

BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

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In the Matter of the OVEC :
Generation Purchase Rider :
Audits Required by R.C. :
4928.148 for Duke Energy : Case No. 21-477-EL-RDR
Ohio, Inc., The Dayton :
Power and Light Company :
d/b/a AES Ohio, and Ohio :
Power Company d/b/a AEP :
Ohio. :

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PROCEEDINGS

before Ms. Megan Addison and Mr. Jesse Davis,
Attorney Examiners, at the Public Utilities
Commission of Ohio, 180 East Broad Street, Room 11-A,
Columbus, Ohio, called at 9:05 a.m. on Wednesday,
November 1, 2023.

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VOLUME II

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Wednesday Morning Session,
November 1, 2023.

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

Good morning, everyone. Today we will be
resuming the hearing for Case No. 21-477-EL-RDR being
captioned in the Matter of the OVEC Generation
Purchase Rider Audits Required by RC 4928.148 for
Duke Energy Ohio, Inc., The Dayton Power and Light
Company, and the Ohio Power Company.

We will dispense with taking appearances
this morning, and I will -- will be taking the -- we
will be taking back up with the testimony of
Dr. Fagan.

Dr. Fagan, I will remind you that you are
still under oath.

THE WITNESS: Yes, your Honor.

EXAMINER ADDISON: Thank you.

Mr. Finnigan, whenever you are ready.

MR. FINNIGAN: Thank you, your Honor.

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MARIE N. FAGAN, Ph.D.

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

DIRECT EXAMINATION

By Mr. Finnigan:

Q. Good morning, Dr. Fagan.

A. Good morning.

Q. Dr. Fagan, I would ask if you could refer
to the AEP audit report you prepared, and I would
like to direct your attention to page 31 of the
report. And let me ask if you would please use the
public version.

A. I'm there.

Q. Okay. Now, I want to direct your
attention to the middle of the page where it says
analysis under 4.3.3.1.

A. Okay.

Q. Okay. Now, do you see the second
paragraph where it begins "LEI's results"?

A. Yes.

Q. Now, I have the unredacted version in
front of me, so I don't want to discuss any
confidential information at this point. So that
paragraph "LEI's results" in the public version, are
there any redactions in that paragraph?

1 A. No.

2 Q. Okay. Now, let me read that for a minute
3 and I want to ask a question about it. It says
4 "LEI's results are consistent with reporting by OVEC,
5 which noted: 'In 2020, OVEC's average power cost to
6 the Sponsoring Companies was \$67 per megawatt-hour
7 compared with \$57 [SIC] per megawatt-hour in 2019.'"
8 Have I read that correctly?

9 A. Correct.

10 Q. So the OVEC costs were \$10 per
11 megawatt-hour higher in 2020 than in 2019; is that
12 right?

13 A. Within 4 cents, yes.

14 Q. And in addition to the higher costs, we
15 also had lower PJM prices because of the COVID-19
16 pandemic; is that right?

17 A. So there's a few pieces of the question.
18 So the first part is about the higher costs.
19 Probably somewhat related to the pandemic because
20 that reduced energy demand which reduces prices in
21 PJM which reduces the need to -- demand reduces the
22 need to generate energy and when you need to call on
23 less -- fewer generation resources, you are usually
24 at lower prices. I think that gets to your question.

25 Q. Yes. Thank you. And so as a result of

1 those higher costs and lower prices, the OVEC rider
2 was more costly to consumers in 2020 as compared to
3 2019; is that right?

4 A. The cost -- so if we are just referring
5 to this paragraph, the cost per megawatt-hour is
6 higher than -- in 2020 than in 2019. But this
7 paragraph doesn't talk about the net impact on the
8 rider which has to do with -- so you have got these
9 OVEC costs, but the impact on the rider between those
10 two pieces, you've got the PJM settlements.

11 Q. That's why I asked you about the PJM
12 price. They are lower, right?

13 A. Okay. I believe they were. I could --
14 let me check.

15 Q. Please do.

16 A. So looking at Figure 5 on page 18, yes,
17 we had lower annual average day-ahead prices in PJM
18 in 2020 compared to 2019, yes.

19 Q. So that combination of those two factors,
20 lower prices in PJM and higher costs from OVEC, those
21 combined to make the OVEC rider even more costly for
22 consumers in 2020 as compared to 2019.

23 A. So it -- what we were looking at in that
24 paragraph is cost per megawatt-hour. The cost in the
25 rider is a dollar amount, so OVEC's costs have to

1 do -- their dollar costs have to do with, you know,
2 the fuel charge, all these other components of costs
3 we can look at in one of our exhibits. And the net
4 impact on the rider has to do with the earnings in
5 the PJM market. That's -- that's the accurate way to
6 describe what you are saying, I would say.

7 Q. Yes. I understand what you're saying but
8 that's not my question. My question is this, you've
9 already said that the costs from OVEC in 2020 were
10 \$10 a megawatt-hour higher than 2019, right?

11 A. OVEC's costs.

12 Q. Right. And then you've also said that
13 the PJM prices are lower in 2020 as compared to 2019,
14 right?

15 A. Correct.

16 Q. And whether you want to look at it on a
17 unit basis per megawatt-hour or a cumulative basis
18 that's based on all the megawatt-hours sold in a
19 year, either way you look at it, the rider is more
20 costly to consumers in 2020 as compared to 2019
21 because of that combination of higher OVEC costs and
22 lower PJM revenues.

23 A. I would like to look at the 2019 results
24 just to verify that. I am trying to think if I have
25 that anywhere in these.

1 I think my 2020 reports for the total
2 rider costs only have 2020 numbers in them. Let me
3 check one more.

4 The charts that relate to that total
5 charge to customers are in Figure 9 in each of the
6 reports, but we only looked at 2020, so we didn't in
7 these reports use a comparison to 2019.

8 Q. Okay. Well, let's just look at it, you
9 know, applying some logic and look at it on the basis
10 of a single megawatt-hour sold, just 1 megawatt-hour.
11 And I think that we might be able to arrive at an
12 answer just based on the information you've already
13 given us and that information is that the OVEC costs
14 in 2020 were \$10 a megawatt-hour higher than in 2019,
15 right?

16 A. Partly because fewer megawatt-hours are
17 sold.

18 Q. Well, I don't care why at this point but
19 just the fact it was \$10 an hour higher in 2020. I
20 am just trying to get to whether on a unit basis it
21 was more costly to consumers in 2020.

22 A. So OVEC's dollar costs may or may not
23 have been different but if there's less -- fewer
24 kilowatt-hours sold, then when you do the math, you
25 do the dividing, you'll get a higher cost per

1 kilowatt-hour no matter the PJM price.

2 Q. Okay. Well, I understand that, but I'm
3 just going by what you say in your audit report here
4 and let's go back and look at this again. And I am
5 on the same paragraph that said "LEI's results were
6 consistent." Do you see that?

7 A. Please remind me of the page number.

8 Q. I think it was page 29.

9 A. 29.

10 EXAMINER ADDISON: Page 31, Mr. Finnigan.

11 Q. Oh, page 31, I'm sorry.

12 THE WITNESS: Thank you, your Honor.

13 Q. It's that very last paragraph at the
14 bottom which begins "LEI's results." Do you see
15 that?

16 A. Yes.

17 Q. And I want to focus on that second
18 sentence that begins "In 2020." So that says "In
19 2020, OVEC's average power cost to the Sponsoring
20 Companies was \$67 per megawatt-hour compared with
21 \$57.04 per megawatt-hour in 2019." Have I read that
22 correctly?

23 A. Yes.

24 Q. So more or less the OVEC costs on average
25 for the whole year were \$10 a megawatt higher in 2020

1 than 2019, right?

2 A. Yes, I would say that's -- it's OVEC's
3 number, but it's very close to what we arrived at,
4 and it does appear that it's a yearly average.

5 Q. Okay. Now, let's look at it from just
6 this unit basis and think about this in terms of just
7 1 megawatt-hour. Keep it simple. So we know from
8 this that the 2020 rider on the cost side is already
9 worse for consumers because it's \$10 a megawatt-hour
10 higher on the cost side, the OVEC cost, right?

11 A. I'm trying to describe how it flows
12 through the rider. So OVEC's costs -- so looking at
13 it on a per megawatt-hour basis is OVEC's analysis
14 here; it's our analysis in other parts of the report.
15 But as it flows through the rider, it's a total
16 dollar amount.

17 Q. Yes. I'm aware of that, but I don't want
18 to ask you about the total dollar amount. I want to
19 ask you about the unit amount. And do you understand
20 when I say on the unit amount, I mean 1 megawatt-hour
21 and let's analyze it on the basis of 1 megawatt-hour.
22 Do you understand what I am saying?

23 A. I think so.

24 Q. Okay. Now, in your report that we just
25 read, you analyzed it on the basis of 1

1 megawatt-hour, didn't you?

2 A. I'll find the charts where we did that.
 3 Where we looked at charges to customers, that would
 4 be Figure 8 -- the reconciliation, Figure 8 and
 5 Figure 9, which is consistent numbering across the
 6 audits. We didn't look at that on a megawatt-hour
 7 basis. Where we did our own analysis, because, of
 8 course, part of our assignment is to look at charges,
 9 earnings, et cetera, in the context of market, where
 10 we looked at per megawatt-hour analysis was, for
 11 example, Figure 12, Figure 13, and I believe those
 12 numbers are the same in all the audits.

13 Q. Okay. So where does that leave us on the
 14 analysis based on 1 megawatt per hour in 2020 versus
 15 2019? If we go back to my question, and let me
 16 direct your attention back to page 31 of the AEP
 17 report that we were reading from in that very last
 18 page on the bottom, and that part of your report, you
 19 address the OVEC costs for 2020 and compare them to
 20 2019, you do it on the basis of 1 megawatt-hour,
 21 right? On the unit basis.

22 MR. SHARKEY: Object, your Honor. It has
 23 been asked and answered repeatedly. The fact he
 24 doesn't like the answer doesn't mean we need to
 25 continue asking the same question.

EXAMINER ADDISON: I will allow this one more time, Mr. Finnigan. I will allow the witness to answer the question.

Please answer.

MR. FINNIGAN: And let me withdraw that question. I think -- I am not sure. I apologize. I must be making my question very unclear this morning.

Q. (By Mr. Finnigan) But all I'm getting at is that this combination of higher OVEC costs in 2020 and lower PJM prices in 2020 compared to 2019 made the OVEC rider more costly to consumers on a per unit basis.

MR. McKENZIE: Objection, your Honor. We keep retreading the same ground. The witness has explained many times that a dollar per megawatt-hour is not the same as the total amount that is billed to the Companies and included in the rider, and so you can't make the leap from dollars per megawatt-hour to rider charges. She said that several times now.

EXAMINER ADDISON: Thank you, Mr. McKenzie.

I will allow the witness to answer the question but provide you an ample amount of latitude to explain if it's more complicated than what Mr. Finnigan is trying to ask.

1 THE WITNESS: Thank you, your Honor.

2 A. It's a little more complicated because
3 the way the fresh -- the question is phrased can
4 double count some of the impacts. So if you start
5 with OVEC's average power cost, you are taking the
6 total cost incurred by OVEC and dividing it by the
7 megawatt-hours that they produced.

8 Now, the fact that they produced fewer
9 megawatt-hours didn't increase its cost as such. In
10 fact, it could have reduced its variable cost because
11 if you're not running a plant, you're not consuming
12 coal, et cetera.

13 So because -- but on the other hand, you
14 still have your fixed costs. You have got to spread
15 your fixed costs over a fewer megawatt-hours. So to
16 say the costs are higher on a megawatt-hour basis is
17 accurate. But again, that's not how customers are
18 billed. So if you want to extend that into and here
19 is the impact on billing, you have to go through what
20 the Companies earned in the PJM markets which if
21 prices were lower, the earnings could be lower. So
22 you can't necessarily from this paragraph say, well,
23 here it's a \$10 difference and that's how it impacted
24 the rider.

25 Q. Okay. And so do -- are you able to say

1 based on now doing five audits of OVEC costs and PJM
2 revenues during the 2019 and 2020 time period, after
3 those five audits which you prepared, are you able to
4 say whether the OVEC rider was more costly to
5 consumers on a per unit basis in 2020 as compared to
6 2019, or are you not able to render any opinion on
7 that subject?

8 MR. McKENZIE: Objection, your Honor.
9 The premise of costly to customers on a per unit
10 basis does not make sense, and she's explained why
11 many, many times. He keeps asking the same question
12 over and over.

13 EXAMINER ADDISON: Thank you,
14 Mr. McKenzie.

15 MR. FINNIGAN: Your Honor, if I may
16 address that.

17 EXAMINER ADDISON: You may.

18 MR. FINNIGAN: This is simple mathematics
19 here.

20 EXAMINER ADDISON: I think the witness
21 has explained it's not a simple mathematical
22 question.

23 MR. FINNIGAN: But I have asked her to
24 reduce it to a per unit basis and really the -- you
25 know, at a general level, what we are talking about

1 is if you drive down the charge to a per unit basis
2 and you multiply it by how many megawatts were sold
3 that year, that's what the cost was. And so I am
4 looking at this on a per unit basis now.

5 And if she can't answer the question,
6 that's fine. I think that we can move on but I --
7 you know, she did address this in her audit report on
8 a per unit basis, and I have directed her attention
9 to so let me just ask the question and if she has no
10 opinion, I'll move on to another subject.

11 EXAMINER ADDISON: I think we've -- we've
12 beat this -- we've beat this dead horse a little bit
13 too much, Mr. Finnigan. So let's -- let's just move
14 on to the next question.

15 Q. (By Mr. Finnigan) Do you have any opinion
16 as to whether the OVEC rider in 2020 was in the best
17 interests of retail ratepayers?

18 A. We didn't look at the concept of best
19 interest.

20 Q. Did you prepare an opinion in 2019 as to
21 whether the OVEC charge was in the best interest of
22 retail ratepayers?

23 A. We did not.

24 Q. Did you submit a draft report on the AEP
25 OVEC costs in 2019 stating that the running of the

1 plants was not in the best interest of retail
2 ratepayers?

3 MR. LINDGREN: Objection. That's outside
4 the scope of this case.

5 EXAMINER ADDISON: Mr. Finnigan?

6 MR. FINNIGAN: Oh, yes, your Honor. This
7 is something that is within the scope of this hearing
8 because it goes to, you know, several things that are
9 admissible or allowable in cross-examination. So
10 this is my cross-examination of the Staff's witness.
11 It's a hostile witness for me, and so I am entitled
12 to ask questions that go to this witness's bias or
13 prejudice or sense of perhaps animus towards
14 consumers.

15 And there is information from her work on
16 the 2019 audit report indicating that she had an
17 e-mail exchange with members of the Commission Staff
18 where she submitted a draft audit report, and in the
19 draft audit report, she prepared --

20 EXAMINER ADDISON: Mr. Finnigan, I am
21 going to stop you right there before we get too far
22 ahead in that dispute.

23 Mr. Lindgren, did you have anything to
24 add?

25 MR. LINDGREN: Well, I will just say

1 there is a pending motion to take administrative
2 notice of that -- the docket in that previous case
3 but that hasn't been ruled on yet. Now, Mr. Finnigan
4 is attempting to jump ahead and start asking
5 questions based on that -- that evidence in that
6 case. Again, it's not pertinent to this case.

7 EXAMINER ADDISON: Thank you.

8 MS. BOJKO: Your Honor, may I be heard on
9 this subject?

10 EXAMINER ADDISON: Very briefly.

11 MS. BOJKO: The scope of the 2020 audit
12 and the 2019 audit is very much included in that 220
13 audit. In each her audit reports --

14 EXAMINER ADDISON: Ms. Bojko, did you
15 misstate? 2020 and 2019?

16 MS. BOJKO: Yeah. I think the question
17 was about 2019, so the 2020 audit very much includes
18 her past findings of 2019 which is -- the question is
19 based on the 2019 audit is my understanding of the
20 question and that's very much in the scope of the
21 2020 audit because she relies on that information.
22 She cites to that information in every single audit
23 report.

24 And if you look at the audit reports,
25 I'll just take Duke's, for instance -- I'm sorry. I

1 am looking at AEP's. If you look at the audit
2 reports on page 11, and it's in each of the different
3 audit reports, it specifically addresses what the
4 auditor found in the 2019 audit. And one of the
5 scope items of the Commission is to look at whether
6 they have adopted the recommendations of 2019,
7 whether the utilities have made changes based on
8 2019. That's part of the whole point of a 2020 audit
9 is to look at what the auditor's recommendations were
10 in the prior year and see if the utilities adopted
11 it.

12 So 2019 and those findings and how they
13 play into 2020, as well as going forward, is very
14 much within the scope. And if you look at the new
15 statutory rider that we're now operating under, it
16 very much talks about what's in the best interests of
17 the consumers and what is going forward and how that
18 prudence goes forward and those actions move forward.
19 So it's very relevant to this case.

20 EXAMINER ADDISON: Thank you, Ms. Bojko.

21 MR. FINNIGAN: May I respond to
22 Mr. Lindgren's objections?

23 EXAMINER ADDISON: Very briefly.

24 MR. FINNIGAN: We have two separate
25 issues to resolve at this point in time. One is the

1 admissibility of documents, the e-mails themselves,
 2 which I intend to offer into evidence later on this
 3 morning. A separate issue aside from whether you
 4 find that those e-mails were admissible is whether I
 5 can question her about those e-mails. And so even if
 6 you were to rule that the e-mails are not admissible
 7 in evidence, I'm still allowed to ask her questions
 8 about the e-mails on cross-examination because that's
 9 within the allowable scope of cross-examination to
 10 determine bias and prejudice by referring to
 11 documents that she had a part in.

12 MR. SHARKEY: Can I be heard, your Honor?

13 EXAMINER ADDISON: Yes.

14 MR. SHARKEY: I submit that the
 15 Commission has already decided this issue. The
 16 Attorney Examiner in the 2019 audit of -- in Duke's
 17 case refused to admit similar evidence, and the
 18 Commission affirmed the exclusion of things that
 19 happened in AEP's 2019 audit into Duke's 2019 audit,
 20 so it's even more distant here. We, in fact, discuss
 21 those Commission decisions in the joint motion that
 22 the utilities have filed regarding OCC Witness Perez
 23 so that's cited and quoted there, but the Commission
 24 has already ruled, in fact, on the admissibility.

25 MR. McKENZIE: And just for reference,

1 your Honor, that's the September 6, 2023, Opinion and
2 Order in Case 20-167.

3 MS. BOJKO: Your Honor, may I be heard on
4 that point?

5 EXAMINER ADDISON: Yes.

6 MS. BOJKO: That's not exactly correct.
7 We are allowed to ask questions about certain things
8 that happened in prior audits. What they are talking
9 about is the admissibility of the e-mails and the
10 evidence. There's a difference. You are allowed to
11 go to sworn statements by a witness and try to
12 impeach them or attack their credibility or ask them
13 questions about past audits that they've done. You
14 are allowed to do that. The utilities do it all the
15 time. They ask about our past writings and past
16 testimonies of our witnesses. We are allowed to do
17 that.

18 That's -- that's completely different
19 than the motion to bring in actual evidence and
20 documents. Questioning is allowed. The citations
21 that they are talking about are whether the e-mails
22 came in in those prior cases. That's different.

23 MS. AKHBARI: Your Honor, could I be
24 heard on this topic?

25 EXAMINER ADDISON: Very briefly.

1 MS. AKHBARI: Excuse me. So, your Honor,
2 I believe what Mr. Finnigan and Ms. Bojko are
3 referring to is the concept of impeachment, but
4 Mr. Finnigan has not established that there is any
5 statement from the auditor that is impeachable at
6 this point in time that would allow him to go to
7 those documents.

8 Moreover, the law that the present
9 proceeding is taking place under is wholly separate
10 and different from that in the PPA Rider. The
11 participating parties are different. AES and Duke
12 Energy Ohio were not participants in that prior
13 audit, and they haven't had the opportunity to ask
14 questions of that audit, speak to the record in that
15 audit, or anything of the like.

16 If Mr. Finnigan wants to impeach the
17 auditor, he needs to elicit some impeachable
18 statement. He can't just go skip straight to the
19 material he wants to read into the record at this
20 point in time.

21 MR. FINNIGAN: Your Honor, may I respond
22 to that objection?

23 EXAMINER ADDISON: Very quickly,
24 Mr. Finnigan.

25 MR. FINNIGAN: Your Honor, I did lay the

1 foundation for impeachment because I asked her
2 whether she had an opinion as to whether the OVEC
3 costs were in the best interests of the ratepayers in
4 2020. She said she didn't render any opinion on that
5 for this audit report. And then I asked her the same
6 question about 2019.

7 And so that's the basis for my
8 impeachment is to get into this question of e-mails
9 because she -- as I understood her answer, she said
10 she didn't have an opinion about 2019 either, but I
11 have got e-mails that said she turned in a draft
12 audit report --

13 EXAMINER ADDISON: Mr. Finnigan, let's
14 not get into the contents of the e-mails at this
15 point.

16 MR. FINNIGAN: Okay.

17 EXAMINER ADDISON: I will allow Dr. Fagan
18 to answer this one question. We will take it very
19 delicately moving forward. I do have concerns
20 whether or not that this falls within the scope of
21 this proceeding which -- which in the entry that went
22 out on July 7, 2023, in this case, we noted -- the
23 Commission noted the purpose of this proceeding is to
24 determine the prudence and reasonableness of the
25 actions of EDUs with ownership interest in OVEC

1 during the calendar year 2020.

2 So with that being said, I will allow
3 Dr. Fagan to answer this one question.

4 Do you need the question read back,
5 Dr. Fagan?

6 THE WITNESS: Yes, please, your Honor.

7 EXAMINER ADDISON: Karen, if we could
8 have the question back. Thank you.

9 (Record read.)

10 A. So we submitted a draft report of the
11 2019 audit. I would have to look back at the text as
12 to exactly how we said that. But we decided
13 ultimately that it was too broad of a statement for
14 the scope of the audit, so we didn't say it in the
15 final audit report.

16 Q. Okay. And my question wasn't asking
17 about the final audit report, but it was asking about
18 the draft. So you say that you did have that
19 statement in the draft.

20 MR. MCKENZIE: Objection, asked and
21 answered.

22 EXAMINER ADDISON: Sustained. She's
23 already said it, Mr. Finnigan. Let's move on.

24 Q. (By Mr. Finnigan) Okay. And the
25 statement that was in the draft report, in the 2019

1 audit of AEP's OVEC costs, was that, therefore,
2 keeping the plants running does not seem to be in the
3 best interest of the ratepayers? Was that the
4 statement --

5 MR. LINDGREN: Objection.

6 MR. FINNIGAN: Your Honor, I wasn't
7 finished asking the question.

8 EXAMINER ADDISON: Finish asking your
9 question and then we will take the objection,
10 Mr. Lindgren.

11 Q. (By Mr. Finnigan) Was that the statement
12 you submitted in your draft audit report for AEP 2019
13 OVEC costs to which you just referred?

14 MR. LINDGREN: Your Honor, I believe your
15 instruction was that you would only permit one
16 question on this topic. He is going on to ask
17 another question now on the same topic.

18 EXAMINER ADDISON: I said we were going
19 to take it -- take a delicate approach to this,
20 Mr. Lindgren, moving on.

21 But, Mr. Finnigan, perhaps it would be
22 time if you plan on introducing those exhibits, we
23 could just go right out and have those arguments as
24 well if we are going to be asking questions about
25 the --

1 MR. FINNIGAN: Yes, your Honor. Your
2 Honor, just give me a moment. This is out of the
3 order I had planned, but I can address this now.

4 EXAMINER ADDISON: I think we may save
5 time by addressing it all at once.

6 MS. BOJKO: I'm sorry, your Honor. Are
7 you stating we are going to have the arguments you
8 said we were going to leave to Monday now?

9 EXAMINER ADDISON: Well, it seems like
10 the parties have kind of twisted my arm into that.

11 MS. BOJKO: Just checking.

12 EXAMINER ADDISON: Yes.

13 MR. FINNIGAN: Your Honor, at this time I
14 would like to have marked as OCC Exhibit 10, a series
15 of three e-mails. I would like to have that marked
16 as -- for identification purposes.

17 EXAMINER ADDISON: It is so marked.

18 (EXHIBIT MARKED FOR IDENTIFICATION.)

19 MR. FINNIGAN: And may I approach the
20 witness, your Honor?

21 EXAMINER ADDISON: You may.

22 MS. BOJKO: Your Honor, while he is
23 passing that out, can I have the last answer reread?

24 EXAMINER ADDISON: Certainly.

25 MS. BOJKO: Thank you.

1 EXAMINER ADDISON: Thank you, Karen.

2 (Record read.)

3 MS. AKHBARI: Your Honor, may we be heard
4 on our objections to this exhibit or how did you want
5 to start?

6 EXAMINER ADDISON: Well --

7 MR. FINNIGAN: Your Honor, may I ask the
8 witness --

9 EXAMINER ADDISON: You may ask a question
10 and then take up objections at that point.

11 Q. (By Mr. Finnigan) Dr. Fagan, do you have
12 a document before you that's been marked as OCC
13 Exhibit 10?

14 A. I do.

15 Q. Can you identify what that document is?

16 A. It's a printout of a set of -- e-mail
17 chain.

18 Q. Have you seen these before?

19 A. Yes.

20 Q. The first e-mail is from you to Mahila
21 Christopher and Rodney Windle dated September 18,
22 2020, at 3:42 p.m.?

23 MS. AKHBARI: Your Honor, I would object
24 to reading information from these e-mails into the
25 record until we've completed discussion on this

1 topic.

2 MR. FINNIGAN: And, your Honor, if I may
3 respond, this is a series of e-mails. And, first, I
4 am trying to get the witness to identify and
5 authenticate the document, and I have to do it e-mail
6 by e-mail because it contains a series of e-mails. I
7 just want to make sure she's in a position to
8 identify these and authenticate the document into
9 evidence before I get into the substance.

10 EXAMINER ADDISON: Well, I think we'll
11 take arguments as to whether or not questions about
12 this document are appropriate at this time. So,
13 Ms. Akhbari, do you want to lead us off?

14 MS. AKHBARI: Sure, your Honor. And I
15 would ask just for the sake of brevity if all the
16 EDUs could present their arguments on this document
17 prior to response from Ms. Bojko and Mr. Finnigan, if
18 possible.

19 EXAMINER ADDISON: Certainly.

20 MS. AKHBARI: Thank you. So Duke Energy
21 Ohio would object to the admission, discussion of,
22 and reference to OCC Exhibit 10 which is an e-mail
23 chain discussing certain facets of the AEP 2019 PPA
24 audit report. As the Commission ruled in Duke's Case
25 No. 20-167, PSR Rider, these are completely separate

1 audits. The evidence in question here pertains to a
 2 draft audit report concerning a different rider,
 3 different EDU. As explained by the Attorney Examiner
 4 in that case, the purpose of the underlying LGR
 5 proceeding which applies here as well is not to
 6 really relitigate another EDU's rider. Moreover, the
 7 questions regarding draft reports, et cetera, could
 8 easily be asked regarding the 2020 LGR Rider of which
 9 we are all here today to discuss and of which all of
 10 the EDUs were a party.

11 The PPA Rider and evidence related to it
 12 is highly prejudicial to the EDUs who were unable to
 13 participate or were not parties to the prior record.
 14 Moreover, Duke's position would be that to take a
 15 different position in the LGR matter would be to
 16 upend the Commission's Finding in 20-167 which had
 17 ample support and which arguments were made at that
 18 time related to these documents.

19 EXAMINER ADDISON: Thank you.

20 MR. MCKENZIE: Your Honor, I would just
 21 note we addressed these documents and this topic in a
 22 memo contra that we filed in the docket which I am
 23 sure your Honor has read.

24 Just to hit a couple of high points, you
 25 know, this audit is about a statute that created the

1 LGR. It is not about the PPA Rider for AEP which is
 2 what these e-mails pertain to. And the Intervenor
 3 may disagree with the judgment of the General
 4 Assembly, but the General Assembly decided by law
 5 that the question in this case is the prudence and
 6 reasonableness of the actions of the electric
 7 distribution utilities with ownership interests in
 8 the legacy generation resource. These e-mails have
 9 nothing to do with that. They relate to a previous
 10 rider with a different standard and a different year.

11 In the Duke decision that Mr. Sharkey
 12 mentioned earlier, the Commission agreed that it was
 13 appropriate -- appropriate to exclude evidence that
 14 relates to a draft report concerning a different
 15 rider. I'll quote as explained by the Attorney
 16 Examiner, "The purpose of this proceeding is not to
 17 relitigate another EDU's rider." So obviously AEP is
 18 part of this case. But the point of that statement
 19 is we are not here to relitigate certainly not the
 20 PPA Rider or the other utilities' similar riders, and
 21 we are also not here to relitigate the statute.
 22 These e-mails are intended for that purpose. They
 23 are far outside the scope of the 2020 audit.

24 EXAMINER ADDISON: Thank you.

25 Mr. Sharkey?

1 MR. SHARKEY: Yes, your Honor. I -- I
2 will second the arguments made by counsel for Duke
3 and AEP. The Commission has already decided this
4 issue in the Duke 2019 audit case.

5 But in addition, your Honor, I call your
6 attention to Evidence Rule 613. Impeachment by
7 self-contradiction provides that extrinsic evidence
8 of prior inconsistent statements by a witness is
9 admissible if both of the following apply. And there
10 is subsection 1. I want to call your attention to
11 subsection 2. The subject matter of the statement is
12 one of the following: A fact that is of consequence
13 to the determination for the action other than the
14 credibility of the witness.

15 What happened in the 2019 audit is not a
16 fact of consequence in this action. And in
17 particular, your Honor, as counsel for AEP argued,
18 the statute identifies what -- what facts are of
19 consequence. The statute says what matters is the
20 prudence of the utility's action, and it does not
21 include a best interest of the customer standard in
22 the statute, so it's both inconsistent with -- the
23 effort is both inconsistent with the Commission's
24 prior decision and Evidence Rule 613.

25 EXAMINER ADDISON: Thank you.

1 Mr. Finnigan, I will allow you first.

2 MR. FINNIGAN: Thank you, your Honor.

3 Just to address those in the order of recency, so
 4 Mr. Sharkey when he was reading 613, he glossed over
 5 the part other than credibility. This goes to her
 6 credibility. This goes to whether she has any bias
 7 in favor of the utilities and against consumers by
 8 removing information from a draft report saying that
 9 running the plants is not in the best interests of
 10 ratepayers. So the evidence is allowable under the
 11 rule that Mr. Sharkey cites.

12 Now, as far as we're concerned, your
 13 Honor, people talk about rulings in other cases.
 14 None of those rulings is final. All of those cases
 15 have been appealed and they're in the status where
 16 there is an Application for Rehearing pending or
 17 that's been granted for further reconsideration by
 18 the Commission.

19 So for someone to suggest that there's
 20 been any final determination on any of these issues,
 21 that would be incorrect. Now, as far as this case is
 22 concerned, we talked yesterday at the beginning of
 23 Dr. Fagan's testimony about what was the scope of the
 24 audit, and we looked at the RFP that was attached to
 25 the entry that the Commission issued on May 5 of

1 2021. And it says that the purpose is to -- one of
2 the purposes is to determine whether these costs are
3 in the best interests of the ratepayers. That's one
4 of the issues at the heart of this case. And so
5 whether she has any bias in favor of utilities on
6 that issue is a very important issue.

7 So I think at the outset the important
8 thing here is that there are two considerations for
9 your decision today. One consideration is whether
10 the documents themselves are admissible as
11 documentary evidence in this case. And the second
12 consideration is whether we're allowed to ask
13 questions about the documents on cross-examination to
14 show the witness's bias or prejudice towards our
15 clients as consumers.

16 Even if your Honor were to reach the
17 determination that the documents are not admissible
18 as documentary evidence, we should still be allowed
19 to question the witness about any prejudice or bias
20 under the Rules of Evidence regardless of whether the
21 documents come into evidence.

22 Now, I will -- I will say that this is a
23 very important issue in the case. This is one that I
24 think that the Commission would have great interest
25 in resolving, and I think there is a great public

1 interest in this issue because this issue goes to the
2 question of whether members of the Commission Staff
3 asked the auditor to change her substantive opinion
4 about the contents of an audit report on an issue
5 that was the subject of the audit.

6 Now, we heard yesterday about the
7 sequence of events leading up to this audit report,
8 and we heard Dr. Fagan say how she presented this
9 audit report to the Staff and to the utilities for
10 review of any confidential information and correction
11 of any factual errors. And what we have here in this
12 case regarding a statement that running the plants is
13 not in the best interests of consumers, that's not a
14 matter of fact. That's not a matter that can be
15 objectively verified by someone else.

16 EXAMINER ADDISON: But it's also not the
17 report in this proceeding; is that correct,
18 Mr. Finnigan?

19 MR. FINNIGAN: No, it's not the report in
20 this proceeding, but I am tying it to this proceeding
21 because if her conclusion was that it's not in the
22 best interests of retail ratepayers in 2019, then it
23 seems like by logic it would be even doubly so in
24 2020.

25 EXAMINER ADDISON: I think that's a far

1 reach, Mr. Finnigan. I think that's a far reach.

2 MR. FINNIGAN: But -- so anyway, long
3 story short is that the conditions affecting the
4 audit in 2020 were quite a bit more unfavorable for
5 consumers in terms of the OVEC cost and ended up
6 being higher and the PJM revenues being lower, so by
7 logic -- and it would seem that if her opinion is
8 that the OVEC costs are not in the best interests of
9 retail ratepayers in 2019, it would also be true that
10 they wouldn't be in the best interests of retail
11 ratepayers in 2020. It's just a matter of logic.

12 EXAMINER ADDISON: Thank you for your
13 testimony, Mr. Finnigan. I am going to allow
14 Ms. Bojko to respond.

15 MS. WHITFIELD: Sorry. I thought you
16 were going to rule already.

17 EXAMINER ADDISON: No. Go ahead. I
18 promised everyone a bite at the apple.

19 MS. BOJKO: Thank you, your Honor. I
20 think Mr. Sharkey misstated the record in this case.
21 That is a matter of impeachment. She has now stated
22 on the stand that best interest is not in the scope
23 of the audit, wasn't in her audit, which is just
24 simply not true. On page 2 of the RFP, it says "The
25 purpose of the audit is to establish the prudence of

1 all costs and sales flowing through the OVEC riders
2 and to demonstrate that the actions of the companies
3 were in the best interests of its retail ratepayers."

4 When you look at the RFP response
5 submitted by LEI on page 7, she specifically says --
6 and this is what she filed in order to win the bid to
7 be able to be the auditor. She stated that PUCO is
8 seeking audit services to assist with the prudence
9 and performance of audit costs and sales flowing
10 through the OVEC riders and the actions of certain
11 EDUs were in the best interests of its retail
12 ratepayers.

13 So is -- in order to win the bid at the
14 Commission, she has agreed that this is the scope.
15 She did not say it was broad in any of her audit
16 reports. On page 7 of her audit reports, she
17 actually discusses the purpose of the audit to be in
18 the best interest of kid -- of customers so this
19 actually is in the scope, and I am very well going to
20 impeach her.

21 EXAMINER ADDISON: That would be -- I'm
22 sorry, Ms. Bojko, but that would be a fair point to
23 bring up on cross for this audit report.

24 MS. BOJKO: Right. We're trying.

25 EXAMINER ADDISON: Correct, yes.

1 MS. BOJKO: We're trying. If I may
2 finish, your Honor.

3 EXAMINER ADDISON: Absolutely. Go ahead.

4 MS. BOJKO: We go back -- so the question
5 pending was about the 2019 audit. I very much want
6 to impeach this witness because I have her testimony
7 from the 2019 audit, and it specifically says best
8 interest is the purpose of the audit. So we do have
9 the information to impeach this witness, and we are
10 entitled to impeach the witness.

11 In addition, your Honor, the EDUs are
12 trying to strike testimony that is in their own
13 testimony as well as in the audit reports. The audit
14 reports specifically speak to the 2019 audits. It
15 talks about recommendations. It talks about whether
16 those recommendations were met in the 2020 audit.
17 That is the purpose as I said earlier today. One of
18 the purposes of a subsequent audit is to ensure that
19 the utilities actually did the recommendations that
20 were set forth in the prior audit and the
21 Commission's orders of those prior audits.

22 Additionally, all of the reports in
23 Figure 1 discuss the recommendations contained in
24 those audits and then also state whether they have
25 been met or satisfied.

1 Additionally, Duke Witness Ziolkowski
2 provides details regarding the past audit and the PSR
3 and going forward, and so do I think some of the
4 other utility witnesses.

5 And, lastly, your Honor, if you look at
6 4928.148, which is the statute as they pointed out
7 that is pertinent to this case, actually says to
8 recover those same costs, and the same costs is
9 referring to all the prior audits and all the prior
10 riders. So the statutory provision requires a look
11 of those same costs and they -- requires them to
12 determine whether they were prudently recovered
13 through the previous OVEC riders. That's in the
14 statutory provision, 4928.148.

15 The old OVEC riders will be replaced by
16 new mechanisms to recover those same costs that were
17 recovered through the previous OVEC riders. The
18 Commission's prior decisions regarding what costs
19 could be collected through the prior OVEC riders
20 helps inform what exactly those same costs were and
21 what they should have been collecting in 2020.

22 So all of these things go to allowing us
23 to discuss the 2019 riders, but more specifically we
24 should be allowed to impeach the witness who claimed
25 today on the stand that best interests is not in the

1 scope and was too broad, although that's never
2 mentioned in any of her audit reports before.

