there were several
20 months during the audit period so that means over
21 that one-month period of time where on net the energy
22 market revenues did not cover the OVEC costs so, yes,
23 there were specific months when literally these units
24 were -- ratepayers would have been better off if
25 these units were not operating.

1 Q. That would have led to lower charges to
2 ratepayers through the Reconciliation Rider.

3 A. That is correct. There are specific
4 months during the audit period when their ratepayers
5 would have had lower costs through the Reconciliation
6 Rider if the units had been offline.

7 Q. Do you have an opinion whether it was
8 prudent to run the plants during those times?

9 A. So to assess prudence, you actually need
10 to have the information the company had at the time
11 that it made the unit commitment decision. And
12 because OVEC does not track -- apparently track that
13 information or provide that, it's hard to make a
14 clear definitive statement that that specific daily
15 decision was imprudent, but the practice of --
16 overall of operating a unit and the way that it loses
17 money if you continue to do that and you see that the
18 unit is losing money and you don't change your
19 behavior, you don't take what actually happens as an
20 input into your process, then I would consider that
21 imprudent behavior.

22 Q. Do you have a document before you that
23 was marked as AES Exhibit 3? It's the audit report
24 from the Duke case?

25 A. Yes, I do.

1 Q. Could you please turn to page 44 of that
2 document.

3 A. Page 44, yes.

4 Q. Now, do you see a section on page 44
5 identified as Section 5.3.4 DEO's involvement in the
6 energy offer process?

7 A. Yes.

8 Q. Okay. DEO is Duke Energy Ohio as you
9 understand it?

10 A. Yes.

11 Q. Okay. And can you just summarize what's
12 discussed in that section of the audit report?

13 A. Yeah. It looks like this is discussing
14 the daily unit commitment analysis that Duke Energy
15 Ohio uses for its own power plants, and I believe
16 they also conduct this analysis for their share of
17 the OVEC power plants.

18 Q. Do you have any opinion as to whether
19 it's reasonable to use this kind of daily economic
20 forecast in making the unit commitment decisions into
21 the energy markets?

22 A. Yeah. So this is exactly the kind of
23 analysis that OVEC should be conducting to make its
24 unit commitment decisions. So Duke does this
25 analysis but to be clear this is not an analysis that

1 is used to directly drive OVEC's decisions because
2 there is an operating Board and they have to
3 unanimously agree, so I guess this is something that
4 Duke is doing that AES is not doing to try to inform,
5 I guess, the prudence of unit commitment decisions.

6 Q. Could you please turn to page 54 of that
7 document. Do you see a section entitled 5.4
8 Recommendations?

9 A. I do, yes.

10 Q. Do you see a -- the first bullet point
11 under there that is entitled "Must-run offer
12 strategy"?

13 A. Yes, I do.

14 Q. Could you read that, please?

15 A. "LEI believes DEO's efforts to modify
16 OVEC's must-run strategy as noted in Section 5.3.4 is
17 prudent, and has no recommendations except to
18 continue doing so."

19 Q. 5.3.4 was the section we just referred to
20 a moment ago, wasn't it?

21 A. That's correct.

22 Q. Did you find any indication that this --
23 in this case whether AES did this same practice?

24 A. I found no indication that AES did this
25 same practice. To my understanding only Duke

1 conducted this practice.

2 Q. Did you find any indication in this case
3 as to whether the OVEC Operating Committee followed
4 this practice?

5 A. My understanding is that they do not
6 follow this practice, that this is only Duke Energy
7 that does this analysis.

8 Q. And that's for its own units?

9 A. Right, correct. Duke Energy conducts
10 this analysis for its own units and as part of this
11 process, also conducts this analysis for its share of
12 the OVEC units.

13 MR. FINNIGAN: That's all the questions I
14 have. Thank you, Ms. Glick.

15 EXAMINER SCHABO: Any recross, Ms. Bojko?

16 MS. BOJKO: I do, your Honor, just a
17 couple clarification questions.

18 - - -

19 CROSS-EXAMINATION

20 By Ms. Bojko:

21 Q. Ms. Glick, you used the words
22 uneconomically commit. Can you explain what that
23 means?

24 MR. SHARKEY: I am going to object, your
25 Honor. This is friendly cross or redirect.

1 MS. BOJKO: Your Honor, I'm not -- I am
2 asking her what -- she used that word in her
3 redirect, and I am asking what that means. I can
4 rephrase.

5 EXAMINER SCHABO: Please.

6 Q. (By Ms. Bojko) Ms. Glick, when you stated
7 uneconomically commit, were you referring to a
8 must-run strategy?

9 MR. SHARKEY: Again, your Honor, it's
10 friendly cross, and it's also leading.

11 EXAMINER SCHABO: I am going to overrule
12 your objection. She is asking for clarification as
13 to a phrase she used during her testimony means. You
14 can answer the question.

15 THE WITNESS: Thank you.

16 A. So when you say uneconomically commit, it
17 means you are committing a unit with a must-run
18 status regardless of what the economics of the plant
19 are, so the term commitment is referring to the
20 decision to turn a plant on or off. That is in
21 contrast with what was also discussed by the witness
22 earlier, dispatch, which is a decision to turn a
23 plant up and down. Dispatch generally happens
24 economically and there is -- I am not saying anywhere
25 in my testimony that OVEC is being dispatched

1 uneconomically. I am saying it's being committed.
2 The decisions to turn it on or off are being made
3 not -- ignoring economics.

4 Q. Ms. Glick, you were -- in your redirect
5 you were asked some questions about two audits
6 conducted in Duke and AEP. Do you recall that?

7 A. Yes, I do.

8 Q. Are -- the Duke and AEP audits, were
9 those conducted by a different auditor than in this
10 case?

11 A. Yes. They were conducted by London
12 Economics International.

13 Q. So both Duke and AEP's audits were by the
14 same auditor.

15 A. Yes, that's correct.

16 Q. And there was a different auditor in the
17 AES case?

18 A. Yeah, Vantage.

19 Q. Okay. And you referenced these
20 documents, and in your testimony you cited to these
21 documents. What was the purpose of your citation to
22 these two cases?

23 MR. SHARKEY: Again, your Honor, I would
24 object. This is friendly questioning. It's been
25 impermissible in Commission proceedings as long as I

1 have been practicing before the Commission.

2 EXAMINER SCHABO: She's already testified
3 as to why she cited those, so I am going to sustain
4 that objection.

5 Q. (By Ms. Bojko) One of the -- I must not
6 have heard it then, but was one -- ask it a different
7 way, was the -- one of the points you were making
8 that the LEI auditors did a more thorough audit than
9 the Vantage auditors?

10 MR. SHARKEY: Again, objection, your
11 Honor. It is both friendly and leading.

12 EXAMINER SCHABO: Sustained.

13 MS. BOJKO: It can be leading. I am not
14 asking redirect. I'm recrossing.

15 EXAMINER SCHABO: I'm sustaining the
16 objection.

17 MS. BOJKO: I'm sorry, your Honor, on the
18 grounds of friendly cross? So I can rephrase?

19 EXAMINER SCHABO: You may rephrase.

20 Q. (By Ms. Bojko) Ms. Glick, do you believe
21 that the auditors in both -- in all three cases
22 looked at the OVEC costs in the same manner?

23 MR. SHARKEY: Again, objection, your
24 Honor. This is friendly questioning.

25 MS. BOJKO: Your Honor, he brought up

1 these audits. He -- he is trying to -- attempting to
2 introduce these. He asked no questions on these
3 audit reports. I think it's only fair to let us
4 respond to these audit reports that he himself
5 brought up for I don't know what purpose.

6 EXAMINER SCHABO: She's already testified
7 that she looked at the audit reports for her
8 analysis, findings, and observations.

9 MS. BOJKO: Yes, your Honor. I am trying
10 to ask why she needed to look at audit reports from a
11 different auditor in a different case in this case.
12 I don't know the answer. It's not friendly. I don't
13 know the answer to that.

14 EXAMINER SCHABO: Proceed. Objection is
15 overruled, but I would like for you to answer the
16 question that's being asked of you and then stop your
17 answer rather than continue to produce commentary.

18 A. I looked at these audits because they
19 have a lot of information on the exact same power
20 plants that were operated during the same time frame.

21 Q. And the same data is not in the Vantage
22 audit?

23 A. There is a lot less data in the Vantage
24 audit, and some of it was wrong.

25 MS. BOJKO: Your Honor, I have no further

1 questions. Thank you.

2 EXAMINER SCHABO: Thank you.

3 Staff, did you have any recross based on
4 the redirect?

5 MS. WILSON: No, your Honor.

6 EXAMINER SCHABO: Okay. Mr. Sharkey?

7 MR. SHARKEY: Briefly, your Honor.

8 - - -

9 RECROSS-EXAMINATION

10 By Mr. Sharkey:*

11 Q. You during redirect, Ms. Glick, referred
12 to certain analysis that Duke performed regarding the
13 OVEC units -- strike that, certain analysis Duke
14 performed on its own units and also on the OVEC
15 units, correct?

16 A. Yes, that's correct.

17 Q. First of all, do you know in the audit
18 period if AES Ohio owned generation assets?

19 A. In Ohio my understanding is AES does not
20 own the generation assets.

21 Q. Okay. Its only interest in generation
22 assets of which you are aware is OVEC?

23 A. It's my understanding it's a distribution
24 utility and that the OVEC power plants' costs are
25 passed on as financial hedge.

