

BEFORE THE PUBLIC UTILITIES
COMMISSION OF OHIO

- - -

In the Matter of the OVEC :
Generation Rider Audits :
Required by R.C. 4928.148 :
For Duke Energy Ohio, Inc., : Case No. 21-0477-EL-RDR
The Dayton Power and Light :
Company, and AEP Ohio. :

- - -

PROCEEDINGS
before Megan Addison and Jesse Davis, Attorney
Examiners, at the Public Utilities Commission of
Ohio, 180 East Broad Street, Room 11-A, Columbus,
Ohio, called at 9:00 a.m. on Monday, November 6,
2023.

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VOLUME V

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1	INDEX	
2	- - -	
3	WITNESSES:	PAGE
4	David J. Crusey	
	Direct Examination by Mr. Sharkey	1087
5	Cross-Examination by Mr. Finnigan	1089
	Cross-Examination by Ms. Bojko	1129
6	Cross-Examination by Mr. Nourse	1160
	Cross-Examination by Mr. Dougherty	1161
7	Cross-Examination by Mr. Lindgren	1163
8	Devi Glick	
	Direct Examination by Mr. Dougherty	1194
9	Cross-Examination by Mr. Sharkey	1197
	Cross-Examination by Mr. Nourse	1229
10	Cross-Examination by Ms. Akhbari	1238
11	Joseph Perez	
	Direct Examination by Mr. Finnigan	1250
12	Cross-Examination by Mr. Sharkey	1255
	Cross-Examination by Ms. Akhbari	1268
13	Cross-Examination by Mr. Nourse	1272
	Cross-Examination by Mr. Lindgren	1274
14	Redirect Examination by Mr. Finnigan	1276
	Recross-Examination by Mr. Sharkey	1283
15	Recross-Examination by Mr. Nourse	1284
16	John Seryak	
	Direct Examination by Ms. Bojko	1291
17	Cross-Examination by Mr. McKenzie	1336
	Cross-Examination by Mr. Sharkey	1340
18	Redirect Examination by Ms. Bojko	1349
	Recross-Examination by Mr. Sharkey	1356
19	- - -	
20	OCC EXHIBITS	IDENTIFIED ADMITTED
21	15 - IRUC Order	1100 --
	16 - David Jackson IRUC Testimony	1107 --
22	17 - David Jackson IRUC Testimony	1107 --
	18 - SEC Form 10-Q	1361 --
23	19 - Criminal Complaint by United	1361 --
	States of America against Larry	
24	Householder	
25		

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

INDEX (Continued)

- - -

OCC EXHIBITS	IDENTIFIED	ADMITTED
20 - Prefiled Testimony of	1250	1291
Joseph Perez		

- - -

OMAEG EXHIBITS	IDENTIFIED	ADMITTED
1 - Direct Testimony of	1292	1358
John Seryak		
1A - Errata to Direct Testimony of	1192	1358
John Seryak		
2C - Confidential Direct Testimony	1295	1358
of John Seryak		
15 AES responses to second set	1144	1171
of discovery from CUB/UCS		
16C - Errata to Confidential	1296	1358
Direct Testimony of John Seryak		

- - -

AES EXHIBITS	IDENTIFIED	ADMITTED
1 - Direct Testimony of	--	1170
David J. Crusey		
2C - Confidential Testimony of	--	1170
David J. Crusey		

- - -

CUB/USC EXHIBITS	IDENTIFIED	ADMITTED
1 - Direct Testimony of	1193	1245
Devi Glick		
2C - Confidential Testimony of	1193	1245
Devi Glick		

- - -

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
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Monday Morning Session,
November 6, 2023.
- - -
EXAMINER ADDISON: Let's go on the
record. Good morning, everybody. Today is the fifth
day of hearing scheduled for Case No. 21-477-EL-RDR.
We will not be taking appearances this morning.
Mr. Sharkey.
MR. SHARKEY: Yes, your Honor, AES Ohio
would call David J. Crusey to the stand.
EXAMINER ADDISON: Raise your right
hand. Do you swear the testimony you're about to
provide in this proceeding is the truth?
THE WITNESS: I do.
EXAMINER ADDISON: Please be seated.
- - -
DAVID J. CRUSEY
being first duly sworn, as prescribed by law, was
examined and testified as follows:
DIRECT EXAMINATION
By Mr. Sharkey:
Q. Good morning, Mr. Crusey. Could you
state your name for the record?
A. My name is David J. Crusey.
Q. And do you have a copy of your

1 confidential and your public testimony with you?

2 A. Yes, I do.

3 MR. SHARKEY: Your Honor, AES Ohio would
4 ask that the public version of Mr. Crusey's testimony
5 be designated AES Ohio Exhibit 1, and that the
6 confidential version of his testimony be designated
7 and marked as AES Ohio Exhibit 2C.

8 EXAMINER ADDISON: Thank you.
9 Mr. Sharkey, I believe we had already marked both
10 exhibits previously, so I'll just note that for the
11 record.

12 MR. SHARKEY: Thank you very much.
13 By Mr. Sharkey:

14 Q. Mr. Crusey, do you have any corrections
15 or changes to your testimony?

16 A. I do not.

17 Q. If I asked you the same questions that
18 are contained in that testimony, would you give the
19 same answers?

20 A. Yes, I would.

21 MR. SHARKEY: Thank you. And your
22 Honors, I have no further questions for Mr. Crusey.
23 I move for the admission of his testimony pending
24 cross.

25 EXAMINER ADDISON: Thank you very much,

1 Mr. Sharkey.

2 Questions from AEP?

3 MR. NOURSE: No, your Honor.

4 EXAMINER ADDISON: Duke?

5 MS. AKHBARI: No, your Honor.

6 EXAMINER ADDISON: Ms. Finnigan,

7 Mr. Bojko, do you have an agreement as to who goes
8 first?

9 MR. FINNIGAN: I think I'm going to go
10 first, and then Ms. Bojko.

11 EXAMINER ADDISON: Of course. You have
12 the floor, Mr. Finnigan.

13 MR. FINNIGAN: Thank you, your Honor.

14 - - -

15 CROSS-EXAMINATION

16 By Mr. Finnigan:

17 Q. Good morning, Mr. Crusey.

18 A. Good morning.

19 Q. Mr. Crusey, I'd like to kind of follow
20 the sequence of events as you laid them out in your
21 testimony.

22 And in your testimony you talked about
23 bidding the OVEC plants into the capacity market in
24 one section, and then in a different section you
25 talked about bidding the plants into the capacity --

1 into the energy market. Do you recall that?

2 A. Yes, I do.

3 Q. So let's start with bidding into the
4 capacity market. If you could please turn to that
5 section of your testimony, and let me know when
6 you've reached that.

7 A. I'm there.

8 Q. Now, is it true that a plant owner can
9 bid into the capacity market with a price as low as
10 zero?

11 A. Yes, a generation owner in the PJM
12 construct can offer to sell their unit into the
13 annual base residual auction with an offer price of
14 zero, that's true.

15 MS. BOJKO: Your Honor, I'm sorry, could
16 either Mr. Crusey speak out --

17 THE WITNESS: Is that better?

18 MS. BOJKO: There's talking in the back
19 and I can't hear him.

20 THE WITNESS: Is that better?

21 MS. BOJKO: Yes.

22 EXAMINER ADDISON: Let's go off the
23 record.

24 (Discussion off the record.)

25 EXAMINER ADDISON: Let's go back on the

1 record. Valerie, if you could read that last answer
2 for us.

3 (Record read back.)

4 By Mr. Finnigan:

5 Q. And then is there any requirement that
6 the price used to bid the capacity into the capacity
7 market must cover the fixed costs for operating the
8 plant?

9 A. Not to my knowledge, there is not a
10 requirement. There is a rule in the PJM capacity
11 construct called the MOPR, which is the Minimum Offer
12 Price Rule, but my understanding is that it applies
13 to certain units or new units that are coming into
14 the market. My understanding, it does not apply to
15 the OVEC resources.

16 Q. And of course that would fit with what
17 you just said, that if you could bid a capacity price
18 of zero, then it wouldn't cover your costs?

19 A. That is correct.

20 Q. Now, does the fact that the OVEC plants
21 might clear the capacity market auction effect
22 whether they can be committed as must run or economic
23 in the energy market?

24 A. Could you please repeat the question?

25 Q. Yeah. So let me see if I can simplify

1 it.

2 If a plant clears the capacity market
3 auction it could still be bid as either economic or
4 must run in the energy market auction?

5 A. That is correct. Units that clear and
6 are awarded -- units that clear the PJM capacity
7 construct have a must-offer requirement each day in
8 the PJM day-ahead energy market, but my understanding
9 is it does not require a unit to be offered one way
10 or the other, must run or economically.

11 Q. Now, did you read the audit report for
12 EAS that was filed in this case?

13 A. Yes, I did.

14 Q. Do you recall a section of the audit
15 report where the auditor remarked that some of the
16 time during the audit period the PJM energy price did
17 not cover the fuel and variable costs for the OVEC
18 plants?

19 A. I do remember reading that. I don't
20 remember specifically where it's at, but I do
21 remember that being in the audit report.

22 Q. And the fact that the PJM energy price
23 doesn't cover fuel and variable costs, is that an
24 indicator of times when the plant is offered with a
25 must-run commitment in the energy market?

1 A. The must-run or economic commitment is a
2 daily choice or a daily designation for the day-ahead
3 energy market. When the unit gets picked up or
4 clears in a PJM capacity market, it's for the entire
5 365-day year.

6 Q. Okay. And I apologize, I want to switch
7 topics now, so I'm done talking about the capacity
8 market.

9 A. Okay.

10 Q. And I understand how often the
11 commitment decisions have to be made in the energy
12 market; that's a daily decision, isn't it?

13 A. Yes, it is.

14 Q. Like you just said?

15 A. Yes.

16 Q. But what I want to do is I want to shift
17 focus now. Let's talk about the energy market.

18 And you mentioned a moment ago that the
19 auditor stated in her report that there were times
20 during the audit period where the PJM energy price
21 did not cover the OVEC fuel and variable costs;
22 remember we talked about that?

23 A. Yes.

24 Q. Now, would that be an indication of
25 times when a must-run commitment was used in the

1 energy market auction?

2 A. It's possible. It could have been, yes.

3 Q. In other words, if you committed as
4 economic, then you would expect that PJM would not
5 dispatch your unit if the OVEC costs were greater
6 than the PJM energy price?

7 A. The unit, when it offers must run --
8 when it's offered as must run, and it's operating,
9 even though its revenue -- even though its revenue is
10 not greater than its incremental cost for that day,
11 that unit is still being dispatched economically by
12 PJM during the day.

13 It is following PJM's realtime economic
14 dispatch signal. So I'm not sure I understood your
15 question.

16 Q. Okay. But to your point, that's only
17 above a minimum load amount; isn't that right?

18 A. That is correct. All plants have a
19 minimum loading level to operate to be synced to the
20 electric grid.

21 Q. And when the OVEC bids the OVEC plants
22 into the energy market they decide what minimum
23 operating level to use?

24 A. It's more -- I would say it's more of a
25 characteristic of the unit. From the unit's

1 stability perspective, the units can only operate at
2 or above a certain minimum level.

3 Q. Who turns in the minimum operating level
4 to PJM when the energy market auction commitment is
5 made every day?

6 A. OVEC would be doing that every day.

7 Q. When OVEC does that every day, and they
8 turn in that minimum operating level, the economic
9 dispatch which PJM performs is only for levels above
10 that minimum operating level, isn't that true?

11 A. That is correct. That is correct.
12 Between the minimum and then the maximum operating
13 range is where the unit will be dispatched during the
14 day economically by PJM.

15 Q. Now, are you aware of any retrospective
16 economic analysis of the costs and benefits of using
17 the economic commitment for the OVEC plants in the
18 PJM energy markets that was performed for this audit
19 period of 2020?

20 A. I'm not aware of any, no.

21 Q. Now, I want to kind of take it back a
22 step and talk about AES operations, generally, okay?

23 As a general rule -- Strike that.

24 Just generally speaking, describing
25 AES -- AES is a worldwide energy company?

1 A. Yes, we are.

2 Q. And it has both regulated utility
3 operations and competitive market operations
4 throughout the world?

5 A. That is correct.

6 Q. In the United States it owns two
7 electric distribution utility operating companies?

8 A. Yes, we do.

9 Q. Those are -- AES Ohio is one?

10 A. That is correct.

11 Q. The other one is AES Indiana?

12 A. That is correct.

13 Q. AES Indiana is a former Indianapolis
14 Power & Light utility which serves the service
15 territory of the metropolitan area around the City of
16 Indianapolis?

17 A. That is correct.

18 Q. AES Indiana also owns some coal units?

19 A. Yes, they do.

20 Q. And there's one station that's a coal
21 station, that's their only station, that's the
22 Petersburg Station?

23 A. That is correct.

24 Q. The Petersburg Station has four units,
25 three of which are currently operating?

1 A. That is correct.

2 Q. Those three units are Petersburg 2, 3,
3 and 4?

4 A. Yes. And 2, if it's not retired. It's
5 close to being retired, so I don't know the exact
6 status of Unit 2.

7 Q. But it was operating in 2020, wasn't it?

8 A. Yes, sir.

9 Q. And your counterpart, if you will, who
10 makes the daily -- Strike that.

11 Just to back that up a step, the
12 Petersburg units participate in the MISO wholesale
13 market?

14 A. That is correct.

15 Q. MISO has a day-ahead energy market
16 similar to PJM's?

17 A. Yes, sir.

18 Q. Your counterpart who makes the daily
19 commitment decisions into the MISO day-ahead energy
20 market for the Petersburg plants is a fellow by the
21 name of Mr. David Jackson?

22 A. That is the individual that makes the
23 offers, but he is not my counterpart. I am the
24 Senior Director of Risk. I am not involved in daily
25 operational decisions commercially for AES Indiana.

1 Q. Now, are you aware of any data that
2 would track how often an economic commitment decision
3 was used versus a must-run commitment decision was
4 used for the Petersburg plants during 2020?

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

6 Q. Isn't it true that Mr. Jackson manages
7 the commitment decisions for the Petersburg plants by
8 looking at the predicted economic performance of each
9 generating unit over a period of one week, and using
10 that data to analyze whether to commit as economic or
11 must run?

12 A. It sounds reasonable, but just having
13 worked at the company, I think there are times when
14 they would look at periods much longer than a week.
15 But that does sound reasonable in a normal course of
16 business.

17 Q. One week?

18 A. It sounds reasonable, but I think there
19 are times where they would consider periods longer
20 than a week.

21 Q. Okay. And they also factor in the
22 startup costs necessary to restart the unit?

23 A. I'm sure that they factor the startup
24 costs in. They factor the coal supply chain issues,
25 they factor in the coal pile issues, whether the coal

1 pile is at its upper limit, whether the coal pile is
2 very low.

3 I'm sure they consider environmental
4 equipment factors. I'm sure they consider many
5 things when offering a unit and managing a coal plant
6 status over the next days, weeks, or months.

7 Q. Now, in 2020, Mr. Jackson developed an
8 innovative short-term model which AES then
9 implemented to support and track the Petersburg unit
10 commitment decisions into the MISO day-ahead energy
11 market?

12 A. I'm not involved at that level of
13 detail, so I'm not aware of that model.

14 Q. Okay. So you didn't give that model to
15 OVEC to help them make their day-ahead commitment
16 decisions for the OVEC plants?

17 A. I did not, no.

18 MR. FINNIGAN: Your Honor, may I have a
19 moment, please?

20 EXAMINER ADDISON: You may.

21 (Pause.)

22 MR. FINNIGAN: Your Honor, at this time
23 I'd like to mark for identification purposes OCC
24 Exhibit 15, which is an order by the Indiana Utility
25 Regulatory Commission.

1 EXAMINER ADDISON: It will be so marked.

2 (EXHIBIT MARKED FOR IDENTIFICATION.)

3 MR. FINNIGAN: Your Honor, may I
4 approach the witness?

5 EXAMINER ADDISON: You may.

6 By Mr. Finnigan:

7 Q. Now --

8 MR. SHARKEY: Your Honor, can I
9 interject? We served discovery upon OCC that among
10 other things asked OCC to identify and produce to us
11 any documents they may use as exhibits at the
12 hearing.

13 This entire document was not something
14 they either identified or produced, to the best of my
15 recollection.

16 I asked Mr. Finnigan, while he was
17 handing me a copy, if they had identified or produced
18 it, and he simply responded that it was OCC
19 Exhibit 15, so I don't believe it was ever produced
20 or identified to us.

21 We had -- so it's our belief that this
22 document OCC has failed to provide in response to a
23 valid discovery request, and therefore should be
24 precluded from using it.

25 I note for you that we had a similar

1 fight over in AES Ohio's Reconciliation Rider case,
2 which was auditing the -- essentially the 2019 OVEC
3 expenses, and our Attorney-Examiner in that case had
4 instructed, after we had a similar fight, that the
5 counsel for the Intervenor provide to us documents
6 that they would be using in the hearing in response
7 to a similar request.

8 So it's not like it's not a surprise to
9 Mr. Finnigan, who was in that hearing, for me to be
10 objecting to and moving to exclude any documents he
11 didn't produce to us.

12 The short version is we served a
13 discovery request, asked them for any documents they
14 may use at the hearing, and to the best of my
15 recollection they didn't identify or produce this
16 document.

17 EXAMINER ADDISON: Mr. Finnigan.

18 MR. FINNIGAN: Your Honor, in response
19 to that objection, we did respond to AES's discovery
20 requests, and one of the things that they asked was
21 the one that Mr. Sharkey describes, copies of
22 documents which we would be used at the hearing.

23 We objected on the grounds that we
24 didn't know what documents we would use at the
25 hearing at that point in the case when we answered

1 the discovery request.

2 Also, we raised the trial preparation
3 privilege which is a privilege which protects the
4 attorney's work and work product in deciding what
5 documents to use in cross-examination at the hearing.

6 Now, this is a document that's not used
7 for the direct examination of our witnesses. Those
8 we filed with our testimony and we identified those
9 in our interrogatory answers.

10 This is a document that we're using in
11 cross-examination of Mr. Crusey, and in
12 cross-examination one of the hallmarks and one of the
13 ways that cross-examination can be effective in
14 arriving at the truth of the matter is the element of
15 surprise.

16 And there is no surprise if I have to
17 decide what documents I'm going to use for
18 cross-examination a month ahead of the hearing and
19 give those to Mr. Sharkey so he can prepare his
20 witnesses to address those, any surprise is lost at
21 that point. And so the Rules of Evidence don't
22 contemplate that.

23 Further, I'm not aware of any
24 requirement of the Commission, except perhaps during
25 the COVID hearings, where a party has been required

1 to produce documents that they are going to use on
2 cross-examination in advance of the hearing and share
3 those with opposing counsel.

4 And further, your Honor, we had a break
5 in this case over the weekend, and it was over the
6 weekend that I decided to use these documents. I was
7 coping these documents furiously this morning, as
8 anyone on the OCC Staff can attest. And I can report
9 no curse words were used.

10 EXAMINER ADDISON: We certainly
11 appreciate that, Mr. Finnigan.

12 MR. FINNIGAN: But there was a time
13 during the OVEC hearings where, because of the remote
14 nature of those hearings, counsel was required to
15 share a list of all exhibits, including
16 cross-examination exhibits, with opposing parties.

17 However, as I understand that, even
18 during that time the attorney for the opposing party
19 was not to share the document with their client ahead
20 of the hearing.

21 So what Mr. Sharkey suggests -- and this
22 objection flies in the face of all the Commission's
23 rules and procedures for handling this, and it flies
24 in the face of the Rules of Evidence in terms of how
25 cross-examination is to be conducted.

1 EXAMINER ADDISON: Thank you,
2 Mr. Finnigan.

3 MS. BOJKO: Your Honor, may I be heard
4 on the subject?

5 EXAMINER ADDISON: I'm going to provide
6 a ruling. I will allow Mr. Finnigan to ask some
7 questions from the document, but we'll split the baby
8 and provide Mr. Sharkey just a few minutes to look
9 over the document before you begin your line of
10 questions.

11 MR. FINNIGAN: Thank you, your Honor.

12 EXAMINER ADDISON: Let's go off the
13 record.

14 (Discussion off the record.)

15 EXAMINER ADDISON: Let's go back on the
16 record.

17 Mr. Sharkey.

18 MR. SHARKEY: Yes, your Honor, I've had
19 an opportunity to review the document. We continue
20 to maintain our objection to its use, but I
21 understand your ruling.

22 EXAMINER ADDISON: Your objection is
23 noted, Mr. Sharkey. Mr. Finnigan.

24 MR. FINNIGAN: Thank you, your Honor.
25 By Mr. Finnigan:

1 Q. So, Mr. Crusey, during the break, have
2 you had a chance to look through OCC Exhibit 15?

3 A. I have not seen this document before.
4 It's a 12-page document. I did skim it briefly, yes.

5 Q. I just want to ask you a question about
6 one paragraph in the document on page 4, but before I
7 do that, do you see on the front where this says FAC
8 in the upper right-hand corner?

9 A. Yes.

10 Q. And are you familiar with fuel
11 adjustment clause cases?

12 A. In general, yes.

13 Q. You used to handle those for the
14 Company, didn't you?

15 A. For the Dayton Power & Light Company,
16 AES Ohio, yes, I did.

17 Q. Okay. So can you identify OCC
18 Exhibit 15 as what appears to be some order by the
19 Indiana Utility Regulatory Commission, it says that
20 at the top of the document, and in the upper
21 right-hand corner it says August 28, 2020; is that
22 what it appears to be?

23 MR. SHARKEY: I'm going to object, your
24 Honor. Mr. Crusey has already stated the document he
25 hasn't seen before.

1 Asking him to read what the document
2 says I think is an inappropriate question, and
3 certainly can't lay a foundation for its use having
4 never seen it before.

5 EXAMINER ADDISON: Mr. Finnigan.

6 MR. FINNIGAN: Well, that was just a
7 foundational question, your Honor, and it's very
8 plain that that is where it's issued by, and the
9 date, and if I were citing this in my brief I would
10 cite the name of the issuing authority and the date.

11 EXAMINER ADDISON: I recognize that, but
12 the witness has indicated he's not seen this
13 document.

14 I think as to your question to the
15 paragraph on page 4, he's already indicated he's not
16 aware of the model created in your last line of
17 questioning, so I think we can move on from this
18 document.

19 MR. FINNIGAN: Thank you, your Honor.

20 At this time I'd like to mark two
21 additional exhibits, OCC Exhibit 16 and OCC
22 Exhibit 17.

23 These are testimonies filed by Mr. David
24 Jackson of AES in connection with the FAC case which
25 we just discussed. May I approach the witness with

1 these, your Honor?

2 EXAMINER ADDISON: You may, and they
3 will be so marked.

4 (EXHIBITS MARKED FOR IDENTIFICATION.)

5 By Mr. Finnigan:

6 Q. Mr. Crusey, do you have two documents
7 before you marked as OCC Exhibit 16 and 17?

8 MR. SHARKEY: Your Honor, we'd again
9 object to the use of these documents as, again, as I
10 described earlier, we served discovery requests upon
11 OCC asking them to produce any documents they may use
12 at the hearing for the examination of witnesses.

13 These documents were not identified or
14 produced, so I believe it's inappropriate for there
15 to be questions asked on these documents.

16 EXAMINER ADDISON: Thank you,
17 Mr. Sharkey, but I believe we'll allow Mr. Finnigan
18 to at least lay a foundation for these documents
19 before we provide the Company a chance to look
20 through them to see if questioning will be allowed.
21 So, Mr. Finnigan.

22 MR. FINNIGAN: Thank you, your Honor.

23 By Mr. Finnigan:

24 Q. So, Mr. Crusey, do you have two
25 documents before you marked as OCC Exhibit 16 and 17?

1 A. Yes, I do.

2 Q. And can you see in the upper right-hand
3 corner that they appear to be documents that were
4 filed in some proceeding before the Indiana Utility
5 Regulatory Commission?

6 A. I do see that.

7 Q. And you see the case number in the upper
8 right-hand corner, 38703 FAC128 and --

9 A. I do see that, yes.

10 Q. And the other one is 130?

11 A. Yes, sir.

12 Q. Okay. And that case number, 38703 FAC,
13 that corresponds to the order that we were talking
14 about a moment earlier, OCC Exhibit 15, doesn't it?

15 MR. SHARKEY: Objection, your Honor. He
16 hasn't established that Mr. Crusey has seen or been
17 involved in any way with these documents.

18 EXAMINER ADDISON: I'll allow him to
19 answer the question. It appears to be the same
20 number, and then we can move on from there.

21 THE WITNESS: Yes, it appears to be the
22 same number, 38703.

23 By Mr. Finnigan:

24 Q. Now, you see that little box in the
25 upper right-hand corner of the document where it

1 says, "Filed June 18th, 2020, Indiana Utility
2 Regulatory Commission"?

3 A. Yes, I see that on Exhibit 16.

4 Q. Would that appear to indicate that this
5 document was filed in that docket of the IURC?

6 MR. SHARKEY: Objection, your Honor. He
7 hasn't established any foundation for Mr. Crusey to
8 be able to answer what this document is, that it's
9 authentic, what anything --

10 MR. FINNIGAN: Your Honor, I have a
11 couple more foundational questions, just one or two,
12 and then I'll ask about the substance of the
13 documents.

14 EXAMINER ADDISON: Please proceed.
15 By Mr. Finnigan:

16 Q. So could you please turn to page 40 of
17 the document?

18 A. Of 16?

19 Q. Page 40.

20 A. Of Exhibit 16? I have two in front of
21 me.

22 Q. Of Exhibit 16, yes. And page 40 I'll
23 state for the record is not numbered, but it's right
24 after page 39.

25 A. It's not numbered, but I believe I'm

1 there.

2 Q. Okay. Does it say "Verification" at the
3 top?

4 A. Yes, it does.

5 Q. And it says underneath that, "I affirm
6 under penalties for perjury that the foregoing
7 representations are true to the best of my knowledge,
8 information and belief," and then the date and then
9 it appears to be signed by Mr. Jackson; is that
10 correct?

11 A. Yes, sir.

12 MR. SHARKEY: I'm going to object again.
13 He hasn't established it's a document that the
14 witness has seen or that -- any factual basis for
15 establishing that's Mr. Jackson's signature.

16 EXAMINER ADDISON: Thank you,
17 Mr. Sharkey. I believe the witness did answer that
18 particular question.

19 But, Mr. Finnigan, we do need to have
20 the appropriate foundation laid for this document
21 before you ask any additional questions.

22 MR. FINNIGAN: And, your Honor, by way
23 of foundation, I would submit that I have asked
24 questions which generally identify what the document
25 is, and -- the two documents, two pieces of testimony

1 filed by Mr. Jackson in an IURC case.

2 EXAMINER ADDISON: And I would agree
3 that those would have laid the proper foundation if
4 Mr. Jackson was sitting on the witness stand.
5 Mr. Crusey is here, so you need to lay the
6 appropriate foundation with him.

7 MR. FINNIGAN: I agree with that, your
8 Honor, and the appropriate foundation would be these
9 two documents are in the nature of an admission by a
10 party opponent.

11 EXAMINER ADDISON: That's a hearsay
12 exception, Mr. Finnigan. We are here to lay the
13 appropriate foundation with this witness. We need to
14 lay the foundation before we even broach other
15 objectionable issues with these documents.

16 MR. FINNIGAN: Okay. Thank you, your
17 Honor.

18 By Mr. Finnigan:

19 Q. Sir, could you turn to page 22 of that
20 document?

21 A. I'm there.

22 Q. You see a table at the top?

23 MR. SHARKEY: I'm going to object, your
24 Honor. You've instructed Mr. Finnigan to lay a
25 foundation for this document, and in laying a

1 foundation, trying to establish Mr. Crusey has seen
2 this document, he's asking questions about it.

3 EXAMINER ADDISON: Mr. Finnigan.

4 MR. FINNIGAN: Well, your Honor, my
5 point would be the same here that whether he's seen
6 it or not is immaterial. An attorney is allowed to
7 ask an expert witness questions about a document --

8 EXAMINER ADDISON: You can ask him
9 questions -- if you want to ask about certain
10 percentages of commitment strategy you can certainly
11 ask him that question, but you cannot reference a
12 document that he -- you've laid absolutely no
13 foundation for.

14 So if you'd like to ask questions
15 without referring to this document you can certainly
16 do so at this time. But you haven't laid any
17 foundation for this document with this witness.

18 By Mr. Finnigan:

19 Q. Now, Mr. Crusey, you mentioned that you
20 used to handle FAC cases for AES, Dayton Power &
21 Light?

22 A. Yes, I did.

23 Q. And when you handled FAC cases did you
24 have to file testimony?

25 A. Yes, I did.

1 Q. And the testimony would be in support of
2 the reasonableness of the FAC charges for the current
3 period?

4 A. That is correct, yes.

5 Q. And the testimony would talk about how
6 the power plants involved in supplying power were
7 used, how the coal was purchased, how the coal was
8 transported, et cetera, et cetera?

9 A. That is correct.

10 Q. Now, with regard to these two documents,
11 Exhibits 16 and 17, have you seen these before?

12 A. I have not, no.

13 Q. Now, there is a table on page 22 of
14 Mr. Jackson's testimony on the document marked as
15 Exhibit 16. Have you seen this table before on
16 commitment percentages?

17 A. The table labeled DJ-2?

18 Q. Yes.

19 A. I have not seen that table before, no.

20 Q. And does this table refresh your memory
21 that AES does have a tool they can use to track the
22 commitment decisions as either must run or economic?

23 A. Apparently based on what I'm reading,
24 the EAS Indiana commercial team has a commercial tool
25 that they use as referenced in this discussion.

1 Q. Okay.

2 A. But I've not been privy to or reviewed
3 that model previously.

4 Q. Okay. And now, these Petersburg plants
5 are all coal plants?

6 A. That is correct, they are coal plants.

7 Q. And are you familiar with the percentage
8 of the time which the Petersburg plants were
9 committed as must run during 2020?

10 EXAMINER ADDISON: If you can recall
11 without referencing the document in front of you.

12 THE WITNESS: I cannot recall without
13 referencing this document --

14 By Mr. Finnigan:

15 Q. Now --

16 A. -- prior to 2020.

17 Q. Does this document refresh your
18 recollection of that?

19 A. It does not refresh my recollection.

20 Q. Do you have any reason to question the
21 accuracy of this table on page 22 of Mr. Jackson's
22 testimony regarding the frequency of the time the
23 Petersburg units were committed as must run in the
24 MISO day-ahead energy market?

25 MR. SHARKEY: Objection, your Honor. He

1 hasn't established that this is a document that
2 Mr. Crusey has seen or numbers that he knows, asking
3 does he have any reason to question the --
4 information that's hearsay and inadmissible.

5 MR. FINNIGAN: Your Honor --

6 EXAMINER ADDISON: Sustained.

7 MR. FINNIGAN: Well, your Honor, may I
8 just respond for the record?

9 EXAMINER ADDISON: You may for the
10 record.

11 MR. FINNIGAN: Regarding the hearsay
12 objection, this document is an exception to the
13 hearsay exception because it's an official record of
14 the Indiana Utility Regulatory Commission.

15 It's got all the indicia of reliability
16 for admission within this case in that it's
17 documented by this published decision by the IURC,
18 which is OCC Exhibit 15, and OCC Exhibit 15, which is
19 the Commission's decision in that case references
20 this same testimony, and it refers to this and
21 discusses it in great detail, which would corroborate
22 that this testimony is also accurate and reliable.

23 Also, we can see from this document that
24 on the first page there's a file stamp on page 1
25 indicating that the document was filed in that

1 docket. It's available online in the IURC records.
2 That's where I got it.

3 And also, Mr. Jackson filed this
4 testimony under oath, as Mr. Crusey just indicated.
5 So all the indicators of reliability are there for
6 these two documents, OCC Exhibit 16 and 17.

7 And it's common in Commission cases that
8 the Commission has taken notice of testimony filed by
9 other witnesses in other Commission cases that a
10 witness who is on the stand is allowed to answer
11 questions about or rely upon or remark on, and that's
12 simply what I'm doing here.

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

15 I believe I provided my ruling, and I
16 will note for the record that it was not on the basis
17 of hearsay. But we will move on.

18 MR. FINNIGAN: Your Honor, may I have
19 just one minute?

20 EXAMINER ADDISON: Absolutely.

21 (Discussion off the record.)

22 MS. BOJKO: Your Honor, may I ask just
23 what the basis was for the record?

24 EXAMINER ADDISON: Foundation.

25 MR. FINNIGAN: Your Honor, just to be

1 clear, the foundation was Mr. Crusey identified what
2 the document is and where it appeared to originate --

3 EXAMINER ADDISON: He read the front
4 page of the document, yes, Mr. Finnigan, and that was
5 his awareness of it.

6 By Mr. Finnigan:

7 Q. Now, you are employed by AES Corp.?

8 A. Yes, sir.

9 Q. You indicated that you know Mr. Jackson
10 when I asked you about him earlier?

11 A. I do know David -- Mr. David Jackson.

12 Q. He's also employed by AES Corp.?

13 A. I'm not sure if his employer is AES
14 Indiana, which is a subsidiary of AES Corp., or if
15 he's employed directly by AES Corporation. He's
16 under the AES Company, yes, sir.