3 Thank you.

4 EXAMINER ADDISON: Thank you.

5 Ms. Whitfield.

6 MS. WHITFIELD: Yeah, thank you, your
7 Honor. Just briefly to add on, with respect to her
8 audit report on page 7, which Ms. Bojko referred to,
9 it actually says that the purpose of the audit is to
10 investigate whether AEP Ohio's, it differs for each
11 audit report, actions were in the best interests of
12 its retail ratepayers.

13 Now, she has admitted repeatedly that she
14 did not do that investigation about whether their
15 acts were in the best interest of the retail
16 ratepayers, so we are entitled to question her about
17 the last time -- so she failed to complete the scope
18 and the purpose of this audit in 2020. We are
19 entitled to question her on the last time that she
20 looked at the best interest and see what would have
21 changed. Your Honor keeps saying that you would
22 agree that if this -- if this related to this report.

23 That's the fundamental problem. She
24 doesn't do what she was supposed to do for this
25 report which was to investigate whether the actions

1 were in the best interest of the retail ratepayers.
 2 If there is no finding of that in this audit, we are
 3 entitled to question and impeach her on her findings
 4 in prior audits or her opinions on that in prior
 5 audits.

6 Thank you, your Honor.

7 EXAMINER ADDISON: Thank you very much.

8 Ms. Nordstrom, Mr. Dougherty, anything
 9 else?

10 MS. NORDSTROM: Just something very
 11 quickly, your Honor. I think that the utilities have
 12 mischaracterized the scope of this -- of this
 13 proceeding and what the statute says. The statute
 14 says that costs can be collected for prudent -- all
 15 costs must be prudent and reasonable. The utilities
 16 keep just confining this discussion to prudence.
 17 However, there is a reasonableness component that
 18 includes public interest as the -- as the other
 19 counsel here have mentioned. Thank you.

20 EXAMINER ADDISON: Thank you.

21 MR. DOUGHERTY: Ditto to my intervening
 22 counsel.

23 EXAMINER ADDISON: I like it,
 24 Mr. Dougherty. Very brief.

25 MR. LINDGREN: Your Honor, may Staff be

1 heard?

2 EXAMINER ADDISON: Yes, absolutely,
3 Mr. Lindgren.

4 MR. LINDGREN: I would just like to add
5 there is a distinction in the RFP between purposes
6 and scope and I believe Dr. Fagan has testified that
7 she carried out the scope of the audit and she's
8 already testified to that.

9 EXAMINER ADDISON: Thank you.

10 Thank you all for your comments and
11 arguments as to this matter. The Attorney Examiners
12 are highly concerned about the prejudicial effect
13 that this line of questioning may have on AES Ohio
14 and Duke who were not participants in that 2019 audit
15 of AEP's PPA Rider.

16 Noting that, any -- any information that
17 would be garnered from this line of questioning from
18 these -- from this series of e-mails that's been
19 marked as OCC Exhibit 10, any probative value from
20 using that information would be highly outweighed by
21 that prejudicial effect, and notably everyone has
22 cited to the statute.

23 We are operating under a different
24 paradigm in this proceeding. As noted, even in that
25 the Duke order cited by multiple counsel from the

1 Companies from Case No. 20-167-EL-RDR, we -- the
2 Commission noted, you know, we are evaluating a
3 different rider from a different EDU. This is even
4 more so we are operating under a different statutory
5 paradigm in this case. As Mr. McKenzie noted, the
6 General Assembly has spoken. This is what we need to
7 operate under.

8 I just don't see the relevance in
9 allowing these types of questions to proceed, so I am
10 going to sustain the objection.

11 And on that note, for the arguments
12 cited, similarly, I know we had indicated that we
13 would rule on the motion to take administrative
14 notice of various filings in the 2019 AEP PPA Rider
15 audit. For the reasons noted by counsel from the
16 Companies as well as the memorandum contra, the
17 motion to take administrative notice filed by Duke
18 Energy and AES Ohio, we will be denying that motion
19 at this time.

20 MS. BOJKO: Your Honor, point of
21 clarification.

22 EXAMINER ADDISON: Absolutely.

23 MS. BOJKO: Is -- your ruling, I'm
24 assuming, does not go to any impeachment of prior
25 sworn statements; is that correct? It's just taking

1 administrative notice of all the documents?

2 MR. FINNIGAN: And, your Honor, I have a
3 similar question, a clarification.

4 EXAMINER ADDISON: Absolutely,
5 Mr. Finnigan.

6 MR. FINNIGAN: I would like to direct
7 your attention to the rule we were just discussing,
8 Ohio Rules of Evidence 611(b). And what it says is
9 that cross-examination shall be permitted on all
10 relevant matters and matters affecting credibility.
11 So even if your Honor would conclude that these
12 e-mails are not relevant or that the prejudicial
13 effect might outweigh the probative value, set that
14 aside because under 611(b), separate from that, we
15 are entitled to ask questions about these e-mails
16 regarding credibility. The rule says
17 cross-examination shall be permitted on all matters
18 affecting credibility.

19 EXAMINER ADDISON: Anything else,
20 Mr. Finnigan?

21 MR. FINNIGAN: Please?

22 EXAMINER ADDISON: Anything else? I'm
23 sorry.

24 MR. FINNIGAN: No, your Honor. I am just
25 asking as a point of clarification -- I understand

1 your ruling on the documents coming into evidence.
 2 I'm just trying to understand whether we are allowed
 3 to ask any questions on cross-examination about the
 4 documents going to her credibility as a witness.

5 EXAMINER ADDISON: Thank you.

6 Anyone else care to respond?

7 MR. McKENZIE: Yes, your Honor. You
 8 know, Rule 403 says although relevant, evidence is
 9 not admissible if its probative value is
 10 substantially outweighed by the danger of unfair
 11 prejudice, et cetera. So I think your Honor's
 12 reasoning with respect to prejudice would apply to
 13 the topic of statements made in a draft audit report
 14 for the 2019 AEP audit.

15 I would also say, your Honor, your ruling
 16 was broad so not only to prejudice but also the
 17 statute. Specifically directs the Commission as to
 18 the scope of the audit and the scope of this
 19 proceeding. So, you know, reading the documents or
 20 asking questions about the documents is tantamount to
 21 admitting the documents into evidence. It's the same
 22 content, and I think it goes outside the scope of the
 23 proceeding as your Honor has now clearly articulated.

24 EXAMINER ADDISON: Thank you.

25 MR. McKENZIE: Of course, I think we may

1 need to take this on a case-by-case basis, but I just
2 want to say I feel like the ruling would apply to the
3 things that Mr. Finnigan was just describing,
4 although I don't know exactly what he wants to ask.

5 EXAMINER ADDISON: Thank you.

6 Anyone else? No?

7 MR. SHARKEY: I'll follow Trent's lead
8 and just say ditto.

9 EXAMINER ADDISON: Very good.

10 Well, I believe Ms. Fagan did answer the
11 question whether or not such a recommendation was
12 contained in the 2019 AEP Ohio PPA draft report. I
13 agree my ruling was very broad in nature in that for
14 very good reason, but we will see. I'm not -- I
15 suppose I am not shutting the door quite yet,
16 Mr. Finnigan, so we'll take it question by question
17 but please keep my ruling in mind as to what
18 questions you will want to ask because it will be a
19 very, very short lead.

20 MR. FINNIGAN: And -- and, your Honor,
21 could we have that question repeated, the last
22 question and the last answer before we had this
23 discussion?

24 MS. BOJKO: No, the one that Karen just
25 reread for me I think is what he is talking about,

1 the one that was allowed.

2 (Record read.)

3 MR. FINNIGAN: And, your Honor, I do have
4 a document that might refresh her memory. She said
5 she would have to look back at the report to see if
6 we said that. So I have these e-mails that have been
7 marked as OCC Exhibit 10 which I would like to show
8 the witness just to refresh her memory as to what the
9 statement was that was in the 2019 draft audit
10 report.

11 MS. AKHBARI: Your Honor, I would object
12 to the extent this has been ruled upon, and I will
13 also move to strike the witness's last statement as
14 outside the scope as your Honor directed in her
15 order.

16 EXAMINER ADDISON: Thank you.

17 I will allow her previous answer to
18 stand. But on a going-forward basis, I do have to
19 agree, I think -- I think we need to move on,
20 Mr. Finnigan, so.

21 Q. (By Mr. Finnigan) So let me ask this, in
22 the 2019 audit report, did you make any determination
23 as to whether -- did LEI make any determination about
24 whether the question of -- whether the OVEC costs
25 were in the best interests of ratepayers was too

1 broad for you to address?

2 MS. AKHBARI: I would object, again, your
3 Honor, and just clarify that the 2019 audit report as
4 Mr. Finnigan stated is the AEP PPA Rider audit
5 report, and I believe this would also fall under the
6 scope of your Honor's ruling on this matter.

7 EXAMINER ADDISON: Thank you.

8 And I think her -- it's demonstrably
9 similar to what her answer has already conveyed.

10 Maybe your next question, Mr. Finnigan.

11 Q. (By Mr. Finnigan) Did the Commission
12 Staff ask you to remove from the 2019 audit report a
13 statement that you had submitted in your draft
14 stating that running in the -- running the plants is
15 not in the best interest of retail ratepayers?

16 MR. LINDGREN: Objection.

17 EXAMINER ADDISON: Grounds?

18 MR. LINDGREN: Relevancy. It's still
19 outside the scope of this proceeding.

20 EXAMINER ADDISON: Yeah. Mr. Finnigan,
21 this doesn't go to the impeachment or credibility
22 issue so.

23 MR. FINNIGAN: Your Honor, I submit that
24 it does because it does for two prongs. No. 1, it
25 goes to the -- her credibility as an auditor in terms

1 of whether she is independent. So it was required as
2 a condition of the audit in 2019 and in 2020 that she
3 submit an independent audit. And if --

4 EXAMINER ADDISON: Mr. Finnigan, again --
5 again, before we get -- I don't want to read the
6 issue into the transcript through your explanation,
7 so I'm going to sustain the objection. Let's --
8 let's continue on.

9 Q. (By Mr. Finnigan) Now, with respect to
10 your statement in the answer that was just reread,
11 you used the term "We determined it was too broad."
12 Who was the we in your answer?

13 A. Me.

14 Q. So we meant just you?

15 A. Yes.

16 Q. Did -- did the Staff ever ask you to take
17 it out?

18 MR. SHARKEY: Objection, your Honor. You
19 just ruled on this exact issue.

20 EXAMINER ADDISON: Sustained.

21 Q. (By Mr. Finnigan) Now, when you
22 approached this audit report in 2020, did you come
23 into it with any prior understanding as to the tone
24 that the Commission Staff would like you to take with
25 the utilities and the costs at issue in this audit

1 report?

2 MS. AKHBARI: I would just object to the
3 extent tone is a vague term.

4 EXAMINER ADDISON: I will allow her to
5 answer the question and provide your sense of
6 understanding of the question so.

7 A. We didn't think about tone. We go into
8 these thinking about collecting data and, you know,
9 presenting material.

10 Q. But did you come into this audit in 2020
11 with a -- a thought that in Ohio the Ohio Commission
12 prefers that auditors take a mild tone with utilities
13 that are being audited?

14 MR. SHARKEY: Objection, asked and
15 answered.

16 MS. AKHBARI: Objection.

17 EXAMINER ADDISON: Sustained.

18 MR. FINNIGAN: Your Honor, I would like
19 to make an offer of proof at this time.

20 EXAMINER ADDISON: Please proceed.

21 MR. FINNIGAN: And, your Honor, I would
22 like to present this under Rule 103, rulings on
23 evidence. And I would like to first proffer the
24 e-mails into evidence that have been marked as OCC
25 Exhibit 10, a series of three e-mails.

1 EXAMINER ADDISON: And before you
2 continue, Mr. Finnigan, I will just note the
3 transcript will capture all the arguments before, so
4 before we go through -- as Mr. McKenzie had brought
5 up, I don't want to have overly repetitive notations
6 in the transcript if we can. But, please, with that
7 in mind, please offer your proof.

8 MR. FINNIGAN: Thank you, your Honor.
9 And I'm not trying to argue with anyone. I am just
10 trying --

11 EXAMINER ADDISON: Certainly. I wasn't
12 suggesting that.

13 MR. FINNIGAN: Summarize what the
14 evidence would show if we were permitted to explore
15 this. And I understand from your Honor's rulings
16 that we are not being allowed to ask questions that
17 go to the witness's credibility relating to these
18 e-mails so let me address this in this offer of
19 proof.

20 MS. AKHBARI: Your Honor, I would just
21 object to Mr. Finnigan's description of your ruling.
22 I don't think it's proper.

23 EXAMINER ADDISON: I am not going to take
24 offense, but the transcript will note how -- how the
25 ruling was held, so we'll just let the transcript

1 speak for itself.

2 Mr. Finnigan, please continue.

3 MR. FINNIGAN: Thank you, your Honor.
4 Well, let me explore then. Again, I want to make
5 sure that I conform with your rulings, your Honor,
6 and what I am just unclear on to the extent I am
7 allowed to ask any questions on cross-examination of
8 this witness relating to these statements in the
9 e-mails --

10 EXAMINER ADDISON: Well, Mr. Finnigan,
11 are you asking for clarification, or are you asking
12 to offer a proffer?

13 MR. FINNIGAN: Well, let me -- I will
14 make a proffer on -- on, first, on the e-mails. So
15 at this point in time I would like to make a proffer
16 of evidence OCC Exhibit 10, a series of three e-mails
17 between the auditor and Commission Staff relating to
18 the OVEC costs in the 2019 AEP case. These e-mails
19 relate to the 2019 audits which involve the same coal
20 plants, the same auditing firm, London Economics, and
21 the same auditor at London Economics as we have in
22 this case.

23 And the e-mails will establish that
24 Ms. Fagan submitted a draft audit report to the
25 Commission and to AEP before the audit report was

1 finalized and filed in the record. And in that draft
2 audit report, she made the statement that her opinion
3 was that "keeping the plants running does not seem to
4 be in the best interest of the ratepayers."

5 Now, the e-mails will further establish
6 that the Commission Staff directed her to use "a
7 milder tone and intensity of language and that in
8 response to that direction from the Commission Staff,
9 she removed that statement from the audit report.
10 And that's even though this question of whether the
11 costs were in the best interest of ratepayers was a
12 subject of the audit in the RFP in that case as it is
13 in this case.

14 Now, the e-mails evident -- the
15 documentary evidence is relevant to show that running
16 the plants is imprudent and not in the best interest
17 of consumers because -- and the reason it's relevant
18 to show that is because it shows what her unbiased
19 opinion was. This was work that she did on her own
20 after several months of investigation and gathering
21 information from the utility company and from OVEC,
22 and she concluded in her expert opinion as an auditor
23 with 30 years of experience that running these plants
24 was not in the best interests of ratepayers.

25 So the e-mails are relevant to show

1 that's her opinion. And that information would be
2 relevant to this case because we know in this case
3 that the OVEC costs are substantially higher and the
4 PJM prices are substantially lower, so it would
5 follow that it would also not be in the best interest
6 of consumers this year in 2020. Now, the evidence
7 that is relevant -- the evidence is relevant not only
8 to show that ultimate opinion in the case but also to
9 show any potential for bias or prejudice that might
10 exist on her part. And the evidence is relevant also
11 to show that she did not act in an independent
12 capacity. And the RFP called for an independent
13 audit in 2019 and 2020.

14 So if she submits a draft audit report on
15 the ultimate issue in the case saying that running
16 the plants isn't in the best interest of retail
17 ratepayers and then she takes it out upon request of
18 the Commission Staff, that's not acting
19 independently. And it shows that she did not fulfill
20 the requirements of the audit as set forth in the RFP
21 issued by the Commission.

22 And -- and so ultimately these e-mails
23 make it more probable than not that she didn't act
24 independently because this information was
25 eliminated. Without these e-mails we can't show that

1 lack of independence because we can't get these
 2 e-mails into evidence. So on a critical issue in the
 3 case, whether the audit was done independently, we
 4 have evidence showing that she removed opinion
 5 language on the ultimate issue at the request of
 6 Commission Staff. She didn't act independently. So
 7 she didn't fill -- fulfill the purposes of the audit
 8 in 2019 and that carried over because she won this
 9 assignment to do the same thing in 2020 where she
 10 also had to act independently.

11 When she was asked to take this
 12 information out of the e-mails in 2019, the
 13 Commission -- the e-mails will establish that the
 14 Commission Staff asked her to remove that statement
 15 for the reason that she should use a milder tone and
 16 intensity of language. So this goes to her
 17 credibility in preparing this 2020 audit report
 18 because we know coming into the 2020 audit that she
 19 had this dealing with Commission Staff where if she
 20 came in and revealed her true opinion in 2020, that
 21 these costs are not in the best interest of retail
 22 ratepayers, that she would be asked to remove it
 23 again based on her experience in 2019 and, of course,
 24 we know that that statement isn't in her 2020 draft
 25 report.

1 In fact, she went so far as to say she
2 didn't even try to address it in her report in 2020.
3 And this would go to her credibility to establish why
4 she didn't address it because she knew going in that
5 Staff has this predisposition that they want the
6 auditor to use a mild tone in addressing whether
7 these costs are in the best interest of ratepayers.
8 So this is a question of credibility affecting why
9 she didn't address this in the 2020 audit report.

10 Also, we have to keep in mind that
11 Dr. Fagan is appearing here on behalf of Commission
12 Staff. And Commission Staff is a party to this case.
13 And so the evidence is also admissible as an
14 admission by a party opponent. And the admission is
15 that running the plants is not in the best interest
16 of retail ratepayers. She said that. And so that
17 admission should also be admissible into evidence.

18 Then -- that's all I have to say, your
19 Honor, with respect to the proffer as to the
20 documentary evidence. However, I do want to also
21 explore on cross-examination a series of questions
22 related to this. I just want to understand what I am
23 allowed to get into and not allowed to get into. And
24 if you are ruling that I am not allowed to address
25 this on cross-examination going to the witness's

1 credibility, I won't do that, but I -- I am not sure
2 what -- from your ruling whether you are permitting
3 that or not. If you would permit it, I do have a
4 series of questions where I would explore her
5 credibility on these same issues by just asking
6 questions on cross-examination apart from whether
7 these are actually in evidence

8 EXAMINER ADDISON: Well, I believe --
9 Mr. Finnigan, I believe my ruling was we were going
10 to take it on a case-by-case basis with the fact --
11 with keeping in mind that we have already made a
12 ruling as to OCC Exhibit 10 and the ruling on the
13 motion to take administrative notice of various
14 filings in that -- in that AEP 2019 OVEC rider audit.
15 So with that in mind, I believe that's as much
16 clarification as I am willing to provide.

17 MR. FINNIGAN: Okay.

18 EXAMINER ADDISON: So I will leave it up
19 to you to ask the questions, and we'll take it from
20 there.

21 Ms. Bojko.

22 MS. BOJKO: Could we take a 5-minute
23 break?

24 EXAMINER ADDISON: Absolutely. Thanks
25 for keeping me honest.

1 Let's go off the record.

2 (Recess taken.)

3 EXAMINER ADDISON: Let's go back on the
4 record.

5 Mr. Finnigan.

6 MR. FINNIGAN: Thank you, your Honor.

7 Q. (By Mr. Finnigan) So, Dr. Fagan, when you
8 were approaching this 2020 audit reports of the three
9 utilities, isn't it true that you knew that the
10 Commission Staff would want you to take a mild tone
11 towards your review of the utilities' actions?

12 A. We didn't know that.

13 Q. Have you ever had any experience in any
14 prior audits where you made any comments about the
15 subject of the audit that the Commission Staff
16 indicated were -- were not mild enough or were too
17 harsh?

18 MR. SHARKEY: Objection, your Honor. He
19 is attempting to get back into the same information
20 in the e-mails we have already addressed.

21 EXAMINER ADDISON: Yeah. I don't think
22 this is the best course forward, Mr. Finnigan. So
23 objection sustained.

24 Q. (By Mr. Finnigan) And so when you were
25 approaching this audit report in 2020, was it your

1 understanding that if you made the statement that the
2 OVEC -- that running the OVEC plants in 2020 was not
3 in the best interest of retail ratepayers, that you
4 would be asked to strike that from your audit report
5 by the Commission Staff?

6 MR. SHARKEY: Again, objection, your
7 Honor. This falls right in the scope of your prior
8 rulings. I think this question is impermissible.

9 EXAMINER ADDISON: Thank you. I think
10 Mr. Finnigan's coined it to this particular audit, so
11 I will allow Dr. Fagan to answer the question but
12 also provide you ample latitude in your answer as I
13 think that may have characterized some things in a
14 way that I would not have otherwise. So please
15 answer, Dr. Fagan.

16 MR. FINNIGAN: And, your Honor, may we
17 have the question reread, please?

18 EXAMINER ADDISON: Yes, you may.

19 (Record read.)

20 A. So going into the 2020 audit from our
21 learnings and experiences from the previous audit,
22 the concept of best interest was part of the purpose,
23 but it wasn't part of the scope. So going in to the
24 2020 audits, we stuck again with the scope and not
25 the purpose.

1 Q. Okay. And regardless of whether it was
2 within the purpose or the scope, you did address this
3 in response to the RFP about whether best interests
4 should be addressed in this audit, didn't you, when
5 you responded to the Commission's RFP?

6 A. May I see our -- is that our proposal?

7 Q. I'm just asking if you remember whether
8 you stated that in your proposal that you submitted
9 in response to the RFP.

10 A. I would need to see whether it's in the
11 "understanding of the assignment" part of the RFP or
12 if it's in the part where we describe the scope of
13 work. I would like to see the R -- the proposal.

14 MR. FINNIGAN: And, your Honor, I only
15 have one copy.

16 MS. BOJKO: No. I have more.

17 MR. FINNIGAN: Your Honor, at this time I
18 would like to have marked as OCC Exhibit 11 the
19 response to the RFP submitted by London Economics
20 dated June 3 of 2021.

21 EXAMINER ADDISON: So marked.

22 (EXHIBIT MARKED FOR IDENTIFICATION.)

23 MR. FINNIGAN: May I approach the
24 witness, your Honor?

25 EXAMINER ADDISON: You may.

1 Q. (By Mr. Finnigan) Now, Dr. Fagan, you've
2 been handed a document that's been marked as OCC
3 Exhibit 11. Can you identify what that document is?

4 A. This is London Economics' response to the
5 RFP in the Ohio No. RA21-PPA-1, the proposal for the
6 independent audit of we called it the Power Purchase
7 Agreement Riders. On the cover page it probably
8 should say Legacy Generation Riders of AEP Ohio, AES
9 Ohio, and Duke Energy Ohio.

10 Q. Was this document prepared by you or
11 under your control?

12 A. Yes.

13 Q. Is the information that's in this
14 document accurate to the best of your knowledge and
15 belief?

16 A. Yes.

17 Q. Let me ask you to turn to page 7 of the
18 document and the section "Understanding of the
19 Assignment," Section 1.2. Do you see that?

20 A. Yes.

21 Q. Now let me read that. "PUCO is seeking
22 audit services to assist with the prudence and
23 performance audit of the cost and sales flowing
24 through the Ohio Valley Electric Corporation (OVEC)
25 riders and the actions of certain distribution

1 utilities (EDU) were in the best interest of retail
2 ratepayers." Have I read that correctly?

3 A. You read it correctly. I feel like we
4 might be missing a verb or. Let me read it again.
5 Oh, no. It's good.

6 Q. Okay. So going back to the question
7 about your work on this audit, did you have any
8 understanding based on previous experience that if
9 you turned in an audit report in this case stating
10 that the OVEC plants or the OVEC costs were not in
11 the best interest of retail ratepayers, that
12 Commission Staff would ask you to strike that from
13 your audit report?

14 MR. SHARKEY: Objection again, your
15 Honor. I believe that's beyond the scope of your
16 rulings.

17 EXAMINER ADDISON: I believe she's
18 already answered that exact question, Mr. Finnigan,
19 so let's continue on.

20 MR. FINNIGAN: Okay. I did not catch her
21 answer. Did you -- could you read back the answer to
22 that question, please?

23 EXAMINER ADDISON: Mr. Finnigan, can we
24 just move on? It's going to be a little difficult to
25 parse back and find at this point.

1 MR. FINNIGAN: Maybe I could just reask
2 it just to be clear? I just don't remember what --
3 that she answered the question, so I just wanted to
4 make sure I understand her answer, so I can move on
5 to the next question.

6 EXAMINER ADDISON: For the sake of
7 administrative efficiency, I will allow her to answer
8 the question again.

9 Dr. Fagan, you may answer the question.

10 THE WITNESS: May I hear it one more
11 time?

12 EXAMINER ADDISON: Absolutely.

13 Q. (By Mr. Finnigan) Sure. Was it your
14 understanding coming into the 2020 audits that if you
15 did submit a statement that running the plants or
16 that the OVEC costs were not in the best interest of
17 retail ratepayers, that the Commission Staff would
18 ask you to strike that from the audit report?

19 A. So going into this audit, we felt that
20 best interest of retail ratepayers, although it's
21 part of the broader purpose that the Commission
22 sought in the audits, it was outside the scope of the
23 tasks that London Economics would be doing.

24 Q. But did you know from prior experience
25 that if you had submitted that statement for the 2020

1 audit report, the Staff would ask you to strike it?

2 A. I don't know.

3 Q. Okay. Have you ever had that experience
4 with Commission Staff where you stated that running
5 the OVEC plants is not in the interest of ratepayers
6 and they did ask you to strike?

7 MR. SHARKEY: Objection, your Honor. I
8 believe that's in the scope of your prior rulings.

9 EXAMINER ADDISON: Anyone else care to
10 weigh in?

11 MS. AKHBARI: Duke would just join, your
12 Honor.

13 MR. McKENZIE: I think we were allowing
14 the other questions because they were 2020 and this
15 is obviously not 2020.

16 EXAMINER ADDISON: Thank you. Objection
17 sustained.

18 MR. FINNIGAN: Your Honor, at this time
19 I'll just state for the record I will make a proffer
20 as to my cross-examination of this witness.

21 MR. McKENZIE: Your Honor, before he does
22 that, could I renew my request proffers be made in
23 writing? I think we've seen what the proffers are
24 going to do to our timeline. It could be a letter to
25 the docket.

1 MS. WHITFIELD: Your Honor, I want to
2 respond to Mr. McKenzie keeps mentioning timeline and
3 limited time and how long things are taking. That
4 should have no guidance whatsoever on what is
5 occurring here in this hearing. And if the proffers
6 are not made in the record, then they are not going
7 to be part of the -- of the record here on appeal and
8 not be able to cite if people want to argue in their
9 briefs -- not on appeal but post-hearing briefs. So
10 I don't think -- I'm troubled by Mr. McKenzie
11 constantly referring to time and starting late and
12 getting a late start and all those things when those
13 should have no bearing whatsoever on the conduct of
14 this hearing here.

15 EXAMINER ADDISON: Thank you.

16 Duly noted. I think Mr. McKenzie is just
17 making a suggestion to help move things along.
18 However, I will allow Mr. Finnigan to make your
19 proffer, perhaps a little bit more quickly than the
20 prior one so we can move along and make up some --
21 make up some time from yesterday so.

22 MR. FINNIGAN: I am not going to use a
23 ditto, but I will try to come close.

24 EXAMINER ADDISON: I had a feeling,
25 Mr. Finnigan. Please proceed.

1 MR. FINNIGAN: And, your Honor, at this
2 time I would just like to make a proffer that I have
3 a series of questions I would like to ask the witness
4 on cross-examination. These questions all go to the
5 credibility of her testimony as a witness, and they
6 all relate to her experience with the 2019 audit as
7 reflected in the e-mails that we've already
8 addressed.

9 And I submit that if permitted to ask
10 these questions on cross-examination, the questions
11 and answers would establish that the witness did not
12 prepare an independent audit report in this case, and
13 the witness also approached this audit report with a
14 bias or prejudice in favor of utilities because she
15 knew from her prior experience with the Commission
16 Staff that Staff would not approve any final audit
17 report language that was -- that Staff deemed as too
18 harsh or too critical of the utilities' actions.

19 And those are the things that I submit my
20 line of questioning of her credibility would show if
21 permitted to ask these questions.

22 EXAMINER ADDISON: Thank you very much,
23 Mr. Finnigan.

24 And just briefly, Dr. Fagan, when you
25 indicated that you provide draft reports to both

1 Staff as well as the three EDUs that are the subjects
2 of this proceeding and you solicit specifically
3 recommendations from Staff, those are
4 recommendations, correct? Ultimately you hold the
5 ability to take recommendations as suggestions and
6 incorporate them into your Staff Report, do you not?

7 THE WITNESS: That's correct. Whether
8 they are incorporated are my decision.

9 EXAMINER ADDISON: Thank you.

10 Mr. Finnigan.

11 Q. (By Mr. Finnigan) So when you receive
12 recommendations from the Staff on change to a draft
13 audit report, first, do you make the judgment in your
14 own mind as to whether the recommendation from the
15 Staff goes to a question of fact versus a question of
16 opinion in your audit report?

17 A. Staff recommendations tip -- they could
18 go to either, I guess, depends on the specific
19 comment.

20 Q. Now, if Staff's recommendations go to
21 your opinion, then your audit report is not
22 independent because you're incorporating Staff's
23 opinions, correct?

24 A. I disagree.

25 Q. Could you please explain?

1 A. The -- in the final analysis what goes in
2 or doesn't is up to the auditor. It's up to me.

3 Q. Okay. Do you try to incorporate or be
4 responsive to the Staff's recommendations to the best
5 of your ability?

6 A. To the degree that it doesn't change
7 final conclusions, we always want to be responsive to
8 clients.

9 Q. Okay. What about you try to be
10 responsive when it does change your final conclusion
11 on a topic like whether the OVEC costs are in the
12 best interests of retail ratepayers?

13 MR. SHARKEY: Object, your Honor. It is
14 essentially asking the questions that you have
15 already ruled were beyond the scope of this
16 proceeding.

17 EXAMINER ADDISON: I'll allow this
18 question.

19 A. Would you just ask it again? I'm sorry.

20 MR. FINNIGAN: Could you please?

21 EXAMINER ADDISON: And provide it as a
22 hypothetical because I do believe that in this audit
23 report that was never -- never an issue, correct,
24 Mr. Finnigan?

25 MR. FINNIGAN: Well, I don't know if it

1 was an issue or not but at this --

2 EXAMINER ADDISON: It was never included
3 in the draft audit report, correct?

4 MR. FINNIGAN: Correct.

5 EXAMINER ADDISON: Correct.

6 MR. FINNIGAN: Well, your Honor, I don't
7 know. She said it wasn't included -- she didn't
8 address it in this audit; so, yes, it wasn't included
9 in the draft or the final audit report. Yes, I
10 agree.

11 EXAMINER ADDISON: Thank you.

12 A. I'm sorry, the question?

13 MR. FINNIGAN: May we have the question
14 reread?

15 EXAMINER ADDISON: I'm sorry, Karen.
16 Thank you.

17 (Record read.)

18 A. We didn't have a conclusion on best
19 interest in the 2020 audit.

20 Q. Did you discuss with Staff at any time in
21 relation to the 2020 audit this concept of best
22 interest of retail ratepayers?

23 A. I don't think that we did at all, no.

24 Q. Now, are you aware of the fact that when
25 you submit your bids to respond to an RFP, that Staff

1 has to make a judgment whether to accept your bid or
2 somebody else's bid?

3 A. That's my understanding of the
4 procurement process. So I guess so long as there is
5 more than one bid, they are going to have to decide,
6 yeah.

7 Q. And in this case you were successful
8 winning the bid to do these three audits after your
9 experience in the 2019 case; is that correct?

10 A. So we -- we won the bids to do these
11 three, but I don't know the circumstance -- so I
12 don't know who at PUCO -- so in some organizations
13 there will be somebody writing the RFP and maybe a
14 different group of people selects bidders. I just
15 don't know how it works inside PUCO.

16 Q. But at least on a general level, do you
17 have a sense that if you are cooperative with the
18 Commission Staff in trying to address their
19 recommendations in your audit reports, that you might
20 have a better chance of winning future RFPs?

21 A. That didn't go through my mind.

22 Q. Does it make sense to you though you
23 might?

24 A. I don't know.

25 MR. FINNIGAN: Okay. Your Honor, at this

1 time I would like to make the proffer -- well, strike
2 that. May I have one moment, your Honor?

3 EXAMINER ADDISON: You may.

4 Q. (By Mr. Finnigan) Okay. Dr. Fagan, let
5 me move on to another topic. I would like you to go
6 back to this OVEC annual report from 2020 that we
7 were talking about the other day.

8 A. Is that OCC Exhibit 7? I have it. I
9 think that's the right one.

10 Q. And, Dr. Fagan, could you please direct
11 your attention to Exhibit -- page 6 of Exhibit 7?

12 A. Okay.

13 Q. Now, please look at the heading in the
14 middle of the page that says "Commitments and
15 Contingencies." Do you see that?

16 A. You need to give me a minute to read it.

17 It's -- it's a little too much legal
18 language for me to fully appreciate.

19 Q. Okay. And I'm not asking you to
20 understand the whole document, but do you see a
21 category that says "Advanced Billing of Debt Reserve"
22 in the middle of the page?

23 MS. AKHBARI: I'm sorry, Mr. Finnigan.
24 Could you just repeat what page you are on?

25 MR. FINNIGAN: This is page 6 and it's

1 the heading "Commitments and Contingencies" and below
2 that "Regulatory Reliabilities" in the middle of the
3 page and it's the third line item down from that
4 "Advanced Billing of Debt Reserve."

5 MS. AKHBARI: Thanks.

6 A. I see the line item.

7 Q. And do you see that this account for
8 advanced billing of debt reserve grew by \$30 million
9 from 2019 to 2020?

10 A. I see the numbers that you are pointing
11 to, but I don't have any insight -- I haven't
12 examined their balance sheets or income statements.
13 I don't -- I don't have an intelligent opinion about
14 this.

15 Q. Have you examined any other information
16 in the course of your audits of this case that might
17 lead you to conclude how that account grew by
18 30 million during 2020?

19 A. I don't know.

20 Q. Okay. Now, let me ask you about your
21 general experience in the field of energy and doing
22 audits. You've done work in these kinds of utility
23 rated -- utility-related audit cases in a number of
24 different states; is that right?

25 A. Correct.

1 Q. And you've done this over a course of
2 many years. How long?

3 A. I think eight years, roughly eight years.

4 Q. And during the course of your work, have
5 you developed any understanding about the
6 utility-ratemaking process and how it works?

7 A. Yes. I've also worked on rate cases.

8 Q. And are you aware of the general process
9 that applies when a utility comes in and files one of
10 these rate cases in terms of how the Commission
11 reviews the filing and what's at issue in the case at
12 a very general high level?

13 A. At a very high level, yes, but they are
14 all very complex.

15 Q. Sure. And at a very high level, what
16 happens in a rate case is that the utility comes in
17 and they make a filing that is based on -- strike
18 that.

19 What happens in these rate cases at a
20 very high level is that the utility presents
21 information about their investment in utility plant
22 and equipment and their operating expenses and their
23 income taxes and so forth, and the Commission has to
24 decide on what's an appropriate rate of return and
25 then set rates for the utility for a prospective

1 period of time?

2 MR. MCKENZIE: Objection, relevance.

3 EXAMINER ADDISON: Mr. Finnigan.

4 MR. FINNIGAN: Your Honor, this goes to a
5 matter that I am going to address actually in this
6 category of costs and it will come up with the OVEC
7 costs that are at issue in this case. And what I am
8 attempting to show here is that --

9 EXAMINER ADDISON: Can we just jump to
10 those questions instead of talking about what kind of
11 information comes about in a rate case?

12 MR. FINNIGAN: Well, not -- I can't
13 really do that. This is just setting the foundation
14 for that and I am not going to go into anything else
15 about a rate case other than that's generally how it
16 works.

17 EXAMINER ADDISON: Okay. With that
18 understanding, you may answer the question.

19 A. I'm sorry. What was the question?

20 MR. FINNIGAN: May I have it reread,
21 please?

22 EXAMINER ADDISON: You may.

23 (Record read.)

24 A. So in a cost-of-service rate case, that's
25 I would say generally how it's done. In a

1 performance-based ratemaking case, it's somewhat
2 different. But either way the utility presents
3 either historical test year costs or current test
4 year or projections of costs but ultimately -- and,
5 you know, Intervenors also present information, and
6 then ultimately the Commission will decide, you know,
7 what is -- what costs are allowed and what the rates
8 should look like.

9 Q. Okay. And have you ever had the
10 experience in any of the rate cases on which you
11 worked where a utility included in their application
12 a request for approval of some advanced billing of
13 debt reserve of an unspecified nature not tied to any
14 particular expense or debt?

15 A. I don't know.

16 Q. But in any event, are you -- would it be
17 fair that based on your knowledge of the general
18 ratemaking process, if AES or AEP or Duke came in and
19 filed a base rate case today with the Commission and
20 they asked for approval in that rate filing of an
21 advanced billing of debt reserve for \$30 million,
22 that that would not be approved because it's not tied
23 to any cost of service?

24 MR. McKENZIE: Objection, your Honor.
25 It's not relevant to these proceedings. It's far

1 outside the scope of what the question is here as
2 dictated by statute.

3 EXAMINER ADDISON: I have to agree with
4 Mr. McKenzie, Mr. Finnigan. Objection sustained.

5 MR. FINNIGAN: And, your Honor, let me
6 just make a proffer for the record. So this goes to
7 whether this category of costs is just and reasonable
8 and also whether it conforms with the general
9 ratemaking principle of inner-generational equity.
10 Because -- and I do have some questions about this
11 category of information when we get to the OVEC bills
12 that the utilities made and what -- what this
13 evidence will establish is that if there is a cost
14 that the utilities paid to OVEC for some advanced
15 billing of debt reserve of \$30 million, if that did
16 occur, then that would not be just and reasonable and
17 it would violate the concept of energy -- inner
18 generational equity because the consumers who are
19 paying for the OVEC riders in 2020 are not going to
20 benefit from some \$30 million payment of advanced
21 debt reserve that is used to pay off some debt
22 obligation that becomes due in the future.