1 Q. And it's true, isn't it, Duke's customers
2 didn't experience any cost savings as compared to AES
3 Ohio's customers associated with Duke's practice of
4 doing unit commitment analysis?

5 A. So because of the Operating Committee's
6 they -- or apparently decisions have to be made
7 unanimously, there was no difference in the costs
8 that were passed on because my understanding is
9 Duke's recommendation to the Operating Committee was
10 not accepted. If AES had also been recommending the
11 same thing, it's more voices, it's possible that
12 potentially the Operating Committee would have
13 changed the behavior. If it's just one voice
14 recommending something, it's harder to convince a
15 group. If it's multiple, that could potential have
16 greater weight.

17 MR. SHARKEY: Your Honor, I have no
18 further questions.

19 Thank you, Ms. Glick.

20 EXAMINER SCHABO: Thank you, Ms. Glick.

21 You can take with you what you brought
22 but leave the rest.

23 THE WITNESS: Leave all these things?

24 EXAMINER SCHABO: Thank you.

25 THE WITNESS: Piles are getting big.

1 EXAMINER SCHABO: They are. Let's go to
2 exhibits. Mr. Finnigan.

3 MR. FINNIGAN: Your Honor, I would like
4 to move into evidence OCC Exhibit 3, the public
5 testimony of Ms. Glick.

6 EXAMINER SCHABO: Are there any
7 objections to the admission of OCC Exhibit No. 3,
8 noting that motions to strike were made and ruled on?

9 MR. SHARKEY: No objections other than
10 the motions to strike that you have already ruled on.

11 EXAMINER SCHABO: Okay. OCC No. 3 is
12 admitted to the record.

13 (EXHIBIT ADMITTED INTO EVIDENCE.)

14 MR. FINNIGAN: And, your Honor, I would
15 also like to move into evidence OCC Exhibit 3C, the
16 confidential version of Ms. Glick's testimony.

17 EXAMINER SCHABO: Again, noting -- noting
18 the motions to strike, are there any objections to
19 the admission of 3C?

20 Hearing none, it will be admitted.

21 (EXHIBIT ADMITTED INTO EVIDENCE.)

22 MR. FINNIGAN: And, your Honor, I would
23 also like to move into evidence OMAEG Exhibit 11, the
24 MISO Independent Market Monitor Report. Ms. Glick
25 authenticated that during her testimony.

1 MS. BOJKO: Your Honor, I would support
2 and was actually going to also renew my motion to
3 admit the market -- the MISO Market Monitor Report.

4 EXAMINER SCHABO: Are there objections?

5 MR. SHARKEY: No, your Honor.

6 EXAMINER SCHABO: OMAEG Exhibit 11 will
7 be admitted to the record.

8 (EXHIBIT ADMITTED INTO EVIDENCE.)

9 MR. FINNIGAN: And, your Honor, pursuant
10 to your earlier discussion, next week I will file in
11 the docket of the case the version of Ms. Glick's
12 public testimony without any redactions and without
13 any attachments in light of our discussion earlier in
14 the case about certain documents or certain
15 information that now can be disclosed in the public
16 forum.

17 EXAMINER SCHABO: Yes. So OCC Exhibit
18 No. 4 would be that unredacted version of Ms. Glick's
19 testimony without exhibits. Are there any objections
20 to that being admitted, subject to making sure that
21 that's what's filed?

22 MR. SHARKEY: No objection from the
23 company, your Honor.

24 EXAMINER SCHABO: All right. None, we
25 will -- we will admit that.

1 (EXHIBIT ADMITTED INTO EVIDENCE.)

2 EXAMINER SCHABO: Mr. Sharkey, you had
3 some exhibits.

4 MR. SHARKEY: Yes. We would move for the
5 admission of AES Ohio 3, 4, and 5.

6 EXAMINER SCHABO: Start with 3 and 4.
7 Are there any objections to the admission of AES
8 Ohio's Exhibit 3 and 4?

9 MR. FINNIGAN: Your Honor, we have no
10 objection as long as the complete record is admitted.
11 What we have in the case is we have simply an audit
12 report but no one had any opportunity to question the
13 auditor about their findings that were in the report.
14 Now, we do have an evidentiary record of that
15 questioning and so what I would ask is that I would
16 move that if these two audit reports are admitted
17 into evidence, that the complete record be admitted.
18 And by that what I mean is the auditor's testimony
19 from the evidentiary hearing in Case No. 18-1004.
20 Without that the document is incomplete because it's
21 just the bare audit report without any opportunity of
22 intervenors to question the auditor about her
23 findings and that would be similar to deciding this
24 case just based on the written Vantage audit report
25 without any opportunity to cross-examine

1 Mr. Boismenu.

2 I would cite Rule 106 of the Rule --
3 Rules of Evidence in support of that. Rule 106
4 provides generally that when part of a writing or a
5 statement is introduced, that the opposing party has
6 a right to request that the full statement or the
7 full record be produced and that's what we have here.
8 I don't have that information with me, but the
9 Commission could take administrative notice of the
10 evidentiary hearing transcript from that case and
11 that's something that the Commission commonly does in
12 other cases.

13 I have a number of sites from other ESP
14 cases in particular where the Commission has taken
15 administrative notice of testimony and documents
16 filed in other proceedings before the Commission, so
17 I would simply ask that if those two documents are
18 going to be admitted into evidence, that the
19 Commission take administrative notice of Ms. Fagan's
20 testimony from the evidentiary hearing in Case No.
21 18-1004 so that the information is complete.

22 EXAMINER SCHABO: So you don't care with
23 regard to the auditor's testimony in Case 21-67?

24 MS. BOJKO: What's 21-67?

25 EXAMINER SCHABO: We are on 3 and 4.

1 I've got -- is 21-67 not Duke's audit?

2 MS. BOJKO: Yeah. I think I heard
3 Mr. Finnigan say that the audit reports are like
4 prefiled testimony and that the corresponding
5 cross-examination of the auditor should be admitted.
6 We heard on the stand that there was a change in the
7 audit at some point, so I think it's only fair for
8 completeness that if the audit report is being
9 admitted, that the testimony, so Fagan's testimony,
10 was in both the Duke and the AEP audit, so I heard
11 him asking for both of those transcripts to be
12 admitted; is that not right?

13 EXAMINER SCHABO: I only heard 18 --

14 MR. FINNIGAN: 18-1004. I didn't mention
15 the 21-67, but I do believe it would be appropriate
16 to -- to take administrative notice and to admit both
17 instances of her testimony at the evidentiary
18 hearings in both of those cases.

19 MS. BOJKO: Your Honor, I would ask that
20 Mr. Sharkey handed these exhibits to the witness but
21 proceeded to ask no questions on these exhibits, just
22 a couple general questions about her testifying in
23 these cases, so I am not sure what the purpose of
24 except for to state that it's for the truth of the
25 matter stated therein which is why I think we need

1 the corresponding cross-examination and testimony
2 from the hearing of the auditor that actually tested
3 the statements in the audit report themselves.

4 EXAMINER SCHABO: Okay. So just so I am
5 clear on the request, the request is not -- at one
6 point you said the entire evidentiary record, and now
7 we've limited that?

8 MR. FINNIGAN: Yes, your Honor. If I
9 said that, I misspoke. I did not intend that. I
10 only asked for that portion -- or I only am asking
11 now for that portion of the evidentiary record where
12 the auditor testified.

13 EXAMINER SCHABO: So the prefiled
14 testimony and then those portions of the transcript
15 in which she was cross-examined?

16 MR. FINNIGAN: Yes, your Honor.

17 MS. BOJKO: Your Honor, the prefiled
18 testimony was the audit report and maybe --

19 EXAMINER SCHABO: Okay. She did not --

20 MS. BOJKO: -- a couple pages kind of
21 like Vantage. She didn't do prefiled testimony like
22 full prefiled testimony is my understanding.

23 EXAMINER SCHABO: Okay. Whatever was
24 prefiled plus whatever --

25 MS. BOJKO: The audit report.

1 EXAMINER SCHABO: -- portions of the
2 transcript in which she was cross-examined.

3 MR. FINNIGAN: Yes. And that would
4 include any hearing exhibits that were introduced
5 during the cross-examination.

6 EXAMINER SCHABO: Okay.

7 MS. WILSON: Your Honor, may Staff be
8 heard?

9 EXAMINER SCHABO: Absolutely.

10 MS. WILSON: Staff objects to the
11 admission of these documents. They are publicly
12 available. They don't need to be brought into this
13 docket, and I believe the Attorney Examiner in 21-67
14 case denied a similar request to pull in these
15 documents from other cases.

16 EXAMINER SCHABO: So are you admitting to
17 the objection -- I'm sorry. Are you objecting to the
18 admission of the audit reports, or are you objecting
19 to the admission of -- are you objecting to taking
20 administrative notice as requested by Mr. Finnigan?

21 MS. WILSON: The latter, the
22 administrative notice.

23 EXAMINER SCHABO: Is that the completion
24 of your statement?

25 MS. WILSON: Yes. Thank you.

1 EXAMINER SCHABO: Okay. Before I come to
2 you, if you will give me a chance to ask
3 Ms. Whitfield if she would like to weigh in on behalf
4 of Kroger.

5 MS. WHITFIELD: I will just join with
6 Mr. Finnigan and Ms. Bojko in saying for the rule of
7 completeness the cross-examination of the auditor
8 from both of those cases about the audit report
9 should be taken administrative notice of.