17 Q. But in any event, they all flow up to
18 the whole AES Holding Company?

19 A. Yes, sir.

20 Q. And perform services for that company?

21 A. Correct.

22 Q. And are you saying that the Indiana team
23 that handles the Petersburg plants has some tool for
24 making commitment decisions in the day-ahead market
25 that is not shared with the Ohio team?

1 A. The Ohio -- the AES Ohio company sold or
2 divested or shut down all of its generation in the
3 2018 time frame, so AES Ohio no longer operates coal
4 generation.

5 Q. But it owns some?

6 A. The only ownership of generation that we
7 have is 4.9 percent ownership stake in OVEC.

8 Q. And the Indiana team that commits the
9 Petersburg units didn't share this commitment tool
10 with the Ohio team?

11 MR. SHARKEY: Object.

12 THE WITNESS: When you say the Ohio
13 team, I'm not sure what you mean by the Ohio team.
14 By Mr. Finnigan:

15 Q. Are you the one who serves as a
16 representative on the OVEC operating committee on
17 behalf of AES?

18 A. Yes, I am.

19 Q. Well, then I meant you.

20 A. No, this was not shared with me, nor
21 have I requested it.

22 Q. Now, the tool itself would be property
23 of the company AES; is that right?

24 MR. SHARKEY: I'm going to object. He
25 hasn't established personal knowledge that Mr. Crusey

1 has of the tool.

2 EXAMINER ADDISON: Mr. Finnigan, I think
3 he'd be speculating at this point any ownership or
4 any other details of this model.

5 He's already indicated he's not aware of
6 it, it's not been provided to him, so I don't know if
7 this line of questioning is going to be beneficial to
8 us at this point.

9 MS. BOJKO: Your Honor, he actually did
10 say he thought he knew where it came from, so I think
11 we should be entitled to ask him some questions of
12 why one tool that would be under the AES Corp.
13 umbrella would be available to one subsidiary and not
14 available to another subsidiary.

15 EXAMINER ADDISON: I don't know if he's
16 going to be able to elaborate on that because he's
17 already indicated he's not aware of the model itself.

18 MR. FINNIGAN: Your Honor, with that I
19 have no further questions of Mr. Crusey. However,
20 Ms. Bojko may have some questions.

21 EXAMINER ADDISON: Certainly. Thank
22 you, Mr. Finnigan. Ms. Bojko.

23 MS. BOJKO: If I could have one minute,
24 your Honor, I wasn't expecting that.

25 EXAMINER ADDISON: Certainly. Take your

1 time.

2 EXAMINER ADDISON: Let's go ahead and go
3 off the record.

4 (Discussion off the record.)

5 EXAMINER ADDISON: Let's go back on the
6 record. Ms. Bojko.

7 MS. BOJKO: Yes, your Honor. I'd like
8 to do a brief voir dire for a moment to ascertain the
9 witness' knowledge about a couple of points in his
10 testimony.

11 EXAMINER ADDISON: Please proceed.

12 - - -

13 VOIR DIRE

14 By Ms. Bojko:

15 Q. Could we turn to page 14 of your
16 testimony, please, sir? Sorry, Mr. Crusey. Good
17 morning. Good to see you again.

18 A. Good to see you. Good to be here.

19 Q. Page 14, line 1 through 6 is the portion
20 of your testimony I'm looking at. You do not work
21 for AEP, do you, sir?

22 A. I do not, no.

23 Q. And here you're testifying to what AEP
24 typically does; is that correct?

25 A. What they typically do, yes.

1 Q. And you do not work for OVEC; is that
2 correct?

3 A. I do not, no.

4 Q. And in lines 4 to 6 you surmise about
5 what OVEC did with regard to the signing of a
6 contract; is that correct?

7 A. Based on my understanding, yes.

8 Q. And could we turn to page 15, lines 4
9 through 7? Mr. Crusey, you are not a Board member,
10 are you?

11 A. I am not a Board member of OVEC.

12 Q. And you would not have the capability to
13 make Board member decisions, would you?

14 A. That is correct.

15 Q. You are not allowed to offer your input
16 as a Board member, is that correct, or a vote?

17 A. I would attend the Board meetings, but I
18 would not offer my input, nor would I vote at the
19 OVEC Board meetings.

20 Q. And if you could look at line 16, you
21 state there were active discussions, and that is
22 referring to active discussions of the Board; is that
23 correct?

24 A. Yes.

25 MS. BOJKO: Your Honor, at this time

1 OMAEG moves to strike the following portions of
2 Mr. Crusey's testimony for lack of personal knowledge
3 and as inadmissible hearsay; page 14, lines 1 through
4 6, beginning with the word "AEP" and ending with the
5 word "prices."

6 Also on page 15, lines 4 through 7, on
7 line 4 beginning with the word "These" and ending on
8 line 7 with the word "happening."

9 Also on page 15, line 16 beginning with
10 the word "There" and ending with the word "prudent"
11 at the end of 18.

12 Under Rule 602 of the Ohio Rules of
13 Evidence a witness may not testify to a matter unless
14 evidence is introduced sufficient to support a
15 finding that the witness has personal knowledge of
16 the matter.

17 With regard to these portions of his
18 testimony Mr. Crusey has just admitted that he's not
19 an employee of OVEC, he's not a Board member, he is
20 not an employee of AEP, but then he goes through at
21 length to describing what those two entities did and
22 thought and how they voted.

23 He does not have personal knowledge
24 about the thoughts or beliefs of the Board members or
25 AEP's coal procurement team, and he cannot speak to

1 these matters.

2 Similarly, he admits they only talk
3 about coal at a high level when he attends meetings,
4 but then he goes into detail about decisions they
5 make. And he has not laid the proper foundation for
6 having knowledge of these decisions or conclusions.

7 He did not personally verify the
8 accuracy of these statements and assertions, and he
9 has no independent knowledge of the information
10 asserted therein, therefore those should be struck on
11 lack of personal knowledge.

12 Additionally, under Ohio Rule of
13 Evidence 801, these are hearsay statements. Hearsay
14 is any statement other than one made by the declarant
15 while testifying at the trial or hearing offered into
16 evidence to prove the truth of the matter asserted.

17 Hearsay is inadmissible unless an
18 exception applies. None apply here. The witness
19 opines on the Board, OVEC and AEP's coal procurement
20 team's thoughts, discussions, and knowledge despite
21 not having any personal knowledge on his own.

22 Therefore, all of these statements are
23 inadmissible hearsay, and no exception applies and
24 they should be struck. Thank you.

25 EXAMINER ADDISON: Mr. Sharkey.

1 MR. SHARKEY: Yes, your Honor. I'd like
2 to start with principle. This is a prudence hearing
3 regarding whether AES Ohio's conduct was prudent.

4 And as your Honors know, to question
5 whether something is prudent is based upon what a
6 reasonable person would do based upon information
7 that that person had at that time.

8 So information that Mr. Crusey or the
9 Company had, whatever its source, is directly
10 relevant here in this case.

11 So if Mr. Crusey is attending a board
12 meeting or Mr. Crusey is attending an operating
13 committee meeting and information is provided to
14 Mr. Crusey, that information and the fact that he had
15 it is directly relevant in this case because it's --
16 it's the basis for and explains why AES Ohio and
17 Mr. Crusey had done various conduct.

18 So it is not a lack of personal
19 knowledge, it's a -- it's based on what did
20 Mr. Crusey know, and based on what he was told, were
21 his actions reasonable.

22 So he doesn't necessarily have to have
23 personal knowledge, for example, of what AEP's fuel
24 procurement practices are, it's directly relevant in
25 this case that those fuel procurement practices were

1 discussed and described at the operating committee,
2 that Mr. Crusey understood those principles, and
3 based upon those -- what he learned, acted or didn't
4 act, why -- why he either acted or why he didn't act.

5 Similarly, your Honor, as to hearsay,
6 again, this information is not hearsay. As we all
7 know, information that describes its affect on a
8 listener is not hearsay to begin with at all.

9 So the example we all learned in law
10 school is if somebody yells fire in a crowded room,
11 and everybody flees and gets trampled or injured, the
12 fact that somebody yelled fire, even if there's no
13 fire, is admissible not for the truth of the matter
14 asserted, but for the effect it had on the listener.

15 Here, your Honor, I realize that's kind
16 of an extreme example, but the fact of the matter is
17 it's information provided to the company, and the
18 company then can explain its actions in response to
19 that information or not.

20 So if information isn't offered for the
21 truth of the matter asserted, the information is
22 offered for the fact that it was provided to the
23 company and the company acted or didn't act and it's
24 actually more reasonable for those reasons.

25 So the information -- the no personal

1 requirement is satisfied because Mr. Crusey was
2 present and the information was told to him, and
3 information provided to him was directly relevant to
4 the case, is not hearsay.

5 MS. BOJKO: Your Honor, may I briefly
6 respond?

7 EXAMINER ADDISON: We'll hear from
8 everyone else and I'll allow you to respond to
9 everyone.

10 MR. NOURSE: I'd like to join
11 Mr. Sharkey's objection and motion to strike. I
12 think this witness' observations are based on his
13 experience and interactions with OVEC, as well as
14 AEP.

15 The AEP reference here is clearly not to
16 AEP Ohio, it's to the AEP Service Corp. group that
17 supports OVEC, and that is essentially a business
18 unit of OVEC for this purpose of this context.

19 So Mr. Crusey's reference to that, his
20 knowledge of that, his experience and involvement
21 with OVEC, it all supports that.

22 Further, I agree with Mr. Sharkey, this
23 is about conduct. The fact that the -- the RFPs are
24 issued and, you know, transportation contracts are
25 procured, that's conduct, it's not repeating someone

1 else's statement or hearsay at all.

2 And I think that similarly, the page 15
3 references are again about Mr. Crusey's experience
4 and his direct involvement in dealing with OVEC, and
5 just like all the other witnesses in this case,
6 he's -- he should be permitted to be subject to
7 cross-examination, but make statements about his
8 experience and about his observations in connection
9 with the prudence audit. Thank you.

10 EXAMINER ADDISON: Thank you very much.
11 Anyone else care to weigh in?

12 MS. AKHBARI: Your Honor, Duke would
13 just join both what Mr. Nourse and Mr. Sharkey have
14 stated so far.

15 EXAMINER ADDISON: Thank you. Anyone
16 else?

17 Ms. Bojko.

18 MS. BOJKO: Thank you, your Honor.
19 Mr. Sharkey nailed it on the head. That person had
20 at the time. Mr. Crusey was not that person, he was
21 not there.

22 I was very surgical in my request to
23 strike. I would have loved to -- if you look at my
24 paper, I started this out striking a lot more.

25 But on line 16, on page 13, he says at a

1 high level this was a topic discussed. Then he goes
2 into intricate decisions that were made by AEP, OVEC,
3 Board members.

4 He is not employed by any of those, so
5 anything he was told by them absolutely is hearsay.
6 And unfortunately for Mr. Sharkey, this is not an
7 excited utterance exception. He did not say this
8 when a fire broke out, so that is not an exception to
9 hearsay.

10 These are not his observations, these
11 are decisions made by entities that are not even his
12 employer, and that's the distinction.

13 You just did not allow questioning based
14 on a lack of personal knowledge on documents that his
15 own company made, and now we're testifying to -- or
16 we're saying personal knowledge doesn't matter. It
17 absolutely matters.

18 These are not discussions that happened
19 in meetings when he was there, these are decisions
20 made by people other than him and other than his
21 company. And those are purely hearsay and there's no
22 exception for them. Thank you.

23 MR. SHARKEY: Can I respond briefly to
24 the excited utterance?

25 EXAMINER ADDISON: No, I think I'm ready

1 to make my ruling, Mr. Sharkey. But I certainly
2 agree it was not an excited utterance exception.
3 Appreciate the effort, Mr. Sharkey.

4 At this time I do feel it's appropriate
5 to deny the motion to strike. The witness has
6 indicated these statements are based on his
7 experience and understanding.

8 However, given Mrs. Bojko's reasoning
9 for proposing her motion to strike at the beginning,
10 I will allow parties ample latitude in their
11 cross-examination.

12 The Commission can certainly look into
13 his answers that he provides during that
14 cross-examination to determine how much weight to
15 provide this testimony. Thank you.

16 MS. BOJKO: Thank you, your Honor.

17 CROSS-EXAMINATION

18 By Ms. Bojko:

19 Q. Mr. Crusey, I want to go back to
20 something Mr. Finnigan was talking to you about, the
21 commitment strategy tool.

22 You recognized that as being a tool in
23 Indiana, is that correct, the Indiana competitive
24 team, I think is what you called it?

25 MR. SHARKEY: Objection, misstates his

1 prior testimony, your Honor. He's already testified
2 he wasn't familiar with it.

3 EXAMINER ADDISON: I will allow the
4 witness to answer if he can clarify any
5 mischaracterization he has with Ms. Bojko's question.

6 MS. BOJKO: That was not my intent. I
7 was trying to ask him if that's what he said.

8 EXAMINER ADDISON: I'll allow him to
9 answer the question. And if you could answer without
10 referring to the documents.

11 THE WITNESS: They are not in play?

12 EXAMINER ADDISON: No.

13 THE WITNESS: I was not familiar with
14 the AES Indiana commercial team's tool until it was
15 brought up this morning.

16 By Ms. Bojko:

17 Q. Okay.

18 A. If that was your question.

19 Q. It was. Thank you. I thought you said
20 you recognized it as an Indiana tool, so okay.

21 A. Based on what I have seen in that
22 document.

23 Q. I see. If there did exist a tool in AES
24 Corporation, would all subsidiaries have access to
25 that tool?

1 A. It would depend on if there are any
2 regulatory restrictions from the Indiana commercial
3 team since they are regulated in the state of
4 Indiana.

5 Q. Of course.

6 A. It's likely that it would be restricted
7 to Indiana employees, and that it may not be
8 disseminated throughout the company due to the
9 regulatory restrictions.

10 Q. Fair enough. But you as an Ohio -- on
11 the Ohio commercial team could ask for a similar tool
12 to be created for your group, could you not?

13 A. Again, the AES Ohio team, we don't own
14 coal generation anymore other than the OVEC facility.

15 Q. Sure. But you could have it because you
16 do still own the OVEC coal generation, do you not?

17 A. One could ask, yes.

18 Q. Right. And you would assume that you
19 would have access to a similar type tool, would you
20 not?

21 A. Again, it depends on the regulatory
22 restrictions that would be placed on the Indiana
23 commercial team, if any, through our regulatory
24 group.

25 Q. Right. I wasn't trying to imply that

1 you could have access to the Indiana tool.

2 I'm asking if you believe that you could
3 have access to the same type of tool, and one could
4 be created for Ohio.

5 MR. SHARKEY: We would object, your
6 Honor. She said the same type of tool, but we
7 haven't identified what type of tool or whether the
8 tool even exists, how could he testify --

9 EXAMINER ADDISON: Thank you,
10 Mr. Sharkey. Maybe you could rephrase your question.

11 MS. BOJKO: Sure.

12 By Ms. Bojko:

13 Q. Mr. Crusey, Ohio used to own coal-fired
14 generation; is that correct?

15 A. That is definitely correct.

16 Q. And they used to own more than just the
17 OVEC?

18 A. That is correct, yes.

19 Q. And as part of owning generation, AES
20 has previously considered must run -- or commitment
21 strategies, correct?

22 A. That is correct, yes.

23 Q. So in your position on the OVEC team --
24 in your experience being in the commercial
25 operations -- you were vice-president of commercial

1 operations at AES Ohio and senior director of risk
2 management for U.S. Thermal and Utilities; is that
3 correct?

4 A. That is correct, yes.

5 Q. And as part of that commercial
6 operations team you would consider commitment
7 strategies, correct?

8 A. Yes, we would have.

9 Q. And if AES Corp. -- they could create
10 some kind of tool to consider the difference in the
11 commitment strategies, correct?

12 A. That's possible, yes.

13 Q. And to your knowledge -- well, let me
14 ask, did you request any kind of analysis be done or
15 a tool created regarding the commitment strategies
16 with regard to OVEC during the audit period?

17 A. I did not, no.

18 Q. Mr. Crusey, back up a little bit.
19 You've been present for most of the hearing so far,
20 is that fair?

21 A. Yes, I was here all of last week.

22 Q. And so you were in the hearing room when
23 AEP Witness Stegall and Duke Witness Swez testified?

24 A. Yes, I was.

25 Q. And your testimony -- do you have it in

1 front of you? It was marked as AES Exhibit 1?

2 A. I have my public testimony in front of
3 me.

4 Q. That testimony included attachments; is
5 that correct?

6 A. Yes, ma'am.

7 Q. As I understand the purpose statement of
8 your testimony on page 3, lines 1 through 3, you are
9 testifying to the prudence and reasonableness of
10 AES's actions through the audit period, correct?

11 A. The purpose of my testimony is to
12 demonstrate that AES Ohio's actions regarding the
13 revenues and expenses related to OVEC during the
14 audit period were prudent and reasonable, yes.

15 Q. You're testifying to AES's actions
16 during that period, correct?

17 A. Yes, regarding the revenues and expenses
18 related to OVEC.

19 Q. You're not here to testify to AEP's
20 actions, are you?

21 A. I am not.

22 Q. And you're not here to testify to OVEC's
23 actions, are you?

24 A. I am not, no.

25 Q. And you're not here to testify to Duke's

1 actions, are you?

2 A. No, ma'am.

3 Q. On page 3, going over to page 4 of your
4 testimony, you describe the Intercompany Power
5 Agreement, ICPA; is that correct?

6 A. Yes, I do.

7 Q. And you note in your testimony that the
8 ICPA was accepted by FERC, not approved, correct?

9 A. That's what it states, yes.

10 Q. And page 4, line 8 of your testimony,
11 you note that the ICPA was filed at FERC and approved
12 by the Sponsoring Companies, correct?

13 A. That's what it says, yes.

14 Q. And at page 4, lines 9 through 11, here
15 you state that the ICPA, "requires the Sponsoring
16 Companies to pay all of OVEC's costs and grants them
17 the ability to utilize their share of energy and
18 capacity from OVEC," correct?

19 A. That is correct, yes.

20 Q. And you attached the ICPA to your
21 testimony as Exhibit 1; is that right?

22 A. Yes, it is.

23 Q. And through the ICPA, AES is entitled to
24 4.9 percent of OVEC's energy and capacity, correct?

25 A. AES owns 4.9 percent of OVEC, yes.

1 Q. And it's entitled to 4.9 percent of
2 OVEC's energy and capacity; is that correct?

3 A. That is correct.

4 Q. This means that AEP is responsible for
5 4.9 percent of the cost --

6 A. You mean AES.

7 Q. Sorry, strike that.

8 This means that AES is responsible for
9 4.9 percent of the costs of the two OVEC plants, one
10 in Ohio and one in Indiana, correct?

11 A. That is correct, yes.

12 Q. And you describe OVEC's governance and
13 management structure in your testimony beginning on
14 page 4, is that correct, line 12?

15 A. Yes.

16 Q. On page 4, line 13, you state that OVEC
17 Board of Directors oversees OVEC, is that correct?

18 A. From a strategic level, yes.

19 Q. But the Board does not oversee the
20 day-to-day operations of OVEC?

21 A. That is correct.

22 Q. And you are not a member of the Board?

23 A. I am not a member of the Board of
24 Directors of OVEC.

25 Q. Who is the AES Board member?

1 A. Currently, or during the audit period?

2 Q. Good question. During the audit period.

3 Thank you.

4 A. During the audit period I believe our
5 Board member was Mark Miller.

6 Q. And the operating committee makes
7 recommendations to the Board regarding major
8 decisions; is that correct?

9 A. On an as-needed basis, yes.

10 Q. You were AES's designated representative
11 on the operating company during the audit period,
12 correct?

13 A. On the operating committee -- during the
14 audit period, I was AES Ohio's operating committee
15 member, yes.

16 Q. As a member of the operating committee
17 AES had a vote regarding the operating committee's
18 decisions, correct?

19 A. AES Ohio would have a vote on the
20 operating committee for any items that came up for
21 vote, that is correct.

22 Q. How long have you been serving as AES's
23 representative on the operating committee?

24 A. For a long time. There may have been
25 periods due to restructurings for a year or two where

1 I was not AES Ohio's representative, but I've been
2 involved with OVEC for many years.

3 Q. And it's true that the operating
4 committee does not oversee the day-to-day operations
5 of OVEC, correct?

6 A. That is correct. The operating
7 committee puts in place the operating procedures.
8 The operating committee is made up of a diverse group
9 of owners, I believe ten -- ten Sponsoring Companies
10 that review and approve the operating procedures,
11 part of which govern OVEC's day-to-day operations and
12 management of the OVEC Clifty Creek and Kyger Creek
13 facilities.

14 Q. Do you have in front of you a copy of
15 the audit report filed in this case -- or AES's audit
16 report?

17 A. I have one that says Staff Exhibit 2,
18 but it says AES public.

19 Q. Okay. Have you reviewed the audit
20 report concerning AES's LGR Rider that was filed in
21 this proceeding by the auditor on December 17th,
22 2021?

23 A. Yes, I have.

24 Q. And it is your understanding that the
25 purpose of the audit is to review the prudence of all

1 costs and sales flowing through LGR Rider and
2 investigate whether AES's actions were in the best
3 interest of its retail ratepayers?

4 A. That sounds correct, yes.

5 Q. The LGR Rider is a mechanism allowing
6 AES to collect from customers the difference between
7 the OVEC costs and the PJM revenues, correct?

8 A. The LGR allows AES Ohio to collect from
9 customers, or provide customers a credit, the
10 difference between the cost of the company, AES Ohio,
11 incurs from OVEC, compared with the revenues that the
12 company receives for capacity, energy, and ancillary
13 services from PJM.

14 MS. BOJKO: Your Honor, may I hear that
15 response back again?

16 EXAMINER ADDISON: You may.

17 (Record read back.)

18 By Ms. Bojko:

19 Q. And those costs are different than
20 demand charges associated with AES's share of OVEC;
21 is that correct?

22 A. The costs that the company receives --
23 or incurs from its share of OVEC from the cost from
24 OVEC include a variable or incremental cost to
25 operate the units, as well as fixed cost, which I

1 would refer to as the demand charge that we incur
2 from OVEC.

3 So I would think that those costs do
4 include the demand charge, which are typically the
5 fixed costs.

6 Q. Let's go to the ICP attached to your
7 testimony as Exhibit 1. Do you have that in front of
8 you?

9 A. I do, yes.

10 Q. Would you go to page 6? Looking at
11 Section 4.02. Are you there?

12 A. I'm there.

13 Q. Section 4.02 describes how a Sponsoring
14 Company takes available power entitlement and
15 available energy entitlement under the terms of the
16 ICP; is that correct?

17 A. That is the subject of 4.02.

18 Q. And, Mr. Crusey, if OVEC were to close
19 tomorrow would AES be obligated to pay the demand
20 charge?

21 A. My understanding is that yes, if the
22 OVEC plants -- my understanding is if OVEC were to
23 shut down or close tomorrow, the Company would still
24 be responsible for the demand charge for the shutdown
25 costs, fixed cost, demand charge, yes.

1 Q. AES includes the cost of its
2 unconditional obligated demand charges from OVEC
3 under the ICP in its calculation of the LGR Rider,
4 correct?

5 A. My understanding is all of the costs the
6 Company incurs from OVEC, and all of the revenues the
7 Company receives from PJM are included in the LGR
8 Rider.

9 Although the calculation and the
10 mechanics of the LGR Rider are not my responsibility
11 in my direct daily responsibility, that is my
12 understanding of how the LGR Rider works.

13 Q. And you would expect that that would
14 fall under Mr. Donlon who testified last week?

15 A. Yes, I would.

16 Q. You would agree -- Let's talk a little
17 bit about dispatching of energy and capacity.

18 You would agree that, generally
19 speaking, a plant operator will receive net positive
20 revenue as long as the cost of operating its facility
21 remains below the market price of power, correct?

22 A. Could you restate the question again,
23 please?

24 Q. Sure. Generally speaking, a plant
25 operator will receive net positive revenue as long as

1 the cost of operating its facility remains below the
2 market price of power?

3 A. You say net positive revenue. You mean
4 the net positive margin?

5 The power plant operator -- the owner
6 receives revenues, in this instance, from PJM, and
7 those incremental costs are fuel and variable costs
8 required to operate the plant on an incremental
9 basis.

10 I was confused by your term incremental,
11 incremental revenue -- incremental revenue I believe
12 you used.

13 Q. So would your answer be yes, that if a
14 plant operator would receive net positive -- net
15 margin, to use your term, as long as the cost of
16 operating its facility remains below the market power
17 price?

18 A. On an incremental basis, that is
19 correct, for variable incremental costs.

20 Q. And you're familiar with the term must
21 run; is that correct?

22 A. Yes, I am.

23 Q. And on page 8 of your testimony you
24 discuss must run; is that correct?

25 A. I do discuss that on page 8.

1 Q. It's fair to say that must run does not
2 mean or imply that the units are needed for
3 reliability purposes, correct?

4 A. The must run designation is literally a
5 designation that the operator of the plant that's
6 offering the unit into PJM market -- into the PJM
7 day-ahead energy market, literally makes in the PJM
8 energy system.

9 They have a choice, they can choose
10 must-run designation, or they can choose the economic
11 designation.

12 Q. So you would agree with me that that
13 designation has nothing to do with whether the plants
14 are needed for reliability?

15 A. I do agree with that statement, yes.

16 Q. And during the majority of the audit
17 period OVEC offered all but one of the units as must
18 run, correct, except for the period of April to June?

19 A. Except for the period from April through
20 June, the majority of the OVEC plants for that time
21 frame were offered as must run into the day-ahead PJM
22 energy market, correct.

23 MS. BOJKO: Can I have one minute, your
24 Honor?

25 EXAMINER ADDISON: Absolutely. Let's go

1 off the record.

2 (Discussion off the record.)

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

5 Ms. Bojko.

6 MS. BOJKO: Your Honor, at this time I
7 would like to mark as OMAEG Exhibit 15?

8 EXAMINER ADDISON: We're up to 15.

9 MS. BOJKO: 15?

10 EXAMINER ADDISON: Yes.

11 MS. BOJKO: This document -- or AES's
12 responses to second set of discovery from Ohio -- by
13 Citizens Utility Board Ohio and Union of Concerned
14 Scientists.

15 EXAMINER ADDISON: It will be so marked.

16 (EXHIBIT MARKED FOR IDENTIFICATION.)

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

18 EXAMINER ADDISON: You may.

19 By Ms. Bojko:

20 Q. Do you have in front of you what's been
21 marked as OMAEG Exhibit 15?

22 A. I do.

23 Q. Does this appear to be discovery
24 responses that AES provided to one of the intervening
25 parties?

1 A. It does, yes.

2 Q. Okay. Could you turn to page 11?

3 A. I'm still getting familiar with the
4 document because I'm looking at the name on it, which
5 is not a current employee of AES, so I'm just trying
6 to get familiar with the document.

7 Q. Are you stating that Mr. Griffin no
8 longer works with AES?

9 A. I'm saying that, yes, so I'm just trying
10 to get my bearings on the time frame of this
11 document.

12 MS. BOJKO: Of course I will note that
13 Mr. Hollon, who is sitting in the room today, is also
14 on the document signature block.

15 EXAMINER ADDISON: Thank you. We'll
16 give him a few minutes to look it over.

17 THE WITNESS: I see that. Thank you.
18 By Ms. Bojko:

19 Q. Does this appear to be discovery
20 responses that AES would have provided to the
21 parties?

22 A. Yes, it does.

23 Q. And this document is dated April 22nd,
24 2022, if you look at the certificate of service page.

25 A. Yes, April 22nd, 2022.

1 Q. Now, if you could turn to page 11. I'm
2 looking at the top question, the top interrogatory,
3 02-018. Do you see that?

4 A. Yes, I do.

5 Q. And this is talking about OVEC's unit
6 commitment decisions during 2020; is that correct?

7 A. Yes, ma'am.

8 Q. And if you look to 02-018B, the request
9 asks that AES produce all daily economic analyses
10 that the Company used to inform OVEC's unit
11 commitment decisions for the OVEC units in 2020; is
12 that correct?

13 A. That is correct.

14 Q. And if you look at the response provided
15 by AES, 02-018, the answer is, "None"; is that
16 correct?

17 A. That is correct.

18 Q. So during the audit period AES did not
19 perform any daily economic analyses to inform its
20 recommendations to the operating committee regarding
21 OVEC's unit commitment; is that correct?

22 A. None that I'm aware of, correct.

23 Q. Do you know if -- during the audit
24 period if OVEC ever analyzed the amount of time
25 necessary to shut down and restart the unit?

1 A. OVEC, as the operator of the Clifty and
2 Kyger Creek facilities, in my view and my opinion,
3 should know what that startup and shutdown time
4 requirement is, the technical specifications of that
5 plan, so they should know what that is, yes.

6 Q. Well, you're speculating that they
7 should know. Did you actually see any economic
8 analysis produced by OVEC regarding that issue?

9 A. I did not.

10 Q. Thank you. As a Sponsoring Company with
11 representation on the operating committee during the
12 audit period, AES had input as to the commitment
13 strategy of the OVEC units?

14 A. Through our involvement on the operating
15 committee and through the approved operating
16 procedures for OVEC, that is correct, yes.

17 Q. And as a member of the operating
18 committee, AES had input into the operating
19 committee's decisions and procedures; is that
20 correct?

21 A. That is correct, yes.

22 Q. And as a member of the operating
23 committee, AES has ability to recommend modifications
24 to the operating procedures, correct?

25 A. That is correct.

1 Q. And it's your understanding that the
2 operating procedures have been changed in the past
3 from time to time, correct?

4 A. They have been changed in the past from
5 time to time, yes, the operating committee
6 procedures, yes.

7 Q. And AES would have had input and a vote
8 in changing those procedures, correct?

9 A. That is correct.

10 Q. According to your testimony at page 11,
11 you state that OVEC has designated its units as
12 economic within the market when it is prudent and
13 reasonable to do so, correct?

14 A. That is correct.

15 Q. And this remark specifically refers to
16 the period during 2020; is that correct?

17 A. Yes, ma'am.

18 Q. And you were referring to, in that
19 comment, the period from April 14th, 2020 through
20 June 30th, 2020?

21 A. That sounds correct, yes.

22 Q. And the operating committee voted to
23 authorize OVEC the discretion to offer its units with
24 a commitment economic status instead of must run
25 during that period; is that right?

1 A. Yes, that sounds correct as well.

2 Q. And AES was among the Sponsoring
3 Companies that voted to give OVEC the option to offer
4 units as economic; is that correct?

5 A. Yes.

6 Q. AES did not propose or recommend
7 changing OVEC's unit commitment strategy from
8 January through April 8th, 2020, did it?

9 A. Prior to Duke bringing that issue up,
10 OVEC was following the approved operating committee
11 procedures, but the operating committee then had
12 those calls starting in 2020.

13 But to answer your question, prior to
14 that I did not make, nor did AES make a
15 recommendation to change the offer category or
16 status, if you will.

17 Q. But AES could have made the
18 recommendation, isn't that fair?

19 A. We could have made that recommendation,
20 yes.

21 Q. And during the period from April 14th,
22 2020 through June 30th, 2020, three of the units were
23 given economic commitment status?

24 A. Certain of the units were, correct.

25 Q. Let's go back to the -- what's been

1 marked an OMAEG Exhibit 15.

2 Can you turn to page 10 now? If you
3 look at the interrogatory numbered 02-017 -- do you
4 see that? It's at the bottom of page 10.

5 A. Yeah, I'm sorry, I was on the wrong
6 page.

7 Q. At the bottom of page 10 02-017 asks AES
8 to admit or deny whether the OVEC units were all
9 committed as must run during 2020; is that correct?

10 A. That is correct.

11 Q. And here AES responds by explaining the
12 brief period that we just talked about, April until
13 June; is that right?

14 A. That is what that says, yes.

15 Q. And the second line -- or third line
16 from the bottom, excuse me, AES responds that three
17 units were committed as economic. Does that refresh
18 your recollection about how many units were committed
19 as economic?

20 A. That sounds approximately correct. I
21 don't have an exact number in my head, but that does
22 sound correct.

23 Q. You don't have any reason to think that
24 the statement made by AES is inaccurate?

25 A. I do not have any reason to believe that

1 statement is inaccurate, no.

2 Q. And, sir, is it your understanding that
3 units that are offered economically receive PJM
4 Uplift payments to ensure that utilities recover
5 their total offered costs when market revenues are
6 insufficient?