23 So it's not -- it wouldn't be just and
24 reasonable to allow the utilities to include that in
25 the OVEC rider in this case which -- which is the

1 subject of this proceeding is whether the OVEC
2 charges are prudent and reasonable.

3 EXAMINER ADDISON: Thank you. Your
4 proffer is noted.

5 MR. FINNIGAN: Now, at this time, your
6 Honor, I would like to ask that we go into a
7 confidential session because I have a number of
8 questions about the OVEC bills and those are
9 confidential documents. I believe they've been
10 produced probably by all three utilities and by OVEC
11 in response to different discovery requests or
12 subpoenas.

13 I plan to use the ones that I believe
14 were produced by Duke that Dr. Fagan has referred to
15 previously in her testimony today with -- I believe
16 it's LEI-DR-01-022 Confidential Attachment, and it's
17 a packet of documents that's about 150 pages. I have
18 those here. I am prepared to produce copies of those
19 and have those marked, and I have a series of several
20 questions about those. However, since those are all
21 confidential documents, I would ask that we do that
22 in a confidential session so that there is no
23 confidential information that is disclosed to the
24 public.

25 EXAMINER ADDISON: Thank you. And I

1 should have been surprised with no party indicated
2 that they were going to have cross-examination in
3 confidential session in the e-mails given the witness
4 order, so I should have clarified on that yesterday.

5 Certainly we can go into confidential
6 section, Mr. Finnigan, but I would prefer to proceed
7 in the public session and get as much done in that as
8 we can. That way if other parties have confidential
9 questions as well, we can just hit it all in the
10 confidential session all at once and proceed that
11 way, consistent with at least how I've done it in
12 prior proceeding so.

13 MR. FINNIGAN: Okay. I just have one
14 area to address before I will be ready for that
15 confidential session that I think is appropriate for
16 public session and I understand --

17 EXAMINER ADDISON: Excellent.

18 MR. FINNIGAN: I understand and I'll
19 conform to that.

20 EXAMINER ADDISON: You will have your
21 chance to ask your questions in confidential session.

22 MS. BOJKO: Your Honors, just for the
23 record, we did work with OVEC's attorney in an
24 attempt to try to get these released to the public
25 and that request was denied, so we didn't know.

1 EXAMINER ADDISON: That's fine. I had
2 inquired if parties had cross-examination they
3 anticipated to be conducted in confidential session.
4 And when no parties indicated that, I assumed we were
5 going to try to do everything in public but that's
6 fine. We will give every party the opportunity to
7 ask questions in confidential session if you plan to
8 do so. So please proceed.

9 MS. BOJKO: We did try.

10 EXAMINER ADDISON: No. I appreciate
11 that, Ms. Bojko.

12 Let's move on, Mr. Finnigan, if you want
13 to continue in the public session for now.

14 MR. FINNIGAN: Okay. Thank you, your
15 Honor.

16 MS. WHITFIELD: Your Honor, can I ask one
17 point of clarification? Are you saying we are all
18 going to do public?

19 EXAMINER ADDISON: We are all going to do
20 public. We will move into confidential. We will
21 have confidential redirect opportunity and then a
22 public redirect opportunity, so we will see where
23 that takes us.

24 MS. WHITFIELD: All right. Thank you,
25 your Honor.

1 EXAMINER ADDISON: Uh-huh.

2 Mr. Finnigan.

3 MR. FINNIGAN: Thank you, your Honor.

4 Q. (By Mr. Finnigan) Now, Dr. Fagan, one of
5 your assignments in doing this audit report was to
6 review these OVEC costs, and if you determined that
7 any of the OVEC costs were improper or unreasonable,
8 you understood that you are to bring that to the
9 Commission's attention, like this component D return
10 on equity we discussed yesterday.

11 A. So parts of the RFP in the scope of work
12 do say that, yes.

13 Q. Okay.

14 A. Yes.

15 Q. Now --

16 A. Or it's one of the options to bring it to
17 the Commission's attention is one of the options, one
18 of the suggestions under the scope of work.

19 Q. Okay. And you did bring that to the
20 Commission's attention with respect to this component
21 D; is that right?

22 A. Correct.

23 Q. Now, did you bring to the Commission's
24 attention any question about the -- of imprudency or
25 unreasonableness about the amount of pension and

1 benefit costs charged by OVEC during the audit
2 period?

3 A. We did not.

4 Q. Now, do you have a general opinion that
5 pension and benefit costs ought to bear some
6 reasonable relationship to the amount of wages and
7 salaries that are paid during a particular period?

8 A. Broadly, they may not be closely related
9 because wages and salaries have to do with current
10 costs, but pensions and benefits have to do with the
11 previous makeup of the workforce, salaries, the age
12 of the workforce, whose retired, so I think you would
13 have to look at that very carefully on a case-by-case
14 basis.

15 Q. And then as part of that careful review,
16 would it be appropriate for the Commission to decide
17 what's a reasonable time period for spreading out any
18 pension and benefit costs that might be associated
19 with past periods of service by the labor force?

20 A. I don't know.

21 Q. So how would you make a judgment if you
22 were reviewing costs and you knew that the wages were
23 certain -- one certain level and the pension costs
24 were another level? How do you make the judgment as
25 to whether pension costs are unreasonably high to

1 charge the consumers who are asked to pay for those
2 current costs?

3 A. I've never performed an analysis like
4 that, so I don't know what we would encounter doing
5 that.

6 Q. Okay. Now, we talked yesterday a little
7 bit about this topic of must-run commitment versus
8 economic commitment; is that right?

9 A. Correct.

10 Q. Now, isn't it true repeated use of this
11 must-run commitment could result in higher costs to
12 consumers?

13 A. Higher than -- what is the comparison?

14 Q. Well, just let's first compare it to no
15 use of must-run commitments. So if you compare no
16 use of must-run commitment versus repeated use of
17 must-run commitment, isn't it true that this repeated
18 use of must-run commitment could result in higher
19 costs to consumers?

20 A. I guess it depends on what the energy
21 market prices are. It depends on a lot of factors.
22 It could. It might not.

23 Q. Okay. It could, and it would depend on
24 certain factors.

25 A. Correct.

1 MR. FINNIGAN: All right. Your Honor, at
2 this time that's all the questions I have for the
3 public session. I would like to reserve the right as
4 your Honor indicated to ask some questions during the
5 confidential session relating to the OVEC bills and
6 other topics that may arise of a confidential nature.
7 Thank you.

8 EXAMINER ADDISON: Of course,
9 Mr. Finnigan.

10 MR. FINNIGAN: Thank you, Dr. Fagan.

11 EXAMINER ADDISON: Thank you very much.

12 Ms. Bojko?

13 MS. BOJKO: Thank you, your Honor.

14 - - -

15 CROSS-EXAMINATION

16 By Ms. Bojko:

17 Q. Can you hear me, Dr. Fagan?

18 A. Yes, ma'am.

19 Q. Thanks. Good morning. It's still
20 morning. Good morning, Dr. Fagan. As you know, my
21 name is Kim Bojko, and I represent the Ohio
22 Manufacturers' Association Energy Group. We've had a
23 chance to talk in prior audits, if you might recall.

24 I am going to try not to repeat the
25 questions that Mr. Finnigan asked. Unfortunately I

1 will have to ask a few for foundational purposes, so
2 if you could bear with me, I would appreciate it.

3 Dr. Fagan, you are employed by London
4 Economics International, LLC, and if I refer to that
5 as LEI, is that understandable to you?

6 A. Yes, to both.

7 Q. This case is about the audit of the Rider
8 LGR which is the Legacy Generation Resource Rider for
9 all three Ohio utilities; is that correct?

10 A. That's correct.

11 Q. And given that there are three utilities
12 in this case, if I refer to Duke Energy Ohio, AEP
13 Ohio, and AES Ohio collectively as the Ohio utilities
14 or just the utilities, you will understand what I am
15 referring to?

16 A. Yes.

17 Q. And LEI was the auditor in this case; is
18 that correct?

19 A. Yes.

20 Q. And it -- the case is designated as one
21 case; is that correct?

22 A. Yes.

23 Q. But you conducted three separate audits?

24 A. Yes.

25 Q. And you produced three separate audit

1 reports; is that correct?

2 A. Yes.

3 Q. One for each of the Ohio utilities?

4 A. Yes.

5 Q. But many of the provisions in each of the
6 audit reports are the same; is that correct?

7 A. The provisions?

8 Q. Many of your statements, many of your
9 conclusions are the same for all three utilities; is
10 that correct?

11 A. Correct.

12 Q. And the Staff Reports have been marked as
13 Staff Exhibits 2 through 7; is that your
14 understanding?

15 A. Yes. Some of them have C next to them
16 because they are the confidential ones but, yes.

17 Q. Sure. Given that we are in the public
18 session, I am just going to refer to the public audit
19 reports. Do you have those in front of you?

20 A. I do.

21 Q. And to try to expedite this, I don't want
22 to ask the same questions for each utility, so during
23 my questioning, if you believe that there is a
24 difference between the audit reports, could you
25 please let me know that?

1 A. I'll try to flag it, sure.

2 Q. Great. And let's -- I have my notes
3 based on the Duke audit report at this time. Could
4 you pull up that one, it's Staff Exhibit 6, so we are
5 talking about the same page numbers?

6 A. I've got it.

7 Q. Great. And you are the auditor that's
8 supporting all three audit reports, correct?

9 A. Correct.

10 Q. And you said we in some of your answers.
11 Is we -- and then you clarified and said we meant I,
12 so I am just trying to understand, who conducted the
13 audits?

14 A. So I led the audits, and I'm responsible
15 for the ultimate content of the audits, but it's too
16 big a job for one person, so we do have several Staff
17 members on any of our audits to perform some of the
18 analysis, review Data Requests, draft material, but
19 I'm responsible for the ultimate product.

20 Q. Okay. And were these three audits
21 conducted concurrently or simultaneously -- or, I'm
22 sorry, simultaneously or consecutively?

23 A. Oh, I see. Some of it is simultaneous
24 and it's just a question of scheduling our work. So
25 they were all due on the same day, so they all have

1 the same, you know, filing dates. We prepared
2 material, for example in the sections that are
3 particular to OVEC, not to the Companies, and that
4 material because it's about OVEC is in all the
5 reports. So you could call that simultaneous. Then
6 the analysis that has to do with the Companies, I --
7 some of the work is simultaneous because different
8 people are doing it, but they are doing it at the
9 same time, and then some of the work is sequential,
10 for example, the work that I did because I could only
11 do one company at a time so that part would be
12 sequential.

13 Q. So what -- you just referred to work that
14 you did that was sequential. What work do you
15 consider that you did that was sequential?

16 A. So I can't recall which company went
17 first, but chapters 4 and 5 where we're talking about
18 the OVEC bill and reconciliation and disposition of
19 energy and capacity, those are pieces that I myself
20 worked on. I mean, I might have had some support
21 from junior staff but. So those I would have had to
22 do one company at a time.

23 Q. Okay. And just so we are all on the same
24 page, look at page 23 of the Duke audit, and you used
25 the term chapter. So at the top it says a "4" and so

1 that's what you mean by chapter?

2 A. Yes.

3 Q. So your work would be on -- started on
4 page 23, and it would go over to page 50, 4 and 5?

5 A. So in chapter 5 I did have the help of
6 staff on some of the charts and details. Let me
7 find -- let me get to the end of that chapter and
8 tell you the page number. That's right. Page 50,
9 yes.

10 Q. Okay. And you noted earlier you were the
11 lead auditor and you had assistance from others and
12 that you specifically worked on chapters 4 and 5, but
13 you are the overall responsible person for drafting
14 these audit reports; is that correct?

15 A. For the process of drafting, pulling
16 analysis together, and creating a report, yes.

17 Q. And in -- I think in Duke's you call them
18 DEO. You'll understand that DEO is the same as Duke
19 in my questions?

20 A. Correct. I understand.

21 Q. Okay. Let's look at -- turn to page 8 of
22 Duke's audit.

23 A. Okay.

24 Q. And does your audit have page numbers at
25 the bottom?

1 A. Yes. I am on page 8.

2 Q. Okay. Actually it -- it starts on page
3 7, I'm sorry. I was looking at the date stamp -- or
4 Bates stamp at the top. It's page 8 of 113 for the
5 PDF, but it's page 7 of the audit report. It's
6 entitled "Chapter 1 the Executive summary and
7 recommendations." Are you there?

8 A. Yes.

9 Q. In this audit you explain how Duke's
10 Rider PSR was established; is that correct?

11 A. In general we spoke to the historical
12 process established as a nonbypassable rider through
13 DEO's third electric security plan, so not in detail
14 but broadly, yes.

15 Q. Okay. Okay. My question was just that
16 you explained how Duke's riders -- Rider PSR was
17 established, so your answer is yes?

18 A. It was -- right. It was established by
19 the third electric security plan in Case
20 14-841-EL-SSO and that it started at zero, et cetera,
21 et cetera. So the whys and wherefores and how we
22 didn't get into but sort of the place where that
23 happened is what we identified.

24 Q. Okay. I just don't understand if you are
25 quibbling with my question or not or you actually --

1 I just asked you you state how it's established; is
2 that a fair characterization of your audit report?

3 MR. McKENZIE: Objection, asked and
4 answered.

5 EXAMINER ADDISON: I think she has
6 answered yes. The history is there so.

7 MS. BOJKO: I just didn't understand why
8 she wasn't responding yes.

9 EXAMINER ADDISON: Let's just move on.

10 Q. (By Ms. Bojko) Rider PSR was the
11 predecessor to the LGR Rider; is that correct?

12 A. That's correct.

13 Q. Okay. And the Rider PSR also collected
14 OVEC-related charges; is that correct?

15 A. That -- it might have collected others as
16 well but, yes, OVEC charges, yes.

17 Q. Okay. And you are familiar with Rider
18 PSR because you were the audit -- auditor in Duke's
19 prior OVEC case; is that correct?

20 A. Correct.

21 Q. And in that prior case, you were the
22 auditor who audited the prudence of the OVEC costs
23 passed onto customers and whether the cus -- the
24 Companies' acts were in the best interest of
25 ratepayers, correct?

1 A. That was the stated purpose of the work
2 that the Commission was looking for but our scope of
3 the audit, we ultimately decided didn't include best
4 interest, but it included the scope that was defined
5 in the RFP -- actually it's both RFPs, the 2019 and
6 2020.

7 Q. And when you just said we in that
8 statement, the we you are referring to you said
9 earlier was you, I.

10 A. Yes, yes.

11 Q. So LEI determined the scope; is that what
12 your statement is to me?

13 A. No. The scope was determined by the RFP
14 that's issued by PUCO. And the scope is -- is the
15 work that's envisioned and the work we provided.

16 Q. So you believe that best interests is --
17 was the purpose of the audit, but it might not have
18 been LEI's assignment for the audit?

19 MS. AKHBARI: Can I just object to the
20 extent I don't know which audit Ms. Bojko is
21 referring to, 2019 PSR or LGR.

22 EXAMINER ADDISON: Thank you.

23 If you could specify, Ms. Bojko.

24 MS. BOJKO: We were talking about the PSR
25 Rider.

1 A. So I have the RFP for the 2020 riders,
2 but I don't have the one for the 2019 riders -- or I
3 should say rider, PSR Rider.

4 MS. AKHBARI: Your Honor, I would just
5 object to the extent that I don't believe the RFP in
6 the 2019 PSR Rider would be relevant to the
7 underlying proceeding.

8 EXAMINER ADDISON: Thank you. I think
9 she has already provided a partial answer so.

10 Ms. Bojko.

11 MS. BOJKO: You are just asking me to
12 continue?

13 EXAMINER ADDISON: Yes, continue.

14 Q. (By Ms. Bojko) You stated that you
15 drafted the audit report in the prior case; is that
16 correct?

17 A. So my team and I, yes.

18 Q. And in questioning with Mr. Finnigan
19 earlier, you stated that you meaning I is how you
20 defined the term earlier, that you decided that best
21 interests was beyond the scope; is that correct? It
22 was too broad is the statement you made.

23 A. Correct.

24 Q. And you're saying it was you that
25 determined that; is that correct?

1 A. Upon reading what was required ultimately
2 by Staff, yes, it was part of the purpose but not
3 part of the scope.

4 Q. Are you saying reading -- reading by
5 Staff the RFP, or are you talking about reading
6 e-mails by Staff?

7 MS. AKHBARI: Your Honor, I would just
8 object again to the extent she's discussing the RFP
9 for the Rider PSR proceeding. I don't see how that's
10 relevant in the underlying procedure. There is an
11 RFP in this case she is welcome to talk about.

12 EXAMINER ADDISON: Thank you,
13 Ms. Akhbari. I will allow this one question.

14 A. It was both.

15 Q. So in earlier questions you stated that
16 you determined what the scope of the prior audit was,
17 and now you are telling me that you and Staff
18 determined what the scope of the prior audit was from
19 e-mails and RFP?

20 MR. LINDGREN: Objection.

21 MS. AKHBARI: Renew the same objection.

22 EXAMINER ADDISON: That objection will be
23 sustained.

24 MS. BOJKO: Okay. Your Honor, I am
25 trying to impeach her prior statement --

1 EXAMINER ADDISON: I understand what you
2 are attempting to do but, no. We are -- I am going
3 to sustain the objection. You can go about it a
4 different way, Ms. Bojko, but.

5 MS. BOJKO: Well, I am going to impeach
6 her. I am going to go ahead and impeach because she
7 impeached herself, so it's a prior sworn statement
8 under Rule 602. I believe we are allowed to impeach
9 the witness with a prior sworn statement. And it
10 goes to the costs which is in the LGR Rider. It's in
11 the statutory provision. It says the same costs of
12 the PSR so this is part and parcel of that line of
13 questioning.

14 MS. AKHBARI: Your Honor, if Ms. Bojko is
15 attempting to impeach the witness, she's not gone
16 about it properly pursuant to the Rules of Evidence.
17 She hasn't stated what statement she's seeking to
18 impeach. She hasn't asked the question if she
19 remembers any prior sworn statement. She hasn't
20 taken any underlying steps.

21 MS. BOJKO: I actually did. I just asked
22 three questions. But, Karen, do you know the -- your
23 Honor, sorry, may we have read back the question and
24 answer that I asked the court reporter to mark
25 previously?

1 EXAMINER ADDISON: You can.

2 MS. BOJKO: I was trying to ask
3 additional questions but if that's going to be
4 stopped, we might as well go to that.

5 EXAMINER ADDISON: Why don't you go ahead
6 and take your seat, Ms. Bojko, while we have this
7 read back.

8 (Record read.)

9 Q. (By Ms. Bojko) And do you recall
10 testifying you said we meant I?

11 A. Correct.

12 MS. BOJKO: May I approach, your Honor?

13 EXAMINER ADDISON: I still don't
14 understand. I don't see where she has been
15 inconsistent, Ms. Bojko.

16 MS. BOJKO: Well, I am going to show you,
17 your Honor, a prior sworn statement she is
18 inconsistent in her statements.

19 EXAMINER ADDISON: Please. You may
20 approach the witness.

21 MS. AKHBARI: Your Honor, same objection.
22 I don't see what -- what inconsistency there could
23 be.

24 EXAMINER ADDISON: I will allow Ms. Bojko
25 to give it a try. Thank you.

1 MR. MCKENZIE: If I may add, your Honor,
2 just while we are handing this out, I assume this is
3 a deposition or hearing transcript. The question is
4 not just whether this is a proper exception to the
5 hearsay rules because it is impeachment. Your
6 Honor's rulings with regard to Rule 403, the matter
7 of the draft report in the previous case is more
8 prejudicial than probative. And also your Honor's
9 ruling with respect to the scope of the 2020 audit
10 statute would still apply and would be reason not to
11 get into these topics yet again regardless of if it's
12 impeachment, and I don't agree that it is. Even if
13 it were, those rulings would supercede that concept.

14 MR. SHARKEY: And, your Honor, again,
15 Evidence Rule 613, impeachment by self-contradiction,
16 if they are going to use extrinsic evidence of a
17 prior statement that's inconsistent -- is allegedly
18 inconsistent, they need to establish that it relates
19 to a fact of consequence to the determination of this
20 action. And I don't believe that has been
21 established by any means. This is purely questioning
22 that's not a fact that is of consequence to this
23 action.

24 EXAMINER ADDISON: Thank you,
25 Mr. Sharkey.

1 MS. BOJKO: I haven't been able to
2 proceed to ask her if she recalls testifying. That's
3 the next step is asking her if she recalls
4 testifying, if she did a prior sworn statement the
5 last time she testified, and then I will impeach the
6 statement she just made.

7 EXAMINER ADDISON: Well, I think
8 Mr. Finnigan made that very clear in his attempts to
9 get this -- or at least related information into the
10 record through his questioning. Can you respond to
11 Mr. Sharkey's argument, Ms. Bojko?

12 MS. BOJKO: Yeah. Mr. Sharkey is not
13 reading to you the whole entire rule for impeachment.
14 If you look at impeachment, impeachment of a witness
15 is allowed where there is a prior sworn statement
16 contradictory to that statement and goes to the
17 credibility of the witness testifying as well as to
18 whether she is telling the truth from a prior sworn
19 statement to telling -- giving the same answer in
20 a -- in a subsequent case. That's impeachment. It's
21 Rule 611. He is reading to you I think (a). You
22 have to look at (b) for the entirety of the
23 impeachment rule.

24 MS. WHITFIELD: Yeah, your Honor.

25 MS. AKHBARI: Your Honor --

1 EXAMINER ADDISON: Go ahead, Ms. Akhbari.

2 MS. AKHBARI: Sorry. Sorry, Angie. I
3 believe the witness's response was she didn't recall.
4 I don't understand recollection or, you know, not
5 remembering a response to be impeachable or a
6 demonstration of -- of a statement that could be
7 impeachable either.

8 MS. BOJKO: Your Honor, she didn't say
9 that.

10 EXAMINER ADDISON: Go ahead,
11 Ms. Whitfield.

12 MS. WHITFIELD: Your Honor, first, let me
13 respond to that. She did not say that. The question
14 that the court reporter just read back was that she
15 said we made the determination it was too broad. And
16 she clarified in response to questions that we means
17 me, so I made the determination. And so she's
18 allowed to be impeached on prior testimony where she
19 said somebody else made that determination, and it
20 wasn't we or we equals me. It was somebody else.

21 And to the extent that, to follow up on
22 what Ms. Bojko said, 611(b) talks about the scope of
23 cross-examination. And as Mr. Finnigan pointed out
24 earlier, cross-examination shall be permitted on all
25 relevant matters. That's one. Or and on all matters

1 affecting credibility.

2 So you made a ruling that the probative
3 value is outweighed by prejudice as to the relevancy,
4 but we are still entitled to question this witness
5 about her credibility and impeach her. That's not
6 overcome by a Rule 403 determination.

7 EXAMINER ADDISON: Correct me if I am
8 wrong, if there has been any alleged statements that
9 are contradictory to one another, haven't we already
10 had them out in cross-examination?

11 MS. WHITFIELD: No.

12 MS. BOJKO: No.

13 MS. WHITFIELD: No, your Honor. You have
14 shut that down several times.

15 EXAMINER ADDISON: No.

16 MS. WHITFIELD: He made it in his
17 proffers.

18 EXAMINER ADDISON: I think she already
19 stated we -- any alleged contradiction has already
20 been brought out. I don't see bringing out a
21 deposition or a transcript that we've already noted
22 for the various reasons the prejudicial effect of
23 having this in here does not outweigh the probative
24 value. In my opinion it does not -- it will not
25 provide any sort of credence to your impeachment

1 purposes.

2 You've already indicated or alleged that
3 she's had inconsistent statements made during her
4 cross-examination here. I don't see the need for
5 this right now, so we are going -- we are going to go
6 ahead and continue.

7 If you would like -- if you would like to
8 ask some more questions, see if you can bring out
9 another reason for me to change my mind, you are free
10 to do so. But that's my ruling.

11 MS. BOJKO: Your Honor, that's not proper
12 impeachment. Impeachment is to have her actually
13 read the exact sentence, the prior sworn statement
14 that she made. Mr. Finnigan giving proffers is not
15 evidence in this record. The witness is what's
16 evidence in this record, so she can only make an
17 improper -- or impeach -- I can only impeach the
18 witness through her, not through what Mr. Finnigan's
19 questions were or what might or might not be in the
20 record.

21 She has not read the prior sworn
22 statement, so she has not been impeached as to that
23 prior sworn statement. I'm sorry. Mr. Finnigan
24 didn't do the impeachment the correct way. I am
25 trying to do impeachment the correct way which is

1 have her read in the record the prior sworn statement
2 that's inconsistent. That's how impeachment works.

3 MR. FINNIGAN: And, your Honor, I
4 recognize that we are trying to thread a fine needle
5 here, and it's difficult to do, but in terms of
6 whether we are allowed to ask about inconsistent
7 statements, my whole line of questioning that I was
8 not permitted to get into was seeking to ask about
9 inconsistent statements relative to the 2019 audit
10 relating to whether she was able to act in an
11 independent capacity for the 2020 audit and whether
12 she had any predisposition or bias or prejudices in
13 terms of approaching the 2020 audit knowing that she
14 was expected to take a mild tone towards the
15 utilities in her audit reports.

16 And to do that I was trying to get into
17 these inconsistent statements in the e-mails that
18 were excluded from evidence but, you know, to the
19 extent that whether, you know, we've been allowed to
20 explore inconsistent statements without the
21 statements that are reflected in the e-mails and
22 asking about that in cross-examination of Dr. Fagan,
23 we cannot test her credibility, and we can't probe
24 that because we are not being allowed to point out
25 whether there have been inconsistent statements or

1 inconsistent actions on her part.

2 So that's why I made the proffer and I
3 only make these remarks because when you made the
4 comment that, you know, the parties have had a full
5 opportunity to present inconsistent remarks, I was
6 not allowed to ask any questions about inconsistent
7 remarks comparing her acts in this audit versus what
8 is reflected in the e-mails in the last case and
9 going to her credibility. That's why I made the
10 proffer on the credibility issue.

11 EXAMINER ADDISON: Thank you,
12 Mr. Finnigan. I believe I have already made my
13 ruling. We are going to continue.

14 MS. BOJKO: So your ruling, your Honor,
15 is I am not allowed to impeach a witness?

16 EXAMINER ADDISON: The objection is
17 sustained. I don't believe bringing out this
18 deposition -- I'm sorry, keep calling it a
19 deposition, this transcript from a prior proceeding
20 is going to be used for proper impeachment at this
21 time. You can go ahead and continue with your
22 questions, Ms. Bojko. If there is another
23 opportunity you would like to raise this, you can
24 certainly do so at that time, but we are going to
25 move on. So please proceed.

1 Q. (By Ms. Bojko) Ms. -- or, Dr. Fagan, do
2 you recall testifying in a prior PPA proceeding
3 concerning the PPA Rider to collect OVEC-related
4 costs for the AEP Ohio Company?

5 A. Yes.

6 Q. And do you recall in that proceeding
7 where you stated that --

8 MR. McKENZIE: Objection, your Honor.
9 She is going to read this into the record now. You
10 have already ruled on this, and she continues to try
11 to push your rulings beyond what you've decided.

12 MS. BOJKO: I am allowed to finish my
13 question, first of all. Secondly, I was not going to
14 read it into the record.

15 EXAMINER ADDISON: All right. Comments
16 will be directed to the Bench. We will have one
17 person speaking, and then we will have a response.
18 We are not going to be talking over one another.
19 That will not help us get back on track with this
20 hearing.

21 Ms. Bojko, please finish your question.

22 Q. (By Ms. Bojko) Dr. Fagan, do you recall
23 in the prior AEP Ohio proceeding stating on the
24 record during the hearing that after consultation
25 with Staff, that you decided or -- or after

1 consultation with Staff, you decided to take out the
2 best interest language even though you believed best
3 interest was not the purpose of the audit?

4 MR. McKENZIE: Objection for all the
5 reasons we stated many times now.

6 A. I would have to read to see.

7 EXAMINER ADDISON: I'm sorry, Dr. Fagan.
8 We have a pending objection.

9 MR. McKENZIE: I will just note this is
10 certainly not proper impeachment just asking her
11 whether she remembers certain topics and what she
12 said on them. That's not how you do impeachment.

13 EXAMINER ADDISON: May I have the
14 question reread, Karen? Thank you.

15 (Record read.)

16 EXAMINER ADDISON: I think we are getting
17 very close to asked and answered in line with
18 Mr. Finnigan's questioning, but for brevity sake, I
19 will allow the witness to answer the question.

20 A. I would have to read the transcript to
21 know exactly what I said.

22 Q. So you are saying you don't recall.

23 A. Well, I know we discussed the topic, but
24 I don't know if the exact words are the way that --
25 that was described. I would need to read it.

1 Q. Dr. Fagan, is it your understanding the
2 RFP in the last round of audits for all of these
3 riders all had the purpose statement including
4 this -- this rider for 2020 all had the purpose of --
5 excuse me. Let me just get the language. To
6 establish the prudence of all the costs and sales
7 flowing through the LGR Rider and to investigate
8 whether DEO's actions were in the best interest of
9 retail ratepayers?

10 A. For all the Companies, yes. It's in the
11 introduction on page 2 of the RFP.

12 MS. BOJKO: I'm sorry. Can I have that
13 last response read back?

14 EXAMINER ADDISON: You can.

15 (Record read.)

16 Q. (By Ms. Bojko) And it's also included in
17 all three of your audit reports in the Executive
18 Summary and Recommendation sections; is that correct?

19 A. It's included in Section 1.1 in Objective
20 and Purpose.

21 Q. Which is under Executive Summary and
22 Recommendations; is that correct?

23 A. Correct.

24 Q. And prior -- in prior testimony this
25 morning, you stated that tone was not an issue you

1 considered in drafting the current audit reports; is
2 that correct?

3 A. That sounds right.

4 Q. But in prior audits that you have
5 personally conducted, you have considered tone; is
6 that correct?

7 A. I mean, I would say our tone is, I
8 guess -- it's hard to describe it. It's not content.
9 You know, we want a professional tone which is, you
10 know, readable, organized, but I'm not sure it's
11 something you consciously go in with.

12 Q. So in prior audits you have not
13 considered the tone and intensity of the language of
14 your audits?

15 A. So are you referring to feedback from --
16 from draft reports, previous drafts?

17 Q. I'm asking if in prior audits you have
18 considered tone and intensity with regard to language
19 that you choose to use in the audit reports?

20 MR. McKENZIE: Objection, your Honor.
21 I've been trying to let this go, but it's tantamount
22 to asking about those e-mails.

23 MS. BOJKO: I have not asked about the
24 e-mails.

25 EXAMINER ADDISON: Mr. McKenzie, I will

1 allow the witness to answer the question. Thank you.

2 A. So we consider it, I guess, in terms
3 of -- of feedback from clients, but going into a
4 report or a piece of research, I guess we go in with
5 our own tone, but it's not -- it's not a conscious
6 decision. It's -- I think it just comes out of doing
7 the analysis, presenting the results.

8 Q. And in your audit reports in Ohio
9 regarding OVEC costs, your client would be Staff of
10 the Commission; is that correct?

11 A. That's correct.

12 Q. And so when you say you would consider it
13 if you had feedback from clients, you are referring
14 to Staff; is that correct?

15 A. We would consider it from any client but
16 in this case, yes, Staff.

17 Q. Has any other client asked you to rewrite
18 an audit report based on your tone and intensity?

19 MS. AKHBARI: I would just object. I
20 don't think that reflects her testimony thus far.

21 EXAMINER ADDISON: She can answer if she
22 has an opinion on it.

23 A. Just to be clear on the question, it
24 wasn't a rewrite of the report or a change in our
25 substantive conclusions, so it was, I guess -- it's

1 odd to be talking about tone and intensity because
2 that had to do with a previous audit. Can I talk
3 about this?

4 MS. BOJKO: Your Honor, I will help.
5 That wasn't my question.

6 EXAMINER ADDISON: Thank you, Ms. Bojko.
7 I think I've -- in my overruling of the objection, I
8 gave the witness plenty of latitude to respond so.
9 You may answer the question however you see fit.

10 THE WITNESS: Okay.

11 EXAMINER ADDISON: Or deem fit, sorry.

12 A. Okay. So the question was -- what was
13 the question? I'm sorry.

14 EXAMINER ADDISON: Can I have it reread?

15 MS. BOJKO: I am happy to reask it, your
16 Honor.

17 EXAMINER ADDISON: Okay. Go ahead and
18 reask, Ms. Bojko.

19 MS. BOJKO: Sorry.

20 Q. (By Ms. Bojko) I asked if any of your
21 clients in the past or currently have ever asked you
22 to change language in an audit based on tone or
23 intensity of the language in the audit.

24 MR. MCKENZIE: And, your Honor, I would
25 object to the extent the question asks her to talk

1 about only -- if there is other things, that's fine.
 2 Insofar as it asks her to talk about the matters
 3 which you have already excluded from evidence, which
 4 are the drafts of a previous audit for a previous
 5 rider not under the statute, that are prejudicial to
 6 Duke and AES. That evidence has been excluded.

7 EXAMINER ADDISON: Thank you.

8 MR. SHARKEY: I would join that
 9 objection.

10 EXAMINER ADDISON: Thank you. The
 11 witness can answer.

12 A. I don't think I've heard those two words
 13 in feedback before in an audit.

14 Q. From any other clients other than Staff,
 15 that was my question.

16 A. No, not that I recall.

17 Q. Do you believe your clients with regard
 18 to the audit reports are the Ohio utilities?

19 A. No.

20 Q. The Ohio utilities are able to review
 21 your draft audit reports; is that correct?

22 A. Yes.

23 Q. And the auditor makes changes sometimes
 24 based on the comments from the Ohio utilities; is
 25 that correct?

1 A. If the comments are correcting factual
2 errors, yes.

3 Q. And Ohio utilities have also made
4 comments that aren't solely about factual errors; is
5 that correct?

6 A. I would have to look back at the reports.

7 Q. And in this case did the aud -- the Ohio
8 utilities review draft reports and provide comments
9 and recommendations to you for changes in your draft
10 reports?

11 A. So they review the drafts after -- so the
12 Commission Staff gets a draft, reviews it. After
13 that, the draft goes to the utilities for
14 highlighting factual errors and indicating
15 redactions. But we do not seek comments on a
16 recommendation or analysis. It's strictly -- I mean,
17 companies might make a comment. I can't recall if
18 they did but that's not the purpose of that. We are
19 looking for if we've missed a matter of fact and to
20 know what to redact.

21 Q. So you don't seek comments on your
22 recommendations, but it's true, isn't it, that
23 sometimes utilities provide you comments on your
24 recommendations?

25 A. They might.

1 Q. And in this case isn't it true that the
2 utilities provided comments on draft reports?

3 A. I don't recall.

4 Q. And in this case you stated Staff, who
5 you are calling your client in this proceeding; is
6 that correct?

7 A. Correct.

8 Q. Staff reviewed a draft report; is that
9 correct?

10 A. Yes.

11 Q. And Staff had an opportunity to provide
12 comments and feedback on your draft report, correct?

13 A. Correct.

14 Q. And Staff is able to provide feedback on
15 nonfactual issues such as your recommendations; is
16 that correct?

17 A. They may, yes.

18 Q. And did Staff in this case?

19 A. I would have to go back and look at the
20 e-mails, et cetera. They may have or may not.

21 Q. You just don't recall sitting here today.

22 A. I do not.

23 Q. And when drafting your -- what you called
24 an errata, it's been labeled as Staff Exhibit 8C, in
25 drafting that errata were comments received from

1 utilities considered on your audit report?

2 A. It was not -- the comments on the say
3 mathematical calculations which is what we were
4 addressing weren't received from the companies on the
5 draft that they reviewed.

6 Q. No. I am talking about in -- in drafting
7 your Exhibit 8C, which it's dated October 26 -- well,
8 let's ask that. When did you create Exhibit Staff
9 Exhibit 8C?

10 A. In the several days leading up to
11 October 26.

12 Q. Okay. And in drafting Staff Exhibit 8C,
13 did you consider comments provided by utility
14 companies?

15 A. So we considered the initial comments
16 that were filed by AEP Ohio that pointed out
17 potential miscalculations.

18 Q. Did you consider any other comments?

19 A. There were comments from Witness Glick
20 that also pointed out potential miscalculations.

21 Q. Did you review any other comments?

22 A. We read everything in the docket.

23 Q. Did you review Data Requests?

24 A. We did not review the Data Requests in
25 detail, no.

1 Q. Did you receive comments from Staff and
2 consider those comments in drafting Staff Exhibit 8C?

3 A. No.

4 Q. Do you still have your errata sheet up
5 there with you what's been marked as Staff
6 Exhibit 8C?

7 A. I do.

8 Q. So reviewing that errata, or what you are
9 calling an errata, let's look first at the first page
10 of the errata. For the AEP audit, isn't it true that
11 this errata also offers an explanation of why you
12 changed something?

13 A. Yes.

14 Q. And here you state that the available
15 energy allocation ratio was used to calculate AEP's
16 share of the OVEC generation; is that correct?

17 A. It was used by OVEC. We had
18 inadvertently used the PPR.

19 Q. And is the same true for the other two
20 utilities? Did you also make a correction where you
21 used the AEAR to recalculate the available monthly
22 energy?