10 EXAMINER SCHABO: All right.

11 Mr. Sharkey.

12 MR. SHARKEY: Yeah, I will be brief, your
13 Honor. The additional information that was in the
14 Duke record, the cross-examination was not something
15 that Ms. Glick identified as something she relied
16 upon. She identified these two documents as
17 documents she had relied upon; and, therefore, it
18 seems to be appropriate to introduce documents she
19 relied upon and for us to be able to show whether the
20 documents she relied upon do or don't support her
21 opinions, but additional cross-examination that
22 happened on these things aren't things she relied
23 upon and shouldn't be admitted into our record.

24 EXAMINER SCHABO: Okay. Is that the
25 completion of the argument on this point?

1 MS. BOJKO: Your Honor, I guess I have --
2 I have transcript in front of me that was from
3 transcript Volume V in 18-1004 that did allow
4 testimony to stand regarding the audit reports of the
5 different utilities, so I think that was stated that
6 it didn't exist, and I have the AEs' ruling that it
7 was allowed.

8 EXAMINER SCHABO: Okay. Rather than read
9 to me, I will let you all know that I will be
10 deferring ruling on this and going upstairs and doing
11 my own research. So that is -- that is where we
12 stand on AES Ohio Exhibit 3 and Exhibit 4. I will
13 not rule on the admission without looking into the
14 administrative notice request.

15 But, Mr. Finnigan, that still leaves us
16 with AES Exhibit No. 5 which Mr. Sharkey has moved
17 into evidence.

18 MS. BOJKO: Your Honor, OMAEG opposes the
19 admission of Exhibit 5. Again, Mr. Sharkey asked her
20 no questions on the testimony itself. She did not
21 opine on the testimony. The only thing that he asked
22 her about was a number in her testimony of 48 million
23 she cited to and that was in one exhibit. This
24 document is confidential. We were given versions
25 that contained all the information. I don't think

1 it's appropriate to wholesale dump this testimony in
2 when Mr. Malinak is not here unless we want to get
3 out his cross-examination testimony from 16-395 and
4 allow us to enter in that testimony that disputes or
5 refutes or challenges his testimony conclusions.
6 It's not fair to dump his testimony in when you
7 didn't even ask the witness any questions about the
8 testimony except the one exhibit, so at a minimum,
9 the one exhibit is the only one that should be
10 allowed into the record.

11 EXAMINER SCHABO: Mr. Finnigan.

12 MR. FINNIGAN: Your Honor, I believe it
13 would create a number of problems to admit this
14 document into evidence in this case because my
15 understanding is that Mr. Malinak's testimony from
16 the 16-395 case contained a number of portions of
17 confidential information. What we have here in
18 Exhibit 5 Mr. Sharkey just asked about one attachment
19 to the document but if we were to admit this entire
20 document into evidence, it's not highlighted. We
21 don't know what information was designated as
22 confidential in that case that now would become part
23 of the public record in this case by admitting this
24 document into evidence.

25 So without anything further than what we

1 have here, that is this Exhibit 5, a document that
2 says on its face is confidential but has no
3 redactions, I believe it would be inappropriate to
4 admit that into the record of this case.

5 EXAMINER SCHABO: Staff, do you have any
6 opinions?

7 MS. WILSON: Staff also objects to the
8 admission of this exhibit. There was no chance to
9 review and cross on it.

10 EXAMINER SCHABO: Ms. Whitfield?

11 MS. WHITFIELD: Yeah. I would object as
12 well and, if anything, just the one confidential
13 attachment, but I think that's difficult because I
14 believe Mr. Sharkey said that everything remains
15 confidential on that one page except for the line he
16 questioned her about so.

17 EXAMINER SCHABO: Mr. Sharkey.

18 MR. SHARKEY: Yes, your Honor. This is a
19 document that she expressly testified she relied upon
20 and pulled numbers out of to conduct her analysis.
21 The substance of his testimony explains how RJM-1 was
22 cal -- RJM was calculated generally and how the
23 Reconciliation Rider line on that page was calculated
24 so admitting the testimony would be admitting the
25 document, in particular that exhibit showing the

1 projections which the Commission relied upon, is
2 appropriate. I believe Rule 703, your Honor, basis
3 of opinions, testimony by experts says that the facts
4 of the case in which the expert bases their opinion
5 on may be documented that either they perceived or
6 that have been admitted into evidence which I think
7 means we can admit this document, that evidence to
8 show what it is she is relying upon.

9 EXAMINER SCHABO: So you are willing to
10 submit this entire document unredacted?

11 MR. SHARKEY: What I have asked, your
12 Honor, is we identify -- this be submitted under
13 seal, and we can provide a copy of the document that
14 shows the information that was redacted.

15 EXAMINER SCHABO: This is going to be
16 part of my research. I will defer my ruling on this
17 exhibit as well. I will take AES Exhibit 3, 4, and 5
18 up immediately upon our re-adjournment. After that,
19 we will have the testimony of Mr. Seryak.

20 MS. BOJKO: Mr. Seryak.

21 EXAMINER SCHABO: For now it is 1:15. We
22 will reconvene at 2:15. Thank you.

23 (Thereupon, at 1:16 p.m., a lunch recess
24 was taken.)

25 - - -

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Thursday Afternoon Session,
September 28, 2023.

- - -

EXAMINER SCHABO: Let's go back on the
record.

We are back on the record after lunch.
As promised, the first thing I will do is take up the
pending exhibits. We have AES Exhibit 3 and AES
Exhibit 4. I will be admitting those into the
record. I will not be taking administrative notice
of the auditor's testimony whether prefiled or on
cross-examination in either case.

(EXHIBITS ADMITTED INTO EVIDENCE.)

EXAMINER SCHABO: AES Exhibit 5 is
Mr. Malinak's testimony from Case 16-395. I will not
be admitting that into evidence.

Do we have any other outstanding
exhibits?

MR. FINNIGAN: I do not, your Honor.

MS. BOJKO: No, thank you.

EXAMINER SCHABO: All right. In which
case I believe we are on to Mr. Seryak.

MS. BOJKO: Yes, your Honor. Your Honor,
at this time OMAEG calls its witness, Mr. John
Seryak, to the stand.

1 EXAMINER SCHABO: Actually if you would
2 remain standing for just a moment.

3 (Witness sworn.)

4 EXAMINER SCHABO: Thank you. Have a
5 seat. If you could turn your microphone back on.

6 - - -

7 JOHN A. SERYAK

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

10 DIRECT EXAMINATION

11 By Ms. Bojko:

12 Q. Mr. Seryak, could you please state your
13 name and business address for the record?

14 A. John A. Seryak, business address 5701
15 North High Street, Suite 112, Worthington, Ohio. I
16 forget the ZIP Code.

17 Q. Sir, did you file or cause to be filed
18 testimony regarding the 2018-2019 audit of AES's
19 Reconciliation Rider?

20 A. Yes.

21 MS. BOJKO: Your Honors, at this time --
22 your Honor, at this time I would like to mark as
23 OMAEG Exhibit 1, a document titled the "Direct
24 Testimony of John Seryak."

25 EXAMINER SCHABO: So marked.

1 MS. BOJKO: Your Honor, may we go off the
2 record for a moment?

3 EXAMINER SCHABO: We can.

4 (Discussion off the record.)

5 EXAMINER SCHABO: Back on the record,
6 please.

7 MS. BOJKO: Your Honor, at this time I
8 would like to mark as OMAEG Exhibit 1, the unredacted
9 public version of Mr. John Seryak's testimony.

10 EXAMINER SCHABO: And it is unredacted
11 and public because the information that was filed
12 confidentially has now been made public?

13 MS. BOJKO: Yes, that's correct, your
14 Honor. In the case originally we had filed a public
15 version and a confidential version. Given the
16 release of the table of the auditor that is now
17 released as public information and not -- no longer
18 confidential, Mr. Seryak's entirety of his direct
19 testimony is now public and can be treated as public,
20 so we only intend to mark and enter into the record
21 one document which would be titled "Direct Testimony
22 of John Seryak Public Version Unredacted."

23 EXAMINER SCHABO: Okay. So marked.

24 (EXHIBIT MARKED FOR IDENTIFICATION.)

25 MS. BOJKO: May I approach?

1 EXAMINER SCHABO: You may. Let's go back
2 off the record.

3 (Discussion off the record.)

4 EXAMINER SCHABO: We're back on the
5 record.

6 All right. We have marked OMAEG No. 1.

7 MS. BOJKO: Thank you, your Honor.

8 Q. (By Ms. Bojko) Mr. Seryak, do you have
9 OMAEG Exhibit 1?

10 A. Yes.

11 Q. And do you recognize this document as the
12 unredacted public version of the testimony you filed
13 on September 12, 2023, in this proceeding?

14 A. Yes.

15 Q. And, sir, was this testimony prepared by
16 you or under your direction?

17 A. Yes.

18 Q. And on whose behalf are you filing
19 testimony today?

20 A. The OMA Energy Group.

21 Q. And on whose behalf are you giving
22 testimony today?

23 A. Mine.

24 Q. I said the word filing. You are not
25 filing testimony. You are providing live testimony

1 today on behalf of OMAEG; is that correct?

2 A. Yes.

3 Q. And, sir, is it your understanding that
4 all information contained in your testimony is now
5 public data and information?