7 A. When a unit offers into the day-ahead
8 energy market on a must-run basis -- let me start
9 over.

10 When a unit offers into the PJM
11 day-ahead energy market on an economic basis, that
12 tells PJM in its 24-hour look for the next day, to
13 include startup costs in the evaluation of whether or
14 not to commit the unit.

15 If that unit does get picked up and
16 clears the day-ahead energy market, if during that
17 operating day the unit did not earn enough
18 capacity revenue -- sorry, energy revenue during the
19 energy -- from the energy market for that 24-hour
20 period to cover its total costs for that day,
21 including startup costs, PJM will then give an Uplift
22 or make-whole payment to make that unit whole for the
23 day including its startup costs.

24 A unit that offers must run signals the
25 PJM do not include startup costs in your evaluation

1 for the 24-hour energy -- for the 24-hour period in
2 its analysis of whether that unit gets a committed
3 fixed-price commitment for that day, pardon me.

4 Q. And the Uplift payments are not offered
5 to must-run units; is that correct?

6 A. Units that offer must run are not
7 available for make whole or Uplift payments, that is
8 correct, per the PJM business rules.

9 Q. And isn't it true that AES did not
10 perform any calculations or qualitative analysis
11 regarding the reasonableness of the must-run strategy
12 during that period?

13 A. For the OVEC Cliff Clifty and Kyger
14 Creek units that are coal base load units designed to
15 run for long periods of time, we did not do that
16 analysis, that is correct, during the audit period.

17 MS. BOJKO: Your Honor, may we go off
18 the record for a minute?

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

21 (Discussion off the record.)

22 EXAMINER ADDISON: Let's go back on the
23 record.

24 Ms. Bojko.

25 MS. BOJKO: Thank you, your Honor.

1 By Ms. Bojko:

2 Q. Mr. Crusey, under the ICPA, OVEC bills
3 AES for fuel-related expenses, I think you stated
4 that to me earlier?

5 A. That is one of the components under
6 the -- OVEC bills AES Ohio.

7 Q. And these fuel costs charged to AES are
8 then also passed on to customers through the LGR
9 Rider?

10 A. Yes, they are currently passed through
11 to customers as one of the cost components through
12 the Legacy Generation Rider.

13 Q. And if you could turn to page 13 of your
14 testimony, page 13, lines 19 through 22 of your
15 testimony, here you explain that AEP -- you just use
16 the term AEP manages OVEC's coal procurement and
17 transportation contracts. Is it your understanding
18 that that's AEP Ohio or AEP Service Corp.?

19 A. It is AEP Service Corporation.

20 Q. And AES is not directly involved in
21 OVEC's coal procurement transportation contracts, is
22 it?

23 A. AES is not directly involved in the fuel
24 or transportation contracts.

25 Q. And AES has not conducted any sort of

1 review to determine whether AEP's fuel procurement
2 practices are reasonable and prudent, correct?

3 A. We have not reviewed AEP Service
4 Corporation's policies or procedures, no.

5 Q. And has AES done an independent review
6 of any of OVEC's fuel procurement practices?

7 A. We have not, no.

8 Q. And if you go on to -- if you turn the
9 page to page 14, at the top, lines 4 through 7, you
10 state that OVEC independently reviews coal contracts.
11 Do you see that?

12 A. Yes.

13 Q. Has AES done an independent review of
14 these OVEC coal contracts?

15 A. AES does not review the OVEC coal
16 contracts that are managed by AEP, if you will.

17 Q. And you have not received a formal
18 analysis from OVEC regarding the coal contract review
19 that you reference on lines 4 through 7, have you?

20 A. Could you repeat that?

21 Q. You have not reviewed a formal analysis
22 from OVEC regarding the coal contract review that you
23 reference on page 14, lines 4 through 6?

24 A. I've not completed a formal analysis,
25 but I do note at the bottom of my testimony that

1 OVEC's 2020 Annual Report on page 44 reflects that
2 their fuel costs -- unit fuel costs of burn have
3 trended down from '16 to 2020.

4 And I believe state in general terms
5 that that supports AEP's method of issuing RFPs,
6 purchasing coal from different providers over
7 different periods of time, and that diversity helps
8 provide a more market based prudent fuel cost.

9 MS. BOJKO: Your Honor, I move to strike
10 his response as nonresponsive. I didn't ask him
11 anything about AEP, I asked him about a formal
12 analysis conducted by OVEC.

13 EXAMINER ADDISON: Thank you. I don't
14 believe Mr. Crusey has taken advantage of my one bite
15 at the apple rule, as I will deny the motion to
16 strike and allow the answer to stand.

17 But, Mr. Crusey, if you could listen to
18 Ms. Bojko's questions and only answer her questions
19 going forward. If there's any additional information
20 you'd like to bring out on redirect, Mr. Sharkey will
21 certainly have the opportunity to do that.

22 THE WITNESS: Thank you.

23 MS. BOJKO: Could I have my question
24 reread?

25 EXAMINER ADDISON: I will note I don't

1 believe he directly answered your question, so with
2 that yes, we can have the question read and I'll
3 direct the witness to answer it.

4 (Record read back.)

5 EXAMINER ADDISON: You may answer.

6 THE WITNESS: I have not completed a
7 formal review of OVEC's processes or procedures for
8 coal contract review, if they have one. I have not
9 reviewed that, no.

10 By Ms. Bojko:

11 Q. And you don't know if they have one; is
12 that correct?

13 A. OVEC? I don't know if they have one.

14 Q. It's your understanding that the auditor
15 in this case found that for the Clifty Creek plant
16 the coal purchase prices during the audit period were
17 significantly higher than the spot prices, correct?

18 A. I believe I recall reading that OVEC had
19 a long-term contract that had prices in it, and then
20 the market prices had subsequently declined, so the
21 coal cost or price of that fuel contract was
22 currently greater than the then current spot price.

23 Q. And could you turn to page 54 of AES's
24 audit report at issue in this case? It's been marked
25 as AES Exhibit 2 -- or Staff Exhibit 2. My

1 apologies.

2 A. I'm sorry, which page, please?

3 Q. 54.

4 A. I have it. It's redacted, but I do have
5 it.

6 Q. Great. Look at the first sentence under
7 Figure 32. Isn't it true that LEI found that for the
8 Clifty Creek plant, the coal purchase prices in 2020
9 were significantly higher than the spot prices from
10 SNL?

11 A. You asked me if that's what it says?

12 Q. Yes.

13 A. That's what that sentence says, yes.

14 Q. Is that what the auditor found and
15 concluded?

16 A. It goes on to say, "The high average
17 prices attributable to expensive coal purchased from
18 (redaction) of the supply in 2020."

19 Q. Okay.

20 A. So a long-term contract that was
21 purchased previously can either be in the money or
22 out of the money over time depending on where market
23 prices go.

24 Market prices apparently declined, so
25 the spot price of coal was less than the contract

1 price for the contract that was entered into at a
2 previous -- at a previous time.

3 Q. And having all of that knowledge, the
4 auditor specifically concluded that the Clifty Creek
5 plant -- the coal purchased prices in 2020 were
6 significantly higher, correct?

7 A. My read of that is that's a fact that
8 there was a long-term contract in place and spot
9 prices are not lower than that. So that statement is
10 correct, yes.

11 Q. And then she goes on to say that the
12 coal prices for Kyger Creek plant were also higher
13 than the S&P physical market survey prices, correct?

14 A. That's what that says, yes.

15 Q. And that was a different contract that
16 was in place with regard to that higher than market
17 prices, correct?

18 A. I don't have the details on that
19 contract, or either contract, actually.

20 Q. And the auditor also recommends that
21 AES, in its role on the operating committee,
22 encourage OVEC to provide less coal through long-term
23 contracts; isn't that correct?

24 A. Do you have a reference for me?

25 Q. Sure. It's on page 65.

1 A. It's a --

2 Q. Under the recommendation section with
3 regard to fuel, it's the second bullet.

4 A. I do read that, yes.

5 Q. Mr. Crusey, throughout your testimony
6 you testified to the ICPA and what you believe
7 various sections state or mean; is that correct?

8 A. I do reference the ICPA in terms of the
9 power agreement in my testimony, yes.

10 Q. And you're not an attorney, are you,
11 sir?

12 A. I am not an attorney.

13 Q. Okay. Mr. Crusey, you stated earlier
14 that you're not an OVEC Board member; is that
15 correct?

16 A. I am not a Board member of OVEC.

17 Q. And if the Board members would have had
18 email correspondence or discussions, given that
19 you're not a Board member, you would not have been on
20 those correspondence, would you?

21 A. Typically no. Typically, no.

22 Q. And you have not poled the Board members
23 to ask what they would have done in a variety of
24 situations, have you?

25 A. No, I have not done that.

1 Q. And you obviously cannot -- you do not
2 know how they would have voted on a particular issue
3 or not, would you have?

4 A. I know what I would have observed from
5 being in the Board room, but for example, if they
6 went into executive session I would have left the
7 room and not been a party to that conversation,
8 correct.

9 Q. And you didn't speak to them after each
10 vote and ask why they voted the way they did?

11 A. I definitely did not, no.

12 MS. BOJKO: Thank you. Your Honor, I
13 have no further questions.

14 EXAMINER ADDISON: Thank you very much,
15 Ms. Bojko.

16 Ms. Nordstrom?

17 MS. NORDSTROM: Just one question.

18 - - -

19 CROSS-EXAMINATION

20 By Ms. Nordstrom:

21 Q. Hi, Mr. Crusey. My name is Karin
22 Nordstrom. I represent the Ohio Environmental
23 Council.

24 Just to confirm from your discussion
25 with Ms. Bojko and Mr. Finnigan, so during 2020 did

1 you, as an AES representative to the OVEC operating
2 committee, suggest that OVEC renegotiate its coal
3 supply contracts?

4 A. I did not suggest that, no.

5 MS. NORDSTROM: Thank you. Nothing
6 further.

7 EXAMINER ADDISON: Thank you very much.
8 Mr. Dougherty.

9 MR. DOUGHERTY: Yes, just briefly.

10 - - -

11 CROSS-EXAMINATION

12 By Mr. Dougherty:

13 Q. Hi, Mr. Crusey. My name is Trent
14 Dougherty, representing Citizens Utility Board of
15 Ohio and Union of Concerned Scientists.

16 I just want to clarify just some of the
17 wording that you use in your testimony. I'm having
18 some trouble understanding the tense -- the verb
19 tenses here.

20 If you can go to page 15 of your
21 testimony, starting on the section -- the question on
22 line 13. Let me know when you're there.

23 A. I'm there.

24 Q. Okay. And that question is wanting you
25 to describe the process that OVEC uses to approve

1 capital projects, correct?

2 A. Yes.

3 Q. And your answer that you give in lines
4 14 through 18, are those just generally what -- just
5 generally the process that OVEC uses?

6 A. Yes, those are generally at a high level
7 the process that OVEC uses.

8 Q. Okay. And then if we go to lines 16 and
9 17 where you state there were active discussions of
10 those investments of the Board, is that pertaining to
11 a specific meeting, or is that pertaining to
12 generally?

13 A. It should be read in the more general
14 sense.

15 Q. And that's also then, your second part
16 of that sentence, which is the Board would approve
17 them only if the Board concluded they were necessary
18 and prudent.

19 A. By the subject meaning the capital
20 projects that were over that certain threshold.

21 Q. Okay. And those general processes that
22 you talk about, including the general process that
23 the Board would approve capital projects only if the
24 Board concluded they were necessary and prudent, are
25 those part of the ICPA, that you have as Exhibit 1 --

1 are those stated in there?

2 A. They are not, no.

3 Q. Are those stated in any other document
4 that governs OVEC?

5 A. Not that I am aware of.

6 Q. So this conclusion that they make
7 decisions based on what is necessary and prudent is
8 not part of anything written down as their policy?

9 A. Not that I am aware of.

10 MR. DOUGHERTY: Thank you. No more
11 questions, your Honor.

12 EXAMINER ADDISON: Thank you.
13 Mr. Lindgren.

14 MR. LINDGREN: Thank you, your Honor.

15 - - -

16 CROSS-EXAMINATION

17 By Mr. Lindgren:

18 Q. Good morning, Mr. Crusey.

19 A. Good morning.

20 Q. Are you familiar with Component D of the
21 OVEC bill? If you need a reference you can turn to
22 page 10 of the ICPA that's attached to your
23 testimony.

24 A. I am familiar with Component D slightly,
25 and I am on page 10 of the ICPA.

1 Q. Thank you. Could you take a minute then
2 to read over the description of Component D that's on
3 page 10 there?

4 A. I have read it.

5 Q. Thank you. Could you explain your
6 understanding of Component D?

7 MS. BOJKO: Objection, your Honor.

8 EXAMINER ADDISON: Grounds?

9 MS. BOJKO: This is beyond the scope of
10 this witness' testimony. He just said he's vaguely
11 familiar with it. He didn't testify to Component D
12 at all.

13 EXAMINER ADDISON: Mr. Lindgren.

14 MR. LINDGREN: Your Honor, I believe he
15 did reference -- he testified in direct testimony
16 that he -- AES did not receive dividends for this
17 service, so I'm going to explore that.

18 MS. BOJKO: That does not specifically
19 mean Component D.

20 EXAMINER ADDISON: I'll allow the
21 question.

22 MR. LINDGREN: Thank you.

23 THE WITNESS: Could you repeat it,
24 please?

25 By Mr. Lindgren:

1 Q. Yes. What your understanding of
2 Component D and how it works?

3 A. Well, I don't want to read it, but the
4 words state that Component D shall consist of an
5 amount equal to the product of \$2.089 multiplied by
6 the number of shares of capital stock of OVEC with a
7 par value of \$100 per share of OVEC that have been
8 issued and outstanding.

9 And I know just from my history that AES
10 or DP&L has not received a dividend from OVEC prior
11 to 2013.

12 MS. BOJKO: Objection. I move to strike
13 his answer after he read Component D when he talks
14 about dividend.

15 Assumes facts not in evidence. There's
16 been no foundation laid that they equate to the same
17 thing. Component D doesn't say anything about
18 dividends.

19 It's improper cross-examination. Goes
20 beyond the scope of the question, and there's been a
21 lack of foundation laid.

22 EXAMINER ADDISON: Mr. Lindgren, care to
23 respond?

24 MR. LINDGREN: I believe he did testify
25 regarding -- in his direct testimony regarding

1 receipt of dividends.

2 EXAMINER ADDISON: Ms. Bojko, what
3 portion of his answer were you aiming to strike?

4 MS. BOJKO: He's not laid any
5 connection -- he read Component D, said to multiply
6 it by the total number of shares of capital stock,
7 and I think there was a period and then he went on to
8 talk about dividends which is not -- there's been no
9 foundation that those two items correlate.

10 MR. NOURSE: But, your Honor, that was
11 the basis of Staff's question, connecting dividends
12 to Component D.

13 EXAMINER ADDISON: Well, they may have
14 been aiming to that, Mr. Nourse, but I will be
15 granting the motion to strike.

16 If Mr. Lindgren wants to get to that
17 point, I'll allow him to take a couple more steps to
18 get there.

19 MR. LINDGREN: Thank you.

20 By Mr. Lindgren:

21 Q. Mr. Crusey, in addition to your duties
22 with AES, you were also an adjunct professor of
23 finance at the University of Dayton; is that correct?

24 A. Yes, I am.

25 Q. And is the term capital stock used in

1 the field of finance? Is the term capital stock used
2 in the field of finance?

3 A. Yes, sir, it is.

4 Q. And can you explain what capital stock
5 is?

6 A. So to me capital stock is the equity
7 that the owners would put into a company in the form
8 of its capital structure. It's the ownership
9 structure or capital structure as opposed to the debt
10 structure of a company.

11 Q. So capital stock is a form of equity?

12 A. Yes, sir. That's my understanding, yes.

13 Q. Thank you. And can you explain the term
14 par value, if you know?

15 A. Par value is in name only, but it's the
16 stated value typically on a share of stock. Like a
17 bond might have a par value, and the price of the
18 bond will change over time as interest rates change,
19 but at maturity the bond will pay it's stated par
20 value.

21 Q. Thank you. Mr. Crusey, as a regulatory
22 expert are you aware of the Ohio Statute RC
23 4928.01a42 that defines prudently incurred costs
24 related to a Legacy Generation Resource?

25 A. I am familiar with it. I wouldn't label

1 myself as a regulatory expert, I'm testifying as a
2 commercial and OVEC -- and our OVEC operating
3 committee member.

4 Q. I understand. But you are familiar with
5 that definition?

6 A. Yes, sir.

7 Q. Thank you. And are you aware that the
8 definition contained in that statute excludes any
9 return on investment in common equity?

10 A. Yes, I am.

11 MS. BOJKO: Objection.

12 MR. LINDGREN: Thank you.

13 EXAMINER ADDISON: He's already
14 answered. Move on.

15 MS. BOJKO: Your Honor, I'm going to
16 object to this line of questioning. Nowhere in
17 Mr. Crusey's testimony does he talk about 4928.148 or
18 does he talk about 4928.01a42. Purposely did not ask
19 him any of these questions because it's not contained
20 in his testimony, and now we are -- I guess I'll call
21 it friendly cross at this point.

22 MS. NORDSTROM: Your Honor, OEC would
23 like to join that objection where it appears
24 Mr. Lindgren, as Ms. Bojko said, is going down some
25 friendly cross angle and it's not clear where he's

1 headed.

2 EXAMINER ADDISON: Anyone else care to
3 weigh in?

4 MR. LINDGREN: Your Honor, may I
5 respond?

6 EXAMINER ADDISON: You may.

7 MR. LINDGREN: Your Honor, the auditor
8 put forward the question to the Commission of whether
9 the components of -- whether the costs of Component D
10 were properly billed.

11 I think it will inform the Commission if
12 witnesses such as Mr. Crusey is able to provide an
13 explanation of this.

14 EXAMINER ADDISON: I would agree,
15 Mr. Lindgren, but I'm not sure if Mr. Crusey is the
16 appropriate witness for AES Ohio to respond to these
17 questions. Perhaps the more appropriate witness
18 would have been Mr. Donlon.

19 MR. LINDGREN: I understand, your Honor.

20 EXAMINER ADDISON: Let's move on.

21 MR. LINDGREN: May I ask any questions
22 concerning his understanding of terms in the statute?

23 EXAMINER ADDISON: I think we're beyond
24 that, Mr. Lindgren.

25 MR. LINDGREN: Thank you. Then I have

1 no further questions. Thank you.

2 EXAMINER ADDISON: Thank you very much.

3 Mr. Sharkey, any redirect?

4 MR. SHARKEY: No, your Honor.

5 EXAMINER ADDISON: Mr. Crusey, we have
6 no additional questions for you at this time. You
7 are excused. Thank you very much.

8 (Witness excused.)

9 MR. SHARKEY: Your Honor, we'd renew our
10 motions for the admission of AES Ohio Exhibit 1 and
11 2C.

12 EXAMINER ADDISON: Thank you. Any
13 objection to the admission of AES Ohio Exhibit 1 and
14 2C at this time?

15 MS. BOJKO: Just the prior stated
16 objections to the three areas of his testimony that
17 he had no personal knowledge of, your Honor.

18 EXAMINER ADDISON: Of course, Ms. Bojko,
19 those objections are noted. Any additional
20 objections at this time?

21 Hearing none, those exhibits will be
22 admitted.

23 (EXHIBITS ADMITTED INTO EVIDENCE.)

24 EXAMINER ADDISON: Ms. Bojko?

25 MS. BOJKO: Yes, your Honor, at this

1 time I'd like to move OMAEG Exhibit 15, discovery
2 responses by AEP.

3 EXAMINER ADDISON: AEP response --

4 MS. BOJKO: I'm sorry, AES's response.

5 EXAMINER ADDISON: Thank you, Ms. Bojko.

6 Any objection to the admission of OMAEG Exhibit 15 at
7 this time?

8 Hearing none, it will be admitted.

9 (EXHIBIT ADMITTED INTO EVIDENCE.)

10 MS. BOJKO: Thank you.

11 EXAMINER ADDISON: Mr. Finnigan?

12 MR. FINNIGAN: Yes, your Honors. At
13 this time I'd like to move into evidence OCC Exhibits
14 15, 16, and 17.

15 EXAMINER ADDISON: Any objections?

16 MR. SHARKEY: Yes, your Honor.

17 EXAMINER ADDISON: Mr. Sharkey, you beat
18 me to the punch.

19 MR. SHARKEY: For the same reasons that
20 I objected to and you precluded questioning on them,
21 OCC hasn't established a foundation for those
22 documents. I don't believe they are admissible.

23 MR. NOURSE: AEP joins the objection.

24 MS. AKHBARI: Duke joins.

25 EXAMINER ADDISON: Thank you.

1 Mr. Finnigan.

2 MR. FINNIGAN: Yes, your Honor, these
3 documents are admissible on many grounds.

4 First they are admissible under Rule 201
5 allowing the Commission to take administrative notice
6 of these documents, and in particular, Rule 201(B)
7 dealing with the kind of facts for which the
8 Commission can take administrative notice.

9 Rule 201(B) says that the kind of facts
10 the Commission can take administrative notice of are
11 facts that are not subject to reasonable dispute and
12 either -- and that they are either generally known or
13 capable of accurate and ready determination by resort
14 to sources whose accuracy cannot reasonably be
15 questioned.

16 And I would suggest that it's the latter
17 element of that rule that comes into play, that the
18 facts that are contained in the Commission's
19 decision, Exhibit 15, and the testimony by
20 Mr. Jackson, Exhibits 16 and 17, cannot really be
21 reasonably questioned as to their accuracy. And why
22 is that? Well, if we look at the documents
23 themselves, we can see the answer.

24 If we look at the OCC Exhibit 15, this
25 is the decision by the IURC, and there's a stamp at

1 the top of the document which states original, and
2 then in the upper right-hand corner there's a stamp
3 which lists all the Commissioner's names and what
4 their vote might be on the case.

5 And then if we flip through to page 12
6 of the document, there's another stamp, and that
7 stamp at the end says the names of the Commissioners,
8 that they concur, that it's approved on August 28th,
9 2020, and then there's a statement by the Secretary
10 of the Commission that, "I hereby certify that the
11 above is a true and correct copy of the order as
12 approved."

13 So this document cannot reasonably be
14 questioned as to accuracy based on those indicia of
15 the accuracy of the document.

16 And it's also available on the
17 Commission's website by just doing a search under
18 IURC docket search, and that's where I got it. The
19 same --

20 EXAMINER ADDISON: Mr. Finnigan, can I
21 ask a clarifying question? Are you moving to admit
22 these, or for me to take administrative notice?

23 MR. FINNIGAN: Both.

24 EXAMINER ADDISON: Fair enough.
25 Continue.

1 MR. FINNIGAN: And then the same
2 argument would apply to Exhibits 16 and 17. So if we
3 go back to the rule, this is Rule 201 on
4 administrative notice, B, what kind of facts can we
5 take administrative notice of?

6 And B2, the subsection we just talked
7 about, facts that are capable of accurate and ready
8 determination by resort to sources whose accuracy
9 cannot reasonably be questioned. And so the two
10 pieces of testimony would also fit within that rule.

11 And what we have is we can see that
12 these two pieces of testimony are filed in the same
13 docket, FAC Case 38703. There's a stamp in the upper
14 right-hand corner which appears to be a stamp of the
15 Commission, that it was filed on June 18th of 2020,
16 for Exhibit 16, and whatever the filing date was for
17 Exhibit 17. So again, these appear to be official
18 records of the Indiana Utility Regulatory Commission.

19 In addition to that, we have got the
20 testimony by Mr. Jackson who is the one who was
21 submitting this testimony in that proceeding, and if
22 we turn to page 40 -- and these pages are not
23 numbered at the bottom once you get after 39, so this
24 would be the 40th page, and on the 40th page there's
25 a verification, and it says, "I affirm under

1 penalties for perjury that the foregoing
2 representations are true to the best of my knowledge,
3 information, and belief," and it appears to be signed
4 by Mr. Jackson.

5 And this document is available, I will
6 represent, on the docket of the IURC's website that
7 anybody can go to by making that Google docket
8 search, and then just type in the docket number for
9 this case, 38703, and that's where I got it.

10 And so this clearly fits within the rule
11 for administrative notice of adjudicative facts
12 because based on what we have just reviewed here,
13 these facts are capable of accurate and ready
14 determination by checking the sources whose accuracy
15 cannot reasonably be questioned.

16 It can't reasonably be questioned that
17 these are accurate facts because Mr. Jackson swore to
18 them under oath and the Commission accepted them.

19 And we know the Commission accepted them
20 because if we review the order, Exhibit 15, it
21 recites all the facts in Mr. Jackson's testimony, and
22 it discusses them, and it talks about them.

23 So, you know, I would submit that the
24 Commission should take administrative notice of these
25 three documents under this rule and admit them into

1 evidence under this rule.

2 In addition to that, I think these
3 documents are also admissible otherwise under two
4 other rules.

5 The first is Rule 902 for
6 self-authentication. And if we turn to that for a
7 moment, Rule 902, 902 talks about different kinds of
8 documents which qualify for being authenticated
9 through a self-authenticating process.

10 In other words, the document itself is
11 an indicator that it is authentic, it's
12 self-authenticating by the nature of the document
13 itself.

14 And so -- and so the fact that
15 Mr. Crusey never saw the document before is
16 immaterial if it's self-authenticating, which these
17 documents are.

18 And they are self-authenticating under
19 subsection 2 of the rule, domestic public documents
20 not under seal. And these documents aren't under
21 seal, at least Exhibit 15 is, and I'm not going to
22 read the rule, but I will submit to you that there
23 are three elements if you read the rule -- there are
24 three elements that a document has to fulfill to be
25 considered self-authenticating under this rule.

1 One is that the document has to have a
2 seal -- Strike that. Before I get into this, let me
3 back up and let's look at what kind of documents
4 could be self-authenticating under this rule.

5 So if we look at subsection 2, it says
6 to be self-authenticating, a document purporting to
7 bear -- to bear the signature of -- in his official
8 capacity of an officer or employee of an entity
9 included -- okay. I'm going to back up one more
10 step.

11 Let's look at item No. 1, domestic
12 public documents under seal, because I think that's
13 the threshold rule to consider here.

14 So a document having a seal purporting
15 to be that of the United States, et cetera,
16 et cetera, or any state, or a political subdivision
17 or an agency thereof, and a signature purporting to
18 be an attestation or execution, and we have that for
19 all three documents.

20 So we have the seal that we talked about
21 earlier. The official stamps of the IURC are on all
22 three documents, that's the seal.

23 The IURC is a state agency of the State
24 of Indiana, so it fulfills that requirement, and the
25 documents all have signatures to indicate their

1 authentic nature, so for that reason these documents
2 are all self-authenticating under Rule 902 of the
3 Rules of Evidence.

4 In addition, another rule that comes
5 into play here is the hearsay rule, and these
6 documents actually would not be considered hearsay
7 within the definition -- within the definition of
8 what hearsay is considered to be. And the rule that
9 comes into play here is Rule 801, the definition of
10 hearsay, and let's turn to that for a moment.

11 So if we look at hearsay definitions,
12 Rule 801, what's considered hearsay, we scroll down
13 to Rule D, 801D, statements that are not hearsay, and
14 it says a statement is not hearsay if it is an
15 admission by a party opponent.

16 Now, what would be considered an
17 admission by a party opponent? Let's go down and
18 look at the elements of that rule. It's the party's
19 own statement by someone either in an individual or
20 representative capacity.

21 Well, this fulfills that because we have
22 got the statement of Mr. Jackson who works for AES,
23 and this is a statement of his in a representative
24 capacity.

25 And we can see that by reviewing his

1 testimony that is Exhibit 16 and 17 where he
2 describes what his position is at AES, and this was
3 also confirmed by Mr. Crusey that he knows
4 Mr. Jackson.

5 And they both -- this is Mr. Jackson's
6 testimony in an FAC case for AES Indiana, and
7 Mr. Crusey knows him. Mr. Crusey used to do the FAC
8 cases for AES Ohio, so it satisfies the first element
9 of the rule.

10 It's a statement by a person who works
11 for the corporation, and he's supplying the statement
12 in his representative capacity as a representative of
13 the corporation.

14 And then there has to be some indicator
15 that there's -- as to the truth of the statement, and
16 that's item No. B. It says a statement of which the
17 party has manifested some adoption or some belief in
18 its truth.

19 Well, Mr. Jackson did this because he
20 swore in his verification that it was true, so it
21 clearly satisfies that element.

22 Then item C, it has to be a statement by
23 the -- a person authorized by the party to make the
24 statement. Was Mr. Jackson authorized to make this
25 statement on behalf of AES? Well, yes, he was,

1 because he's the person who submits the testimony in
2 their FAC proceedings.

3 Again, Mr. Crusey talked about that in
4 his testimony. It's evident by reading Mr. Jackson's
5 testimony, and it's evident by reading the IURC's
6 decision, Exhibit 15.

7 It spends about two pages talking about
8 who Mr. Jackson is and that he's the representative
9 for AES Indiana and that he's submitting the
10 testimony in that case in his representative capacity
11 on behalf of AES Indiana. So it satisfies that
12 element of the rule.

13 And then finally, the rule requires to
14 make -- requires the establishment that the party is
15 making this statement within the scope of his
16 employment on behalf of the corporation for which he
17 is representing.

18 And, you know, the argument that I just
19 laid out indicates that he's doing this within the
20 scope of his employment for AES.

21 So for those reasons, your Honor, I
22 would submit that all three of these items are
23 admitted.

24 MS. BOJKO: Your Honor, may I be heard
25 briefly?

1 EXAMINER ADDISON: You may.

2 MS. BOJKO: I'm not going to repeat
3 anything that Mr. Finnigan just said, but under Ohio
4 Rules of Evidence 402 all relevant evidence is
5 admissible, and Rule 401 defines relevant as evidence
6 having any tendency to make the existence of any fact
7 that is of any consequence to the determination of
8 action more probable or less probable than it would
9 be without the evidence.

10 Here this evidence is relevant. And I
11 agree with Mr. Finnigan, it's not hearsay because of
12 the admission by a party opponent.

13 But I would further say, even if you did
14 consider it hearsay, it falls under two exceptions to
15 hearsay, and the availability of the declarant is
16 immaterial under these exceptions, and those are the
17 public record and report of the activities of an
18 agency.

19 This is clearly the activity of the
20 Indiana Commission, and it is also a business record
21 that was completed by AES itself, and accepted by the
22 Indiana Commission.

23 So if these do fall with -- under
24 hearsay, even if you determine them to be hearsay,
25 they are relevant, and all admissible evidence should

1 be relevant and they have been authenticated. Thank
2 you.

3 EXAMINER ADDISON: Thank you. Anyone
4 else?

5 Mr. Sharkey?

6 MR. SHARKEY: Thank you, your Honor.
7 Break these down into sort of two categories, the
8 statement by the Commission and then purported
9 responses or testimony of Mr. Jackson.

10 We don't -- I'll start with the Indiana
11 Commission order. At this point I don't know that
12 they have established -- I don't think they have
13 established that this is subject to being a
14 judicially noticed -- judicial notice is appropriate
15 for a fact.

16 There's various points and discussions
17 that are -- points that are discussed in this
18 testimony, but they are apparently wanting to get
19 this order in to try to admit those facts, but that
20 the underlying facts here that are included in this
21 document aren't necessarily capable of accurate and
22 ready determination.

23 And I'll say this, if I'd have seen this
24 document before today I may be in a position to say
25 yes or no having had an opportunity to talk to my

1 client to find out are these accurate, are these
2 documents that are truthful, were they yours.

3 I haven't had that opportunity, so
4 there's no way for Mr. Finnigan to establish, I
5 think, that these are documents and the facts in them
6 are capable of accurate and ready determination. So
7 I don't believe really any of this information is
8 subject to judicial notice.

9 And then as to, in particular, the two
10 pieces of testimony by Mr. Jackson, those have not
11 been authenticated by any means.

12 Those aren't statements of a political
13 agency, and are not subject to the
14 self-authentication rules that Mr. Finnigan had
15 relied upon.

16 Those are documents that Mr. Crusey has
17 testified that he's never seen, and that they are not
18 authenticated.

19 In addition, your Honor, regarding the
20 hearsay arguments that these are statements
21 purportedly by somebody who is an AES Indiana person,
22 AES Indiana is not a party to this case.

23 We have not had an opportunity to talk
24 to them, so I don't think they constitute an
25 admission of a party opponent because Indiana is not

1 a party here.

2 So in short, consistent with your prior
3 rulings, I think you should deny admission of them
4 into the record, and I also think you should refuse
5 to take judicial notice of them.