23 A. Correct, yes.

24 Q. And you note that the AEAR is different
25 from the PPR; is that correct?

1 A. It's slightly different, yes.

2 Q. How?

3 A. By a couple of hundredths of a percent.
4 It's a small difference.

5 Q. I don't mean monetarily what the
6 difference is. What is the difference between the
7 two charges?

8 A. So our understanding is that the PPR is
9 the performance -- excuse me, the participation
10 ratios; but in any given month, the AEAR is slightly
11 different. We didn't find a definition of the AEAR
12 in the ICPA though.

13 Q. But what is the difference between the
14 two ratios? Are you aware of what that difference is
15 or how they are calculated to make a different ratio?

16 A. No.

17 Q. What they are based upon?

18 A. No.

19 Q. So where did you get your understanding
20 from?

21 A. The OVEC bills.

22 Q. You got your -- I don't understand. If
23 you don't know what the ratio differences are, are
24 you saying that the OVEC bills contained a charge for
25 an AEAR and then also contained a charge for a PPR?

1 A. So --

2 Q. Or PPR, excuse me.

3 A. So we had assumed going in -- so the PPR
4 is used for -- so OVEC produces energy, and then it
5 has to figure out which share of energy goes to -- it
6 doesn't actually go through but is allocated to each
7 company. And we had assumed that that was done based
8 on the PPR. So when we created some of the figures,
9 Figure 13, we went ahead and used the PPR. But the
10 OVEC bill actually uses the available energy
11 allocation ratio to calculate the share of costs that
12 goes to the Company. So we are auditing the share of
13 costs that goes to the Company. That was the number
14 we ought to have used in those -- in those charts.

15 Q. Who told you that was the number you
16 ought to have used?

17 A. That was brought to our attention in the
18 AEP initial comments.

19 Q. Where at in the AEP initial comments does
20 it use the word PPR or AR -- or AEAR?

21 A. May I have a look at the comments?

22 Q. Sure.

23 EXAMINER ADDISON: Do you have a copy of
24 the comments?

25 Q. (By Ms. Bojko) You're saying that's just

1 your recollection? You don't know -- you didn't cite
2 to it in your Staff Exhibit 8C, did you?

3 A. I didn't put a footnote in, no.

4 Q. So you think the initial -- well, let's
5 establish that first. We might have established that
6 yesterday. My apologies. This is you -- you got
7 AEP's initial comments. They were filed, I believe,
8 May 5; is that correct? Somewhere May 2023?

9 A. I could look at it as soon as I see it.

10 Q. May 8, 2023. Are you referring in Staff
11 Exhibit 8C to the initial comments that AEP filed in
12 this same proceeding on May 8, 2023?

13 A. Yes.

14 MS. BOJKO: Okay. Your Honor, may I
15 approach?

16 EXAMINER ADDISON: You may.

17 MS. BOJKO: I am not going to mark this.
18 I am using it to refresh her recollection.

19 EXAMINER ADDISON: Sure. Thank you.

20 Q. (By Ms. Bojko) Is this the document you
21 referenced in your Staff Exhibit 8C?

22 A. Yes.

23 Q. And could you tell me whether anywhere in
24 this document the terms "available energy allocation
25 ratio, AEAR," are used?

1 A. They don't refer to the AEAR, but they
2 refer to the actual OVEC invoices and when you go
3 back and look at the OVEC invoice, those are
4 calculated based on the A -- allocation -- available
5 energy allocation ratio.

6 Q. So I thought in your prior statement you
7 told me that AEP directed you to the AEAR instead of
8 PPR [SIC] and that's not exactly correct, right? AEP
9 instead directed you to the OVEC bills; is that a
10 more fair statement?

11 A. But what they referred to was the OVEC
12 invoices. Our explanation of why it's different is
13 because the OVEC invoices are calculated on the --
14 the available energy allocation ratio, not the PPR so
15 that's our explanation. And, of course, you know, we
16 double-checked this to make sure that the -- the --
17 you know, we said we miscalculated something. We
18 didn't just take their word for it. We went back and
19 looked at the OVEC bills, invoices.

20 Q. Well, can you -- can you turn to page 2
21 of the Staff Exhibit 8C?

22 A. Yes.

23 Q. And if you look at the second bullet, the
24 last -- the second to last sentence you state "If
25 AEP's calculations are correct." So now I'm

1 confused. Did you assume AEP's calculations were
2 correct, or did you verify that their calculations
3 were correct?

4 A. So the second bullet has to do with the
5 average days of coal inventory, and as we noted, we
6 calculated that based on average coal burn, but the
7 fuel procurement strategy addresses it in terms of
8 full load burn, but we didn't have full load burn to,
9 you know, double-check this.

10 Q. So in this instance you didn't
11 double-check, but in the first instance regarding
12 AEAR, you did double-check?

13 A. Yes, because we had access to the data.

14 Q. Okay. And the AEAR is nowhere in your
15 audit reports, is it?

16 A. It is not.

17 Q. And the PRR is nowhere in your audit
18 reports, is it?

19 EXAMINER ADDISON: I think you said PRR
20 again.

21 Q. PPR, sorry.

22 EXAMINER ADDISON: Thank you.

23 A. I'm going to find you the table where we
24 talk about the power participation ratios. So that's
25 in Figure 3 and should be Figure 3 in all the

1 reports.

2 Q. Okay. I'm sorry. So you talked about
3 the PPR, but you didn't talk about the AEAR and the
4 differences between the two; is that fair?

5 A. Correct.

6 Q. Okay. And it doesn't -- the AEAR is
7 nowhere in the ICPA, correct?

8 A. It is not -- we couldn't find a
9 definition of it in the ICPA, but it may be there.
10 That's a long document. We looked for it. And we
11 looked for it in the definition in the OVEC bills.

12 Q. So you looked for a definition of the
13 AEAR, correct?

14 A. Yes.

15 Q. Okay. And you couldn't find it.

16 A. Correct.

17 Q. So you don't know why OVEC used the AEAR
18 instead of the PPR, correct?

19 A. That's right.

20 Q. And just to be clear, AEP did not explain
21 to you that there was a difference. They simply
22 directed you to the OVEC bills, correct?

23 A. Correct.

24 Q. So you talked about the recalculation in
25 Staff Exhibit 8C. When was that recalculation

1 performed?

2 A. In the days leading up to October 26.

3 Q. Okay. You didn't perform it before
4 drafting your testimony that was filed on October 10;
5 is that correct?

6 A. That's correct.

7 Q. And you -- these were -- you didn't do it
8 any time between May 2023 and October 23, 2023; is
9 that right?

10 A. Correct.

11 Q. You said days leading up to it, so I just
12 said the 23rd because that was three days before; is
13 that fair?

14 A. It's probably about right.

15 Q. And you decided to recalculate after your
16 testimony was filed and five months after the
17 comments were filed why?

18 A. It just hadn't come to our attention.

19 Q. So it had not come to your attention in
20 May 2023, and it had not come to your attention on
21 October 10, 2023, correct?

22 A. Correct.

23 Q. And who brought it to your attention
24 around October 23, thereabouts?

25 A. We were doing a -- I was doing a final

1 review of all the material filed in the docket and
2 that's when I saw it.

3 Q. So no one brought it to your attention in
4 October?

5 A. So I looked at all the materials, read
6 the initial comments, testimony, everything, and
7 that's when I looked at it and said, you know,
8 there's --

9 Q. And did you have --

10 EXAMINER ADDISION: Oh, hold on,
11 Ms. Bojko.

12 A. I was going to say we saw it was comments
13 about our calculations that I wanted to check.

14 Q. And did you have discussions with AEP
15 about these changes?

16 A. No.

17 Q. Did you have discussion with Staff about
18 these changes?

19 A. I told Staff that I found critique of our
20 calculations that I wanted to straighten out and make
21 sure we were as accurate as possible, and I would be
22 preparing this document.

23 Q. Did Staff have input to the document?

24 A. No.

25 Q. Did Staff review a draft of the document?

1 A. I don't know.

2 Q. Who at Staff did you talk to and provide
3 a draft of a document to?

4 A. So I provided the document to Rodney
5 Windle, Kevin Moore -- if I leave someone out, let me
6 know -- Tom Lindgren, the folk I have been working
7 with on Staff. I might have left somebody out.

8 Q. Okay. Let's turn to page 2 of the
9 errata. On page 2, this is Figure 13. And I guess
10 I'm a little -- I would like to seek some
11 clarification on some testimony that was had
12 yesterday. I thought you said yesterday -- I wrote
13 down on my notes that columns A, B, and C are public
14 data; is that correct?

15 A. I don't believe that's correct. I need
16 to look at the sources. So the OVEC bills, the total
17 OVEC charges, I believe those are confidential. It
18 was from LEI-DR-2-009 Confidential Attachment 1. So
19 that column is confidential.

20 Q. Which one are you looking at just so we
21 are all?

22 A. Figure 13 on page 2 and then I am looking
23 at the sources for Figure 13 on page 32.

24 Q. For which utility?

25 A. In AEP. And I just want to double-check

1 the confidential version and see what got redacted.

2 So all of Figure 13 is redacted as confidential.

3 Q. That's what I am trying to understand.

4 Okay. So you are saying A is confidential, and B and
5 C were public information.

6 A. No, no. All the foundational information
7 which is columns A, B, C, and F were from Data
8 Requests that when we sent the report to the
9 Companies to redact was identified as confidential.

10 Q. So I was mistaken. Yesterday you didn't
11 say that some of these columns were from publicly
12 available data?

13 A. No, they are not.

14 Q. Okay. But you reconciled these columns
15 with rate filings that are public; is that what you
16 testified to yesterday?

17 MR. McKENZIE: Your Honor, I would
18 object. Mischaracterizes her testimony from
19 yesterday. There has been several
20 mischaracterizations including this one. She did not
21 testify to that.

22 EXAMINER ADDISON: Thank you. She can --
23 she can clarify in her response.

24 A. So the reconciliation is performed in
25 Figures 8 and 9 but this is Figure 13. So this is a

1 separate presentation so we can go back to 8 and 9.
 2 I'm in AEP. So in 8 and 9 is where we have the
 3 reconciliation of the OVEC bill to the -- in 8. We
 4 reconcile the OVEC bill to the journal entries, and
 5 then the second step -- and this is -- these figure
 6 numbers are the same for all the Companies. Then we
 7 tie the journal entries to the rider charges.

8 Q. And where -- and are the rider charges in
 9 the rate filings that are public?

10 A. We used the data that the Companies
 11 provided us. I would have to have a look at the
 12 actual filings.

13 Q. So you don't know whether -- you just --

14 A. Not off the top of my head.

15 Q. Okay. So let's go down to the second
 16 bullet point in your Staff Exhibit 8C.

17 A. On page 2?

18 Q. Just a minute. I want to make sure I get
 19 the right audit so I can direct you appropriately.

20 Okay. Okay. So before we go onto the next bullet,
 21 sorry, I wanted to ask you another question about 13,
 22 Figure 13. Okay. So if you look at Figure 13 -- and
 23 you did them separately, right? You did one section
 24 for each of the utilities?

25 A. Correct, because it's company level

1 information, yes.

2 Q. Okay. So let's -- so I'm sorry. Before
3 we move onto the second bullet, I would like to
4 direct you to page 9 of that Staff Exhibit 8C, the
5 actual Figure 13 for Duke. It says "DEO" at the top.
6 Are you there?

7 A. I am there. Yes, I'm there.

8 Q. Okay. And it's my understanding from
9 your testimony yesterday as well as this Staff
10 Exhibit 8C that Figure 13 corrected is to in whole
11 replace the figure that's on page 30 of the Duke
12 audit report; is that correct?

13 A. Yes. It corrects the numerical portion,
14 but the sources on the bottom are the same.

15 Q. Okay. I'm speaking about the numerical
16 portion.

17 A. Yes.

18 Q. On page 30 of the audit report, I count
19 seven columns to the right of the month; is that
20 correct?

21 A. That's correct.

22 Q. But in the errata, Staff Exhibit 8C,
23 there are only five columns to the right of the
24 month.

25 A. That's correct.

1 Q. So you are removing two of the columns in
2 your corrected Figure 13 for Duke?

3 A. That's right. Because before when we had
4 inadvertently double counted capacity market
5 earnings, we needed to do more calculations to get to
6 the gain and loss per megawatt-hour, but when I
7 corrected our use of their PJM settlements data, I
8 could condense it all into just column B in the new
9 Figure 13, so it simplified the figure.

10 Q. And would your answer be the same for
11 AES's Figure 13 on page 29 of the AES audit report?

12 A. That's correct.

13 Q. And you've stated both of those
14 rationales for Duke and AES in the Exhibit 8C,
15 correct?

16 A. That's correct.

17 Q. But now when you look at -- so for AES
18 and Duke, you were able to simplify and I thought you
19 were stating that you were able to simplify --
20 simplify similar to AEP's.

21 A. So there were two different corrections
22 that applied to -- let me read it so I get it right.
23 I don't want to mix up the audits. So in the AEP we
24 made the correction based on the OVEC bills but we
25 hadn't miscalculated by double counting capacity

1 market revenues but we had made that error in AES and
2 Duke?

3 Q. But you stated for AES and Duke you used
4 PJM settlements, but you did not use that for AEP
5 Ohio then?

6 A. I believe we did. We did use it, yes.
7 So in AEP Ohio columns B and C of Figure 13, which is
8 on page 32, the PJM energy earnings and capacity
9 earnings are from the settlement data, from their
10 accounting data.

11 Q. So you reflected the PJM settlements in
12 two columns in AEP but only in one column in Duke and
13 AES?

14 A. In the Exhibit 8C, yes.

15 Q. Why are the titles in Figure 13 different
16 for the different utilities?

17 A. I just -- idiosyncrasy, I guess.

18 Q. So you don't know?

19 A. I don't know.

20 Q. And then let's go to page 2, bullet --
21 the first bullet under Figure 13. This is the second
22 change that you are making to your audit reports,
23 correct?

24 A. This is the -- if we look at the AEP
25 report, this is for Figures 40 and 42 that you are

1 referring to?

2 Q. No. I was looking at the second bullet
3 on page 2 which says Figures 32 and 33, the first
4 bullet.

5 A. I'm there. Okay.

6 Q. Oh, sorry. I mean, it's the second
7 bullet of the document. It's the second change.

8 A. Got it.

9 Q. Right? Am I correct it's the second
10 change that you are making to your audit reports?

11 A. We didn't -- we examined the critique of
12 our analysis, but when we looked at the numbers again
13 from the Company's response, we didn't change the
14 audit report because we are -- our calculations came
15 out within pennies of what we had before, so we
16 actually didn't make a change.

17 Q. Okay. Thank you for that clarification.
18 Fair point. You are -- this is the second errata
19 issue you are discussing, but it didn't result in a
20 change to your audit report?

21 A. That's correct.

22 Q. So again in this one you refer to AEP's
23 initial comments. Are you referring to the May 8,
24 2023, initial comments?

25 A. Yes.

1 Q. Okay. And you state on the
2 second-to-last sentence in this bullet that "LEI's
3 new calculations." Do you see that?

4 A. Correct.

5 Q. Where are those new calculations?

6 A. They are in a workpaper.

7 Q. Okay. So you did not provide any new
8 calculations in either Staff Exhibit 8C or -- well,
9 in Staff Exhibit 8C, I guess?

10 A. No, we didn't.

11 Q. And when you say they were within
12 pennies, since we don't have your calculations, what
13 are the new numbers?

14 A. I don't have them off the top of my head.

15 Q. So your testimony today is that if we
16 were -- to go to Figure 32 and 33 for AEP, so on
17 pages 56 and 57 of AEP's, Figure 32 and 33 contain
18 incorrect numbers; is that correct?

19 A. We don't think that they do.

20 Q. Well, you state that the calculation
21 demonstrated that they are within pennies of the
22 original numbers, so these original numbers are not
23 accurate, correct?

24 A. They -- they could be off by a couple
25 pennies.

1 Q. So these numbers are not accurate,
2 correct?

3 A. I think for all intents and purposes they
4 are accurate enough. If we had done recalculations
5 and found that there was a material difference, we
6 would have put in new numbers like we did for these
7 other parts of this errata, but in my judgment when
8 we looked at it and recalculated it, it just -- it
9 just didn't -- it didn't make sense. It was just too
10 small to make a difference.

11 Q. So accurate enough is the new audit
12 standard that we're doing for audits --

13 MS. AKHBARI: Objection, argumentative.

14 Q. -- for this case?

15 EXAMINER ADDISON: Ms. Bojko, I think you
16 made your point.

17 MS. BOJKO: Well, I don't understand what
18 pennies is.

19 Q. (By Ms. Bojko) Pennies meaning to whom?
20 Pennies, are you talking about the impact on
21 customers that it was so small it was pennies that it
22 wouldn't matter much to customers or who -- who are
23 the pennies that don't matter much and it's accurate
24 enough?

25 A. So for the weighted average coal prices

1 that you see, for example, and I can't mention -- I
2 want to make sure I don't mention the numbers.

3 EXAMINER ADDISON: Thank you.

4 A. But it's Figure 32. They're in nominal
5 dollars per ton. So it changed the -- at least based
6 on our calculations, it changed the nominal dollars
7 per ton by a couple of pennies.

8 Q. Okay. So does pennies mean a couple or a
9 few? How many pennies is pennies?

10 A. I -- I don't know off the top of my head.

11 Q. And pennies on a unit -- these are
12 pennies on a unit price; is that correct?

13 A. On dollars per ton.

14 Q. So these numbers on a unit price, is that
15 correct, per unit?

16 A. Per ton, sure.

17 Q. And then that unit price is calculated so
18 the pennies really are multiplied by the number of
19 units; is that correct?

20 A. For say total coal consumed or delivered
21 or something?

22 Q. The total price of coal, isn't that what
23 we are talking about here?

24 A. So --

25 Q. That's passed on to customers?

1 A. It is passed on to customers, yes.

2 Q. So you're -- you're talking about pennies
3 on a unit basis, and to get the amount that's passed
4 on to customers, we have to multiply the pennies by
5 the number of units and that total cost is passed on
6 to customers, correct?

7 A. So -- so the way that fuel costs are
8 passed on to customers in the LGR Rider is -- so we
9 looked at contract coal prices. But in the rider
10 it's not the contract in any given year that the
11 customer pays for. It's -- it's the coal as burned
12 to generate the energy. So it's -- I don't know what
13 the actual impact would be but this measures -- this
14 is a -- you know, it's our coal spot price
15 comparison. We are comparing to the market, but
16 we're not taking this number and working it through
17 the calculations to the impact on the customer bill
18 because that happens in a different way.

19 Q. But it is fair to say that any unit price
20 that is ultimately charged to customers is multiplied
21 by the number of units of the coal that's burned so
22 it -- the number of units matters; is that correct?

23 A. So the price of -- broadly the price of
24 coal matters ultimately to what customers pay.

25 Q. And the price of coal is based on a unit

1 cost measurement; is that correct?

2 A. So if -- yeah, companies usually buy at a
3 dollars per ton for a contract for a certain amount
4 of coal, sure.

5 MS. BOJKO: Your Honor, may we go off the
6 record?

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

9 (Discussion off the record.)

10 EXAMINER ADDISON: Let's go ahead and go
11 back on the record. Ms. Bojko.

12 MS. BOJKO: Thank you.

13 Q. (By Ms. Bojko) Dr. Fagan, you make a
14 similar -- you have a similar discussion on page 5
15 with regard to AES's audit report, but the figures
16 for the AES audit that you are discussing that the
17 calculations were redone and were within pennies of
18 the original numbers are Figures 31 and 32; is that
19 correct?

20 A. That's correct.

21 Q. And for Duke's -- and you did not --
22 similarly, you did not replace the Figures 31 and 32,
23 correct?

24 A. That's correct.

25 Q. And then just to close the loop, if we

1 look at Duke's on page 9, this is regarding Figures
2 37 and 38 of Duke that the numbers have been
3 recalculated and that they are within pennies, but
4 the figures are 37 and 38, correct?

5 A. Correct.

6 Q. And so 37, 38 figures are changed -- or
7 have changed in your calculations by pennies, but
8 similarly, you did not provide new calculations for
9 Figures 37 and 38, correct?

10 A. Correct.

11 Q. And throughout this Staff Exhibit 8C so
12 we don't have to go through every one, wherever you
13 reference AEP's initial comments, you are referring
14 to the same initial comments that were filed May 8,
15 2023?

16 A. Correct.

17 Q. And that's true even though you are
18 talking about a Duke audit or an AES audit, correct?

19 A. That's correct.

20 Q. So you used AEP's comments to change your
21 Duke audit report and your AES audit report, correct?

22 A. We used what they pointed out that we did
23 incorrectly, to go back and use the data that we
24 initially used to create the figures and look at the
25 data and say we used that incorrectly or repeated it

1 I think correctly, so the AEP initial comments
2 alerted us to the miscalculations, but the data that
3 we looked at to recalculate was the original data
4 with the exception of the one that we couldn't do
5 which was the -- the day's supply of coal.

6 Q. And AES and Duke did not make similar
7 comments because you didn't -- you didn't reference
8 them, so I am assuming they didn't make similar
9 comments; is that fair?

10 A. Not that we saw.

11 Q. And in just -- just so the record is
12 clear, the same is true for the other bullet points
13 too. You referenced AEP's comments, and Duke and AES
14 did not make similar comments; is that correct?

15 A. They did not.

16 Q. Okay. I am going to move on from
17 Exhibit 8C, Dr. Fagan. I want to go back to Duke's
18 audit that we were talking about earlier and that
19 audit we were talking about page 11 of the audit
20 report. Could you turn to that -- oh, no, we were
21 not. We were talking about the executive summary on
22 page 7. Do you recall that discussion?

23 A. Yes.

24 Q. And in the executive summary, if you go
25 to the fourth paragraph under Section 1.1, do you see

1 that?

2 A. Yes.

3 Q. Here is where you describe the purpose
4 that was mentioned earlier about the prudence of the
5 costs as well as the actions being in the best
6 interest; is that correct?

7 A. That's the purpose.

8 Q. Okay. And right above that you describe
9 House Bill 6 that was passed in 2019; is that
10 correct?

11 A. Yes.

12 Q. And House Bill 6 defined a legacy
13 generation resource in 4928.01(A)(41); is that
14 correct?

15 A. I can't bring exact text to mind but,
16 yes.

17 Q. Well, that's what you state in your audit
18 report, right?

19 A. Yes.

20 Q. And later in the audit report you refer
21 to the legacy generation resource section regarding
22 prudence. That's also in -- it's in 4928.148; is
23 that correct?

24 A. Would you point me to that?

25 Q. You had it yesterday on the witness

1 stand. Or are you asking where you stated it in
2 your --

3 A. Yes, please, where.

4 Q. Oh, okay. Let's come back to that.
5 Yeah, let's come back to that. I don't want to hold
6 up the hearing. I have questions later about that.
7 Let's -- let's move on right now. But let's first --
8 we're at page 7. Could you turn to page 11 of the
9 audit report. I am looking at Duke's right now.

10 A. Okay.

11 Q. Here Figure 1, do you see Figure 1?

12 A. Yes.

13 Q. As part of this audit, you looked to the
14 prior 2019 audit to determine whether the auditor
15 recommendations were adopted; is that correct?

16 A. We did.

17 Q. And that is part of determining whether
18 the utilities' actions were prudent in 2020; is that
19 correct?

20 A. It was more just to provide the status of
21 analysis that's ongoing.

22 Q. But as part of your 2020 audit, isn't it
23 true that auditors look at recommendations of prior
24 audits to determine whether they have been adopted or
25 not by the utility companies?

1 A. The first thing we would determine is
2 whether the Commission wanted them to adopt any of
3 the recommendations and then whether they had.

4 Q. Okay. And here on Figure 1 you put a
5 topic and then the LEI recommendation from the 2019
6 case, correct?

7 A. Correct.

8 Q. And then the last column is the status or
9 the outcome from that 2019 case, correct?

10 A. Yes.

11 Q. Let's turn to the AEP audit. And the AEP
12 audit has been marked as Staff Exhibit 4; is that
13 correct?

14 A. I have Staff Exhibit 4.

15 Q. Okay. The AEP audit, you're supporting
16 this audit; is that correct?

17 A. Yes.

18 Q. And you also state in your testimony and
19 you have, I think, before today that you're
20 responsible for drafting that audit as well?

21 A. I've drafted parts of it, reviewed all of
22 it, you know, directed staff, so the bottom line is
23 the audit is my responsibility.

24 Q. Okay. And that your comments about
25 chapters 4 and 5 would be similar to AEP that you

1 made with regard to Duke about what you worked on?

2 A. Right. So I performed the rider
3 reconciliation and parts of the disposition of energy
4 and capacity. Some of the graphics and things were
5 prepared by staff.

6 Q. Staff meaning LEI staff.

7 A. Yeah, my staff, yes.

8 Q. Okay. And if we turn to page 7, you have
9 a similar summary of the recommendations on chapter
10 1, page 7; is that correct?

11 A. On page 11.

12 Q. Well, first on page 7, you have the
13 executive summary; is that correct?

14 A. Yes.

15 Q. Let's look at page 7 first. And the top
16 of page 7, here you discuss the PPA Rider which was
17 the predecessor of the LGR Rider, correct?

18 A. Yes.

19 Q. And the PPA Rider also collected
20 OVEC-related charges; is that correct?

21 A. Yes.

22 Q. And you -- LEI was the auditor in AEP's
23 prior OVEC rider-related case; is that correct?

24 A. In the PPA case, yes.

25 Q. And in that case you were the auditor

1 that audited the prudence of the OVEC costs passed on
2 to customers and whether the Company's actions were
3 in the best interest of ratepayers, correct?

4 A. So that was the purpose of the audit and
5 our scope was within that.

6 Q. Okay. And you drafted the audit report
7 in that case too, right?

8 A. Correct.

9 Q. And then on page 10 and 11 of the AEP
10 audit here, you reference that prior audit and also
11 list a Figure 1; is that correct?

12 A. Correct.

13 Q. And that Figure 1 is similar to the one
14 we just talked about in Duke where it lists a topic,
15 the LEI recommendation from the last audit case, and
16 then the status or outcome of the audit in this case?

17 A. Correct.

18 Q. And similar to the Duke audit, you looked
19 at the 2019 audit to determine the status and outcome
20 and whether the auditor recommendations were adopted?

21 A. Again, the first thing we would look at
22 is what the Commission instructed the Company to do
23 and then whether -- whether they did that.

24 Q. Right. But didn't you also list here
25 what the auditor recommended and whether they

1 followed the auditor's recommendation or not?

2 A. We listed our recommendation, yes.

3 Q. And then you listed --

4 A. The status -- the status or outcome. So
5 in some cases we made a recommendation but they
6 didn't necessarily do it but it might not have been
7 relevant like the true-up process. So that's why we
8 call it status or outcome.

9 Q. Right. But you also list if you made a
10 recommendation and they didn't do it in 2020, is that
11 correct, such as the fuel and variable cost
12 expensive -- expenses category?

13 A. Right. So we noticed -- and that, you
14 know, there were recommendations on coal burn
15 forecasts and coal inventories, that they didn't
16 appear to have been addressed, but it's -- I don't
17 think the Commission told them to so but that was the
18 status.

19 Q. When you did your audit of 2020, they did
20 not appear to have addressed your concern from the
21 2019 audit regarding coal inventories being higher
22 than target and the full -- and the coal burn
23 forecast being inaccurate, correct?

24 A. Correct.

25 Q. And isn't it true that the -- strike

1 that.

2 Let's -- okay. Let's go to the last
3 audit report and this is the AES audit report and
4 that's been marked as Staff Exhibit 2. Do you have
5 that in front of you?

6 A. I do.

7 Q. And this audit report filed on
8 December 17, 2021, is regarding AES's LGR Rider; is
9 that correct?

10 A. Correct.

11 Q. And you support this audit report as
12 well?

13 A. Yes.

14 Q. Let's turn to page 7 of the audit report.
15 On page 7 of the audit report here you talk about --
16 or here it's chapter 1 Executive Summary and
17 Recommendations; is that correct?

18 A. Yes.

19 Q. And similarly to the other riders or
20 other audit reports here you discuss the prior rider
21 that AES had in place; is that correct? Actually
22 strike that.

23 In this audit here you do not explain
24 AES's predecessor rider and how it was initially
25 established, do you?

1 A. We do not.

2 Q. But do you know that Rider RR was the
3 predecessor to the LGR Rider for AES that collected
4 the OVEC-related costs?

5 A. We might have mentioned that in the
6 reconciliation section, so I can check.

7 Q. Yeah. If you turn to page 10 of that
8 audit report, here you reference the RR Rider within
9 the last paragraph on page 10; is that correct?

10 A. That's correct.

11 Q. And so you do know that Rider RR was the
12 predecessor that collected OVEC rider-related costs,
13 correct?

14 A. Yes.

15 Q. And the reason why you didn't put it in
16 the beginning section is because you were not the
17 auditor on that AES case; is that correct?

18 A. We might just have inadvertently let it
19 out -- left it out.

20 Q. Okay. But it's true that you weren't the
21 auditor in the prior Rider RR case.

22 A. We were not.

23 Q. But if we go to the next page, page 11,
24 here you still looked at what the prior auditor did,
25 and you listed the topic and the auditor

1 recommendations from that 2019 case; is that correct?

2 A. Correct.

3 Q. And you also did a status or outcome as
4 part of your audit in this case with regard to the
5 2019 audit, correct?

6 A. Correct.

7 Q. And for the two audits that you performed
8 in 2019, you received separate compensation for those
9 audits; is that correct? Let me clarify. Let me
10 withdraw that question.

11 You received separate compensation for
12 the 2019 two audits in addition to the 2020 audit,
13 correct?

14 A. So the 2019 audits were under separate
15 RFPs so separate contracts. The 2020 audits were
16 under one RFP so one -- no. I think it was three
17 separate contracts.

18 Q. Okay. But you received -- received for
19 your 2019 two contracts, you received compensation
20 for each of those contracts, correct?

21 A. Yes. They were separate projects, and we
22 were compensated separately.

23 Q. Okay. And for the 2020 audits, did you
24 receive three payments from the different utilities,
25 or did you receive one compensation for the 2020

1 audit?

2 A. We send out -- I don't necessarily see
3 what our accounting folks get, but as far as
4 invoices, we -- let me think about how we do this.
5 We send an invoice -- we send invoices to PUCO Staff.
6 They review. Once they approve, they go to the
7 Companies in three separate invoices to the
8 Companies. So my guess is we get paid from three
9 separate sources.

10 Q. And can you explain -- what is OVEC
11 exactly?

12 A. It's a holding company that has a
13 subsidiary called IKEC that owns Clifty Creek power
14 plant and in its own name it owns Kyger Creek power
15 plant.

16 Q. So OVEC owns two 60-year-old coal plants;
17 is that correct?

18 A. I don't recall the exact date but that's
19 probably about right for their age.

20 Q. And they are coal; is that correct?

21 A. Yes.

22 Q. And one plant is located in Ohio and one
23 is in Indiana; is that correct?

24 A. Yes.

25 Q. You also filed -- in addition to the

1 audit reports, you also filed testimony in this case
2 and that was marked as Staff Exhibit 1 on October 10,
3 2023, correct?

4 A. Correct.

5 Q. And do you have that testimony in front
6 of you?

7 A. Yes.

8 Q. I want to turn to page 3 of your
9 testimony, lines 18 and 19, you state "I conducted
10 the audits." Do you see that?

11 A. Yes.

12 Q. It's really -- from your testimony what I
13 understand it is really a team conducted the audits;
14 is that fair?

15 A. Yes.

16 Q. Okay.

17 A. But I am responsible for the audits.

18 Q. Sure. And did you conduct the interviews
19 with the utility companies?

20 A. Which interviews?

21 Q. It's my understanding in your audit
22 process you conduct interviews with the utilities?
23 Was that not the case in this audit?

24 A. We do most of the work with written Data
25 Requests. For the environmental compliance section

1 and the coal handling section, we had a virtual power
2 plant tour. I guess you could consider that an
3 interview. And then in some cases where we have
4 questions about the Data Requests, looking through
5 the accounting numbers and trying to figure out how
6 everything fits together, we'll have one-off calls --
7 conference calls, so I don't know if you would
8 consider those interviews but -- but that's how we
9 operate or that's how we have done these audits.

10 Q. Okay. So for the one-off conference
11 calls or the questions you might have had, were those
12 conducted by you?

13 A. Yes. I would have been on all of them.

14 Q. Okay. Okay. You've talked a little bit
15 about the scope, and you make a distinction between
16 the scope and the purpose of an audit; is that
17 correct?

18 A. Yes.

19 Q. And you would agree that you obtained the
20 scope for your work and the purpose of the audit from
21 Commission entry and the RFP that's issued?

22 A. So this is the 2020 audits, right?

23 Q. Well, my question was just general but.

24 A. Oh, yes.

25 Q. But sure. Do you have in front of you

1 what's been marked as OCC Exhibit 9 which is the
2 Commission entry that issued the RFP in this case?

3 A. Yes.

4 Q. So this is the document -- are you
5 familiar with this document?

6 A. Yes.

7 Q. And the Commission entry is dated May 5,
8 2021; is that correct?

9 A. Yes.

10 Q. And the entry issues a request for
11 proposal, and it says to assist the Commission with
12 the prudence and performance audit of the utilities'
13 LGR Riders for the period of January 1, 2020, through
14 the end of that year?

15 A. Yes.

16 Q. And attached to the entry is where you
17 find the RFP; is that correct?

18 A. Yes.

19 Q. And this is the RFP that you referred to
20 in your audit report and also I think you referred to
21 it in Staff Exhibit 8C?

22 A. Just checking. Yes.

23 Q. Turn to page 2 of the RFP, please,
24 Section 1 which is titled "Introduction." Do you see
25 that?

1 A. Yes.

2 Q. Okay. Here the RFP states that the
3 purpose -- and this is the Purpose section I think we
4 talked about a couple different times without reading
5 the whole thing. It generally states that the
6 purpose of the audit is for a prudence of all the
7 costs and sales as well as to demonstrate that the
8 actions of the utilities were in the best interests
9 of ratepayers?

10 A. Yes, that's the purpose.

11 Q. Okay. So there are two purposes,
12 prudence and the utilities' actions being in the best
13 interest of ratepayers, correct?

14 A. That's the purpose, yes.

15 Q. Okay. So now let's turn to page 6. And
16 if you look at page 6, under Section 2, this is
17 called "Purpose"; is that correct?

18 A. Correct.

19 Q. And under that is Section A titled
20 "Prudence and Performance Audit," correct?

21 A. Correct.

22 Q. And in that paragraph it states that "The
23 audit shall investigate the prudence of all costs and
24 sales flowing through the EDU riders and demonstrate
25 that the Companies' actions were in the best

1 interests of retail ratepayers," correct?

2 A. That's what it says for the purpose, yes.

3 Q. But it says "the audit shall" and then
4 lists two things that the audit shall do; is that
5 correct?

6 A. It says that in the purpose, but we
7 conducted the audit based on the scope of
8 investigation.

9 Q. Okay. And so you do not believe you were
10 tasked with reviewing and investigating the prudence
11 of the OVEC costs that ultimate -- I will just ask.
12 Excuse me. Strike that.

13 Were you tasked with reviewing and
14 investigating the prudence of the OVEC costs that
15 ultimately flowed through the LGR Riders and were
16 charged to customers?

17 A. So we saw our tasks as those that were
18 identified in the scope of investigation.

19 Q. Okay. So you do not believe you were --
20 I am asking if you believe you were tasked with
21 reviewing and investigating the prudence of the OVEC
22 costs that ultimately flowed through the LGR Riders
23 and were charged to customers.

24 A. I agree with that part, yes.

25 Q. Okay. And do you believe you were tasked

1 with determining whether the utilities' actions were
2 in the best interests of retail ratepayers?

3 A. No.

4 Q. Okay. And regarding the prudence of the
5 utilities' actions and decisions with regard to the
6 LGR Riders, would you agree with me that it would be
7 prudent for an auditor to review any conflicts of
8 interest that a utility may have when reviewing the
9 prudence of its decisions?

10 A. We didn't see that in the scope of
11 investigation, so we didn't look at that.

12 Q. So you don't believe that it is prudent
13 for an auditor to review conflicts of interest when
14 you are determining the prudence of decisions made by
15 Companies?

16 MS. AKHBARI: Objection. Misstates her
17 testimony.

18 EXAMINER ADDISON: She can clarify to the
19 extent she believes she needs to.

20 A. I don't know if I can clarify it. We
21 stuck to our scope of investigation.

22 Q. Sure. It asked for a number of things.

23 A. It didn't ask for investigation of
24 conflicts of interests which perhaps is even more of
25 a legal concept than accounting or operations.

1 Q. So I'm referring to the prudence. You
2 would agree with me that you were tasked with
3 determining the prudence of all costs and sales and
4 the prudence of the EDUs in this case?

5 A. So again, according to the scope of
6 investigation, the examination of prudence and
7 actions had to do with a number of topics,
8 disposition of energy and capacity, fuel and variable
9 cost expenses, capital expenses, environmental
10 compliance, plant performance, and then a separate
11 section called -- or area of research called utility
12 industry perspective.

13 Q. Okay. And where are you reading from?

14 A. So this is on the RFP. It starts on page
15 7, and it's called "Section 3 Scope of
16 Investigation."

17 Q. So when you're reviewing -- it does
18 require you to review the prudence, bidding behavior,
19 the prudence of the costs. Are you somehow
20 disagreeing with me that you are required to review
21 the prudence of the utilities' decisions and acts as
22 well as the prudence of the costs?

23 A. No. That's within the scope of the
24 audit.

25 Q. Okay. We agree on that. That's within

1 the scope of the audit.

2 A. On these topics that were assigned in the
3 scope of work, yes.

4 Q. Okay. So when you're -- speaking
5 generally as an auditor, isn't it true that a company
6 that has conflicts of interest may not make a
7 decision that's in the best interests of its
8 customers?