6 A. That's my understanding.

7 Q. Since the filing of your testimony, do
8 you have any changes?

9 A. No. Oh, yes. Sorry.

10 MS. BOJKO: Your Honor, at this time I
11 would like to mark as OMAEG Exhibit 2, for ease we've
12 created an errata sheet for Mr. Seryak's unredacted
13 public testimony. May I approach?

14 EXAMINER SCHABO: You may.

15 MS. BOJKO: Did I ask for this to be
16 marked as OMAEG Exhibit 2?

17 EXAMINER SCHABO: So marked.

18 (EXHIBIT MARKED FOR IDENTIFICATION.)

19 Q. (By Ms. Bojko) Mr. Seryak, do you have in
20 front of you what's been previously marked as OMAEG
21 Exhibit 2?

22 A. Yes.

23 Q. Is this an errata sheet to your
24 testimony?

25 A. Yes.

1 Q. And does this errata sheet explain
2 revisions that you would like to make to your as
3 filed September 12 testimony?

4 A. Yes, it does.

5 Q. And let's walk through these changes and
6 if you could offer an explanation of why you made
7 those changes, that would be great. Can we start
8 with page 6?

9 A. Sure. Oh, reason for the change was
10 there was errors in the filed audit report table that
11 I referenced that had been corrected and so this
12 is -- these numbers are a correction based on
13 corrections to the audit report.

14 Q. Okay. So let's walk through the changes
15 so everybody is clear of your change. So the first
16 one is page 6, line 12, and you are making a change
17 to the dollar amount presented on line 12 to correct
18 an error in the auditor's table; is that correct?

19 A. Sorry. It's -- this is an amount that
20 I've calculated that was based on the value in a
21 table in the auditor report. That table in the
22 auditor report had errors in it that were since
23 corrected and so I had to correct my calculation
24 accordingly.

25 Q. So your correction is based on a revised

1 audit report that was given to the parties before the
2 hearing began; is that correct?

3 A. Yes.

4 Q. And your next change is on page 8, line
5 2. Would you explain this change?

6 A. Yes. That was just a typo.

7 Q. And the same typographical error in
8 footnote 16 on page 8; is that correct?

9 A. Yes, that's right.

10 Q. And then for page 11, line 9, you are
11 making a change to footnote 26.

12 A. Yes.

13 Q. Could you explain that? Is that just a
14 citation clarification change?

15 A. Yes; yes, that's right.

16 Q. Okay. And then without going through all
17 the others, page 11 through 17, the next five changes
18 to your testimony are changes to numbers; is that
19 right?

20 A. That's right.

21 Q. And is the rationale for those changes
22 the same that you stated before, that Exhibit 3-2,
23 page 7 -- 17 of the audit report was revised and,
24 thus, you needed to update your numbers to recognize
25 the correction to the audit report?

1 A. Yes, that's right.

2 Q. So besides the revisions to your
3 testimony listed on OMAEG Exhibit 2, which is an
4 errata sheet, do you have any other changes?

5 A. No.

6 Q. And do you have -- or if -- Mr. Seryak,
7 if I were to ask you the same questions today as they
8 appear in your testimony with the errata sheet
9 presented, would your answers be the same?

10 A. Yes.

11 MS. BOJKO: At this time, your Honor, I
12 would like to move OMAEG Exhibit 1 and 2, subject to
13 cross-examination, and I tender the witness for
14 cross.

15 EXAMINER SCHABO: Thank you. We will
16 come back to admission after cross.

17 Kroger, do you have any cross-examination
18 for this witness?

19 MS. WHITFIELD: No cross-examination.

20 EXAMINER SCHABO: OCC, do you have any
21 cross-examination for this witness?

22 MR. FINNIGAN: No, your Honor.

23 EXAMINER SCHABO: AES Ohio, do you have
24 cross-examination for this witness?

25 MR. SHARKEY: Yes, your Honor.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

EXAMINER SCHABO: Please proceed.

- - -

CROSS-EXAMINATION

By Mr. Sharkey:

Q. Mr. Seryak, we met through Teams previously. As you know, my name is Jeff Sharkey. I represent AES Ohio here. I want to start a little bit with your qualifications. You are an engineer by training, correct?

A. Yes.

Q. Not an accountant?

A. That's correct.

Q. Not an economist?

A. That's right.

Q. You have never worked at a coal-fired generation plant?

A. No, I haven't.

MS. BOJKO: Excuse me, your Honor. I'm sorry, Mr. Sharkey. Could you pull -- I am having a little trouble hearing you. Thank you.

Q. (By Mr. Sharkey) You have never worked in a coal-fired generation plant, correct?

A. No, I have not.

Q. No experience -- no experience dispatching a power plant, correct?

1 A. That's right.

2 Q. Never provided consulting or engineering
3 services regarding the operation of a coal-fired
4 plant, right?

5 A. No, sir, I have not.

6 Q. And you have never -- you have never
7 performed a financial or prudency audit in your
8 career, correct?

9 A. No.

10 Q. So, no, you are agreeing with me?

11 A. I am agreeing with you.

12 Q. Thank you. You are aware that the
13 Commission has recently issued a ruling in a case for
14 Duke as to its OVEC charges for 2019, correct?

15 A. Yes.

16 Q. You filed testimony in that case?

17 A. I believe I did.

18 Q. Okay. And were your recommendations in
19 that case similar to recommendations you make here?

20 A. I think some of them are similar. If
21 memory serves me right, they weren't exactly the
22 same.

23 Q. Okay. I am going to try to do this on
24 the public record, the question was and I asked you
25 at your deposition if you could identify anything

1 that Duke did during 2019 that AES Ohio failed to do.

2 Do you recall me asking you those questions?

3 A. Yeah, in relation to --

4 Q. Don't disclose what it was.

5 A. The OVEC power plants' respective riders,
6 yes, I remember that question.

7 Q. And you identified one item that you said
8 was different but that you didn't have an opinion as
9 to whether the way AES Ohio did it or the way Duke
10 did it was better; am I correctly representing what
11 happened at your deposition?

12 A. I think the -- that's probably close. I
13 don't have an opinion because I didn't investigate
14 those specific behaviors, I guess is what I would
15 say, so I reserve the right to have an opinion later
16 if I investigate that but.

17 Q. But as you sit here, you have not done
18 that analysis, and you are not sponsoring any
19 testimony regarding that difference.

20 A. Correct. It did not impact my
21 recommendations.

22 Q. Then I want to compare two periods. You
23 understand that the Duke audit period was 2019?

24 A. I don't remember specifically, but I will
25 trust you on that. I recall it's different.

1 Q. Okay. Would you assume for the fact that
2 it is.

3 A. Sure.

4 Q. And you understand the AES Ohio's audit
5 period is November 2018 through the end of 2019.

6 A. Yes.

7 Q. So the AES period has two additional
8 months.

9 A. Correct.

10 Q. Okay. I want to compare what happened in
11 November and December of 2018 to events that happened
12 during 2019. Are you aware of any material
13 differences in events that occurred regarding OVEC in
14 20 -- November and December of 2018 as opposed to
15 what happened during 2019?

16 A. Not that I'm aware.

17 Q. Do you know what the ICPA is?

18 A. Yes.

19 Q. Okay. Did you review it in preparing
20 your testimony?

21 A. Yes.

22 Q. Do you know it was signed before the
23 audit period?

24 A. Yes.

25 Q. Do you know how far in advance it was

1 signed?

2 A. I can check. I don't remember the
3 specific date, but I believe I cite to it. Would you
4 like me to do that?

5 Q. No, no. I don't need the specific date.
6 If you knew what it was off the top of your head, I
7 would inquire. In any event your testimony does not
8 address AES Ohio's decision to enter into the ICPA,
9 correct?

10 A. No, it doesn't.

11 Q. You are aware that OVEC submits monthly
12 bills to AES Ohio?

13 A. Yes.

14 Q. Okay. And you did not review those
15 bills, correct?

16 A. No. I did see some of those bills as we
17 were working on Exhibit 3-2, double-checking my
18 understanding and finding that 3-2 was -- had a lot
19 of errors and that the source of that VEC 3 or 4, you
20 know, was listed as both. I believe those sources
21 have bills from OVEC to AES Ohio.

22 Q. Okay. Did you review those bills after
23 your deposition but before -- but before today?

24 A. Yes. And then in order to track down the
25 source of errors in that table, yeah.

1 Q. In any event while you contest the
2 prudence of OVEC's costs, you do not dispute that
3 those costs were actually incurred, correct?

4 A. No, I am not disputing that.

5 Q. Okay. And then you also understand that
6 AES Ohio was allocated a share of OVEC's output?

7 A. I don't think I would phrase it that way.
8 AES Ohio is a sponsoring party, is entitled to a
9 share of output, but it's really only allocated if
10 they take title to that. So there is an action or
11 lack of action on AES's -- AES Ohio's part before
12 it's allocated. The entitlement is allocated, but
13 the actual output isn't until after AES decides on
14 whether to take title to it.

15 Q. You are aware that during the audit
16 period AES Ohio received revenues from PJM associated
17 with capacity, energy, and ancillary services?

18 A. Yes, that's my understanding.

19 Q. Okay. And you haven't done any analysis
20 as to whether in calculating the Reconciliation Rider
21 AES Ohio made accounting or mathematical errors; you
22 are not aware of anything like that, right?

23 MS. BOJKO: Objection. I think that
24 mischaracterizes his prior statement where he said he
25 found errors and went to explore them.