6 EXAMINER ADDISON: Thank you,
7 Mr. Sharkey. Do you concede that OCC Exhibit 15
8 would be self-authenticating?

9 MR. SHARKEY: If I can have a moment,
10 your Honor.

11 MR. NOURSE: Sorry, what was the
12 question, your Honor?

13 EXAMINER ADDISON: I was asking
14 Mr. Sharkey if he concedes to the fact -- if he was
15 conceding to the fact that OCC Exhibit 15 is
16 self-authenticating.

17 MR. SHARKEY: Your Honor, the rule
18 requires that the document bear a seal. I'm not sure
19 what that means.

20 In my experience we have gotten
21 documents authenticated we have had the stamp by the
22 agency itself. I've had to get documents from this
23 Commission authenticated before and we have gone and
24 gotten them stamped by docketing.

25 MR. NOURSE: And can I weight in on

1 that? I also want to make a general statement but on
2 the self-authentication.

3 EXAMINER ADDISON: You may.

4 MR. NOURSE: I mean, this is not a
5 government document that is sealed to show the truth
6 of everything in the document.

7 I mean, the docket -- that's like saying
8 every time something gets docketed at the Commission,
9 everything that's said in that document, and even in
10 a contested proceeding like this, could be deemed as
11 a judicially noticed fact.

12 Obviously that rule is intended to deal
13 with government documents and other things that have
14 facts that cannot reasonably be questioned, you know.

15 If that were applicable to expert
16 testimony in proceedings like this we wouldn't be on
17 day five of a hearing where you have extensive hours
18 of cross-examination on almost every statement that's
19 made in testimony.

20 So I don't think the Commission's seal
21 on a docketed item bears any representation of the
22 authenticity of the contents of the document,
23 especially expert testimony in a proceeding.

24 And with respect to the order itself,
25 again, it would be like relitigating the case in this

1 case, to relitigate everything that was said in here
2 to determine whether all those facts are true.

3 But I'll stop there because I want to
4 make general arguments after Mr. Sharkey is done, but
5 I'm just addressing the self-authentication piece.

6 EXAMINER ADDISON: Thank you. And were
7 you done, Mr. Sharkey?

8 MR. SHARKEY: I was, your Honor.

9 EXAMINER ADDISON: Thank you.
10 Mr. Nourse, do you have anything you need to add?

11 MR. NOURSE: Yes. The main problem here
12 is relevancy. And I think, you know, we don't
13 know -- first of all, beyond the -- beyond the
14 foundation, the lack of foundations laid because this
15 witness was not familiar with this proceeding, or the
16 documents put in of him for the first time on cross
17 and, you know, Indiana law, you know, we could go
18 into the differences between Ohio and Indiana law,
19 but certainly the fact that an Indiana integrated
20 utility under Indiana law takes a different approach
21 than one might in Ohio, you know, I think that's
22 pretty obvious, if anybody has any general
23 familiarity with those two states, the differences in
24 regulatory context, and -- and the regulation under
25 the respective state laws. So I would question the

1 relevancy of any of this on that basis.

2 I also think that, you know, relative to
3 the -- the argument about hearsay exception for
4 admission by a party opponent, in addition to what
5 Mr. Sharkey said, we don't really have the party
6 here.

7 Obviously AEP would object to anything
8 said by an AES employee being used against AEP.
9 Again, I don't know all the things that are in this
10 testimony, it was barely explored on the record.

11 I haven't reviewed -- there's about a
12 hundred pages here in total, and I think using any of
13 that for so-called undisputed or facts that cannot be
14 reasonably questioned, frankly is absurd to say that
15 could be used in this record and used against parties
16 like AEP Ohio.

17 Just looking at my notes. Yeah, I think
18 we covered it. Thank you.

19 EXAMINER ADDISON: Thank you.
20 Ms. Akhbari.

21 MS. AKHBARI: Very briefly, your Honor.
22 I know Intervenors were discussing, and I wanted to
23 reiterate what Mr. Nourse was discussing regarding
24 relevancy.

25 This document, particularly the court

1 decision -- well, both documents really, relevant
2 evidence is meant to make a fact at issue in a case
3 more or less likely.

4 Mr. Crusey could not speak to any of the
5 facts in these documents, therefore allowing them
6 into the record does not make any testimony from
7 Mr. Crusey more or less likely.

8 It also doesn't make any fact that
9 Mr. Finnigan was trying to make in this case more or
10 less likely.

11 These are documents that are from a
12 separate entity, not one at issue in this case, and I
13 don't believe that they should be admitted into the
14 record in this case.

15 I believe it would be highly prejudicial
16 to all the parties in this case, particularly to Duke
17 Energy Ohio and AEP Ohio, but AES Ohio, these are not
18 documents to deal with AES Ohio whether sponsored by
19 or formulated by AES Ohio.

20 EXAMINER ADDISON: Thank you.
21 Mr. Finnigan, do you have anything to add?

22 MR. FINNIGAN: Yes, your Honor. I am
23 somewhat surprised that there were any objections to
24 Exhibit 15 because that's a decision by another State
25 Commission.

1 And even if I had not brought that
2 document into the hearing today, I could cite that in
3 my brief, and I could cite any language in that
4 decision.

5 EXAMINER ADDISON: Could you,
6 Mr. Finnigan?

7 MR. FINNIGAN: Because it's a reported
8 case, and so to that extent I'm surprised that anyone
9 would object.

10 But the one issue I'd like to address is
11 this: I'm not going to repeat the arguments I made
12 earlier about administrative notice and
13 self-authenticating and hearsay, I'll stand by those,
14 but a couple of persons have mentioned whether the
15 information is relevant.

16 Now, if we turn to Section
17 4921.148(A(1), which is the Legacy Generation Rider
18 statute, it says the Commission shall determine in
19 the year specified in this division the prudence and
20 reasonableness of the actions of the electric
21 distribution utilities with ownership interest in a
22 Legacy Generation Resource including --

23 EXAMINER ADDISON: If you could slow
24 down a little bit, Mr. Finnigan.

25 MR. FINNIGAN: Sorry. Usually I'm too

1 slow, so I'm trying to make up for that.

2 But it says including their decisions
3 relating to offering the contractual commitment into
4 the wholesale markets. That's what the statute says.

5 Now, here we -- and we heard testimony
6 and it's in the audit reports that what happened
7 about these commitments, very clear picture.

8 January 1st to April 14th, the
9 commitment decisions are governed by the OVEC
10 operating committee written procedures, it's
11 committed as must run a hundred percent of the time.

12 June -- July 1st through December 31st,
13 2020, the commitment is governed by the OVEC
14 operating procedures, it's committed as must run a
15 hundred percent of the time.

16 April 14th to June 30th, the commitment
17 authority is delegated to OVEC, they decide to commit
18 three of the units as economic part of the time. So
19 that's what they did.

20 Now, what is a -- what would a
21 reasonable operator do, and how can you judge whether
22 their commitment decisions and in the wholesale
23 market are reasonable and prudent unless you look at
24 the standard of care, what other operators do?

25 Well, that's what Mr. Jackson talks

1 about, and he talks about what other operators do,
2 what they did for their coal plants in Indiana, and
3 he's got this table. So if you turn to page 22 --

4 EXAMINER ADDISON: We're not going to be
5 turning to pages in the document, Mr. Finnigan.

6 MR. FINNIGAN: Well, I'll just say that
7 his evidence bears upon the frequency of commitments
8 by other co-operators relating to what could be
9 considered a prudent and reasonable decision for
10 making contractual commitments into the wholesale
11 market, and so the information would be relevant to
12 that. Thank you.

13 EXAMINER ADDISON: Thank you very much.

14 Consistent with my rulings earlier as to
15 these documents I tend to agree with the arguments
16 laid out by Mr. Sharkey, Mr. Nourse, and Ms. Akhbari.

17 I will not be admitting OCC Exhibits 15,
18 16, and 17 into the record at this time, nor will we
19 be taking administrative notice of those documents.

20 MR. FINNIGAN: Your Honor, at this time
21 I'd like to make a proffer.

22 EXAMINER ADDISON: Very quickly,
23 Mr. Finnigan. And I would remind you you do not have
24 to reiterate any of the points that you have made
25 already.

1 MR. FINNIGAN: And I won't. In the
2 interest of time I'll simply reincorporate all the
3 arguments that I just made regarding the
4 admissibility of those documents and -- including the
5 relevance.

6 So I would just like to proffer those
7 three documents into the record of this case, and
8 inquire, since Exhibit 15 is a reported decision by
9 another Commission, I take it that we're still
10 allowed to cite to that and discuss any of the
11 information contained in that decision when we submit
12 our briefs.

13 EXAMINER ADDISON: I believe that's the
14 entire issue, Mr. Finnigan. But your proffer is
15 noted.

16 MR. FINNIGAN: But, your Honor, when you
17 say it's the entire issue, I understand -- are there
18 any restrictions from doing that?

19 EXAMINER ADDISON: We will operate
20 consistently with past briefing procedures, so if
21 that answers your question, Mr. Finnigan, then we can
22 move on.

23 MR. FINNIGAN: Thank you, your Honor.

24 EXAMINER DAVIS: At this time you'll be
25 calling your witness, Mr. Dougherty?

1 MR. DOUGHERTY: Yes. Citizens Utility
2 Board of Ohio and Union of Concerned Scientists call
3 Devi Glick to the stand. And as she's going up can
4 we go off the record for one second?

5 EXAMINER DAVIS: Go off the record.

6 (Discussion off the record.)

7 EXAMINER DAVIS: Let's go back on the
8 record. Please proceed, Mr. Dougherty.

9 MR. DOUGHERTY: Thank you, your Honor.
10 I would like marked as --

11 EXAMINER DAVIS: One second. Do you
12 swear or affirm the testimony you're about to provide
13 in this proceeding is the truth?

14 THE WITNESS: Yes.

15 MR. DOUGHERTY: Thank you, your Honor.
16 May I have marked as CUB/UCS Exhibit 1, the direct
17 testimony of Devi Glick?

18 EXAMINER DAVIS: It will be so marked.

19 (EXHIBIT MARKED FOR IDENTIFICATION.)

20 MR. DOUGHERTY: And can I also have
21 marked as CUB/UCS Exhibit 2C, the confidential
22 version of Ms. Glick's testimony?

23 EXAMINER DAVIS: It shall be so marked.

24 (EXHIBIT MARKED FOR IDENTIFICATION.)

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DEVI GLICK,
being first duly sworn, as prescribed by law, was
examined and testified as follows:
DIRECT EXAMINATION
By Mr. Dougherty:
Q. And, Ms. Glick, can you state and spell
your name for the record?
A. Devi, D-E-V-I, Glick, G-L-I-C-K.
Q. And do you have in front of you what has
been marked as CUB/UCS Exhibit 1?
A. Yes, I do.
Q. And can you identify that?
A. It's the public version of my direct
testimony.
Q. And do you have in front of you also
what has been marked as CUB/UCS Exhibit 2C?
A. Yes, I do.
Q. Thank you. Can you identify that?
A. That is the confidential version of my
direct testimony.
Q. Okay. And you filed these on behalf of
Citizens Utility Board of Ohio and Union of Concerned
Scientists?
A. Yes, that is correct.
Q. And you do not work for either of those

1 entities?

2 A. No, I work for Synapse Energy Economics.

3 Q. And what is your title?

4 A. I am a Senior Principal at Synapse.

5 Q. Thank you. And do you have any changes
6 you would like to make to that testimony?

7 A. Yes, I have just a few small edits. I
8 think the page number should be the same, but I'll
9 use the public version.

10 Starting on page 10, on line 9, which
11 should be a bullet point No. 2, to the very beginning
12 of that sentence just add the word "Nearly," so it
13 should say, "Nearly all prior analysis." And then on
14 that same line 9 where it says, "the Company," that
15 should say, "the Companies," plural.

16 A couple small other ones on page 18, on
17 line number 6, after the word "utilities," in the
18 middle of the sentence, add the words, "and their
19 affiliates and parent companies."

20 Same thing on the next line, on line 7,
21 after "AES Ohio," insert the words, "affiliates and
22 parent companies."

23 And then going to page 20, on line 7,
24 after the word, "from," that first word on line 7,
25 add, "affiliates and parent companies of."

1 And the final change is on page 41, on
2 line 3, which is a subheading. After the word
3 "Company" the words, "claims it," should be added so
4 it reads, "Each individual Company claims it has,"
5 which is consistent with what is in the text below.

6 Q. Are those all the changes that you have?

7 A. Those are all my changes. Thank you.

8 Q. And with these changes, if I asked you
9 these questions today would your answers be the same?

10 A. Yes, they would.

11 MR. DOUGHERTY: Thank you. Your Honors,
12 I move for admission of CUB/UCS Exhibit 1 and CUB/UCS
13 Exhibit 2C into evidence pending cross-examination.

14 EXAMINER DAVIS: Thank you,
15 Mr. Dougherty.

16 Ms. Nordstrom?

17 MS. NORDSTROM: No questions, your
18 Honor.

19 EXAMINER DAVIS: Ms. Bojko?

20 MS. BOJKO: No questions.

21 EXAMINER DAVIS: Mr. Finnigan?

22 MR. FINNIGAN: No questions, your Honor.

23 EXAMINER DAVIS: Thank you.
24 Mr. Sharkey?

25 MR. SHARKEY: The Utilities have worked

1 amongst themselves that I'm to go first with
2 Ms. Glick, if that's acceptable.

3 EXAMINER DAVIS: That's fine. Please
4 proceed.

5 - - -

6 CROSS-EXAMINATION

7 By Mr. Sharkey:

8 Q. Hello, Ms. Glick. As you know, my name
9 Jeff Sharkey and I represent AES Ohio in this matter.
10 I want to start by asking you questions about your
11 clients.

12 First, Citizens Utility Board, what type
13 of entity is that, what are its interests?

14 A. My understanding is that Citizens
15 Utility Board is a citizens advocate, a -- or a
16 customer type client, but I do not work for Citizens
17 Utility Board.

18 Q. Do you know what type of customers it
19 advocates on behalf of?

20 A. I believe residential, but as I stated,
21 I do not work for Citizens Utility Board.

22 Q. And the Union of Concerned Scientists,
23 what are its interests?

24 A. I do not work for Union of Concerned
25 Scientists, but I believe they generally advocate for

1 environmental and science related cause.

2 Q. Do you know if the Union of Concerned
3 Scientists or its members are customers of any of the
4 three Utilities?

5 MR. DOUGHERTY: Objection. This is a --
6 again, she does not work for either of the entities,
7 and if you wanted to question the organizations about
8 standing, the Company could have done that -- could
9 have done that quite a while ago.

10 EXAMINER DAVIS: Overruled. She can
11 answer if she knows.

12 THE WITNESS: I'm not a lawyer, but I
13 would be surprised if they were allowed in this
14 hearing if they did not have members
15 By Mr. Sharkey:

16 Q. The question is do they have members of
17 the regulated Utilities, do you know?

18 A. I'm not a lawyer. I do not know any of
19 that information.

20 Q. It's true, isn't it, that you are not an
21 engineer?

22 A. I am not an engineer.

23 Q. Not an accountant?

24 A. I'm not an accountant.

25 Q. You've never performed an audit, right?

1 A. I have never performed an audit, no.

2 Q. Never worked in a coal-fired plant?

3 A. I have never worked for a coal-fired
4 power plant, I have never worked for a utility, I
5 have never operated a coal-fired power plant, or made
6 decisions. Help you out there.

7 Q. You've heard these questions before.

8 A. I have.

9 Q. You don't doubt that the auditor was
10 qualified to perform the three audits at issue in
11 this case?

12 A. No, I do not. That was not the scope
13 of -- my work did not involve evaluating the
14 auditor's credentials.

15 Q. Similarly, you don't doubt that the
16 auditor was impartial, correct?

17 A. That was not within the scope of my
18 analysis to evaluate that question.

19 Q. And you're aware that through the LGR
20 the three Utilities have recovered certain OVEC
21 costs?

22 A. Yes, my understanding, the purpose of
23 the LGR is to recover the OVEC costs.

24 Q. You don't dispute that OVEC actually
25 incurred the costs at issue, correct?

1 A. No, that was not within the scope of my
2 analysis to evaluate that.

3 Q. Okay. And you also don't dispute that
4 the PJM revenues have been accounted for accurately?

5 A. No, I don't dispute.

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

8 A. Yes.

9 Q. Okay. And you're aware the Commission
10 has issued an order in that case?

11 A. Yes, I am aware.

12 Q. Are you aware of any differences as to
13 how OVEC was operated comparing 2019 and the 2020
14 audit period in this case?

15 A. So I understand that during the 2020
16 audit period three of the units were committed
17 economically into the market for about a third of the
18 time they operated between the months of April and
19 June.

20 Q. Any other material differences that
21 might affect any of your opinions in this case?

22 A. No.

23 Q. Do you know whether the OVEC plants have
24 been used at any time to provide power to the
25 customers of the three Utilities?

1 A. So my understanding is that because
2 Ohio's utilities do not own generation, the power is
3 not directly provided to customers. The costs that
4 are passed on are simply a financial -- in the prior
5 dockets they were a financial hedge, and in this case
6 it's just a financial transaction.

7 Q. Do you know if that was implemented as a
8 part of deregulation in Ohio?

9 A. My understanding is it was, but I was
10 not involved in any cases further back than the, I
11 believe 2018 audit, so I can't say I know the details
12 of anything prior to that.

13 Q. So preceding deregulation, you don't
14 know whether or not these OVEC plants have been used
15 to provide power to any of the customers of the three
16 Utilities?

17 A. I imagine it was if Ohio was similar to,
18 for example, how things operated in Michigan or
19 Indiana prior to deregulation in the way that the
20 power was basically a Power Purchase Agreement and
21 used to supply power to customers.

22 Q. Speaking of which, do you know what the
23 ICPA is?

24 A. The Intercompany Power Agreement.

25 Q. And it's true, isn't it, that your

1 testimony does not address the decision of the three
2 Utilities to enter that agreement?

3 A. It does not. That precedes the audit
4 period by over about a decade.

5 Q. Do you know whether the ICPA requires
6 OVEC to operate the plants at the highest practical
7 level attainable?

8 A. I don't have a copy of the ICPA in front
9 of me so I don't recall if that language is in it.

10 Q. You do agree with me that it's prudent
11 for parties to comply with their contractual
12 obligations?

13 A. Yes. I never challenged that the
14 Companies should pay the cost to OVEC, what I
15 challenge in my testimony is whether those costs
16 should be passed on to ratepayers.

17 Q. You do believe that -- Strike that.

18 If, during 2020, the OVEC units have
19 been committed to PJM's day-ahead energy markets as
20 economic instead of must run, do you believe that
21 would have resulted in the units being operated less
22 often, less frequently?

23 A. Yes.

24 Q. Are you aware of any rights that any of
25 the three Utilities had under the ICPA that they

1 should have exercised but failed to do so?

2 MR. FINNIGAN: Objection, calls for a
3 legal conclusion.

4 EXAMINER DAVIS: Any response,
5 Mr. Sharkey?

6 MR. SHARKEY: Sure. She's testified
7 that she has reviewed the ICPA. She's offering her
8 opinions up here as an expert witness. She can say
9 she doesn't know, she hasn't read it, that doesn't
10 necessarily prove that they have, it's just a
11 question of what her personal knowledge is.

12 MR. DOUGHERTY: If I can respond to
13 that, though. She's not an attorney. Your word
14 rights, I'm not sure whether she understands what all
15 in that document is considered their rights.

16 MS. BOJKO: Your Honor, I believe she
17 said she didn't have the document in front of her,
18 and she seemingly asked for it and was never provided
19 a copy.

20 EXAMINER DAVIS: I'm going to overrule
21 the objection, she can answer, but I'd like to
22 first -- Ms. Glick, there should be a copy of it --

23 THE WITNESS: Let me see if I can find
24 it.

25 EXAMINER DAVIS: The testimony of Mr.

1 Crusey, it should be up there, it's attached to it.

2 MR. DOUGHERTY: I believe we were using
3 the one that was attached to Mr. Crusey's testimony.

4 EXAMINER ADDISON: We're on it,
5 Mr. Dougherty.

6 MR. SHARKEY: Your Honor, I'll withdraw
7 the question and rephrase it to make this easier.

8 EXAMINER ADDISON: Thank you.
9 By Mr. Sharkey:

10 Q. It's true, isn't it, that your testimony
11 does not address what rights any of the three
12 Utilities had under the ICPA?

13 A. No, I don't believe I directly discuss
14 rights under the ICPA. I discuss their role on the
15 operating committee and on the Board of Directors, so
16 I'm not sure if that's what you mean by rights at
17 all.

18 Q. Do you know what the operating
19 procedures are?

20 A. So I know there are operating
21 procedures. I have read a section of the operating
22 procedures.

23 Q. Do you know when they were last amended?

24 A. Gosh, no, I definitely don't.

25 Q. Your testimony doesn't address whether

1 it was reasonable or prudent to enter the operating
2 procedures, correct?

3 A. No, I don't talk about that.

4 Q. Do you know how many members there are
5 on OVEC's Board of Directors?

6 A. I think 15. I have that in my
7 testimony.

8 Q. And do you know how many of those
9 representatives represent each of the three Utilities
10 in this case?

11 A. I think another one, but let me find
12 where I have it in my testimony so I'm not
13 misspeaking here.

14 On page 41 of my testimony, a 15-person
15 Board of Directors, each of the Companies --
16 Sponsoring Company has one member on the Board of
17 Directors and is allowed to appoint one member to
18 OVEC's operating company. So that's my
19 understanding.

20 Q. And while we're on page 41, you, on
21 direct examination to the heading added the words
22 "claims it" to the heading, so it now it reads, "Each
23 individual Company claims it has limited control over
24 the operation of the OVEC plant," right?

25 A. Yeah. So if you look on line 18, it has

1 the word "claims," and so I just omitted that in the
2 subheading.

3 Q. Are you aware of any facts that suggest
4 that those claims are false?

5 A. Can you -- sorry, can you rephrase the
6 question?

7 Q. Sure. The sentence previously before
8 your amendment, it says, "Each individual Company has
9 limited control over the operation and management of
10 OVEC," and then having inserted the words "each
11 individual company claims it has limited control,"
12 suggests that maybe you didn't believe the Companies'
13 representation, at least to me.

14 So the question is are you aware of any
15 facts to suggest those claims are false?

16 A. So I want to make sure I'm answering
17 your question. So the claim that you're asking about
18 is the claim that the Companies have limited control?

19 Q. Correct.

20 A. So in testimony, and in discovery when
21 I -- when my client -- when we asked about the
22 Companies' role and ability to influence operating
23 decisions and capital decisions, a lot of the
24 discovery responses indicated that every individual
25 company does not have the ability to make a

1 unilateral or -- decision, and so there was a lot
2 of -- a lot of the answers indicated that every
3 utility can't act unilaterally, therefore they did
4 not have a lot of power.

5 But I do challenge that, because AES,
6 Duke, and AEP together, that's three parties out of
7 the 15-person board, also a very large percentage of
8 the ownership share, and Duke especially does unit
9 commitment analysis that it has provided the results
10 of to the OVEC operators, and so I do believe that if
11 these three very relatively sophisticated utilities
12 got together and made prudent recommendations to the
13 OVEC Board, those would be taken seriously by the
14 other members.

15 Q. You do know that other members of the
16 Board operate outside of Ohio, correct?

17 A. Yes.

18 Q. And you do know that other members of
19 the Board represent fully integrated and regulated
20 utilities?

21 A. Yes.

22 Q. Turn, if you would, to page 35 of your
23 testimony. Starting on line 19 you say for units
24 such as OVEC -- "for units such as OVEC's coal-fired
25 plants with long start-up and shut-down times,

1 utilities sometimes instead elect to maintain control
2 of unit commitment decisions to utilize a must-run
3 commitment status." Did I read that accurately?

4 A. Yes.

5 Q. How do you know that?

6 A. I have been involved in, I guess I could
7 probably say over a dozen dockets looking at unit
8 commitment practices of coal-fired power plants.

9 I've also read reports put out by market
10 monitors and other NGOs that discuss the -- and have
11 evaluated the unit fitment and dispatch practices of
12 coal-fired power plants.

13 Q. Turn, if you would then, to page 47.

14 A. I'm on 47.

15 Q. You state on line 11, "I am not
16 recommending that OVEC commit the units within an
17 Economic status and cycle them extensively." Did I
18 read that accurately?

19 A. Yes.

20 Q. And the reason you're not recommending
21 that is that you have an understanding that
22 coal-fired plants have significant startup costs and
23 that cycling coal-fired plants can create risks of
24 equipment breakdowns, correct?

25 A. Yes, that is correct.

1 Q. It's true, isn't it, that coal-fired
2 plants are more likely to be designated as must run
3 than gas fired peakers?

4 A. It is true that the operators of
5 coal-fired power plants are more likely to designate
6 them. They don't -- there's not the magical
7 characteristics that are inherent to coal plants.

8 Q. Fair enough. I'll agree. Page 34, if
9 you would, please.

10 A. Yes, I'm on 34.

11 Q. Okay. On lines 13 and 14 there are some
12 numbers that are still confidential, but I think I
13 can ask you questions about them without revealing
14 the numbers.

15 So the sentence on line 13, "This
16 contributed, blank, to the total of, blank, in
17 above-market costs across the two plants for," the
18 three Utilities. Did I read that accurately?

19 A. Yes.

20 Q. Okay. And so the second blank on line
21 14 is your calculation of what you describe as the
22 total above-market costs for all three Utilities,
23 correct?

24 A. Which number again?

25 Q. The number on line 14.

1 A. Yes, that's the total.

2 Q. And that's for all three Utilities?

3 A. Exactly.

4 Q. And then the number on line 13 is the
5 amount of above-market costs that resulted from the
6 units being operated on a must-run basis according to
7 you, right?

8 A. So that number on line 13 that's
9 redacted is the amount of variable losses that were
10 incurred during the specific months, that are also
11 redacted on line 13, in 2020 when the units incurred
12 variable losses. So it's just a set.

13 Q. Okay. And is that set related to and
14 caused by the use by OVEC of a must-run designation?

15 A. In large part, yes. So it's -- in order
16 to actually calculate the -- yes.

17 Q. Okay. That number assumes -- let me
18 step back.

19 To determine the amount of -- I'll
20 strike that and move on.

21 Turn, if you would, to page 39 of your
22 testimony.

23 A. I'm on 39 now.

24 Q. You -- there's a question posed to you
25 on line 11, "Does OVEC have an economic incentive to

1 avoid running its plants in uneconomic conditions?"

2 And you answered, "No," and include an explanation,
3 right?

4 A. That is correct.

5 Q. You're aware that the purpose of this
6 case is to determine whether the three Utilities
7 acted prudently, correct?

8 A. So that is my understanding that is part
9 of the mandate of this case.

10 Q. To the extent that the Utilities didn't
11 act in a prudent manner, it's possible this case
12 could result in a refund, right?

13 A. I would hope so, but questions by some
14 of your partner utilities have indicated that some of
15 the Companies believe that all costs should be passed
16 on regardless of prudence, so I'm not entirely clear
17 of the legal purpose of this hearing if that is the
18 case.

19 Q. What comments are you referring to?

20 A. During the deposition questions by
21 Duke's lawyer.

22 Q. You measure prudence based upon
23 information that the Utilities had at the time that
24 they made their decisions, right?

25 A. Yes, that is correct.

1 Q. You're not aware of any facts suggesting
2 that OVEC paid above-market costs for coal, for
3 example, right?

4 A. That wasn't within the scope of my
5 analysis, so I can't say yes or no. I didn't look
6 into that.

7 Q. And the same would be true for all of
8 OVEC's costs, you haven't done any analysis to
9 determine whether any of the costs were paid above
10 market?

11 A. You'll have to be more specific in the
12 question, because that is relatively the point of my
13 testimony, is that the power was above-market cost.

14 Q. Well, I want to ask you about the costs
15 that OVEC incurred for things like labor, materials,
16 things like that.

17 You're not aware of any suggestion that
18 OVEC -- any facts that suggest that OVEC was paying
19 more than the going wage for labor or more than what
20 materials cost, right?

21 A. That wasn't within the scope of my
22 analysis, so I don't have an opinion on that.

23 Q. You believe that a hedge is a financial
24 instrument designed to spread out or mitigate risk,
25 right?

1 A. Yes.

2 Q. You've never worked on a transaction
3 that you considered to be a hedge, right?

4 A. No.

5 Q. You do understand that the LGR would be
6 a credit to customers if the applicable PJM revenues
7 exceeded the OVEC's billed costs, right?

8 A. That is correct.

9 Q. Okay. Do you know if in any month
10 OVEC's -- I'm sorry. Start that over.

11 Do you know if for any months PJM
12 revenues have ever exceeded OVEC's costs?

13 MR. FINNIGAN: Excuse me, your Honor,
14 may I ask for clarification? Is that on -- are we
15 asking during the audit period of 2020?

16 EXAMINER DAVIS: Mr. Sharkey.

17 MR. SHARKEY: The question was for any
18 month.

19 MR. FINNIGAN: Then I object; vagueness,
20 unclear, ambiguous as to whether it's asking about
21 the scope of the audit period.

22 EXAMINER DAVIS: Could you perhaps
23 rephrase the question?

24 MR. SHARKEY: Sure.

25 By Mr. Sharkey:

1 Q. To be clear, I'm asking you about any
2 month before, during, and after the audit period.

3 MR. FINNIGAN: Your Honor, objection;
4 before, during, or after the audit period. I object
5 to any question about before or after the audit
6 period because this has come up in the testimony of
7 other individuals during the course of the hearing
8 and your Honors have generally ruled that information
9 pertaining to the period of time before or after the
10 audit period is not the subject of this hearing, what
11 is the subject of this hearing is calendar year 2020.

12 EXAMINER DAVIS: Mr. Sharkey.

13 MR. SHARKEY: Yes, your Honor. I think
14 one of the issues that have been raised in this case
15 is whether the LGR has functioned as a hedge, and I
16 think we're entitled to show that it has in fact
17 operated as a hedge, if she knows.

18 EXAMINER DAVIS: Sticking with our prior
19 ruling I'm going to sustain the objection. Let's
20 stay within the audit period.

21 By Mr. Sharkey:

22 Q. Do you know if during the audit period
23 there were any months in which PJM revenues exceeded
24 OVEC costs?

25 A. Yes, I do know.

1 Q. And?

2 A. That is confidential information.

3 Q. All right. Then we'll move on.

4 Are you familiar with PJM's capacity
5 market?

6 A. Yes.

7 Q. Okay. Do you know whether utilities
8 received the revenues in 2020 associated with
9 providing OVEC capacity to PJM?

10 A. Yes, I do know they did.

11 Q. You do know that they did?

12 A. Yes.

13 Q. Okay. And the auction then relating to
14 that 2020 period would have happened two, three years
15 before 2020?

16 A. Yeah. There's sometimes delays with the
17 PJM capacity market rules constantly changing, but
18 generally it occurs several years in advance.

19 Q. Okay. And you're aware that each of the
20 three Utilities independently bid their capacity into
21 that prior auction?

22 A. Yes.

23 Q. And you're also aware that PJM accepted
24 utility bids and picked up them and paid them for
25 capacity during the applicable period, right?

1 A. Yes.

2 Q. As a result of having won the auction
3 and being paid PJM capacity revenues, what
4 obligations did the three Utilities have?

5 A. So my understanding is that if a
6 capacity -- capacity credit is awarded, then the
7 plant has to be available in the energy market, so
8 you cannot bid a plant into a capacity market, get
9 capacity revenue, and then not offer the plant for
10 the energy from the plant.

11 Q. And your testimony does not address
12 whether it was reasonable or prudent for the
13 Utilities to bid their capacity into those prior
14 auctions, right?

15 A. So I do -- I don't remember exactly
16 where it is, but I do have a statement in my
17 testimony that it might have been prudent not to have
18 operated the plants, which would mean not bidding
19 them into the auction based on how inflexible they
20 are.

21 Q. Where does your testimony say that?

22 A. If you give me a few minutes, I can find
23 it.

24 (Pause.)

25 So if you look on page 47 where I'm

1 talking about the unit commitment practices and
2 procedures that Duke and AEP use elsewhere.

3 Q. Can you point me to a line?

4 A. Yes, I'm sorry. So generally starting
5 on line 5. So I say, "I don't disagree with their
6 characterization of the units..." This is discussing
7 that the unit can't quickly ramp on or off.

8 "...but if the units have operational
9 characteristics that make them inherently challenging
10 to operate economically within the current market,
11 then perhaps they are not a good asset to continue
12 operating and funding through ratepayers."

13 Q. You told me earlier that whether a
14 decision is prudent would be based upon information
15 known by the utilities at the time, correct?

16 A. Yes, that is correct.

17 Q. You are aware that during 2020,
18 associated with COVID and weather, that the PJM
19 energy prices were at historic lows?

20 A. That is correct, yes.

21 Q. And that's not a fact that was known
22 whenever these PJM auctions occurred, correct?

23 A. Correct.

24 Q. Turn to page 17 of your testimony.
25 You're discussing, starting on line 1, a bankruptcy

1 of FirstEnergy Solutions, correct?

