

BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

- - -

In the Matter of the :
Application of Ohio Power :
Company for Authority to :
Establish a Standard :
Service Offer Pursuant to : Case No. 23-23-EL-SSO
R.C. 4928.143, in the Form:
of an Electric Security :
Plan. :

In the Matter of the :
Application of Ohio Power :
Company for Approval of : Case No. 23-24-EL-AAM
Certain Accounting :
Authority. :

- - -

PROCEEDINGS

before Ms. Greta See and Ms. Megan Addison, Attorney
Examiners, at the Public Utilities Commission of
Ohio, 180 East Broad Street, Room 11-A, Columbus,
Ohio, called at 10:00 a.m. on Tuesday, October 10,
2023.

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VOLUME I

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On behalf of the Ohio Manufacturers'
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On behalf of The Kroger Company.

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On behalf of the Ohio Environmental
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On behalf of the Ohio Energy Leadership
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On behalf of the Ohio Cable
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APPEARANCES: (Continued)

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On behalf of the Northeast Ohio Public
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On behalf of the Enel North America, Inc.

NRG Business Marketing LLC
By Mr. Bryce A. McKenney
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On behalf of the Direct Energy Business,
LLC, and Direct Energy Services, LLC.

Dave Yost, Ohio Attorney General
John Jones, Section Chief
Public Utilities Section
By Mr. Werner L. Margard, III,
Ms. Ambrosia Wilson,
and Ms. Ashley Wnek,
Assistant Attorneys General
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On behalf of the Staff of the PUCO.

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Tuesday Morning Session,
October 10, 2023.

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EXAMINER SEE: Let's go on the record.

Scheduled for hearing this morning before
the Public Utilities Commission at this time and
place is Case No. 23-23-EL-SSO and Case No.
23-24-EL-AAM, being entitled in the Matter of the
Application of Ohio Power Company for Authority to
Establish a Standard Service Offer Pursuant to
Revised Code Section 4928.143 in the Form of an
Electric Security Plan, and in the Matter of the
Application of Ohio Power Company for Approval of
Certain Accounting Authority.

My name is Greta See. Joining me on the
Bench this morning is Megan Addison. The other AE
assigned to the case, David Hicks, is not feeling
well this morning and perhaps may join us later in
the week.

At this time I would like to take
appearances of the parties, and we will start with
Ohio Power Company.

MR. NOURSE: Thank you, your Honor. On
behalf of the Ohio Power Company, Steven T. Nourse,
Michael J. Schuler, 1 Riverside Plaza, Columbus, Ohio

1 43215.

2 Also the law firm of Porter, Wright,
3 Morris & Arthur by Eric B. Gallon, 41 South High
4 Street, Columbus, Ohio 43125.

5 And also the law firm of Ice Miller,
6 Christopher L. Miller, that is 250 West Street,
7 Columbus, Ohio 43215.

8 EXAMINER SEE: On behalf of the Staff of
9 the Commission.

10 MR. MARGARD: Thank you, your Honor. On
11 behalf of the Staff of the Public Utilities
12 Commission of Ohio, Dave Yost, Ohio Attorney General,
13 John Jones, Section Chief, Public Utilities Section,
14 by Assistant Attorneys General Werner Margard,
15 Ambrosia Wilson, and Ashley Wnek, 30 East Broad
16 Street, 26th Floor, Columbus, Ohio.

17 EXAMINER SEE: On behalf of Ohio Energy
18 Group.

19 MR. KURTZ: Good morning, your Honors.
20 Mike Kurtz and Jody Cone for OEG.

21 EXAMINER SEE: On behalf of Armada Power,
22 LLC.

23 MR. ROMIG: Good morning, your Honors.
24 Drew Romig, Armada Power, LLC, 230 West Street,
25 Columbus, Ohio 43215.

1 EXAMINER SEE: Ohio Manufacturers'
2 Association Energy Group.

3 MS. BOJKO: Thank you, your Honors. On
4 behalf of the Ohio Manufacturers' Association Energy
5 Group, Kimberly W. Bojko, Emma Easley, with the law
6 firm Carpenter Lipps, 280 North High Street, Suite
7 1300, Columbus, Ohio 43215.

8 EXAMINER SEE: Citizens Utility Board of
9 Ohio.

10 MR. DOUGHERTY: Thank you, your Honors.
11 For Citizens Utility Board of Ohio, Trent Dougherty
12 of the law firm Hubay Dougherty, Grandview Heights,
13 Ohio 43212.

14 EXAMINER SEE: Ohio Partners for
15 Affordable Energy.

16 MR. BOBB: Good morning, your Honors.
17 Nicholas Bobb, Kegler, Brown, Hill & Ritter, 65 East
18 State Street, Suite 1800, Columbus, Ohio 43215.

19 EXAMINER SEE: Calpine Retail Holdings,
20 LLC.

21 MR. WHITT: Thank you. Mark Whitt from
22 Whitt Sturtevant LLP, 88 East Broad Street, Suite
23 1590, Columbus, Ohio 43215.

24 EXAMINER SEE: Nationwide Energy
25 Partners.

1 MR. ROMIG: Your Honor, again Drew Romig.
2 Add to the Armada Power.

3 EXAMINER SEE: I'm sorry. Speak up. Say
4 that again, please.

5 MR. ROMIG: I'm sorry. Forgot to mention
6 I was also representing Nationwide Energy Partners.

7 EXAMINER SEE: Okay. Ohio Hospital
8 Association.

9 MS. MAINS: Good morning, your Honors.
10 Rachael Mains with the Ohio Hospital Association,
11 from the law firm Bricker Graydon, 100 South Third
12 Street, Columbus, Ohio 43215.

13 EXAMINER SEE: ChargePoint, Inc.
14 Walmart, Incorporated.

15 MS. GRUNDMANN: Good morning, your Honor.
16 Carrie Grundmann with the law firm Spilman, Thomas &
17 Battle, 110 Oakwood Drive, Suite 500, Winston-Salem,
18 North Carolina 27103 on behalf of Walmart, Inc.

19 EXAMINER SEE: Interstate Gas Supply,
20 LLC.

21 MR. BETTERTON: Good morning, your
22 Honors. Evan Betterton on behalf of the Interstate
23 Gas Supply, LLC, 6100 Emerald Parkway, Dublin, Ohio
24 43016.

25 EXAMINER SEE: Environmental Law & Policy

1 Center.

2 MS. McCONNELL: Good morning, your
3 Honors. Erica McConnell on behalf of the
4 Environmental Law & Policy Center along with Rob
5 Kelter, 21 West Broad Street, Columbus, Ohio 43215.

6 EXAMINER SEE: Kroger Company.

7 MS. BOJKO: Your Honor, I have been asked
8 to make an appearance for Angela Paul Whitfield on
9 behalf of The Kroger Company, also the law firm
10 Carpenter Lipps, 280 North High Street, Suite 1300,
11 Columbus, Ohio 43215. She is in another hearing in
12 an out-of-state court and will be here as soon as she
13 can.

14 EXAMINER SEE: Okay.

15 MS. BOJKO: Thank you.

16 EXAMINER SEE: One Energy Enterprises,
17 Inc.

18 MR. DUNN: Good morning, your Honors.
19 This is James D. Dunn on behalf of the One Energy
20 Enterprises, Inc., at 12385 Township Road 215,
21 Findlay, Ohio 45840. And Marion H. Little from the
22 law firm of Zeiger, Tigges & Little at 3500
23 Huntington Center, Columbus, Ohio 43215.

24 EXAMINER SEE: Ohio Environmental
25 Council.

1 MS. NORDSTROM: Good morning, your Honor.
2 On behalf of the Ohio Environmental Council, Karin
3 Nordstrom and Chris Tavenor at 1145 Chesapeake
4 Avenue, Suite I, Columbus, Ohio 43212.

5 EXAMINER SEE: Ohio Consumers' Counsel.

6 MR. MICHAEL: Good morning, your Honors.
7 On behalf of AEP's residential utility consumers, the
8 Office of the Ohio Consumers' Counsel by Bill
9 Michael, Connor Semple, and Don Kral.

10 EXAMINER SEE: Retail Energy Supply
11 Association.

12 MR. PRITCHARD: On behalf of RESA, Matt
13 Pritchard, Avery Walke with the law firm McNees,
14 Wallace & Nurick, 250 West Street, Columbus, Ohio
15 43215.

16 EXAMINER SEE: Ohio Energy Leadership
17 Council.

18 MR. PROANO: Good morning, your Honors.
19 David Proano from Baker & Hostetler, 127 Public
20 Square, Cleveland, Ohio 44114.

21 EXAMINER SEE: Constellation Energy
22 Generation, LLC, and Constellation NewEnergy, Inc.

23 MR. SETTINERI: Good morning, your
24 Honors. On behalf of Constellation Energy
25 Generation, LLC, and Constellation NewEnergy, Inc.,

Michael Settineri and Gretchen Petrucci with the law
Vorys, Sater, Seymour and Pease, 52 East Gay Street,
Columbus, Ohio 43215.

EXAMINER SEE: Ohio Telecom Association.

MR. DARR: On behalf Ohio Telecom
Association, Frank Darr.

EXAMINER SEE: Ohio Cable
Telecommunications Association.

MS. PETRUCCI: Good morning, your Honors.
On behalf of the OCTA, the law firm Vorys, Sater,
Seymour and Pease, Gretchen Petrucci and Anna Sanyal.

EXAMINER SEE: Northeast Ohio Public
Energy Council.

MR. STINSON: Thank you, your Honor. On
behalf of the Northeast Ohio Public Energy Council,
the law firm of Bricker Graydon, LLP, by Dane
Stinson, 100 South Third Street, Columbus, Ohio
43215, and Glenn S. Krassen, General Counsel,
Northeast Ohio Public Energy Council, 31360 Solon
Road, Suite 33, Solon, Ohio 44139.

EXAMINER SEE: Enel North America, Inc.

MS. PIRIK: Thank you, your Honor.
Dickinson Wright, Christine Pirik and Terrence
O'Donnell, 180 East Broad Street, Suite 3400,
Columbus, Ohio.

1 EXAMINER SEE: Direct Energy Business,
2 LLC, and Direct Energy Services, LLC.

3 MR. McKENNEY: Good morning, your Honors.
4 Bryce McKenney on behalf Direct Energy Business, LLC,
5 and Direct Energy Services, LLC.

6 EXAMINER SEE: Did I omit any party?

7 Okay. I understand there is some matters
8 that the parties would like to bring to the Bench's
9 attention.

10 MR. NOURSE: Yes, your Honor. As we
11 indicated when we transmitted the proposed hearing
12 schedule, there was an issue raised by Calpine as to
13 whether parties or witnesses that filed original
14 testimony in response to the Company's Application
15 would be permitted to appear or support their
16 original testimony, and the Company would like to get
17 that issue resolved at the outset of the hearing. I
18 am happy to present my view on the matter, but if
19 Mr. Whitt wanted to make any proposals he might have,
20 that might streamline the discussion.

21 MR. MICHAEL: If I could provide some
22 context to Mr. Nourse, OCC filed both supplemental
23 testimony and direct testimony of Ramteen Sioshansi,
24 Dr. Sioshansi incorporated his direct testimony into
25 his supplemental testimony, so to the extent these

1 issues touch on the admissibility of Dr. Sioshansi's
2 direct testimony, we would like to have an
3 opportunity to be heard on that.

4 EXAMINER SEE: Okay.

5 MR. NOURSE: In my view I think that's a
6 separate issue but that would be addressed when he
7 takes the stand. I think this is a different issue
8 that was raised as to a party that did not file
9 testimony for or against the Stipulation per the
10 Examiner's entry.

11 EXAMINER SEE: Let's start with Calpine
12 first. Mr. Whitt.

13 MR. WHITT: Well, as a preliminary
14 matter, your Honor, I just wanted to make clear that
15 Calpine is certainly going to honor the existing
16 witness schedule. It is not suggesting that anybody
17 needs to be bumped to accommodate Calpine's
18 appearance. We simply request that Calpine's witness
19 be added to the case schedule so that we can submit
20 that witness's testimony.

21 Now, if there is no cross for this
22 witness, we could enter the --

23 EXAMINER SEE: But let's be clear, we are
24 talking about his -- his or her direct testimony
25 filed in the case in June.

1 MR. WHITT: In June responsive to the
2 Application.

3 EXAMINER SEE: Okay.

4 MR. WHITT: Since then, of course, we
5 have had a Stipulation which doesn't -- it is a
6 proposed resolution of the issues that the Commission
7 is free to accept, reject, modify. There are many
8 options available to the Commission.

9 And it is the Application that is
10 ultimately at play here and whether the evidence and
11 the Revised Code Section 4928.141 permits the Company
12 to implement its proposals. Parties that have filed
13 testimony supporting the Stipulation acknowledge the
14 relevance of the original Application. One of their
15 selling points for the Stipulation is their testimony
16 and their view that the Stipulation provides more
17 benefits than the Application did originally, and
18 they sort of walked -- walked through the changes
19 from the Application to -- to the Stipulation as they
20 are certainly free to do.

21 Calpine is not a signatory to the
22 Stipulation. And although the Bench invited parties
23 to file testimony in opposition to the Stipulation,
24 that wasn't necessary for Calpine to register its
25 nonacceptance of the Stipulation. It simply -- it

1 didn't sign the agreement and at this point frankly
2 hasn't formally opposed the Stipulation. Any party
3 is entitled to hear the evidence at hearing to decide
4 in briefing what position they may ultimately wish to
5 take.

6 So the only issue here is can we present
7 the testimony filed over four months ago that
8 everyone has had notice of. It was timely filed. If
9 there are specific objections when the witness is
10 called to testify, we can deal with those in the
11 ordinary course. But the suggestion that a
12 Stipulation somehow allows the signatory parties to
13 define the issues and decide who gets to testify and
14 who doesn't, that's just not supported in law.
15 That's our position.

16 MR. NOURSE: Your Honor, if I could
17 respond?

18 EXAMINER SEE: Yes.

19 MR. NOURSE: Thank you. Yes, first of
20 all, I think, you know, we are not -- the Company did
21 not say that the testimony that was filed originally
22 should be stricken from the record or anything like
23 that. It is part of the record in the case. It's
24 part of the docket, just like the supporting
25 testimony of the Company with the original

1 Application as well as the Intervenor testimony that
2 was filed, I believe, in June. And that does provide
3 context for the -- for the Stipulation.

4 But it doesn't -- it's not being admitted
5 into the evidentiary record for the truth of the
6 matter asserted or to litigate all the issues that
7 were presented with the original Application and
8 response to the original Application.

9 So leaving all that testimony in the
10 docket, in the record of the case, certainly is fine,
11 and it is referenced. It shows context, and it also
12 shows compromise, but it's not admitted to the
13 evidentiary record and in support of all the matters
14 addressed in that testimony.

15 You know, secondly, the Examiner did set
16 a schedule for this -- for this hearing and did
17 require and set a deadline for testimony in support
18 of and in opposition to the Stipulation. And unlike
19 a witness that might have filed, you know, testimony
20 under those deadlines in support of or in opposition
21 to the Stipulation, they could have incorporated
22 their direct or -- or modified it to add the
23 three-part test. You know, that's entirely different
24 than after the deadline has come and gone supporting
25 and opposing the Stipulation for a party to raise the

1 idea that they would submit their original testimony
2 that was -- that was not refiled under the deadlines
3 for this hearing.

4 This hearing we are here today for is
5 about the Stipulation; and, you know, it's governed
6 by the three-part test. It's well established by the
7 Commission and the Supreme Court. And the testimony
8 in support of or in opposition to the original
9 Application is not relevant, and the scope of that
10 original testimony is not relevant or probative of
11 the three-part test in addition to not following the
12 Examiner's deadlines set for this hearing.

13 I think additionally, your Honor, I don't
14 think there is precedent supporting this approach. I
15 think it would be a disincentive for parties in
16 settling cases before the Commission if you still
17 have to go into a full blown hearing and have all the
18 testimony supporting or opposing an Application in a
19 Stipulation hearing. This is a Stipulation hearing.

20 So I think that would be
21 counterproductive and a disincentive for settlement.
22 I don't think there's precedent supporting that
23 approach. I think it violates the deadlines you set
24 for this case, and we didn't have any notice of it.

25 So if we are going to be doing that, I

1 think it's a game changer. It's not just about
2 scheduling a witness on the hearing schedule. It's a
3 game changer in terms of really all parties should be
4 permitted to consider whether they want to file
5 original testimony and dramatically expand the scope
6 of this hearing.

7 So I don't advise that. I am not
8 recommending it, but I am saying it's certainly not a
9 narrow question of scheduling, and I think the
10 Calpine's request should be denied for those reasons.

11 EXAMINER SEE: Any other parties want to
12 respond briefly?

13 MR. WHITT: If I may, your Honor, if we
14 are going to enforce deadlines --

15 EXAMINER SEE: Just a moment, Mr. Whitt.
16 I indicated were there any other parties that wanted
17 to respond. Just a minute.

18 Okay. Thank you. Go ahead.

19 MR. WHITT: On the issue of deadlines,
20 there was a deadline set for motions to strike
21 testimony. AEP filed motions relative to other
22 witnesses' prefiled testimony but not Calpine's. So
23 everything Mr. Nourse just said is untimely,
24 everything. IGS raised a motion broadly referring to
25 all -- all testimony predating the Stipulation. They

1 asked that it be stricken without identifying
2 specifically which witnesses they are talking about
3 and why the testimony isn't relevant. And IGS is
4 here. Obviously they can present their case to
5 the -- to the Bench, but AEP wasn't the party that
6 did.

7 MR. NOURSE: Your Honor, just briefly
8 again, I said this earlier, but we are not asking for
9 any of that testimony that was filed in the docket to
10 be stricken. But we're opposing what was raised
11 after your deadline for testimony for and against the
12 Stipulation to call a witness that was filed in the
13 original proceeding, not the Stipulation proceeding.
14 And so we are opposing that which is at this point a
15 verbal motion to begin with. It's not a motion to
16 strike. Thank you.

17 MR. WHITT: If I may, your Honor? Filing
18 the testimony in the docket --

19 EXAMINER SEE: That's okay, Mr. Whitt.
20 We are going to go off the record for a second to
21 take an opportunity to review Mr. Whitt's motion from
22 Calpine and to consider the issues that were raised,
23 and we will be back in just a moment.

24 We are off the record.

25 (Recess taken.)

1 EXAMINER SEE: Let's go back on the
2 record.

3 There are two or three issues that are
4 interrelated here and I believe the first is one that
5 AEP Ohio has raised and it is more so rather whether
6 Calpine can present the testimony that its witness
7 filed back in June in regard to the Application
8 itself.

9 As Mr. Whitt acknowledges, there was an
10 entry from the Bench directing that testimony in
11 support of the Stipulation or testimony in opposition
12 to the Stipulation be filed in October -- September,
13 I'm sorry. Calpine did not take the opportunity to
14 file in regards to the Stipulation; and, therefore,
15 their prior testimony will not be able to be
16 presented at this point. It was more than an
17 invitation. It was directed by the Bench for the
18 administrative efficiency of the record in these
19 proceedings.