1 EXAMINER SCHABO: Can I hear the
2 question, Karen?

3 (Record road.)

4 EXAMINER SCHABO: You can answer the
5 question.

6 A. No, I haven't done that analysis.

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

9 A. Okay.

10 Q. That piece of testimony contains your
11 four recommendations in this case, right?

12 A. Yes.

13 Q. And later pages in your testimony expand
14 upon why it is you are recommending those specific
15 items, right?

16 A. That's right.

17 Q. So your first recommendation you opine
18 that the Reconciliation Rider was not operating as a
19 financial hedge during the audit period and should be
20 disallowed; is that a fair characterization?

21 A. Yep.

22 Q. Okay. And you define a financial hedge
23 as a transaction that moves in the opposite direction
24 than what you are hedging against, right?

25 A. Yes.

1 Q. You understand that the RR would pass
2 through to customers OVEC's charges to AES Ohio net
3 of the revenues AES Ohio receives from PJM for
4 energy, capacity, and the ancillary services, right?

5 A. I'm sorry. Could you just repeat? That
6 was a long question. That's all.

7 Q. That was. There is a lot of words in it.
8 You understand that the Reconciliation Rider would
9 collect the net of OVEC's costs and PJM's revenues as
10 to AES Ohio, right?

11 A. While I think -- does or supposed to I
12 think makes a difference with this question. And
13 then the word costs, which costs? Because I am
14 disputing in my testimony and I have in other
15 testimony which costs are eligible so I just want to
16 be clear here I am not saying the reconciliary --
17 Reconciliation Rider was supposed to recover the
18 costs -- the net costs that it did. I am disputing
19 that.

20 Q. Well, I am just trying to work out the
21 mathematics of how the Reconciliation Rider worked,
22 and if in a particular period the PJM's revenues
23 exceeded the OVEC's costs, then by math the
24 Reconciliation Rider would be a credit to customers,
25 right?

1 A. Well, hold on. OVEC costs is something I
2 am contending here and specifically in relation to
3 PJM in the wholesale transaction and the whole -- the
4 language in the other orders on what a hedge is and
5 specifically that the costs as I read it from related
6 orders is contractual entitlement, so contractual
7 entitlement costs are the marginal or variable costs
8 as bid into PJM.

9 Okay. That's different than OVEC's costs
10 that they bill to AES Ohio which can include an
11 unconditional obligation so there is two very
12 different costs and so this is kind of the crux of my
13 testimony is if we are saying costs, you know, air
14 quotes, are we talking marginal costs? Because I
15 think in some of the orders we are talking marginal
16 costs.

17 If that's the case, when there is
18 revenue, when OVEC is able to bid in and has -- you
19 know, has a clearing price over their marginal costs,
20 there should be sufficient profit that is sent back
21 to ratepayers through Rider RR, that's not happening
22 so that the word cost here is legally important. So
23 I think I need to have the question is it marginal
24 costs? Are we talking unconditional obligation costs
25 from the ICPA? Those are -- those are two very

1 different costs.

2 Q. Do you know whether the Reconciliation
3 Rider is ever operated as a credit to customers?

4 A. Do I know -- let me just reflect that
5 back to you. Do I know if the Reconciliation Rider
6 is ever a credit to customers or has been?

7 Q. Correct.

8 A. In this audit period I don't believe it
9 was.

10 Q. Do you know if it ever has been?

11 A. I'm --

12 MS. BOJKO: Objection, beyond the scope
13 of the audit period.

14 EXAMINER SCHABO: He can answer the
15 question if he knows.

16 A. I don't believe so, but I'm not sure.

17 Q. Do you know whether the Reconciliation
18 Rider has been calculated over time as the net
19 difference between the costs allocated to AES Ohio by
20 OVEC and the PJM revenues that AES Ohio receives?

21 MS. BOJKO: Objection.

22 EXAMINER SCHABO: Basis?

23 MS. BOJKO: Seeking clarification. The
24 witness said he couldn't answer the prior question
25 without knowing the definition that the counsel is

1 using with regard to which costs and this is the same
2 question repeated without explaining what costs he is
3 asking about.

4 EXAMINER SCHABO: Mr. Sharkey, can you
5 ask your question with a better definition of cost?

6 MR. SHARKEY: I think if I define costs
7 as the one allocated to AES Ohio by OVEC, that's very
8 specific. There is invoices, some of which he has
9 testified he has looked at. Those are the costs I am
10 talking about.

11 MS. BOJKO: Your Honor --

12 MR. SHARKEY: Those are very specific
13 amounts.

14 MS. BOJKO: Well, allocation and invoice
15 are different.

16 EXAMINER SCHABO: Karen, can I have the
17 question read back?

18 (Record read.)

19 EXAMINER SCHABO: So, Mr. Sharkey, go
20 ahead and ask your question. Be very specific about
21 your costs and then he may answer.

22 Q. (By Mr. Sharkey) You understand that on a
23 monthly basis OVEC issues invoices to AES Ohio.

24 A. Yes.

25 Q. Okay. And you -- so those are what I

1 want to define as OVEC costs for the purpose of this
2 question. Do you know if the amounts that are going
3 to be collected through Reconciliation Rider are
4 calculated as the difference between those costs and
5 the revenues that AES Ohio receives from PJM
6 associated with the ancillary services, capacity, and
7 energy?

8 MS. BOJKO: Objection.

9 EXAMINER SCHABO: Basis?

10 MS. BOJKO: He said are supposed to and
11 who -- under whose interpretation?

12 EXAMINER SCHABO: Objection is overruled.
13 You can answer the question.

14 A. Yes. My understanding is they --
15 those -- RR has been calculated as the difference
16 between PJM revenues and the invoiced costs from OVEC
17 to AES Ohio.

18 Q. All right. And in periods of time when
19 those invoiced costs have exceeded the PJM revenues,
20 then the Reconciliation Rider would be a charge,
21 correct?

22 A. Yes, and I just want to clarify there is
23 often a true-up like the Reconciliation Rider is a
24 forecast, so the actual difference between invoiced
25 costs and revenue isn't perfectly reflected in RR;

1 but, yes, generally speaking when invoiced costs are
2 higher than market revenue, you would have a charge
3 in RR.

4 Q. Okay. And similarly for periods in which
5 the PJM revenues exceeded the invoiced costs, then
6 the Reconciliation Rider would operate -- operate as
7 a credit to customers at the same caveats about
8 timing you just offered?

9 A. Yes. We have an example in this -- in
10 this case of those -- the difference between the PJM
11 revenues and the invoiced costs which we could call
12 net costs. Based on Exhibit 3-2, we have an example
13 of that being revenue -- negative. It does not
14 result in a charge with RR because of these
15 differences with the forecasts and true-up and
16 carryover and things of that nature. But if it were
17 significant enough, that could happen.

18 MS. BOJKO: Your Honor, may I have the
19 answer read back, please?

20 EXAMINER SCHABO: Yes. Go ahead and turn
21 your microphone on, please.

22 (Record read.)

23 Q. (By Mr. Sharkey) Still on page 6, I want
24 to turn to your next recommendation, and your next
25 recommendation in essence says that AES Ohio's

1 projections when the RR was implemented were -- were
2 wrong, turned out to be wrong. And you're suggesting
3 that a refund of a now public amount roughly
4 \$9 million should be made to reflect the differences
5 between the projections and the actual amounts
6 recovered through the RR during the audit period; is
7 that a fair characterization?

8 A. I would just add that my reasoning is
9 that those -- that \$9,595,580 I am saying are
10 unreasonable based on my understanding of reasonable
11 versus unreasonable costs within a rate stability
12 charge of this type from the Commission rulings, so I
13 just wanted to make sure it was -- my rationale is
14 that these charges are unreasonable.

15 Q. Turn, if you would -- turn, if you would
16 then, to page 8 of your testimony.

17 A. Okay.

18 Q. Then on line 5 you say "The Commission
19 based its approval in part on AES Ohio's forecast of
20 net credits to customers for several coal plants
21 amounting to \$455 million by 2026," correct?

22 A. Yes.

23 Q. And you have a footnote there, footnote
24 No. 18, if we look down in the footnote, we see you
25 are citing to a Commission order, and then you are

1 also citing to testimony of Jeff Malinak in the ESP
2 III case for that -- for that opinion, right?

3 A. Yes.

4 Q. Okay. And then if we take a look at page
5 10 of your testimony.

6 A. Yes, I'm there.

7 Q. Pagination changed a little bit so my
8 notes referred me to 10. It is now actually on page
9 11. Starting on line 1, you are again citing to
10 Mr. Malinak, and you say "According to AES" Ohio --
11 I'm sorry, "AES Witness Malinak, the entire cost for
12 AES Ohio's coal plants were projected to be
13 \$105 million for 2018, and 69 million for 2019,"
14 correct?

15 A. Right.

16 Q. And then in your footnote, you were again
17 citing to the testimony of Mr. Malinak, February 22,
18 2016, in the ESP III case, right?

19 A. Yes.

20 Q. Okay. And so then there's on page 11,
21 Table 1 and Table 2, can you describe for me the
22 calculations and the sources for the information in
23 Table 1?

24 A. Sure. So Table 1 I am citing to Mr.
25 Malinak's testimony, so I took the megawatt capacity

1 listed by Mr. Malinak, and I simply calculate the
2 percentage of that total capacity that is OVEC so
3 simply dividing OVEC's capacity divided by the total.