2 A. Yes.

3 Q. And without getting into all the details
4 of FirstEnergy Solutions, your testimony does not
5 analyze whether customers were injured or benefitted
6 by the FirstEnergy Solutions bankruptcy?

7 A. Well, because the Companies -- AES, AEP
8 and Duke's customers all accumulated or were
9 responsible for a portion of the energy costs during
10 the audit period, I think it ended in May, the end of
11 May, so that would have been January through May, all
12 of the costs and revenues associated with the energy
13 were passed on to the customers; therefore, any
14 variable losses that were incurred would also have
15 been passed on to the customers, so they would have
16 been injured by that in that way.

17 Q. You also understand that none of the
18 FirstEnergy fixed costs, the demand costs under the
19 ICPA were passed on to the three Utilities, right?

20 A. That is correct. But there were --
21 putting aside demand costs, fixed costs, looking at
22 just variables costs -- and I know it's confidential,
23 the numbers -- but there are months in 2020 in which
24 the strictly variable costs were -- exceeded the
25 variable revenues, and when that happens that means

1 that every -- when the plant isn't operating and
2 online, it is losing money and therefore having more
3 energy to pay for when every megawatt-hour is
4 incurring a loss, when you have FES' portions that
5 does pass additional costs on and injure the
6 customers of Duke, AEP and AES.

7 MR. SHARKEY: Your Honors, may I
8 approach?

9 EXAMINER DAVIS: You may.

10 THE WITNESS: I never got to review this
11 transcript, by the way, and I was told I was allowed
12 to.

13 MR. DOUGHERTY: We're going to object to
14 the use of this. As the witness said, she was
15 offered -- she was to be offered the opportunity to
16 review this for accuracy, but never did get the
17 opportunity.

18 MR. SHARKEY: Your Honor, that is their
19 responsibility to follow up if they want to review
20 and sign a transcript. If they failed to pursue,
21 that shouldn't preclude me from using her answers in
22 this deposition.

23 MS. BOJKO: Your Honor, respectfully,
24 I'm in the same situation, and I did follow up
25 multiple times and I have still not received the

1 transcripts.

2 So I mean, I think it might be the --
3 whoever ordered it, or the Court Reporter that is not
4 responding, we're in the same boat.

5 MR. SHARKEY: Your Honor, they certainly
6 had the opportunity to follow up with the Court
7 Reporter and I believe step one would have required
8 them to order a copy of the transcript for her to
9 review it.

10 I'm not aware of whether Mr. Dougherty's
11 clients have ordered the transcript, a copy of the
12 transcript, but there's no prohibition to me reading
13 it and impeaching her, the fact that she didn't
14 follow up and review it.

15 MR. DOUGHERTY: One thing, your Honor,
16 there's no requirement that we purchase the
17 transcript in order to review it for accuracy of what
18 my -- what my witness said.

19 MS. AKHBARI: Did you pursue the
20 transcript and you didn't get it? Is that what
21 you're representation is?

22 MR. DOUGHERTY: I'm just answering the
23 question that we are required to purchase this.

24 MS. AKHBARI: So is it your --

25 EXAMINER DAVIS: Let's go off the record

1 for a moment so we can hash this out. Please
2 continue.

3 (Discussion off the record.)

4 EXAMINER DAVIS: Go ahead and go back on
5 the record.

6 MR. DOUGHERTY: Your Honor, if I could
7 just add to my objection. I believe in Rule 30(E)
8 that the deposition can either be waived or signed.
9 We never waived it, and this is not signed.

10 EXAMINER DAVIS: Thank you,
11 Mr. Dougherty. The objection is overruled. Please
12 proceed.

13 By Mr. Sharkey:

14 Q. Mrs. Glick, you recall being deposed in
15 this case?

16 A. Yes, I do.

17 Q. And if you turn to page 47 of your
18 deposition transcript. Are you there?

19 A. Yes, I'm there.

20 Q. You can see on that page I started by
21 asking you about page 17 of your testimony, which you
22 discussed FirstEnergy Solution's bankruptcy, right?
23 That happens on line 8?

24 A. Yes.

25 Q. Okay. And I asked the question, "Your

1 testimony doesn't analyze whether customers were
2 injured or benefitted by the FirstEnergy Solutions
3 bankruptcy," correct?

4 And you offer the answer, "It does not,
5 no."

6 MR. DOUGHERTY: Objection. Objection.
7 It's improper impeachment. She just explained a
8 little further this question of whether it benefits
9 or doesn't benefit, the clarification of what counsel
10 for AES asked her.

11 EXAMINER DAVIS: Thank you. Objection
12 is overruled. We're going to let the transcript
13 speak for itself and then we'll move on.
14 By Mr. Sharkey:

15 Q. Turn if you would to page 49 of your
16 testimony, Ms. Glick.

17 A. I'm on page 49.

18 Q. Your testimony, starting on page 49,
19 addresses certain environmental investments, correct?

20 A. The -- starting on line 17, yes.

21 Q. And the environmental investments that
22 you're discussing there were approved in 2020, but
23 were not incurred during the 2020 audit period; is
24 that right?

25 A. Yes, most of the investments that are

1 discussed here were approved but not -- they were
2 approved during 2020, but they are not included in
3 the LGR cost in 2020.

4 Q. Okay. So on page 52 you have
5 recommendations relating to those environmental
6 expenses, but those are for a future Commission
7 proceeding and a future audit period, correct?

8 A. Yeah, I found that in these audits it's
9 really challenging because decisions are made during
10 one audit period, and then costs are incurred in
11 another, and you usually can't bring up things from a
12 prior audit purpose, so the only way I could see to
13 reasonably make a recommendation about the
14 information that was available during this audit
15 period would be to make a future looking
16 recommendation.

17 Q. Do you know whether utilities typically
18 pay dividends to their investors?

19 A. My understanding is that investor-owned
20 utilities typically pay dividends to their investors.

21 Q. Turn if you would to page 25 of your
22 testimony.

23 A. Yes, I'm on page 25.

24 Q. Table 4 is a chart that calculates
25 historic OVEC revenues and expenses, correct?

1 A. Yes, it has the charges and it has the
2 revenues.

3 Q. Okay. And the information in this chart
4 was all publicly available?

5 A. That is correct.

6 Q. And where did you get it?

7 A. So I think the sources that I list here
8 are from a prior AEP audit and some of the
9 information is the locational marginal prices which
10 would indicate revenue are from the PJM website.

11 They have a data liner for the hourly
12 load data. It's from the U.S. Clean Air Markets
13 Database, it's an EPA tool. The capacity prices are
14 from the PJM State of the Market Report.

15 Q. And all of those figures are historic
16 actuals, not projections, right?

17 A. That is correct, yes.

18 Q. Turn if you would to page 26. You
19 discuss in Table 5 a December 2018 report from
20 Moody's Analytics, correct?

21 A. That is correct.

22 Q. Is that publicly available?

23 A. I think it might be behind a pay wall.
24 I know some Moody's stuff you have to pay for, but I
25 mean, ostensibly it's publically available if you pay

1 for it.

2 Q. Okay. And that information regarding
3 OVEC expenses and losses was also historic, not
4 projections, right?

5 A. So I think the \$10 to \$13 million
6 number, I'd have to go back and look, is an actual,
7 and so yes, I think it is, that is an historic.

8 Q. Okay. And then you have a FirstEnergy
9 Solutions entry on that same chart dated April 2019?

10 A. Yes.

11 Q. I believe you told me at your deposition
12 that it was April 2018. Do you recall which one is
13 correct?

14 A. Yeah, I think it is 2018. That's
15 probably another change I should have made in the
16 errata.

17 Q. In any event, that -- those are
18 projections that were provided in 2018 or 2019,
19 correct?

20 A. Yes.

21 Q. And they were publicly available?

22 A. Yes, in the sources that are listed
23 below.

24 Q. Turn if you would to page 22. Table 3,
25 about four lines down, includes a series of

1 projections that were made by the three Utilities in
2 this case, correct?

3 A. They were made in prior dockets by the
4 Utilities in this case.

5 Q. Yes, I did not intend to represent they
6 were in this case, but for the three Utilities?

7 A. Yes, that is correct.

8 Q. Very poor question. So then Footnote 1
9 identifies your source for the AEP projections,
10 correct?

11 A. Yes. I pulled it from an application
12 for rehearing, but it would have been in a final
13 order, too. That was just the document I had at my
14 fingertips.

15 Q. So do you know -- let me step back.

16 The application for rehearing that
17 you're citing to was filed in 2016?

18 A. Yes.

19 Q. Okay. And you're familiar like an
20 application for rehearing isn't evidence, you're
21 aware of that, right?

22 A. I'm not a lawyer so I don't know whether
23 to consider that evidence or not.

24 Q. Fair enough. In any event, do you know
25 whether the projections this application was citing

1 to were prepared prior to the 2016 date?

2 A. Yes. So I believe I'd have to go back
3 and pull the document, but I believe the numbers that
4 are cited in the application for rehearing came from
5 testimony that was submitted and entered into the
6 docket.

7 Q. Okay. So then the projections for Duke
8 Energy that you cite to were included in direct
9 testimony of Judah Rose in a 2017-126 3-EL-SSO case,
10 correct?

11 A. Yes, that is correct.

12 Q. Okay. And that testimony, we have a
13 date of July 10, 2018, correct?

14 A. Yes, that is correct.

15 Q. Okay. And then finally, your Footnote 5
16 shows that AES Ohio projected \$49 million in losses
17 associated with the Reconciliation Rider, right?

18 A. That is correct.

19 Q. And you cite to the direct testimony of
20 Jeff Malinak in case 16-395-EL-SSO for that, correct?

21 A. Yes, that's correct.

22 Q. And we don't have a date on that
23 testimony. Do you recall approximately when it was?

24 A. I don't. I can pull it up, but I don't
25 remember the exact date on that testimony.

1 Q. In any event, focusing on the AES Ohio
2 projection, it's true, isn't it, that to date AES
3 Ohio's projections of OVEC costs and revenues, the
4 net amount is very accurate?

5 A. Yeah, so AES has accurately projected
6 the losses pretty close to what they actually ended
7 up being.

8 Q. And do you know what the projections
9 were for AEP Ohio or Duke Energy Ohio for 2020, our
10 audit period?

11 A. I don't believe I have the breakdown,
12 and I actually don't remember that there was a
13 breakdown by year that wasn't confidential. So a lot
14 of the numbers were aggregated and so the underlying
15 data that had the annual numbers is confidential.

16 Q. Okay. You believe that you may have
17 glanced at the LGR legislation, but you're not
18 relying on it for your testimony, right?

19 A. Yes, I might have looked at it, but I'm
20 not a lawyer so I'm not relying on any legal
21 understanding of it in my testimony.

22 MR. SHARKEY: Thank you, Ms. Glick.
23 Your Honors, I have no further questions.

24 EXAMINER DAVIS: Thank you, Mr. Sharkey.

25 Mr. Nourse.

1 MR. NOURSE: Thank you.

2 - - -

3 CROSS-EXAMINATION

4 By Mr. Nourse:

5 Q. Good afternoon, Ms. Glick. Steve Nourse
6 for AEP. None of my questions are designed to ask
7 you to reveal confidential information. If you do
8 need to refer to confidential information in a
9 response please make note of that ahead of time and
10 we'll go off the record and get it resolved, okay?

11 A. Okay.

12 Q. Did you perform a redispatch analysis
13 for 2020 of the OVEC units?

14 A. No. I mean, I didn't have any data on
15 what information the Company knew at the time it made
16 its decision, so in order to do a redispatch analysis
17 you have to have the daily information the Company
18 had on what the projected costs and revenues were
19 going to be for the plant.

20 Q. Can you describe your understanding of
21 what such an analysis would do?

22 A. It would indicate -- it would show you
23 what the -- basically you have all the information --
24 if OVEC actually had the information, which I do not
25 believe they have, to do this analysis it would say

1 okay, for tomorrow, for the next week, these are the
2 projected energy market revenues that we expect to
3 earn, these are the expected variable and fuel costs
4 we expect to pay, and therefore this is the economic
5 decision we expect to make on whether it makes sense
6 to commit the unit into the market or to -- as must
7 run, or does it make sense to economically committee
8 the unit because we expect it not to run.

9 Q. So you'd have to go back and based on
10 information on each day, and under an economic
11 dispatch approach, make decisions in effect in a
12 parallel universe to what actually happened?

13 A. Yes. And I've never done a full
14 redispatch analysis, it's quite time intensive, but I
15 have in several other dockets reviewed the hourly --
16 or the day-ahead analysis that the companies perform
17 and evaluated the prudence of the daily unit
18 commitment decisions that were made.

19 So it's a pretty time intensive process.
20 I even had to fly out to Plainfield, Indiana and copy
21 the information down by hand one time, but it is
22 possible to do that.

23 Q. And you didn't do it in this case?

24 A. Well, you can't do an analysis with data
25 that doesn't exist or is not provided, so there was

1 no analysis provided by OVEC, or by any of the three
2 Companies, I think with the exception of the
3 information Duke had on the information that OVEC had
4 at the time that OVEC used to make the decisions.

5 I understand Duke did an analysis, but
6 we did not have information on what data OVEC used to
7 make its commitment decision.

8 Q. So I just want to be clear, you did not
9 do the analysis because you didn't have the
10 information?

11 A. That is correct.

12 Q. And did you ask for the information?

13 A. Yes.

14 Q. Okay. You asked for the information and
15 didn't get it?

16 A. We asked if OVEC had done daily unit
17 commitment analysis and they indicated they did not,
18 and therefore that information is not available.

19 Q. But you could go do your own analysis
20 though, right?

21 A. No, I don't have information on what --
22 so this is not a retrospective analysis, this is
23 information on what information OVEC had at the time
24 and what OVEC projected.

25 I don't have the ability in any way to

1 get access to what is in OVEC's brain and head.

2 Q. Okay. Well, so as far as you know,
3 nobody knows what the amount of net losses or gains
4 would be on the energy market had OVEC used an
5 economic dispatch analysis for the entire audit
6 period, correct?

7 A. That correct. So that is why I looked
8 at what actually happened.

9 Q. Okay. And let me ask you this. If OVEC
10 had used economic dispatch commitment for the entire
11 audit period, all else being equal, could that have
12 increased the market clearing price for energy?

13 A. Can you repeat your question?

14 Q. Sure. If during the audit period OVEC
15 had used economic dispatch as its commitment process
16 for the entire year, would -- could that have
17 increased market clearing prices for energy, all else
18 being equal?

19 A. So if OVEC was bidding economically -- I
20 guess I'm unclear on how talking about would that
21 impact the PJM market prices as a whole?

22 Q. Could it have given the OVEC units
23 operating in the PJM energy market?

24 A. So if the OVEC units -- it shouldn't
25 impact the market prices, it's just they would fall

1 in a different place in the bid stack. So it
2 shouldn't impact the market prices overall, though.

3 Q. Well, the -- where it falls in the bid
4 stack could determine the -- where the clearing price
5 is cut off, right, at or below that level?

6 A. Yeah, what the last megawatt of
7 generation that's selected, yes, that could be
8 impacted.

9 Q. Okay. Now, you recommend -- and I don't
10 want you to talk about the amount, but on page 11,
11 for example, you recommend a disallowance for what
12 you call the above-market energy cost, right?

13 A. So on page 11, line 10, that's energy
14 and capacity. So that's not just the energy.

15 Q. Okay. But you recommend a disallowance
16 of that amount that's confidential, and so I just
17 want to understand what you're asking.

18 So should AEP Ohio, AES, and Duke Energy
19 customers get some refund or credit in the future of
20 that amount in total?

21 A. Yes.

22 Q. Okay. And you're not recommending
23 FirstEnergy customers get a refund of part of that
24 amount, correct?

25 A. So my understanding is that this audit

1 is just for these three Companies, so I did not do
2 any analysis on the impact on FirstEnergy customers.

3 Q. Okay. But does the total amount that
4 you have on page 11, line 10, apply to the three
5 Companies?

6 A. It applies to the three Companies, and
7 then I think included in that is the impact on the
8 three Companies of FES' portion of the energies that
9 the three Companies paid for through May -- May 31st,
10 2020, but there should not -- there are no costs
11 involved in that recommended number that covered FES
12 customer cost.

13 Q. I'll ask you to turn to page 48 in your
14 testimony.

15 A. Yes --

16 Q. Actually, I'm sorry. Let's go to 41
17 first and then go back to 48.

18 Page 41, you've got a reference on lines
19 12 and 13 to each -- each Company being allowed to
20 appoint one member to the operating committee, do you
21 see that?

22 A. Yes, I do.

23 Q. And is it your understanding that AEP
24 Ohio gets to appoint a member to the operating
25 committee?

1 A. Yes, it is.

2 Q. Just for AEP Ohio?

3 A. No, my understanding is that AEP, the
4 parent company, gets one member and that covers AEP
5 Ohio, Indiana, Michigan, all of the AEP subsidiaries.

6 Q. Okay. So AEP Ohio has a fractional
7 interest in one member represented on the operating
8 committee, correct?

9 A. It's AEP as a whole has the cost -- the
10 costs and revenues are a responsibility of AEP more
11 broadly, so --

12 Q. But back to my original question, AEP
13 Ohio, do they get a member on the operating committee
14 by themselves?

15 A. No, AEP does.

16 Q. All right. Now let's go to 48. In the
17 answer that starts on line 9 you talk about a
18 Michigan regulatory decision, do you see that?

19 A. Yes, I do.

20 Q. Okay. And is it your understanding that
21 Michigan utilities have -- that they are integrated
22 utility companies?

23 A. Yes.

24 Q. Okay. And they have a portfolio of
25 generation, correct?

1 A. Yes.

2 Q. And they have an ongoing duty to supply
3 power through an Integrated Resource Planning
4 process, correct?

5 A. Yes, in Michigan and Indiana they do
6 have IRPs.

7 Q. And are you aware of the inverse pricing
8 rule in Michigan?

9 A. I don't believe so, at least not by that
10 name.

11 Q. Are you aware of a regulatory provision
12 that says that a regulated utility purchasing from an
13 affiliate has to pay the higher of cost or market and
14 the utility selling to an affiliate would charge
15 the -- I'm sorry. Let me restate that.

16 The reason it's called the inverse
17 pricing rule is because a regulated utility selling
18 to an affiliate would sell at the lower of cost or
19 market, and buying from a utility would pay the
20 higher of the cost or market, does that sound
21 familiar?

22 A. I know of something called the code of
23 conduct, I don't know if that's the same as what
24 you're referring to.

25 Q. Well, let's forget about what it's

1 called. Are you aware of whether Michigan has that
2 requirement?

3 A. So I didn't a hundred percent follow
4 what you said, but my understanding is in Michigan
5 utilities can't pay affiliates above market for
6 power, or anything.

7 Q. So they would pay the lower of cost of
8 market when purchasing from a utility?

9 A. Correct. If it's enforced. It's
10 not like a self-enforcing. It's if the Commission
11 decides that it is an affiliate relationship and that
12 they are paying above market and enforces that.

13 Q. But in this discussion on page 48 and
14 carries over, was that concept in play, to your
15 knowledge?

16 A. So that concept does not -- does not
17 apply necessarily inherently to a power supply cost
18 recovery or an FAC process, it only comes into play
19 if the power or the fuel at issue is controlled by or
20 comes from an affiliate.

21 So it's not -- the power supply cost
22 recovery in FAC process -- in Indiana the FAC
23 process, that wasn't an issue at all.

24 So those two processes, I cite those
25 simply to provide an example for the Commission of

1 ways to evaluate the prudence of a fuel cost and of
2 variable operational decisions.

3 Q. But again, in that Michigan decision, do
4 you know whether the Michigan Commission considered
5 OVEC an affiliate of Indiana Michigan Power Company?

6 A. Sorry, I don't see a reference to a
7 specific decision in this -- on page 48.

8 Q. Okay. I think you might reference it
9 earlier as well. I'm looking at page 14. This is
10 actually one of your prior experiences you cited, so
11 I do think you were involved in that proceeding
12 involving OVEC fuel costs purchased by I&M?

13 A. Yes, so on Table 2 I list a variety of
14 them, several of which are with Indiana Michigan,
15 yeah.

16 MR. NOURSE: Okay. And I think you
17 already answered my question about Indiana, so that's
18 all the questions I have. Thank you.

19 EXAMINER DAVIS: Thank you, Mr. Nourse.

20 MS. AKHBARI: Ms. Akhbari?

21 MS. AKHBARI: Thank you.

22 - - -

23 CROSS-EXAMINATION

24 By Ms. Akhbari:

25 Q. Hi, Ms. Glick. Really nice to see you

1 again.

2 A. Good afternoon.

3 Q. Thanks for traveling here and being
4 here. Could you please -- and I'll try to be brief
5 and I'll try not to backtrack. Could you please turn
6 to page 20 of your testimony?

7 A. Sure. I'm on page 20.

8 Q. All right. And if you could look
9 starting on line 17, it goes on to the next page, top
10 of 21, you state in your testimony, "Under the Legacy
11 Generation Rider, each of the three Companies
12 provides its ratepayers with the net costs or net
13 revenues associated with its respective ownership
14 share of the OVEC plants. This means that if OVEC's
15 costs exceed market revenues in a given year, the
16 ratepayers for each of these three Companies pay the
17 difference."

18 Did I read that correctly?

19 A. Yes, I think so.

20 Q. Thanks. Ms. Glick, you would agree,
21 wouldn't you, that this statement in your testimony
22 reflects your impression of how the LGR Rider
23 operates, and I would just say answering
24 understanding that you're not an attorney?

25 A. Yes, my understanding is that the LGR

1 passes on the net costs or revenues associated with
2 the OVEC plants, you know, obviously under -- under
3 the conditions that the auditor view concludes that
4 they are prudent.

5 Q. And, Ms. Glick, in the audit period that
6 we're here discussing today, so calendar year 2020,
7 would you agree that the description that you have in
8 your testimony on page 20 and going to the top of 21
9 is how the LGR Rider for all three Companies did
10 function in fact in the audit period?

11 A. Yes. So during the audit period my
12 understanding is that all three Companies are
13 attempting to pass on the costs of revenues that they
14 incurred in operating the OVEC plants.

15 Q. Ms. Glick, let's turn to page 21, if you
16 don't mind -- or you might already be there.

17 Okay. So on 21, just further down,
18 lines 11 and 12, it states, "In each of the prior
19 dockets, the Companies justified their requests for
20 the rider as a financial hedge.

21 The prior docket that you were
22 referencing in this testimony, would you agree that
23 those would be the PPA docket, the PSR docket, and
24 the Reconciliation Rider docket?

25 A. Yes, it's the dockets listed in Table 3,

1 so yes, PPA, Stabilization, and Reconciliation.

2 Q. Well, let's look at Table 3 then on page
3 22. On page 22 you have a chart, and on the fifth
4 line down in this chart you discuss -- and I know
5 Mr. Sharkey covered some of this, but you discussed
6 projected rider performance by Company; is that
7 correct?

8 A. Yes, that is correct.

9 Q. And the analysis that you reference in
10 your testimony here in Table 3, those analyses
11 setting forth those projections, it's your
12 understanding those were submitted to the Commission
13 in those various dockets; is that correct?

14 A. Yes, that is correct.

15 Q. And you would assume that those analyses
16 were considered as part of the approval for the
17 Companies' respective riders in those dockets,
18 correct?

19 A. Yes, that is correct.

20 Q. Okay. Sorry, trying to cross things
21 off.

22 Let's look back to page 17, if you don't
23 mind real quick. So beginning on line 14 on page 17,
24 and continuing through the figure and discussion on
25 page 18 and beyond -- I'm sorry, I think I have the

1 wrong page reference. Just bear with me one minute.

2 So beginning on page 17 -- let me
3 rephrase to get rid of the specific reference.
4 You -- beginning on page 17 continuing on to 18 is
5 your discussion of retirement for coal-fired power
6 plants; is that correct?

7 A. Yes, I'm talking -- yes, I just got the
8 trend in coal-fired power plant retirements in the
9 U.S.

10 Q. And, Ms. Glick, if you could look to the
11 bottom -- the footnote on page 18, and it is
12 encompassing a number of citations, Footnote 20 on
13 page 18.

14 A. Yes.

15 Q. You have one particular article there,
16 it's titled, "Duke Energy considering retiring 9,000
17 megawatts of coal, adding vast amounts of storage."
18 Do you see that?

19 A. Yes, I do.

20 Q. And, Ms. Glick, it's your understanding
21 that this article does not reference Duke Energy
22 Ohio?

23 A. That is correct.

24 Q. And this article is actually directed to
25 Duke Energy Carolinas and Duke Energy Progress, is

1 that correct?

2 A. Yes, that's why I made some of the
3 clarifications earlier to my testimony.

4 Q. And, Ms. Glick, would you agree that the
5 article that you cite here, in addition to not being
6 about Duke Energy Ohio, is actually an article
7 describing six different scenarios that Duke Energy
8 Carolinas and Duke Energy Progress were considering
9 for their long-term IR?

10 A. I would have to look at the article, I
11 don't remember that level of detail.

12 Q. Ms. Glick, if you could turn -- actually
13 staying on page 18, you have a chart there in Figure
14 1, correct?

15 A. Yes.

16 Q. And this chart shows -- well, what does
17 the chart show, actually?

18 A. Yes, so this shows all of the coal
19 capacity online in the U.S. by the year that it came
20 online.

21 So if you have -- there's a bar and it
22 says 1955, that represents the plant that came online
23 in 1955. And the Y axis is the megawatt of coal.

24 So this chart shows the amount of coal
25 online in the U.S. by the year it came online. The

1 yellow shows the coal plants -- or the megawatts of
2 coal capacity that does not have a scheduled
3 retirement date, the gray shows coal plants with
4 scheduled retirement dates, and then the red is the
5 OVEC plants.

6 Q. Okay. Thanks, Ms. Glick.

7 So would you agree that the chart in
8 Figure 1 shows in different colors which coal plants
9 have a scheduled retirement date and which coal
10 plants do not?

11 A. Yes, that is correct.

12 Q. Would you agree that the majority of the
13 chart is in yellow, meaning that the coal generation
14 in question does not have a scheduled retirement
15 date?

16 A. Yes. And my testimony focuses on the
17 oldest plants though. But yes, many of the newer
18 plants do not have scheduled retirement dates.

19 MS. AKHBARI: I don't think I have any
20 further questions. Thank you, your Honor.

21 EXAMINER DAVIS: Thank you.

22 Mr. Lindgren?

23 MR. LINDGREN: No questions.

24 EXAMINER DAVIS: Thank you very much.

25 Mr. Dougherty?

1 MR. DOUGHERTY: Can I get two minutes?

2 EXAMINER DAVIS: Let's go off the
3 record.

4 (Discussion off the record.)

5 EXAMINER DAVIS: Let's go back on the
6 record. Mr. Dougherty, please proceed.

7 MR. DOUGHERTY: No redirect.

8 EXAMINER DAVIS: Okay. Thank you.

9 Ms. Glick, you're excused. Thank you
10 very much.

11 (Witness excused.)

12 EXAMINER DAVIS: Mr. Dougherty.

13 MR. DOUGHERTY: Yes, your Honor, I would
14 like to move for the acceptance of CUB/UCS Exhibit 1
15 and CUB/UCS Exhibit 2C into evidence, please.

16 EXAMINER DAVIS: Thank you. Are there
17 any objections?

18 Hearing none, they shall be admitted.

19 (EXHIBITS ADMITTED INTO EVIDENCE.)

20 EXAMINER DAVIS: Thank you,
21 Mr. Dougherty.

22 MR. NOURSE: Your Honor, can we just
23 note for the record, because I think we only have a
24 couple of these items for cleanup after the hearing,
25 but I believe portions of the testimony of Ms. Glick

1 were going to be re-examined by the group and the
2 confidential -- some confidential material may be
3 released publicly when we complete that exercise?

4 EXAMINER DAVIS: Thank you, Mr. Nourse.

5 So, Mr. Dougherty, I would just ask that
6 in the event those talks are completed and there are
7 currently redacted portions of Ms. Glick's testimony
8 that are no longer redacted, that you just submit to
9 the docket a modified version?

10 MR. DOUGHERTY: Yes, absolutely. Would
11 you like me to file that -- file just the
12 testimony -- I think we're just talking about the
13 testimony, the public testimony, unredacted portions
14 of the public testimony?

15 MR. NOURSE: I thought we would just
16 submit it to the Bench and the reporter to make sure
17 it was acceptable and that's what would be in the
18 entry record.

19 EXAMINER DAVIS: Okay. Thank you.

20 EXAMINER ADDISON: Thank you both. I
21 think now is as good a time as any to take our lunch
22 break. Why don't we go off the record?

23 (Discussion off the record.)

24 EXAMINER ADDISON: Let's go back on the
25 record. We'll go ahead and take a 45-minute lunch

1 break. Thank you all.

2 (Lunch recess from 1:00 to 1:45.)

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

5 Mr. Finnigan.

6 MR. FINNIGAN: Thank you, your Honor.
7 Your Honor, at this time I'd like to call Mr. Joseph
8 Perez as our next witness.

9 EXAMINER ADDISON: Raise your right
10 hand, please. Do you swear the testimony you're
11 about to provide in this proceeding is the truth?

12 THE WITNESS: Yes.

13 EXAMINER ADDISON: Thank you. Please be
14 seated. And if you'd please turn on your microphone.

15 MR. FINNIGAN: And, your Honors, before
16 we present Mr. Perez's testimony, a couple of other
17 items.

18 First is, earlier in the hearing we
19 tendered a document which is the FERC Form 1 for
20 OVEC, and I believe it might have been marked as OCC
21 Exhibit 8.

22 EXAMINER ADDISON: That sounds right.
23 Yes, it was.

24 MR. FINNIGAN: And so when we got to the
25 subject of admitting documents into evidence, at that

1 time I withdrew the document because I thought it
2 wasn't really needed, it was covered by other items
3 like the OVEC Annual Report which was admitted into
4 evidence in the audit reports.

5 However, upon further reflection, I
6 think it might be helpful to have this document as
7 part of the record in this evidentiary hearing, and
8 the reason is because it goes to a couple of issues
9 which are the subject of the case, one of which, for
10 example, is this issue of retained earnings.

11 So these FERC Annual Reports, they
12 account for all the Utilities costs under the Uniform
13 System of Accounts, and every utility is required to
14 follow the Uniform System of Accounts in their
15 accounting.

16 And OVEC is a public utility in the
17 State of Ohio, so they are required to follow the
18 Uniform System of Accounts, too.

19 And the FERC Form 1 reports data
20 according to this Uniform System of Accounts system.
21 And the beauty of a FERC Form 1 is that it's all
22 standardized, there is really no argument about it.

23 The definitions of what goes into a
24 particular account under the Uniform System is set
25 out in the Code of Federal Regulations that

1 established it. And in Ohio, utilities are required
2 to follow the Uniform System of Accounts by law.

3 And these FERC Form 1 accounts -- or
4 these term Form 1 reports, like this one for OVEC,
5 are also required by federal law for -- and the Ohio
6 Commission requires that these be filed, too.

7 MR. NOURSE: Your Honor --

8 MR. FINNIGAN: I'm not done, yet.

9 MR. NOURSE: I know. He didn't even
10 make a request. This is just like a speech. Are we
11 taking the next witness?

12 EXAMINER ADDISON: One moment,
13 Mr. Nourse.

14 Mr. Finnigan, let's proceed with your
15 witness. We can take up whatever you'd like to take
16 up with OCC exhibit -- what's been marked as OCC
17 Exhibit 8 at a later time. I'd prefer to move
18 through our witness schedule for today.

19 MR. FINNIGAN: I have this and a couple
20 other documents for administrative notice, but I'll
21 proceed with Mr. Perez.

22 - - -

23 JOSEPH PEREZ,
24 being first duly sworn, as prescribed by law, was
25 examined and testified as follows:

1 DIRECT EXAMINATION

2 By Mr. Finnigan:

3 Q. Sir, could you state your name, please?

4 A. Yes, Joseph Perez.

5 MR. FINNIGAN: And, your Honor, I
6 understand the witness has been sworn before that
7 lengthy discussion?

8 EXAMINER ADDISON: That is correct.

9 By Mr. Finnigan:

10 Q. And did you -- Mr. Perez, did you
11 prepare testimony that was prefiled in this
12 proceeding?

13 A. Yes, I did.

14 MR. FINNIGAN: Your Honor, at this time
15 I would like to mark as OCC Exhibit 20 the prefiled
16 testimony of Mr. Joseph Perez.

17 EXAMINER ADDISON: It will be so marked.

18 (EXHIBIT MARKED FOR IDENTIFICATION.)

19 MR. FINNIGAN: And, your Honor, I've
20 already presented that to Mr. Perez on the witness
21 stand and distributed copies.