9 A. That's very broad. I mean, there may
10 be -- I don't know what factors might be impacting
11 it.

12 Q. Okay. And when you look at prudence,
13 don't you think that conflict of interest could
14 influence a decision that would make it imprudent?

15 MS. AKHBARI: I would just object to the
16 extent Ms. Bojko hasn't defined the conflict of
17 interest she is asking the auditor to opine upon.

18 EXAMINER ADDISON: I think the witness
19 can answer and provide clarification if she needs to.
20 Thank you.

21 A. So I'm hesitant because I think conflict
22 of interest is a legal term and I -- it was beyond
23 the scope of what was asked for, so we didn't
24 contemplate it.

25 Q. So when you looked at prudence for the

1 number of items listed --

2 EXAMINER ADDISON: Ms. Bojko, I'm so
3 sorry to interrupt. We are getting close to that
4 time. I see folks coming down for the Commission
5 meeting, so at this time we will take a brief break
6 and return at 2:00 p.m.

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

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1 Wednesday Afternoon Session,
2 November 1, 2023.

3 - - -

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

6 Ms. Bojko.

7 MS. BOJKO: Thank you, your Honor.

8 - - -

9 MARIE N. FAGAN, Ph.D.
10 being previously duly sworn, as prescribed by law,
11 was examined and testified further as follows:

12 CROSS-EXAMINATION (Continued)

13 By Ms. Bojko:

14 Q. Dr. Fagan, before the break, we were
15 discussing prudence and the prudence language that
16 was contained in both the purpose and the scope of
17 the audit in the RFP. Do you recall that discussion?

18 A. Yes.

19 Q. And, Dr. Fagan, would you agree with me
20 that if a regulated utility chooses profits to
21 shareholders over the provision of lower cost to its
22 customers, its actions may not be in the best
23 interest of customers?

24 A. So there is a lot of factors that go into
25 how a utility makes decisions and part of it is

1 providing cost effective service to customers. Part
2 of it is making sure it's, you know, like what you
3 see in rate cases, make sure that the return is
4 adequate so that the utility can stay in business and
5 provide its service. That's some of the issues that
6 get discussed in a -- in ratemaking. So there's -- I
7 would say there is a balance.

8 Q. And don't you believe that the balance
9 that you just talked about would go into a prudence
10 or reasonableness evaluation of the utilities'
11 decisions?

12 A. Can you be more specific?

13 Q. Well, you just said there is a balance
14 with regard to profits; is that correct?

15 A. That's right.

16 Q. And --

17 A. But the Commission would consider, right,
18 and that's part of -- that's part of a rate case.

19 Q. Well, isn't it a part of a prudence
20 determination when you're evaluating decisions as an
21 auditor?

22 A. We didn't look at profitability in the
23 audit. We just looked at costs and expenses of a
24 rider.

25 Q. Sure. Wasn't one of your -- I believe

1 you stated or agreed to me before the break that in
2 the prudency scope and purpose of the auditor that --
3 excuse me, in the RFP, one of the purposes and the
4 scope issues that you -- the auditor was supposed to
5 determine was the prudency of the utilities' actions;
6 is that not correct?

7 A. The prudency of their behavior is in the
8 scope of investigation in terms of unit scheduling
9 and bidding, but I think they mean offering of energy
10 into the PJM markets for energy and capacity and
11 other PJM markets for fuel and variable cost expense,
12 capital expense, environmental compliance, and power
13 plant performance. But it didn't go to an
14 examination of profitability.

15 Q. Well, you -- let's take a couple of those
16 separately then. So the bidding behavior, when one
17 chooses to bid a certain thing into -- certain amount
18 of energy into the market, isn't that a decision that
19 falls under that? You are determining whether that
20 decision was prudent or reasonable?

21 A. So we would call it offering energy but,
22 yes.

23 Q. Okay. And if the utility made profit off
24 of offering, even though the cost to customers was
25 higher, shouldn't that go into whether the decision

1 was actually prudent or not?

2 A. So if the -- you are saying depending on
3 the outcome, is the decision prudent or imprudent?

4 Q. Yes. Isn't that something you are
5 supposed to be evaluating these all -- all of the --
6 the audit is retrospective, correct?

7 A. Correct.

8 Q. So you know the outcomes, and you are
9 supposed to look at the prudence of the behavior and
10 determine whether it was reasonable or not; is that
11 correct?

12 A. We know the outcomes. When the decision
13 is being made by the decision maker, they don't
14 necessarily know the outcomes.

15 Q. But they may be based on forecasts and prior
16 history, correct?

17 A. They -- they can have some insight into
18 outcomes, but unexpected things also happen.

19 Q. Sure. And isn't that part of the
20 prudence determination of whether that decision was
21 right based on the information they have available to
22 them at the time?

23 A. Based on the information that they have
24 at the time, yes. Was -- we don't use right but
25 whether it was prudent.

1 Q. Sure. And you also mentioned the capital
2 expenses as part of your prudency determination under
3 the scope; is that correct?

4 A. That's correct.

5 Q. Okay. And their decision with regard to
6 expenditures would be something you would consider as
7 prudent or not prudent; is that correct?

8 A. Expenditures and the process of making
9 decisions about capital expenditures.

10 Q. And the cost of making those expenditures
11 versus the benefits of making those capital
12 expenditures; is that correct?

13 A. Yes. Well, the cost of expected benefits
14 because sometimes you have a better handle on costs,
15 they happen right away. The benefits might be
16 estimated or expected because sometimes they occur
17 over a period of time in the future.

18 Q. And that's all part of the prudency
19 determination, right?

20 A. We looked at those, yes, for the capital
21 expenditures, yes.

22 Q. And you also looked at that for the cost
23 of fuel and whether the expenses related to the cost
24 of fuel that are passed on to customers was prudently
25 incurred; is that correct?

1 A. Yes. We looked at fuel costs.

2 Q. And also you looked at the cost of
3 environmental compliance; is that correct?

4 A. That is not precisely correct. We looked
5 at procedures for environmental compliance, and in a
6 couple of cases, for example, the NOx inventory we
7 established a cost, but it was -- so process and
8 approach rather than trying to develop a unit cost
9 for compliance.

10 Q. And was the cost of operating and
11 becoming environmentally compliant versus early
12 retirement considered in your prudence review?

13 A. We didn't consider any retirement
14 decisions. There are many complicated factors that
15 go into that.

16 And I'm sorry. What was the first part
17 of the question?

18 MS. BOJKO: I guess I will have to have
19 Karen read that back, please.

20 EXAMINER ADDISON: Please, Karen. Thank
21 you.

22 (Record read.)

23 A. So the cost of operating and becoming
24 environmentally compliant, so we know the -- well, I
25 say we know the operating costs, those are the

1 variable costs that show up in the OVEC bill. The
2 cost of becoming environmentally compliant, there
3 were capital expenditures. Some of them had to do
4 with -- I would have to look and some of it is
5 confidential but there were some capital expenditures
6 that had to do with some of the environmental
7 regulations.

8 So to the extent that the way OVEC
9 works -- I believe we have this in the report. I can
10 look for the text. The expenditures are treated, I
11 believe, as an expense in the year they are incurred,
12 so they would go into the demand charge. So working
13 that way through the information, yes, we did that.

14 Q. And going back to your comment about
15 early retirement, you didn't take into consideration
16 early retirement even if it was known at the time of
17 the audit; is that right?

18 A. What was known?

19 Q. The cost of early retirement.

20 A. We didn't -- I'm not sure what you mean
21 by early.

22 Q. Well, they're -- they are 60-year-old
23 coal plants, right? And the ICPA goes through 2040;
24 is that correct?

25 A. That's correct.

1 Q. So what do you think the life expectancy
2 of a coal plant is?

3 A. I think it depends on -- it's a
4 plant-by-plant decision and there is a technical
5 aspect which I think you need to be an engineer and
6 there's an economic aspect where you need to make
7 assumptions about costs, future energy prices, et
8 cetera. So it's a complex issue, and we did not
9 examine it in the audit.

10 Q. Okay. In your experience, what is the
11 lifespan of a coal plant?

12 A. It varies.

13 Q. And then if you look at the No. 5 on the
14 RFP, it's "Power Plant Performance." So I think I
15 understood your response to say that you did consider
16 the prudence of the decisions regarding how the power
17 plant was operated?

18 A. So power plant performance usually refers
19 to some specific metrics, outages, operating -- EAF,
20 equivalent availability factor, capacity factors, so
21 for those aspects of power plant performance, we have
22 a whole section where we report on the plants unit by
23 unit, and we compare them to averages in the industry
24 that are provided by, I think, PJM and NERC.

25 Q. Okay. And then also listed on the RFP is

1 the utility industry perspective; is that correct?

2 A. Yes.

3 Q. And you agreed or stated earlier that
4 your prudence determination or audit review was --
5 looked into the utility industry perspective?

6 A. So it's called utility industry
7 perspective, but it's not just the utilities'
8 perspective. It is sort of the current state of
9 play, the current dynamics as they say here in the
10 PJM markets. And those -- that is covered in chapter
11 3, section 3 of all of the audits.

12 Q. And you did not, however -- if you turn
13 to -- turn to page 7 of -- I don't know whose audit
14 you have opened last. Do you have AEP's audit open?

15 A. I do.

16 Q. Okay. If you could look at page 7 of
17 AEP's audit.

18 A. I'm there.

19 Q. Hold that open and then can you also look
20 at page 7 of the RFP that we were just talking about?

21 A. Okay. I have them both.

22 Q. We talked about the prudence of these
23 items in the scope. Look at page 8, section 3A1. Is
24 it your understanding that the auditor is also
25 required to ensure that accounting procedures

1 accurately and properly allocate revenues to
2 ratepayers?

3 A. Yes.

4 Q. And we talked about the prudence of
5 bidding the behaviors into the PJM capacity markets.
6 Is it your understanding that the auditor was also
7 required to review the prudence of bidding and/or
8 participating in other markets that may provide
9 revenue?

10 A. Yes. That was the ancillary service
11 markets.

12 Q. And it's your understanding that the RFP
13 requires the auditor to ensure that all OVEC fuel and
14 variable O&M-related expenses were prudently incurred
15 and properly allocated to each utility?

16 A. So this is under fuel and variable costs,
17 yes.

18 Q. And that same section requires the
19 auditor specifically to compare the incurred fuel
20 costs and the market prices to evaluate the
21 reasonableness of the fuel expenses during the audit
22 period, correct?

23 A. Correct.

24 Q. And the auditor in both section 2 on page
25 8 as well as 3, the auditor's expected to ensure that

1 only prudently-incurred costs are included for
2 recovery through the LGR Riders and that any and all
3 costs that have been deemed to be ineligible for
4 recovery are properly excluded; is that correct?

5 A. That's correct.

6 Q. And in these sections there is no
7 language using the term -- excuse me. There is no
8 term mostly adequate, is there?

9 A. There is not.

10 Q. And it does not -- the scope in the RFP
11 does not condition the prudency on what's in the
12 ICPA, does it?

13 A. I wouldn't say it conditions it, but it's
14 my understanding that without the ICPA, there
15 wouldn't be an LGR Rider.

16 Q. Well, there was -- but we're talking
17 about not the establishment of the rider. We are
18 talking about the prudency. I'm asking if the
19 prudency determination that the auditor's required to
20 make is conditioned on the ICPA.

21 A. And conditioned meaning?

22 Q. Is there any reference in the RFP to the
23 ICPA in these sections about prudency determinations?

24 A. No.

25 Q. And I believe -- let's do an example in

1 both 2 and 3. I am looking at specific language. It
2 says "related expenses were prudently incurred and
3 properly allocated," and then for capital expenses,
4 it says "The auditor is expected to ensure that only
5 prudently incurred costs are included for a
6 recovery"; is that correct?

7 A. Correct.

8 Q. Okay. And in these two sections, there
9 is no other conditions to prudence, is there?

10 A. Do you mean -- by condition do you mean
11 other -- like a framework or?

12 Q. Well, I am asking if this -- this states
13 "The auditor is expected to ensure that only
14 prudently incurred costs are included in recovery."
15 It doesn't say the auditor is expected to ensure that
16 only prudently incurred costs are included for
17 recovery if X happens or if Y happens.

18 A. That's correct, it does not.

19 Q. And then go to section 3. It's an
20 overall section. 3A5 is the proper citation. So but
21 if you turn to page 9, I am looking at section 5
22 which is the power plant performance.

23 A. I'm there.

24 Q. And looking at the power plant
25 performance, in addition to the prudence, it also

1 requires the auditor to review and report on OVEC's
2 plant performance including the impact on ratepayers,
3 correct?

4 A. Correct.

5 Q. And it also in the same section
6 specifically requires the auditor to state whether
7 additional review is necessary or make a
8 determination of the reasonableness of OVEC and/or
9 the EDUs' actions, correct?

10 A. Correct.

11 Q. And I'm sorry. I asked you earlier if I
12 was to refer to all the utilities just as utilities,
13 but do you understand that EDU to be electric
14 distribution utility and all three utilities in Ohio?

15 A. Correct.

16 Q. Because that's what the -- that's the
17 terminology that the RFP uses. I just want to make
18 sure we are on the same page.

19 Dr. Fagan, I am not sure the foundation
20 was relayed -- relayed before but, before the
21 Commission selected LEI as the auditor, you submitted
22 a response to the RFP; is that correct?

23 A. Correct.

24 Q. Okay. And I believe OCC has beat me to
25 the punch and labeled the exhibit as OCC Exhibit 11.

1 Do you have that in front of you?

2 A. Yes.

3 Q. Okay. And does this -- Dr. Fagan, does
4 this appear to be LEI's response to the RFP issued by
5 the Commission?

6 A. Yes.

7 Q. And this is a true and accurate copy? Do
8 you recognize this document as that response?

9 A. I haven't inspected every page, but
10 looking through it, it looks like an accurate copy.

11 Q. Okay. And this is dated June 3, 2021; is
12 that correct?

13 A. That's correct.

14 Q. And this lays out -- if you turn to page
15 7. Let's turn to page 7. Here you have what's
16 titled "Understanding of the Assignment." Do you see
17 that?

18 A. Yes.

19 Q. Okay. And under the understanding of the
20 assignment, this lays out LEI's -- your understanding
21 of what the audit entails; is that correct?

22 A. The details of what the audit entails is
23 in our scope of work, our tasks. The understanding
24 of the assignment is sort of the umbrella, what is --
25 what is the client's goal, what's the context of the

1 assignment.

2 Q. Okay. And it's in this understanding of
3 the assignment where Mr. Finnigan had asked you
4 whether it -- it says that the audit is -- or "The
5 Commission is seeking audit services to assist with
6 the prudence and performance audit of the cost and
7 sales flowing through OVEC riders and the actions of
8 certain EDUs were in the best interest of the retail
9 ratepayers"; is that correct?

10 A. Right. That's from the RFP.

11 Q. Okay. But -- that is in your
12 understanding of the assignment; is that correct?

13 A. It's PUCO's goal. It's their purpose.

14 Q. Okay. You don't use -- when you are
15 explaining the assignment, you don't use the word
16 purpose or goal, do you?

17 A. Well, we say seeking audit services to
18 assist so that's my understanding of their purpose.

19 Q. I was asking if you used the terminology
20 purpose in that statement.

21 MR. McKENZIE: Objection, asked and
22 answered and argumentative. She said she used the
23 word seeking. It's become badgering.

24 EXAMINER ADDISON: Thank you,
25 Mr. McKenzie.

1 I will allow the question.

2 A. So we assume that seeking implies a goal,
3 a purposeful activity, but we didn't choose the word
4 purpose.

5 Q. So according to the understanding of the
6 assignment, you would agree that LEI believed that
7 this audit should examine the prudence of OVEC costs
8 and whether the utilities' actions were in the best
9 interest of rate makers, correct?

10 A. So the audit in our mind needed to cover
11 the scope of the assignment. The framework, the goal
12 of the Commission, PUCO, was to have this audit in
13 place to assist with the prudence, performance, audit
14 of costs and sales flowing through, et cetera.

15 Q. So you're disagreeing. You don't believe
16 that LEI was required to examine whether the
17 utilities' actions were in the best interest of
18 ratepayers?

19 A. That is correct.

20 Q. So you believe that the purpose of the
21 audit -- you just ignored the purpose of the audit;
22 is that a fair statement?

23 MS. AKHBARI: Objection.

24 MS. BOJKO: I asked if that was a fair
25 statement. If she doesn't believe it's a fair

1 statement, she can say it's not.

2 EXAMINER ADDISON: Thank you. Objection
3 sustained.

4 Q. (By Ms. Bojko) You did not fulfill the
5 Commission's stated purpose; is that correct?

6 A. I disagree with that.

7 Q. Does anywhere in all three of your audit
8 reports talk about whether the utilities' actions
9 were in the best interest of ratepayers?

10 A. No.

11 Q. Let's turn to the RFP on page 6, please.
12 Here there's a reference to 4928.148(A). Do you see
13 that?

14 A. Under section 2, item A?

15 Q. Yes, on page 6.

16 A. Yes.

17 Q. Okay. So this says prudence and
18 performance audit is 2A; is that right?

19 A. Yes.

20 Q. Okay. So here the Commission in its RFP
21 explains that 4928.14(A) -- 8(A) mandates that a
22 prudence and reasonableness audit be conducted once
23 every three years of all costs related to the various
24 EDU riders due to the OVEC expense recovery; is that
25 correct?

1 A. That's correct.

2 Q. So you understand that 49 -- do you
3 understand that 4928.148(A) refers to the statutory
4 section of the Ohio Revised Code?

5 A. I understand the reference. I don't know
6 that I could recite the ORC chapter and verse there,
7 but I understand that it refers to the ORC.

8 Q. Okay. Well, this is the same law -- this
9 is part of the same law that you describe in your
10 audit reports in Sections 1.1 regarding House Bill 6,
11 isn't it?

12 A. The one that we cited, for example, on
13 page 7 probably of any of the audits, but in this
14 case the AEP public version, we refer to
15 4928.01(A)(41) and this is 4928.148(A). So they
16 are -- they are different pieces. They are different
17 I guess paragraphs or subsections of the ORC.

18 Q. So I first just asked you -- strike that.

19 Okay. So you don't know that 4928
20 point -- strike that.

21 Okay. You reference on page 7 a
22 definition section, right?

23 A. That's right.

24 Q. And you do understand that the
25 definitions play into a later statutory section that

1 specifically authorize -- authorizes Rider LGR; is
2 that correct? Is that your understanding?

3 A. That's probably a deeper understanding
4 than I actually have. So we understand that the
5 4928.01(A)(41) defined the legacy generation resource
6 in a way that encompasses the plants.

7 Q. So --

8 A. The -- go ahead.

9 EXAMINER ADDISON: You can finish your
10 answer.

11 Q. Yeah. I didn't mean to cut you off.

12 A. And then the second piece of the
13 legislation, ORC 4928.148(A), I took it on faith. It
14 says it mandates that a prudency and reasonable audit
15 shall be conducted once every three years of all the
16 costs, et cetera. So I didn't double-check that and
17 see -- sort of walk through all the pieces of the
18 legislation to see how it fit together. I took that
19 piece on faith.

20 Q. So you were tasked with doing a prudency
21 and performance audit mandated by 4928.148 -- 148(A),
22 and you didn't go read 4928.148(A) before rendering
23 your audit -- your opinions in your audit report?

24 MS. WILSON: Objection. The witness is
25 not an attorney, so she should not be expected to

1 interpret the Revised Code. What was provided in the
2 RFP she could rely on as accurate.

3 EXAMINER ADDISON: Thank you for your
4 objection. I'll allow the witness to answer.

5 A. We may have referred to it and read it.
6 But, like I said, I wouldn't have gone into the depth
7 of saying how each piece and sort of section and
8 subsection relate to one another.

9 Q. I --

10 MS. BOJKO: Your Honor, may we go off the
11 record for a second?

12 EXAMINER ADDISON: Yes. Let's go off the
13 record.

14 (Discussion off the record.)

15 EXAMINER ADDISON: Let's go back on the
16 record.

17 Ms. Bojko.

18 Q. (By Ms. Bojko) Dr. Fagan, I had asked you
19 previously did you read. All I am asking is before
20 issuing your audit reports and doing your prudence
21 audit, whether you read 4928.148(A).

22 A. I don't recall. We may have, but I don't
23 recall.

24 Q. And I'm sorry. You keep saying we, and
25 you mean I, right?

1 A. I do.

2 Q. Just checking.

3 A. Some kind of consulting training we are
4 always told to say we because team project, et
5 cetera, but yes, I.

6 Q. Understand. That one was just kind of a
7 personal question.

8 A. I've got a pronoun issue obviously.

9 Q. Okay. Can you look at page 7, we are
10 still -- always love page 7, page 7 of your RFP
11 response, okay? Are you there? For the record
12 that's been identified as OCC Exhibit 11.

13 A. I'm there.

14 Q. Okay. If you look in Section 1.2.1,
15 which is under what we were just discussing a minute
16 ago, here it says "Context of the Assignment." Are
17 you there?

18 A. Yes.

19 Q. And here you yourself cite to 4928.148 of
20 the Ohio Revised Code, correct?

21 A. Correct.

22 Q. And then you cite specifically to
23 4928.148(A) and the requirement that we just read for
24 4928.148(A) that was in the RFP, right?

25 A. Correct.

1 Q. So you knew that that was the statutory
2 provision underlining the assignment, correct?

3 A. Correct.

4 Q. Okay. And in your audit reports on page
5 7 of AEP's, for example, you refer to House Bill 6;
6 is that correct?

7 A. Correct.

8 Q. And is it your understanding that House
9 Bill 6 is where the underlying statutory provisions,
10 both the definition as well as the -- the statutory
11 requirement, the mandate that we just read, were
12 housed in a bill called House Bill 6?

13 A. So we didn't read through all of House
14 Bill 6, and I referred -- I guess I took it for
15 granted that the materials that we read to bid on the
16 project would, you know, be an accurate
17 representation of what's in the ORC. I just don't
18 recall reading all of House Bill 6.

19 Q. Right. My question was you cited to
20 House Bill 6, and you understood that to be, at least
21 in part, the legislation that set forth the LGR
22 Riders.

23 A. Yes.

24 Q. Okay. And, I mean, you -- you cited to
25 an article from a law firm regarding House Bill 6 in

1 footnote 2, did you not?

2 A. Yes.

3 Q. So you read the article about House Bill
4 6, correct?

5 A. Yes.

6 Q. And you understood from the introduction
7 of the Commission's entry that House Bill 6 was the
8 piece of legislation enacted in order to set forth
9 the LGR Riders, correct?

10 A. Just want to check the entry which is OCC
11 Exhibit 9. I'm checking that.

12 So I don't think that the entry refers to
13 House Bill 6 unless I am missing it.

14 Q. Not the RFP entry, right? It was a
15 different entry?

16 A. Okay. I must have been looking at -- I
17 am looking at the one for the RFP.

18 Q. Right, right. Okay. It -- you cite to
19 House Bill 6, and you cite to an article about House
20 Bill 6 on page 7 of your testimony. You also -- not
21 on your testimony, of your audit report. You also
22 cite to House Bill 6 on page 14 of the AEP audit
23 report, correct?

24 A. That's correct.

25 Q. And then on footnote 21 you cite to the

1 actual piece of House Bill 6, the actual bill; is
2 that correct?

3 A. That's correct.

4 Q. So you reviewed or you didn't review the
5 bill that you cite to on footnote 21?

6 A. We must have reviewed it.

7 Q. Then look at --

8 A. I don't know if we reviewed every word in
9 every section, but relative to the research we were
10 doing to -- in this front matter, we definitely read
11 it.

12 Q. Okay. And could you turn to page 24 of
13 the AEP audit. On page 24 of the AEP audit, you also
14 reference and cite to House Bill 6 and the repeal of
15 House Bill 6; is that correct?

16 A. So we cited to the Ohio State legislature
17 House Bill 128 which refers to House Bill 6, yes.

18 Q. And the repeal of the nuclear subsidies,
19 correct?

20 A. I believe that's the title of House Bill
21 128.

22 Q. Okay. Well, you cite to an article that
23 you reviewed and referenced, correct? Titled "Ohio
24 House Passes Legislation to Repeal Nuclear
25 Subsidies"?

1 A. Correct.

2 Q. Okay. Let's turn to page 25 of AEP.
3 Page 25 here you also reference the background of the
4 PPA Rider and how the LGR Rider replaced the PPA
5 Rider through House Bill 6; is that correct?

6 A. That's correct.

7 Q. And then if you look in your appendix
8 attached to your audit report, House Bill 6 is listed
9 as your appendix of your acronyms; is that right?

10 A. Yes, it is on page 110, 110 of the AEP
11 report.

12 Q. Sure. And so we don't have to go through
13 all the other two reports, but is it fair to assume
14 that you have similarly listed or cited to, excuse
15 me, articles about House Bill 6 and the repeal of
16 House Bill 6 and have similarly referred to House
17 Bill 6 throughout both of the other audits?

18 A. Yes. Yep.

19 Q. Do you know whether 4928.148 provides any
20 additional insights into what costs can be recovered
21 through the LGR Riders?

22 A. My understanding based on the RFP it's --
23 it satisfies -- well, the RFP encompasses all of the
24 EDU riders mentioned above. I think above this is --
25 on page 6 of the RFP, which is OCC Exhibit 9, and

1 right under section 2, paragraph A, ORC 4928.148(A)
 2 mandates that a prudency and reasonable audit be
 3 conducted once every three years of all costs related
 4 to the various EDU riders due to the OVEC expense
 5 recovery starting in year 2001 for the calendar year
 6 2020. This RFP encompasses all of the EDU riders
 7 mentioned above, so I think it's all the OVEC-related
 8 costs. That's what -- my understanding.

9 Q. Okay.

10 MS. BOJKO: Your Honor, at this time can
 11 I have marked for identification purposes as OMAEG --
 12 I would like to reserve No. 1 so this would be OMAEG
 13 Exhibit 2. Oh, excuse me. Given the Bench's
 14 preference for public versus confidential
 15 identification, I would like to reserve OMAEG Exhibit
 16 1 and OMAEG Exhibit 2C and so this would be OMAEG 3,
 17 please.

18 EXAMINER ADDISON: Thank you. Can you
 19 describe the document, Ms. Bojko?

20 MS. BOJKO: Oh, it's just the 4928.148,
 21 the law.

22 EXAMINER ADDISON: Is that --

23 MS. BOJKO: Printout of the statute.

24 EXAMINER ADDISON: I don't believe OCC
 25 had moved or had marked anything. I know they had a

1 statute printout, so we will go ahead and mark it as
2 OMAEG Exhibit 3.

3 (EXHIBIT MARKED FOR IDENTIFICATION.)

4 MS. BOJKO: That's fine.

5 EXAMINER ADDISON: Yeah. That's fine.
6 Go ahead and mark it.

7 MS. BOJKO: May I approach?

8 EXAMINER ADDISON: You may.

9 MS. BOJKO: I apologize. I didn't recall
10 he did that.

11 EXAMINER ADDISON: I don't think we had
12 marked it before.

13 Q. (By Ms. Bojko) Do you have in front of
14 you what's been marked as OMAEG Exhibit 3?

15 A. Yes.

16 Q. Does this appear to be a printout of the
17 legislation that we've been discussing -- or the law?
18 Excuse me, not the legislation.

19 A. It appears to be.

20 Q. In Section (A) the law states that the
21 Commission must establish a rate mechanism for
22 recovery of prudently incurred costs; is that
23 correct?

24 A. I am not a lawyer but that's what it
25 looks like.

1 Q. And in the first sentence it says you --
2 that the Commission has created a mechanism
3 authorized by the Commission "for retail recovery of
4 prudently incurred costs related to a legacy
5 generation resource shall be replaced by a
6 nonbypassable ratemaking -- rate mechanism
7 established by the Commission for recovery of those
8 costs." Do you see that? There is a reference to
9 those costs?

10 A. Yes.

11 Q. And those costs, is it your
12 understanding, refers back to the prudency-incurred
13 costs?

14 MS. AKHBARI: Consistently she has
15 already stated she is not an attorney. Ms. Bojko is
16 seeking legal interpretation of this document.

17 MS. BOJKO: Oh, your Honor, I did not
18 mean to seek a legal interpretation. As an auditor,
19 she is in charge of determining prudency and that's
20 what we are talking about.

21 EXAMINER ADDISON: Thank you. I think
22 Dr. Fagan has established she is not attorney, but
23 you can answer the question to the extent you have an
24 opinion.

25 A. Just looking at the grammar of the

1 sentence, it looks like that's what it refers to. So
2 I guess, yes.

3 Q. Your understanding of the LGR Rider is to
4 recover costs related to the legacy generation
5 resource which is OVEC; is that correct?

6 A. That's our understanding, yes.

7 Q. And in this (A) (1) section, here it
8 states that the Commission shall exclude from
9 recovery those costs that the Commission determines
10 imprudent and unreasonable; is that right?

11 A. That's right.

12 Q. And that's where you come in? The
13 auditor is supposed to help the Commission determine
14 what's imprudent and unreasonable?

15 A. Right. They seek assistance I think is
16 the phrase that's used. I'll find that again.

17 Q. Your understanding --

18 EXAMINER ADDISON: Ms. Bojko, she was
19 looking.

20 A. I want to make sure I quote -- I believe
21 it's in the RFP. I want to quote the right place.
22 Well, they use the phrase assist the Commission on --
23 in OCC Exhibit 9 on the first page. It doesn't have
24 a page number, but it must be No. 1. It's that entry
25 on May 5, 2021.

1 Q. Okay. You are --

2 EXAMINER ADDISON: You mean 2023?

3 THE WITNESS: The first paragraph, yes,
4 May 5, 2021, the OCC Exhibit 9 first paragraph.

5 Q. (By Ms. Bojko) You are referring to the
6 Commission entry that issued the RFP; is that
7 correct?

8 A. Yes.

9 Q. And can you while you are on that --
10 first of all, you believe that the RFP is consistent
11 with the 4928.148; is that correct?

12 A. Again, I am not a lawyer. I don't know.
13 We took our assignment from the RFP. In doing the
14 assignment we read pieces of the legislation, but I
15 can't say I went through it and checked for
16 consistency.

17 Q. Okay. Can you look at your -- still have
18 OCC Exhibit 9 in front of you, right? Can you look
19 at paragraph 4 of the entry.

20 A. It starts on page 1, right?

21 Q. Yes.

22 A. Okay. Yeah.

23 Q. Okay. On page 1, paragraph 4, it
24 references another case. It says that the LGR Rider
25 was established in Case 19-1808; is that correct?

1 A. That's what it says.

2 Q. Have you reviewed any documents from Case
3 No. 19-1808?

4 A. I don't think we have. I don't think we
5 did.

6 Q. So you don't know whether that order
7 provided any additional insights on what the prudency
8 audit was supposed to contain or include?

9 A. I don't know one way or the other.

10 Q. Okay. And is it fair to say then you
11 don't know or have not read the Commission's order in
12 that case, 19-1808?

13 A. I don't recall reading it. I don't think
14 I did.

15 MS. BOJKO: Your Honor, at this time for
16 identification purposes I would like to have marked
17 as OMAEG Exhibit 4, the Commission entry -- or Order
18 issued in Case No. 19-1808.

19 EXAMINER ADDISON: So marked.

20 (EXHIBIT MARKED FOR IDENTIFICATION.)

21 MS. BOJKO: May I approach, your Honor?

22 EXAMINER ADDISON: You may.

23 Q. (By Ms. Bojko) Do you have in front of
24 you what has been marked as OMAEG Exhibit 4?

25 A. I do.

1 Q. Does this appear to be an entry issued by
2 the Commission in 19-1808?

3 A. It does.

4 Q. Does this refresh your recollection of
5 whether you reviewed this entry that established the
6 LGR Riders?

7 A. It doesn't look familiar, so looking at
8 it, I don't think I read it.

9 Q. You did see on paragraph 2 that it does
10 reference as background House Bill 6 and the
11 requirement to establish a replacement rate mechanism
12 for the OVEC riders that you had audited previously?

13 A. It doesn't use the phrase OVEC riders,
14 but other than that, it -- the legacy generation
15 resource, I believe, is defined in the law that
16 includes the OVEC resources, so with that sort of
17 expansion, yes, I understand it to do that.

18 Q. Okay. Okay. Let's go back to -- you can
19 put that aside. It didn't refresh your recollection.
20 Let's go back to the audit reports. Let's go to --
21 let's go to Duke's, just if you have that one in
22 front of you.

23 A. I do.

24 Q. Again, I am just going to talk about one,
25 but if you believe there is a difference, could you

1 please highlight that and we can then turn there? I
2 don't want to ask you three sets of the same
3 questions.

4 A. Okay.

5 Q. Okay. So if we turn to page 7 of Duke's,
6 and just now we talked about it in the context of the
7 RFP, but I just want to ask a clarifying question.
8 If you go to the last paragraph in Section 1.1, this
9 is where the purpose of the audit is -- is written;
10 is that correct?

11 A. Correct.

12 Q. Okay. And here you -- you included both
13 pieces, the prudence piece as well as the
14 investigation of Duke's actions were -- whether they
15 were in the best interest of retail ratepayers,
16 right?

17 A. That's right, per the RFP which we cite
18 to, that's correct.

19 Q. Sure. Okay. Just -- just to clarify,
20 nowhere in this audit report does it discuss that
21 last "and" phrase regarding the best interest,
22 correct?

23 A. It does not.

24 Q. Okay. And if we look at your -- and if
25 we go to the findings section, which it starts on

1 page 9 of the Duke audit report, it's 1.3.

2 A. I'm there.

3 Q. Okay. And in the findings section here
4 you list out the -- the items that you reviewed for
5 prudence that we went through with the scope which
6 were included in your scope of the RFP and your RFP
7 response, correct?

8 A. That's correct.

9 Q. And this matches up with the RFP scope
10 that you referred me to on page 7 and 8 of the RFP
11 going over to 9; is that correct?

12 A. So in the RFP, the way it's organized it
13 starts with disposition of energy and capacity. But
14 the way we presented our findings is we talked first
15 about a component of fixed costs.

16 Q. All right.

17 A. So the -- the costs that are part of what
18 we felt was within the scope of the audit, but as we
19 listed our findings, we dealt with that first. Then
20 we turned to disposition of energy and capacity which
21 is actually the first under scope of investigation
22 general requirements. It's the first topical area.

23 The second one is fuel and variable cost
24 which we have next on page 10 of the audit report.
25 Then capital expense which is the third item that's

1 on -- it's on page 8 of the RFP. Then we talk about
2 our findings with respect to environmental compliance
3 which is the fourth item in the RFP. And then power
4 plant performance, we talk about that next. That's
5 No. 5. We don't have a separate section on utility
6 industry perspective. It's not an audit finding as
7 such. It provides the context, so we didn't have
8 a -- like a finding or a bullet, but it's an audit
9 section.

10 Q. Okay. Let's talk about that No. 6.
11 Under the RFP scope on page 9, it does say the
12 auditor shall include in the audit report a
13 discussion of the current dynamics of the PJM
14 wholesale markets in which OVEC operates and the
15 impacts that changing market dynamics have on OVEC's
16 operations practice, correct?

17 A. Correct.

18 Q. And you did not make a finding in your
19 1.3 finding section regarding that; is that correct?

20 A. Not exactly. So one of the current
21 dynamics at the time in PJM was the impact of COVID
22 on power consumption, power demand, which reduced
23 prices in PJM, and probably not just PJM, that led to
24 decisions by the OVEC Operating Committee to --
25 during a period of the year to commit the OVEC plants

1 based on economic, not as must run, so that
 2 finding -- we classified it as a part of energy and
 3 capacity disposition. So it's -- it's a changing
 4 market dynamic. It had an impact on OVEC operations
 5 and practices, but it shows up on page 10 under
 6 disposition of energy and capacity.

7 Q. Okay. So that's one changing market
 8 dynamic that you discuss in your report, correct?

9 A. We do discuss that, yes.

10 Q. And do you have any other changing market
 11 dynamics in your report?

12 A. Let me go to that section.

13 Q. I'm sorry, section? Where are you
 14 looking?

15 A. So the industry context section is on --
 16 starts on page 16. I am looking at the Duke public
 17 version. So we already discussed energy prices.
 18 Then on section -- on page 18, Section 3.1.3, we
 19 talked about capacity market clearing prices. And
 20 later on in the disposition of energy and capacity
 21 section, we talked about -- this will get into
 22 confidential so I will be very broad. We talked
 23 about how the Companies offered their capacity into
 24 the -- the PJM RPM, the liability pricing model. So
 25 that's another piece.

1 We talked about -- on page 19, Section
2 3.2, we were asked to look at whether participation
3 in the PJM ancillary services markets might be an
4 avenue for providing value of revenue to customers.
5 So we have the discussion of the ancillary services
6 market, and I need to refresh my memory in our text,
7 but I think that the OVEC operators -- operator was
8 examining perhaps the pros and cons. They were doing
9 a study of whether they wanted to participate in more
10 ancillary services markets.

11 So those are places where we talked about
12 current market dynamics. And we also looked at the
13 market for coal transportation and supply.

14 Q. And I didn't reference, but I believe on
15 page 22, you also talked about a utility industry
16 dynamic that occurred which was the House Bill 6
17 scandal, correct?

18 A. So we noted that HB 128 ended a subsidy
19 to the State's nuclear plants and had impacts on the
20 solar generation fund, reduced charges to residential
21 customers and capped charges to industrial customers.
22 And given that -- and this is on page 22 in our
23 footnote No. 42. Given that the title of HB 128 is
24 "revise electric utility service law; repeal portions
25 of HB 6," then it does refer to HB 6.

1 Q. And you refer to an article in footnote
2 41 that talks about the House Bill 6 scandal that
3 broke that led up to the repeal of the nuclear
4 subsidies, correct?