20 We will address IGS's motion on striking
21 of other testimony as that issue comes up.

22 MR. NOURSE: Thank you, your Honor. And
23 I have another preliminary matter, if you're ready to
24 move on.

25 EXAMINER SEE: I am.

1 MR. NOURSE: Thank you. And I just --
2 before we call witnesses, I want to introduce the --
3 on behalf of the signatory parties the Stipulation
4 that was docketed on September 6 and mark this as
5 Joint Exhibit 1, the Stipulation and Recommendation
6 along with the attachments that go with that --

7 EXAMINER SEE: Okay.

8 MR. NOURSE: -- ahead of any testimony.
9 Thank you.

10 (EXHIBIT MARKED FOR IDENTIFICATION.)

11 MR. SCHULER: Your Honor, may I approach
12 to hand this out?

13 EXAMINER SEE: Yes.

14 MR. NOURSE: That's all the Company had
15 preliminarily. We are ready to call our first
16 witness when you are ready.

17 EXAMINER SEE: Go ahead.

18 MR. SCHULER: Your Honor, at this time
19 Ohio Power Company calls Jaime Mayhan to the stand.

20 EXAMINER SEE: Ms. Mayhan, if you would
21 cut your microphone on. Okay. Please raise your
22 right hand.

23 (Witness sworn.)

24 EXAMINER SEE: Thank you.

25 Go ahead, Mr. Schuler.

1 MR. SCHULER: Thank you, your Honor. At
2 this time I would like to mark three exhibits. May I
3 approach, your Honor?

4 EXAMINER SEE: Yes.

5 MR. SCHULER: All right. First exhibit
6 is AEP Ohio Exhibit 1 which is Ohio Power Company's
7 Application for an electric security plan filed on
8 January 6, 2023.

9 The second exhibit we would like to have
10 marked as AEP Ohio Exhibit 2 which is the Direct
11 Testimony of Jaime L. Mayhan in Support of the Joint
12 Stipulation and Recommendation filed on September 11,
13 2023.

14 And we would like to have marked as AEP
15 Ohio Exhibit No. 3, the 2nd Revised Tariff Sheet
16 No. 220 and 272.

17 EXAMINER SEE: Repeat that tariff sheet
18 number, please.

19 MR. SCHULER: I'm sorry, your Honor?

20 EXAMINER SEE: Repeat the tariff sheet
21 number.

22 MR. SCHULER: Yes. It's 2nd Revised
23 Tariff Sheet No. 220 and 272. And the witness will
24 further explain AEP Ohio Exhibit 3. May I approach
25 and hand out, your Honor, once they are so marked?

1 EXAMINER SEE: Yes. They are marked.

2 (EXHIBITS MARKED FOR IDENTIFICATION.)

3 MR. SETTINERI: Mr. Schuler, while you
4 are handing those out, the Company Application, AEP
5 Ohio Exhibit 1, is that the -- is that -- what is it?
6 22 pages to the signature page with the legal notice
7 Attachment 1 attached? That's the final?

8 MR. SCHULER: It's the as filed from the
9 docket, yes.

10 MR. SETTINERI: Okay.

11 MR. SCHULER: Your Honor, just for
12 clarity AEP Ohio Exhibits 1 and 2 are docketed items.
13 In response to Mr. Settineri's question, AEP Ohio
14 Exhibit 3 is a non-docketed item. It is an issue we
15 brought to all the parties' attention yesterday
16 afternoon. We will have Witness Mayhan discuss it.
17 We did bring copies for I believe everyone in the
18 room.

19 MR. WHITT: If I may, your Honor, based
20 on your ruling on the what would be -- what's the
21 scope of testimony at hearing, the Application was
22 not refiled with testimony in support of the
23 Stipulation, and I think your ruling prohibits the
24 discussion of that document now.

25 MR. SCHULER: If I may, your Honor?

1 EXAMINER SEE: Go ahead.

2 MR. SCHULER: The Application is
3 referenced in the Stipulation. It is adopted unless
4 otherwise amended by the Stipulation, so it has been
5 provided as context and is relevant to the discussion
6 today. It is also our understanding the Commission
7 generally likes to have that in the record when it is
8 being referenced by the Stipulation, so we have done
9 it as a courtesy.

10 EXAMINER SEE: Thank you. And we will
11 move on. Go ahead.

12 MR. SCHULER: Thank you, your Honor.

13 - - -

14 JAIME L. MAYHAN
15 being first duly sworn, as prescribed by law, was
16 examined and testified as follows:

17 DIRECT EXAMINATION

18 By Mr. Schuler:

19 Q. Good morning, Ms. Mayhan.

20 A. Good morning.

21 Q. Could you please state your name and
22 business address for the record?

23 A. Yes. It's Jaime Mayhan, 700 Morrison
24 Road, Gahanna, Ohio 43230.

25 EXAMINER SEE: Ms. Mayhan, please pull

1 the mic down. Make sure you use it. Thank you.

2 THE WITNESS: You're welcome.

3 Q. (By Mr. Schuler) Do you have before you
4 what has been labeled as Joint Exhibit 1?

5 A. Yes.

6 Q. What do you recognize that to be?

7 A. This is the Joint Stipulation and
8 Recommendation.

9 Q. And this is the Joint Stipulation and
10 Recommendation that is referenced in your testimony
11 that is AEP Ohio Exhibit 2, correct?

12 A. Yes.

13 Q. Do you also have before you what has been
14 marked as AEP Ohio Exhibit 1?

15 A. Yes.

16 Q. What do you recognize that to be?

17 A. This is the Company's Application for the
18 ESP plan filed on January 6, 2023.

19 Q. And that is the same Application that you
20 also reference in your testimony and is referenced in
21 the Stipulation that is in Joint Exhibit No. 1,
22 correct?

23 A. Correct.

24 Q. Do you also have before you what is
25 marked as AEP Ohio Exhibit No. 2?

1 A. Yes.

2 Q. And what do you recognize that to be?

3 A. This is my prefiled testimony.

4 Q. It was filed in support of the
5 Stipulation and Recommendation in this case?

6 A. Yes.

7 Q. Was that testimony prepared by you or at
8 your direction?

9 A. Yes, it was.

10 Q. Do you have any amendments to your
11 testimony that is in AEP Ohio Exhibit No. 2?

12 A. Yes, I do.

13 Q. Could you please walk us through those
14 edits.

15 A. Yes. I have two edits. The first edit
16 is on page 14. Under question 24, row 18, the last
17 part of the sentence has the word "federal," so it
18 has "will be offset with a credit for federal funds."
19 "Federal" should be changed to "state."

20 And then the second correction is on page
21 20 under Table 1. At the bottom there is a note
22 section. Under Note 1 at the end of that it has
23 "\$36.31 per." After "per," it should say "month."

24 And that's all I have.

25 Q. Thank you. Now, I understand you have

1 identified corrections to two of the tariffs that
2 were filed as part of the Stipulation that is
3 presented as Joint Exhibit No. 1, correct?

4 A. Correct.

5 Q. Do you have before you what is AEP Ohio
6 Exhibit No. 3?

7 A. I do.

8 Q. Can you identify what that is?

9 A. Yes. These are the revised tariff sheets
10 that were attached to the Joint Stipulation and
11 Recommendation that's Exhibit 1.

12 Q. Could you walk us through the corrections
13 that you identified and are, therefore, captured in
14 AEP Ohio Exhibit No. 3?

15 A. Yes. On page -- on Sheet No. 220-7, the
16 Pilot Distribute -- Distributed Generation Service,
17 in the rate box where it has "Primary," I've added
18 the word "Secondary" and that's to the left of where
19 the demand and charge rate is of 8.99 and 138.50.
20 And then down below underneath the Monthly Billing
21 Demand paragraph, the sentence under that paragraph
22 towards the end we've added the word "Secondary"
23 after "Primary."

24 And then the other change is related to
25 the Schedule Bus PEV Rate. So between the paragraphs

1 of Minimum Charge and Delayed Payment Charge, we are
2 deleting the monthly demand charge because as filed,
3 this rate does not include a monthly demand charge.
4 It's only an energy charge and a customer charge.

5 Q. Thank you.

6 A. You're welcome.

7 Q. If I were to ask you the same questions
8 today that are contained in your testimony on AEP
9 Ohio Exhibit No. 2, subject to the amendments that
10 you just discussed this morning, would your answers
11 be the same?

12 A. Yes, they would.

13 MR. SCHULER: At this time, your Honor,
14 the Company would offer Ms. Mayhan up for
15 cross-examination and move for the admission of
16 Exhibits -- AEP Ohio Exhibits 1 through 3, subject to
17 that cross-examination.

18 EXAMINER SEE: Any cross for this
19 witness, OEG?

20 MR. KURTZ: No, your Honor.

21 EXAMINER SEE: Armada?

22 MR. ROMIG: No, your Honor. No, your
23 Honor.

24 EXAMINER SEE: Ohio Manufacturers'
25 Association Energy Group?

1 MS. BOJKO: No, thank you, your Honor.
 2 EXAMINER SEE: Citizens Utility Board?
 3 MR. DOUGHERTY: No, your Honor.
 4 EXAMINER SEE: Ohio Partners for
 5 Affordable Energy?
 6 MR. BOBB: None, your Honor.
 7 EXAMINER SEE: Ohio Hospital Association?
 8 MS. MAINS: No, your Honor.
 9 EXAMINER SEE: Walmart, Inc.?
 10 MS. GRUNDMANN: No, your Honor.
 11 EXAMINER SEE: Interstate Gas Supply?
 12 MR. BETTERTON: No questions, your Honor.
 13 EXAMINER SEE: Environmental Law & Policy
 14 Center?
 15 MS. McCONNELL: No, your Honor.
 16 EXAMINER SEE: Kroger Company?
 17 MS. BOJKO: No, your Honor.
 18 EXAMINER SEE: Ohio Environmental
 19 Council?
 20 MS. NORDSTROM: No, your Honor.
 21 EXAMINER SEE: Retail Energy Supply
 22 Association?
 23 MR. PRITCHARD: No questions, your Honor.
 24 EXAMINER SEE: Ohio Energy Leadership
 25 Council?

1 MR. PROANO: No questions, your Honor.
2 EXAMINER SEE: Ohio Telecom Association?
3 MR. DARR: No questions, your Honor.
4 EXAMINER SEE: Enel North America?
5 MS. PIRIK: No, your Honor.
6 EXAMINER SEE: Direct Energy?
7 MR. McKENNEY: No questions, your Honor.
8 Thank you.
9 EXAMINER SEE: Staff?
10 MR. MENDOZA: No, thank you, your Honor.
11 EXAMINER SEE: Okay. Calpine?
12 MR. WHITT: No questions.
13 EXAMINER SEE: Nationwide Energy
14 Partners?
15 MR. ROMIG: No, your Honor.
16 EXAMINER SEE: ChargePoint Inc.?
17 Chargepoint, Inc.
18 One Energy?
19 MR. LITTLE: No questions, your Honor,
20 thank you.
21 EXAMINER SEE: OCC?
22 MR. SEMPLE: Yes, your Honor.
23 EXAMINER SEE: Go ahead.

24 - - -
25

CROSS-EXAMINATION

By Mr. Semple:

Q. Good morning. My name is Connor Semple. I have a few questions for you. But before I ask them, could you turn to page 24 of your testimony. Please let me know when you are there.

A. Okay. Okay.

Q. At page 24, question 34, you testify that the settlement does not violate any important regulatory principle or practice, right?

A. Correct.

Q. And there are no other questions and answers in your testimony about regulatory principles and practices, right?

A. This is the main section that discusses regulatory principle and practice.

Q. Thank you. Now, it's your testimony that the settlement promotes state of Ohio policies that are articulated in Revised Code 4928.02, right?

A. I'm sorry. Can you repeat that question?

MR. SEMPLE: Your Honor, could I have the record reread?

EXAMINER SEE: Sure.

(Record read.)

A. Correct.

1 Q. And that statute it's structured as a
2 list of policies, right?

3 A. Yes.

4 Q. Now, you didn't testify that any
5 individual term in the settlement promotes any
6 individual policy listed in Revised Code 4928.02,
7 right?

8 A. Right.

9 Q. And you didn't describe how the
10 settlement viewed as a package promotes any
11 individual policy listed in Revised Code 4928.02,
12 right?

13 MR. SCHULER: Could I have that question
14 reread, please?

15 EXAMINER SEE: Sure.

16 (Record read.)

17 A. I would say based on my testimony, I just
18 mention on page 24 "None of the individual provisions
19 of the Stipulation is inconsistent or violates any
20 important Commission principle or practice."

21 MR. SEMPLE: Your Honor, I would move to
22 strike that as nonresponsive. She's just repeating
23 her testimony. That's -- that's not an answer to my
24 question.

25 MR. SCHULER: Your Honor, he's asked

1 about what the testimony is and she's answered what
2 the testimony is. It's already in the testimony. It
3 seems like an appropriate answer.

4 EXAMINER SEE: Her answer stands.

5 Q. (By Mr. Semple) Other than --

6 MR. SEMPLE: Thank you, your Honor.

7 EXAMINER SEE: Uh-huh.

8 Q. (By Mr. Semple) Other than repeating the
9 text of Revised Code 4928.02, did you apply the
10 principles in that statute to the settlement as a
11 whole and describe whether they are met or not met by
12 the settlement?

13 A. I am saying that in my testimony the
14 compromise reached by the diverse set of signatory
15 parties results in a Stipulation that promotes these
16 regulatory principles and policies.

17 Q. And you provide no additional analysis
18 beyond what you've just read for me?

19 MR. SCHULER: Objection, asked and
20 answered.

21 MR. SEMPLE: Your Honor, if I may?

22 EXAMINER SEE: Go ahead.

23 MR. SEMPLE: I am just clarifying whether
24 there is any analysis in the testimony on the third
25 prong of the PUCO settlement standard other than the

1 text of the Revised Code Statute we've been
2 discussing.

3 EXAMINER SEE: The witness can answer the
4 question. Do you need it read back to you?

5 THE WITNESS: No, thanks.

6 A. I think it's the same question I was
7 asked before, and I will just state that none of the
8 individual provisions of the Stipulation is
9 inconsistent or violates any important Commission
10 principle or practice and that relates to all of my
11 testimony.

12 Q. Okay. Thank you. Now, can you turn to
13 page 25 for me. You testified that one regulatory
14 principle and practice the settlement promotes is
15 that of Revised Code 4928.02(L) which makes it a
16 policy of the state of Ohio to, in part, protect
17 at-risk populations, right?

18 A. Correct.

19 Q. Those at-risk populations include low
20 income residential consumers, right?

21 A. Yes.

22 Q. You didn't analyze any consumer household
23 income data regarding AEP electric residential
24 consumers, did you?

25 A. Not specifically.

1 Q. And you didn't analyze any AEP
2 residential consumer average household savings data,
3 did you?

4 A. I did analyze some of the savings for low
5 income residents related to our income efficiency
6 program.

7 Q. Did you analyze household savings for
8 non-low income consumers?

9 A. Not specifically.

10 Q. And you didn't analyze the cost of living
11 in AEP's service territory, did you?

12 A. No, I did not.

13 Q. Now, Ms. Mayhan, you provide the
14 settlement provides for a 2 percent rate increase in
15 2024 for a typical consumer using 1,000
16 kilowatt-hours per month, right?

17 A. Can you repeat the question, please?

18 MR. SEMPLE: Your Honor, could I have the
19 record reread?

20 EXAMINER SEE: Sure.

21 (Record read.)

22 A. Subject to check the math but, no, I
23 don't believe that's correct, the amounts you have
24 stated.

25 Q. Did you read the testimony of Staff

1 Witness Chris Healey in this case?

2 A. Yes.

3 Q. Do you disagree with the -- did you
4 disagree with his testimony on the amount of the rate
5 increase under the settlement?

6 MR. SCHULER: Objection. That is not a
7 part of the record at this point. He is asking it
8 extemporaneously without putting it in front of the
9 witness, and it is also not Ms. Mayhan's testimony.

10 MR. SEMPLE: Your Honor, she said that
11 she read it.

12 MR. SCHULER: Recalling what is
13 specifically in that testimony, your Honor, is a
14 difficult thing to do on the stand and to be able to
15 opine accordingly.

16 MR. SEMPLE: Your Honor, she said she
17 disagreed with it. If she doesn't remember, she is
18 able to say that.

19 MR. SCHULER: I believe -- sorry.

20 EXAMINER SEE: That's not the -- the
21 objection is sustained.

22 MR. SEMPLE: Your Honor, can you clarify
23 what line of questioning you would like me to stay
24 away from?

25 EXAMINER SEE: What line of questioning I

1 want you to stay away from? Do you want to reask
2 your question or restate it?

3 MR. SEMPLE: Sure. Your Honor, I am
4 really just asking whether the witness accepts the
5 testimony of Chris Healey regarding the percent rate
6 increase that this settlement calls for on electric
7 residential consumers in the year 2024.

8 EXAMINER SEE: And if I recall -- I'll
9 let you -- you can ask that question.

10 MR. SCHULER: So I'm a bit unclear on
11 what question is pending right now.

12 EXAMINER SEE: I think Mr. Semple
13 restated -- read the question back, Karen. Let me
14 just be certain.

15 (Record read.)

16 MR. SCHULER: Objection again, your
17 Honor. It is lack of foundation.

18 MR. SEMPLE: I can rephrase. I can
19 rephrase.

20 EXAMINER SEE: Okay.

21 MR. SEMPLE: Thank you.

22 Q. (By Mr. Semple) Ms. Mayhan, in your
23 analysis of the settlement, does the settlement
24 increase electric rates for residential utility
25 consumers?

1 A. Yes, it does.

2 Q. By what percentage monthly in the year
3 2024?

4 A. Depending on how you are looking at it.
5 So I offered two views within my testimony. So on
6 page 20, there is a traditional view. So in 2024,
7 based off this traditional view, it would assume that
8 all costs are spent, and we file our updated rider
9 filings right away effective, assuming the Commission
10 orders -- an Opinion and Order goes out for this ESP
11 case and that would be 2 percent.

12 And on page 20 and 21, if you look at the
13 actual rider filings as they occur, because some of
14 these rider filings happen on a quarterly, annual,
15 semi-annual basis, and based off of that analysis of
16 the customer bill impacts, it would be .5 percent in
17 2024.

18 Q. But you didn't analyze whether a
19 .5 percent rate increase in 2024 would increase
20 disconnections for nonpayment, did you?

21 A. No, I did not.

22 Q. And you didn't estimate how many more
23 consumers may be disconnected after a .5 percent rate
24 increase than are currently per month under AEP's
25 current ESP, right?

1 A. Correct. I did not analyze that or -- as
2 well as I didn't analyze how many less disconnections
3 there would be if we are able to offer an energy
4 efficiency program that's able to save low-income
5 customers money and reduce their rates.

6 Q. Okay. Thank you. Now, Ms. Mayhan, the
7 policies that are listed in revised 4928.02 are not
8 the only important regulatory practices or principles
9 that the PUCO recognized, right?

10 A. I would say these are the main regulatory
11 principles and practices.

12 Q. So you didn't analyze in your testimony
13 any PUCO decisions establishing important regulatory
14 practices and principles that are not listed in
15 Revised Code 4928.02, right?