22 By Mr. Finnigan:

23 Q. Mr. Perez, do you have a document before
24 you that's marked as OCC Exhibit 20?

25 A. I do.

1 Q. Can you identify what that document is?

2 A. It's my personal testimony and the
3 attachments.

4 Q. Did you prepare this testimony, or was
5 it prepared under your direction and control?

6 A. I did.

7 Q. If I were to ask you the same questions
8 today would your answers be the same?

9 A. They would.

10 Q. Do you have any changes or corrections
11 that you need to make?

12 A. No.

13 MR. FINNIGAN: Your Honor, with that I'd
14 move for the admission of OCC Exhibit 20 subject to
15 cross-examination.

16 EXAMINER ADDISON: Thank you. And
17 before we move on to cross I will note that there was
18 a motion to strike specific portions of Mr. Perez's
19 testimony, and that was filed by Duke, AES Ohio, and
20 AEP.

21 I have read -- or the Examiners have
22 read that motion to strike, Mr. Finnigan. I would
23 like to give you an opportunity to respond to the
24 arguments raised in that motion at this time.

25 MR. FINNIGAN: And -- Yes, your Honor.

1 Thank you.

2 MR. LINDGREN: Your Honor, if I may
3 interject, the Staff supports the motion to strike.

4 EXAMINER ADDISON: Thank you,
5 Mr. Lindgren.

6 MR. FINNIGAN: And, your Honor, if I may
7 just have a moment to pull up the motion, unless
8 anyone has a copy?

9 MS. BOJKO: I do.

10 EXAMINER ADDISON: Thank you, Ms. Bojko.

11 MS. AKHBARI: Just for record
12 clarification, is Mr. Perez's testimony Exhibit 2?

13 EXAMINER ADDISON: OCC Exhibit 20.

14 MR. MCKENZIE: There is no OCC
15 Exhibit 2, correct?

16 EXAMINER ADDISON: I know we've skipped
17 over some numbers, Mr. McKenzie. I don't believe I
18 have an OCC Exhibit 2.

19 MR. MCKENZIE: None of us do either, so
20 just clarifying.

21 EXAMINER ADDISON: I appreciate that.
22 It never hurts to ask. Are you ready?

23 MR. FINNIGAN: Thank you, your Honor.

24 Yes, I would like to respond to the
25 motion. And just moving through the motion and the

1 way -- or addressing it in the way the motion was
2 presented, I'll start with argument A for a motion to
3 strike a -- dealing with whether Mr. Perez has
4 personal knowledge of the intentions of Staff or the
5 auditor regarding the 2019 PPA audit proceeding.

6 Your Honor, Mr. Perez did submit
7 testimony regarding certain emails from the 2019
8 audit, and also expressed some opinions regarding
9 those emails and the auditor's lack of independence.

10 However, I believe that you have already
11 ruled on this topic, and I believe your prior ruling
12 will address this motion to strike, and so I would
13 simply incorporate the arguments I already made in
14 response to the motion for administrative notice of
15 those 2019 audit materials, and I will rest on that.

16 EXAMINER ADDISON: Thank you very much,
17 Mr. Finnigan. And you are correct, my prior ruling
18 would -- would apply to this information noted in the
19 motion to strike.

20 So we will be granting the motion to
21 strike. Specifically we'll be striking Attachment
22 JSP-3. We will also be granting the motion to strike
23 as to page 2, lines 24 through 25, as well as page 3,
24 line 8 beginning with, "And lastly," and ending on
25 line 9 with the word, "cost."

1 MS. BOJKO: I'm sorry, your Honor,
2 clearly you have already done this, so could you
3 start over? I don't know where you are.

4 EXAMINER ADDISON: Certainly, Ms. Bojko.
5 I'm reading the page and line references noted in the
6 motion to strike. So I could start over -- I'll
7 start from the beginning as well.

8 MS. BOJKO: Thank you.

9 EXAMINER ADDISON: So that was striking
10 Attachment JFP-3, striking page 2, line 24, beginning
11 with the word -- beginning with, "I" through line 25,
12 ending with the word, "economics."

13 Moving to page 3, line 8, beginning with
14 the phrase, "And lastly," through page 3, line 9,
15 ending with the word, "costs."

16 MS. WHITFIELD: Did you say page 3?

17 EXAMINER ADDISON: Yes.

18 MS. WHITFIELD: I got it.

19 EXAMINER ADDISON: Thank you,
20 Ms. Whitfield.

21 Moving to page 5, line 9, in its
22 entirety through page 5, line 23, so both of those
23 paragraphs.

24 And lastly, page -- lastly page, 16,
25 beginning on line 1 through page 17, ending with line

1 4. So all of Question and Answer 19.

2 Do I need to restate any of those at
3 this time? Okay. I will take that as everyone wrote
4 down the appropriate stricken language, so we will
5 move on to cross. Mr. Sharkey.

6 MR. SHARKEY: Thank you, your Honor.

7 - - -

8 CROSS-EXAMINATION

9 By Mr. Sharkey:

10 Q. Mr. Perez, as you know, my name is Jeff
11 Sharkey. I represent AES Ohio in this matter. I'll
12 start by asking you some questions about your
13 qualifications.

14 EXAMINER ADDISON: Mr. Sharkey, I'm
15 sorry, would you mind turning on your microphone?

16 MR. SHARKEY: Sorry about that.

17 By Mr. Sharkey:

18 Q. It's true, isn't it, that you have never
19 performed a prudence audit in your career?

20 A. That is correct.

21 Q. And you've never worked at a coal plant?

22 A. No.

23 Q. Have you ever dispatched coal plants?

24 A. No.

25 Q. When you say, "No," you're agreeing with

1 me?

2 A. I'm agreeing with you, yes.

3 Q. Do you know what the ICPA is?

4 A. At a high level.

5 Q. Did you review it in preparing your
6 testimony?

7 A. Yes, I did.

8 Q. Okay. Your testimony does not address
9 the decision of the feasibility design in that ICPA,
10 correct?

11 A. No, it doesn't.

12 Q. And your testimony doesn't address any
13 rights that the Utilities had under the ICPA but
14 failed to exercise, correct?

15 A. No, it doesn't discuss that.

16 Q. Okay. Do you believe it's prudent for
17 the Utilities to comply with their contractual
18 obligations in the ICPA?

19 A. Yes. If counterparties are being
20 reasonable, yes, of course.

21 Q. And if the counterparties -- even if the
22 Utilities were to disagree with the counterparties,
23 if the contract required the Utilities to act a
24 certain way, you agree they should do so, right?

25 A. Overtly I believe in following through

1 with your commitments.

2 Q. Do you know whether OVEC was operating
3 its units in the highest practical level attainable?

4 A. I don't know what that value is on a
5 megawatt basis.

6 Q. You recommend that the -- that OVEC
7 offer the units on an economic basis in the PJM
8 Day-Ahead Energy Markets, right?

9 A. That is correct.

10 Q. And you believe if they did so, that
11 would result in units being operated at some amount
12 that was less than what they were operated at in
13 2020?

14 A. I do.

15 Q. Do you know what the operating
16 procedures are?

17 A. Yes, I scanned them.

18 Q. You don't address them in your
19 testimony, do you?

20 A. No, I don't.

21 Q. Do you know whether OVEC was required to
22 comply with the operating procedures?

23 A. I don't know that.

24 Q. Do you know --

25 A. I would assume.

1 MR. FINNIGAN: Objection, your Honor.
2 Calls for a legal conclusion.

3 EXAMINER ADDISON: I believe he already
4 gave his answer, so we'll move on.
5 By Mr. Sharkey:

6 Q. Do you know how many utilities -- step
7 back.

8 Do you know how many members the
9 operating committee has?

10 A. I believe there was one per Sponsoring
11 Company, plus one OVEC, so 14, I would say.

12 Q. And the three Ohio Utilities each only
13 had one seat on the operating committee?

14 A. I believe so.

15 Q. And do you know if there were
16 requirements as to the number of votes required to
17 change provisions in the operating procedures?

18 A. I believe it has to be unanimous.

19 Q. And then you're familiar with the fact
20 that OVEC has a Board?

21 A. Yes.

22 Q. Do you know how many members there are
23 on the Board?

24 A. I think I heard 15 earlier. I think you
25 confirmed that in Ms. Glick's --

1 Q. You heard that from Ms. Glick?

2 A. I heard it from you, you guys talking
3 about it.

4 Q. And do you know how many seats on the
5 Board each of the three Utilities here have?

6 A. I believe, one.

7 Q. One per Utility?

8 A. One per Utility Sponsoring Company.

9 Q. Are you familiar with the fact that the
10 Commission has recently issued an opinion and order
11 regarding its audit of OVEC's 2019 expenses in the
12 Duke case?

13 A. No, I didn't read that order.

14 Q. Have you made any -- when did you start
15 working on the OVEC case?

16 A. Well, I started with the agency -- the
17 Ohio Consumers' Counsel in July, so that was my first
18 assignment.

19 Q. Okay. Has your analysis been limited to
20 the 2020 period of time?

21 A. Yes, for this case the 2020 period was
22 the focus of my analysis.

23 Q. I think that answer is obvious, but I'll
24 ask it anyway.

25 Fair to say you're not aware of any

1 differences between how OVEC was operated in 2019
2 compared to how it was operated in 2020?

3 A. That is correct, I'm not aware.

4 Q. You're familiar with the fact that the
5 LGR allows the Utilities to recover from customers,
6 or credit to customers, the net difference between
7 the billed OVEC costs and the related PJM revenues?

8 A. That's how I understand it.

9 Q. And on an accounting basis, you haven't
10 done any work to confirm -- Strike that.

11 You don't dispute that the amount of
12 OVEC's costs has been accurately calculated under the
13 LGR, right?

14 A. That is correct. I verified the bills
15 and the over and under in Figure 9.

16 Q. And same for the PJM revenues, you're
17 not disputing that those have been accurately
18 accounted for?

19 A. Not disputing that besides the capacity
20 revenues for AES and Duke. It was a small -- it was
21 about a third of the revenues that were double
22 counted, but yeah, besides that, no other problems.

23 I was able to separate them out by
24 energy capacity and the ancillary services.

25 Q. Okay. And the items that you disagreed

1 with, is that the items that the auditor corrected on
2 the stand?

3 A. That is correct.

4 Q. Okay. Are you familiar with how the
5 capacity market works?

6 A. Yes.

7 Q. Okay. So do you know whether the three
8 Utilities received capacity revenue from PJM during
9 the audit period?

10 A. Yes, they did.

11 Q. Okay. And when would the auction have
12 occurred?

13 A. That would have taken place in May of
14 2017.

15 Q. And the three Utilities -- strike that.

16 Do you know whether the three Utilities
17 independently bid their share of OVEC's capacity into
18 that auction?

19 A. Yes, they did.

20 Q. And your testimony doesn't address their
21 bidding practices, does it?

22 A. No, it doesn't.

23 MR. FINNIGAN: I'm going to object and
24 move to strike because "their bidding practices" is
25 vague.

1 This line of questioning has been
2 dealing with the capacity market, but to the extent
3 that he's asking a general question of whether the
4 testimony addresses bidding practices, I think that,
5 on a stand-alone basis, is vague and ambiguous. I
6 move to strike his answer.

7 EXAMINER ADDISON: Well, in the event
8 you'd like to lodge an objection you can do so before
9 the witness presents his answer. And that certainly
10 sounds like something that you can bring up on
11 redirect, Mr. Finnigan.

12 MR. FINNIGAN: Thank you.
13 By Mr. Sharkey:

14 Q. You're aware that a coal-fired
15 generation plant startup needs to incur significant
16 costs, right?

17 A. You mean a time frame of startup? Yeah,
18 there's a startup cost and then the time to get fully
19 loaded, yes, I would agree with that statement.

20 Q. And do you know the amount of -- not
21 focusing on the time, but on the amount of the cost,
22 do you know how much it is?

23 A. Yeah, is it confidential, though? It's
24 in the fuel cost policy.

25 Q. Then it's going to be confidential.

1 A. In the confidential.

2 Q. Let me ask you this question: Is it a
3 material amount?

4 A. In comparison to what?

5 Q. You're a financial expert, would you
6 consider the amount of costs material for an entity
7 like OVEC?

8 A. Could be.

9 Q. And then do you know how long it takes
10 to start up OVEC's plants from the time PJM says
11 start them up?

12 A. I don't know the exact time.

13 Q. Do you know approximately?

14 A. From a cold state, like completely off,
15 it could be eight to ten hours.

16 Q. And then do you know whether the units
17 have a minimum downtime after they have been --

18 A. Yeah, they do, but I don't know what it
19 is.

20 Q. Do you have a general idea how long it
21 is?

22 MS. BOJKO: Objection. He just said he
23 doesn't know what it is.

24 EXAMINER ADDISON: Mr. Sharkey, I think
25 he's provided an answer. Move on.

1 MR. SHARKEY: Fair enough.

2 By Mr. Sharkey:

3 Q. Do you know whether cycling coal-fired
4 plants on and off increases the risk or the
5 probability of equipment failures?

6 A. Cycling does have damage, yes,
7 especially for older units.

8 Q. Turning, if you would, to page 4 of your
9 testimony. Are you there?

10 A. One moment, please. Okay. I'm here.

11 Q. All right. Down on Line 21 you quote
12 the audit report in Duke's case as stating, "Ideally,
13 the units would be committed based on economics all
14 or most of the time," correct?

15 A. Yeah, I say that.

16 Q. Okay. That's Duke's audit report page
17 10, correct?

18 A. That is correct.

19 Q. Do you have a copy of Duke's audit
20 report available to you?

21 A. I think so right here. Give me a moment
22 to look here. Okay. I'm here.

23 Q. Can you open it to page 10?

24 A. Yep.

25 Q. And do you see where it has the quote

1 that you had the word, "Ideally"?

2 A. Yeah, I see that.

3 Q. And the whole sentence in fact says,
4 "Ideally, the units would be committed based on
5 economics all or most of the time, but in the case of
6 coal plants this can cause difficulties in managing
7 staffing and fuel deliveries, and repeated startup of
8 coal plants can damage equipment." Did I read that
9 accurately?

10 A. Yes, you did.

11 Q. Do you know whether energy prices in
12 PJM's Day-Ahead Markets were at historic lows during
13 2020?

14 A. Yes, they were.

15 Q. Turn to page 14 of your testimony, would
16 you?

17 A. Okay. I'm here.

18 Q. Figure 3 is a chart of data from MISO,
19 correct?

20 A. That is correct.

21 Q. And what is MISO?

22 A. It's an RTO similar to PJM. Mainly
23 covers Indiana, Illinois, a little bit of Texas,
24 Arkansas, Louisiana, so our neighbors.

25 Q. You would agree with me that weather

1 patterns between MISO and PJM could be significantly
2 different?

3 A. There's differences in weather.

4 Q. And do you know whether there are
5 differences in coal prices across regions?

6 A. Yeah, there is, there's differences.

7 Q. And do you know if there are differences
8 across regions as to availability of types of coal?

9 A. I didn't study that for my testimony.

10 Q. You're aware that there are different
11 types of coal, correct?

12 A. Yes, there's Illinois basin,
13 Appalachian, yes, there's different kinds.

14 Q. Some types of coal is more expensive
15 than other types of coal principally based upon the
16 MMBtu?

17 A. Yes.

18 Q. You haven't done any analysis regarding
19 whether it compares the operating characteristics of
20 the coal-fired plants in MISO to the operating
21 characteristics of the coal-fired plants in PJM?

22 A. I have not undertaken a study. Did I
23 hear that right? Did you ask me if I did a study on
24 the two different coal plants or areas? Or do you
25 want to reask that question, please?

1 Q. I'll reask it just so that we're sure
2 we're on the same page.

3 A. Thank you.

4 Q. Happy to. It's true, isn't it, that you
5 haven't done a comparison of the characteristics of
6 the coal-fired plants in MISO to the operating
7 characteristics of coal-fired plants in PJM?

8 A. That's true.

9 Q. Do you know whether there are -- Strike
10 that.

11 It is true, isn't it, that there are
12 coal-fired plants operating in MISO that have been
13 designated by their owners as must run?

14 A. Yes.

15 Q. Do you know whether there are coal-fired
16 plants located in PJM that have been designated by
17 their operator or owners as must run?

18 A. Yes.

19 Q. Yes, you know?

20 A. Yes. And yes, they are both offered as
21 must run in both PJM and MISO.

22 EXAMINER ADDISON: Mr. Sharkey, before
23 you ask your next question, Mr. Perez, on line 10, on
24 page 14 of your testimony, are the dates supposed to
25 read 2017 through 2020?

1 THE WITNESS: Yes, they are.

2 EXAMINER ADDISON: Thank you.

3 MS. BOJKO: I'm sorry, which page was
4 that, your Honor?

5 EXAMINER ADDISON: Page 14, line 10.

6 MS. BOJKO: Thank you.

7 THE WITNESS: There's extra 2 in there.

8 MR. SHARKEY: Thank you, Mr. Perez.

9 And, your Honors, I have no more questions.

10 EXAMINER ADDISON: Thank you very much.

11 Ms. Akhbari?

12 MS. AKHBARI: Thank you, your Honor.

13 - - -

14 CROSS-EXAMINATION

15 By Ms. Akhbari:

16 Q. Hi, Mr. Perez. Nice to see you again.

17 A. Hi to you, too.

18 Q. Thank you. So if you could turn in your
19 testimony to page 18.

20 A. Okay. I'm here.

21 Q. Starting on line 23, you state, "The PJM
22 Independent Market Monitor's vigorous participation
23 in the underlying case where the PUCO approved the
24 Coal Plant Subsidy charge shows the PJM Independent
25 Market Monitor's strong interests in bidding

1 practices at issue in this case." Do you see that?

2 A. I do.

3 Q. And you don't have a citation in support
4 of that statement. What underlying case are you
5 referring to?

6 A. Sorry about that. Yeah, that is the --
7 give me a moment here. It's actually the application
8 on page 17, sorry, Footnote 15, the Ohio PPA Rider
9 case, I'm referencing that, 14-1 693, where the
10 Market Monitor was very vocal in his brief about the
11 issues that we're talking about in this case today.

12 Q. Okay. So you're referring to the
13 underlying 18-1004 that established the PPA -- prior
14 PPA Rider; is that right?

15 A. I'll take your word for it. Whatever
16 case established the PPA Rider, that's what I'm
17 referring to.

18 Q. And when you say "vigorous
19 participation," what are you referring to?

20 A. I'm referring to the Market Monitor
21 not -- he was against the -- the LGR in this case
22 very loudly.

23 His testimony and his brief talks about
24 that it was against the choice, competition in Ohio,
25 subsidies to the utilities, and basically shifting

1 that risk from the utilities back to us, to me, the
2 customer.

3 And I think he also points out that the
4 capacity market -- the units weren't needed for the
5 RPM, and that wouldn't have any impact on the
6 capacity market. So I think those are the reasons
7 that I'm referring to.

8 Q. Mr. Perez, if you could turn to page 6
9 of your testimony.

10 A. Okay. I'm there.

11 Q. And in Recommendation 2 you have a
12 recommendation there regarding the PJM Independent
13 Market Monitor, correct?

14 A. That is correct.

15 Q. And do you have any sense -- and it's
16 your recommendation that the PJM Independent Market
17 Monitor should prepare a report of the unit
18 commitment practices in the PJM Day-Ahead Energy
19 Market for 2020, correct?

20 A. Yes, there's a really good report put
21 out from MISO and I thought that would be an
22 excellent report for PJM.

23 MS. AKHBARI: Your Honor, I move to
24 strike the remainder of Mr. Perez's response after he
25 answered my yes or no question with "Yes."

1 EXAMINER ADDISON: Thank you. I'll
2 afford Mr. Perez the same courtesy as having one bite
3 at the apple as our other witnesses have in the
4 proceeding, but I will advise you, Mr. Perez, to just
5 listen to counsel's question, answer her question
6 only, in the event Mr. Finnigan would like to bring
7 out addition information on redirect, he can have the
8 opportunity to do so at that time.

9 THE WITNESS: Yes, your Honor.

10 MR. FINNIGAN: Your Honor, is Mr. Perez
11 allowed to explain his answers, or is he limited to a
12 yes or no answer, because throughout this hearing
13 there haven't been many yes or nos.

14 EXAMINER ADDISON: Thank you,
15 Mr. Finnigan. We'll take it on a case-by-case basis,
16 and the Bench will certainly entertain any objections
17 or motions to strike that may be had.

18 So Ms. Akhbari, please continue.

19 By Ms. Akhbari:

20 Q. Mr. Perez, do you have any sense how
21 much time it would take the PJM Independent Market
22 Monitors to prepare a report?

23 A. I do not.

24 Q. And you would want such a report --
25 well, I guess -- isn't it true that you would want

1 such a report docketed in the underlying docket that
2 we're here participating in today?

3 A. Yes, I believe so, unless it would be a
4 separate docketing system. But I would assume it
5 would fall under this one, the 21-477.

6 MS. AKHBARI: I don't have any further
7 questions for Mr. Perez.

8 EXAMINER ADDISON: Thank you very much.
9 Mr. Nourse.

10 MR. NOURSE: Thank you, your Honor.

11 - - -

12 CROSS-EXAMINATION

13 By Mr. Nourse:

14 Q. Good afternoon, Mr. Perez.

15 A. Hi.

16 Q. I think you've been sitting in a part of
17 this hearing, right?

18 A. Yes.

19 Q. So you probably have a good idea of a
20 couple questions I'm going to ask, but I'm
21 representing AEP Ohio. I'm not asking you to divulge
22 anything confidential in this part of the hearing,
23 okay?

24 A. Yes.

25 Q. Have you performed a redispatch analysis

1 for 2020 on the OVEC units had they been operating
2 under an economic commitment status?

3 A. No, I did not do a redispatch analysis,
4 but I did look at all the hourly production costs and
5 revenues at an eighty-seven-sixty level, yeah, so I
6 could look at the hourly margins.

7 Q. But do you know whether it would
8 actually be cheaper for ratepayers in 2020, based on
9 daily dispatch and the hourly market prices, if OVEC
10 units were utilized in economic dispatch for the
11 entire year?

12 A. What I gleaned from my analysis was, is
13 after looking at the hourly margins based on the heat
14 rates, the market price, fuel costs, that there was
15 so many negative hourly margins that the capacity
16 factors would have been severely impacted if they
17 were on economic dispatch, so yes, they would have
18 ran less.

19 Q. Well, you don't know -- you don't know
20 how much cheaper, you're saying you think it would
21 have been cheaper, you don't have a dollar figure,
22 right?

23 A. I do not.

24 Q. Okay. Let me just turn to page 17 of
25 your testimony.

1 A. Okay. I'm there.

2 Q. And Question and Answer 20 you make your
3 recommendation for the PJM IMM report we were just
4 talking about, right?

5 A. That's right.

6 Q. And your recommendation is based on the
7 part -- the language bolded on lines 15 through 17,
8 referring to being held to the same standard as a
9 merchant generator; is that correct?

10 A. I see that.

11 Q. Is that the basis of your
12 recommendation?

13 A. That is, to be held to that standard.

14 MR. NOURSE: Thank you. That's all I
15 have, your Honor.

16 EXAMINER ADDISON: Thank you, very much.

17 Mr. Lindgren.

18 MR. LINDGREN: Thank you, your Honor.

19 - - -

20 CROSS-EXAMINATION

21 By Mr. Lindgren:

22 Q. Good afternoon, Mr. Perez. Concerning
23 your recommendation that the PUCO should ask the PJM
24 Independent Market Monitor to prepare the report you
25 suggest, would that require us to hold the hearing

1 open until the report was delivered and docketed to
2 give the parties an opportunity to perhaps rebut that
3 report or to question the Market Monitor on the
4 stand?

5 MS. BOJKO: Objection.

6 EXAMINER ADDISON: Grounds?

7 MS. BOJKO: Calls for a legal opinion
8 about the Commission's process and docketing process.

9 MR. LINDGREN: I'm not asking for his
10 legal opinion, just for his understanding as a
11 regulatory expert of OCC.

12 EXAMINER ADDISON: Let me ask it a
13 different way, Mr. Lindgren.

14 As a natural consequence of your
15 recommendation on page 6, Mr. Perez, would that
16 prolong this matter in order to afford parties an
17 opportunity to review the report and obviously be
18 able to have a chance to ask questions about it?

19 THE WITNESS: I would assume it would
20 add more time.

21 EXAMINER ADDISON: I think that's the
22 extent of his answer that we're going to get. Is
23 that all your questions?

24 MR. LINDGREN: Yes, your Honor.

25 EXAMINER ADDISON: Thank you very much.

1 Ms. Bojko, any questions for Mr. Perez?

2 Think about that very carefully, Ms. Bojko.

3 MS. BOJKO: No, thank you.

4 EXAMINER ADDISON: Thank you. Ms.
5 Whitfield?

6 MS. WHITFIELD: No questions, your
7 Honor.

8 EXAMINER ADDISON: Ms. Nordstrom?

9 MS. NORDSTROM: No questions.

10 EXAMINER ADDISON: Mr. Dougherty?

11 MR. DOUGHERTY: No questions.

12 EXAMINER ADDISON: I apologize for the
13 oversight. Mr. Finnigan, any redirect?

14 MR. FINNIGAN: Yes, your Honor, just a
15 few questions.

16 - - -

17 REDIRECT EXAMINATION

18 By Mr. Finnigan:

19 Q. Mr. Perez, you were asked if the OVEC
20 plants had been committed as economic throughout the
21 year of 2020, would it -- do you know the amount of
22 the difference in price as compared to what was
23 actually billed on the LGR bills; do you recall that
24 question from Mr. Nourse?

25 A. Yes.

1 Q. Now, even though you don't know the
2 exact amount, do you think that difference would have
3 been a material amount, or just a minor negligible
4 amount?

5 A. You're referring to the over and
6 under -- if it was on economic dispatch, what is the
7 over and under versus the must run?

8 Yeah, I'm sure it would be material
9 because the capacity factor would have been cut in
10 half.

11 Q. And can you explain that? Explain what
12 the over and under is and why that would have
13 resulted in a material amount of savings for
14 consumers if the plants had been run as economic.

15 A. Well, the over and under is basically
16 your energy revenues, capacity revenues, netted
17 against the cost, and that's the Figure 9 in the
18 audit report.

19 So the PJM revenues, the -- the netting
20 would have been less because there would have been
21 less revenues.

22 So to that extent -- I can't put a
23 dollar amount on it, but obviously your revenues
24 would have declined. I'm not sure how that goes
25 against the demand charges if you're not generating

1 as much, I'm not as familiar with that component.

2 Q. What about on the times when the -- when
3 the OVEC plants were operated when the PJM revenue
4 did not cover the -- the OVEC plants' variable costs?

5 A. Yeah, so the weekend average that --
6 from my analysis and my workpapers on any weekend
7 there could be an average of negative -- 20,000
8 negative margins over a weekend, which is more than a
9 startup.

10 Q. And could that have been avoided by
11 using economic commitment?

12 A. Yeah, because the unit would have been
13 shut down over the weekend.

14 Q. In addition to weekends, were there
15 other times throughout the year when the revenues
16 from the PJM Day-Ahead Energy Market did not cover
17 the OVEC plants' variable operating costs and fuel
18 costs?

19 A. From the audit report, the average cost
20 was \$26 for the fuel, so if you add on variable costs
21 on top of that from the FERC Form 1, from the S&P
22 data that's where I got that information, so I
23 compared those prices to around a \$30 average coal
24 dispatch cost, and the result of that was -- it was a
25 terrible year, so let's just say that -- so we know

1 at least half the time since the average was \$26 and
2 the dispatch cost was \$30, that we know at least half
3 the time it would have been uneconomic.

4 Q. And would that have resulted in savings
5 to consumers if the plants had been committed as
6 economic during those times?

7 A. I believe so.

8 Q. Now, please turn to page 10 of the Duke
9 audit report which you were addressing a minute ago,
10 and let me know when you get to page 10.

11 A. Okay. I'm here.

12 Q. Do you see the heading near the top of
13 the page where it says, "Disposition of Energy and
14 Capacity," in bold print?

15 A. I do.

16 Q. And then near the bottom of that
17 paragraph there's this sentence which you quote -- or
18 you partially quote in your testimony where it says,
19 "Ideally, the units would be committed based on
20 economics." Do you see that?

21 A. Yes, I do.

22 Q. Okay. And then going towards the end of
23 that sentence it says, "but in the case of coal
24 plants this can cause difficulties in managing
25 staffing, and fuel deliveries, and repeated startup

1 of coal plants can damage equipment." Have I read
2 that correctly?

3 A. I see that.

4 Q. And I guess the result of that sentence
5 means that nobody ever operates or nobody ever
6 commits their coal plants as economic because of
7 these factors.

8 MS. AKHBARI: Objection. Mr. Finnigan
9 is introducing a fact that is not in the record, not
10 reflected in the audit report.

11 MR. FINNIGAN: Let me rephrase.

12 EXAMINER ADDISON: Thank you.

13 By Mr. Finnigan:

14 Q. So I just read you that phrase of
15 horrors that the auditor pointed out, and do those
16 things that she lists in her audit report, like
17 difficulties in managing staffing and fuel
18 deliveries, is that something that has prevented
19 other coal operators from making economic commitments
20 for their coal plants?

21 A. No, other coal facilities have to cycle
22 just like other regulated utilities like merchant
23 plants. So no, all coal units have to assume that
24 risk. It's part of the cost of doing business.

25 Q. And are these other coal plant operators

1 knowledgeable enough about their operations that they
2 can put a dollar value on these type of costs, and
3 factor that into the amount and times when they might
4 use an economic commitment?

5 A. I would say yeah, especially the
6 merchant generators, because their margins are
7 tighter.

8 Q. You were asked a couple of questions
9 about what happens in PJM, what happens in MISO, are
10 there some coal plants that are sometimes committed
11 as must run, you remember that?

12 A. Yes.

13 Q. Let's talk about the frequency of the
14 use of must run, and let's talk about it from the
15 standpoint of a competitive merchant operator with a
16 coal plant.

17 With a competitive merchant operator of
18 a coal plant who is seeking to maximize their
19 profits, do you have any sense of how often they use
20 a must-run commitment status?

21 MR. NOURSE: Your Honor, I'm going to
22 object. I think Mr. Finnigan is going beyond the
23 scope of the cross-examination.

24 He's just going through and trying to
25 reinforce different points that were made in the

1 testimony without reference to cross-examination.

2 MR. FINNIGAN: Your Honor, may I
3 respond?

4 EXAMINER ADDISON: You may.

5 MR. FINNIGAN: Mr. Sharkey, when he was
6 asking some questions on cross-examination, he made a
7 point to ask the question of Mr. Perez are you aware
8 of any coal plants in MISO that use must-run
9 commitment, and are you aware of any coal plants in
10 PJM who use must-run commitment, and he answered that
11 yes, there are some, but I'm just responding to that.

12 So I'm responding to that by asking him
13 what is the frequency, so Mr. Sharkey opened the door
14 to that, and I'm just doing the logical followup of
15 okay, he knows of some that are used must run, and
16 now I'm saying well, how often.

17 EXAMINER ADDISON: Thank you. Objection
18 overruled.

19 THE WITNESS: I think the MISO study
20 that they did, that they performed on the coal
21 dispatch in 2020, indicated that there's room for
22 improvement in the regulated utility side because of
23 their use of must run a little more frequently or a
24 lot more frequently than the merchant counterpart.

25 The merchants almost rarely use must

1 run, so yeah, the frequency is skewed because they
2 don't have any regulatory incentives, they are
3 totally dependent on the market LMP.

4 MR. FINNIGAN: That's all the questions
5 I have. Thank you very much, Mr. Perez.

6 EXAMINER ADDISON: Ms. Bojko, any
7 recross?

8 MS. BOJKO: No, thank you.

9 EXAMINER ADDISON: Ms. Nordstrom?

10 MS. NORDSTROM: No.

11 EXAMINER ADDISON: Mr. Dougherty?

12 MR. DOUGHERTY: No, thank you.

13 EXAMINER ADDISON: Mr. Sharkey?

14 MR. SHARKEY: Briefly, your Honor.

15 - - -

16 RECROSS-EXAMINATION

17 By Mr. Sharkey:

18 Q. Mr. Perez, do you know whether the
19 Sponsoring Companies for OVEC include fully regulated
20 utilities?

21 A. I think there's some cooperatives. I
22 think Energy Harbor is a competitive IPP.

23 Q. Well, you're aware that there are states
24 like Ohio that have deregulated the generation
25 market, right?

1 A. That is correct.

2 Q. And there are other states where the
3 market is not deregulated?

4 A. Yes.

5 Q. Do you know whether any of the members
6 of the -- any of the Sponsoring Companies to the ICPA
7 are in regulated states?