5 A. I don't remember exactly what was in the
6 article.

7 Q. You do know that the reason that the
8 nuclear subsidies were repealed was due to the House
9 Bill 6 scandal that erupted, correct?

10 A. Well, I knew there was issues around HB
11 6.

12 Q. Okay. And that would -- that's why
13 that's included in the industry perspective section,
14 correct?

15 A. Well, yes, it was a dynamic that was
16 going on in the Ohio energy industry.

17 Q. Thank you. Let's look at your -- go back
18 to where we were talking about on page 10, the
19 findings.

20 A. I'm there.

21 Q. And here on Section 1.3 in the findings
22 section, it talks about the disposition of energy on
23 page 10 that you mentioned. Isn't it true that the
24 output from OVEC must be offered in accordance with
25 the OVEC Operating Committee's procedures?

1 A. The generation, yeah, yes.

2 Q. And the Operating Committee procedures,
3 you are familiar with those, right?

4 A. Yes.

5 Q. And those procedures establish that all
6 but one of the units must be offered as must run
7 except when offline for maintenance; is that correct?

8 A. That was correct most of the time in the
9 audit period.

10 Q. Well, I didn't ask about what -- the
11 audit period. I was asking about the operating
12 procedures. Is your understanding that the operating
13 procedures require all the units to be offered at
14 must run except when offline for maintenance except
15 for one of the units?

16 A. During the audit period, that was the
17 case except for April 14 through June 30, during the
18 audit period.

19 Q. I'm actually asking you about a document
20 titled -- entitled "The OVEC Operating Committee
21 Procedures." Does that list the exception that you
22 just noted on the stand for April 2020 to June 2020,
23 or are the procedures standard procedures?

24 A. Would you point me to where I have those
25 in the audit?

1 Q. In the audit? I don't believe you
2 attached them to the audit. That's why I asked if
3 you were familiar with the operating procedures.

4 A. I --

5 Q. It's cited -- sorry. It's cited on page
6 41 of your audit report.

7 A. Is that Duke?

8 Q. Yeah. I am still on Duke. Actually it's
9 on 39 of the Duke. Well, that's the reference you
10 have. You've referenced it in your audit report.

11 A. On page 39, we have the daily scheduling
12 timeline.

13 Q. Right. I'm sorry. Let me try this
14 again. You reference the operating procedures in
15 your audit report as the source on page 39. I had --

16 A. Oh, I'm sorry, yes.

17 Q. I had asked if you were familiar with the
18 operating procedures. I assumed because you
19 referenced it that you were familiar with it; is that
20 not a fair assumption?

21 A. To the extent the operating procedures
22 have more in them than we put in Figure 20, I would
23 like to look at the rest of the report because --

24 Q. Fair enough.

25 A. -- there might have been more pieces we

1 used.

2 Q. Sure.

3 A. So if you could bear with me.

4 Q. Fair enough.

5 MS. BOJKO: Your Honor, the operating
6 procedures are attached to Mr. Swez's testimony.
7 Because they were filed and attached, I did not bring
8 copies today. I have a copy I can provide to the
9 witness, but I didn't bring copies for everybody else
10 because it was already part of the docket.

11 MS. AKHBARI: And I'll just note for
12 Ms. Bojko's purposes those were filed confidentially
13 as well and would constitute confidential
14 information.

15 EXAMINER ADDISON: Thank you. I believe
16 we've already had -- well, it's obviously not your
17 intent to move on with marking Mr. Swez's testimony
18 at this time, is it, Ms. Bojko?

19 MS. BOJKO: No. That's why I am in a
20 quandary, your Honor. We talked about this fact.
21 It's never been deemed to be confidential. We talked
22 about this fact for three years now.

23 A. So we do have --

24 EXAMINER ADDISON: Dr. Fagan, hold on one
25 moment. Are you going to provide the witness a copy,

1 Ms. Bojko?

2 MS. BOJKO: Yeah. I am trying to locate
3 it, your Honor.

4 EXAMINER ADDISON: And obviously the same
5 instruction applies. We will refrain from going into
6 the specifics until we are in confidential session,
7 if necessary.

8 MS. AKHBARI: If helpful to the Bench, we
9 do have copies of Mr. Swez's testimony that would
10 have that document attached.

11 MS. BOJKO: Oh, that would be helpful if
12 you brought copies.

13 EXAMINER ADDISON: Whoever might be able
14 to provide the witness a copy, that would be helpful.
15 Thank you. The Bench already has copies so thank
16 you.

17 MS. AKHBARI: You have copies on the
18 Bench?

19 EXAMINER ADDISON: We do.

20 MS. BOJKO: May I approach, your Honor?

21 EXAMINER ADDISON: You may.

22 MS. AKHBARI: This was going to be Duke
23 2C. I don't know if you want to mark it at this
24 point in time.

25 MS. BOJKO: Your Honor, this fact is in

1 Mr. Swez's testimony on page 19 as a public
2 statement. And, your Honor, we seem to have another
3 issue.

4 EXAMINER ADDISON: Let's go off the
5 record for a moment.

6 (Discussion off the record.)

7 EXAMINER ADDISON: Let's go back on the
8 record.

9 Ms. Bojko.

10 MS. BOJKO: Your Honor, it might be
11 helpful if I -- do you have Mr. -- your Honor, for
12 identification purposes, so the record is clear, I
13 would like to mark as Duke Energy Ohio Exhibit 2C?

14 MS. AKHBARI: Yeah, 2C.

15 MS. BOJKO: 2C, the direct testimony of
16 John D. Swez on behalf of Duke Energy Ohio
17 confidential version.

18 EXAMINER ADDISON: Ms. Akhbari, would you
19 like to -- seems a little odd to have Ms. Bojko move
20 it.

21 MS. AKHBARI: That's fine, your Honor. I
22 mean, I don't think we -- it's not like we can move
23 it with this witness so marking is fine. Thank you.

24 MS. BOJKO: Yes. I did not move.

25 EXAMINER ADDISON: Thank you. Thank you.

1 So Duke Energy -- I'm sorry. Could you --

2 MS. AKHBARI: 2C.

3 EXAMINER ADDISON: 2C. Thank you. It
4 will be so marked.

5 (EXHIBIT MARKED FOR IDENTIFICATION.)

6 Q. (By Ms. Bojko) Dr. Fagan, do you have in
7 front of you what's been marked as Duke Exhibit 2C?

8 A. I do.

9 Q. And does this appear to be the direct
10 testimony of John D. Swez?

11 A. It does.

12 Q. And did you have a chance to read this
13 testimony? I think you stated you read testimonies
14 earlier?

15 A. I believe I read all the documents that
16 were filed in the docket except the DRs, yes.

17 Q. Okay. And in Mr. Swez's testimony, so we
18 don't get into any confidential information, if you
19 look at page 19 of his testimony, does this refresh
20 your recollection of what the Operating Committee
21 procedures state with regard to the commitment status
22 of OVEC?

23 A. Let me read this. We also refer to it in
24 a confidential part of our audit as well. So maybe I
25 should go --

1 Q. We are trying to do it publicly. It's
2 been in a public document.

3 A. Oh, I see. Okay. I am reading page 19?

4 Q. That's correct. It talks about what --
5 starts -- I guess starts on 18 over to 19.

6 EXAMINER ADDISON: Do you have a specific
7 line, Ms. Bojko?

8 MS. BOJKO: Your Honor, it's a very long
9 sentence, so it starts on line 4 -- 6 and goes over
10 to page -- top of 19.

11 A. Okay. So I've read from the beginning of
12 the quote on line 9 on page 18 through line 8 on page
13 19.

14 Q. Does this refresh your recollection that
15 the Operating Committee procedures established that
16 all but one of the units must be offered as must run
17 except when offline for maintenance?

18 A. What it actually says that a unanimous
19 approval of the Operating Committee excluding OVEC's
20 representative is required to change the commitment
21 status of must run with respect to the offer of the
22 PJM sponsors' aggregate share of reserve, available
23 energy, into PJM's day-ahead market.

24 Q. Right. Because the operating procedures
25 require all but one of the units to be offered as

1 must run, right? And then it takes the Operating
2 Committee's unanimous decision to change that
3 standard in the procedures.

4 A. That makes sense, okay.

5 Q. Okay. You don't know? You don't recall
6 that in the operating procedures?

7 A. Well, the period that we audited involved
8 a period of, I guess, unanimous decision to commit
9 the plants based on economics. So, yes, they made a
10 unanimous decision which the Operating Committee
11 procedures allow.

12 Q. And the other period of 2020 as well as
13 the prior audit that you reviewed and made and put
14 forth the recommendation is to have flexibility and
15 an option was because the plants were required to be
16 offered as must run, correct?

17 A. That's correct.

18 Q. Okay. And as an economist, would you
19 agree that as a general rule in the field of
20 economics, an option has a value?

21 A. It -- I would say a positive value means
22 that somebody is willing to buy an opportunity to
23 have some flexibility or make a decision. So I would
24 say we are speaking very broadly, but yes.

25 Q. Okay. And if OVEC has the option to use

1 either an economic or must-run commitment strategy,
2 depending on the circumstances, that could provide
3 value to customers, correct?

4 MS. AKHBARI: I would object to the
5 extent that Ms. Bojko is referencing two different
6 types of options. It's not obviously that the
7 auditor was referencing the same sort of option
8 Ms. Bojko was.

9 EXAMINER ADDISON: I will allow the
10 witness to answer the question, but you can provide
11 as much clarification as you need.

12 A. So -- so putting aside a general
13 discussion of options, the reason that we had a
14 recommendation to allow the option, the choice, of
15 committing the plants based on must-run versus
16 economic commitment is because we believe that the
17 flexibility could be valuable.

18 Q. Okay. And, in fact, we go back to the
19 audit report, you recommended that the Ohio utilities
20 and the other members of the Operating Committee
21 allow OVEC the flexibility to offer the units as must
22 run or economic on an ongoing basis, correct?

23 A. Correct.

24 Q. And you made this recommendation in part
25 because on page 10 of the audit report, you state

1 ideally the units would be committed based on
2 economics all or most of the time, correct?

3 A. But in the case of coal plants, this can
4 cause difficulties in managing staffing and fuel
5 deliveries and repeated startup of coal plants can
6 damage equipment. These are coal plants. So, you
7 know, in an ideal world, it would be great to have a
8 lot of operational flexibility, but we -- you know,
9 we recognize that it can increase costs or the risk
10 of technical problems for coal units.

11 Q. I don't think you answered the first part
12 of my question. I heard the but, but didn't you
13 state that ideally the units would be committed based
14 on economics all or most of the time?

15 A. Ideally.

16 Q. And isn't it true that committing units
17 based on economics is ideal because of this
18 flexibility of reducing costs for customers?

19 A. To the extent that you aren't incurring
20 costs or other downsides or risks, and for some
21 plants it's very straightforward, they are built for
22 economic commitment. They are built to cycle off and
23 on. They are built to ramp up and down. That's why
24 we use the word ideally. But in the case of coal
25 plants, there is other ramifications.

1 Q. And you note that offer -- in your audit
2 report offering units as economic has very little
3 financial risk, correct?

4 A. Would you point me to that section or the
5 phrase?

6 Q. It's on page 42 of the Duke audit report
7 we've been looking at.

8 A. I don't know that we use. Okay. So the
9 risk is minimized because if PJM dispatches you, your
10 plant, but it -- say it needs you in certain hours
11 but you're not covering variable costs, it will give
12 you uplift payments. It's -- but it doesn't
13 eliminate all the risk that would come from wear and
14 tear on the plant, startups and shutdowns, ramping,
15 et cetera, which we go on to say in the rest of that
16 paragraph.

17 Q. So did you agree with me that you did
18 note in the audit report on page 42 that offering the
19 units as economic has minimal risk?

20 A. Financial risk is minimal.

21 Q. Okay.

22 A. But there are -- there are these other
23 operational technical startup, shutdown risks.

24 Q. Sure. I am just -- my question asked
25 about financial risk. So sticking with the financial

1 risk, you believe that the financial risk is minimal
2 because PJM actually provides uplift payments,
3 correct?

4 A. Yes.

5 Q. And the PJM uplift payments ensure that
6 utilities will cover their total offered costs when
7 market revenues are insufficient or when their
8 dispatch instructions diverge from their dispatch
9 schedule; is that correct?

10 A. Can you show me our definition of uplift
11 payments?

12 Q. Sure. If you go to Duke, your audit
13 report on page 17 to 18. Here you talk about uplift
14 payments in Section 3.1.2.

15 A. Yes.

16 Q. And you quote or you -- yeah, you quote a
17 definition on that page; is that right?

18 A. We do.

19 Q. Okay. And that definition comes from
20 PJM, it looks like?

21 A. That's correct.

22 Q. Okay. So I don't think you answered the
23 question the PJM uplift payments are to ensure the
24 utilities recover their total offered costs when
25 market revenues are insufficient or when their

1 dispatch instructions diverge from their dispatch
2 schedule?

3 A. Yes.

4 Q. And the uplift payments are not available
5 to must-run units, are they?

6 A. That's our understanding.

7 Q. So having the option to offer units as
8 must run or economic has minimum financial risk but
9 obviously financial benefits; is that correct?

10 A. I would say minimal financial risk. I
11 need to think about the benefit side.

12 Q. Okay. Well, you do state --

13 EXAMINER ADDISON: I think she is just
14 asking for a minute to think about it.

15 A. Give me a moment.

16 I would say thinking it through there may
17 or may not be financial benefits. I'm trying to
18 think of different scenarios. I think it would
19 depend on energy market prices and the variable cost
20 of the plant when it's operated at -- economic
21 minimum, so I don't know about maximum financial
22 benefits but having uplift payments does minimize
23 the -- I don't know about minimize, but it makes the
24 financial risk lower.

25 Q. You do conclude in your audit reports,

1 don't you, that OVEC having the option to offer units
2 as economic or must run could reduce costs to
3 customers; is that correct?

4 A. It could.

5 Q. And could you turn to Section 5.3.9 of
6 the Duke audit report which is on page 49?

7 A. I'm there.

8 Q. Here you discuss how there were times in
9 2020 when the emergency day-ahead prices did not
10 cover the variable costs of running the plants; is
11 that correct?

12 A. In 2020, yes.

13 Q. And in that same paragraph you state that
14 "Under such circumstances, units which are
15 self-scheduled incur losses for their owners"; is
16 that correct?

17 A. Correct.

18 Q. And it's your understanding that the term
19 self-scheduled has the same meaning as the term must
20 run?

21 A. That's right.

22 Q. So during times when the PJM day-ahead
23 prices did not cover the variable costs of running
24 the plants, the must-run units incurred losses for
25 the utilities; is that correct?

1 A. It incurred losses in the energy markets.

2 Q. Okay.

3 A. The capacity payments might not have
4 changed so, yes, losses in the energy markets.

5 Q. And in that same paragraph, you state
6 that unlike must-run units, "economically committed
7 units would receive an uplift payment to cover costs
8 if day-ahead prices do not cover variable costs"; is
9 that correct?

10 A. Correct.

11 Q. And so units that are offered
12 economically wouldn't incur startup, shutdown losses
13 if they received uplift payments, correct?

14 A. They would be made whole by the uplift
15 payments to the extent that they, you know, bid those
16 costs.

17 Q. Okay. Let's turn back to page 8 of the
18 audit report. I'm still in Duke's. Are you there?

19 A. Yes.

20 Q. If you look under Section 1.2, it says
21 that you relied on information provided from the
22 utilities through Data Requests; is that correct?

23 A. Correct.

24 Q. And it says you also used publicly
25 available data from OVEC annual reports and other

1 sources of public data; is that right?

2 A. That's right.

3 Q. Okay. So you did review the OVEC annual
4 report in completing your audit?

5 A. We didn't read the entire annual report,
6 but we did use it as -- as it's cited in our report,
7 for example, comparing our numbers for the cost per
8 megawatt-hour versus what OVEC reported in its annual
9 report.

10 Q. And referring to your statement of other
11 sources of public data, that would include all of
12 your footnoted materials such as the House Bill 6
13 articles that we discussed earlier; is that right?

14 A. Correct.

15 Q. And it would include the State of the
16 Market Reports that we discussed earlier today that
17 were included in numerous footnotes; is that correct?

18 A. So state -- as you know probably, State
19 of the Market Reports are extensive, so to the extent
20 we used pieces of it to have a look at ancillary
21 service markets and a handful of other things, yes,
22 that's one of our public sources.

23 Q. And then you would also use the PJM IMM
24 reports that you cited to in your testimony that were
25 discussed yesterday?

1 A. Those are the same ones so the IMM
2 reports are the State of the Market Reports.

3 Q. And you also reference some PJM
4 documents; is that correct?

5 A. Let me check. I'm sure we did it --
6 referenced them in the -- I am having a look at the
7 capacity market, and I need to check where else. So,
8 for example, on page 10 in footnote 7, we reference
9 the PJM manual. Let me find that for you. So we are
10 clarifying what the unit availability status is
11 economic means so that's on page 10, footnote 7, the
12 PJM manual.

13 Q. We just talked about one on footnote 26
14 on page 17, the PJM drivers of the uplift explanation
15 and definitions?

16 A. We did.

17 Q. And it looks like there is one in
18 footnote 30 about the PJM RPM base residual auction
19 results?

20 A. Yes. Those are the capacity auction
21 results I mentioned, yes.

22 Q. And there's also PJM three priorities
23 article -- FAQ article in footnote 29; is that
24 correct?

25 A. FAQs, yes, description of the capacity

1 market. We've got a map on page 16 that is sourced
2 from PJM. It's Figure 4. And footnote 32 and 33 on
3 page 19, we're discussing the ancillary services
4 definitions of the ancillary services and the
5 markets. And then we have footnote 39 on page 21
6 where we are talking about the PJM MOPR, the minimum
7 offer price rule.

8 Q. I'm sorry. I was really just asking you
9 generally what sources you relied on. Are you
10 finished, or are you still looking?

11 A. I was looking for the places that we were
12 citing material from PJM, but I don't have to keep
13 doing that if you don't want me to.

14 Q. Just generally it's fair to say that you
15 relied on PJM documents, the IMM, Monitoring
16 Analytics documents, capacity market document, things
17 of that nature; is that fair?

18 A. Yes.

19 Q. And can you review the 2020 PJM State of
20 the Market Report?

21 A. I believe we cited it. I don't know if I
22 reread the entire thing.

23 Q. Is that footnote 28?

24 A. So, right, the PJM State of the Market
25 Report, it's produced by Monitoring Analytics which

1 is the IMM.

2 Q. Okay.

3 A. I wouldn't say we read the entire thing,
4 but we got -- we footnoted and looked at their
5 section on energy uplift.

6 MS. BOJKO: Your Honor, at this time for
7 identification purposes could I have marked as OMAEG
8 Exhibit 4 --

9 EXAMINER ADDISON: I believe we are up to
10 5, Ms. Bojko.

11 MS. BOJKO: Oh, sorry.

12 EXAMINER ADDISON: You're fine.

13 MS. BOJKO: The State of the Market
14 Report for PJM. This is just an excerpt. This is a
15 pretty large document as Dr. Fagan has pointed out.

16 EXAMINER ADDISON: It is so marked.

17 (EXHIBIT MARKED FOR IDENTIFICATION.)

18 MS. BOJKO: May I approach?

19 EXAMINER ADDISON: You may.

20 MS. AKHBARI: Kim, is that for 2020 if we
21 are trying to pull it up?

22 MS. BOJKO: Yes. So, your Honor, we have
23 this in a link form that it might be easier to e-mail
24 to the parties if they would like to review it, the
25 entirety of the document --

1 EXAMINER ADDISON: Certainly.

2 MS. BOJKO: -- for completeness.

3 EXAMINER ADDISON: But the excerpt is
4 what we are marking as an exhibit; is that correct?

5 MS. BOJKO: That's correct, your Honor,
6 at least for identification purposes.

7 MR. SHARKEY: And, your Honor, we don't
8 have a copy of the document, so I would ask at least
9 the link be sent out before any questions so we could
10 catch up.

11 MS. BOJKO: It's already done.

12 MR. SHARKEY: Can I get a minute to catch
13 up?

14 EXAMINER ADDISON: Absolutely.

15 MR. SHARKEY: I don't have the link yet.

16 MS. EASLEY: I did just press send so
17 however the wifi wants.

18 MR. DOUGHERTY: It came this way first.

19 MR. McKENZIE: The link goes to the
20 website that then has lots and lots of links on it.
21 Can you help us know where we should click?

22 MS. BOJKO: Haven't gotten there yet but
23 Volume II, Section 3.

24 MR. McKENZIE: It's got multiple years,
25 so this is the 2020 State of the Market Report for

1 PJM?

2 MS. BOJKO: That is correct. That's
3 what's been marked, an excerpt of it.

4 EXAMINER ADDISON: Why don't we go off
5 the record until everyone gets on the same page.

6 (Discussion off the record.)

7 EXAMINER ADDISON: Let's go back on the
8 record.

9 Ms. Bojko.

10 MS. BOJKO: Thank you for that. It's
11 also -- this document is also attached to Mr. Perez's
12 testimony.

13 Q. (By Ms. Bojko) Do you have in front of
14 you what's been marked for identification purposes as
15 OMAEG Exhibit 5?

16 A. I do.

17 Q. And we did -- it's an excerpt but we put
18 Volume II, the preface, as well as the table of
19 contents; is that correct?

20 A. Correct.

21 Q. So does this appear to be the same State
22 of the Market Report for PJM that you reference on
23 footnote 28 of Duke?

24 A. So in footnote 28, Duke it's on page 18,
25 we cited to Section 4 which is the energy uplift

1 section. I think what we have here is Section 3.

2 Q. Okay. You are getting ahead of me a
3 little bit. I first was asking you if this is the
4 same 2020 State of the Market Report for PJM.

5 A. I believe it is.

6 Q. Okay. And did you -- you referenced it,
7 so am I to assume you reviewed this 2020 State of the
8 Market Report?

9 A. We looked at materials, but we did not
10 review it cover to cover.

11 Q. Okay. You referenced the Section 4 a
12 minute ago. Did you review Section 3 entitled
13 "Energy Market"?

14 A. We might have. So we didn't cite to
15 Section 3 of the Monitoring Analytics 2020 IMM
16 report, so as far as I can recall, I didn't read
17 Section 3.

18 Q. Okay. We've been talking about the
19 flexibility of running the units. And if you look
20 at, just to narrate your search, if you look at 142
21 which is the last page on the excerpt you have, there
22 is a section titled "Generator Flexibility Under
23 Capacity Performance." You don't believe you
24 reviewed this section?

25 MR. SHARKEY: Ms. Bojko, I need the page

1 again.

2 MS. BOJKO: 142.

3 A. So where we cited to uplift payments was
4 in Section 4. That has to do with the day-ahead
5 energy market, I believe. This section has to do
6 with the capacity performance construct which is the
7 capacity market. It might have similar material, but
8 I need to read it.

9 Q. I'm not trying to talk about uplift
10 payments in Section 4. I'm trying to talk about the
11 generator flexibility incentives under a capacity
12 performance construct so that's why I was asking if
13 you reviewed this part of the report.

14 A. I don't think I did.

15 Q. Okay.

16 MS. WILSON: Your Honor, Dr. Fagan has
17 been up there for two hours. Would now be a good
18 time to take a brief comfort break?

19 EXAMINER ADDISON: Let's go ahead and
20 take a brief break.

21 Let's go off the record.

22 (Recess taken.)

23 EXAMINER ADDISON: Let's go back on the
24 record.

25 Ms. Bojko.

1 MS. BOJKO: Thank you.

2 Q. (By Ms. Bojko) Dr. Fagan, before the
3 break, we were talking about the 2020 State of the
4 Market Report for PJM and that was performed by the
5 independent market monitor for PJM; is that correct?

6 A. Yes, we were.

7 Q. So although you reference this I think a
8 couple of places in your testimony, or at least once,
9 you did not review the entirety of the report; is
10 that correct?

11 A. So we referenced the 2020 report in one
12 place. I think we referenced the 2021 report in a
13 different place. That was -- the 2020 reference was
14 for Section 4 which had to do with energy uplift
15 payments.

16 Q. And thank you for refreshing my
17 recollection of our discussion yesterday. You also,
18 I believe, referenced 2019 IMM in your -- in your
19 document, is that correct, in the audit report?

20 A. I need to check. I think it was just the
21 2020 and 2021 IMM reports. I don't think we
22 mentioned or cite to, I should say, the 2019 report.
23 It was just the 2020 and 2021 unless I am missing
24 one.

25 Q. We can look. You have a note there were

1 three different IMM reports that you referenced in
2 your audit reports.

3 A. There were three footnotes but one was an
4 Ibid. So that was on page 20 and footnote 35 and
5 that referred back -- that was like a citation again
6 of the 2021 Monitoring Analytics report.

7 Q. Yeah. And then on page 108, Figure 68,
8 in the source materials here is where you reference
9 the 2019 IMM report.

10 A. Oh, yes, that's right because we have
11 data from the year before to compare, yes, you're
12 right.

13 Q. Okay. So back to my question with regard
14 to the 2020 report, even though you cited to a part
15 of the report, you did not review the entirety of the
16 report; is that correct?

17 A. We did not.

18 Q. And also on -- in that same Figure 68,
19 you refer to a different portion of the 2020 market
20 report; is that correct? Not just Section 4. Here
21 you are referring to a different section. You cite
22 to page 44.

23 A. That's right. That's a different
24 section.

25 Q. So I just want to make sure the record is

1 clear, you cited to the IMM report for 2020 beyond
2 Section 4. You cited to it in other respects; is
3 that correct?

4 A. That's correct. We looked at the PJM
5 average EAF and page 20 -- oh, wait. That's the
6 2021. Sorry. So for the 2020 State of the Market
7 Report, we cited to Section 4 in footnote 28. And we
8 cited page 44 in the source on page 108 to Figure 68.

9 Q. Okay. And there was a discussion
10 yesterday with Mr. Finnigan about the market
11 monitoring and I want to clarify something you said.
12 I thought you said that you were not familiar with
13 Marketing Analytics, the PJM IMM?

14 A. I know that they are the IMM for PJM.

15 Q. Okay. And you cite to -- four times you
16 cite to an IMM report in three different places, or
17 three different reports, four different cites, so you
18 do believe that the IMM is an authoritative source,
19 correct?

20 A. I would say on some factual information
21 they are quite authoritative. They do have their own
22 opinions and views on different aspects of the PJM
23 market. So it's not that every -- it's not that
24 every word in their report is -- it's not the Bible.
25 It has very useful information, but it also has the

1 market monitor's point of view as well.

2 Q. And but you believe that for the purposes
3 that you relied upon them or you did rely on them for
4 the citations that you provided in your reports,
5 correct?

6 A. We believe they were reliable for the
7 information that we used.

8 Q. And you believe that the reports were
9 applicable to the audits and within the scope of the
10 audits, correct?

11 A. Part of the audit asks for comparisons to
12 market outcomes and description of the utility
13 industry perspective, so it's a very useful source
14 for, for example, comparing like we did the
15 equivalent availability factors, to talk about the
16 ancillary services market, and to talk about energy
17 uplifts so, yes, a useful industry source.

18 Q. But the answer to my question was yes; is
19 that right?

20 A. And the -- what was the question again?

21 MS. BOJKO: Your Honor, may I have that
22 reread?

23 EXAMINER ADDISON: You may.

24 (Record read.)

25 A. I don't know about every single page of

1 the IMM report, but for the materials that we used,
2 we deemed them to be a reliable source and
3 applicable, yes.

4 Q. And within the scope of the audits.

5 A. Yes.

6 Q. Dr. Fagan, do you know if OVEC's must-run
7 offer strategy during the audit period was similar or
8 different from the offer strategy of competitive
9 generators in PJM during the audit period?

10 A. I didn't look at the offer strategies for
11 competitive generators. It depends on the kind of
12 generator, I guess. Baseload generators might offer
13 must run.

14 Q. So in determining the reasonableness of
15 OVEC's must-run strategy, wouldn't it be helpful to
16 have a benchmark of comparison?

17 A. You mean other plants?

18 Q. Correct.

19 A. Yeah. I mean, you would want to make
20 sure that you looked at, if you could find the
21 information, you know, their costs, technical
22 capabilities. It could -- it's probably beyond the
23 scope of the audit to understand how, you know --
24 it's usually confidential information -- well, in
25 many cases confidential information about offer

1 strategies.

2 Q. Okay. Now I'm confused because I thought
3 you told me earlier that part of the scope of the
4 audit was to determine the prudence of the utilities'
5 unit scheduling and bidding of energy into the PJM
6 wholesale markets.

7 A. That's right. I would say offering but,
8 yeah.

9 Q. So it's not beyond the scope that when
10 one determines the prudence or the reasonableness of
11 a commitment strategy, to look at what other
12 competitors are doing in the wholesale market.

13 A. You could look at what they were doing.
14 You would also need to understand a lot about the
15 cost structure, what kind of plant, how they are
16 designed to run, so there would be a number of other
17 factors.

18 Q. But you didn't look at that; is that
19 correct?

20 A. We looked at average capacity factors
21 in -- let me find the figure. So we did a PJM
22 comparison for a number of variables. I'll find the
23 right section. I think it's in chapter 9. So in a
24 confidential Figure 64, at least 64 for the Duke
25 audit on page 101, we have heat rates for all the

1 different units for the OVEC plants compared to PJM
2 average heat rates.

3 Q. Okay. My question was you didn't review
4 whether OVEC's must-run offer strategy during the
5 audit period was similar or different from the offer
6 strategy of competitor -- competitive generators when
7 determining the prudence of unit scheduling and
8 bidding of energy into PJM wholesale markets,
9 correct?

10 MS. WILSON: Objection. That's way
11 outside the scope of the audit. That was not in the
12 request for proposal to compare competitively
13 providers.

14 MS. BOJKO: Your Honor, I am reading from
15 the scope of the audit.

16 EXAMINER ADDISON: Could I have the
17 question read back, Karen?

18 (Record read.)

19 EXAMINER ADDISON: Thank you. Objection
20 overruled.

21 A. We did not.

22 Q. Let's go back to the audit reports. I am
23 still on Duke, page 42 Duke's.

24 A. Okay. I'm there.

25 Q. Here you -- on page -- it's the first

1 paragraph on page 42 underneath the Figure 42, do you
2 see that?

3 A. Yes.

4 Q. Here you discuss how the OVEC Operating
5 Committee unanimous -- unanimously decided to offer
6 units as must run or economic from April 14, 2020,
7 through June 30, 2020; right?

8 A. That's correct.

9 Q. And in the following paragraph LEI
10 recommends that Duke and the other members of the
11 Operating Committee, so all of the Ohio utilities,
12 correct?

13 A. Yes. Given that it has to be a unanimous
14 decision, yes.

15 Q. Okay. Allow this flexibility on an
16 ongoing basis; is that correct?

17 A. Correct.

18 Q. And if you go to 5.4 which is on page 50
19 of the Duke audit report.

20 A. I'm there.

21 Q. And here under the first bullet, must-run
22 offer strategy bullet, do you see that?

23 A. Yes.

24 Q. Okay. Here you state that "LEI believes
25 the change to OVEC's must-run strategy due to

1 COVID-19 was prudent"; is that correct?

2 A. Yes.

3 Q. And in the same bullet you state that
4 Duke, or any of the utilities I'm assuming in their
5 respective audit reports, should encourage the
6 Operating Committee to allow OVEC the option to
7 commit available units based on must-run or economics
8 on a going-forward basis; is that correct?

9 A. Correct.

10 Q. And -- and is my assumption correct that
11 same encouragement would go for AES and AEP as well?

12 A. Out of fairness to everybody, let me
13 check.

14 Q. I'll help you. AES's is on 44, AEP at 48
15 if you are trying to confirm.

16 A. Yes.

17 Q. Okay.

18 A. It's the same on all three.

19 Q. Thank you for confirming that. And then
20 just to close out this loop, you state in that same
21 paragraph that "Ideally, the units would be committed
22 based on economics all or most of the time"; is that
23 correct?

24 A. That's correct but it's qualified because
25 we are aware that it could create issues for coal

1 plants.

2 Q. Okay. So would you agree with me that
3 having the option to offer units as must run or
4 economic optimizes OVEC's participation in the PJM
5 day-ahead market?

6 A. I don't know about optimizes. But having
7 more flexibility to make decisions on an ongoing
8 basis, you know, obviously doing the research to
9 provide the information for your decision, it could
10 result in improved outcomes.

11 Q. As part of your audit, did LEI analyze
12 how much OVEC lost or gained as a result of switching
13 the commitment strategies during the audit period?

14 A. We did not do an hour-by-hour analysis,
15 no.

16 Q. And it's true that all costs associated
17 with the must-run commitment strategy were passed on
18 to customers as OVEC costs, correct?

19 A. Well, all costs incurred on a -- the
20 variable cost side, which is fuel, are passed on so
21 those would reflect commitment decisions so, yes.

22 Q. And you didn't compare daily net revenues
23 received during the periods OVEC utilized in the
24 economic offer strategy to daily net revenues
25 received during the periods when they did that

1 must-run strategy; is that right?

2 A. We didn't do that. That would be highly
3 impacted by PJM energy prices on a daily basis, not
4 just how often the plants ran, but the short answer
5 is we did not do that.

6 Q. And you could have though, you could have
7 done a -- conducted a re-dispatch analysis, couldn't
8 you?

9 A. That's a detailed look which was out of
10 the scope. It's not impossible theoretically, but it
11 would have been a very big project that was not
12 contemplated in the scope of this work.

13 Q. But that is what -- that's the mechanism
14 that you would have had to use to do that; is that
15 fair?

16 A. Yes. You would need quite a bit of data.
17 You would need a lot of information about the
18 individual plants, minimum run times, ramping hours
19 required, costs of -- at least hourly costs, variable
20 O&M which is fuel mostly, hourly energy revenues.
21 It's not an impossible task but very detailed.

22 Q. Sure. And that re-dispatch analysis
23 would have used information that was available to
24 OVEC at the time it made its decision to offer into
25 PJM markets, right?

1 A. So the re-dispatch analysis we are
2 talking about is backward looking, so I think you
3 asked if they did one thing versus another. So -- so
4 that's a backward-looking analysis.

5 Q. Right. A re-dispatch analysis would have
6 compared the daily net revenues received during the
7 period of the audit under one strategy versus daily
8 net revenues received during the period under a
9 different strategy, correct?

10 MS. AKHBARI: I would object to -- under
11 the fact that I don't believe a foundation has been
12 laid that that's the auditor's impression of what
13 re-dispatch analysis is.

14 EXAMINER ADDISON: Thank you. I will
15 provide Dr. Fagan quite a bit of latitude to answer
16 the question so you may.

17 A. Okay. So typically you would do that on
18 an hourly basis just because the PJM markets clear on
19 an hourly basis. And you might be dispatched in one
20 hour versus another. So you -- I don't know that you
21 would do it daily, but you probably do it hourly.
22 It's -- what you are describing is a backward-looking
23 analysis given energy prices, compare the outcome of
24 one dispatch strategy -- excuse me, commitment
25 strategy versus another, and as I said, it's doable.

1 You would -- to do it you would need a lot of
2 information about the physical capability of plants,
3 the cost for different kinds of -- you know,
4 operating the plant differently. It might cost a
5 different amount. You might be operating the plant
6 less, but you still have fixed costs.

7 So it's not impossible to do. If a plant
8 is deciding if -- if an operator is deciding whether
9 to offer based on must run or economics, I don't
10 think they would look backwards. I think they would
11 be looking forward at what they think the hourly
12 market would pay them over a period, I don't know, a
13 week or something like that. So I think you are
14 talking about two different things.

15 Q. Well, it's fair to say that when one --
16 if an auditor like yourself is trying to determine
17 whether OVEC acted prudently with its must-run
18 commitment strategy during the audit period, one way
19 to do that would be to go back and do this
20 re-dispatch analysis, right?

21 A. It could be done given -- there would
22 have to be a lot of information about plant operating
23 characteristics, fixed costs that might be incurred
24 whether you are operating or not. There would be a
25 good deal of data involved apart from just the hourly

1 operations and hourly energy prices.

2 Q. Sure. And a lot of that data would --
3 you would expect that PJM or the independent market
4 monitor might have that energy cost data?

5 A. I would doubt that they would have plant
6 cost data -- they might. They might. I'll take that
7 back. They might.

8 Q. And they would have the wholesale market
9 data.

10 A. Yes, that's easy to find, the energy --
11 the market clearing prices, hourly market clearing
12 prices. They have that, yes.

13 Q. Sure.

14 A. Or actually -- I don't know about the
15 market -- PJM has that.

16 Q. Okay. And -- well, you are familiar that
17 the market monitor does, in fact, report in its State
18 of the Market Reports that you have cited to, it does
19 report which generators in the competitive market
20 offer in at which strategies. Are you aware of that?

21 A. I was not aware of that.

22 Q. Okay. So assuming you have had all that
23 data that you needed, you could do a re-dispatch
24 analysis and that would be one way to determine
25 prudence.

1 A. It would be a factor in evaluating
2 prudence.

3 Q. Okay. Let's turn to page 11, again I
4 will still be sticking with the Duke report, if
5 that's okay, unless you have switched to another.

6 A. Okay. I'm there.

7 Q. If you look at the Figure 1, and I think
8 this is true for Duke and AEP because LEI conducted
9 the audits, for Duke and LEI [SIC], you previously
10 recommended for the 2019, that OVEC should consider
11 its must-run strategy -- or should reconsider its
12 must-run strategy; is that correct?

13 MR. SHARKEY: Just object, your Honor,
14 because LEI did not conduct the 2019 audit for AES
15 Ohio.

16 EXAMINER ADDISON: I think she did
17 qualify it to AEP and Duke so.

18 MR. SHARKEY: I apologize. I
19 misunderstood the question. I withdraw the
20 objection.

21 EXAMINER ADDISON: Thank you.

22 A. So, yes, we recommended reconsidering the
23 must-run offer strategy in the AEP report and in the
24 Duke report. DEO had the strategy of, I think,
25 bringing this idea to the OVEC Operating Committee.