4 Q. So you determined that of AES Ohio's
5 generating facilities, OVEC was, or Mr. Malinak
6 determined, 4.7 percent?

7 A. Of the listed capacity, yes.

8 Q. Of the listed capacity, okay. And then
9 can you describe what you did in Table 2?

10 A. Sure. So you see in Table 2 the first
11 two lines, 2018 estimated cost and then 2019
12 estimated cost, all plants, those numbers are pulled
13 from Malinak Exhibit RJM-3.

14 Q. Okay. So what does that -- there is a \$4
15 million 85 thousand --

16 A. I'll get there.

17 Q. Oh.

18 A. I was just stopping so everyone could
19 follow along. And then the third line, prorated, I
20 took the 2018 estimated costs which were annual, and
21 in our audit period we are only looking at November
22 and December of 2018, so I simply multiplied by
23 2/12ths, that's an estimate to get what's kind of a
24 prorated estimate of the November and December '18
25 cost plus all of 2019 and that's how I got to

1 86,500,000. And then to estimate about how much of
2 that original estimate of costs might have been, you
3 know, attributable to OVEC, you multiplied by the
4 4.7 percent so that's how I get to that bottom line.

5 Q. So the \$4 million figure is a calculation
6 by you of the amount of OVEC costs AES Ohio Witness
7 Malinak had included in his original projections in
8 the ESP III case.

9 A. Yes, I believe that's needed for the
10 Commission to decide what's a reasonable cost so I
11 did not find that in the record so I did the
12 calculation on my own.

13 Q. Okay. And you are basing that, in
14 looking at the footnote, it's the February 22, 2016,
15 testimony of Mr. Malinak?

16 A. Yes.

17 Q. And you pulled that off of the PUCO's
18 website yourself?

19 A. That's right.

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

21 EXAMINER SCHABO: You may.

22 MR. SHARKEY: Your Honor, I have given
23 the witness a printout of the docket, Commission's
24 docket, in that ESP III case 16-395 and ask that be
25 marked as AES Ohio Exhibit 6.

1 EXAMINER SCHABO: So marked.

2 (EXHIBIT MARKED FOR IDENTIFICATION.)

3 Q. (By Mr. Sharkey) So if you would turn to
4 the last page of the document, if you look in the
5 bottom right-hand corner of the pages, there is a 30
6 out of 30 page numbers here; is that right?

7 A. Yes.

8 Q. Do you see that? Okay. And then we see
9 on that page at the very top line February 22, 2016,
10 there's confidential testimony filed by -- for a
11 number of witnesses including Mr. Malinak, correct?

12 A. Yes.

13 Q. And that's what you've cited to.

14 A. No. If you go three more lines down,
15 there's a nonconfidential testimony Volume 7 of 8,
16 testimony - Witnesses Malinak, Meehan, and Miller.

17 Q. Okay. So it's three lines down. I see
18 what you are referring to. That's the Malinak
19 testimony that you cited to.

20 A. Yes.

21 Q. Okay. Turn, if you would, to page 14.

22 MS. BOJKO: Of the exhibit?

23 MR. SHARKEY: Page 14 of the exhibit,
24 yes.

25 Q. (By Mr. Sharkey) Are you there?

1 A. Yes.

2 Q. Do you see on March 14 of 2017 that there
3 was an Amended Stipulation and Recommendation entered
4 into the case?

5 A. Yes, I do.

6 Q. Okay. And if you look about six or seven
7 lines above that on March 22, 2017, there's
8 testimony, direct testimony of R. Jeffrey Malinak
9 public version?

10 A. Yes.

11 Q. Filed by me?

12 A. Uh-huh.

13 Q. That is not the testimony you relied upon
14 in creating your exhibit, correct?

15 A. No, it's not.

16 Q. And do you know what the projections
17 were -- step back. Have you seen that document
18 before?

19 A. I might have opened that. I couldn't
20 tell you for sure.

21 Q. Okay. You don't recall as you sit here
22 today.

23 A. I don't recall for sure, no.

24 Q. Have you heard -- strike that.

25 Do you know whether the projections used

1 in that testimony were updated and different than the
2 projections that were used in Mr. Malinak's
3 February 22, 2016, testimony that you used?

4 A. No, I don't know.

5 Q. Turn back, if you would, to page 6 of
6 your testimony.

7 EXAMINER SCHABO: Mr. Sharkey?

8 MR. SHARKEY: Page 6.

9 EXAMINER SCHABO: Thank you.

10 A. Yes, I'm there.

11 Q. Your third recommendation deals with the
12 fact that OVEC has operated the plants as a must-run
13 basis, and you believe that losses caused by what you
14 believe to be an imprudent practice should be
15 refunded to customers?

16 A. I use this specific term unreasonable,
17 but I would also say it's imprudent.

18 Q. So otherwise it is a fair
19 characterization of your recommendation there?

20 MS. BOJKO: Objection. He just corrected
21 him and said it was not a fair representation, and he
22 said why so.

23 MR. SHARKEY: I said I understood with
24 that change it is a fair characterization was the
25 point of my question.

1 MS. BOJKO: I did not --

2 A. I would also characterize it if we are
3 going to add words as not in the best interest of
4 ratepayers, but I think the characterization, we
5 could stip to unreasonable.

6 Q. If the units were offered into PJM, the
7 day-ahead markets, if they were designated as
8 economic as opposed to must run, do you believe that
9 the units would be operated less?

10 A. If I can repeat this back to you. You
11 are asking if the units, the OVEC units, were offered
12 into the day-ahead market as economic instead of must
13 run, do I believe the units would be operated less?

14 Q. That's the question.

15 A. Yes, I believe so.

16 Q. And this would make the energy that was
17 available from those units less as well, right?

18 A. Yes.

19 Q. You understand that as coal-fired
20 generation units, there would be considerable costs
21 to restart the plants after they are shut down?

22 A. Yes. There are restart costs.

23 Q. And do you know the magnitude of those
24 costs?

25 A. I've seen estimates. I don't have the

1 magnitude of those costs off the top of my head.

2 Q. What estimates have you seen?

3 A. In some of the case files. I don't
4 recall. I couldn't give you an exact number.

5 Q. And you believe that cycling the OVEC
6 plants on and off would increase the risk of
7 components of the plants breaking, right?

8 A. Yeah. Thermal cycling can do that, yes.

9 Q. You would agree with me gas-fired plants
10 are better suited to be turned on and off in response
11 to changes in price as opposed to coal-fired plants,
12 right?

13 A. Yes, I think so.

14 Q. And let me ask you some questions about
15 the capacity market. You understand that PJM
16 operates in the capacity market, right?

17 A. Yes.

18 Q. Are you generally familiar with how that
19 works?

20 A. Yes.

21 Q. Okay. And do you understand that in the
22 audit period AES Ohio received revenue from PJM
23 associated with offering capacity associated with
24 OVEC?

25 A. Yes, that's my understanding.

1 Q. What obligation does AES Ohio have when
2 it received revenue from PJM associated with
3 capacity?

4 A. Well, the obligation they have in
5 reference to what?

6 Q. Well, step back. There was -- you
7 understand the capacity auctions happen a couple
8 years in advance of the applicable year?

9 A. Yes.

10 Q. Okay. So with our audit period in 2019,
11 there would have been an auction a couple of years
12 prior in which AES Ohio's bid as to -- as to the OVEC
13 capacity cleared the auction, and it was going to be
14 paid, right?

15 A. That's right.

16 Q. Okay. And as a winning bidder in that
17 auction, then during the audit period that auction or
18 auctions, during the audit period AES Ohio has
19 certain obligations, right?

20 A. The resource has obligations. I think --
21 I find your question a little bit confusing because I
22 think the relationship -- I find that whole
23 relationship to be -- I just find it a bit off that
24 specific sponsoring companies are doing the bidding
25 into the capacity market when they don't have a say

1 on how -- they are saying in these audit reports and
2 in their questions to the auditors that they don't
3 have control over the resource and its dispatch. So
4 I don't -- I don't know how -- I understand they do
5 that, but I don't know how that's responsible to bid
6 into the capacity market when you don't have control
7 over the resource. They don't have any control over
8 whether the resource performs or not.

9 Q. You understand as a winning bidder AES
10 Ohio has a contract -- you understand it has
11 contractual obligations and -- to PJM as a winning
12 bidder at an auction?

13 A. But they cannot show that they can manage
14 the plant that way, so they also have contractual
15 terms through the ICPA that does not give them
16 control over the -- whether the resource runs on the
17 day that this is a capacity peak. So I hear what you
18 are saying but that whole idea that sponsoring
19 company bids in capacity when they have no ability to
20 control whether the plant runs practically, I think
21 that is on the face of unreasonable. They could bid
22 into the capacity auction and then get hit by a
23 capacity performance penalty because OVEC decides not
24 to run that day.

25 So there's two sets of obligations and

1 contractual terms AES Ohio has, so I don't know why
2 the sponsoring companies think they actually have any
3 ability to bid into the capacity market when they
4 don't actually control the dispatch of the resource.
5 It is putting the ratepayers at risk with this
6 mechanism in place.

7 Q. You understand that bidders -- let me
8 talk general bidder, not somebody who is like AES
9 Ohio for the OVEC. When they bid into the capacity
10 market and they win, what obligations do they have as
11 a winning bidder?