16 MR. SCHULER: Objection, foundation. For
17 clarity, your Honor, we haven't established they
18 exist.

19 EXAMINER SEE: I'll let the witness
20 answer the question, and the objection is overruled.

21 A. Can you repeat the question, please?

22 MR. SEMPLE: Your Honor, could I have the
23 record reread?

24 EXAMINER SEE: Yes.

25 (Record read.)

1 A. Not that I recall.

2 Q. Okay. Thank you. Ms. Mayhan, if you
3 could, please turn to page 19. I have some questions
4 about Q and A32 on that page, beginning on that page.

5 A. Okay. I'm there.

6 Q. You know what, I would like to ask you
7 about Q and A33 on the same page, if that's all
8 right.

9 A. Okay.

10 Q. You testified that the settlement
11 benefits consumers and the public interest, right?

12 A. Yes.

13 Q. And in your view one of the benefits to
14 consumers and the public interest under the
15 settlement is an improvement in AEP's reliability,
16 right?

17 A. Yes.

18 Q. And you testified that the settlement
19 provisions related to the DIR in your view will
20 improve AEP's reliability, right?

21 A. They will improve or maintain
22 reliability.

23 Q. You're familiar with a metric known as
24 the Customer Average Interruption Duration Index, or
25 CAIDI?

1 A. Yes.

2 Q. You didn't estimate to what extent DIR
3 spending under the settlement will improve AEP's
4 CAIDI metrics, right?

5 A. That's correct.

6 Q. You're familiar with the System Average
7 Interruption Frequency Index, or SAIFI?

8 A. Yes.

9 Q. You didn't estimate to what extent, if
10 any, DIR spending under the settlement will impact
11 AEP's SAIFI metrics either, right?

12 A. Correct.

13 Q. You testify that settlement provisions
14 related to the ESRR will improve AEP's reliability,
15 correct?

16 A. Yes.

17 Q. You testify that the settlement
18 provisions on the BTCR will improve reliability,
19 correct?

20 A. Yes.

21 Q. You testified that settlement provisions
22 related to the IRP will improve reliability, correct?

23 MR. SCHULER: Objection,
24 mischaracterization.

25 EXAMINER SEE: Elaborate, Mr. Schuler.

1 MR. SCHULER: I'm sorry, your Honor?

2 EXAMINER SEE: You want to elaborate on
3 your objection?

4 MR. SCHULER: Yeah. Mr. Semple seems to
5 be quoting from the testimony and is
6 mischaracterizing the prefiled testimony. I can
7 expand further.

8 EXAMINER SEE: Yes.

9 MR. SCHULER: There are two specific
10 issues. I can get into them, your Honor, if you
11 would like further --

12 EXAMINER SEE: Briefly, yes.

13 MR. SCHULER: The first is as Witness
14 Mayhan has said in her testimony and also said on the
15 stand here today, there's maintain and/or improve
16 which is an inaccurate characterization when he is
17 only saying improve. And there's other portions that
18 say could improve, not will improve.

19 EXAMINER SEE: Okay.

20 MR. SEMPLE: I'm happy to rephrase.

21 EXAMINER SEE: All right.

22 Q. (By Mr. Semple) It's your testimony that
23 the provisions related to the IRP could maintain or
24 improve AEP's reliability performance, right?

25 A. Yes.

1 Q. Thank you. Now, you didn't analyze the
2 impact of the ESRR on AEP's CAIDI performance, right?

3 A. No, I did not specifically, but looking
4 historically since we -- the ESRR program began in
5 2010. From 2021 reliability has improved by
6 80 percent, and the Commission in previous orders has
7 seen the benefits of this vegetation management
8 program that we have and the impacts that it has to
9 improve reliability.

10 Q. Okay. But in your testimony you don't
11 estimate -- you don't -- can I strike that?

12 In your testimony you don't quantify
13 expected improvements to CAIDI attributed to the ESRR
14 terms in the settlement, right?

15 A. No. That will be done at a different
16 time in our reliability standards case.

17 Q. And for that reason, you don't quantify
18 the impact of the ESRR in the settlement on AEP's
19 projected future SAIFI performance either, right?

20 A. Right. This is the settled amount based
21 off serious bargaining with capable parties. We do
22 feel like this is a sufficient amount to maintain or
23 improve our reliability despite rising costs and
24 equipment costs increasing. It will allow us to
25 complete our four-year trim cycle while also focusing

1 on trees outside of right-of-way which is a major
2 factor in our reliability.

3 Q. Your testimony doesn't quantify CAIDI or
4 SAIFI improvements projected for the future
5 attributed to the BTCR, right?

6 A. That's correct.

7 Q. And your testimony doesn't quantify
8 projected CAIDI or SAIFI improvements attributed to
9 the IRP, right?

10 A. Correct.

11 Q. Thank you. Your testimony doesn't
12 identify any -- actually no. Strike that.

13 Ms. Mayhan, I would like to move on to my
14 final set of questions about Q and A32 which is also
15 on page 19. Are you there, Ms. Mayhan?

16 A. Yes.

17 Q. Thank you. At Q and A32 you testify that
18 the settlement is the product of serious bargaining
19 among capable, knowledgeable parties, right?

20 A. Yes.

21 Q. And on page -- at page 3 of your
22 testimony in response to question 8, and I will give
23 you a moment to get there before you answer, you
24 identify Ohio Partners for Affordable Energy and the
25 Citizens Utility Board as signatory parties that

1 represent customers, right?

2 A. Yes.

3 Q. And when you say customers, that includes
4 AEP's residential consumers, right?

5 A. Yes.

6 Q. And in response to question 8, you state
7 that Ohio Partners for Affordable Energy advocates
8 for low-income consumers, right?

9 A. Yes. It says "low income customer
10 advocates."

11 Q. Thank you. And you testify the same
12 about the Citizens Utility Board, right?

13 A. Yes.

14 Q. But, Ms. Mayhan, most AEP consumers do
15 not qualify as low income, right?

16 A. What do you define as most?

17 Q. A majority.

18 A. Over 50 percent?

19 Q. Yes.

20 A. Yeah, I would agree.

21 Q. And you didn't identify any signatory
22 party that represents non-low income residential
23 electric consumers, did you?

24 MR. SCHULER: Objection,
25 mischaracterization.

1 EXAMINER SEE: I believe the witness has
2 already answered.

3 MR. SCHULER: Sorry. I didn't hear it.

4 EXAMINER SEE: Did you answer that
5 question?

6 THE WITNESS: I did not.

7 EXAMINER SEE: Okay. All right.

8 A. Yeah. I know it's stated as low-income
9 customer advocates. You know, I think they would
10 support all customers, subject to check.

11 Q. You didn't discuss with OP&E or the
12 Citizens Utility Board what residential electric
13 consumers they represent, did you?

14 A. No, I did not.

15 Q. You didn't review any analysis OP&E did
16 regarding the impact of the rate increase on
17 consumers' ability to pay their electric bills, did
18 you?

19 MR. SCHULER: Objection, foundation and
20 also to the extent it calls for confidential
21 settlement communications.

22 EXAMINER SEE: Without revealing anything
23 that happened during the settlement conference or
24 what was done in the settlement, I am going to allow
25 the witness to answer the question.

1 A. I don't recall.

2 Q. You didn't review any analysis that --

3 MR. SEMPLE: Your Honor, for my benefit
4 could I have the question and answer reread?

5 EXAMINER SEE: Sure.

6 (Record read.)

7 MR. SEMPLE: Thank you.

8 Q. (By Mr. Semple) You didn't review any
9 analysis that the Citizens Utility Board did
10 regarding the impact of the rate increase on
11 residential consumers' ability to pay their electric
12 bills either, right?

13 MR. SCHULER: Same objection, your Honor,
14 to the extent it reveals confidential settlement
15 communications. We have also not laid foundation
16 that such communications or information exists.

17 EXAMINER SEE: I am going to allow the
18 witness to answer the question without revealing any
19 confidential information or the settlement
20 discussions.

21 A. Not that I recall.

22 MR. SEMPLE: Thank you, Ms. Mayhan. I
23 have no further questions.

24 EXAMINER SEE: Constellation NewEnergy?

25 MR. SETTINERI: Yep. Thank you, your

Honor.

- - -

CROSS-EXAMINATION

By Mr. Settineri:

Q. Good morning, Ms. Mayhan.

A. Good morning.

Q. My name is Mike Settineri representing Constellation, and I have some questions for you this morning. First of all, you started your current position approximately in November of 2021, correct?

A. It was in October of 2021.

Q. Thank you. Thank you. If you could turn to page 2 of your testimony, please. Are you there?

A. Yes.

Q. At the line 21, you state "Specifically, my testimony supports the conclusion that the Stipulation:" and then you have 1, 2, and 3 listed carrying over to the top of page 3 and relating to the three-prong test for the test for the Stipulation, correct?

A. Yes.

Q. Okay. Now, you agree with me that as to the three-prong test as set forth in your testimony, that it's the Commission that makes the determination on that test, correct?

1 A. Yes.

2 Q. Okay. And you would agree with me that
3 the Commission will make that determination taking
4 into consideration the evidence that's submitted in
5 this proceeding, correct?

6 A. Yes.

7 Q. Okay. Now, you agree that AEP Ohio was
8 concerned about the increase in customer bills that
9 took place specifically for nonshopping customers on
10 default service in June of 2023 as a result of
11 increased SSO pricing, correct?

12 MR. SCHULER: Objection, compound.

13 EXAMINER SEE: You want to restate that,
14 Mr. Settineri?

15 MR. SETTINERI: Sure.

16 Q. (By Mr. Settineri) You agree that AEP
17 Ohio was concerned earlier this year about the
18 increase in nonshopping customer bills as a result of
19 increased SSO pricing, correct?

20 MR. SCHULER: Objection, still compound.

21 MR. SETTINERI: It's not compound.

22 MR. SCHULER: Your Honor, we are asking
23 about concerns. We are also asking about the reason
24 for those concerns, and we also haven't laid a
25 foundation that those -- haven't established that the

1 witness is aware of it.

2 MR. SETTINERI: Your Honor, it is not a
3 compound question. That's all I will say.

4 MR. SCHULER: If we could just break it
5 up a little bit.

6 EXAMINER SEE: Break it up,
7 Mr. Settineri.

8 MR. SETTINERI: I would be glad to, your
9 Honor.

10 Q. (By Mr. Settineri) Ms. Mayhan, you are
11 aware that starting in June of 2023, there was an
12 increase in nonshopping customer bills as a result of
13 an SSO auction price increase, correct?

14 A. Yes.

15 Q. Okay. And you would agree that AEP was
16 concerned about those price increases as to the
17 impact to the nonshopping customers, correct?

18 A. Yes.

19 Q. Okay. And AEP Ohio communicated to
20 nonshopping customers about those concerns, correct?

21 A. Yes. We did a lot of communications.

22 Q. If you could turn to page 5, line 6, of
23 your testimony, please.

24 A. Okay.

25 Q. There -- and I will paraphrase but lines

1 5 to 6 the Stipulation -- you say "the Stipulation,
2 the Company agrees to withdraw the Governmental
3 Aggregation Standby Rider with prejudice." Do you
4 see that?

5 A. Yes.

6 Q. What does with prejudice mean to you?

7 A. That means that we will not bring it up
8 in another case.

9 Q. All right. And that means forever,
10 correct?

11 A. Right.

12 Q. Okay. Now, let's turn to the Stipulation
13 which has been marked as Joint Exhibit 1, please.
14 And we are going to turn to Section III.B.2. And
15 that would be at -- starting at page 5, page numbered
16 5 of the Joint Exhibit 1.

17 A. Okay.

18 Q. Now, there -- and I will read part of it
19 starting at after part 2, "The Signatory Parties
20 recommend that all Intervenor proposals for SSO/CBP
21 modifications in this case be dismissed without
22 prejudice but may be considered in other SSO-related
23 proceedings." Did I read that correctly?

24 A. Yes.

25 Q. Now, you've never seen a recommendation

1 for dismissal of Intervenor proposals in the
2 Stipulation prior to this proceeding, correct?

3 A. Can you repeat that, please?

4 Q. You've never seen language like this in a
5 Stipulation previously, correct?

6 A. I don't recall.

7 Q. And the Stipulation anticipates that it
8 will be the Commission that dismisses those
9 Intervenor proposals; is that correct?

10 A. Yes, with approval and opinion of this
11 Stipulation.

12 Q. And you anticipated my next question
13 which would be and that dismissal would be through an
14 order of the Commission, correct?

15 A. Yes.

16 Q. Now, what does without prejudice mean in
17 that sentence that we just went through?

18 A. That would mean it could be opened up in
19 another case.

20 Q. Now, the Stipulation doesn't -- let me
21 strike that.

22 The Stipulation with language in that
23 sentence that states may be considered in other
24 SSO-related proceedings does not require the
25 Commission to open a proceeding to consider those

1 proposals, correct?

2 A. Correct.

3 Q. Okay. So it may or may not happen.

4 A. Correct.

5 Q. Okay. Now, the Intervenor's proposals
6 that are referenced in that sentence we just went
7 through, those relate to proposals by the Ohio
8 Consumers' Counsel and the Constellation entities,
9 correct?

10 A. As related to all proposals.

11 Q. Okay. What are all the proposals that
12 you are -- that that Stipulation is addressing in
13 that section?

14 A. The proposals that would be dismissed?

15 Q. Uh-huh.

16 A. I can't recall all of them.

17 Q. Do you know some of them?

18 A. Yes.

19 Q. What are the some?

20 A. One would be that we do a separate
21 auction by class, residential and nonresidential.
22 Others I could summarize it as what's called a
23 circuit breaker where a certain percentage of
24 switching over/under a threshold, it would change. I
25 don't know all the details by heart but those are the

1 two main ones that I recall.

2 Q. Okay.

3 A. There may have been others.

4 Q. Okay. Now, sitting here today, you don't
5 know whether the Commission has authority to issue an
6 order dismissing the proposals referenced in Section
7 III.B.2 of the Stipulation, correct?

8 A. I'm sorry. Can you repeat that?

9 Q. Yeah. You don't know whether the
10 Commission has the authority to issue an order
11 dismissing the proposals referenced in Section
12 III.B.2 of the Stipulation, correct?

13 MR. SCHULER: Objection, calls for a
14 legal conclusion.

15 MR. SETTINERI: Your Honor, I am just
16 asking to her knowledge as Director of Regulatory.
17 If she doesn't know, she doesn't know.

18 EXAMINER SEE: The objection is overruled
19 with the understanding that the witness is not an
20 attorney. You can answer the question, Ms. Mayhan.

21 A. I don't know, but just reading the
22 Stipulation, "If a final order is subsequently issued
23 by the Commission in another proceeding that modifies
24 the SSO/CBP, the Company consents to continuing
25 jurisdiction."

1 Q. Okay. All right. Now, you don't have an
2 opinion whether the Commission has the authority to
3 consider changes to AEP's Ohio CBP and its SSO
4 outside of an ESP proceeding, correct?

5 A. My apologies. Do you mind repeating
6 that?

7 Q. Sure. I will slow it down. You don't
8 have an opinion whether the Commission has the
9 authority to consider changes to AEP Ohio's CBP and
10 its SSO outside of an ESP proceeding, correct?

11 A. Our opinion in this is that we consent to
12 continuous jurisdiction.

13 Q. Now, in that sentence in Section III.B.2,
14 the first sentence, again, "but may" -- I am reading
15 part of the sentence, "but may be considered in other
16 SSO-related proceedings," do you see that language?

17 A. Yes.

18 Q. Okay. What other SSO-related proceedings
19 are being referenced in that section of the Stip?

20 A. I don't recall.

21 Q. Okay. Now, the CBP in place today for
22 AEP Ohio, that -- that requires a full requirements
23 auction product, correct?

24 A. Yes.

25 Q. And both the application and this

1 proceeding and the Stipulation provide for a true-up
2 process that could be used to account for a proxy
3 capacity price, correct?

4 A. Yes.

5 Q. Now, just to be clear, the proxy capacity
6 price recommended in the Stipulation and the
7 Application will only address the capacity component
8 of a Standard Service Offer, correct?

9 A. Yes.

10 Q. Now, you would agree that an SSO supplier
11 does not have risk in pricing capacity in an SSO
12 auction if the capacity price is later trued up,
13 correct?

14 MR. SCHULER: Objection. Beyond the
15 scope of this witness's knowledge. She's here to
16 testify about the Stipulation. She cannot testify on
17 behalf of CRES providers. As a matter of fact,
18 Mr. Settineri represents a CRES provider and has put
19 on a witness in this case.

20 EXAMINER SEE: Let me hear the question
21 again.

22 MR. SETTINERI: Your Honor, I will
23 respond when you are ready.

24 EXAMINER SEE: Let's hear the question
25 again.

1 (Record read.)

2 Q. (By Mr. Settineri) You agree that an SSO
3 supplier does not have risk in pricing capacity in an
4 SSO auction if the capacity price is later trued up,
5 correct?

6 EXAMINER SEE: Then there was an
7 objection. Okay. Now --

8 MR. SETTINERI: Your Honor, she's
9 testifying on the Stipulation which has CBP. She is
10 testifying on the proxy. So certainly it's a fair
11 question to ask.

12 MR. SCHULER: Your Honor --

13 MR. SETTINERI: I am not asking her what
14 suppliers think. I am asking her about the risk.

15 MR. SCHULER: That necessarily requires
16 her to opine on what the suppliers think in order for
17 her to opine on whether they have a risk.

18 MR. SETTINERI: No.

19 MR. SCHULER: She does not work for a
20 competitive supplier, and AEP does not provide the
21 competitive supply.

22 EXAMINER SEE: The objection is
23 sustained.

24 MR. SETTINERI: Okay.

25 Q. (By Mr. Settineri) Ms. Mayhan, if the

1 price for capacity is known in an SSO auction for the
2 period, the tranches are to be delivered, all right?
3 A supplier should not have any risk then in adding
4 that into their price, correct, for the auction?

5 MR. SCHULER: Same objection to the last
6 question, your Honor.

7 MR. SETTINERI: Your Honor, again, she is
8 testifying in the CBP.

9 MR. SCHULER: Your Honor, she is
10 testifying about --

11 MR. SETTINERI: If she doesn't know, she
12 can say she doesn't know.

13 MR. SCHULER: She's testifying about the
14 Stipulation, and she does not work for the CRES
15 provider, and the question again is inherently asking
16 about what CRES providers bake into their risk.

17 EXAMINER SEE: Okay. I am going to let
18 the witness answer the question.

19 A. I don't know.

20 Q. Energy markets can be volatile, correct?

21 A. Yes, they can be.

22 Q. And global demand, global supply issues,
23 economic uncertainty, and the continued war in the
24 Ukraine can impact the costs to produce electricity,
25 correct?

1 A. Yes, it can.

2 Q. Going back to Section III.B.2 of the
3 Stipulation, let me know when you are there, that's
4 Joint Exhibit 1.

5 A. On page 5?

6 Q. It is page 5, part 2.

7 A. Yes.

8 Q. And I will read the sentence just so we
9 both read it. "If a final order is subsequently
10 issued by the Commission in another proceeding that
11 modifies the SSO/CBP (including an order that
12 modifies or reserves the capacity pass-through
13 mechanism established under Paragraph III.B.1), the
14 Company consents to continuing jurisdiction and
15 agrees to waive its right to withdraw under R.C.
16 4928.0143(C)(2)(a) provided that such SSO/CBP
17 modifications apply only during the ESP term, allow
18 for timely and adequate cost recovery along with a
19 reasonable time to implement the modification." Do
20 you see that language?