1 And we were in favor of allowing that on an ongoing
2 basis.

3 Q. You were in favor of the strategy Duke
4 proposed of creating a process whereby OVEC
5 reconsidered its must-run offer strategy and utilized
6 near-term demand forecast information to formulate
7 energy offers?

8 A. So that was our conclusion in the 2019
9 audit, yes.

10 Q. Okay. And under -- it's your
11 understanding that that recommendation to do must run
12 didn't occur in 2019, but it did occur in 2020,
13 correct? Strike that.

14 I'll start over. You just mentioned that
15 Duke proposed that strategy. That proposal was in
16 2019 but it wasn't adopted; is that right?

17 A. I don't -- it wasn't done that way in
18 2019. They might have -- so I guess -- I don't know.
19 It doesn't look like it was adopted in 2019 but
20 that's when we found they proposed it.

21 Q. Okay. And it's your understanding that
22 it was adopted for a short period of time in 2020.

23 A. That's right, April 14 through June 30,
24 2020.

25 Q. To your knowledge, the utilities have not

1 made efforts to advocate for allowing economic
2 dispatch on a permanent basis, have they?

3 A. We didn't ask that.

4 Q. Well, don't you recommend that it be done
5 on a going-forward basis?

6 A. Yes.

7 Q. But you don't -- so my question is do you
8 know if the utilities have done it on a going-forward
9 basis? It's 2023 now.

10 A. Right.

11 Q. And the audit occurred -- it was for the
12 2020 audit.

13 MS. AKHBARI: I would just object to the
14 extent it's outside the audit period, if that's the
15 question.

16 EXAMINER ADDISON: I'll allow the
17 question.

18 A. So between the audit period and now, I
19 don't know.

20 Q. Okay. But what you do know is that this
21 is the second audit, second year in a row that you've
22 recommended that the utilities reconsider the
23 must-run strategy and allow flexibility going
24 forward.

25 A. Yes.

1 Q. Let's turn to fixed costs. Do you agree
2 that the law prohibits any return from being passed
3 on to or collected from customers?

4 A. I need to find that spot. Could you
5 refer me to the page?

6 Q. I just asked you if you knew that --
7 whether the law prohibited it. I wasn't referring to
8 a page. The law you have in front of you was marked
9 as OMAEG Exhibit --

10 EXAMINER ADDISON: 3, I believe,
11 Ms. Bojko.

12 MS. BOJKO: I'm sorry?

13 EXAMINER ADDISON: 3.

14 Q. (By Ms. Bojko) 3. How about this, let's
15 go to -- go to page 9. There is an excerpt that
16 might help you. Sorry.

17 A. Okay. I'm at page 9.

18 Q. This is fixed costs at the bottom?

19 A. Yes. Components of fixed costs is the
20 last paragraph.

21 Q. Yes. Let's narrow the search for the
22 law. On -- here you state that "4928.01(A)(42)
23 requires that 'Prudently-incurred costs...must
24 exclude any return on investment in common equity';
25 is that correct?

1 A. That's correct. That's what we read in
2 the law.

3 Q. Okay. So you would agree that the law
4 prohibits any return from being passed on to
5 customers.

6 A. I'm not a lawyer but that's what it looks
7 like, yes.

8 Q. Okay. And I am not asking you for a
9 legal opinion, just in your audit of this, your
10 regulatory opinion. In your analysis, you just
11 pointed to that you believe -- you concluded that
12 component D of the fixed costs of the OVEC bill seems
13 to be such a return that is excluded in this section;
14 is that correct?

15 A. It appears to be, but we -- our intention
16 was to flag it for the Commission to interpret.

17 Q. Well, isn't part of doing a prudency
18 audit determining whether the utility follows the
19 rules of the Commission and the legal framework?

20 A. It is, but also we are, you know, able to
21 flag recommending further review by the Commission.

22 Q. Okay. Let's look at -- well, speaking of
23 component D, it's identified in the ICPA as a payment
24 per common share similar to a dividend; is that
25 right?

1 A. That's how they describe it.

2 Q. Okay. And it's a return to OVEC and the
3 sponsoring owners who own the capital of that
4 company; is that right?

5 A. That's our understanding.

6 Q. And you are recommending that the
7 Commission look at it because you believe that the
8 statute prohibits the collection of it or the --
9 excuse me, the inclusion of it in the LGR Rider.

10 A. We think that's a possibility.

11 Q. Okay. And it's your understanding that
12 this component was included on the OVEC bills; is
13 that right?

14 A. Yes, it is included in the OVEC bills.

15 Q. And it's your understanding that the
16 EDU -- the utilities paid these bills that included
17 the component D which was then passed on to
18 customers; is that correct?

19 A. That's correct.

20 Q. And according to your audit reports,
21 component D is itself a return to the owners of OVEC;
22 is that right? You state that on page 9.

23 A. Correct.

24 Q. And did you recommend a disallowance and
25 return to customers of the component D that was

1 collected from customers that you believe was a
2 return on investment that is explicitly excluded from
3 4928.01 when defining prudently incurred costs?

4 A. No. We recommended that the Commission
5 examine. It seemed to us to be in a gray area that
6 required a Commission's view.

7 Q. And if you turn back to page 11, you
8 questioned the recovery of this type of cost in the
9 2019 audit as well, didn't you?

10 A. We did. In the Duke audit you can see
11 that in Figure 1.

12 Q. And similarly you did not recommend a
13 disallowance in the 2019 audit, did you?

14 A. We did not recommend a disallowance.

15 Q. Switching to fuel costs, and that's in
16 your recommendations on page 10 of the audit reports,
17 under the ICPA, OVEC bills AE -- bills the
18 utilities -- each utility, I should say, for
19 fuel-related expenses; is that correct?

20 A. That's right, fuel and variable cost.

21 Q. And that's under Section 5.02 of the
22 ICPA?

23 A. I can't bring to mind how the ICPA is set
24 up.

25 Q. The section that discusses fuel and

1 variable costs appears to be Section 6.1.1.1. Could
2 you turn there, please. It's on page 51 of the Duke
3 report.

4 A. Okay. I'm there.

5 Q. Chapter 6 is fuel and variable costs; is
6 that correct?

7 A. That's correct.

8 Q. And that's probably the same section
9 title and number for all of the audit reports?

10 A. Yes, yes.

11 Q. Is it your understanding that the fuel
12 costs charged to the utilities are then passed on to
13 customers through the LGR Rider?

14 A. Yes. So the fuel costs impact the OVEC
15 bill which, as we saw, and checked through the
16 journal entries and flowed through the LGR Rider so
17 that's -- we demonstrated that in Figures 8 and 9.

18 Q. And the fuel and variable cost expenses
19 comprise a significant portion of the OVEC's bills
20 and costs assessed to customers; is that right?

21 A. I am looking for a breakout of the energy
22 versus capacity portions of the bill. The fuel
23 charges are in the energy portion.

24 Q. I believe on 51 under scope you state
25 that fuel and variable cost expenses comprise a

1 significant portion of the OVEC's costs to Duke's
2 customers; is that correct?

3 A. Yes.

4 Q. And your -- it's your understanding that
5 OVEC's largest sponsoring company is AEP; is that
6 right?

7 A. I believe they have the largest PPR.

8 Q. And it's your understanding that AEP
9 is -- provides the coal procurement and other related
10 services for OVEC?

11 A. AEPSC, yes.

12 Q. Thank you for that clarification. SC
13 meaning AEP Service Corp.?

14 A. Yes.

15 Q. And if we look -- the audit report scope
16 states that the audit includes an assessment of
17 OVEC's fuel operations and maintenance related
18 expenses; is that accurate?

19 A. I'm sorry. Can you point me to that?

20 Q. Sure. It's -- if you go back to it's
21 just outlined in the scope section. I am just trying
22 to lay a foundation here. If you go to item 4 on
23 page 8 of your audit. It's in your audit. No, it's
24 in the audit.

25 A. In the audit page 8? Page 8?

1 Q. Page 8 of the audit. Under your scope of
2 work No. 4, fuel and variable costs.

3 A. Right.

4 Q. Does it refresh your recollection that
5 the scope of the audit includes an assessment of
6 OVEC's fuel operations and maintenance related
7 expense?

8 A. Yes.

9 Q. And this assessment includes a comparison
10 of incurred fuel costs and market prices to evaluate
11 the reasonableness of fuel expenses during the audit
12 period?

13 A. Yes.

14 Q. And going now back to the chapter 6 that
15 we were just at, could you look at 6.1.3.6 which is
16 on page 58?

17 A. On page 58, yes, I'm there.

18 Q. And if you switch over after Figure 8,
19 there is your conclusion. Do you see that?

20 A. Are we looking at page 59?

21 Q. Yeah. If you look at the top of 59, it
22 states LEI found that for the Clifty Creek plant, the
23 coal purchase prices during the audit period were
24 significantly higher than the spot price; is that
25 correct?

1 A. That's correct.

2 Q. And coal prices were also higher for
3 Kyger Creek; is that right?

4 A. That's correct.

5 Q. And the higher coal prices were mainly
6 due to the expensive coal that OVEC purchased
7 pursuant to a long-term contract entered into nearly
8 10 years ago with one supplier?

9 A. For Clifty, yes.

10 Q. And are you aware of that supplier?

11 A. I recall -- it's redacted.

12 Q. Do you -- well, I will ask you. Do you
13 recall in the hearing of the last audit it was
14 determined that the supplier that we are talking
15 about was disclosed in a public document and then
16 that supplier's name was made public at that time?

17 A. I did not realize that.

18 MS. BOJKO: Your Honor, that's all --
19 attest that that's the case and our witness cited to
20 publicly-available documents and actually disclosed
21 the name, but if it's your preference, I can still
22 just call it supplier if you would like.

23 MS. AKHBARI: Can Miss Bojko identify the
24 docket and the hearing she is referencing?

25 EXAMINER ADDISON: Yeah. Could you

1 just -- the case number is escaping me, Ms. Bojko.

2 Can you give us that case number?

3 MS. BOJKO: I think it actually was
4 discussed in the AES audit that was just a month ago.

5 EXAMINER ADDISON: Is it Case No. 20-165;
6 is that right?

7 MS. BOJKO: 20-165, yes.

8 MS. AKHBARI: I would just note this is a
9 different auditor, so she wouldn't have any
10 recollection of what transpired in 20-165.

11 EXAMINER ADDISON: Yeah. Why don't we go
12 ahead. We'll continue to treat it as confidential.
13 Again, if the parties would like to discuss that
14 after, you indicated that this particular supplier
15 may be named in another testimony filed in this case,
16 so we'll take it up then.

17 MS. BOJKO: Okay. Your Honor, I have
18 also been informed it was in public testimony filed
19 in this case as well as in 20-167. So I couldn't
20 hear Duke's objection but -- except for she said
21 something about a different auditor. I think --

22 EXAMINER ADDISON: I think we are going
23 to keep it confidential for now. If parties would
24 like to discuss options moving forward, we can
25 certainly take that up when whichever witness has

1 that attached to his or her testimony at that time.

2 So why don't we continue on.

3 Q. (By Ms. Bojko) Dr. Fagan, are you aware
4 that the supplier in question has been -- I am just
5 going to say supplier, so we will keep it
6 confidential. Do you know what I mean when I say
7 supplier? I am referring to a supplier of a coal
8 contract, not a CRES supplier or anything. We are
9 talking about the coal contract supplier.

10 A. That was entered into in 2012?

11 Q. That was entered into with OVEC, correct.

12 A. For that particular contract, yes. I
13 know what you mean, yes.

14 Q. Are you aware that the coal supplier in
15 question has been linked to House Bill 6 which
16 created the LGR Rider?

17 A. I was not aware.

18 Q. As part of your audit of the prudence of
19 the actions of the utilities, did you review the high
20 coal contracts and determine if there was any
21 imprudence in entering into any such contracts or
22 specific term of the contracts?

23 A. We did not find that contract imprudent.
24 It was entered into in 2012 which was a period of
25 time for which coal prices, I think from about 2002,

1 had been increasing pretty dramatically. So entering
2 into a contract at that time would probably have
3 involved higher prices. And in the meantime prices
4 have fallen.

5 MS. BOJKO: Your Honor, I asked if she
6 reviewed the contracts to determine.

7 EXAMINER ADDISON: I think she answered
8 she reviewed the contract.

9 MS. BOJKO: Oh, I didn't hear that.

10 Q. (By Ms. Bojko) So you reviewed the
11 contracts; is that what you are telling me?

12 EXAMINER ADDISON: This particular
13 contract.

14 Q. (By Ms. Bojko) Well, did you review the
15 coal contracts that the utilities entered into?

16 A. My staff reviewed the contracts, and I
17 looked at their summary of results.

18 Q. Okay. I think you spoke to the part of
19 my question that you reviewed the contracts in
20 determining imprudence with regard to the timing of
21 the contract. My second part of my question is did
22 you review the coal contracts to determine if there
23 was any imprudence with regard to the specific terms
24 and conditions of the contracts?

25 A. The -- to the extent that the terms and

1 conditions were the prices, the year they were
2 entered into, the quantities, I think the coal
3 quality, but I can check. Those are the terms that
4 we reviewed.

5 Q. So you reviewed price, quality, and
6 quantity; is that right?

7 A. Let me check. Quantity, quality, unit
8 price, the effective date, and the term.

9 Q. Term meaning length?

10 A. Yes.

11 Q. Did you review out clauses of the
12 contract in your prudency review?

13 A. I did not.

14 Q. It's true, isn't it, that you determined
15 that these contract prices are above current market
16 price?

17 A. I don't think all of them. Do you want
18 each one?

19 Q. If you look at -- I'm sorry. You weren't
20 finished. I apologize.

21 A. So are you interested in the individual
22 contracts or the weighted average or?

23 Q. I am trying not to talk about
24 confidential information. I -- I thought you made a
25 general finding that the contract prices are above

1 current market prices. Are you saying that it's on a
2 contract-by-contract basis you made that
3 determination?

4 A. The figure -- or we talk about at least
5 in the Duke report, Figure 37 and 38 on page 58, we
6 did that on a weighted average basis. There may be
7 some contracts that were -- I have to look. I can
8 look back at the original ones that were below the
9 spot prices. But on a weighted average basis for
10 2020, they were higher.

11 Q. On a weighted average basis -- I'm sorry.
12 You are losing your voice.

13 A. I know. I keep drinking water. It
14 doesn't help.

15 MS. WILSON: Your Honor, can we go off
16 the record for a moment, please?

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

19 (Discussion off the record.)

20 EXAMINER ADDISON: Let's go back on the
21 record.

22 MS. BOJKO: I'm sorry. I don't remember
23 where I left off, and I didn't make a mark.

24 EXAMINER ADDISON: Oh, Ms. Bojko. Can we
25 have the last question, please?

1 MS. BOJKO: Okay. I got it.

2 EXAMINER ADDISON: You got it? Thank
3 you, Karen.

4 Q. (By Ms. Bojko) Let's look at page 59 I
5 think is -- I think -- well, before we do that, 58
6 you did respond to me previously that the weighted
7 average coal contract price for Clifty and Kyger were
8 higher than market; is that a correct
9 characterization?

10 A. That's correct.

11 Q. Okay. And in Section 6.2.4, if you look
12 back at page 69 of the audit, Duke audit report, here
13 you recommend that Duke, or any utility for that
14 matter, in their role on the Operating Committee,
15 that they encourage OVEC to provide less coal through
16 long-term contracts; is that correct?

17 A. This is on page 69.

18 Q. I'm sorry. Go to page 71. I might have
19 had a different utility cite.

20 EXAMINER ADDISON: That's going to count
21 against your cross estimates.

22 A. Yes, that was one of our recommendations.

23 Q. At any time during the audit period, did
24 AEP encourage OVEC to secure less coal through
25 long-term contracts? Or, I'm sorry, I said AEP. Do

1 you know if any utility encouraged OVEC to secure
2 less coal through long-term contracts?

3 A. I don't know.

4 Q. And I guess more specifically do you
5 know -- strike that.

6 And your suggestion that it might be more
7 prudent to have some short-term contracts rather than
8 being locked into long-term contracts is because the
9 short-term contract may potentially decrease costs
10 recovered from customers; is that right?

11 A. In the context of our recommendation, we
12 were thinking about it in terms of managing
13 inventories.

14 Q. In managing inventories would be meaning
15 that if the coal pile is too hot or too large that
16 you could order or take delivery of less coal, and
17 taking delivery of less coal would mean lower coal
18 prices to customers; is that right?

19 A. It would offer more flexibility going out
20 in future years if your contract is a shorter-term
21 contract. You are not as committed to the quantities
22 of coal further out in time when it's harder to
23 project your needs.

24 Q. Okay. In that -- if you have -- if you
25 take delivery of less coal, that would lower the

1 costs of coal during that period; is that fair?

2 A. It depends on the price of coal, but it
3 could help.

4 Q. And you also recommend that OVEC consider
5 changing its policies and practices for coal burn
6 outlooks; is that true?

7 A. I can find that spot but not that
8 forecasting is easy, but better projections of coal
9 burns would allow more accurate purchases of coal to
10 meet -- to meet their needs.

11 Q. And you also recommend that OVEC consider
12 changing its policies and practices regarding taking
13 deliveries of coal, correct?

14 A. We recommended that the Company in its
15 role in the Operating Committee encourage OVEC to
16 consider the requirements contracts. And again, it's
17 an option that would increase flexibility.

18 Q. And you determined -- or you found that
19 the coal inventories were much higher than target
20 levels during the audit period; is that right?

21 A. We found that they were higher. I don't
22 know that we said much but higher than targets.

23 Q. If you look at page 10 of the audit
24 report, the finding under fuel and variable cost
25 expense, you state coal inventories were much higher

1 than target levels in 2020; is that correct?

2 A. Yes.

3 Q. So it's your finding from your audit that
4 the OVEC units were purchasing more coal than what
5 they needed during the audit period; is that correct?

6 A. Yes; in a nutshell, yes.

7 Q. And you also determined that the Clifty
8 Creek plant was purchasing coal at inflated prices;
9 is that right?

10 A. We did not use the term inflated.

11 Q. Higher than market, is that a better
12 term?

13 A. It's higher than the spot market prices.

14 Q. It is your understanding that all coal
15 purchases or all coal -- excuse me, all coal burned
16 during the audit period, the costs are then passed on
17 to customers during that audit period, correct?

18 A. The coal -- the coal that is burned for
19 the generation in the audit period, yes.

20 Q. Just to be clear, the price that was paid
21 for that coal that then was burned during the audit
22 period is what's passed on to customers.

23 A. Yes.

24 Q. Did you attempt to quantify the cost to
25 ratepayers of -- let's step back.

1 Is it your understanding as well that a
2 must-run commitment strategy would burn more coal
3 than -- may burn more coal because they are running
4 all the time than an economic commitment strategy
5 plant?

6 A. If you are producing more electricity,
7 you are burning more coal, yes.

8 Q. So the strategy to run must -- run as a
9 must-run unit would have the effect of burning more
10 coal.

11 A. Compared to? If the must-run strategy
12 has you producing more generation -- generating more
13 than an economic commitment so if you are generating,
14 more, yes, you are burning more coal.

15 Q. And did you attempt to quantify the costs
16 to ratepayers of burning more coal under a must-run
17 strategy versus an economic strategy?

18 A. So that's a very similar question to the
19 one you asked before about re-dispatch analysis so we
20 did not do that.

21 Q. And no fuel procurement audits were
22 performed at the OVEC plants; is that correct?

23 A. I don't recall. Do you mean separate --
24 separate from this audit?

25 Q. I didn't hear that.

1 A. Do you mean separate from this audit?
2 Like separate audit of procurement practices or?

3 Q. Find it for you. Let me rephrase. Thank
4 you for pointing that out. There were no formal
5 internal fuel procurement audits performed by OVEC;
6 is that right?

7 A. Can you refer me to the page?

8 Q. Sure. I am on page 65 of the audit
9 report, Duke's.

10 A. Okay. That's correct.

11 Q. Wouldn't you agree that it would be
12 prudent for the utilities to evaluate their fuel
13 procurement if it is resulting in unnecessary costs
14 or higher than necessary coal inventories?

15 A. There are discussions of procurement
16 inventory levels, et cetera, between OVEC management
17 from the plant and the AEP fuel procurement team so
18 we -- it was not a formal audit, but it's -- it looks
19 at, you know, according to our information is a
20 monthly strategy review that we refer to on page 65
21 in the Duke audit.

22 Q. Did you evaluate whether OVEC could have
23 renegotiated any of its coal contracts with regard to
24 contract price, timing of deliveries, anything of
25 that nature?

1 A. They may have, or they may not have, but
2 we did not ask. We did not ask.

3 Q. Yeah. I just asked if you evaluated it,
4 so you didn't evaluate that.

5 A. We did not.

6 Q. Did you recommend a disallowance or a
7 return to customers for the purchase of the excess
8 coal?

9 A. We did not.

10 Q. Going back to page 11, isn't it also true
11 that you raised the higher coal inventories than
12 target and the coal burn forecasts inaccuracy in 2019
13 audit as well?

14 A. You are asking -- on the Duke audit we
15 did, yes.

16 Q. It would -- it would have also been for
17 AEP; is that correct?

18 A. That's correct, yes.

19 Q. So this is the second year in a row that
20 you have recommended or have found that the coal
21 inventories are higher than target and they do not --
22 it does not appear that that issue has been
23 addressed; is that correct?

24 A. No, not in the audit period, no.

25 Q. Let's go to Section 1.3 of your findings

1 section on page 9 again. Here it states that
2 "Overall, LEI found that the processes, procedures,
3 and oversight were mostly adequate and consistent
4 with good utility practice"; is that correct?

5 A. That's correct.

6 Q. And here you are referring to the
7 utilities' practices, procedures, and oversight; is
8 that correct?

9 A. That's correct.

10 Q. And with regard to the utilities'
11 practices, procedures, and oversight, in this finding
12 you did not use the word prudent; is that correct?

13 A. We did not.

14 Q. And looking at your use -- or qualifier
15 of the word mostly, you would agree with me that
16 there were areas where the Ohio utilities' practices
17 were not adequate and consistent with good utility
18 practice, correct?

19 A. We found there was areas that could be
20 improved upon.

21 Q. You also qualified your statement by
22 noting that the ICPA is in place and, therefore,
23 affects the OVEC operations; is that correct?

24 A. Given that the ICPA is in place and
25 customers will be charged for the cost of the plants

1 until at least May 2024.

2 Q. Right. As we discussed earlier, the RFP
3 doesn't condition prudence on the ICPA; is that
4 correct?

5 A. It does not.

6 Q. You also qualify your statement by noting
7 that customers are charged for the cost of the plants
8 until at least May of 2024; is that correct?

9 A. That was our understanding, yes.

10 Q. And is it fair to assume from your
11 statement that if either of these conditions did not
12 exist, your conclusion may be different?

13 A. No.

14 Q. I just didn't hear you.

15 A. No. No.

16 Q. And the next paragraph on the same page
17 states that "LEI's analysis shows that at this time
18 the OVEC plants cost customers more than the cost of
19 energy and capacity that could be brought -- bought
20 on the PJM wholesale markets"; is that correct?

21 A. Yes.

22 Q. Here you seem to be saying from a pure
23 economic standpoint it is not in customers' best
24 economic interest to keep the plants running at a
25 loss; is that a fair reading?

1 A. It's not a fair reading. You're -- I
2 think your implication is a going-forward statement.
3 And the audit is a statement about this time, the
4 audit period.

5 Q. But if in the next audit the analysis
6 still shows that the OVEC plants cost customers more
7 than the cost of energy and capacity in the PJM
8 markets, your conclusion would be the same, correct?

9 MS. AKHBARI: Objection. It's outside
10 the scope of this proceeding.

11 EXAMINER ADDISON: I'll allow the witness
12 to answer the question to the extent she has an
13 opinion on it.

14 A. I don't know what the following audit
15 would show, so I don't know what our view would be.

16 Q. Well, you did find in the previous audit
17 that this statement was true, so in 2019 and 2020 --
18 '20 you have found that the OVEC plants cost
19 customers more than the cost of energy and capacity
20 that could be bought on the PJM market, right?

21 A. Correct.

22 Q. And in -- if you look at page 29 of the
23 Duke audit, on page 29, this section states that OVEC
24 plants cost more than they earn; is that correct?

25 A. Yes. For this audit period, yes.

1 Q. And this section states that OVEC plants
2 costing more than they earn is obvious; is that
3 right?

4 A. Well, yes, because the rider is a charge
5 rather than a credit so, yes.

6 Q. And during all three -- or during the
7 audit period, all three utilities experienced net
8 losses; is that correct?

9 A. Yes. Or -- I don't know net losses is
10 quite the right word, but the LGR Riders were charges
11 to customers in almost every month but not every
12 single month but in most every month for most of the
13 companies.

14 Q. And so during the audit period, the LGR
15 Riders were charges for all of the three -- net
16 charges for the three utility Companies?

17 A. They were charges in almost every month.
18 I think there might have been a month where they were
19 a credit, but I can check that.

20 Q. Did --

21 A. You don't want me to check?

22 Q. Go ahead.

23 A. This is in one of the confidential
24 reports. There was a net credit in one of the months
25 for one of the companies. I just wanted to check.

1 Q. And that net credit was due to a true-up
2 from the 2019 period; is that right?

3 A. There were charges in every one for all
4 the companies subject to checking one entry that we
5 have for one month. We have a credit of demand
6 charges in August 2020 for one of the Companies, and
7 I just want to check whether it's offset by the
8 energy piece. It looks like it was not, so net
9 charge was positive for all the months. So, yes, all
10 months, all the companies.

11 Q. Okay. And going back to my question
12 about did LEI determine whether the uneconomic nature
13 meaning the plants costs more than they earned is
14 likely to change going forward? Did you respond to
15 that?

16 A. We did not look at that on a
17 going-forward basis.

18 Q. Okay. Can you turn to 4.3.3.2? It's on
19 page 30 of the Duke report.

20 A. Yes, I see it.

21 Q. Okay. Here you do state that
22 customers -- it's in 4.3.3.2, that "customers could
23 be locked into paying a premium for energy and
24 capacity from the OVEC plants in future years,
25 through market prices could -- though market prices

1 could change in the future, so it is possible that
2 the premium could become a discount," but that they
3 could be locked into these for another 20 years; is
4 that right?

5 A. Given the ICPA, but our point was that
6 you don't know going forward whether it would be a
7 premium or a discount because I don't know the energy
8 prices going forward.

9 Q. But you did conclude customers could be
10 locked into paying a premium in future years,
11 correct?

12 MS. AKHBARI: Objection, asked and
13 answered.

14 EXAMINER ADDISON: I think the witness
15 just answered it as well. Thank you.

16 MS. BOJKO: I didn't hear the answer.

17 THE REPORTER: I didn't hear it either.

18 MS. AKHBARI: Then I will renew my
19 objection.

20 EXAMINER ADDISON: Perfect. I am going
21 to sustain the objection.

22 MS. BOJKO: I'm sorry. It was just asked
23 and answered, your Honor?

24 EXAMINER ADDISON: Yes.

25 MS. BOJKO: Okay.

1 Q. (By Ms. Bojko) So based on this
2 conclusion in your audit report, it's correct to
3 assume that the OVEC plants will likely be -- will
4 not be competitively viable going forward?

5 A. We don't know that.

6 Q. And if the plants continue to cost more
7 than they earn, the utilities will continue under the
8 LGR Rider, and the statute that we talked about
9 earlier will continue to receive recovery of those
10 costs from customers; is that correct?

11 A. There is a number of factors there but
12 they might or they might not.

13 Q. Well, customers have to pay the net costs
14 of OVEC; is that correct?

15 A. Under the LGR Rider, yes.

16 Q. So customers pay all the costs of OVEC
17 regardless of the revenues that it receives; is that
18 correct?

19 A. That's our understanding, yes.

20 Q. So if the plants lose money, customers
21 pay for that loss; is that correct?

22 A. That's correct. They -- they pay the net
23 of the OVEC costs, net of energy and capacity market
24 revenues, so if the OVEC costs are higher, then it's
25 an LGR Rider charge and they pay it. And if it's the

1 other way around, then it's an LGR credit, and they
2 would receive it.

3 Q. Go back to page 9, please. Will you go
4 back to Section 1.3?

5 A. I'm there.

6 Q. Okay. Isn't it true that except for two
7 commas these first two paragraphs are identical to
8 LEI's findings and recommendations in the same
9 section in the prior Duke and AEP audit reports
10 conducted by LEI?

11 A. I would like to check them against the
12 other two reports.

13 MS. BOJKO: Your Honor, for
14 identification purposes can I mark as OMAEG
15 Exhibit 6, I think -- this is just an excerpt. I am
16 not -- before you all scream at me, I am not trying
17 to put in the entire audit report. I was trying
18 to -- I will just mark this as Exhibit 6 to refresh
19 her recollection. And it is the cover page of the
20 2019 audit report and just the LEI findings.

21 EXAMINER ADDISON: It is so marked.

22 (EXHIBIT MARKED FOR IDENTIFICATION.)

23 MS. BOJKO: May I approach, your Honor?

24 EXAMINER ADDISON: You may.

25 MS. AKHBARI: Kim, which EDU is this?

1 MS. BOJKO: You won the lucky straw right
2 now. It's Duke.

3 MS. AKHBARI: Got it.

4 Q. (By Ms. Bojko) Do you have in front of
5 you what's been marked as OMAEG Exhibit 6?

6 A. Yes.

7 Q. Does this look familiar that it is the
8 LEI public version of the audit report in the Duke
9 case for the 2019 audit?

10 A. Yes.

11 Q. If you turn to the next page of the
12 excerpt, it's page 9 and it's 1.3. It's the same
13 section number, "LEI findings and recommendations."
14 Do you see that?

15 A. Yes.

16 Q. So do you want to take a moment and
17 refresh your recollection?

18 A. Yes, I've refreshed.

19 Q. Does this refresh your recollection that
20 if I were to ask you the question again, which was
21 isn't it true that except for two commas these first
22 two paragraphs are identical to LEI's findings and
23 recommendations in the same section in the prior Duke
24 audit conducted by LEI?

25 A. That's correct, yes.

1 MS. BOJKO: Your Honor, may I mark for
2 identification purposes OMAEG Exhibit 7, the similar
3 cover page and excerpt for the AEP/Ohio Power Company
4 audit in 2019?

5 EXAMINER ADDISON: It is so marked.

6 (EXHIBIT MARKED FOR IDENTIFICATION.)

7 MS. BOJKO: May I approach?

8 EXAMINER ADDISON: You may.

9 Q. (By Ms. Bojko) Do you have in front of
10 you what's been marked OMAEG Exhibit 7?

11 A. Yes.

12 Q. And does this appear to be the LEI audit
13 report from 2019 that you prepared for the audit of
14 OVEC Power Purchase Agreement Rider costs for Ohio
15 Power or AEP Ohio?

16 A. Yes.

17 Q. And if you turn to page 9, do you see
18 Section 1.3, "LEI's findings and recommendations"?

19 A. Yes.

20 Q. And except for the word however this time
21 and two commas, isn't it true that these first two
22 paragraphs are identical to LEI's findings and the
23 recommendations in the same section in the current
24 2020 AEP audit report conducted by LEI?

25 A. Yes.

1 Q. Dr. Fagan, just a few more clarification
2 questions from some things that we talked about
3 earlier, or that you talked with Mr. Finnigan about
4 yesterday. I'm going to go back to Staff Exhibit 8C
5 and the discussion that we had earlier about
6 available energy allocation ratio. Do you recall
7 that?

8 A. Let me get the exhibit. Okay. I have
9 the exhibit. I have the exhibit.

10 Q. Oh. Do you recall our discussion about
11 the available energy allocation ratio?

12 A. Yes.

13 Q. I think I now understand what the PPR is.
14 Did you say you don't know what the available energy
15 allocation ratio is that OVEC used?

16 A. So it's the share that OVEC used to
17 allocate the monthly OVEC bills company by company.
18 It's very slightly different from the PPR.

19 Q. Okay. Do you know what it is, what the
20 ratio is based on, what -- it's not based on -- we
21 know that the PPR is based on their power
22 participation ratio which is 4.9 percent; is that
23 correct?

24 A. That's correct.

25 Q. So what is that -- what is the ratio

1 based upon?

2 A. We couldn't find a definition of the
3 energy allocation ratio in the bills.

4 Q. I'm sorry. I didn't hear you.

5 A. We couldn't find a definition of the
6 available energy allocation ratio in the OVEC bills.

7 Q. So does that mean you don't know what it
8 is exactly?

9 A. It's slightly different from the PPR. It
10 may have to do with FirstEnergy's share, but I'm not
11 sure, so I don't exactly know. It's different by
12 like a few hundredths of a percent.

13 Q. Okay. Thank you. And just to clarify,
14 you didn't actually audit OVEC's costs, did you? You
15 just took the OVEC bills and made sure they were
16 allocated to the utilities correctly.

17 A. So the portions of the audit, for
18 example, having to do with the fuel costs, those are
19 most of what OVEC's variable costs are. They are the
20 fuel costs, so we audited those. We looked at coal
21 contracts, et cetera, so we audited those costs.

22 The demand charges have to do with
23 several categories that we have in the report. One
24 of those was component D, so as we audited those
25 demand charges, we uncovered the -- what we feel is

1 an ambiguity in component D, and our recommendation
2 resulting from that was for the Commission to
3 consider the definition and whether it ought to be,
4 you know, for their -- for their decision making; so,
5 yes, we did audit the costs in the OVEC bills.

6 Q. The certain costs you have just outlined;
7 is that right?

8 A. So the OVEC bills have an energy charge
9 and a demand charge, and we audited both of those.
10 The energy charge is mostly fuel so -- and that's
11 coal, so we audited the coal contracts. And then the
12 demand charges, we looked at the categories of the
13 demand charge and audited those.

14 MS. BOJKO: One moment, your Honor.

15 EXAMINER ADDISION: I'm sorry, Ms. Bojko?

16 MS. BOJKO: One moment, your Honor.

17 Q. (By Ms. Bojko) It's fair to say that you
18 did not -- you didn't audit any PJM costs that would
19 be in the OVEC bill, did you?

20 A. So PJM costs come -- come from PJM, so
21 they wouldn't be part of the OVEC bill except I guess
22 transmission -- to the extent that OVEC bill has
23 transmission expenses and things like that. We
24 didn't ask OVEC to show us their PJM settlements, but
25 we looked at the PJM settlements for each of the

1 companies.

2 Q. Okay. And I'm sorry. I just didn't
3 hear. Did you look at demand costs or not -- demand
4 charges or not?

5 A. So we looked at the demand charges.
6 There's several categories. There is -- you can
7 probably see on the OVEC bill so there is like
8 interest category, O&M expense, taxes. There's
9 component D, post-retirement benefit,
10 decommissioning. So we looked at those aspects.

11 Like I said, we flagged component D. We
12 had questions about that. We didn't do a detailed
13 analysis of, for example, the post-retirement benefit
14 obligation as I mentioned. That seemed well out of
15 scope. Then, you know, ditto with decommissioning
16 demolition. So there were pieces that would have
17 required very sensitive analysis that was out of
18 scope. But then there were other pieces where we
19 felt that it was within scope, for example, to flag
20 the question of the component D which is part of the
21 demand charge.

22 Q. Okay. Thank you. If you could turn to
23 AEP's audit report, a couple audit report-specific
24 questions.

25 A. AEP.

1 Q. I'm looking at page 31.

2 A. Okay.

3 Q. On page 31, it's at the very last
4 paragraph of that page, do you see that?

5 A. Yes.

6 Q. Here you state that LEI's calculated
7 numbers were very close to what OVEC arrived at. Do
8 you see that?

9 A. In the last paragraph?

10 Q. Well, it's kind of been both paragraphs,
11 yeah. Sorry. Look at 4.3.3.1.

12 A. Yes.

13 Q. You state that the -- you audited this --
14 the energy charges and the demand charges and that
15 the numbers were very close; is that correct?

16 A. That's right. So we came up with the
17 number per megawatt-hour, and as a check for
18 consistency, we looked at the OVEC annual report, and
19 we were within a couple of dollars over their
20 estimate for 2020.

21 Q. So, I mean, that's my question. So you
22 believe that a couple dollars or I think it's \$1.81 a
23 megawatt-hour is very close; is that what your
24 statement is?

25 A. Yes. We don't know exactly -- exactly

1 how the 2020 number, the OVEC annual report was
2 calculated. We calculated in Figure 12 our number
3 based on monthly averages, I believe. Let me just
4 check. And they might have used hourly data, so it
5 wouldn't necessarily have them match perfectly.

6 Q. You're not trying to imply that a
7 difference of \$2 is minimal from a customer
8 perspective, are you, a couple dollars per
9 megawatt-hour by the way from a customer's
10 perspective?

11 A. We did not.

12 Q. Okay. Because you -- you can appreciate
13 that a manufacturer consumes -- if a manufacturer
14 consumes 125,000 megawatt-hours a year, that this
15 would be an additional cost of \$226,000 to that
16 customer.

17 A. I think what you are describing is
18 hypothetical because we looked at the cost on a
19 megawatt-hour basis to help us get a feel for how it
20 compares with the market costs. But the costs to the
21 customer and the OVEC, the riders, that's based on, I
22 think we talked about it before, the total OVEC bill.

23 So the comparison, we came up with a
24 number that was within a couple of dollars of the
25 OVEC annual report. That was just telling us that we

1 were in the ballpark of using the numbers correctly
2 and understanding it but not implying that a customer
3 that uses a lot of energy wouldn't care about it.