12 A. Well, they have an incentive to have
13 their plant operate when there is a capacity
14 performance, when there is a system peak. However,
15 obligation, I mean, they can -- they don't have to
16 run. They will get penalized.

17 Q. So they have a contractual obligation to
18 either have their unit running or be penalized?

19 A. They have an incentive and disincentive.
20 You know, we have an example from this past year with
21 winter storm Elliott where resources had cleared in
22 the capacity auction and then they didn't perform and
23 then they were penalized, so I guess you could say,
24 you know, would you call it an obligation? I would
25 say they have an incentive and disincentive. They

1 are certainly saying they will perform but there are
2 plants that don't, and so then they get penalized if
3 they don't.

4 Q. So do you know whether a winning bidder
5 has any contractual obligations to PJM if their
6 generation clears the auction?

7 MS. BOJKO: Objection, asked and answered
8 three times now.

9 EXAMINER SCHABO: He has not answered the
10 question. Objection overruled.

11 A. Okay. So specifically you are asking --
12 let me reflect this back or rephrase. If a bidder
13 into the PJM auction, if there are resources cleared,
14 do they receive -- do I know if they receive an
15 obligation as part of that?

16 Q. Do they have a contractual obligation,
17 yes.

18 A. I haven't reviewed those contracts, so I
19 don't know.

20 Q. You reflected earlier that they would --
21 the winning bidder would have I think your word was
22 incentive to have their plants run or else they are
23 going to be subject to a risk of receiving a penalty
24 of some sort, right?

25 A. Yes, that's right.

1 Q. Okay. And if the plant that they were
2 planning on providing capacity with were to go into
3 an unforced outage, that could create the risk of the
4 owner, the winning bidder, having to pay penalties,
5 right?

6 A. Yes, but we're talk -- I just want to say
7 when we are talking winning bidder -- sorry, winning
8 bidder, in this case we are not talking about owner
9 even though AES is also a part owner of OVEC. I just
10 want to be clear our questions have talked about like
11 that specific role, AES Ohio is bidding in as a
12 sponsoring company is my understanding. That's
13 different than owner. There may be other plants that
14 bid in as an owner.

15 Q. I am not talking about AES Ohio. I am
16 just talking about a hypothetical winning bidder
17 whose bid cleared in an auction, and I want to
18 understand that they in creating their bid could
19 factor in the risk of penalties if there was a
20 unplanned, unforced outage, right?

21 MS. BOJKO: Objection. The hypothetical
22 calls for speculation. I don't even know who they
23 is. I don't know how the witness can tell you the
24 intent of the they.

25 EXAMINER SCHABO: The they is the

1 hypothetical winning bidder.

2 MS. BOJKO: Objection, speculation. He
3 can't speak to what the winning bidder that we don't
4 know who it is, the unknown winding bidder, did or
5 did not do or would or would not consider.

6 EXAMINER SCHABO: Karen, can you read the
7 question back to me, please?

8 (Record read.)

9 EXAMINER SCHABO: Objection is overruled.

10 A. A winning bidder could. Do all winning
11 bidders -- or how could winning bidders factor in the
12 risk of an unforced outage, I couldn't tell you
13 because I don't have a survey of all winning bidders,
14 but they could -- they may not.

15 Q. They do, but do you think they should?

16 MS. BOJKO: Objection. Your Honor, he --
17 he cannot speak to -- he just said he couldn't speak
18 to whether they did or could so relevance. He said
19 not AES so has no relevance to this case whether a
20 winning bidder did or did not bid in or consider
21 certain factors. He has no idea who it is.

22 EXAMINER SCHABO: Overruled.

23 A. Do I think they should? I mean, this is
24 each bidder's like personal risk tolerance. I think
25 from the bid strategies I've seen, and if you want to

1 ask this again in a confidential case, maybe we could
2 get into the differences between bidding strategies
3 that even OVEC sponsors.

4 Q. My question just was do you think someone
5 creating a bid into the OVEC PJM capacity markets
6 should factor in the risk of potential penalties if
7 there was an unplanned or unforced outage?

8 A. I think it's up to the specific plant
9 bidder and their own risk tolerance, how confident
10 they are in -- in the plant performing, and they
11 would factor that into their price.

12 Q. Do you know whether AES Ohio in bidding
13 OVEC's capacity in the PJM markets factored in the
14 risks that the generation plants would be available?

15 A. I think that isn't a confidential
16 document in this case, so I recall reading it. I
17 couldn't tell you off the top of my head. We could
18 go back to that document as I didn't think they
19 influenced my recommendation, so I didn't include
20 that specific -- AES's specific strategy in my
21 testimony. I recall reading about it though.

22 Q. Back on page 6 of your testimony, your
23 last recommendation addresses an assertion by you
24 that AES Ohio was purchasing coal at above market
25 prices, right?

1 A. Yes.

2 Q. Okay. And then turn to page -- my notes
3 say 15. Let me make sure that's still right in your
4 new testimony.

5 MS. BOJKO: Your Honor, just so the
6 record is clear, the page numbers did not change, so
7 I don't know why Mr. Sharkey keeps stating that, but
8 I want to make sure the record is clear that the page
9 numbers of what was filed in the public document are
10 the same page numbers as what we gave you. We just
11 checked them, so you must have a different version
12 than we have which is why I'm concerned.

13 MR. SHARKEY: Okay. Well, they are very
14 close, it's immaterial so.

15 Q. (By Mr. Sharkey) Page 15 of your
16 testimony, it would be the public version.

17 A. Yes.

18 Q. Okay. And this is the underlying support
19 for the previous recommendation you made that we just
20 looked at earlier, right, your analysis?

21 A. Yes, Section V of my testimony.

22 Q. On pages 15 and 16.

23 A. Yes, that's right.

24 Q. Okay. And you explain there that OVEC is
25 purchasing coal from the same mine from two different

1 suppliers at different prices, correct?

2 A. Yes.

3 Q. One of the suppliers is Resource Fuels
4 and the other one is Alliance.

5 A. That's right.

6 Q. And on page 16, you have pricing
7 information for those contracts, right?

8 A. Yes.

9 Q. And what you've done is listed the prices
10 in -- that is being charged by Resource Fuels and
11 listed the prices being charged by Alliance?

12 A. That's right.

13 Q. And Resource Fuels' prices are higher.

14 A. That's right.

15 Q. And if we flip back to page 15, footnote
16 35, that's the -- that website is the source of your
17 pricing information that you've included on page 16,
18 correct?

19 A. Yes, that's right.

20 Q. And it's true, isn't it, that website
21 does not include information when the contracts were
22 signed?

23 A. It does not.

24 Q. Okay. And you don't know when the
25 Resource Fuels or the Alliance Coal contracts were

1 signed, do you?

2 A. I do.

3 Q. You do.

4 A. Yeah.

5 Q. How do you know that?

6 A. I have reviewed those coal contracts
7 before. I mean, I generally know. I don't recall --
8 I don't keep the day and month and year memorized
9 but.

10 Q. Do you know -- I suspect that the
11 years --

12 MR. SHARKEY: Can we go off the record
13 for a moment?

14 EXAMINER SCHABO: We can.

15 (Discussion off the record.)

16 EXAMINER SCHABO: We'll go back on the
17 record.

18 Q. (By Mr. Sharkey) Do you know as to the
19 Resource Fuels contract if it was signed and then
20 updated a couple times?

21 A. That's my understanding.

22 Q. Okay. And the original date of the
23 Resource Fuels contract is before the Alliance
24 contracts were signed, right?

25 A. I don't perfectly recall but that sounds

1 right.

2 MR. SHARKEY: All right. Thank you,
3 Mr. Seryak.

4 Your Honor, I have no further questions.

5 EXAMINER SCHABO: Okay. Staff, do you
6 have any questions?

7 MR. LINDGREN: No. No, thank you, your
8 Honor.

9 EXAMINER SCHABO: Ms. Bojko, do you have
10 redirect?

11 MS. BOJKO: Yeah. May I have a minute,
12 please?

13 EXAMINER SCHABO: Yes. We will go off
14 the record for 5 minutes.

15 (Recess taken.)

16 EXAMINER SCHABO: Let's go back on the
17 record.

18 Ms. Bojko, do you have redirect for your
19 witness?

20 MS. BOJKO: Yes, I do, your Honor, a few
21 questions.

22 - - -

23 REDIRECT EXAMINATION

24 By Ms. Bojko:

25 Q. Mr. Seryak, do you recall a discussion

1 with Mr. Sharkey about coal contracts?

2 A. Yes, I do.

3 Q. And he was asking you about the dates of
4 the coal contracts. Do -- dates of the coal
5 contracts, are they meaningful? Do they change your
6 opinion?

7 A. No. They weren't meaningful or change
8 the opinion in my testimony. The reason being and
9 the reason I put this in my testimony for two
10 reasons. One is I keep seeing in related cases that
11 the reason for high coal prices for Clifty Creek is
12 because of the thermal content of the coal and that's
13 just demonstratively untrue, and it really bugs me
14 that that information is still being relied on. So I
15 needed -- I wanted to put that in my testimony
16 because that's factually untrue.

17 And then the second reason that the
18 timing of when the contracts were entered doesn't
19 matter is because quite obviously with the high
20 prices of this contract it's an unreasonable coal
21 contract so that OVEC is locked into an unreasonable
22 coal contract shows me that I think you have to
23 consider AES Ohio is acting in the best interests of
24 its shareholders, that they are not using this
25 financial hedge for the best interests of the

1 ratepayers. I think they are using it for -- they
2 clearly have a conflict of interest, and it benefits
3 AES Ohio as a sponsoring owner of the plant to have
4 this rate mechanism to collect costs for their bad
5 coal contract from the ratepayers.