21 A. Yes.

22 Q. All right. So if the Commission were to
23 modify the CBP and SSO along -- by adopting
24 Intervenor proposals that we mentioned earlier in
25 Section B.2 but those modifications exceed the term

1 of ESP V, that could trigger a withdrawal, correct?

2 A. It could.

3 Q. Okay. And, likewise, if AEP Ohio
4 believes that those changes did not allow for
5 reasonable time to implement the modifications, AEP
6 Ohio could also withdraw from the ESP V, correct?

7 A. Could withdraw from the ESP V?

8 Q. Thank you. ESP V -- or, sorry. Yeah,
9 ESP V. So let me ask my question again. So the
10 language in Section III.B.2 of the Stipulation that
11 if the Commission implements the Intervenor's
12 proposals in another SSO proceeding, that does not
13 give AEP Ohio reasonable time to implement those
14 modifications, then AEP Ohio would -- could
15 potentially withdraw from this ESP V, correct?

16 A. Yes.

17 Q. And that withdrawal could take place upon
18 the issuance of an order by the Commission adopting
19 the modifications during the ESP V, correct?

20 A. Yes.

21 MR. SETTINERI: Your Honor, at this time
22 we would mark an exhibit Constellation Exhibit 1.
23 And this would be a response to a request for
24 admission, Constellation RFA-2-001. May I approach,
25 your Honor?

1 EXAMINER SEE: Yes.

2 MR. SETTINERI: Is the exhibit marked?

3 EXAMINER SEE: Can we see it?

4 MR. SETTINERI: I just didn't hear so
5 marked.

6 EXAMINER SEE: You didn't, you're
7 correct.

8 The exhibit is so marked, Mr. Settineri.
9 (EXHIBIT MARKED FOR IDENTIFICATION.)

10 MR. SETTINERI: Thank you, your Honor.

11 Q. (By Mr. Settineri) Ms. Mayhan, can you
12 identify what's been marked as Constellation
13 Exhibit 1?

14 A. It's a discovery request for Case No.
15 23-23-EL-SSO.

16 Q. All right. And that is a request for
17 admission, correct?

18 A. Yes.

19 Q. All right. Now, have you had a chance to
20 read that request for admission?

21 A. No. Just a minute.

22 Q. Please do.

23 A. Okay.

24 Q. Okay. And this request for admission
25 asked AEP Ohio to admit that AEP Ohio's auction

1 manager (NERA) has conducted SSO or default service
2 auctions involving separate customer class-based
3 auction products (E.T., default product for the
4 residential customers versus default product for the
5 commercial customers)." There is a response with a
6 number of objections as well. But, Ms. Mayhan, you
7 would agree in this response, subject to objections,
8 there is a statement in response by the Company "It
9 is the Company's understanding that NERA has
10 conducted default service auctions involving separate
11 customer class-based auction products," correct?

12 A. Right.

13 MR. SCHULER: Objection. I would renew
14 the objections that are listed in the response to the
15 RFA. In addition, I would add this is not relevant
16 as this was discovery that was conducted on the
17 Application itself, not on the Stipulation, and the
18 Stipulation does not contain a class-based auction
19 product, ergo, this is irrelevant.

20 I would also move to strike the question
21 that was previously asked that just reads it right
22 into the record inappropriately.

23 MR. SETTINERI: Your Honor, she answered
24 the question. She also said earlier that they
25 seek -- the Stipulation seeks to dismiss Intervenor's'

1 class auction proposals. Highly relevant. And I'm
2 done asking questions on this, your Honor. It's an
3 admission.

4 EXAMINER SEE: There is an objection.
5 The objection is overruled.

6 Was that your last question,
7 Mr. Settineri?

8 MR. SETTINERI: Sorry?

9 EXAMINER SEE: Did I hear you say that
10 was your last question or on that subject?

11 MR. SETTINERI: On that subject, thank
12 you.

13 No further questions. Thank you,
14 Ms. Mayhan.

15 EXAMINER SEE: Ohio Cable
16 Telecommunications Association?

17 MS. PETRUCCI: No questions, your Honor.

18 EXAMINER SEE: Northeast Ohio Public
19 Energy?

20 Let the record show that Mr. Stinson is
21 not in the hearing.

22 Any redirect, Mr. Schuler?

23 MR. SCHULER: Do you mind if we take a
24 10-minute recess, your Honor, and we can discuss
25 that? Also probably use it for a break for everyone.

1 EXAMINER SEE: Okay. Let's go off the
2 record and resume at approximately 11:50.

3 MR. SCHULER: Thank you, your Honor.

4 EXAMINER SEE: We are off the record.

5 (Recess taken.)

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

8 Mr. Schuler, redirect?

9 MR. SCHULER: Yes, thank you, your Honor.
10 Just briefly.

11 - - -

12 REDIRECT EXAMINATION

13 By Mr. Schuler:

14 Q. Ms. Mayhan, do you recall a question and
15 answer at the beginning of Mr. Settineri's
16 cross-examination regarding AEP Ohio's communications
17 with customers regarding the increase to the SSO
18 price in June of 2023?

19 A. Yes.

20 Q. Did those communications only go to
21 nonshopping customers?

22 A. No. They went to all customers,
23 residential customers, nonresidential customers,
24 shopping, and nonshopping, all customers.

25 Q. Why did the Company issue such

1 communications in this instance?

2 A. We wanted all customers to be prepared
3 for the price increase, that was in June of 2023,
4 because it was so significant and the customers have
5 a choice. So we wanted to let them know what the
6 price to compare would be so they could make their
7 own decision.

8 MR. SCHULER: Thank you. No further
9 questions, your Honor.

10 EXAMINER SEE: Any questions on redirect?
11 Ohio Energy Group?

12 MR. KURTZ: No, your Honor.

13 EXAMINER SEE: Armada Power?

14 MR. ROMIG: No.

15 EXAMINER SEE: OMAEG?

16 MS. BOJKO: No, thank you.

17 EXAMINER SEE: Citizens Utility Board?

18 MR. DOUGHERTY: No, thank you.

19 EXAMINER SEE: Ohio Partners for
20 Affordable Energy?

21 MR. BOBB: No, your Honor.

22 EXAMINER SEE: Sorry. Ohio Hospital
23 Association?

24 MS. MAINS: No, thank you.

25 EXAMINER SEE: Walmart, Inc.?

1 MS. GRUNDMANN: No, your Honor.

2 EXAMINER SEE: Interstate Gas Supply?

3 MR. BETTERTON: No questions, your Honor.

4 EXAMINER SEE: Environmental Law & Policy

5 Center?

6 MS. McCONNELL: No, your Honor.

7 EXAMINER SEE: Kroger Company?

8 MS. BOJKO: Not present, your Honor.

9 EXAMINER SEE: No questions, Ms. Bojko?

10 MS. BOJKO: Kroger's counsel is not

11 present, so I don't think she has any questions.

12 EXAMINER SEE: Okay.

13 EXAMINER ADDISON: Not going to phone in

14 a friend?

15 EXAMINER SEE: Ohio Environment Council?

16 MS. NORDSTROM: No, thank you, your

17 Honor.

18 EXAMINER SEE: Retail Energy Supply

19 Association?

20 MR. PRITCHARD: No questions, your Honor.

21 EXAMINER SEE: OELC?

22 MR. PROANO: No questions, your Honor,

23 thank you.

24 EXAMINER SEE: Ohio Telecom Association?

25 MR. DARR: No questions, your Honor.

1 EXAMINER SEE: Enel North America?

2 MS. PIRIK: None, your Honor.

3 EXAMINER SEE: Direct Energy?

4 MR. McKENNEY: No, your Honor.

5 EXAMINER SEE: Okay. Calpine?

6 MR. WHITT: No questions.

7 EXAMINER SEE: Nationwide Energy

8 Partners?

9 MR. ROMIG: No, your Honor.

10 EXAMINER SEE: Chargepoint, Inc.?

11 One Energy Enterprises?

12 MR. LITTLE: No questions.

13 MR. DUNN: No questions.

14 EXAMINER SEE: OCC?

15 MR. SEMPLE: No, your Honor.

16 EXAMINER SEE: Constellation?

17 MR. SETTINERI: Yes, your Honor.

18 - - -

19 RECROSS-EXAMINATION

20 By Mr. Settineri:

21 Q. Ms. Mayhan, are customer communications
22 under your supervision?

23 A. Not all customer communication but I do
24 review customer communications.

25 Q. Do you review every communication that

1 goes out to customers?

2 A. I can't say that I review all.

3 Q. Okay. Did you review a May 31, 2023,
4 message from Marc Reitter, AEP Ohio President, to SSO
5 customers sent via e-mail?

6 MR. SCHULER: Objection, foundation.
7 Mr. Settineri appears to be referencing a specific
8 communication. It hasn't been placed before the
9 witness.

10 MR. SETTINERI: I'll rephrase, your
11 Honor.

12 Q. (By Mr. Settineri) Are you aware of a
13 May 31, 2023, e-mail from AEP Ohio President Marc
14 Reitter sent to SSO customers regarding the price
15 increases?

16 A. I am familiar with a communication from
17 Marc Reitter. I am not sure who all it went out to.
18 I know I received the communication as a customer.

19 Q. And are you a shopping customer?

20 MR. SCHULER: Objection, relevance.

21 MR. SETTINERI: They said
22 shopping/nonshopping. It's relevant. She said she
23 received a communication, your Honor. I would like
24 to know if she is a nonshopping customer. I think
25 that's relevant.

1 EXAMINER SEE: Did you receive the
2 communication in your professional capacity or as an
3 individual customer?

4 THE WITNESS: Yes.

5 EXAMINER SEE: Which one?

6 THE WITNESS: Oh, I am on the Columbus
7 aggregation.

8 EXAMINER SEE: So you received it as a
9 customer.

10 THE WITNESS: As a customer.

11 EXAMINER SEE: Not in your professional
12 capacity.

13 THE WITNESS: I reviewed it as well in my
14 professional capacity.

15 Q. (By Mr. Settineri) And you're saying that
16 you reviewed a May 31, 2023, e-mail from Marc Reitter
17 to customers?

18 MR. SCHULER: Objection, asked and
19 answered.

20 MR. SETTINERI: A little fuzzy on the
21 record, your Honor.

22 EXAMINER SEE: You can go ahead and
23 respond to that, Ms. Mayhan.

24 A. Yes.

25 Q. Sitting here today though, you can't say

1 you reviewed every communication that went out to
2 customers regarding the SSO increases, correct?

3 A. That's correct.

4 MR. SETTINERI: Thank you. No further
5 questions.

6 EXAMINER SEE: Ohio Cable
7 Telecommunication Association? Ms. Petrucci?

8 MS. PETRUCCI: I'm sorry. No questions,
9 your Honor.

10 EXAMINER SEE: Northwest Ohio Public
11 Energy Council?

12 Okay. And the Bench has no questions for
13 this witness.

14 Mr. Schuler.

15 MR. SCHULER: Thank you, your Honor. At
16 this time we would renew our motion to admit AEP Ohio
17 Exhibit No. 1, AEP Ohio Exhibit No. 2, and AEP Ohio
18 Exhibit No. 3.

19 EXAMINER SEE: Are there any objections
20 to the admission of AEP Ohio Exhibits 1, 2, and 3?

21 Hearing none, they are admitted into the
22 record.

23 (EXHIBITS ADMITTED INTO EVIDENCE.)

24 EXAMINER SEE: Mr. Settineri.

25 MR. SETTINERI: Yes, your Honor. At this

1 time we would move for the admission of Constellation
2 Exhibit 1, which is a response to a request for
3 admission.

4 EXAMINER SEE: Are there any objections
5 to the admission of Constellation Energy Exhibit 1?

6 MR. SCHULER: Yes, your Honor, on behalf
7 of Ohio Power Company. Ohio Power Company objects to
8 the admission of this for the reasons that are listed
9 on the actual response to the RFA itself. It was
10 vague, undefined, overbroad, and unduly burdensome.
11 It is not relevant. It's even further not relevant
12 as we stand here today because this was issued prior
13 to the Stipulation being entered in this case and
14 this was on the case in chief that was -- the
15 Application that was filed and this is no longer a
16 concept that is under review as this is not a part of
17 the Stipulation.

18 The other part that I will also add to
19 both relevance but also hearsay is this is requesting
20 information about a third party that is not AEP Ohio
21 or under AEP Ohio's control.

22 For these numerous reasons, this should
23 not be admitted as evidence in this case. I would
24 also point out, your Honor, the request for admission
25 is denied for lack of knowledge.

1 MR. BETTERTON: Your Honor, IGS would
2 join AEP.

3 EXAMINER SEE: Was there a response,
4 Mr. Settineri?

5 MR. SETTINERI: Your Honor, first of all,
6 it is not hearsay. It is not a statement from a
7 third party, anything like that. No. 2, it's
8 certainly relevant.

9 Constellation is opposing the
10 Stipulation, and specifically this Stipulation seeks
11 to dismiss Constellation's proposals which we heard
12 related to class auctions, so certainly it is
13 relevant. As to the admission, the objection, the
14 Company did provide an answer. The admission asked
15 for -- that -- admit that AEP Ohio auction -- has
16 conducted auctions, SSO or default service auctions,
17 involving, and I'll paraphrase, class-based auction
18 products. The Company did answer and put it in its
19 response. It said it is the Company's understanding
20 that NERA has conducted default service auctions
21 involving separate class-based auction products.
22 That is admissible.

23 It is a response to a request for
24 admission. So it's directly responsive to the
25 question, and it is the Company's understanding

1 the -- you know, so that's what the admission sought.
 2 It was served on AEP Ohio. It sought its
 3 understanding, and it provided an understanding so it
 4 should be admitted. And plus it's already in the
 5 record.

6 MR. SCHULER: Your Honor, if I could
 7 briefly respond.

8 EXAMINER SEE: Okay. Very briefly.

9 MR. SCHULER: Focusing on the relevance
 10 piece, you know, we did reserve the relevance
 11 objection. That's the point of putting objections at
 12 the beginning of discovery responses. What NERA did
 13 in other states is not relevant to this proceeding;
 14 and, again, because it is now a Stipulation, it is
 15 further not relevant.

16 MR. MICHAEL: Your Honor, could we be
 17 heard on the relevance issue? OCC submitted the
 18 testimony of James Wilson in which he recommended
 19 separate auctions and, therefore, that underscores
 20 the relevance of that statement because the
 21 Commission should have the evidence before it as to
 22 whether or not that recommendation should be adopted.
 23 Thank you.

24 MR. SCHULER: Your Honor, if I could
 25 respond since that's a new argument.

1 EXAMINER SEE: Yes.

2 MR. SCHULER: Not to belabor the point
3 but this is -- this is precisely the point why
4 hearsay is also an issue here. If the parties want
5 to put on their evidence, they can, and some of them
6 have chosen to including OCC and Constellation. This
7 is hearsay. This is asking about a third party and
8 it -- again, it's not relevant for the reasons I have
9 previously identified. It's being offered for the
10 truth of the matter asserted which is what the
11 analysis is for hearsay. And recall this was denied.

12 EXAMINER SEE: Anything further on this
13 exhibit?

14 Constellation Exhibit 1 is admitted into
15 the record.

16 (EXHIBIT ADMITTED INTO EVIDENCE.)

17 EXAMINER SEE: Okay. Anything else from
18 AEP Ohio?

19 MR. SCHULER: Nothing further, your
20 Honor.

21 EXAMINER SEE: Okay. Thank you,
22 Ms. Mayhan. You may step down.

23 THE WITNESS: Thank you.

24 EXAMINER SEE: Next witness would be the
25 Direct Energy witness.

1 MR. McKENNEY: Yes. Good morning, your
2 Honor. Thank you. Direct Energy filed a
3 supplemental direct testimony of Travis Kavulla in
4 the record in this case. No parties have indicated
5 cross-examination questions for Mr. Kavulla.

6 Additionally, upon request no party
7 indicated an objection to the admission of his
8 supplemental direct testimony directly into the
9 record. So in a moment I intend to mark the
10 admission of -- his supplemental direct testimony and
11 move for its admission.

12 I have copies for the Bench and the court
13 reporter. If I may approach.

14 EXAMINER SEE: You may.

15 MR. McKENNEY: Thank you.

16 MR. SCHULER: I'm assuming you labeled
17 that Direct Exhibit 1? Is that what you called it?

18 MR. McKENNEY: I am going to in just a
19 minute.

20 Your Honor, based upon that comment, I
21 seek to mark this Direct Energy Exhibit No. 1.

22 EXAMINER SEE: Direct Energy -- Direct
23 Exhibit 1 is so marked.

24 (EXHIBIT MARKED FOR IDENTIFICATION.)

25 MR. McKENNEY: Thank you, your Honor. At

1 this time we would move Direct Energy Exhibit 1.

2 EXAMINER SEE: If there are no objections
3 to the admission of Direct Exhibit 1, the
4 supplemental testimony of Mr. Kavulla, Direct Exhibit
5 1 is so admitted into the record.

6 (EXHIBIT ADMITTED INTO EVIDENCE.)

7 MR. MCKENNEY: Thank you, your Honor.
8 Nothing further from Direct Energy.

9 EXAMINER ADDISON: All right. I know I
10 am feeling particularly generous this morning,
11 Mr. Pritchard, or I should say this afternoon now.
12 Do we have any objections to taking the next witness
13 to allow him to catch his flight later today and keep
14 this train rolling?

15 Okay. I'm so nice. All right.
16 Mr. Pritchard.

17 MR. PRITCHARD: Yes. At this time we
18 would like to call John Smith.

19 EXAMINER ADDISON: Welcome, Mr. Smith.
20 (Witness sworn.)

21 EXAMINER ADDISON: Thank you. Please be
22 seated and if you could just turn on your microphone.

23 MR. PRITCHARD: Thank you, your Honors.

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JOHN SMITH

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

DIRECT EXAMINATION

By Mr. Pritchard:

Q. Mr. Smith, can you state your name and
business address for the record?

A. John Smith, 6555 Sierra Drive, Irving,
Texas 75039.

Q. And by whom are you employed?

A. Vistra Corp.

Q. And you are here on behalf of RESA today,
correct?

A. That is correct.

MR. PRITCHARD: Your Honor, at this time
may I approach the witness --

EXAMINER ADDISON: You may.

MR. PRITCHARD: -- with copies of
testimony? Thank you.

Your Honor, I would request that the
prefiled testimony of John Smith be marked as RESA
Exhibit 1.

EXAMINER ADDISON: It is so marked.

(EXHIBIT MARKED FOR IDENTIFICATION.)

Q. (By Mr. Pritchard) Mr. Smith, do you have

1 in front of you a copy of your prefiled testimony
2 that was just marked as RESA Exhibit 1?

3 A. Yes.

4 Q. And do you have any corrections to this
5 testimony?

6 A. Yes.

7 Q. Could you state those corrections for us
8 on the record?

9 A. Yes. First is we added page numbers at
10 the bottom of the pages. The second correction is on
11 page 6, line 9, the -- we added the letter "N" to the
12 word "know" to make it read "known."