8 A. Not off the top of my head.

9 MR. SHARKEY: Thank you, Mr. Perez.
10 Your Honors, no more questions.

11 EXAMINER ADDISON: Ms. Akhbari, any
12 questions?

13 MS. AKHBARI: None, your Honor.

14 EXAMINER ADDISON: Mr. Nourse.

15 MR. NOURSE: Thank you, your Honor.

16 - - -

17 RE CROSS-EXAMINATION

18 By Mr. Nourse:

19 Q. During redirect you indicated that
20 notwithstanding the fact that you had not done a
21 redispach analysis, you believe there are material
22 savings with an economic dispatch, you recall that?

23 A. Yes.

24 Q. And -- but it doesn't change your
25 earlier answer, does it, that you don't have a

1 specific number and you did not recalculate what the
2 alternative reality would have been in 2020, had OVEC
3 used economic dispatch?

4 A. No. We would need the Utilities to do a
5 simulation, one with must run, one with economic
6 dispatch, and compare the two answers.

7 Q. And you talked about less revenues as
8 part of your general analysis there. Would you agree
9 that there'd also be more cost or additional costs
10 given coal commitments and other costs that wouldn't
11 change by running less?

12 A. Fixed component, yes, it would still be
13 there.

14 Q. Okay. So with less revenues it doesn't
15 mean that customers would realize a savings based on
16 that point, correct?

17 A. It's hard to do that math in your head.
18 I guess you'd have to do that analysis.

19 Q. Okay. And you also talked about weekend
20 and startup cycling during your redirect, you recall
21 that?

22 A. Yes.

23 Q. So not being available in the market,
24 you agree that could increase the market price to pay
25 for all other energy cleared in PJM?

1 A. I don't know that I agree with that.

2 Q. If you take out -- I'm sorry, go ahead.

3 A. No, I was just going to say -- I think I
4 understand what you're asking is if the generators
5 get paid a price, a gen weighted price or a load
6 weighted price, the generators that were receiving
7 less, their weight on that price would just be less.
8 So the surrounding prices would still be there, it's
9 just OVEC's price would get a little less weight.

10 Q. But if you are taking out hundreds of
11 megawatts of capacity out of the market and they are
12 not available, isn't it possible that market prices
13 would go up for energy clearing throughout PJM?

14 A. I don't believe all that can influence
15 the market that much.

16 Q. You don't?

17 A. Not on the market price, no. PJM would
18 need to do that on their clearing engine and their
19 models.

20 Q. You haven't done that analysis, right?

21 A. I have not.

22 Q. What do you think the threshold is, how
23 many hundreds of megawatts before it could affect the
24 market clearing price?

25 A. Lots of generators in PJM. I don't have

1 an estimate.

2 Q. You don't know. But have you done an
3 analysis of what even a small increase in the market
4 clearing price for all energy in PJM could mean to
5 Ohio consumers?

6 MR. FINNIGAN: Objection.

7 THE WITNESS: Impact --

8 MR. FINNIGAN: Vague.

9 EXAMINER ADDISON: Hold on.

10 MR. FINNIGAN: Well, your Honor, I'm not
11 sure what that means; what is the impact of a small
12 increase on Ohio consumers.

13 It seems like a vague and ambiguous
14 question. But more fundamentally, Mr. Perez
15 testified that he didn't think removing the OVEC
16 plants from the market would have any impact on
17 price.

18 EXAMINER ADDISON: Hold on.
19 Mr. Finnigan, I don't think the witness had any
20 hesitation in answering the question. In fact, he
21 was in the middle of his answer when you objected, so
22 please finish your answer.

23 MR. NOURSE: Let me reask it since we
24 got interrupted, your Honor.

25 EXAMINER ADDISON: Thank you.

1 By Mr. Nourse:

2 Q. You stated that you don't know whether
3 OVEC's units not being available could increase the
4 general energy clearing price for PJM?

5 MR. FINNIGAN: Your Honor, I object.
6 That's not what he testified to. He said that it --
7 it would unlikely -- it would be likely not to have
8 any impact.

9 MR. NOURSE: And then I asked him if --
10 he didn't know, and that's where we left it. This is
11 foundational to get back into my question that I
12 asked.

13 MR. FINNIGAN: I don't mind asking
14 foundational questions as long as he accurately
15 states the witness' testimony.

16 EXAMINER ADDISON: Objection overruled.
17 I'll allow the witness to clarify if he thinks his
18 testimony has been mischaracterized.

19 Do you need the question read back, Mr.
20 Perez?

21 THE WITNESS: Sure.

22 EXAMINER ADDISON: Could we have the
23 last question read back?

24 (Record read back.)

25 MR. FINNIGAN: Objection, misstates the

1 witness' testimony.

2 MR. NOURSE: Do we need to redo the
3 objection, your Honor?

4 EXAMINER ADDISON: You may answer the
5 question, Mr. Perez.

6 THE WITNESS: I'm sorry, it was kind of
7 low, so you're asking -- let me just clarify to make
8 sure I have this right.

9 You're asking me if a marginal increase
10 in the energy price with OVEC being out, is that
11 material for consumers?

12 By Mr. Nourse:

13 Q. Well, my next question was going to be
14 whether you've evaluated if even a small incremental
15 price on the energy clearing price for the entire PJM
16 zone, have you evaluated that impact on Ohio
17 consumers?

18 A. I have not.

19 Q. And in order to do the economic dispatch
20 that you're recommending, you do agree that the three
21 Ohio utilities together -- I mean, if they voted on
22 the operating committee, they can't control that
23 policy, can they?

24 A. I believe they can make recommendations,
25 and AEP would hold a high weight in that

1 recommendation.

2 Q. So can the three votes control that
3 decision, to your understanding?

4 A. To my understanding, three votes cannot.

5 MR. NOURSE: Okay. Thank you. That's
6 all I have, your Honor.

7 EXAMINER ADDISON: Thank you very much,
8 Mr. Nourse.

9 Mr. Lindgren, any questions?

10 MR. LINDGREN: No, thank you, your
11 Honor.

12 EXAMINER ADDISON: The Bench doesn't
13 have any questions. Mr. Perez, you are excused.
14 Thank you very much for your testimony.

15 (Witness excused.)

16 EXAMINER ADDISON: I believe you had
17 previously moved for the admission of OCC Exhibit 20,
18 Mr. Finnigan; is that correct?

19 MR. FINNIGAN: I moved for the
20 administrative -- or the admission of OCC Exhibit 20,
21 the prefiled testimony of Mr. Perez.

22 EXAMINER ADDISON: Thank you. Are there
23 any objections to the admission on OCC Exhibit 20
24 subject to the Bench's granting of the motion to
25 strike? Hearing none, it will be admitted.

1 (EXHIBIT ADMITTED INTO EVIDENCE.)

2 EXAMINER ADDISON: Let's go off the
3 record.

4 (Discussion off the record.)

5 EXAMINER ADDISON: Let's go back on the
6 record. Ms. Bojko.

7 MS. BOJKO: Thank you, your Honor. At
8 this time OMAEG calls it's witness Mr. John Seryak to
9 the stand.

10 EXAMINER ADDISON: Welcome, Mr. Seryak.
11 I will ask you to stand up while I swear you in.
12 Raise your right hand. Do you swear the testimony
13 you're about to provide in this proceeding is the
14 truth?

15 THE WITNESS: Yes.

16 EXAMINER ADDISON: Thank you. Please be
17 seated. Ms. Bojko.

18 MS. BOJKO: Thank you, your Honor.

19 - - -

20 JOHN SERYAK,
21 being first duly sworn, as prescribed by law, was
22 examined and testified as follows:

23 DIRECT EXAMINATION

24 By Ms. Bojko:

25 Q. Mr. Seryak, could you please state your

1 name and business address for the record?

2 A. John A. Seryak, and my business address
3 is 5701 North High Street, Suite 112, Worthington,
4 Ohio 43085.

5 Q. Sir, did you file or cause to be filed
6 testimony regarding the 2020 audit of Duke Energy
7 Ohio, AES Ohio, and AEP Ohio's Legacy Generation
8 Resource Rider?

9 A. Yes.

10 MS. BOJKO: Your Honor, at this time I
11 would like to mark OMAEG Exhibit 1, the direct
12 testimony of John Seryak, public version.

13 EXAMINER ADDISON: It will be so marked.

14 (EXHIBIT MARKED FOR IDENTIFICATION.)

15 MS. BOJKO: May we approach?

16 EXAMINER ADDISON: You may.

17 By Ms. Bojko:

18 Q. Mr. Seryak, do you have in front of you
19 what's been marked OMAEG Exhibit 1?

20 A. Yes.

21 Q. Do you recognize this document as the
22 public version of the testimony you filed on October
23 10th, 2023, in this proceeding?

24 A. Yes.

25 Q. Was this testimony prepared by you or

1 under your direction?

2 A. Yes.

3 Q. On whose behalf are you testifying
4 today?

5 A. The Ohio Manufacturer's Association
6 Energy Group.

7 Q. And since the filing of your testimony
8 do you have any changes?

9 A. Yes.

10 MS. BOJKO: Your Honor, at this time I
11 would like to mark as OMAEG Exhibit 1A an errata
12 sheet to Mr. Seryak's testimony.

13 EXAMINER ADDISON: It will be so marked.

14 (EXHIBIT MARKED FOR IDENTIFICATION.)

15 MS. BOJKO: May we approach?

16 EXAMINER ADDISON: You may.

17 By Ms. Bojko:

18 Q. Mr. Seryak, do you have in front of you
19 what's been marked 1A?

20 A. Yes.

21 Q. Is this the public version of an errata
22 sheet that you just referenced?

23 A. Yes.

24 Q. And can you please briefly explain the
25 changes presented on this sheet? It's a two-sided

1 document, obviously you don't need to explain any
2 typographical errors, but could you explain the
3 extent of the clarifications required, and the
4 corrections required?

5 A. Yes. There's a number of changes where
6 the reason is marked "Clarification." Generally
7 that's just to clarify when we're discussing charges
8 from OVEC to the Utilities, and to distinguish that
9 from charges the Utilities pass onto ratepayers.

10 And then there's another set of
11 corrections where the reason is labeled, "Correction
12 due to auditor's error in the auditor's errata to an
13 audit report."

14 So a fair amount of my testimony was
15 based on tables in the original audit report that
16 have since been -- had an errata introduced that
17 changed some of the values and removed some data from
18 those tables, and so I've had to change my testimony
19 accordingly.

20 Q. And when you say tables that the auditor
21 referred to those as figures, are you talking about
22 the same thing?

23 A. Yes.

24 Q. And were those figures updated or
25 changed in what was marked as Staff Exhibit 8C?

1 A. I'll take you on your word, that's
2 probably -- I don't remember the Staff exhibit.

3 Q. And besides the errata sheet changes do
4 you have any other changes to your public version of
5 your testimony?

6 A. No.

7 MS. BOJKO: Your Honor, at this time I
8 would like to mark as OMAEG Exhibit 2C the
9 confidential direct testimony of John Seryak.

10 EXAMINER ADDISON: That will be so
11 marked.

12 (EXHIBIT MARKED FOR IDENTIFICATION.)

13 MS. BOJKO: May I approach?

14 EXAMINER ADDISON: You may.

15 By Ms. Bojko:

16 Q. Sir, do you have in front of you what's
17 been marked OMAEG Exhibit 2C?

18 A. Yes.

19 Q. Does this appear to be the confidential
20 version of the same direct testimony?

21 A. Yes.

22 MS. BOJKO: Your Honor, at this time I
23 would like to mark as OMAEG Exhibit 2C, the errata
24 sheet to the confidential version of OMAEG
25 Exhibit 2C.

1 EXAMINER ADDISON: This is getting quite
2 complicated, Ms. Bojko.

3 MR. MCKENZIE: And, your Honor, if I may
4 further complicate the issue, is 2D confidential?

5 MS. BOJKO: Yes, that's why we're
6 marking it 2C.

7 MR. MCKENZIE: 2C, not 2D?

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

10 (Discussion off the record.)

11 EXAMINER ADDISON: Let's go back on the
12 record. Ms. Bojko.

13 MS. BOJKO: Thank you, your Honor, off
14 the record it was discussed that I will withdraw the
15 identification of the confidential errata as 2D, and
16 I would like to at this time mark the confidential
17 errata to the testimony of John Seryak as being 16 --
18 OMAEG Exhibit 16C.

19 EXAMINER ADDISON: Thank you. It will
20 be so marked.

21 (EXHIBIT MARKED FOR IDENTIFICATION.)

22 EXAMINER ADDISON: And I will note for
23 the record that that was at the Attorney-Examiner's
24 request, Ms. Bojko is not to be blamed.

25 MS. BOJKO: Your Honor, may we approach?

1 EXAMINER ADDISON: You may.

2 MS. BOJKO: Your Honor, just to be
3 clear, the confidential markings are small on this,
4 it's in the title, and then also on Attachment A
5 there's a confidential stamp by the attachment, but
6 we went ahead and made a larger designation that the
7 entirety of the document should be deemed
8 confidential.

9 EXAMINER ADDISON: Thank you for that,
10 Ms. Bojko.

11 By Ms. Bojko:

12 Q. Sir, do you have in front of you what's
13 been marked as OMAEG Exhibit 16C?

14 A. Yes.

15 Q. And, sir, on the -- without going into
16 numbers that are confidential and without disclosing
17 any confidential information, would you generally
18 describe your changes in the same manner you did for
19 the public, that they were either due to a
20 typographical error of clarification with regard to
21 collected versus charged, as well as corrections due
22 to the auditor's error and the auditor's correction
23 in the errata sheet?

24 A. Yes.

25 Q. With the confidential changes presented

1 on the errata sheet, do you have any additional
2 changes to the confidential version of your
3 testimony?

4 A. No.

5 Q. And I will just note, you also have
6 attachments to this errata; is that correct?

7 A. Yes, that's right.

8 Q. Could you explain why you revised your
9 tables that were attached to your testimony
10 originally?

11 A. Yes. There's tables in the attachments
12 that rely on data that was in the auditor report from
13 tables and figures that were later changed with the
14 errata, so I had to change all those attachments as
15 well.

16 Q. So the changed Attachment A, Attachment
17 B, Confidential, those figures were updated due to
18 the auditor's updating of her figures in her audit
19 report?

20 A. Yes, that's right.

21 Q. With that, do you have any additional
22 changes?

23 A. No, I don't.

24 Q. If I were to ask you the same questions
25 today as they appear in your testimony, both the

1 public and confidential versions, would your answers
2 be the same?

3 A. Yes.

4 MS. BOJKO: At this time, your Honor, I
5 would move OMAEG Exhibits 1, 1A, 2C, and 16C into the
6 record subject to cross-examination.

7 EXAMINER ADDISON: Thank you, Ms. Bojko.

8 Before we move on to cross-examination,
9 similar to our last witness I will note that there
10 was a motion to strike certain portions of
11 Mr. Seryak's testimony by AEP Ohio and Duke in this
12 case.

13 We have reviewed the arguments contained
14 within that motion. Ms. Bojko, would you like to
15 respond to those arguments at this time?

16 MR. SHARKEY: Your Honor, can I
17 interject -- we also signed the document. We weren't
18 mentioned inadvertently in the paragraph, but my
19 signature is on it as well.

20 EXAMINER ADDISON: I'm very sorry about
21 that, Mr. Sharkey. I apologize. Yeah, it was lodged
22 by all three Companies. Thank you very much.

23 MR. SHARKEY: Thank you, your Honor.

24 MS. BOJKO: Well, your Honor, your
25 confusion was mine last night when I was rereading.

1 AES was left out of the header, which is the -- kind
2 of the problem.

3 MR. SHARKEY: We let counsel know at the
4 last minute, so that's why that happened.

5 MR. NOURSE: My fault.

6 MS. BOJKO: Yes, your Honor, I would
7 like to respond to the 12-page motion that was filed
8 on the eve of the hearing orally, since we have not
9 had an opportunity to respond in writing.

10 Starting first with the statement that
11 the Commission should strike portions of Mr. Seryak's
12 testimony that raised issues outside the scope of the
13 proceedings, first regarding testimony regarding the
14 ongoing House Bill 6 investigation, the relevancy of
15 that, and the testimony being inflammatory.

16 So the EDUs incorrectly claim that the
17 enactment of an investigation regarding House Bill 6
18 are outside the scope of these proceedings.

19 First, the EDUs mischaracterize the
20 sections of Mr. Seryak's testimony as being
21 inflammatory, accusations, and him conducting his own
22 investigation into the prudence of House Bill 6.

23 That is not what Mr. Seryak is doing.
24 As the EDUs acknowledge in their motion, Mr. Seryak
25 is simply explaining the purpose of his testimony.

1 He plainly states on page 13 of his
2 testimony that the reason he discussed the House Bill
3 6 investigation was to explain the genesis of the LGR
4 Riders.

5 He also explains why the discussion is
6 important to one of the recommendations he is making
7 in his testimony.

8 Secondly, as we have discussed
9 throughout the hearing, the auditor includes detailed
10 discussions of House Bill 6 and how it relates to the
11 creation of the LGR Riders in all three audit
12 reports, and she cites to articles regarding House
13 Bill 6 and the repeal of some House Bill 6
14 provisions.

15 We counted 11 instances where House Bill
16 6 was referenced in the auditor's documentation. The
17 auditor also cited to an article titled "Ohio Enacts
18 Sweeping Energy Legislation, House Bill 6 Bails Out
19 Nuclear and Coal, Rolls Back Renewables and Energy
20 Efficiency."

21 The auditor also references on page 7 of
22 her RFP response that she won the bid at -- about
23 House Bill 6.

24 Additionally the Commission itself, and
25 Staff, reference House Bill 6 and how the riders were

1 established in the RFP entry and in the RFP on page
2 2.

3 The auditor also linked articles that
4 the Utilities did not move to strike. The Utilities
5 could have moved to strike those articles and they
6 did not. This witness should have an opportunity to
7 respond to such testimony and attachments.

8 Third, Duke Witness Ziolkowski has an
9 entire section on the creation of the LGR Rider and
10 the history of its predecessor, Rider PSR, in his
11 testimony at pages 4 and 5, and other witnesses
12 touched on this as well.

13 Your Honors, under Ohio law when a party
14 presents evidence and testimony about an issue, that
15 party opens the door for opposing parties to present
16 evidence and testimony on that same issue in
17 response. Sheets versus Norfolk South Fork, 109 Ohio
18 App 3d 278.

19 As for relevance, the House Bill 6
20 scandal is also directly relevant because the
21 investigation uncovered that the coal company from
22 which OVEC buys a significant amount of overpriced
23 coal that is the subject of the audit has also been
24 implicated in the House Bill 6 scandal.

25 Information regarding AEP's connection

1 to House Bill 6 has been made public through numerous
2 news sources including Gongwer and The Dispatch, and
3 AEP, Inc., itself, disclosed in a recent SEC filing
4 that AEP and the SEC are engaged in discussions about
5 a possible resolution of the SEC's investigation and
6 potential claims under the securities law regarding
7 AEP's involvement in House Bill 6 which created Rider
8 LGR.

9 The EDUs claim that the Commission's
10 past decision regarding the EDU's OVEC riders are
11 also outside the scope of the proceedings.

12 Once again the EDUs seek to strike
13 testimony regarding a matter that the Commission
14 itself, and their own witnesses, and the auditor,
15 have addressed throughout this hearing.

16 As the EDUs know, RC 4928.148 states
17 that the old OVEC riders will be replaced by a new
18 mechanism to recover those same costs that were
19 recovered through the previous OVEC riders.

20 The Commission's prior decisions
21 regarding what costs, and those same costs, could be
22 collected through the prior OVEC riders helps inform
23 the Commission, and it should inform the Commission
24 what exactly those same costs are for the LGR riders
25 in 4928.148.

1 There is no Commission rule or other
2 provision that prevents OMAEG's witness from
3 referencing relevant information submitted in another
4 Commission proceeding, including an OVEC related
5 proceeding.

6 In fact, a witness' expert opinion
7 requires him to do so. Ohio evidence Rule 702
8 through 705 allows regulatory experts to consider
9 other expert's testimony, learned treatise, documents
10 and other things that experts may rely on to form an
11 opinion as long as they disclose the underlying facts
12 in what they relied on. This is exactly what he is
13 doing in this case.

14 The Commission's prior decisions have
15 informed Mr. Seryak's regulatory analysis and expert
16 opinion as to what constitutes prudent costs and
17 reasonable costs in the context of the LGR riders
18 during the audit period, and what costs at issue in
19 this proceeding should be disallowed by the
20 Commission.

21 While the EDUs are certainly entitled to
22 disagree with Mr. Seryak's conclusions, or challenge
23 the conclusions on cross-examination or through
24 direct testimony of its own, the EDUs lack legitimate
25 evidentiary basis as to why such testimony should be

1 excluded from the Commission's consideration.

2 Elements of the prior audit cases, such
3 as OVEC's management practices during the audit
4 period, cost to customers, coal purchases, and the
5 auditor's analyses process evaluations and
6 recommendations are all relevant to this proceeding.

7 Clearly, the auditor thinks so, as many
8 of the findings and conclusions of the auditor's
9 reports are substantially similar, if not identical,
10 in the various audit reports.

11 As we brought out through the hearing
12 last week, the first two paragraphs of the three
13 audit reports in Section 1.3 titled "LEI's Finding
14 and Recommendations," are identical to the same
15 paragraph in the prior Duke PSR AR, and are almost
16 identical except for the word "however" in AEP PPA
17 audit report.

18 In order to determine the prudence of
19 all costs and sales flowing through the LGR Riders,
20 and whether the EDU's actions were in the best
21 interest of customers, the Commission cannot look at
22 the 2020 costs in a vacuum, and nor did the auditor.

23 Evidence that the EDU's claim is outside
24 the scope of this period is plainly relevant to the
25 Commission's determination in this case because it

1 shows what prudent companies would or should do
2 within the audit period, and what was in the best
3 interest of customers.

4 Mr. Seryak's testimony provides an
5 expert opinion on these issues, and to exclude it
6 would unfairly prejudice the customers who were
7 forced to subsidize the OVEC plants.

8 In addition, your Honors, and the
9 Commission has -- your Honors, the Commission has
10 expertise and is fully capable of appropriately
11 weighing the evidence in making determinations in
12 this matter.

13 Furthermore, Mr. Seryak is here today.
14 He is available for cross-examination by the EDU's
15 competent counsel for all the issues raised in his
16 testimony.

17 Your Honor, the portions of Mr. Seryak's
18 testimony regarding past OVEC riders, and the
19 creation of riders at issue that they are also moving
20 to strike, should be allowed to more fully develop
21 the record because related information on these
22 issues has already been allowed in through the
23 auditor and Utility witnesses over our objection.

24 Mr. Swez was allowed to talk for days
25 about various issues including Component D, the LGR

1 Riders, what he thought of the law. He thought he
2 knew prudence, then he didn't know prudence, the best
3 interest of customers, and then he didn't know what
4 that meant.

5 He was allowed to testify to all those
6 facts. We moved to strike it and we were denied and
7 he was not forced to testify on those.

8 Due to not being allowed to question
9 Mr. Swez regarding prudence of cost and the best
10 interest of customers, that part of the record
11 remains incomplete.

12 Therefore, for the sake of completeness
13 of the record, Intervenors should be allowed to more
14 fully develop these matters through Mr. Seryak's
15 testimony and offer contrary testimony.

16 As discussed last Friday, Mr. Swez's
17 testimony was allowed to be admitted into the record
18 unchallenged and not subject to proper
19 cross-examination over Intervenor objection.

20 Therefore, in keeping with your prior
21 decisions made in this case, Mr. Seryak's entire
22 testimony should be admitted into the record and the
23 Utilities will have the opportunity to cross him on
24 those very issues.

25 Additionally, AEP Witness Stegall was

1 allowed to testify, and a lot of his testimony Mr.
2 Seryak will address, and Mr. Seryak's testimony will
3 be contrary to Mr. Stegall's testimony, and
4 consistent with those prior rulings his testimony
5 should be allowed to stand.

6 Your Honor, additionally, Mr. Crusey --
7 AES' witness Mr. Crusey was allowed to testify about
8 the legality of the ICPA and Component D over our
9 objection, and he was allowed to testify to the
10 prudence of the costs, which Mr. Seryak similarly
11 wishes to discuss and more fully develop for the sake
12 of completeness on the record and to offer contrary
13 positions.

14 Therefore, your Honor, to be consistent
15 with your prior rulings, Mr. Seryak's testimony on
16 the same subject should be allowed, the HB 6
17 testimony that lays the foundation for the costs
18 allowed to be recovered for the LGR Riders, as well
19 as the information regarding the past riders is all
20 in the Commission's entries, and it is the basis in
21 the law for recovery of the costs through the new LGR
22 riders. Thank you.

23 EXAMINER ADDISON: Thank you very much,
24 Ms. Bojko.

25 Any other Intervenor want to weigh in

1 before I allow the Company the chance to respond? If
2 any of the Companies would like to respond at this
3 time.

4 MR. MCKENZIE: Yes, your Honor. I'll
5 start anyway. First of all, I would like to thank
6 Ms. Bojko for calling us competent.

7 I'm not going to address all the
8 grievances about prior evidentiary rulings in this
9 case, I'm just going to focus on the motion to strike
10 here.

11 Let me first just respond to a few of
12 the points Ms. Bojko made. First of all, the auditor
13 obviously mentions House Bill 6 as part of the
14 background for the creation of the LGR statute and
15 rider, but of course the auditor does not go into the
16 detail of what Mr. Seryak talks about, which is the
17 House Bill 6 corruption investigation.

18 That's the topic that is not relevant to
19 this proceeding, so I don't agree that the auditor
20 somehow opened the door to that topic.

21 Second, and more fundamentally, the
22 problem is that the validity of House Bill 6 is not
23 at issue in this case. The validity of the statute
24 has to be assumed by the Commission. That's what the
25 Commission has said, that's what the statute says of

1 course.

2 The question is the reasonableness and
3 the prudence of Utilities' actions in the audit
4 period.

5 I also -- just a couple of other things,
6 Ms. Bojko said that Mr. Seryak's discussion of House
7 Bill 6 was to explain the purpose of his testimony.
8 That's not accurate.

9 The entire part three of his testimony
10 is about the corruption investigation. In our motion
11 we cite, on pages 7 and 8, a litany of different
12 references to that in his testimony. It's not just a
13 background statement, rather one of his main points.

14 You know, we would also object to the
15 extent that the testimony goes outside the audit
16 period.

17 Look, bottom line, without belaboring
18 this, we're not here to relitigate the statutes,
19 we're not here to relitigate the former OVEC riders
20 for each of the three Utilities.

21 The question in this proceeding is the
22 prudence of the Utilities' actions in the audit year,
23 and the material we have moved to strike bears no
24 reasonable connection to those questions.

25 EXAMINER ADDISON: Thank you.

1 MR. SHARKEY: Briefly, your Honor, I
2 second the arguments made by Mr. McKenzie.

3 The purpose of this proceeding is to
4 implement the statute. The statute at issue is
5 whether the Utilities' conduct was prudent as to
6 OVEC.

7 The purpose of this proceeding is not an
8 investigation into House Bill 6, how it was passed
9 and any of the related allegations. Those are all
10 outside of and irrelevant to this proceeding, so I
11 believe that the portions of Mr. Seryak's testimony
12 that are identified there should all be stricken.

13 MS. AKHBARI: I'd just join, your Honor.
14 I would join. No additional commentary.

15 MS. BOJKO: Your Honor, may I briefly
16 respond to the two points?

17 EXAMINER ADDISON: Very briefly.

18 MS. BOJKO: I don't think it's a fair
19 statement for Mr. McKenzie to say that -- the EDUs
20 are not trying to strike recommendations about the
21 audit report and the audit findings.

22 If you look at page 7 of their motion
23 they specifically are trying to strike one, two,
24 three, four, five times when the witness actually
25 makes a conclusion about the prudence of the costs of

1 the audit report and why he thinks that it is
2 incorrect.

3 So therefore the Commission should not
4 allow EDUs to continue to recover costs through LGR
5 Riders until all House Bill 6 related investigations
6 have concluded, or determines that such costs, which
7 is the standard in the law, 4928.148, were in fact
8 reasonable, prudently incurred, and in the best
9 interest of customers.

10 He also makes a conclusion that given
11 that the Commission may have assisted in creating and
12 implementing the LGR Riders, the Commission should
13 not continue to authorize cost recovery of such costs
14 until they determine the prudence of such costs.

15 The Utilities are ignoring the language
16 of 4928.148 that talks about such costs, and the
17 definition of what can be recovered, which is
18 prudently incurred costs.

19 So it refers back to such costs in
20 4928.01a42 and 43 -- or 41 and 42, so you cannot
21 ignore the such cost language which is, in fact, the
22 costs that were previously recovered under the prior
23 riders.

24 So they are not just trying to strike
25 House Bill 6 testimony which leads up to and sets the

1 foundation for Mr. Seryak's recommendation, they are
2 actually trying to strike his recommendation, which
3 is inappropriate.

4 EXAMINER ADDISON: Thank you. I will
5 note in our July 7th, 2023 Entry we acknowledged this
6 proceedings' limited -- and this is paragraph 33, we
7 acknowledge this proceeding is limited to reviewing
8 the prudence and the reasonableness of the actions of
9 EDUs with ownership interest in OVEC during calendar
10 year 2020, rather than the events leading up to the
11 creation and implementation of the LGR mechanism that
12 occurred in 2019.

13 RC 4928.148 is still the existing law
14 under which we're operating in this proceeding. It
15 is the Commission's role to effectuate laws passed by
16 the General Assembly.

17 So I agree that this goes well beyond --
18 in addition to the arguments raised by the Companies,
19 I agree Mr. Seryak's testimony goes well beyond what
20 was noted in the audit report as mere background
21 information regarding earlier audits conducted by the
22 Commission for riders that were not implemented
23 pursuant to 4928.148.

24 It is also -- to my knowledge, the U.S.
25 Attorney has not made a similar request to stay this

1 proceeding as it has done so in four other Commission
2 proceedings.

3 So for those reasons we will be granting
4 the motion to strike, and I can go through the
5 specific references, similar to Witness Perez.

6 On page 5, starting with line 19 through
7 page 6, ending with line 3. Additionally, on page 6,
8 beginning with lines 4 -- or beginning with line 4
9 and ending on line 9.

10 Moving on to page 9, beginning with line
11 5 with the phrase, "At a minimum," through line 7,
12 with the word, "conclude."

13 Continuing on page 9, beginning with
14 line 8, through page 13, line 11. So all of section
15 of 13 -- I'm sorry, Section 3.

16 Moving to page 26, starting with line
17 16, through line 20.

18 THE WITNESS: Can you repeat that, I'm
19 trying to keep up?

20 EXAMINER ADDISON: Absolutely,
21 Mr. Seryak.

22 On page 26, beginning with line 16.
23 I'll wait until you get there. Line 16 through line
24 20.

25 Then also continuing on to page 26,

1 starting at line 21, through page 27, line 3.

2 Moving on to the second portion, these
3 are the references beginning on page 10 of the motion
4 to strike, going back to page 6 -- I apologize for
5 going out of order with these.

6 MS. WHITFIELD: Your Honor, what was the
7 basis for this section?

8 EXAMINER ADDISON: I'm sorry?

9 MS. WHITFIELD: I didn't know you had
10 ruled yet on the section that starts on page 10 yet.
11 Had you?

12 EXAMINER ADDISON: Well, I think it's
13 part and parcel that we're operating under this new
14 statutory paradigm.

15 This goes beyond what is included for
16 background purposes in the audit reports and what's
17 been allowed to be asked during cross-examination for
18 other witnesses.

19 MS. BOJKO: Your Honor, can we go one by
20 one? I mean, some of these are about the audit,
21 2020, and about what some costs and prudently
22 incurred costs mean?

23 He is talking about the LGR Riders and
24 what he believes prudently incurred costs --

25 EXAMINER ADDISON: We can go one by one,

1 Ms. Bojko, but I believe my ruling would apply to
2 page 6, lines 12 through 15.

3 MS. BOJKO: I'm with Ms. Whitfield. All
4 I heard you talk about was House Bill 6, not about
5 him talking about the LGR Riders, which are the
6 riders in this proceeding, and his definition of
7 prudently incurred costs, and what can be collected
8 under the LGR Riders.

9 EXAMINER ADDISON: By referencing the
10 earlier orders from these other Commission
11 proceedings, correct?

12 MS. WHITFIELD: Well, your Honor, those
13 were referenced multiple times. And in fact, Company
14 witnesses were able to talk about financial hedges
15 and how that mitigated the prices, so it would be
16 fundamentally unfair not to let Intervenors present
17 counter testimony to that.

18 MS. BOJKO: They talked about dividends
19 and how they have been allowed to have Component Ds
20 in the past.

21 MR. MCKENZIE: I'm sorry, your Honor,
22 we're all over the place now. I already addressed
23 this and I think we have ruled on this issue -- I
24 mean, I think you've ruled on it. Excuse me.

25 EXAMINER ADDISON: I'm sorry.

1 MS. NORDSTROM: If I may, I think
2 there's a distinction between any time outside of the
3 audit period, and times outside of the audit period
4 where information was -- was given to the Company
5 that was then available to them to make decisions.