6 So I think that coal contract is on the
7 face of unreasonable and is quite clearly not
8 interested -- in the best interests of the ratepayers
9 so that's why it's in my testimony.

10 Q. Mr. Seryak, do you recall a discussion
11 with Mr. Sharkey about financial hedges?

12 A. Yes, I do.

13 Q. And what's your understanding of the RR
14 rider when it was implemented and what the Commission
15 stated about financial hedges?

16 A. Yes. So my understanding is that the
17 Commission doesn't approve or hasn't approved just
18 any financial hedge. That has to be a reasonable --
19 a financial hedge reasonable costs that are in the
20 best interests of the ratepayers. And the reason I
21 think this is the order in AES ESP III that approved
22 this referenced the order in the AEP case as
23 substantially similar, and in the AEP case they put
24 qualifiers on what an acceptable financial hedge is.
25 So a financial hedge cannot contain unreasonable

1 costs so then that leaves a question of what's a
2 reasonable cost or unreasonable cost.

3 And if you hold with me for just a
4 moment, I think we have some insight into that. The
5 Commission says in the AEP order that a rate
6 stability proposal, in their case it's Rider PPA,
7 must not impose unreasonable costs. So we need to
8 look at that in a prudency review and then what does
9 unreasonable mean. So you can look at the concurring
10 opinions from Commissioners in that case.

11 Commissioner Trombold said -- it's here. She says
12 "It is my clear expectation that the PPA Rider
13 approved today will result in a credit to ratepayers
14 over the next years," right? So there is an
15 expectation with the approval that there will be a
16 credit.

17 Commissioner Haque's concurring opinion
18 goes on to say that "They build in certain consumers'
19 protections to ensure that bills do not increase
20 beyond a certain limit." So that means -- that
21 protection, I think, is this prudence -- prudency
22 audit, the prudency audits, and we need to ensure
23 that the bills do not increase beyond a certain
24 limit. He again says "I expect to see credits." He
25 also says "What exactly is the point of the hedge if

1 ratepayers never experience the credits? If
2 ratepayers never experience the credits, then the PPA
3 Rider mechanism would then act as a somewhat illusory
4 insurance policy," so he is distinguishing between a
5 hedge, a rate stability mechanism, and he is saying
6 if you do not have credits and if the costs exceed a
7 certain amount, then it is not functioning as a
8 hedge. It is a somewhat illusory assurance policy,
9 and I think so that makes it quite clear when we are
10 incurring costs after costs after costs with OVEC,
11 that we have gone well beyond the functioning of a
12 financial hedge with reasonable costs that's in the
13 best interests of ratepayers.

14 Q. Mr. Seryak, do you remember questions
15 from Mr. Sharkey about what's been marked as Staff
16 Exhibit 3, which is Exhibit 3-2, the corrected table
17 to the audit --

18 A. Yes.

19 Q. -- report? He asked you about the
20 November '18 -- 2018 month and he asked you whether
21 there were net costs and then the rider revenue. Do
22 you recall that?

23 MR. SHARKEY: I am going to object, your
24 Honor. I never asked this witness about Staff
25 Exhibit 3.

1 MS. BOJKO: Your Honor, he did, and I
2 think the witness just has a clarification of
3 something he said. He asked if the net costs
4 exceeded the -- excuse me, if the revenues exceeded
5 the costs, whether there would be a credit to
6 customers, and Mr. Seryak answered that and gave an
7 example of that for 2018 and misspoke, and he would
8 like to clarify the record. I will ask the question,
9 your Honor.

10 EXAMINER SCHABO: Yeah. I was going to
11 say I personally don't recall Exhibit 3 ever coming
12 out. I remember the question you are referring to so
13 if you can rephrase your question to...

14 MS. BOJKO: Sure. He might not have
15 specifically identified Exhibit 3, but it was the
16 concept.

17 Q. (By Ms. Bojko) Mr. Seryak, do you recall
18 a question and answer where you were providing an
19 example of a time that when net costs are negative,
20 that it might not flow through to the rider as a
21 credit?

22 A. Yes, I remember that.

23 Q. And you said that it might not flow
24 through the rider as a charge, and did you mean a
25 different word than charge?

1 A. Yeah; yes, I did.

2 Q. What did you mean?

3 A. I meant in case where is net costs
4 meaning the difference between PJM revenues and
5 invoiced costs may be negative such as November 2018
6 as in PJM revenues exceeded the invoice costs, that
7 may not flow through as a credit in RR which in that
8 month it did not. Rider RR was still a charge in
9 that month so that was the example, and I think I
10 selected the wrong word. I think I said charge
11 instead of credit so.

12 Q. So even if there are -- net costs are
13 negative, it may not ultimately be a credit to
14 customers through Rider RR.

15 A. That's correct, yes.

16 Q. Do you remember Mr. Sharkey asked you
17 about units running less and if they run less, then
18 they produce less energy?

19 A. Yes, I do.

20 Q. What else is less if the units are
21 running less?

22 A. If the units are running less, the -- the
23 costs to run the units are lower and so would the
24 financial losses in certain cases, the losses would
25 be less as well.

1 Q. And you are saying the losses or the
2 costs attributed to ratepayers.

3 A. The net costs that would then be charged
4 to ratepayers, so if the financial losses are less,
5 that means the amount charged to ratepayers would
6 also be lower.

7 MS. BOJKO: Thank you. No further
8 questions, your Honor.

9 EXAMINER SCHABO: Kroger, do you have any
10 recross?

11 MS. WHITFIELD: No, your Honor.

12 EXAMINER SCHABO: Staff, do you have
13 recross?

14 MR. LINDGREN: No, thank you, your Honor.

15 EXAMINER SCHABO: Mr. Sharkey, do you
16 have any recross?

17 MR. SHARKEY: One moment, please.

18 EXAMINER SCHABO: Of course.

19 MR. SHARKEY: We don't need to go
20 anywhere. It will be real quick.

21 EXAMINER SCHABO: I'm sorry. I skipped
22 Mr. Finnigan. Do you have any recross?

23 MR. FINNIGAN: No, your Honor.

24 MR. SHARKEY: No further questions, your
25 Honor.

1 EXAMINER SCHABO: Okay. Thank you,
2 Mr. Seryak. You may be excused.

3 THE WITNESS: Thank you.

4 EXAMINER SCHABO: You can take what you
5 brought with you but please leave everything else on
6 the stand, although you are the last witness.

7 MS. BOJKO: Yes, your Honor. At this
8 time OMAEG would ask to move in and admit OMAEG
9 Exhibit 1 and Exhibit 2.

10 EXAMINER SCHABO: Are there any
11 objections to the admission of OMAEG Exhibits 1 and
12 2?

13 Hearing none, it will be admitted.

14 (EXHIBITS ADMITTED INTO EVIDENCE.)

15 MR. SHARKEY: We move, your Honor, for
16 the admission of AES Ohio Exhibit 6.

17 EXAMINER SCHABO: Are there any
18 objections to the admission of AES Ohio Exhibit 6?

19 MS. BOJKO: I'm sorry, your Honor. May
20 you refresh my recollection?

21 EXAMINER SCHABO: It's the docket.

22 MS. BOJKO: Oh, your Honor, I don't think
23 the docket card of a case that's -- yeah, I don't
24 think a docket card was -- should be marked as an
25 exhibit and evidence just because he asked him when

1 the date of a testimony was filed. So I guess I
2 would object on relevancy.

3 EXAMINER SCHABO: Would you prefer we
4 take administrative notice?

5 MS. BOJKO: Sure.

6 EXAMINER SCHABO: Would you be okay with
7 taking administrative notice of the docket?

8 MR. SHARKEY: I am good with
9 administrative notice, your Honor.

10 EXAMINER SCHABO: All right. We will
11 take administrative notice of the docket for Case No.
12 16-395. For ease of briefing if you would like to
13 refer to it as AES Ohio Exhibit 6, feel free.

14 MR. SHARKEY: Thank you, your Honor.

15 EXAMINER SCHABO: All right. Let's go
16 off the record.

17 (Discussion off the record.)

18 EXAMINER SCHABO: Off the record we had a
19 brief conversation about briefing. We have come up
20 with a briefing schedule for this proceeding.
21 Initial briefs will be due November 13, and reply
22 briefs will be due December 4.

23 With that I think we are done. I don't
24 see anyone disagreeing with me, so I will thank you
25 all for being here. Thank you for your time.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

We are adjourned.

(Thereupon, at 3:38 p.m., the hearing was
adjourned.)

- - -

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

CERTIFICATE

I do hereby certify that the foregoing is a true and correct transcript of the proceedings taken by me in this matter on Thursday, September 28, 2023, and carefully compared with my original stenographic notes.

Karen Sue Gibson, Registered
Merit Reporter.

(KSG-7527)

- - -

**This foregoing document was electronically filed with the Public Utilities
Commission of Ohio Docketing Information System on**

10/12/2023 10:18:34 AM

in

Case No(s). 20-0165-EL-RDR

Summary: Transcript September 28th 2023 Reconciliation Rider of The Dayton Power and Light Company. electronically filed by Mr. Ken Spencer on behalf of Armstrong & Okey, Inc. and Gibson, Karen Sue Mrs..