13 And the third is on page 6, line 11,
14 delete the dash between the "14" and "75," so it
15 reads "19-1475-EL-RDR."

16 Q. Thank you. And with those corrections,
17 if I asked you all the questions in your testimony,
18 would your answers be the same?

19 A. Yes.

20 MR. PRITCHARD: Thank you.

21 With that, your Honors, I would move for
22 the admission of RESA Exhibit 1, subject to
23 cross-examination.

24 EXAMINER ADDISON: Thank you very much,
25 Mr. Pritchard.

1 OEG, any questions for this witness?

2 MR. KURTZ: No, your Honor.

3 EXAMINER ADDISON: Armada Power?

4 MR. ROMIG: No, your Honor.

5 EXAMINER ADDISON: OMAEG?

6 MS. BOJKO: No, thank you, your Honor.

7 EXAMINER ADDISON: Citizens Utility

8 Board?

9 MR. DOUGHERTY: No, your Honor.

10 EXAMINER ADDISON: OPAE?

11 MR. BOBB: No, your Honor.

12 EXAMINER ADDISON: Ohio Hospital

13 Association?

14 MS. MAINS: No, thank you, your Honor.

15 EXAMINER ADDISON: Walmart?

16 MS. GRUNDMANN: No, your Honor.

17 EXAMINER ADDISON: IGS?

18 MR. BETTERTON: No, your Honors.

19 EXAMINER ADDISON: ELPC?

20 MS. McCONNELL: No, your Honor.

21 EXAMINER ADDISON: And I am guessing,

22 Ms. Bojko, Ms. Whitfield is not currently here?

23 MS. BOJKO: No, your Honor. Correct.

24 EXAMINER ADDISON: Thank you.

25 OEC?

1 MS. NORDSTROM: No, your Honor.

2 EXAMINER ADDISON: OELC?

3 MR. PROANO: No questions, your Honor,
4 thank you.

5 EXAMINER ADDISON: Ohio Telecom
6 Association?

7 MR. DARR: No, your Honor.

8 EXAMINER ADDISON: Enel North America?

9 MS. PIRIK: None, your Honor.

10 EXAMINER ADDISON: Direct Energy?

11 MR. McKENNEY: No, thank you.

12 EXAMINER ADDISON: AEP Ohio?

13 MR. SCHULER: No, your Honor.

14 EXAMINER ADDISON: Calpine?

15 MR. WHITT: No, questions.

16 EXAMINER ADDISON: NEP?

17 MR. ROMIG: No, your Honor.

18 EXAMINER ADDISON: ChargePoint? Nope.
19 One Energy?

20 MR. LITTLE: Yes, your Honor.

21 EXAMINER ADDISON: Please proceed.

22 - - -

23 CROSS-EXAMINATION

24 By Mr. Little:

25 Q. Sir, my name is Marion Little. I have a

1 few subject matters to cover with you. Could we
2 first turn to question No. 9 of your written
3 testimony. Let me know when you are there.

4 A. I'm there.

5 Q. And I would like to direct your -- your
6 attention to your answer that starts on line 20 -- or
7 continues on line 20. And if I understand your
8 position, you believe the Stipulation that is being
9 submitted to the PUCO for consideration makes clear
10 that customers reserve the ability, on their own or
11 through their agent such as a CRES provider, to
12 engage in energy efficiency and peak demand reduction
13 activities and/or otherwise participate in PJM demand
14 response programs, correct?

15 A. Yes.

16 Q. And you would agree with me that energy
17 efficiency is an important consideration for all
18 energy consumers and CRES providers?

19 A. Yes.

20 Q. And is it likewise important that all
21 energy consumers and CRES providers have options on
22 how to deploy their demand resource capability in
23 ways that best satisfy their price, reliability, and
24 other preferences?

25 A. Yes.

1 Q. I believe your comments taken
2 collectively in your written statement make clear all
3 energy consumers should not be captive to AEP Ohio
4 demand response programs.

5 A. Correct.

6 Q. Now, I would like to direct your
7 attention to a couple different subject matters and
8 let's begin first with a couple preliminary matters.
9 So if I could direct your attention to question 10 as
10 part of your written comments. And that's on page
11 what of your handout?

12 A. Starts on 4 and ends on 5.

13 Q. Thank you. And your testimony there
14 where it identifies some smart thermostat program
15 open issues that will require as part of this
16 settlement a stakeholder collaboration to discuss and
17 implement any reasonable and cost effective changes
18 to allow customers to continue to engage in customer
19 choice activities in a competitive market; is that
20 right?

21 A. Yes.

22 Q. And if we could also then look at your
23 response to question No. 11, which I believe then is
24 found on page 5 of your written testimony.

25 A. Yes.

1 Q. You mention there that Texas -- in Texas
2 the revenue stream available to demand response
3 resources from the demand response market is used to
4 fund customer incentives directed at smart meter
5 development -- deployment, correct?

6 A. Yes.

7 Q. And your description of the Texas program
8 is designed to illustrate a market-based approach for
9 encouraging customers to purchase and use smart
10 thermostats; is that right?

11 A. That's correct.

12 Q. Now, the market-based approach that is
13 available in Texas is different than the
14 subsidies/incentive approach embedded in the
15 Stipulation being considered today; is that right?

16 MR. SCHULER: Objection, argumentative
17 and mischaracterizes.

18 EXAMINER ADDISON: I will allow the
19 witness to answer the question and provide him a
20 little bit of latitude.

21 MR. LITTLE: Thank you.

22 A. Could you repeat the question?

23 Q. Sure. The market-based approach that is
24 described as occurring in the Texas program is
25 different than the subsidies/incentive approach

1 embedded in the Stipulation being presented today.

2 A. Yes.

3 Q. Now, also if we could look at the
4 response to question 12, which should be on page 6 of
5 the written statement, there you've identified things
6 in AEP Ohio's service area that have slowed or
7 prevented market-based smart thermostat programs from
8 being implemented; is that right?

9 A. Yes.

10 Q. And one of the items that has slowed or
11 prevented such market-based programs from being
12 implemented in AEP Ohio's service area is the
13 inability of consumers to receive pricing information
14 about critical peak demand hours; is that right?

15 A. Yes.

16 Q. Now, also looking at your response to
17 question 12 on page 6 of your written testimony, you
18 refer to the demand tag or billing determinant for
19 capacity, do you not?

20 A. Yes, we do.

21 Q. And that's also known as the peak load
22 contribution factor, or PLC?

23 A. Yes.

24 Q. And just so the record is clear, the PLC
25 factor identifies consumers' responsibilities for the

1 unbundled generation supply component; is that right?

2 A. Correct, yes.

3 Q. Now, each retail customer of AEP Ohio has
4 a PLC as part of the design of the wholesale market
5 operated by PJM Interconnect, LLC; is that right?

6 A. Yes.

7 Q. And each retail distribution service
8 customer of AEP Ohio has a PLC regardless of whether
9 that customer is served by a CRES provider or obtains
10 generation supply from the applicable SSO.

11 A. Yes.

12 Q. Now, in also looking at your response to
13 question 12, you refer to NSPL, do you not?

14 A. Yes.

15 Q. And that is an acronym for network
16 services peak load?

17 A. Yes.

18 Q. Now, in the PJM wholesale market design,
19 the NSPL identifies each customer's relative
20 responsibility for a significant portion of the costs
21 of network integrated transmission service; is that
22 right?

23 A. Yes.

24 Q. Now, each retail distribution service
25 customer of AEP Ohio has an NS -- NSPL or

1 transmission tag regardless of whether the customer
2 is served by a CRES provider or obtains generation
3 supplied from the applicable SSO; is that right?

4 A. Yes.

5 Q. And also in response to question 12, you
6 say that AEP Ohio's wire charges or distribution
7 transmission charges for residential customers are
8 not tied to transparent price signals; is that right?

9 A. Yes.

10 Q. Is the BTCR one of the wire charges
11 referenced in your testimony?

12 A. I'm not sure.

13 Q. Is it -- is there an issue as you've seen
14 it in which the BTCR -- excuse me, that there was a
15 lack of transparency because the transmission charges
16 a customer pays to AEP Ohio through the BTCR are not
17 based on each customer's NSPL?

18 A. Correct, yes.

19 Q. And if AEP Ohio's transmission charges
20 were based upon each customer's NSPL, would that
21 provide a transparent price signal for transmission
22 service?

23 MR. SCHULER: Objection, incomplete
24 hypothetical. The witness has already opined he
25 didn't know some of this information as well.

1 EXAMINER ADDISON: Mr. Little?

2 MR. LITTLE: The witness answered the
3 prior question affirmatively. This is simply a
4 follow-up question to the immediate preceding
5 question, not the question two questions removed
6 which was the basis --

7 EXAMINER ADDISON: My heavens,
8 Mr. Little. I will allow the witness to answer the
9 question. Again, please use as much latitude as you
10 would like in your response.

11 A. I'm not sure.

12 Q. Okay. Do you know whether the lack of
13 transparency is common to all customers who pay for
14 transmission services pursuant to the BTCR?

15 A. I'm not sure.

16 MR. LITTLE: One moment, your Honor.

17 EXAMINER ADDISON: Absolutely.

18 MR. LITTLE: That's all I have. Thank
19 you very much.

20 EXAMINER ADDISON: Thank you, very much,
21 Mr. Little.

22 OCC?

23 MR. KRAL: Yes, your Honor, thank you.

24 - - -

25

CROSS-EXAMINATION

By Mr. Kral:

Q. Mr. Smith, Don Kral on behalf of the Office of the Ohio Consumers' Counsel. Would you please turn to page 3 of your testimony.

A. Okay.

Q. On page 3, you talk about that the Stipulation does not address the potential reductions in coincident peak demand as a result of the smart thermostat program, correct?

A. Yes.

Q. Now, you are employed by Vistra Corporation, correct?

A. Yes.

Q. And you are testifying on behalf of the Retail Energy Supply Association, correct?

A. Correct.

Q. And you are aware that RESA is a signatory party to the Stipulation and Recommendation, correct?

A. Yes.

Q. Well, would you please look at page 2 of your testimony, line 2. There you state that "The smart thermostat demand response program is designed to reduce stress on the distribution grid, which the

1 Stipulation states will enhance reliability." Now as
2 a representative of a signatory party to the
3 Stipulation, how much of a reduction in stress is
4 projected for 2024 as a result of the smart
5 thermostat demand response program?

6 MR. SCHULER: Objection, beyond the scope
7 of the knowledge of this witness. This witness is
8 put on by a competitive supplier, not by AEP Ohio
9 that is the sole maintainer of the distribution grid.

10 EXAMINER ADDISON: Thank you, Mr.
11 Schuler, but the witness does testify to the fact
12 that the program is designed to reduce stress. I
13 will allow him to answer the question if he knows.

14 A. I do not know.

15 Q. (By Mr. Kral) And same question as to
16 2025, how much of a reduction in stress is projected
17 as a result of the smart thermostat -- I am going to
18 shorten down to the smart thermostat program, if
19 that's okay?

20 A. I do not know.

21 Q. Same with 2026, you do not know that
22 either?

23 A. I do not.

24 Q. And in 2027, the end of the term of the
25 ESP?

1 A. I do not.

2 Q. Okay. You also state that the
3 Stipulation states it will enhance reliability. As a
4 representative of a signatory of the Stipulation, how
5 much re -- what, if any, metrics for reliability will
6 be enhanced in 2024 as a result of the smart
7 thermostat program?

8 A. I do not know.

9 Q. And you would agree you don't know for
10 2025, 2026, or 2027, correct?

11 A. Correct.

12 Q. Okay. Now, you in your testimony talk
13 about limiting the program so it manages its
14 potential negative impact on customer choice. Do you
15 recall that testimony?

16 A. Yes.

17 Q. Okay. Now, we can agree that today a
18 residential customer can go out to one of many retail
19 stores and purchase a smart thermostat, correct?

20 A. Yes.

21 Q. We can also agree that a residential
22 customer today could go online and purchase smart
23 thermostats from many different online sites,
24 correct?

25 A. Yes.

1 Q. And they would be exercising their
2 customer choice if they decided to do that, correct?

3 A. Sure.

4 Q. And today a residential customer could
5 purchase their smart thermostat at a retail store or
6 online and then sign up with a CRES provider or
7 default to AEP Ohio, correct?

8 A. Yes.

9 Q. It would be their choice, correct?

10 A. Yes.

11 Q. And under that scenario, there will be no
12 interference with the competitive marketplace,
13 correct?

14 A. Correct.

15 Q. Now, if instead AEP Ohio's residential
16 consumers were required to fund smart thermostats for
17 only AEP Ohio SSO customers, this would interfere
18 with the competitive marketplace in your opinion,
19 correct?

20 MR. SCHULER: Objection.

21 EXAMINER ADDISON: Grounds?

22 MR. SCHULER: Incomplete hypothetical.
23 It's also not relevant because that's not what's
24 proposed in the Stipulation.

25 MR. KRAL: Your Honor, Mr. Smith --

1 Mr. Smith has a great deal of testimony about
2 customer choice and I am just exploring the different
3 options of customer choice that are available and he
4 talks about not negatively impacting customer choice
5 and I wanted to see what he believes would negatively
6 impact customer choice as opposed to not impacting
7 it.

8 EXAMINER ADDISON: Maybe just ask that
9 question then.

10 MR. KRAL: Okay.

11 Q. (By Mr. Kral) Mr. Smith, if AEP Ohio had
12 restricted the smart thermostat program funding to
13 only SSO customers, would that impact -- negatively
14 impact customer choice in your opinion?

15 A. Yes.

16 Q. In what way?

17 A. From a competitive standpoint.

18 Q. And would you explain from the
19 competitive standpoint what you mean?

20 A. There would be an advantage to offering
21 the rebate to their customers where we wouldn't have
22 that opportunity.

23 Q. Okay. And you believe that would place
24 CRES providers at a competitive disadvantage,
25 correct?

1 A. Yes.

2 Q. So once we start -- you previously agreed
3 that simply letting customers make their own choice
4 and go out into the marketplace does not put CRESs at
5 a competitive disadvantage, correct?

6 A. Correct.

7 Q. It's when AEP Ohio starts funding that
8 through its money it collects from its bills that the
9 issue of competitive marketplace becomes a concern,
10 correct?

11 A. Well, only if we are not allowed to
12 participate as well which the Stipulation states
13 otherwise.

14 Q. So in order to balance the fact that AEP
15 Ohio is using funding from its customers to purchase
16 smart thermostats, they need to make that available
17 to CRES providers also, correct?

18 A. That would be our testimony, yes.

19 Q. Now, Mr. Smith, a residential customer in
20 the smart thermostat program can be subject to up to
21 16 demand response events in a calendar year,
22 correct?

23 A. Yes.

24 Q. And if the residential customer is a CRES
25 customer, the 16 events exclude any CRES events

1 noticed through AEP Ohio's system, correct?

2 A. Yes.

3 Q. So under the Stipulation, if a
4 residential customer participating in the smart
5 thermostat program is a CRES customer, what
6 limitations are there in the stipulation as to how
7 many CRES events can be noticed in addition to the 16
8 AEP Ohio events?

9 A. I don't believe there are any
10 stipulations around that.

11 Q. So you would agree that under the
12 Stipulation a residential customer participating in
13 the -- in the program is subject to up to 16 AEP ohio
14 notice events and an undescribed amount of CRES
15 program notice events, correct?

16 A. Correct. However, a lot of that detail
17 has not been outlined, and so I believe the
18 collaborative piece that is outlined is more around,
19 you know, coming up with the right rules and
20 engagement around that.

21 Q. You would agree though in terms of the
22 language of the Stipulation that's before the
23 Commission, there's no restriction on the number of
24 CRES events that can be called in addition to the AEP
25 Ohio events, correct?

1 A. That is correct. From a competitive
2 standpoint, you don't want to inconvenience the
3 customers to where they leave you; so, you know,
4 again, from a competitive perspective, you know,
5 those events have to be, you know, very strategic
6 when you call them and how many times you call them
7 and how often and when, what time of day, so on and
8 so forth.

9 MS. GRUNDMANN: Your Honor, very briefly,
10 could you ask the witness to speak into the
11 microphone? We are having a very tough time hearing
12 him across the room.

13 EXAMINER ADDISON: Of course.

14 MS. GRUNDMANN: I am not -- I can hear
15 counsel speaking into the microphone. I know he's
16 closer to me, but I can hear it. It doesn't sound
17 like the microphone is even on for the witness.

18 EXAMINER ADDISON: It is on, but I will
19 direct Mr. Smith, if you could talk into the
20 microphone a little closer. Thank you.

21 THE WITNESS: Thank you.

22 EXAMINER ADDISON: Thank you. If it
23 becomes an issue again, just raise your hand.

24 MS. GRUNDMANN: I was trying to wait for
25 a break in the questioning. My apologies. Thank

1 you.

2 Q. (By Mr. Kral) Mr. Smith, under the smart
3 thermostat program, a residential customer gets a \$75
4 incentive towards the purchase of a qualifying smart
5 thermostat, correct?

6 A. Yes.

7 Q. And if they already have a smart
8 thermostat, they can get up to a \$50 incentive to
9 encourage their participation, correct?

10 A. Yes.

11 Q. The funding for those smart -- for that
12 smart thermostat program is coming from AEP Ohio
13 customers, correct?

14 A. Yes.

15 Q. There is no funding coming from CRES
16 provider customers, correct?

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

18 Q. Well, under the Stipulation are you aware
19 of any funding that a CRES provider is making to that
20 \$75 or \$50 rebate program?

21 A. No.

22 Q. And under the Stipulation, a CRES
23 provider can sign up their own customers on the smart
24 thermostat program, correct?

25 A. Yes.

1 Q. And those customers are equally entitled
2 to a \$75 rebate if they purchase a qualified smart
3 thermostat or a \$50 rebate if they already have one,
4 correct?

5 A. Correct. If they consent to that, yes.

6 Q. And those CRES customers are receiving
7 those rebates from money collected from AEP Ohio
8 non-marketing customers, correct?

9 MR. SCHULER: Sorry. Before he answers
10 can I have that read back?

11 EXAMINER ADDISON: You may.

12 (Record read.)

13 MR. SCHULER: I would object that that's
14 misleading. This is a nonbypassable rider. They are
15 not two separate sets of customers that this is being
16 charged to.

17 MR. KRAL: Let me restate that, your
18 Honor.

19 EXAMINER ADDISON: Thank you very much,
20 Mr. Kral.

21 Q. (By Mr. Kral) Mr. Smith, you would agree
22 that the CRES customers who are getting rebates under
23 the smart thermostat program are getting those
24 rebates from funds collected from AEP Ohio customers,
25 the SSO customers, correct?

1 MR. SCHULER: Objection, the
2 clarification at the end. We got back into the same
3 objection I had on the last one about misleading.

4 MR. PRITCHARD: Same objection.

5 EXAMINER ADDISON: Thank you. Could you
6 please rephrase again, Mr. Kral?

7 MR. KRAL: We will give it another try.

8 EXAMINER ADDISON: Why not.

9 Q. (By Mr. Kral) You would agree that the --
10 you've already testified the CRES provider is not
11 contributing to the \$75 and \$50 rebate, correct?

12 A. Correct.

13 Q. That's coming from the AEP Ohio side of
14 things, correct?

15 A. Correct, but my understanding is that our
16 customers would also be paying that same fee.

17 Q. What do you mean by the same fee?

18 A. Well, the increase in the rate to cover
19 this would be passed through to our customers as
20 well, whether it's a CRES customer or a direct AEP
21 Ohio customer.