4 Q. Okay. Could you turn to -- now I am
5 going to go to the AES report. I am looking at
6 Figure 9 on page 25.

7 A. Okay. I'm there.

8 Q. Did you say you're there?

9 A. Yes.

10 Q. If you look at the Figure 9, would you --
11 would you consider the headings to be confidential?

12 A. So -- so I don't determine what's
13 confidential. It's given to us.

14 MS. BOJKO: Your Honor, just to be safe I
15 can hold that to the confidential session.

16 EXAMINER ADDISON: Thank you.

17 Q. (By Ms. Bojko) Okay. Let's go to -- I am
18 looking at Figure 9 now for Duke. Let me see if this
19 is confidential. No, it's not. Okay. Figure 9 for
20 Duke which is on page 26.

21 A. I have that it's confidential.

22 Q. If you look at the source, that's not
23 confidential in my copy. Is that your understanding?

24 A. The source is the DRs. Some of the DRs
25 themselves are confidential, but I think the fact

1 that we used them is not confidential.

2 Q. Okay. So my question is the asterisks.
3 It says "Includes two parts: One-time reversal of FE
4 reserve, and a one-time recovery of broker fees."
5 What would be the one time recovery of broker fees?
6 Broker fees for what?

7 A. So broker fees that were not recovered in
8 a previous filing.

9 Q. I'm sorry. I can't hear you.

10 A. So they're broker fees that were -- oh, I
11 see what you are asking. You are asking about column
12 H?

13 Q. I was asking about the source that says
14 one-time recovery of broker fees to ask what that
15 was.

16 A. Okay. So the one-time recovery is in
17 column I. And it's -- column H is the normal monthly
18 broker fees. And there is a reversal of the
19 recovery -- I'm sorry, additional recovery of the
20 fees. I think we describe it on the previous page.
21 The fees -- if I look at page 25, I can check what's
22 redacted.

23 Okay. So on page 25, we had a reversal
24 of a reserve that was excluded until FES's bankruptcy
25 was resolved and a one-time recovery of broker fees

1 that were not recovered in a previous filing and
2 those together are column I.

3 Q. Okay. I am just asking generally like if
4 you look at the description on page 25, which is not
5 confidential, what is the broker fee in like what --
6 a broker for what?

7 A. So our understanding is that it's the use
8 of a broker for making energy market offers possibly.
9 I don't know that we have a detailed description of
10 what that is actually. In fact, I don't think we do.
11 But there may be a more detailed description in the
12 Data Request but I don't recall what it is and we
13 didn't describe it here.

14 Q. Okay. Why would Duke have a broker fee
15 but it's not in AEP's Figure 9 with the same
16 information?

17 A. So we are using the information from
18 their journal entries which have to do with their PJM
19 settlements. So in the case of Duke, it was broken
20 out separately, so we tracked it separately. In the
21 others it prob -- I don't know whether they have
22 those charges or not, but it might not have been a
23 separate item. But I would have to look at the DRs
24 to be able to be confident about that.

25 Q. Okay. In -- in questions in response to

1 Mr. Finnigan and maybe part of my beginning
2 discussion, you talked about the best interests of
3 customers being too broad. Do you recall -- do you
4 recall that?

5 A. It was in the broader purpose of the
6 audit, but it wasn't in the scope of investigation.

7 Q. Did you ask the Commission or Staff for
8 clarification on what that meant if you believed it
9 to be too broad in either the 2019 audit or the '20
10 audit?

11 A. We did not.

12 Q. And I think also in response to
13 Mr. Finnigan, he was talking to you about
14 4928.01(A)(42) which is the definition of legacy
15 generation resource. It's on page 9. Do you recall
16 that discussion?

17 A. Page 9 of one of the audits?

18 Q. Yes. Page 9 of the audits. There was
19 the reference to the definition of 4928.01(A)(42) and
20 I believe in questions from Mr. Finnigan, you might
21 have stated that the exclusion of the return language
22 was too broad or vague? Do you recall that?

23 A. Are we looking at page 9 of one of the
24 audits?

25 Q. Page 9 of Duke. What are you looking at?

1 Which one are you looking at?

2 A. Duke.

3 Q. 1.3, the components of fixed costs.

4 There is a definition right there.

5 A. Correct.

6 Q. Okay.

7 A. I'm in the right place.

8 Q. Do you recall a discussion that it was
9 too vague or broad?

10 A. No.

11 Q. Okay. So you don't believe this language
12 is vague?

13 A. Our reading of it when we read what was
14 written in ORC 4928.01(A)(42), it says "The costs
15 must include any return on invested common equity,"
16 and as we said right after that, that component D
17 seems to be such a return, so we felt that the
18 Commission would wish to examine this.

19 MS. BOJKO: Okay. Thank you for that
20 clarification.

21 Your Honor, I have nothing further.
22 Thank you so much, Dr. Fagan, for your time today.

23 THE WITNESS: Thank you.

24 EXAMINER ADDISON: Thank you, Ms. Bojko.

25 MS. BOJKO: Except for confidential.

1 THE WITNESS: Your Honor, may I have a
2 quick break?

3 EXAMINER ADDISON: Absolutely. Let's
4 take a quick 5-minute break. Go off the record.

5 (Discussion off the record.)

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

8 Ms. Whitfield.

9 MS. WHITFIELD: Yes.

10 - - -

11 CROSS-EXAMINATION

12 By Ms. Whitfield:

13 Q. Hi, Dr. Fagan. My name is Angie Paul
14 Whitfield. I represent The Kroger Company. And I
15 just have a very few limited questions.

16 EXAMINER ADDISON: Ms. Whitfield, would
17 you use a mic? I'm sorry. There is a lot of
18 background noise.

19 Q. Okay. Can you pull up what's Staff
20 Exhibit 8C? All of my questions are going to relate
21 just to your errata.

22 A. I have that.

23 Q. Now, I just want to confirm that in this
24 errata for each of the figures that you have changed
25 or adjusted, you have not listed any sources in

1 Exhibit 8C, correct?

2 A. We didn't put any sources in because the
3 sources are the same as the figures that they are
4 replacing.

5 Q. Okay. And so -- I'm sorry. I didn't
6 quite hear that, but I think you said the original
7 sources from the audit reports still apply.

8 A. Correct. Yeah.

9 Q. And with respect to -- in several of the
10 bullet points, you reference in your descriptions
11 AEP's comments. Do you recall that?

12 A. The initial comments, yes.

13 Q. Are you adding those initial comments as
14 a source to those figures?

15 A. No. We are not adding them as an
16 additional source. They pointed out that we made
17 miscalculations, and it went back to the original
18 sources with the exception of, for example, on page 2
19 the second bullet down where that was for the AEP
20 audit on pages 66 through 68, Figures 40 and 42, we
21 didn't have full load burn. So we didn't change --
22 we added as a citation.

23 Q. And did you ask or receive any
24 supplementation to the sources that you originally
25 listed in the various audit reports when you were

1 preparing Exhibit 8C?

2 A. Except for the page -- it appears in a
3 couple of pages, but on page 2 in the second bullet,
4 the AEP's initial comments said the different -- the
5 day's inventory should be different numbers, but we
6 didn't -- we didn't have a way to calculate that, so
7 we didn't actually change the figure.

8 Q. Okay. But I guess what I was wanting to
9 see is, for example, you reference various data
10 responses in your sources in the original audit
11 reports, correct?

12 A. That's correct.

13 Q. And what I was trying to clarify is you
14 did not receive or request any supplementation to
15 those Data Responses in preparation of 8C, correct?

16 A. That's correct, yes.

17 Q. And then if you turn to page 2, the first
18 bullet point on there related to Figures 32 and 33,
19 you reference a Data Response that is not listed as a
20 source. It's LEI-DR-02-005. And I'm just trying to
21 figure out if we should consider that a source now.

22 A. Let me double-check. So the data
23 source -- oh, I think I see what you mean.

24 Q. Yeah.

25 A. Attachment 2. LEI-DR-02-006 Attachment 1

1 that we're mentioning in the errata and that
2 corresponds to the source in Figure 33, so it's the
3 same source, and then DR-02-006 Attachment 2 that
4 we're talking about in the errata, that is a source
5 in Figure 32, so it's the same -- it's not
6 additional. It's not an additional DR. It's the
7 same DR.

8 Q. Yes. In the first bullet point on page 2
9 though three lines down, you reference
10 LEI-DR-02-0005. That's not listed in the sources for
11 Figures 32 or 33 and I am just wondering should we
12 consider that a new source?

13 A. I'm sorry. Let me read that.

14 Q. Yep.

15 A. So the coal contracts that AEP provided
16 in 02-005 were the actual contracts. And the summary
17 data from the contracts that we used to create the
18 tables were in 006, so 005 is the foundational
19 contracts. The numbers are the 006 DR.

20 Q. Okay. Thank you. Now, if you could also
21 look on page 2 of Exhibit 8C, just a clarification,
22 am I correct that F column should actually be E,
23 correct? I think it's just a typo.

24 A. It should be E, yes.

25 Q. And then the second F column remains the

1 same.

2 A. Yes, it is.

3 MS. WHITFIELD: I am trying not to ask
4 you questions you have already answered.

5 Yeah, that's all. You answered
6 everything else. Thank you.

7 THE WITNESS: You're welcome.

8 EXAMINER ADDISON: Thank you,
9 Ms. Whitfield.

10 Ms. Nordstrom, anything in the public
11 session?

12 MS. NORDSTROM: Yes, I do have -- I do
13 have something in the public session just very
14 quickly.

15 EXAMINER ADDISON: Please continue. We
16 will see what we can get in.

17 - - -

18 CROSS-EXAMINATION

19 By Ms. Nordstrom:

20 Q. Hi, Dr. Fagan. My name is Karen
21 Nordstrom. I represent the Ohio Environmental
22 Council. I have just a couple of quick questions.
23 Sticking with Staff Exhibit 8C, the errata that
24 you're -- errata that you're looking at right there,
25 on page 2, the second bullet point, you discuss that

1 AEP raised that there are differences in the
2 procurement strategy. You looked at load burn, and
3 they said it should have used -- you looked at
4 average burn, pardon me, and it should have used full
5 load burn; is that a correct summary?

6 A. That's correct, yes.

7 Q. So what is the difference between average
8 burn and full load burn?

9 A. So the fuel procurement strategy, the
10 target is -- establishes how many days of coal supply
11 you need -- or that they want to have on hand, but
12 the number of days depends on how fast you use the
13 coal. So the fuel procurement strategy assumes that
14 the plant is running at full load, so you are using
15 more coal. We did our calculation based on the
16 actual average burns during the audit period.

17 So our new -- our denominator was smaller
18 which means the day's inventory on hand that we
19 calculated was higher. So when we -- we didn't have
20 full load burn data, but assuming that the days that
21 were mentioned by AEP in the initial comments are
22 correct, even so, even if those numbers are correct,
23 it's still inventories exceeded OVEC's targets in the
24 fuel procurement strategy itself. So even given if
25 those numbers are correct, it doesn't affect our

1 results or conclusions.

2 Q. And thank you. And why don't you have
3 access to the full load burn numbers?

4 A. We may not have asked the question as
5 pointedly as we ought to have. I don't think we were
6 denied the information, but we might not have asked
7 for the right information.

8 Q. Did you ask the Companies about their
9 fuel procurement methodology, if you remember?

10 A. Yes. That's in -- so that would be --
11 for example, in the AEP report, that would be
12 starting on page 52, 6.1.3.2.

13 Q. And in the Companies' responses, did they
14 state that they used the full load burn instead of
15 the average burn?

16 A. Let me read and refresh my memory.

17 Q. Okay. Certainly.

18 A. So I don't know that we use the phrase
19 full load, but on the bottom of page 52 in the AEP
20 audit, we note that -- it's under 6.1.3.3. "OVEC's
21 forecast for coal burn is based on its projected
22 generation for each of the units." So it's a
23 projection that they define based on a full burn,
24 whereas, our calculations were based on what actually
25 happened.

1 Q. Okay. Thank you. And so just one more
2 question, so when you asked the Companies about the
3 fuel procurement methodology, did they tell you that
4 they used the full load burn?

5 A. It's -- it's possible that it was in a
6 Data Request, and we didn't use the phrase in our
7 writeup, but it may or may not have been.

8 MS. NORDSTROM: Okay. Thank you. No --
9 nothing further, your Honor.

10 EXAMINER ADDISON: Thank you.

11 Mr. Dougherty, do you have any questions
12 for the public session?

13 MR. DOUGHERTY: No. It looks like
14 Ms. Bojko asked all my questions so thank you.

15 EXAMINER ADDISON: Thank you.

16 Mr. Sharkey, any questions at this time?

17 MR. SHARKEY: No, your Honor.

18 EXAMINER ADDISON: Mr. McKenzie?

19 MR. MCKENZIE: I do have just a limited
20 set of questions.

21 EXAMINER ADDISON: How are we feeling?

22 MR. MCKENZIE: 5 to 10 minutes.

23 THE WITNESS: 5 to 10 minutes is fine.

24 Thanks.

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CROSS-EXAMINATION

By Mr. McKenzie:

Q. Okay. Thank you. Dr. Fagan, my name is Matthew McKenzie. I represent AEP Ohio. I have three areas of questions I would like to ask you to clarify some items that were brought up in your discussion with Mr. Finnigan yesterday and today.

The first one relates to Figure 9 of the audit, so if you could please go to -- let's use the AEP Ohio audit report, if that's okay, which would be Staff Exhibit -- let's use 5C.

A. Confidential.

Q. Confidential. I am not going to ask you to talk about any of the numbers, but I am going to ask about some of the headings --

A. Okay.

Q. -- in a public nonconfidential way.

A. I am looking at Figure 9.

Q. Okay. Great. Figure 9, page 28, 29. If you could go to page 29, the second page of the figure, there is a column heading in the middle that says "Actuals Charged to Customers," correct?

A. Correct.

1 Q. You recall going through that with
2 Mr. Finnigan?

3 A. Yes.

4 MS. BOJKO: Your Honor, I'm sorry, but I
5 thought if it was blocked out -- I tried to ask about
6 headings, and I was told I had to do it in a
7 confidential session.

8 EXAMINER ADDISON: Well, you said you
9 were going to elect to do it in a confidential
10 session. You did not ask.

11 So let's continue, Mr. McKenzie.

12 MR. McKENZIE: Thank you.

13 Q. (By Mr. McKenzie) If you go then to page
14 35.

15 MS. BOJKO: But it is -- he is reading
16 confidential information.

17 MR. McKENZIE: Your Honor, the headings
18 are not confidential.

19 EXAMINER ADDISON: Yes, Mr. McKenzie.
20 Thank you. And I believe Mr. Finnigan referenced
21 several headings in his cross-examination, so if you
22 wanted clarification, you should have asked at that
23 time, so we'll just continue.

24 Go ahead, Mr. McKenzie.

25 MR. McKENZIE: Thank you, your Honor.

1 Q. (By Mr. McKenzie) Page 35, please.

2 A. Okay.

3 Q. In Figure 16, do you see column A,
4 PPA/LGR Revenue?

5 A. Yes.

6 Q. Do the figures in this column show the
7 amounts that AEP Ohio actually collected from
8 customers under the rider?

9 A. It would relate to the actual charges,
10 but the rider has more than one piece. The rider has
11 got a forward-looking piece in part A and that's part
12 of the collections as well.

13 Q. Okay. So is this part A? Part B? Both?

14 A. The actual revenues and charges so it's
15 part B.

16 Q. Okay. Thank you. And without divulging
17 the number, January 2020 was a credit to customers;
18 is that correct?

19 A. For -- yes, it was.

20 Q. And for all the months except for one,
21 AEP Ohio experienced an under-recovery; is that
22 correct?

23 A. That's -- when you are looking at the
24 whole rider which includes true-ups from previous
25 riders, yes.

1 Q. Okay. Thank you. And are you aware that
2 the utilities AEP Ohio, Duke, and AES work with Staff
3 in setting the Rider LGR rates?

4 A. I was not aware.

5 Q. Okay. Okay. Let me move to my next
6 area. Could you take out OCC Exhibits 4, 5, and 6,
7 please. Those were the letters with Figure 25
8 attached to them. And actually, Dr. Fagan, I
9 misstated. So OCC Exhibit 6 is a letter with
10 Figure 25 from AEP's report; is that correct?

11 A. Yes, it is.

12 Q. Okay. And then the next two, OCC 5 is
13 Figure 24 from AES, DP&L, and then the next one is
14 for Duke; is that correct?

15 A. Yes.

16 Q. Okay. Thank you. So let's go back to
17 OCC Exhibit 4, the AEP Exhibit. I'm sorry. I think
18 that might be 6. That's 6. Apologize. Let's just
19 go to 6, please.

20 A. Okay.

21 Q. Now, looking at the Figure 25, the energy
22 price per megawatt-hour, that's taken from the AEP
23 Gen Hub; is that correct?

24 A. That's correct.

25 Q. And then the similar figures for the

1 other utilities were taken at hubs for those
2 utilities; is that correct?

3 A. Correct, on a monthly average basis.

4 Q. Thank you very much. Do you know for a
5 fact that the AEP OVEC entitlement was sold or
6 settled in the PJM at the AEP Gen Hub?

7 A. Not for a fact.

8 Q. Do you, in fact, know where the AEP OVEC
9 entitlement was sold?

10 A. I don't.

11 Q. Do you know that there is an OVEC Hub?

12 A. Yes, I am aware there is an OVEC Hub.

13 Q. And do you know whether the utilities'
14 entitlement of OVEC was sold at the OVEC Hub?

15 A. I don't know.

16 Q. Okay. If it were, each of these figures
17 would be different, correct?

18 A. Yes, if the prices are different, yeah.

19 Q. Okay. Thank you. All right. My last
20 area, if we could go back to the audit, please. That
21 would be the AEP Ohio confidential audit, Staff
22 Exhibit 5C, page 31.

23 A. I'm there.

24 Q. Okay. If you recall, Mr. Finnigan
25 directed your attention to the last paragraph in the

1 body of the page that's talking about a comparison in
2 the dollars per megawatt-hour costs in 2020 versus
3 2019.

4 A. That's correct --

5 Q. Okay.

6 A. -- from the OVEC annual report.

7 Q. Right. And Mr. Finnigan was asking
8 questions about unit costs and impact to customers.
9 Do you recall that line of questioning?

10 A. Yes.

11 Q. All right. Could you please look at
12 footnote 53 in your report? That footnote for the
13 statement that we were just talking about is to the
14 2020 OVEC annual report page 3, correct?

15 A. Correct.

16 Q. All right. I would like to go there now,
17 please. The OVEC annual report I believe is OCC
18 Exhibit 7, and you cited page 3.

19 MR. FINNIGAN: I'm sorry. Excuse me.
20 What page of the audit report are you referring to?

21 MR. MCKENZIE: That was on page 31 of the
22 audit report.

23 Q. (By Mr. McKenzie) That's Exhibit -- Staff
24 Exhibit 5C was the audit report. Now we are on OCC
25 Exhibit 7, the 2020 OVEC report.

1 A. Okay. I've got the OVEC annual report
2 opened.

3 Q. Okay. Thank you. Page 3, do you see the
4 very first part of the page, it says "Power Costs"?

5 A. Yes.

6 Q. Okay. And the first sentence says -- I
7 will just read it in, "2020, OVEC's average power
8 cost to the Sponsoring Companies was \$67 per
9 megawatt-hour compared with \$57.04 per megawatt-hour
10 in 2019." Do you see that?

11 A. That's correct.

12 Q. And is that the source of -- is that
13 where you got the information on page 31 of the audit
14 report?

15 A. Yes.

16 Q. Okay. If you could just continue with
17 that paragraph. It says "The total Sponsoring
18 Company power costs were \$605 million in 2020
19 compared with \$641 million in 2019." Do you see
20 that?

21 A. Yes.

22 Q. So to make sure I understand, does that
23 mean that the total OVEC costs in 2020 were lower
24 than 2019?

25 A. They were lower in total as we've

1 discussed before because you have got a fixed cost
2 component and a variable cost component, so the
3 totals were lower, but the average was higher because
4 there was less generation.

5 Q. Right. That's right. But it's the total
6 that goes into the rider, correct?

7 A. Yes, it is.

8 Q. Not the unit cost. And if you could just
9 turn to page 5, is my last question, I will ask this
10 other question. I'm sorry. It's page 7. I want to
11 go to the income statement.

12 MS. BOJKO: Page 7 of what document?

13 MR. McKENZIE: OCC Exhibit 7, the 2020
14 OVEC report.

15 MS. BOJKO: Thank you.

16 A. I haven't reviewed the income statement
17 in detail, but I am at the page.

18 Q. Okay. Did you review this report?

19 A. We didn't review it cover to cover.

20 Q. Okay. If you look at operating expenses,
21 just looking at those numbers, it looks like taxes
22 other than income taxes was higher in 2020, but other
23 than that every single operating expense was lower in
24 2020 than 2019, correct?

25 MS. WHITFIELD: Objection. First, this

1 is friendly cross; and, second, she already said that
2 she did not look at this chart when she reviewed
3 certain parts of the annual report, that she was
4 turned to it but she hadn't reviewed it previously.

5 EXAMINER ADDISON: Thank you.

6 MS. BOJKO: I join the objection.

7 EXAMINER ADDISON: Thank you.

8 Mr. McKenzie, I think you are flirting
9 with that line.

10 MR. MCKENZIE: Well, your Honor,
11 Mr. Finnigan spent a long time trying to imply that
12 the costs were higher in 2020 based on that unit cost
13 example, so I think I should be allowed some leeway
14 to rebut that. It's not friendly cross. It's a
15 clarification. She said she didn't review the income
16 statement, but she is the auditor of OVEC costs for
17 2020 and this is the OVEC income statement.

18 EXAMINER ADDISON: Well, thank you. I
19 think I sustained objections for certain lines of
20 questioning related to other financial statements so
21 for other parties, for other Intervenors, so I am
22 going to go ahead and sustain the objection at this
23 time.

24 MR. MCKENZIE: Okay. Thank you. That's
25 all I have. Thank you.

1 EXAMINER ADDISON: Thank you,
2 Mr. McKenzie.

3 Ms. Akhbari?

4 MS. AKHBARI: Nothing for Duke Energy
5 Ohio, your Honor. Thank you.

6 EXAMINER ADDISON: Thank you. Then at
7 this time we will excuse you, Dr. Fagan. We will
8 resume with your testimony tomorrow starting with the
9 confidential session at that time, but for the
10 evening you are excused.

11 THE WITNESS: Thank you. 9:00 a.m.?

12 MS. WHITFIELD: Your Honor, do we want to
13 do -- okay. Forget it. Sorry.

14 EXAMINER DAVIS: Ms. Nordstrom, I
15 understand you have a witness?

16 MS. NORDSTROM: Yes, thank you, your
17 Honor. At this time I would like to call
18 Mr. Nicholas Nolan to the stand.

19 EXAMINER DAVIS: Sir, thank you very much
20 for being here this evening.

21 (Witness sworn.)

22 MS. NORDSTROM: May I approach with what
23 has been marked -- what I quest to be marked as OEC
24 Exhibit 1?

25 EXAMINER DAVIS: You may. It is so

1 marked.

2 (EXHIBIT MARKED FOR IDENTIFICATION.)

3 MS. NORDSTROM: This is Mr. Nolan's
4 direct testimony which is in the docket so I only
5 have copies for Mr. Nolan, ALJs, and court reporter
6 Karen.

7 - - -

8 NICHOLAS S. NOLAN

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

11 DIRECT EXAMINATION

12 By Ms. Nordstrom:

13 Q. Mr. Nolan, could you state and spell your
14 name for the record, please?

15 A. It's Nicholas Nolan, N-I-C-H-O-L-A-S,
16 Steven, S-T-E-V-E-N, Nolan, N-O-L-A-N.

17 Q. Thank you. Do you have in front of you
18 what has been marked as OEC Exhibit 1?

19 A. Yes.

20 Q. Is that the written testimony you filed
21 in this case?

22 A. Yeah.

23 Q. And this was a document prepared by you
24 or under your direction?

25 A. Under direction.

1 Q. And do you have any changes to your
2 testimony that you would like to make at this time?

3 A. No.

4 Q. If I asked you the same questions today
5 that are in your testimony, would your answers be the
6 same?

7 A. Probably not verbatim but, yeah, it would
8 be the same.

9 MS. NORDSTROM: Okay. Your Honor, I move
10 to enter Mr. Nolan's testimony marked as OEC Exhibit
11 1 into the record pending cross-examination.

12 EXAMINER DAVIS: Are there any
13 objections? We will now entertain cross starting
14 with the Intervenors. So Mr. Finnigan?

15 MR. FINNIGAN: No questions, your Honor.

16 EXAMINER DAVIS: Ms. Bojko?

17 MS. BOJKO: No questions, your Honor.

18 EXAMINER DAVIS: Ms. Whitfield?

19 Mr. Dougherty?

20 MR. DOUGHERTY: No questions, your Honor.

21 EXAMINER DAVIS: Do you want to circle
22 back or just assume?

23 EXAMINER ADDISON: No.

24 EXAMINER DAVIS: Ms. Akhbari?

25 MS. AKHBARI: Sure, your Honor. I do

1 have some questions for Mr. Nolan.

2 EXAMINER DAVIS: Please proceed.

3 CROSS-EXAMINATION

4 By Ms. Akhbari:

5 Q. Good morning, Mr. Nolan.

6 A. Good morning.

7 Q. Thank you for being here. It's nice to
8 see you again and meet you in person as well. We
9 appreciate your time and for hanging on with us this
10 evening.

11 So as you may remember, my name is Elyse
12 Akhbari. I'm an attorney for Duke Energy Ohio. I am
13 going to be asking you some questions under oath
14 today and let's get started and try to keep this
15 brief.

16 Mr. Nolan, the Ohio Environmental Council
17 approached you and asked you to get involved as a
18 witness in this audit proceeding, correct?

19 A. Correct.

20 Q. And regarding your background, you are
21 currently a farmer, a dairy farmer, correct?

22 A. Yes, correct.

23 Q. And you've previously worked as a plant
24 engineer at General Mills?

25 A. Yes, that's correct.

1 Q. And at Nestle, I believe?

2 A. Right, yeah.

3 Q. And you do not have a background in
4 auditing, correct?

5 A. No.

6 Q. And you have no background in economics?

7 A. No.

8 Q. And you have no background in unit
9 dispatch for power plants, correct?

10 A. No, huh-uh.

11 Q. And no background in power plant
12 commitment, correct?

13 A. No.

14 Q. And no background in the coal industry;
15 is that right?

16 A. Well, not exactly. I'm -- I have several
17 predeceasing generations that are coalminers.

18 Q. Sure. And you have no background in coal
19 procurement, correct?

20 A. No.

21 Q. And you have no background in
22 environmental permitting?

23 A. No.

24 Q. And I know you just saw her, but you have
25 never spoken to the auditor in this case, have you?

1 A. I haven't.

2 Q. Mr. Nolan, when we spoke previously, you
3 are not aware of which -- exactly which utilities
4 were being audited in that -- in this case; is that
5 correct?

6 A. I guess that's correct when we spoke
7 previously, but I looked at it. It was Duke Energy
8 and American Electric Power, right?

9 Q. Okay. And so your understanding today is
10 that Duke Energy Ohio and AEP Ohio are being audited
11 in this proceeding; is that correct?

12 A. Yeah.

13 Q. And, Mr. Nolan, when we spoke previously,
14 you did not know the year that was covered by this
15 audit period; is that correct?

16 MS. BOJKO: Objection.

17 A. Yeah.

18 MS. BOJKO: Your Honor, a deposition
19 transcript can be used for impeachment, but it's
20 improper to question the witness on what he may or
21 may not have said previously. The question has to be
22 asked as if it's being asked the first time here
23 today. So improper form of the question.

24 MS. NORDSTROM: OEC joins.

25 MS. AKHBARI: I will ask it presently if

1 that would please the Intervenors and your Honor.

2 MS. BOJKO: Thank you.

3 EXAMINER DAVIS: Go ahead.

4 Q. (By Ms. Akhbari) Mr. Nolan, are you aware
5 of what year the audit period covers in this case?

6 A. I thought it was 2019, 2020.

7 Q. Mr. Nolan, you have no firsthand
8 knowledge of the audit report itself; is that right?

9 A. I skimmed over the document, but I don't
10 really have any firsthand knowledge of how they
11 compiled it.

12 Q. And, Mr. Nolan, do you consider your
13 prefiled -- your prefiled testimony to be expert
14 testimony?

15 A. No, not really. I mean, expert as far as
16 resident of Gallia County, I guess I am.

17 Q. Mr. Nolan, you are speaking here today on
18 behalf of yourself based on your own opinions; is
19 that correct?

20 A. That's correct.

21 Q. And these opinions, they are not informed
22 by any expertise or background in the areas that you
23 are discussing in your testimony, are they?

24 A. Just the news, media, stuff like that,
25 nothing as far as any expert training in the -- in

1 the area, no.

2 Q. Mr. Nolan, you receive your energy bills
3 from Buckeye Rural Electric; is that correct?

4 A. That's correct, yeah.

5 Q. And the three electric distribution
6 utilities being audited in this case, you do not
7 personally receive an electric bill from any of them;
8 is that correct?

9 A. No.

10 Q. And you are not aware of whether or not
11 you have the LGR Rider on your electric bills; is
12 that right?

13 A. I'm not sure at all, no.

14 Q. And so, Mr. Nolan, you're not aware
15 regarding whether or not you personally are impacted
16 as a ratepayer by the LGR Rider; is that true?

17 A. Well, I'm assuming they get the power
18 from the same grid that AEP customers get it from. I
19 mean, it's right there close to it. I don't see how
20 I wouldn't be, but I am not sure I am being charged.

21 Q. Mr. Nolan, let's switch gears briefly and
22 talk a little bit about your relationship to the OVEC
23 plants.

24 A. Okay.

25 Q. Regarding -- regarding the Kyger Creek

1 coal plant, you operate a dairy farm within
2 approximately 10 miles of that plant; is that right?

3 A. That's correct.

4 Q. And you have friends who have worked at
5 that plant over the years?

6 A. Yeah. I have friends and family. I know
7 several people has worked there.

8 Q. And you occasionally see the coal plant
9 if you drive past that plant in your day-to-day life;
10 is that right?

11 A. Well, I can see it driving past up close,
12 but I can stand up on the highest point of my
13 property and see it too.

14 Q. And those facts that we just went
15 through, does that accurately summarize your
16 relationship to the Kyger Creek coal plant?

17 A. Yeah.

18 Q. And you have no relationship to the
19 Clifty Creek plant; is that right?

20 A. No.

21 Q. If you have a copy of your testimony in
22 front of you, Mr. Nolan, if you wouldn't mind
23 grabbing it.

24 A. Sure.

25 Q. And if you could turn to question 10 on

1 page 4 of your testimony. And in question 10 on page
2 4 of your testimony you summarize your understanding
3 of the disposition of energy and capacity; is that
4 correct?

5 A. Yes, that's correct.

6 Q. And that understanding is based upon your
7 personal knowledge of those phrases; is that correct?

8 A. Yeah.

9 Q. And, Mr. Nolan, prior to OEC giving you a
10 copy of the audit report in this case, you had not
11 identified or read any of the audit reports; is that
12 correct?

13 A. That's correct.

14 Q. Mr. Nolan, through participating in this
15 case, did you become aware of the fact that OVEC has
16 invested in environmental mitigation for its plants?

17 MS. NORDSTROM: Objection. The question
18 is misleading and misstates. The environmental
19 investments are strictly subject to legal
20 requirements. It's not some sort of benevolent
21 investment as it's being characterized by counsel.

22 MS. AKHBARI: Your Honor, I really didn't
23 characterize. I stated environmental mitigation. I
24 don't know how much more bland I can make it than
25 that, and Mr. Nolan can respond as he sees fit.

1 Excuse me.

2 EXAMINER DAVIS: He can answer to the
3 extent that he knows. The objection is overruled.

4 A. Okay.

5 Q. I can repeat the question --

6 A. Yeah, please.

7 Q. -- if that's helpful. Mr. Nolan, through
8 participating in this case, did you become aware of
9 the fact that OVEC has invested in environmental
10 mitigation for their plants?

11 A. I would say through participating in this
12 case, I've heard that, but my firsthand knowledge of
13 seeing it hasn't played out. If they are mitigating
14 environmental damage, I don't see how and where.

15 MS. AKHBARI: I don't have any further
16 questions at this time, your Honor.

17 EXAMINER DAVIS: Thank you, Ms. Akhbari.
18 Mr. McKenzie?

19 MR. MCKENZIE: No questions.

20 EXAMINER DAVIS: Mr. Sharkey?

21 MS. WATT: No questions, your Honor.

22 MS. WILSON: No, none for Staff.

23 EXAMINER DAVIS: Ms. Nordstrom, do you
24 have any redirect?

25 MS. NORDSTROM: I do have some short

1 redirect.

2 EXAMINER DAVIS: Go ahead.

3 REDIRECT EXAMINATION

4 By Ms. Nordstrom:

5 Q. So, Mr. Nolan, Ms. Akhbari asked you
6 about environmental mitigation. So in your opinion
7 as a local resident near Kyger Creek coal plant, what
8 level of emissions is in the interest of your
9 community?

10 MS. AKHBARI: Your Honor, I would move to
11 strike that question. He's already indicated he's
12 not an environmental expert. In his own words he
13 stated as much, and I would also say that that's
14 outside the scope of my cross-examination.

15 MS. NORDSTROM: Your Honor, Ms. Akhbari
16 opened the door discussing -- trying to state and get
17 on to the record that OVEC is engaging in
18 environmental mitigation measures to insinuate that
19 Mr. Nolan's testimony about the impacts and his
20 personal opinions as a local resident aren't
21 relevant. And so I do think that this is an open
22 line of redirect based on the door that was opened by
23 Ms. Akhbari.

24 EXAMINER DAVIS: I think he said he is
25 giving his opinion as a resident, as a local, so he

1 can answer to the extent that he knows something or
2 has something. It's overruled.

3 Go ahead, Mr. Nolan.

4 A. Could you repeat the question?

5 Q. Yeah. What level of emissions is in the
6 interest of your community?

7 A. I would say the level of interest --
8 well, I mean, level of pollution in general should be
9 none or little to none; but, you know it seems to be
10 excessive at the point I don't see any reduction in
11 any of it.

12 Q. Okay. Thank you. And the information in
13 this -- in your testimony is based on your personal
14 knowledge as a -- as a local resident, correct?

15 A. Yeah, correct.

16 MS. NORDSTROM: I have nothing further.
17 Thank you, your Honor.

18 EXAMINER DAVIS: Ms. Akhbari, is there
19 recross?

20 MS. AKHBARI: No, thank you.

21 EXAMINER DAVIS: Is there recross from
22 Mr. McKenzie?

23 MR. MCKENZIE: No.

24 EXAMINER DAVIS: Recross from
25 Mr. Sharkey?

1 MS. WATT: No, your Honor.

2 EXAMINER DAVIS: Recross, Mr. Finnigan?

3 Ms. Wilson?

4 MS. WILSON: No.

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

6 MS. WHITFIELD: No, thank you, your
7 Honor.

8 MR. DOUGHERTY: And, no, thank you.

9 EXAMINER DAVIS: Okay. Thank you very
10 much, Mr. Nolan.

11 THE WITNESS: Thank you very much.

12 EXAMINER DAVIS: Thank you for being
13 here.

14 EXAMINER ADDISON: Thank you.

15 EXAMINER DAVIS: I understand it was a
16 trip.

17 MS. NORDSTROM: With that, your Honor, I
18 would move to enter what's been marked as OEC Exhibit
19 1 into the record.

20 EXAMINER DAVIS: Now we will entertain
21 objections.

22 MS. AKHBARI: No objection, your Honor.

23 MR. MCKENZIE: No objection.

24 MS. WATT: No objection.

25 EXAMINER DAVIS: Thank you very much.

1 It's admitted.

2 (EXHIBIT ADMITTED INTO EVIDENCE.)

3 MS. NORDSTROM: Thank you.

4 EXAMINER ADDISON: So we are obviously
5 not taking any more witnesses tonight. I believe I
6 would like just for everyone's -- I know I had kind
7 of offered it up to the parties before but this is
8 the order that I would like to see tomorrow. We will
9 begin with Dr. Fagan, conclude her cross and
10 confidential session and any pending redirect. We'll
11 then take Swez. And Stanton, I believe, is noted as
12 a date certain. After, if we get through Stanton,
13 Perez and Stegall if we are feeling really ambitious.

14 MR. FINNIGAN: Your Honor, may I ask if
15 we could flip the order of Swez and Stanton? We had
16 asked for Dr. Stanton to get a date certain about a
17 month ago, and no one objected to the date of
18 Thursday, and so she made her arrangements. She's an
19 expert in other cases. She also has some family
20 commitments. She had an incident that --

21 EXAMINER ADDISON: Hold on, Mr. Finnigan.
22 Let's just go off the record for this conversation.

23 (Discussion off the record.)

24 EXAMINER ADDISON: Let's go back on the
25 record.

At this point of the evening, we will be adjourning. We'll be reconvening tomorrow at 9:00 a.m. beginning with we'll continue with the testimony of Dr. Fagan.

Thank you all. Let's go off the record.

(Thereupon, at 6:59 p.m., the hearing was 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 Wednesday, November 1,
2023, and carefully compared with my original
stenographic notes.

Karen Sue Gibson, Registered
Merit Reporter.

(KSG-7543)

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Summary: Transcript of the OVEC Generation Purchase Rider Audits hearing held on 11/01/23 - Volume II electronically filed by Mr. Ken Spencer on behalf of Armstrong & Okey, Inc. and Gibson, Karen Sue Mrs..