22 Q. But the rebate itself is coming from AEP
23 Ohio to the CRES customer or under certain
24 circumstances directly to the CRES, right?

25 A. With the customer's consent, correct.

1 Q. Now, the settlement describes setting up
2 a working group, correct?

3 A. Yes.

4 Q. And the working group, one of the things
5 they will do is address how to optimize CRES
6 participation in the smart thermostat program,
7 correct?

8 A. Yes.

9 Q. And this includes using a portion of the
10 \$5 million annual funding cap to implement a
11 solution, correct?

12 A. Yes.

13 Q. Again, that portion of the \$5 million
14 funding cap is going to be coming from AEP Ohio to
15 CRES providers, correct?

16 MR. SCHULER: Objection, misleading.

17 EXAMINER ADDISON: I will allow him to
18 answer.

19 A. My understanding is nothing will be
20 coming directly to the CRES providers.

21 Q. Well, with the consent of the CRES
22 customer, the rebate can go directly to the CRES
23 provider, correct?

24 A. The rebate, yes.

25 Q. Yeah. Okay. Now, if you go back to page

1 2, line 2, you said the smart thermostat demand
 2 response program is designed to reduce stress on the
 3 distribution grid which the Stipulation states will
 4 enhance reliability. In order to reduce stress and
 5 enhance reliability, customers need to be put onto
 6 the smart thermostat program, correct?

7 A. Yes.

8 Q. And what is the projection of the number
 9 of customers for 2024 that will be on the smart
 10 thermostat program?

11 A. I do not know.

12 Q. And you do not know for 2025, 2026, or
 13 2027 either, correct?

14 A. Correct.

15 Q. Now, you would agree that under the
 16 Stipulation AEP Ohio can change program incentive
 17 levels on their own, correct?

18 A. Yes.

19 Q. So when it says that AEP Ohio's
 20 restricted to 16 events during a calendar year, AEP
 21 Ohio can change that number if they want to, correct,
 22 under the Stipulation?

23 A. I don't know.

24 Q. They have the authority to change that
 25 number.

1 A. I don't know.

2 Q. Okay. Well, in the prior question you
3 agreed that under the Stipulation AEP Ohio can change
4 the program incentive level on its own.

5 EXAMINER ADDISON: Is that a question,
6 Mr. Kral?

7 MR. KRAL: Yes, it was. Sorry.

8 A. Yes.

9 Q. And one of the incentive levels is the
10 number of times a customer might be subjected to an
11 event notice, correct?

12 A. Yes.

13 Q. And are you aware whether or not AEP Ohio
14 can on its own change the number of those event
15 notices?

16 A. I am not aware.

17 Q. Okay. Are you aware of whether or not --
18 are you aware of another part of the incentive level
19 is the number of degrees to which the thermostat can
20 be either raised or lowered depending upon the season
21 by AEP Ohio itself?

22 A. I am not aware.

23 Q. So you are not aware that the discussion
24 is that degrees can be raised -- or the temperature
25 can be raised by no more than 3 degrees for no more

1 than four hours in the summer? Are you aware of
2 that?

3 MR. SCHULER: Could I have that question
4 reread?

5 EXAMINER ADDISON: You may.

6 (Record read.)

7 MR. PRITCHARD: I would object as to
8 form. I don't know what discussion is being referred
9 to in the question.

10 MR. SCHULER: I will join, and to the
11 extent it is asking with discussions that are
12 confidential settlement communication, we would
13 object to that.

14 EXAMINER ADDISON: Perhaps we can
15 rephrase the question to avoid the issue completely.

16 MR. KRAL: Okay.

17 Q. (By Mr. Kral) Are you aware of whether
18 the Stipulation sets forth the number of degrees by
19 which the smart thermostat can be raised or lowered
20 in the winter or summer?

21 A. I am not aware.

22 Q. Are you aware of whether under the
23 Stipulation AEP Ohio has the authority to change
24 those number of degrees on its own?

25 MR. SCHULER: Objection, foundation. He

1 just said he didn't know whether there was a degree,
2 so he can't testify whether AEP Ohio can change it.

3 EXAMINER ADDISON: I agree, Mr. Kral.

4 MR. KRAL: No further questions at this
5 time. Thank you.

6 EXAMINER ADDISON: Thank you very much.
7 Constellation?

8 MR. SETTINERI: No, your Honor.

9 EXAMINER ADDISON: OCTA?

10 MS. PETRUCCI: No questions.

11 EXAMINER ADDISON: And Staff?

12 MR. MARGARD: No questions, thank you.

13 EXAMINER ADDISON: Thank you.

14 Redirect, Mr. Pritchard?

15 MR. PRITCHARD: I will have one or two
16 questions. Can I confer with Mr. Smith for maybe
17 just 2 minutes?

18 EXAMINER ADDISON: Absolutely.

19 Let's go off the record.

20 (Recess taken.)

21 EXAMINER ADDISON: Let's go ahead and go
22 back on the record.

23 Mr. Pritchard.

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REDIRECT EXAMINATION

By Mr. Pritchard:

Q. Mr. Smith, do you recall questions asking about the 50 and 75 dollar rebates and whether they would go to CRES providers?

A. Yes.

Q. Is your understanding that that funding is related to AEP Ohio's smart thermostat program?

A. Yes.

Q. And what's your understanding of what the Stipulation permits relative to separate programs that might be offered by CRES providers?

A. My understanding is that no -- none of this funding will go directly to the CRES providers. It will go to the customers via the rebates to which we can then take directly if the customer consents after they have enrolled with a CRES provider.

Q. But that funding is all for the AEP Ohio smart thermostat program, correct?

A. Correct.

Q. And if a CRES provider offered their own smart thermostat program, would you be providing your own incentive for that separate CRES program?

A. Correct.

MR. PRITCHARD: No further questions,

1 your Honor.

2 EXAMINER ADDISON: Thank you very much,
3 Mr. Pritchard.

4 OEG?

5 MR. KURTZ: No questions, your Honor.

6 EXAMINER ADDISON: Armada Power?

7 MR. ROMIG: No, your Honor.

8 EXAMINER ADDISON: OMAEG?

9 MS. BOJKO: No, your Honor.

10 EXAMINER ADDISION: Citizens Utility
11 Board?

12 MR. DOUGHERTY: No, your Honor.

13 EXAMINER ADDISON: OPAC?

14 MR. BOBB: No, your Honor.

15 EXAMINER ADDISION: Ohio Hospital
16 Association?

17 MS. MAINS: No, your Honor.

18 EXAMINER ADDISION: Walmart?

19 MS. GRUNDMANN: No, your Honor.

20 EXAMINER ADDISION: IGS?

21 MR. BETTERTON: No, your Honor.

22 EXAMINER ADDISION: ELPC?

23 MS. McCONNELL: No, your Honor.

24 EXAMINER ADDISON: OEC?

25 MS. NORDSTROM: No, your Honor.

1 EXAMINER ADDISON: OELC?

2 MR. PROANO: No questions, your Honor.

3 EXAMINER ADDISION: Too many acronyms.

4 Ohio Telecom Association?

5 MR. DARR: No questions.

6 EXAMINER ADDISION: And Enel North

7 America?

8 MS. PIRIK: No questions.

9 EXAMINER ADDISION: Direct Energy?

10 MR. McKENNEY: No questions.

11 EXAMINER ADDISION: AEP Ohio?

12 MR. SCHULER: No questions, your Honor.

13 EXAMINER ADDISION: Calpine?

14 MR. WHITT: No questions.

15 EXAMINER ADDISON: NEP?

16 MR. ROMIG: No, your Honor.

17 EXAMINER ADDISION: One Energy?

18 MR. LITTLE: No, thank you, your Honor.

19 EXAMINER ADDISON: OCC?

20 MR. KRAL: No questions, your Honor.

21 EXAMINER ADDISON: Constellation?

22 MR. SETTINERI: No, your Honor.

23 EXAMINER ADDISION: OCTA?

24 MS. PETRUCCI: No questions.

25 EXAMINER ADDISON: Staff?

1 MR. MARGARD: No, thank you, your Honor.

2 EXAMINER ADDISON: We have no additional
3 questions either, Mr. Smith. You are excused. Thank
4 you very much for your testimony.

5 Mr. Pritchard.

6 MR. PRITCHARD: Yes, thank you, your
7 Honor. At this time I would like to move for the
8 admission of RESA Exhibit 1 and with one request and
9 that's to note that the version I handed the witness
10 and the court reporter had the page numbers at the
11 bottom. But, otherwise, it's the same as the
12 prefiled testimony. Would request this version with
13 the page numbers is the version that is admitted into
14 the record.

15 EXAMINER ADDISON: Thank you for that
16 clarification. Are there any objections to the
17 admission of RESA Exhibit No. 1?

18 With that caveat, it will be admitted
19 into the record.

20 (EXHIBIT ADMITTED INTO EVIDENCE.)

21 EXAMINER ADDISON: I believe now would be
22 a good time to take our lunch break. We will have
23 the benefit of the full hour. I thank the parties
24 for that. Let's reconvene around 1:40.

25 And we are off the record.

1 (Thereupon, at 12:40 p.m., a lunch recess
2 was taken.)

3 - - -

1 Tuesday Afternoon Session,
2 October 10, 2023.

3 - - -

4 EXAMINER ADDISON: Let's go ahead and go
5 back on the record.

6 Mr. Margard.

7 MR. MARGARD: Thank you, your Honor. At
8 this time Staff would like to call Mr. Christopher
9 Healey to the stand, please.

10 EXAMINER ADDISON: Welcome, Mr. Healey.
11 Raise your right hand.

12 (Witness sworn.)

13 EXAMINER ADDISON: Thank you. Please be
14 seated and, if you could, please just turn on your
15 microphone. Thank you.

16 MR. MARGARD: Your Honors, I have placed
17 before the Bench, the court reporter, and the witness
18 a multi-paged document captioned "Testimony of
19 Christopher Healey in Support of the Joint
20 Stipulation and Recommendation" and request that it
21 be marked for purposes of identification as Staff
22 Exhibit 1.

23 EXAMINER ADDISON: It will be so marked.

24 (EXHIBIT MARKED FOR IDENTIFICATION.)

25 MR. MARGARD: Thank you, your Honor.

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CHRISTOPHER HEALEY

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

DIRECT EXAMINATION

By Mr. Margard:

Q. Mr. Healey, would you please state your
name and business address?

A. Yes. My name is Christopher Healey. My
business address is 180 East Broad Street, Columbus,
Ohio 43215.

Q. And do you have before you what's been
marked as Staff Exhibit No. 1?

A. Yes.

Q. And can you identify that for us, please?

A. That's the testimony that I filed in
support of the Stipulation in this case.

Q. And it was prepared by you or at your
direction?

A. Yes.

Q. Sir, have you had an opportunity to
review this document prior to taking the stand today?

A. Yes.

Q. As a result of your review, do you have
any changes, corrections, amendments of any kind?

A. Yes, two minor changes.

1 Q. Would you please walk through those?

2 A. The first one is on page 5, line 9. It's
3 just a typographical addition. Add the word "the"
4 before "public interest."

5 And then I have a second change on page
6 11, line 17. I would delete the word "system" and
7 then reinsert the word "system" after the word
8 "utility's."

9 Q. "In the utility's system that are
10 designed"?

11 A. Yes.

12 Q. Thank you, sir. Any other changes,
13 corrections of any kind?

14 A. No other changes.

15 Q. If I were to ask you the questions
16 contained in Staff Exhibit 1 today, would your
17 responses be the same?

18 A. Yes, they would.

19 Q. And in your opinion are those responses
20 truthful and reasonable?

21 A. Yes, they are.

22 MR. MARGARD: Your Honor, I respectfully
23 move for the admission of Staff Exhibit 1, subject to
24 cross-examination, and tender the witness.

25 EXAMINER ADDISON: Thank you very much,

1 Mr. Margard.

2 OEG, any questions?

3 MR. KURTZ: No questions.

4 EXAMINER ADDISON: Armada Power?

5 MR. ROMIG: No questions.

6 EXAMINER ADDISON: OMAEG? Okay. Thank

7 you.

8 Citizens Utility Board?

9 MR. DOUGHERTY: No questions, your Honor.

10 EXAMINER ADDISON: OPAC?

11 MR. BOBB: No questions, your Honor.

12 EXAMINER ADDISON: Ohio Hospital

13 Association?

14 Walmart?

15 MS. GRUNDMANN: No questions.

16 EXAMINER ADDISON: IGS?

17 MR. BETTERTON: No questions.

18 EXAMINER ADDISON: ELPC?

19 MS. McCONNELL: No questions, your Honor.

20 EXAMINER ADDISON: OEC?

21 MS. NORDSTROM: No, your Honor.

22 EXAMINER ADDISON: RESA?

23 MS. WALKE: No questions, your Honor.

24 EXAMINER ADDISON: OELC?

25 MR. PROANO: No questions, your Honor.

1 EXAMINER ADDISON: Ohio Telecom

2 Association?

3 Direct Energy?

4 MR. McKENNEY: No questions, your Honor.

5 EXAMINER ADDISON: AEP?

6 MR. SCHULER: No questions.

7 EXAMINER ADDISON: Calpine?

8 MR. WHITT: No questions.

9 EXAMINER ADDISON: NEP?

10 MR. ROMIG: No questions, your Honor.

11 EXAMINER ADDISON: One Energy?

12 MR. LITTLE: No questions, your Honor.

13 EXAMINER ADDISON: OCC?

14 MR. SEMPLE: Briefly, your Honor.

15 - - -

16 CROSS-EXAMINATION

17 By Mr. Semple:

18 Q. Good morning, Mr. Healey.

19 A. Good morning. Afternoon.

20 Q. Afternoon. Could you turn to page 10 of
21 your testimony.

22 A. I'm there.

23 Q. You testified that "Lower utility bills
24 are good for economic development in the State of
25 Ohio because residential households have more money

1 to spend on other goods and services," right?

2 A. Yes.

3 Q. The settlement in this case does not
4 provide for lower utility bills for AEP's residential
5 electric consumers, right?

6 A. It depends on what you are comparing it
7 to.

8 Q. Would my previous statement be correct if
9 I were comparing it to their current ESP, AEP's
10 current ESP?

11 A. That's correct.

12 Q. Thank you. Now, can you turn to page 5
13 of your testimony.

14 A. I'm there.

15 Q. Starting at line 10 and continuing
16 through line 4 of page 8, you identify several
17 specific benefits to consumers in the public interest
18 of this settlement, right?

19 A. Yes, I do.

20 Q. And your conclusion that certain aspects
21 of the settlement benefits consumers and the public
22 interest is based on your comparison of the
23 settlement to the terms in the Application, right?

24 A. I do mention that as part of my
25 testimony. That's not the exclusive basis I conclude

1 the settlement passes the second part of the two --
2 three-part test.

3 Q. You can't identify any aspects of the
4 settlement about which you testified between the
5 lines I have read where you don't make a comparison
6 between the settlement and the Application, can you?

7 A. I can review them right now and let you
8 know.

9 Q. Thank you.

10 A. I guess I would note first on page 5 I do
11 reference rate increases which are compared to 2024
12 rates that are in place -- expected to be in place
13 under ESP IV so that would be a comparison to those
14 rates and not to the Application.

15 Q. Can you provide me a line number for
16 that?

17 A. Sure. Page 5, line 15 to 19, those rates
18 are comparing ESP IV to ESP V. They are not
19 comparing the Stipulation to the Application.

20 Q. Okay. Any others?

21 A. Yes. Page 6, line 1 to 2, I state "the
22 rate increases under the Stipulation are just and
23 reasonable in light of the Stipulation's many other
24 benefits." My reference to just and reasonable rates
25 is not a comparison to the Application in this case.

1 Q. Can you give me a line number for that as
2 well?

3 A. Yes, page 6, line 1 to 2.

4 Q. Okay. But in the subsequent paragraph,
5 you continue to speak about the rate increase under
6 the settlement, and you do, in fact, compare it to
7 the Application, don't you?

8 A. In the subsequent paragraph I do, yes.

9 Q. Okay. And your analysis of the
10 Distribution Investment Rider beginning on line 11 on
11 page 6 also compared the settlement to the
12 Application, right?

13 A. In part, yes. It also compares it to
14 what is currently in place under ESP IV.

15 Q. On page 7, beginning at line 2, you
16 testify about the Enhanced Service Reliability Rider
17 and, in part, compare it to the Application, right?

18 A. Yes.

19 Q. Beginning at line 6, you testify about
20 customer information system under the settlement, and
21 you state that the settlement "removes the Company's
22 proposal to include charges for its new customer
23 information system through a rider." Those proposals
24 were in AEP's Application, right?

25 A. Yes.

1 Q. Beginning at line 14 on page 7, you
2 testify that "the Stipulation does not adopt the
3 proposal from the Company's Application to use a
4 10.65 percent return on equity for capital riders,"
5 right?

6 A. Yes.

7 Q. And at the end of page 7, you testify
8 about the amount provided in the settlement for AEP's
9 Electric Transportation Plan. You compare that
10 amount to the Application, right?

11 A. Yes, I do.

12 Q. Okay. Now, later on in your testimony on
13 page 9, you identify several specific reasons that
14 you believe the settlement improves reliability,
15 right?

16 A. I'm sorry. Can you repeat that?

17 MR. SEMPLE: Your Honor, could I have the
18 question reread?

19 EXAMINER ADDISON: You may.

20 MR. SEMPLE: Thank you.

21 (Record read.)

22 A. I would say I -- like AEP's witness,
23 maintains or improves is what my testimony generally
24 says.

25 Q. Okay. Thank you for clarifying. One of

1 those reasons is the Distribution Investment Rider,
2 right?

3 A. Yes.

4 Q. And the Enhanced Service Reliability
5 Rider, right?

6 A. Yes.

7 Q. And IRP programs?

8 A. Yes.

9 Q. And the demand response program?

10 A. Yes.

11 Q. You didn't calculate or -- strike that.

12 You didn't project for any of these
13 programs profits to AEP's CAIDI metrics going
14 forward, did you?

15 A. I did not.

16 Q. And the same is true for SAIFI metrics?

17 A. Correct, the same is true.

18 MR. SEMPLE: Okay. Thank you. I have no
19 further questions at this time.

20 EXAMINER ADDISON: Thank you very much,
21 Mr. Semple.

22 Constellation?

23 MR. MARGARD: We are going to fight over
24 the microphone.

25 EXAMINER ADDISON: No bloodshed in the

1 hearing room, please.

2 - - -

3 CROSS-EXAMINATION

4 By Mr. Settineri:

5 Q. A few questions, Mr. Healey. Good
6 afternoon. At page 3 of your testimony, lines 1 to
7 5, and I will paraphrase, you state that "The
8 Stipulation was the product of extensive negotiations
9 among AEP Ohio, Staff, and 24 intervening parties,"
10 correct?

11 A. Correct.

12 Q. Now, to clarify the Stipulation was not
13 executed by all 24 intervening parties, correct?

14 A. Correct.

15 Q. And if you turn to page 4 of your
16 testimony, lines 11 to 13, there you say "No party
17 was excluded from settlement negotiations, and all
18 parties' positions were carefully considered in
19 reaching the final Stipulation." Do you see that?

20 A. Yes, I do.

21 Q. Now, you cannot speak to whether all
22 parties' positions were carefully considered by the
23 other parties in reaching a final Stipulation,
24 correct?

25 A. That's correct, I can't speak for other

1 parties' states of mind.

2 Q. And you agree that Staff cannot speak for
3 the Commission in this proceeding, correct?

4 A. I agree with that.

5 Q. And as a general matter, Staff does not
6 speak for the Commission, correct?

7 A. Correct.

8 Q. The Commission speaks through its order,
9 correct?

10 A. Yes.

11 Q. And you agree that it's the Commission
12 that will decide the Stipulation as a package
13 benefits the ratepayers and the public interest,
14 correct?

15 A. Yes, based on the record today including
16 my testimony.

17 Q. And, likewise, as to the remaining two
18 prongs of the three-part test for Stipulations which,
19 I assume, you are familiar with, correct?

20 A. I am.

21 Q. And following up on that question then,
22 as to those remaining two prongs of the three-prong
23 test, likewise, the Commission will decide whether
24 those prongs are met in this case, correct?

25 A. Correct.

1 Q. Now, do you have a copy of the
2 Stipulation up there? I think one was marked
3 earlier.

4 A. Yes, I do.

5 Q. Super. Let's go ahead and turn to page 5
6 of the Stipulation, please. This was covered briefly
7 with Ms. Mayhan earlier, Section B -- III.B.2.

8 A. I'm there.

9 Q. Okay. We have a sentence "The Signatory
10 Parties recommend that all intervenor proposals for
11 SSO/CBP modifications in this case be dismissed
12 without prejudice but may be considered in other
13 SSO-related proceedings." Do you see that?

14 A. Yes, I do.

15 Q. Okay. Now, in terms of dismissing the
16 proposals without prejudice, you've never seen a
17 requirement like that in a Stipulation prior to this
18 proceeding, correct?

19 A. I would say that that concept is inherent
20 in virtually every Stipulation and that Stipulation
21 seeks to resolve a case in its entirety. And,
22 therefore, anything that's not in the Stipulation,
23 including other parties' recommendations, would be,
24 therefore, excluded and rejected by approval of the
25 Stipulation, so I think this sentence is merely

1 acknowledging what a Stipulation does with respect to
2 other parties' litigation positions.

3 Q. So is it your testimony that sentence
4 does not ask the Commission to issue an order
5 dismissing without prejudice the Intervenor's
6 proposals?

7 A. It does ask for that.

8 Q. It does. Is that --

9 A. That's what it says. Yes, that's what it
10 says.

11 Q. Okay. And so have you ever seen a
12 Stipulation asking the Commission to order to dismiss
13 Intervenor's proposals without prejudice?

14 A. Yes. I would give you the same answer I
15 just did that every Commission order approving the
16 Stipulation as a matter of fact is, therefore,
17 rejecting any proposals that are contrary to the
18 Stipulation so that order would have that exact
19 effect in any case in which there was a Stipulation
20 approved by the Commission.

21 MR. SETTINERI: Your Honors, I have to
22 move to strike that answer as nonresponsive. That
23 wasn't what I asked him.

24 EXAMINER ADDISON: I think he has given
25 his answer. Let's move on, Mr. Settineri.

1 Q. (By Mr. Settineri) Have you ever seen a
2 Stipulation with the language that Intervenor
3 proposals will be dismissed without prejudice?

4 A. Those exact words?

5 Q. Yes.

6 A. I have reviewed many Stipulations. I
7 can't say whether that has been included in one or
8 not as I sit here today.

9 Q. Now, the Intervenor proposals listed in
10 that sentence, those relate to proposals made by
11 Constellation Energy and OCC, correct?

12 A. Yes. I believe both of those parties
13 made proposals. I don't recall if anyone else did.
14 I think RESA may have as well.

15 Q. Okay. And is that language intended also
16 to address RESA's proposals?

17 A. Yes.

18 Q. Okay. And by signing this Stipulation,
19 do you agree then that Staff is recommending to the
20 Commission that all Intervenor proposals versus SSO
21 and CBP modifications in this case be dismissed
22 without prejudice but may be considered in other
23 SSO-related proceedings?

24 A. Yes.

25 Q. So, in other words, Staff is recommending

1 to the Commission that those proposals not be
2 considered at all in this proceeding, correct?

3 A. I'm recommending that they not be
4 approved as part of this Stipulation. I am not --
5 Staff is not taking any position on whether parties
6 can or cannot make those same proposals in the
7 context of proposing the Stipulation.

8 Q. Now, in the Stipulation -- actually going
9 up I believe the same page -- no, actually page 4.
10 If you can turn to that, please, first paragraph.

11 A. First full paragraph or the partial
12 paragraph?

13 Q. First partial paragraph. There's a
14 sentence there that says "The auction manager, in
15 consultation with Staff, will establish the proxy
16 capacity price based on objective criteria in advance
17 of the applicable auction." Do you see that?

18 A. Yes.

19 Q. Now, sitting here today do you know how
20 that proxy capacity price will be established?

21 A. I know in part how it will be
22 established. I believe that sentence that you read
23 provides that it will be done in consultation with
24 Staff and that it will be based on objective
25 criteria, and it will be done in advance of the

1 auction.

2 Q. And what objective criteria would be
3 looked at in order to determine the proxy price?

4 A. I don't know.

5 Q. You agree that the proxy capacity price
6 and later true-up will ensure that SSO suppliers are
7 paid in full for the PJM capacity charges related to
8 default service, correct?

9 A. I'm not sure what you mean by paid in
10 full.

11 Q. They are not out of pocket for any PJM
12 capacity charges. That's what I mean.

13 A. I can't speak to that.

14 Q. Okay. Can you speak at all to the proxy
15 price and true-up?

16 A. Yes.

17 Q. Are you aware that SSO suppliers include
18 a capacity component in their auction prices?

19 A. Yes, I am aware of that.

20 Q. Okay. And would the purpose of the
21 true -- would the true-up ensure that when the proxy
22 capacity price is used that the suppliers are
23 reimbursed for the capacity portion of their price?

24 A. That's -- I think that's the intent, but
25 I guess where I get hung up is I don't know exactly

1 how suppliers interact with PJM and how pricing works
2 there, so I couldn't say for sure.

3 MR. SETTINERI: One moment, your Honors.

4 EXAMINER ADDISON: Absolutely.

5 Q. (By Mr. Settineri) Mr. Healey, going back
6 to Section III.B.2 and the sentence we were talking
7 about dismissing Intervenor proposals, that sentence
8 also notes that the proposals may be considered in
9 other SSO-related proceedings. Do you see that?

10 A. Yes.

11 Q. You agree with me that if the Commission
12 adopts this Stipulation without modification, there's
13 no -- there's no guarantee that those proposals would
14 be considered in any other SSO-related proceeding,
15 correct?

16 A. Correct.

17 Q. And we don't know which other
18 proceedings -- which -- we don't know which other
19 SSO-related proceedings those would be, correct?

20 A. I believe there are several open dockets
21 right now that would seem to fit the bill, but you
22 are right. We don't know for sure exactly which
23 dockets that would be done in, if at all.

24 Q. And the dockets that are open currently
25 are related to specific matters, correct?

1 A. I am not 100 percent sure of the exact
2 scope of those proceedings.

3 Q. But I can look at the Commission's
4 initiating orders to determine that, correct?

5 A. I assume so.

6 MR. SETTINERI: Thank you. No further
7 questions.

8 Thank you, your Honor.

9 EXAMINER ADDISON: Thank you very much,
10 Mr. Settineri.

11 MR. SETTINERI: Thank you, Mr. Healey.

12 EXAMINER ADDISON: OCTA?

13 MS. PETRUCCI: No questions, your Honor.

14 EXAMINER ADDISON: Mr. Margard, any
15 redirect?

16 MR. MARGARD: I'll take a couple minutes.
17 I don't anticipate it, but if I may.

18 EXAMINER ADDISON: Certainly. Let's go
19 off the record.

20 (Recess taken.)

21 EXAMINER ADDISON: Let's go ahead and go
22 back on the record.

23 Mr. Margard, redirect?

24 MR. MARGARD: As anticipated, your Honor,
25 I have no redirect for Mr. Healey, and I renew my

1 motion for admission of Staff Exhibit 1.

2 EXAMINER ADDISON: Thank you very much,
3 Mr. Margard.

4 I don't believe the Bench has any
5 additional questions, Mr. Healey, so you are excused.
6 Thank you very much.

7 THE WITNESS: Thank you.

8 EXAMINER ADDISON: Are there any
9 objections to the admission of Staff Exhibit 1?

10 Hearing none, it will be admitted.

11 (EXHIBIT ADMITTED INTO EVIDENCE.)

12 MR. NOURSE: And, your Honor, now that we
13 have gotten the four supporting witnesses on and off
14 the stand, I wanted to move for the admission of the
15 Joint Exhibit 1, the Stipulation and Recommendation.

16 EXAMINER ADDISON: Any objections to the
17 admission of Joint Exhibit 1?

18 MR. SETTINERI: Your Honor, I would just
19 note for the record our non-objection to the
20 admission should not be construed as an agreement to
21 the terms of the Stipulation. We reserve all rights.

22 EXAMINER ADDISON: Of course,
23 Mr. Settineri. I wouldn't dream of it.

24 With that caveat in place, are there any
25 objections to the admission of Joint Exhibit 1 at

1 this time?

2 It will be admitted.

3 (EXHIBIT ADMITTED INTO EVIDENCE.)

4 MR. NOURSE: Thank you, your Honor.

5 EXAMINER SEE: Let's go back to the issue
6 that was outstanding that Mr. Whitt made off the
7 record, I believe, before we took a lunch break.

8 Mr. Whitt.

9 MR. WHITT: Yes. I'm simply pointing out
10 that the discussion we had involved testimony that
11 has not been offered yet. At some point in the
12 proceeding, I presume after the Applicant finishes
13 its case, we will go down the line and others will --
14 others will be invited to present witnesses and so
15 forth.

16 It's my understanding that the
17 implication of the Bench's ruling is that if Calpine
18 were to present this witness on the stand, that
19 witness would not be permitted to sponsor the direct
20 testimony that she filed on June 9. The reason I ask
21 is --

22 EXAMINER SEE: Mr. Whitt, it would be so
23 much easier if you would sit down and speak directly
24 into the mic. It was on. Go ahead.

25 MR. NOURSE: If he's finished, I could

1 respond briefly, your Honor.

2 EXAMINER SEE: I am not sure. Were you
3 finished?

4 MR. WHITT: I don't want to bring in a
5 witness from out of state who is not going to be
6 permitted to go on the stand. That's all I am trying
7 to get at and I just want to confirm the import of
8 the ruling is that we shouldn't bring the witness
9 here because she will not be permitted to sponsor the
10 testimony that was filed in June.

11 EXAMINER SEE: And just to be clear, you
12 are talking about Ms. Merola --

13 MR. WHITT: Merola, yes.

14 EXAMINER SEE: -- testifying on her
15 direct testimony that was filed in June.

16 MR. WHITT: Correct.

17 EXAMINER SEE: Okay. You wanted to
18 respond, Mr. Nourse?

19 MR. NOURSE: Only that I agree. I think
20 your ruling was that the -- only the testimony filed
21 in accordance with the deadline that you set in your
22 entry for testimony for and against the Stipulation
23 would be entertained in this hearing and that is the
24 scope of the hearing, so I agree Ms. Merola should
25 not attend in another attempt to try to get the same

1 testimony in you already ruled was outside the
2 deadline. Thank you.

3 MR. WHITT: For the record I'm not sure
4 anybody has considered that perhaps the reason
5 testimony in opposition to the Stipulation wasn't
6 filed is that my client's position may be that it
7 doesn't necessarily oppose the Stipulation and that
8 it would be willing to hear the evidence that comes
9 out at hearing, what evidence is presented, what's
10 the cross-examination, how does the record develop,
11 and based on the record file a brief making some kind
12 of recommendation to the Commission.

13 So the -- you know, there's an assumption
14 being made that Calpine opposed the Stipulation, and
15 in the end it may but, you know, this shouldn't be
16 analogous to a situation where we're voting for the
17 president in Russia and there is one candidate and
18 voting is compulsory.

19 We -- the schedule did not force parties
20 to affirmatively express support or opposition to the
21 Stipulation prior to their ever even convening the
22 evidentiary hearing. That's not how the Commission
23 decides cases and that's not how parties necessarily
24 have to approach these cases either.

25 But with that said, we'll respect the

1 Bench's ruling, and I thank you for the
2 clarification.

3 EXAMINER SEE: As to the first part of
4 your reply, Mr. Whitt, I believe all of that could be
5 done without bringing your witness in and offering
6 her to testify which is what -- exactly what I
7 believe you are requesting; is that the case, or am I
8 misunderstanding?

9 MR. WHITT: Filing testimony in the
10 docket does not make it evidence. We can't -- at
11 this point --

12 EXAMINER SEE: Mr. Whitt, you are
13 requesting to bring in Ms. Merola and have her
14 testify; is that correct?

15 MR. WHITT: Yes, by --

16 EXAMINER SEE: Offer her testimony?

17 MR. WHITT: The scope of the testimony
18 would be what is this, would your answers be the
19 same. That's the sum and substance of the testimony.
20 She's then available for cross, and we move on if
21 there is cross. We're not asking --

22 EXAMINER SEE: So the answer to my
23 question is, yes, you are asking for her to come in
24 and offer her testimony.

25 MR. WHITT: Yes.

1 EXAMINER SEE: Okay. Very simple
2 question.

3 MR. NOURSE: Your Honor, just to respond
4 to the second part, I mean, this is a Stipulation
5 hearing and there was a process set up for this. And
6 the scope of the hearing is the three-part test and
7 whether the Commission should adopt the Stipulation.
8 And so, you know, I think saying you are going to
9 decide later like on the day you are going to file a
10 brief or later when all the other parties have
11 already litigated the Stipulation, then they can come
12 up with a neutral position or a position either way.
13 I mean, I just disagree with that.

14 It is -- it is -- you have to adhere to
15 the schedule that was set and everybody -- every
16 other party has made decisions and has litigated
17 their position based on the Stipulation. I think
18 Calpine should do the same thing.

19 MR. WHITT: Well, to the extent any
20 opposition would be based on purely legal reasons,
21 whether the terms of the Stipulation are consistent
22 with the controlling statute, if that's the reason
23 for opposition, that's not the appropriate topic of a
24 fact witness testimony in any event.

25 EXAMINER SEE: Now, my turn. If you two

1 would just wait a moment, I believe as I asked the
2 question was whether or not Mr. Whitt was requesting
3 an opportunity for his witness to come in and offer
4 testimony. He indicated yes, correct?

5 MR. WHITT: Yes.

6 EXAMINER SEE: Okay. And AEP is opposed
7 to him being afforded that opportunity because there
8 was an entry issued which directed that parties file
9 testimony in opposition to or in support of the
10 Stipulation. The whole purpose for doing that is for
11 administrative efficiency, to keep the record -- to
12 reduce the amount of material that is brought into
13 the evidentiary record and so that it is clear the
14 positions of the parties that either support or
15 deny -- or oppose the Stipulation.

16 While it would have been preferred that
17 Mr. Whitt or any other party that wanted to offer
18 testimony on their -- to present a witness on their
19 direct testimony at least inform the Bench of that
20 when that information was filed either in support of
21 or at the conclusion of those deadlines, Mr. Whitt,
22 or counsel for Calpine, didn't do so, and we are now
23 at the point where Mr. Whitt is requesting that his
24 witness come in and that testimony be presented as
25 part of the evidentiary record.

1 While it is not my preferred method, I am
2 going to grant Mr. Whitt the opportunity to bring
3 Ms. Merola, if I am pronouncing her name correctly,
4 in and to offer that testimony. The parties should
5 discuss when it would be feasible for Ms. Merola to
6 come in. With that discussion maybe you should also
7 see if her testimony -- her direct testimony could be
8 stipulated into the record because, as I look at it,
9 she has limited issues addressed in her direct
10 testimony.

11 I will expect Mr. Whitt, Mr. Nourse, or
12 other counsel for AEP, to at least present to the
13 Bench and the other parties where they stand and
14 whether discussions with the other parties have taken
15 place by Friday.

16 MR. NOURSE: Your Honor.

17 EXAMINER SEE: Uh-huh.

18 MR. NOURSE: If you are done, two things.
19 No. 1 is is this a special ruling for Calpine, or do
20 other parties that filed testimony in June get to do
21 the same thing?

22 EXAMINER SEE: No one else has made the
23 request so --

24 MR. NOURSE: I did say this morning if
25 you are going to grant -- entertain that, that would

1 mean the same question for all the other parties. I
2 did say that.

3 EXAMINER SEE: Yes, you did. Like I
4 said, this is not my preference. This is not how I
5 believe that we have handled AEP ESP in the past. I
6 don't think there was a request to bring in a witness
7 only on their direct testimony where a Stipulation
8 has been filed. Usually it is there is some
9 reference within the supplemental testimony that they
10 wish to incorporate, although they continue to offer
11 supplemental testimony on the Stipulation so.

12 MR. NOURSE: There are good reasons for
13 that and I also argue that this testimony, just like
14 all the other direct testimony, was not relevant to
15 the scope of this hearing and the three-part test.

16 So I guess are you ruling now that we are
17 not going to be able to strike it all when she shows
18 up because it's irrelevant? Do we have another
19 opportunity to file motions to strike based on this
20 new wrinkle? And I guess how are you ruling on IGS's
21 motion that would cover the same testimony?

22 EXAMINER SEE: Had not intended to rule
23 on IGS's motion to strike at this point because it
24 was broad. We'll take that piece up tomorrow.

25 MR. NOURSE: Well, can I ask in

1 accordance with my earlier statement this morning
2 before the ruling that this testimony was outside of
3 the deadline, I mean, I guess I don't -- the reasons
4 you stated why it has never been done this way is the
5 same reasons it shouldn't be done here, because if
6 you're a party that has a position on a Stipulation,
7 you should file testimony in accordance with the
8 deadline set in that case for Stipulation testimony.

9 And the scope of this hearing relates to
10 the Stipulation, not the Application which is what
11 the original June testimony was. And, therefore,
12 that's why the original June testimony is not
13 relevant to this hearing. It shouldn't be probative
14 of anything relating to the three-part test and
15 should be categorically excluded.

16 So I certainly object to that but also
17 ask for if your Friday deadline also applied to all
18 the other parties that filed testimony back in June.

19 EXAMINER SEE: Yes. They would need to
20 speak up. Preferably all of this would have happened
21 in accordance with the entry that directed parties to
22 file testimony either in opposition to or in support
23 of the Stipulation, but they also could have taken
24 their position on brief and not had a witness.

25 As I indicated, this is not my

1 preference. This is not how it was intended.
 2 However, the entry did not foreclose -- the entry
 3 directing that testimony be filed in support of the
 4 Stipulation or in opposition to the Stipulation did
 5 not foreclose this time.

6 MR. MICHAEL: Your Honor, if I could --
 7 you asked for people to speak up, so I am going to
 8 speak up. We did file, as I mentioned earlier,
 9 Dr. Sioshansi's supplemental testimony that
 10 references and incorporates his direct testimony.

11 If everyone agrees that this conversation
 12 going on between Calpine and AEP is really not
 13 applicable to that circumstance, I'll stand down, but
 14 I want to make it very clear we intend to introduce
 15 his supplemental testimony that incorporates his
 16 direct testimony to include his direct testimony.

17 EXAMINER SEE: And you can also reiterate
 18 that point Friday when -- if we reach this on other
 19 testimony. The difference is you submitted
 20 supplemental testimony and specifically said that you
 21 would be incorporating --

22 MR. MICHAEL: Indeed we did.

23 EXAMINER SEE: -- portions, if not all,
 24 of his direct testimony. Therefore, AEP and the
 25 other parties had an opportunity to file motions to

1 strike. Okay?

2 MR. PROANO: Your Honor, if I may, David
3 Proano for OELC, we would request Monday as the date
4 certain for Calpine's witness. This is a surprise to
5 many people and we need an opportunity to look at
6 this witness's testimony from June. If -- your
7 Honor, we would move to set a deadline Friday to move
8 to strike any portions of Ms. Merola's testimony. I
9 am not sure if we are going to do that or not.

10 EXAMINER SEE: I'm sorry.

11 MR. PROANO: I just think it procedurally
12 is fair.

13 EXAMINER SEE: Initially did you say
14 Monday and then Friday?

15 MR. PROANO: Yes, your Honor, if we could
16 set Monday, the 16th, as a date certain for Calpine's
17 witness to appear, that will give parties a few days
18 to look back at her testimony from June and have some
19 time to prepare. This is somewhat of a surprise, I
20 think, for many people. We've had now several weeks
21 to look at other witnesses' testimony and prepare
22 cross-examination. And so I think giving the parties
23 a couple days and the weekend to prepare for this new
24 witness would be helpful.

25 MR. NOURSE: Well, I don't agree with

1 Monday.

2 EXAMINER SEE: I wasn't necessarily
3 setting a date for her -- for Ms. -- for Calpine's
4 witness to appear. That was -- I was just saying
5 Friday for the parties to determine whether or not
6 they have come to some agreement, a Stipulation on
7 her testimony, or a date to propose that she appear.
8 I was not saying that that would be the specific
9 date.

10 MR. PROANO: Oh, your Honor, I just
11 assumed the witness was going to appear if her
12 testimony was going to be allowed, but we will confer
13 with the other parties on that issue, your Honor.

14 EXAMINER SEE: She would need to appear.
15 We just don't have a date for her to appear at this
16 time. After the parties have had a chance to discuss
17 matters and confer, we will see if there is a
18 mutually agreeable date. If not, we'll -- the Bench
19 will have to set.

20 MR. NOURSE: I guess, your Honor, I'm not
21 sure what the parties are discussing. I think maybe
22 I would like to make it clear for the record in case
23 we file an interlocutory appeal. Your ruling today
24 is that Calpine's testimony from -- in June that
25 related to the Application will be considered and

1 entertained when she appears at this testimony in
2 some future phase of the hearing? Did I get that
3 correct?

4 EXAMINER SEE: Yes. If -- if Mr. Whitt
5 brings in Ms. Merola as I am permitting him to do, we
6 would consider her direct testimony as we would have
7 with everyone else.

8 MR. NOURSE: Is she going to be permitted
9 to address anything relating to the Stipulation?

10 EXAMINER SEE: That is not a question I
11 can -- it would be open just like we just now for
12 other parties to say something.

13 MR. NOURSE: Well, it's not just like
14 that because you set a deadline, and now you are
15 letting her testify about the Stipulation.

16 MR. WHITT: No.

17 MR. NOURSE: They didn't comply with the
18 deadline. That's a question. I am trying to
19 understand your ruling.

20 EXAMINER SEE: It's true, they didn't.
21 They could have. We are at this point now and rather
22 than --

23 MR. WHITT: Your Honor, like any witness
24 the testimony would be limited to what's in the four
25 corners of the document, that it's correct this

1 surprise testimony filed back in June doesn't address
2 the Stipulation because there was no Stipulation. So
3 that testimony is -- it says nothing about the
4 Stipulation. And I get the argument that, well,
5 since it doesn't address the Stipulation, it's not
6 relevant.

7 The problem is that the Stipulation is
8 not the sole issue in this case. Every procedural
9 entry in this case notices for hearing AEP's
10 Application and related matters. That's what's
11 noticed for hearing. This testimony, the surprise
12 testimony filed in June, addresses the Application
13 and only the Application. To the extent testimony
14 gets into something that is no longer applicable
15 because of the Stipulation, what have you, that can
16 all be addressed in brief.

17 We are not trying to backdoor anything
18 here. I would -- I will inquire of the witness to
19 see if I can get her here on Monday since that's a
20 date that's already been scheduled, and I guess the
21 first order of business is to determine whether
22 anybody actually has cross for her. I don't expect
23 people to do that on the spot, but we could report
24 back. If there is cross, then we will need a date.
25 If there's not cross, then people who want to argue

1 about whether portions of it should be stricken, we
2 can do that but certainly willing to accommodate just
3 entering the testimony into the record.

4 MR. NOURSE: Back to what Mr. Whitt said
5 earlier, the four corners of the document, the reason
6 I asked about the Stipulation testimony because if
7 she's unfairly permitted to testimony about her June
8 testimony, then there will be questions about the
9 Stipulation. And, you know, we at least want to have
10 that option. I don't even -- so you can't say she
11 can't address anything about the Stipulation.

12 MR. WHITT: There won't be questions from
13 me about it. If other parties want to open that
14 door, that's up to them.

15 EXAMINER SEE: As is obvious, it's going
16 to require some conversation among the parties,
17 specifically Calpine and AEP Ohio.

18 MR. NOURSE: I can't hear you, your
19 Honor.

20 EXAMINER SEE: I said clearly it's going
21 to take some conversation between the parties,
22 specifically AEP Ohio and Calpine, so --

23 MR. NOURSE: I don't know what we are
24 supposed to discuss, but I don't have any intention
25 of agreeing to something that was not part of this

1 proceeding.

2 EXAMINER SEE: I understand the issue,
3 and as you indicated, Mr. Nourse, you certainly have
4 the right to file an interlocutory appeal,
5 understood, as everyone else does.

6 This is not the preferred procedure but
7 this is where we are today since he has requested to
8 present his witness, and he would be Mr. Whitt on
9 behalf of Calpine.

10 Is there anything else?

11 MR. LITTLE: I'm sorry, your Honor.
12 There is -- I think we are in agreement we are at the
13 conclusion of the Applicant's case.

14 EXAMINER SEE: Yes.

15 MR. LITTLE: I know we've had discussions
16 about additional testimony but that all appears to be
17 after the conclusion of the Applicant's case, and so
18 with the -- your Honor's indulgence, I would like to
19 make a motion, if I may, on behalf of One Energy.

20 We would request at this time that the
21 Application be summarily denied. This is a motion we
22 will address in greater detail in our brief, and we
23 understand that the final ruling on this motion will
24 be made at the conclusion of the proceedings, but we
25 start with a number of basic propositions.

1 And the first proposition that an EDU in
2 seeking the approval of an ESP bears the burden of
3 proof. And likewise when the EDU is seeking over the
4 objection of various stakeholders to secure a
5 settlement via Stipulation, it bears a burden of
6 proof as to the three basic elements that have been
7 adopted both by Ohio courts and PUCO for evaluating
8 the appropriateness of a settlement.

9 Two of those elements stand out here.
10 One, does the settlement as a package benefit
11 consumers and public interest? And the third, does
12 the settlement violate any important regulatory
13 principles or practices?

14 And I would suggest to your Honors there
15 has been a complete failure of evidence in two key
16 respects. The first is AEP's failure to include in
17 the evidentiary record before the Hearing Officer the
18 EDU Application and the submitted direct evidence of
19 the respective parties. We've been having that
20 discussion throughout the proceedings today where AEP
21 has drawn the line in the sand and suggested that
22 type of information cannot be relevant or probative
23 to your Honors' or the PUCO's consideration of these
24 issues.

25 But when you look to see how the

1 Stipulation is structured, it must necessarily be
2 relevant. The settlement proffers that the signatory
3 parties are submitting the settlement "in order to
4 resolve all the issues raised by this proceeding
5 through the Application filed by" AEP.

6 And then on page -- bottom of page 1, it
7 says -- the settlement states that it is supported by
8 adequate data and information. And then at the top
9 of page 5, it says -- the settlement says that the
10 settlement package "represents a just and reasonable
11 resolution of all issues in this proceeding" and then
12 "represents a combination of the diverse interests
13 represented by the signatory parties." Each of those
14 statements collectively represents that this
15 Stipulation, which is described specifically as an
16 accommodation, has an advantage relative to the ESP
17 that was presented in the Application or the ESP that
18 might have resulted had this litigation continued.

19 But unless the evidentiary record
20 includes the Application and the direct testimony
21 filed in support and the direct testimony in
22 opposition, the settlement leaves the Commission with
23 nothing more than a naked conclusion in advance of
24 the settlement document to conduct a "careful
25 consideration" of a settlement and its relative

merit.

I think of the analogous situation of a class settlement. There the plaintiff must show what the claims were, what evidence has been collected through the discovery process, must give an indication of what the strengths and weaknesses are of the relative claims, and must consider whether or not that settlement is fair in the interest of the class members.

In this case, however, the PUCO's obligation is much broader. While the interest of the parties are obvious considerations, it's the public interest that is paramount; and, thus, the required level of careful scrutiny is even higher.

The Commission must engage in "careful consideration," and this decision must explain how the Commission "carefully considered" a proposed settlement within the applicable legal framework here, Section 4928.143.

But the lack of record prevents the PUCO from action determining whether the settlement, quote, represents a just and reasonable resolution while the issues in this proceeding and, in fact, whether or not it represents an accommodation of the diverse interests represented by the signatory

1 parties. They want to skip over what is a key aspect
2 of the consideration process by excluding that
3 evidence, and they have gone to great lengths to
4 suggest it should not be excluded at all.

5 Which then raises a separate issue that
6 is, once again, a failure of proof and that is the
7 failure to offer any evidence by any of the witnesses
8 as to Basic Transmission Cost Rider issues. That is
9 an issue that was clearly teed up as part of the
10 parties' submissions. The Calpine submission, for
11 example, testified extensively as to that subject.

12 And it is an issue with significant
13 consequences for my client because the demand billing
14 detriment limits the ability of customers like One
15 Energy to modify or to time their electric demand in
16 ways that can reduce the costs of current and future
17 transmission services. So it is a distinction with
18 substance.

19 And that BTCR issue also violates the
20 cost causation principle. Costs should be allocated
21 in accordance with cost causation but there is no
22 written testimony from any of the proponents of this
23 Stipulation in support of a settlement that addresses
24 this key issue of BTCR. It's simply ignored, and it
25 was ignored impermissibly.

Now, there are other issues in this case separate and part from the insufficiency of the evidence. And that relates to this PUCO's subject matter jurisdiction to approve the BTCR element of the settlement. Once again, this is true in two separate respects. The ESP statute 4928.143(B)(2)(g) states that an ESP may include provisions relating to a transmission service required for standard service offer -- offer customers. However, the statute does not permit the PUCO to use an ESP to make shopping customers captive to AEP Ohio's transmission provisions.

And if there was any doubt in this regard, the Commission's own rules eliminate any doubts. The plain language set forth in Administrative Code Rule 4901:1-36-04(B) states that AEP Ohio's Transmission Costs Recovery Rider, which is the BTCR in this issue, shall be bypassable. It's not under this proposed Stipulation. And, in fact --

EXAMINER SEE: Mr. Little.

MR. LITTLE: -- AEP Ohio's tariff on file with the Commission is also consistent with this construction. It states a customer may elect distribution services only and that Competitive Retail Electric Services providers can secure

1 transmission services for their customers from PJM
2 Interconnect, LLC, which is designated as the
3 transmission service provider.

4 EXAMINER SEE: Mr. Little.

5 MR. LITTLE: Yes.

6 EXAMINER SEE: This sounds more like a
7 motion that should have been put in writing.

8 MR. LITTLE: I understand, but as I
9 understand --

10 EXAMINER ADDISON: In a brief.

11 MR. LITTLE: As I understand PUCO rules,
12 we are obligated to make the motion during the course
13 of the proceedings, or otherwise we are obligated to
14 file a separate motion and memorandum at the
15 conclusion of these proceedings hence the reason we
16 are stating them orally for the benefit of your
17 Honors now.

18 EXAMINER SEE: Brief --

19 MR. LITTLE: One final point, if I may.

20 EXAMINER SEE: Okay. One final point.

21 MR. LITTLE: The ESP statute, again,
22 4829.143(B)(2), states that an approved ESP may
23 include provisions regarding district services like
24 the DIR, but the same provision of the statute also
25 states that as part of its determination as to

1 whether to allow an electric distribution utility
2 electric security plan inclusion of any provision
3 described in provision (B) (2) (h) of the section, the
4 Commission shall examine the reliability of the
5 electric distribution utility's distribution system
6 and ensure that customers and the electric
7 distribution utility expectations are aligned and
8 that the electric distribution utility is placing
9 sufficient emphasis on and dedicating sufficient
10 resources to the reliability of the distribution
11 systems.

12 There is nothing in the Application, the
13 direct testimony, or the testimony now offered before
14 the panel which even mentions or examines this
15 necessary issue, an issue if it is not addressed
16 would necessarily deprive the Commission of
17 jurisdiction.

18 I appreciate the indulgence you allowed
19 me, but again, we thought it was appropriate and
20 necessary to make that motion orally for the record.

21 MR. NOURSE: And, your Honor, I would
22 like to respond.

23 EXAMINER SEE: Go ahead.

24 MR. NOURSE: One Energy didn't file any
25 testimony under your schedule that you established

1 for testimony for and against. And I object to
2 Mr. Little testifying about the BTCR, making factual
3 statements, and policy arguments. You know, if they
4 want to make a legal motion to dismiss, they can do
5 that in writing, and we can respond.

6 As far as the direct evidence and the
7 discussion we had earlier, as I said earlier this
8 morning, that the direct testimony in support and
9 against the Application that was filed back earlier
10 this summer is part of the record. It's not part of
11 the evidentiary record. It does provide context and
12 background and does provide the benchmark for
13 comparison of things that were done in the
14 Stipulation.

15 And, you know, I disagree with
16 Mr. Little's characterization that there's not
17 sufficient evidence or testimony on any of these
18 points relating to the three-part test or the
19 statutory structure. Obviously witnesses don't have
20 to talk about statutory and -- statutory issues or
21 standards approved, but the evidence is there. We
22 can argue that on the brief.

23 And I also would note that Mr. Little
24 misstated the three-part test. There is no
25 requirement for diverse interests in the parties that

1 support. The Commission's rejected that in multiple
2 decisions where other parties have argued for a
3 requirement of diversity among the parties. The
4 Commission has rejected that multiple times. It is
5 not part of the three-part test.

6 So, yeah, I agree if there is going to be
7 a motion to dismiss, it should be in writing, and we
8 can get a chance to respond to that.

9 EXAMINER SEE: Are there any other
10 parties that would like to respond?

11 MR. MCKENNEY: Direct Energy agrees with
12 counsel for AEP Ohio insomuch as the motion should be
13 raised in writing. We would like to reserve the
14 right to respond to that motion in writing, and I
15 guess I will leave it with that.

16 EXAMINER SEE: Any of the other parties?
17 Counsel for any of the other parties?

18 Mr. Little, I appreciate your motion.
19 It's denied at this time. We will continue with the
20 hearing and put the matter before the Commission.

21 MR. LITTLE: Thank you, your Honor.

22 EXAMINER SEE: Okay. Is there anything
23 else today before we adjourn?

24 We'll resume tomorrow at 9:00.

25 MS. PETRUCCI: Is the witness order the

1 listing that got circulated to everybody?

2 EXAMINER SEE: Yes. I'm sorry. You said
3 the witness order? Yes. Mr. Wilson, I believe, is
4 the next. Let me make sure.

5 MR. SETTINERI: Are we on the record
6 still?

7 EXAMINER SEE: Yeah, we're still on. I
8 think I said we will resume tomorrow at 9:00, and
9 then the question was is the witness order the same
10 as what was circulated on October 5. That means we
11 would start with Mr. Wilson and then Mr. Tinkham,
12 Mr. Fortney, and then James Williams, OCC's four
13 witnesses.

14 MR. MICHAEL: And, your Honor, Mr. Wilson
15 is coming in from out of town. We are expecting him.
16 However, would there be any objection if he did not
17 arrive here on time we start with Mr. Tinkham?
18 Hearing none, I appreciate it.

19 EXAMINER SEE: Doesn't work that way for
20 you, dear.

21 MR. NOURSE: Company does not object.

22 EXAMINER SEE: What time are you
23 expecting Mr. Wilson?

24 MR. MICHAEL: I thought I heard the
25 Company say they didn't object if we started with

1 Mr. Tinkham; is that correct?

2 MR. NOURSE: That's just our feedback,
3 yes.

4 MR. MICHAEL: I appreciate that feedback.

5 EXAMINER SEE: What time are you
6 expecting Mr. Wilson is the question?

7 MR. MICHAEL: I am expecting Mr. Wilson
8 at 9:00 but I don't have -- have control over some
9 things but. His flight, et cetera, are things I
10 don't, but Mr. Tinkham will be here.

11 EXAMINER SEE: Okay.

12 MR. MICHAEL: Thank you, your Honor.

13 MS. GRUNDMANN: Your Honor, are we going
14 a full day tomorrow? I ask that because I note
15 Mr. Buckley is listed as either the 11th or the 13th,
16 and when you read out the names, I only heard four of
17 the OCC witnesses. Would you intend to attempt to
18 call Mr. Buckley if we got there tomorrow?

19 EXAMINER SEE: Depends on what time we
20 get there.

21 MS. GRUNDMANN: Do you know what time you
22 would intend to adjourn tomorrow?

23 EXAMINER SEE: No. These are questions
24 that the Bench cannot answer without -- counsel gave
25 their cross estimates. We work and we try to be

1 flexible. We try to accommodate the witness
2 schedule, but I couldn't tell you what time.

3 MS. GRUNDMANN: Just checking in terms of
4 making plans because I know we are adjourning for
5 Thursday, correct?

6 EXAMINER SEE: Yes. Anything else?
7 We are off the record.

8 (Thereupon, at 2:55 p.m., the hearing was
9 adjourned.)

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CERTIFICATE

I do hereby certify that the foregoing is
a true and correct transcript of the proceedings
taken by me in this matter on Tuesday, October 10,
2023, and carefully compared with my original
stenographic notes.

Karen Sue Gibson, Registered
Merit Reporter.

(KSG-7531)

- - -

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in

Case No(s). 23-0023-EL-SSO, 23-0024-EL-AAM

Summary: Transcript October 10th 2023 In the Matter of the Application of Ohio Power Company for Authority to Establish a Standard Service Offer Pursuant to R.C. 4928.143, in the Form of an Electric Security Plan. In the Matter of the Application of Ohio Power Company for Approval of Certain Accounting Authority. electronically filed by Mr. Ken Spencer on behalf of Armstrong & Okey, Inc. and Gibson, Karen Sue Mrs..