6 So prudence -- as Mr. McKenzie noted,
7 prudence and reasonableness is what we're here to
8 discuss, and prudence is the information that was
9 available to the Company at the time that they are
10 making these decisions.

11 And as the auditors included these past
12 cases in their audit, you know, it's absolutely
13 relevant, the information that is available -- that
14 was available to these Companies at the time that
15 they are making these decisions about past treatment,
16 past recommendations that auditors have given.

17 And so I think there's -- there's a
18 distinction. The Utilities like to pretend like all
19 time outside the audit is the same.

20 There is a distinction between time
21 outside the audit where there was information
22 provided to the Companies then that was available to
23 them at the time they are making these decisions in
24 2020.

25 That is entirely relevant to the

1 decisions that they are making, and should be, I
2 would hope, informing the decisions that they are
3 making.

4 We are supposed to be learning from
5 history, and so I would say that information is
6 relevant and distinguishable from just anything that
7 occurred outside the audit period. Thank you.

8 EXAMINER ADDISON: Thank you. Anyone
9 else?

10 MS. BOJKO: Well, can we go one by one,
11 because Q 14 and A 14 is the exact testimony that
12 Witness Swez had in his testimony and he was allowed
13 to speak to. He cited to the same law, the same
14 definition, and he was allowed to speak to it.

15 MR. MCKENZIE: Your Honor, the point of
16 the second part of the motion is that all of the
17 passages we're moving to strike relate to the former
18 PPA Rider and other utility rider decisions.

19 It's quoting back to the concurring
20 opinion of Commissioner Haque, it's quoting the
21 language from the cases in 2015 and 2016 that
22 approved those riders.

23 Everything that we cited to relates to
24 that topic, and I think we have already discussed,
25 consistent with your prior ruling in this case, that

1 is outside the scope of this audit.

2 We're not talking about specific
3 information that was known to the Utilities from the
4 time of the audits, the question is about citing
5 these previous cases under a previous rider.

6 MS. BOJKO: Your Honor, Q 14 and answer
7 14 has nothing to do -- there's no citation. It
8 cites to the law, the same provision that Mr. Swez
9 cited to, and it cites to prudently incurred costs
10 under 4928.148A, and he is defining what he believes
11 is prudently incurred costs and the recovery of those
12 costs.

13 That is the same cite that was in
14 Mr. Swez's testimony, and then Mr. Swez got to go on
15 and talk about Component D and how that fit within
16 that definition. That's what is going on in Q 14 and
17 Q 15. It's the exact same as Mr. Swez's testimony.

18 MR. MCKENZIE: Your Honor, the reason --
19 do you want to go through these one by one?

20 MS. BOJKO: I think we should.

21 MR. MCKENZIE: I don't think we need to,
22 they are all of the same ilk. The question 14, the
23 problem is that it talks about whether previous
24 Commission cases imposed limits on what costs are
25 eligible. That's the objectionable part.

1 MS. BOJKO: The auditor's cited to the
2 2019 as the basis of her ongoing investigation. She
3 opened the door --

4 EXAMINER ADDISON: I don't know if she
5 characterized it like that, Ms. Bojko.

6 MS. BOJKO: She had a chart in her audit
7 report that talked about the 2019, and the reason why
8 she did that, I'm presuming, is because if you look
9 at the language in the law it says those costs that
10 were a nonbypassable rate mechanism established by
11 the Commission.

12 It refers -- the law itself refers to
13 the previous riders. That's why he's speaking to the
14 previous riders and the previous Commission
15 decisions, because that's what the law tells us to
16 do. It refers back. That's why she did it. It
17 refers to the prior riders.

18 MR. MCKENZIE: Your Honor, the auditor
19 had a list of recommendations from the previous
20 audit, and compared those to this year. That's not
21 at all what we're talking about here.

22 EXAMINER ADDISON: Thank you. It's my
23 recollection that the auditor contained the
24 recommendations from the prior audit report to
25 determine whether or not those recommendations had

1 been implemented in the 2020 audit period. We are
2 now operating under a statute, 4928.148.

3 MS. BOJKO: And that's what he cites to
4 the bottom of 13. He is citing to the current
5 statute that says, "Replace to non-bypassable rate
6 mechanism established by the Commission for recovery
7 of those costs."

8 And he is -- he is answering the
9 question of what is allowed to be recovered under
10 4928.148(A) just like every other witness has been
11 allowed to do for the utilities.

12 MR. FINNIGAN: Your Honor, may I speak
13 to this briefly?

14 EXAMINER ADDISON: Well, hold on,
15 Mr. Finnigan.

16 Ms. Bojko, the other witnesses did not
17 tie them to previous audits conducted by the
18 Commission, though. That's where we're getting tied
19 up.

20 He can have the statute in his
21 testimony, that's perfectly consistent with other --
22 with other witnesses that we have had. But it's
23 this, as Mr. McKenzie has noted, previous Commission
24 cases.

25 That's where we're getting into an

1 issue, because those cases were not -- the scope of
2 those cases were not set within the scope of this
3 case, which is -- the LGR mechanism created and
4 implemented under RC 4928.148. I think that is the
5 hinge that we are getting hung up on right now.

6 MS. BOJKO: Well, his interpretation
7 might be different than yours, your Honor.

8 His interpretation is that if you read
9 the law -- and some lawyers' interpretation -- if you
10 read the law it says, "This section for retail
11 recovery of prudently incurred costs related to a
12 Legacy Generation Resource shall be replaced by
13 non-bypassable rate mechanism established by the
14 Commission for recovery of those costs through
15 December 31, 2030, from customers of EDUs in the
16 state."

17 So the law itself is referring back to
18 the prior mechanism and what they were allowed to
19 recover.

20 EXAMINER ADDISON: But isn't that a
21 legal argument to make in brief?

22 MS. BOJKO: A regulatory expert can make
23 it just like you let Mr. Swez make the argument about
24 Component D. He did the same thing.

25 He quoted currently incurred costs and

1 then he went on to say the ICPA trumped the new law.
2 And I was precluded from asking him any questions on
3 it.

4 Mr. Seryak is here to answer questions
5 on that topic. And the Commission can decide what it
6 believes to be relevant or not in making it's
7 decision.

8 But there are regulatory experts that
9 disagree with the interpretation put forth by the
10 Utilities, and we should be allowed to testify about
11 the contrary position and then let the Commission
12 sort it out.

13 EXAMINER ADDISON: Thank you. I believe
14 the General Assembly was very clear when they passed
15 the statute, and later chose not to repeal any
16 portion of RC 4928.148.

17 So we will go ahead and go through these
18 specific references to the testimony that we will be
19 granting the motion to strike.

20 Beginning on page 6, lines 12 through
21 15. Moving on to page 8, starting at line 10 with
22 the phrase, "To date," and ending on line 12, "at
23 2030," and including the footnote cited there,
24 Footnote 12.

25 MS. BOJKO: I'm sorry, clarification.

1 The last sentence in line 12 has nothing to do -- why
2 can that not stand? I'm sorry, I misheard you. I'm
3 sorry. The last sentence starting on 12 can stand?

4 EXAMINER ADDISON: Yeah, that is
5 correct.

6 MS. BOJKO: Sorry, I misheard you.

7 EXAMINER ADDISON: You're fine. Moving
8 on to page 13, starting at line 14 through 24.

9 MS. BOJKO: I'm going to object here.
10 Your Honor, that's the same law -- it is the law that
11 is at issue in this case.

12 If you want to object to -- or if you
13 want to strike the first part of the question, I
14 could see why that is in it, but the answer has
15 nothing to do with any other law but the law before
16 us today.

17 EXAMINER ADDISON: I believe the
18 question then is a little misleading, Ms. Bojko, but
19 I will take you up on your offer, we will go ahead
20 and leave lines 19 through 24. I will deny the
21 motion to strike as to the text of the law.

22 MS. BOJKO: And the whole answer? It's
23 just describing prudently incurred costs.

24 MR. MCKENZIE: The objectionable part is
25 the same costs that the Commission previously

1 authorized.

2 EXAMINER ADDISON: Yes.

3 MS. BOJKO: I mean, it's a fact. It's
4 the same costs that the Commission approved --

5 EXAMINER ADDISON: I disagree it's a
6 fact, Ms. Bojko. We will allow the answer to stand
7 as, "Yes," and then a reference to the statute.

8 Moving on to page 14, starting at line
9 1, through line 10.

10 MS. BOJKO: I'm sorry, is this Q and A
11 15?

12 EXAMINER ADDISON: Yes, ma'am.

13 MS. BOJKO: You're striking all of Q and
14 A 15?

15 EXAMINER ADDISON: Yes, I am.

16 MS. BOJKO: He cannot state that the LGR
17 Riders are not allowed to constitute a stability
18 charge because that's not prudent?

19 MR. MCKENZIE: Your Honor, I think
20 you've ruled. I don't that we need to go through
21 these one by one and have Ms. Bojko negotiate over
22 every single one.

23 MS. BOJKO: I'm not negotiating, I'm
24 trying to understand the ruling, because every
25 Utility witness was allowed to talk about their past

1 PSR Rider, PPA Rider, and whatever -- the RR Rider,
2 and now we're saying we're not allowed to talk about
3 those three riders and what costs are or are not
4 prudently incurred.

5 EXAMINER ADDISON: I don't believe
6 that's my ruling, Ms. Bojko.

7 MS. BOJKO: That's the result of
8 striking all of the witness testimony that is
9 offering counterargument.

10 EXAMINER ADDISON: Ms. Bojko, which
11 sentence were you requesting reconsideration? You
12 had noted one sentence.

13 MS. BOJKO: I said I didn't understand
14 how answer 15 -- at least the first sentence says
15 nothing about a prior rider, it's talking about Rider
16 LGR riders, it's talking about his opinion about what
17 the Commission should do as prudent or not prudent.

18 EXAMINER ADDISON: Does it note the OVEC
19 riders in line 3?

20 MS. BOJKO: Just as the Utilities noted
21 the OVEC riders, yes, absolutely it talks about the
22 PSR, the PPA and the RR Rider that the auditor spoke
23 to, and every Utility witness testimony speaks to.

24 MR. MCKENZIE: I disagree with that
25 characterization, your Honor. I'm not going to go

1 through it, we're here to talk about Mr. Seryak. We
2 obviously did not make this point.

3 EXAMINER ADDISON: My ruling will stand
4 as to question 15.

5 Moving to page 14 -- staying on page 14,
6 I'm sorry, beginning on line 11 and ending on page
7 16, line 3.

8 Moving to page 16, line 5, beginning
9 with the phrase, "All of the," through line 14 on
10 that same page, including the Footnote 44.

11 Moving to page 17, beginning on line 14
12 with, "Notably," and ending on line 16 at Footnote
13 52.

14 And then moving to page 19, and I
15 believe we do have then Commissioner Haque's
16 statements already in the record so I will be denying
17 the motion to strike as to that specific sentence on
18 lines 4 and 5, but the motion to strike will be
19 granted starting on line 5 with the word, "The,"
20 after, "Footnote 56," through line 7, ending at
21 "2030," including Footnote 57.

22 And moving to page 20, starting at line
23 3, through line 7. And lastly, page 27, we'll be
24 striking starting at line 5 with, "Therefore,"
25 through line 9, including Footnote 75.

1 MS. BOJKO: Thank you, your Honor. I'd
2 just like to note an objection how you have
3 significantly modified the witness' testimony and
4 prejudiced one of the intervenor parties who is
5 directly responding to other testimony that has been
6 filed.

7 You clearly came here today with a
8 predisposed notion of what you were going to strike
9 and what you were not going to strike without hearing
10 counter arguments.

11 We were not afforded an opportunity to
12 provide a memo contra given that the Utilities filed
13 it on the eve of the hearing.

14 EXAMINER ADDISON: Well, Ms. Bojko, you
15 raised motions to strike without filing anything in
16 the docket.

17 MS. BOJKO: Right. Absolutely.

18 EXAMINER ADDISON: And you had much more
19 notice to prepare a response to their motions to
20 strike, as opposed to the motions to strike that were
21 posed by OCC and OMAEG, correct?

22 MS. BOJKO: No, your Honor, that's --
23 you're missing my point. That's not what I'm
24 speaking to.

25 I'm talking about you yourself have had

1 the time to read a 14-page motion and go back and
2 delineate.

3 If they did it at the hearing today you
4 would have not had that opportunity and you would not
5 have had a predisposition of what you were going to
6 strike or not strike in the record, and that's what
7 happened today.

8 You knew what provisions you were going
9 to strike and you came in here and struck them. And
10 I'm saying that that is very inappropriate, it's
11 unfair, it's prejudicial.

12 You didn't take into consideration the
13 days and hours of Mr. Swez's testimony. Over our
14 constant objections you would not remove his
15 testimony from the record, you allowed it to stand,
16 but yet we were prevented, prohibited, our objections
17 were sustained many, many times, the Utilities'
18 objections were sustained many times, we were asked
19 to move along, we were asked to hurry up, and yet his
20 testimony was allowed to stand in the record.

21 Many of the provisions that you just
22 struck in Mr. Seryak's testimony respond directly to
23 Mr. Swez, to Mr. Stegall, to Mr. Crusey. All whose
24 testimonies were allowed to stand.

25 The Utilities did not move to strike the

1 auditor's references to the past riders. They did
2 not move to strike House Bill 6 articles, they didn't
3 move to strike anything.

4 But then you came in here and wholesale
5 struck and basically obliterated the testimony that
6 we presented in front of the Commission.

7 The Commission should be the one to
8 decide if their orders are referenced. Experts rely
9 on the Commission's orders.

10 The Commission should want experts to
11 rely on their orders. You just struck all of the
12 references to the Commission's orders that the expert
13 used and relied on to determine what was prudently
14 incurred costs.

15 So, your Honor, at this time we would
16 like to make a proffer of the entire testimony of
17 Mr. Seryak as it was filed on October 10th, 2023.

18 We seek to preserve our rights under
19 Ohio Rules of Evidence 103 and Rule 4901-1-15(F) of
20 the Ohio Administrative Code to raise the propriety
21 of the Attorney-Examiner's rulings striking portions
22 of Mr. Seryak's testimony, especially those portions
23 that directly contradict and were filed in response
24 to the auditor's provisions, and to the Utilities'
25 witnesses provision.

Pursuant to Rule of Evidence 103(A) (2),
an error may not be predicated upon a ruling which
admits or excludes evidence unless a substantial
right of the party is affected, and where the ruling
is one excluding evidence, the substance of the
evidence was made known to the court by offer, or was
apparent from the context within which questions were
asked.

Rule 4901-1-15(F) allows any party that
is adversely affected by a ruling issued under
4901-1-14, and who files an interlocutory appeal that
is not certified by the Attorney-Examiner to still
raise the propriety of that ruling as an issue for
the Commission's consideration by discussing the
matter at a distinct issue in its initial brief or
any other appropriate filing prior to the issuance of
a Commission ruling or finding in this case.

For those reasons we will proffer
Mr. Seryak's complete direct testimony in the record,
and believe that the Attorney-Examiner's ruling was
prejudicial and very inappropriate, and violates many
rules of the Commission and the Commission's prior
orders themselves. Thank you.

EXAMINER ADDISON: Thank you, Ms. Bojko.
To the extent that you do have an issue with my

1 rulings you can certainly bring those up in brief and
2 the Commission can take them up then.

3 MS. BOJKO: Thank you, your Honor. We
4 will certainly do that.

5 EXAMINER ADDISON: Thank you.
6 Mr. Finnigan, any questions?

7 MR. FINNIGAN: Well, I was just going to
8 offer that, your Honor, the statute does incorporate
9 the concept prudence, the prudence of the cost for
10 the LGR Rider.

11 However, prudence is a common law
12 concept. In fact, if you look at the testimony of a
13 couple of the experts filed in this case --

14 EXAMINER ADDISON: I'm sorry,
15 Mr. Finnigan, what are you responding to right now?

16 MS. WHITFIELD: He had actually asked
17 quite a while to be heard on this and he was not
18 allowed to be heard, so I think that's what he's
19 doing now.

20 MR. FINNIGAN: I'll just state very
21 briefly, you know, a point has been made that there's
22 a clean break between the LGR statute and the pre2019
23 rulings.

24 There's no clean break. The hinge
25 between the two is the concept of prudence. Prudence

1 is a common law concept.

2 In fact, we can see that in the
3 testimony filed in the case because a couple of the
4 experts quoted from an Ohio Supreme Court opinion as
5 to what is the definition of prudence.

6 Now, if we could only look at law that
7 was adopted from 2020 on when the LGR Rider was
8 enacted, then they would not be allowed to cite that
9 Ohio Supreme Court opinion on the definition of
10 prudence, but they were.

11 And so prudence being a common law
12 concept, the question is what rulings and decisions
13 of the Commission come into that concept of prudence,
14 and that would be the ones that Mr. Seryak cited.

15 And in fact, if we look at the RFP that
16 was issued for the audit in this case, it
17 incorporates the concept of best interest of the
18 retail ratepayer.

19 Best interest of the retail ratepayer
20 was a concept that was adopted by the Commission as
21 part of the prudence test in the 14-1693 case.

22 So prudence is a concept that the LGR
23 Rider incorporates, but it's a common law concept,
24 and it includes these ideas of best interest of the
25 retail ratepayer, and whether the plants were bid the

1 same way that a competitive merchant operator seeking
2 to maximize profits would have bid the plants, too.

3 Those common law concepts are all
4 incorporated within this concept of prudence that is
5 embedded in the LGR statute.

6 For that reason we would submit that
7 Mr. Seryak's testimony should not be stricken. Thank
8 you.

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

11 MS. WHITFIELD: Your Honor, can I just
12 voice Kroger's --

13 EXAMINER ADDISON: Certainly.

14 MS. WHITFIELD: The reason that OPC and
15 OMAEG particularly, and Kroger supports the position
16 that that information should not have been stricken
17 and supports the proffer that has been made of
18 Mr. Seryak's entire testimony to be consistent with
19 what -- with what your Honors have ruled before.

20 When these things were challenged before
21 you would say that the Commission can decide what
22 weight to provide that testimony, and so we would
23 have submitted that just as you have ruled in denying
24 most Intervenor's motions to strike on that basis,
25 that should have happened here as well, and let the

1 Commission decide whether people at the Commission
2 can rely upon its prior -- its own prior orders and
3 opinions, and to what Mr. Finnigan said about how
4 they are interrelated, there's not a clean break
5 between the two.

6 EXAMINER ADDISON: Thank you,
7 Ms. Whitfield.

8 MR. DOUGHERTY: I think you're going to
9 know what I'm going to say, but ditto to what my
10 Intervenor counsels stated.

11 EXAMINER ADDISON: Thank you all. And
12 obviously the offer stands for any party that
13 disagrees with my prior ruling, you can certainly
14 bring those up in brief.

15 Moving on to the cross of Mr. Seryak,
16 Mr. Finnigan, any questions?

17 MR. FINNIGAN: No.

18 EXAMINER ADDISON: Ms. Whitfield?

19 MS. WHITFIELD: No, your Honor.

20 EXAMINER ADDISON: Thank you.
21 Ms. Nordstrom?

22 MS. NORDSTROM: No, thank you, your
23 Honor.

24 EXAMINER ADDISON: Mr. Dougherty?

25 MR. DOUGHERTY: No, your Honor.

1 EXAMINER ADDISON: Mr. Nourse -- or
2 McKenzie? I apologize.

3 MR. MCKENZIE: Thank you, your Honor.

4 - - -

5 CROSS-EXAMINATION

6 By Mr. McKenzie:

7 Q. Good afternoon, Mr. Seryak. To start
8 with, you're not a lawyer, correct?

9 A. That's right.

10 Q. Do you have a degree in economics?

11 A. No.

12 Q. Let's go to page 20 of your testimony,
13 please. And starting on page 20, Part 5, you begin
14 to discuss must-run commitment, correct?

15 A. Yes.

16 Q. Now, you've never worked at a utility
17 power plant, correct?

18 A. No.

19 Q. You have never been involved in dispatch
20 decisions for utility power plants, correct?

21 A. I haven't.

22 Q. You don't know how many coal-fired units
23 operated in PJM in 2020, correct?

24 A. No. I would look that up and reference
25 the report.

1 Q. Could we go to page 21 of your
2 testimony, please?

3 A. Okay.

4 Q. On line 2 you state, "OVEC has
5 historically operated its plants as must run.
6 However, from April 14th to June 30th, 2020, OVEC's
7 plants were operated as economic." Did I read that
8 correctly?

9 A. Yes.

10 Q. You don't know how many of OVEC's units
11 were committed as economic during the period of April
12 14th to June 30th, correct?

13 A. I relied on the audit report that
14 described OVEC. So in sitting through and reviewing
15 other testimony I have come to see that that was
16 inaccurate in the audit report, and not all units
17 were run as economic.

18 So I think the audit report was somewhat
19 misleading, so at the time I took the audit report on
20 face value that all of them were run as economic, but
21 I understand that wasn't the case now.

22 Q. Do you know how many of them were
23 committed as economic?

24 A. I don't know.

25 Q. Do you know the reasons why some of them

1 continued to be committed as must run?

2 A. No, I don't.

3 Q. Do you know why OVEC might need to keep
4 some of its units as must run during the period?

5 A. No.

6 Q. Okay. Do you know whether any of the
7 units that were committed as economic were actually
8 called on to run by PJM?

9 A. No.

10 Q. Let's go to pages 23 and 24 of your
11 testimony. And by the way, I'm looking at the public
12 version of your testimony, so you may want to do that
13 as well, but I'm not asking you to divulge any
14 confidential information, is that okay?

15 A. Yes.

16 Q. Great. Thank you.

17 MS. BOJKO: I'm sorry, which page are
18 you on?

19 MR. MCKENZIE: I'm on pages 23 and 24.

20 MS. BOJKO: Thank you.

21 By Mr. McKenzie:

22 Q. Now, on these two pages you begin to
23 discuss the Resource Fuel's coal contract for OVEC,
24 correct?

25 A. That's right.

1 Q. And are you aware of the year that the
2 contract was entered into?

3 A. I am.

4 Q. However, you have not reviewed the coal
5 spot market prices for the year that the Resource
6 Fuels' contract was entered into; is that correct?

7 A. No, I haven't.

8 Q. And you don't know whether the Resource
9 Fuels' contract was chosen through a request for a
10 proposal, or RFP; is that correct?

11 A. That's right.

12 Q. All right. Page 24 of your testimony,
13 please. Line 15, I'm going to read the question and
14 the first sentence of the answer.

15 Question 29: "Could OVEC have
16 terminated or renegotiated its coal contract with
17 Resource Fuels?"

18 Answer 29: "I am not a lawyer, but from
19 my experience as an owner and CEO of a company who
20 routinely reviews and enters into contracts, yes."

21 Did I read that correctly?

22 A. You did.

23 Q. Okay. Now, you are CEO of Go
24 Sustainable Energy, LLC; is that right?

25 A. Yes.

1 Q. Go Sustainable Energy has never entered
2 into a coal contract, correct?

3 A. No.

4 Q. And Go Sustainable Energy has never
5 broken a contract, correct?

6 A. We haven't.

7 Q. And do you know whether OVEC attempted
8 to renegotiate the Resource Fuels contract?

9 A. To my knowledge, they didn't.

10 MR. MCKENZIE: No further questions,
11 your Honor. Thank you.

12 EXAMINER ADDISON: Thank you very much.
13 Mr. Sharkey.

14 MR. SHARKEY: Thank you, your Honor.

15 - - -

16 CROSS-EXAMINATION

17 By Mr. Sharkey:

18 Q. Hello again, Mr. Seryak. As you know,
19 my name is Jeff Sharkey and you also know I represent
20 AES Ohio.

21 Do you know what the ICPA is?

22 A. Yes.

23 Q. And you cite it in fact in your
24 testimony in a couple places, right?

25 A. I think so. I haven't seen if it's been

1 struck though.

2 Q. During the audit period you would agree
3 with me it was prudent for the Utilities to comply
4 with their obligations under the IPCA, right?

5 MS. BOJKO: Your Honor, I'm sorry,
6 Mr. Sharkey is trailing off at the end of his
7 questions and I'm having difficult hearing him.

8 EXAMINER ADDISON: Thank you very much.
9 By Mr. Sharkey:

10 Q. During the audit period you believe it
11 was prudent for the Utilities to comply with the
12 obligations under the ICPA, correct?

13 A. Are you referring to the unconditional
14 obligations? There was --

15 Q. I was --

16 A. -- ICPA obligation and conditional
17 obligations.

18 Q. We'll start there.

19 A. Okay. So you're asking is it prudent
20 that they comply -- that the Utilities pay that,
21 you're asking if it's prudent that the utilities
22 collect the unconditional obligations?

23 Because I'm drawing a distinction that
24 it's prudent that the Utilities -- the Utilities are
25 obligated to pay that, but I do not believe they are

1 obligated to collect that cost from customers, and I
2 don't believe that cost is within -- allowable within
3 Rider LGR.

4 So I just wanted to clarify which -- are
5 you talking about the utility with OVEC, or the cost
6 within LGR?

7 Q. Well, you understand that there -- first
8 of all, the Utilities have a contract with OVEC, the
9 ICPA, right?

10 A. Yes.

11 Q. And that imposes certain obligations
12 upon the Utilities and OVEC, correct?

13 A. Obligations and entitlement, which are
14 different, yes.

15 Q. And then there's a wholly separate
16 statute that authorizes the Utilities to recover
17 prudently incurred costs, correct?

18 A. Yes, but the cost is that -- I mean, is
19 what I'm arguing about. There's certain costs, and
20 based on how I read this it's in dispute, and I don't
21 think they are allowed to recover obligated --
22 unconditional obligations, I don't think that's an
23 allowable cost.

24 Q. I want to focus on the Utilities'
25 obligations under the ICPA to OVEC.

1 Do you believe that it was prudent for
2 the Utilities to comply with their contractual
3 requirements, including payments -- obligations to
4 make payments to OVEC?

5 MS. BOJKO: Objection.

6 EXAMINER ADDISON: Grounds?

7 MS. BOJKO: Well, it's been asked and
8 answered, but the form of the question.

9 Mr. Sharkey is talking about prudence
10 with regard to the ICPA, which this Commission has no
11 jurisdiction over. Mr. Seryak is testifying to the
12 prudence of LGR Rider, which your Honor has said that
13 is what is at issue in this case.

14 EXAMINER ADDISON: Mr. Sharkey, care to
15 rephrase?

16 MR. SHARKEY: Well, could I be heard,
17 your Honor, because the LGR Rider expressly allows
18 the Utilities to recovery certain costs related to,
19 essentially, the ICPA. So it's fair to ask what are
20 those costs that are incurred under the ICPA.

21 EXAMINER ADDISON: Maybe you could start
22 with that question.

23 By Mr. Sharkey:

24 Q. Do you know what costs Utilities are
25 required to pay OVEC under the ICPA?

1 A. Utilities are required to pay OVEC,
2 under the ICPA, costs of unconditional obligation.
3 There's a certain -- this is demand payments.

4 And then if they take title to available
5 energy they would be required to pay costs for that
6 available energy. They would not be required to pay
7 costs to available energy that they do not take title
8 to. They would -- yeah, that's right.

9 Q. And let's start with the demand costs.

10 A. Yes.

11 Q. Do you believe that it was prudent for
12 the Utilities to pay the demand costs?

13 MS. BOJKO: Objection. We're not here
14 to litigate the prudence of the ICPA, we're supposed
15 to be litigating the prudence of the LGR riders.

16 EXAMINER ADDISON: I think he phrased it
17 in a way that --

18 MS. BOJKO: He asked if it was prudent
19 for the Utilities to honor their ICPA contract. The
20 Commission is not here to uphold the ICPA contract.

21 EXAMINER ADDISON: I believe the
22 question was, was it prudent for them to pay their
23 demand costs.

24 MS. BOJKO: Under the ICPA contract.
25 There's not a dispute about the ICPA contract in

1 front of the Commission, it's what costs are passed
2 on to the customers that are at issue here.

3 EXAMINER ADDISON: Mr. Sharkey, do you
4 want to rephrase your question?

5 MR. SHARKEY: Sure.

6 By Mr. Sharkey:

7 Q. Do you believe, first of all, that the
8 Utilities, under the ICPA, were required to pay their
9 demand costs?

10 A. Yes.

11 Q. And to the extent they took available
12 energy, were the utilities required, under the ICPA,
13 to pay for it?

14 A. Yes, if they take available energy under
15 the ICPA, that's the -- each Utility's decision.
16 Each individual utility makes that decision on their
17 own, then if they make the decision then the utility
18 is required to pay for that.

19 Q. Do you know whether OVEC has operated
20 its generation units at the highest practical level
21 attainable during the audit period?

22 A. I don't know what that rating is right
23 now, so I don't know.

24 Q. Do you know what the operating
25 procedures are?

1 A. You'd have to be more specific, I guess.

2 Q. Do you know whether the OVEC operating
3 committee has promulgated operating procedures?

4 A. I'm sure they have. I have not reviewed
5 them.

6 Q. Do you know what a minimum loading event
7 is?

8 A. Yes.

9 Q. What is it?

10 A. Just a minute. I prefer to refer to the
11 definition in the ICPA, if that's okay.

12 Q. So you're opening up your own copy of
13 the ICPA?

14 A. Yes.

15 Q. I'll just note for the record that the
16 ICPA was attached to both the public and confidential
17 version of Mr. Crusey's testimony.

18 A. And you asked about minimum loading
19 events?

20 Q. Yes, I did.

21 A. Okay. The definition of a minimum
22 loading event in the ICPA is, according to Section
23 1.0110, "Minimum loading event means a period of time
24 during which one or more of the corporation's
25 generation units are operating at below the minimum

1 generating output as a result of a Sponsoring
2 Company's failure to schedule and take delivery of
3 sufficient available energy."

4 Q. And if a minimum loading event were to
5 occur as a result of the Sponsoring Company's failure
6 to schedule and take delivery of a sufficient amount
7 of available energy, that Sponsoring Company could be
8 responsible for paying minimum loading event costs,
9 correct?

10 A. In theory, that's right. In practice,
11 if one company decides to not take delivery -- and
12 again, each of the Utilities here would be
13 responsible for making that decision every day.

14 Multiple -- in those conditions,
15 multiple utilities may also decide not to take
16 energy, and so I think it may happen that many
17 utilities did not decide not to take available
18 energy, so that minimum loading event costs might be
19 spread out through the utilities.

20 This would happen say, for example, if
21 you have months where the OVEC plants are regularly
22 losing money day after day after day in the market
23 such as in 2020.

24 Theoretically to act in the best
25 interest of ratepayers and act prudently, each

1 utility, including AEP Ohio, Duke Energy Ohio, and
2 AES Ohio, should request to not take title to the
3 energy, would they be then exposed to minimum loading
4 event costs?

5 I think given how much money OVEC was
6 losing at that time, the other committee members
7 would have realized it's better to just shut that
8 plant down and not run it at all.

9 And so in that scenario I don't know if
10 the triggering company would be subject to the full
11 minimum loading event cost because it's likely the
12 committee would vote together in the interest of
13 their share -- their ratepayers or their
14 shareholders, depending on the utility, to not run
15 that plant and lose millions of dollars month after
16 month after month.

17 Q. Have you made any effort to estimate the
18 risk exposure associated with minimum loading events?

19 A. No. I was looking for that as part of
20 the burden of proof upon the Utilities. I did not
21 see that in the audit report. Maybe it was in a
22 discovery response I didn't see.

23 MR. SHARKEY: Thank you, Mr. Seryak.
24 Your Honors, I have no further questions.

25 EXAMINER ADDISON: Thank you. Ms.

1 Akhbari?

2 MS. AKHBARI: I have no questions at
3 this time.

4 EXAMINER ADDISON: Thank you.
5 Mr. Lindgren?

6 MR. LINDGREN: Thank you. I have no
7 questions, your Honor.

8 EXAMINER ADDISON: Any redirect, Ms.
9 Bojko?

10 MS. BOJKO: I will have a few minutes.
11 Do you mind if we take a five-minute break? I think
12 he's been up there for a little bit.

13 EXAMINER ADDISON: Certainly. Let's go
14 off the record.

15 (Discussion off the record.)

16 EXAMINER ADDISON: Let's go back on the
17 record.

18 Ms. Bojko, redirect?

19 MS. BOJKO: Thank you, your Honor. Just
20 a few questions.

21 - - -

22 REDIRECT EXAMINATION

23 By Ms. Bojko:

24 Q. Mr. Seryak, is the purpose of your
25 testimony today to discuss the prudence of the costs

1 that are passed on to customers through LGR?

2 A. Yes.

3 Q. And what did you base your
4 recommendations in your testimony on with regard to
5 prudence decisions?

6 A. Yes, I based my analysis and review --
7 review of the law that created Rider LGR, that it did
8 discuss prudent costs.

9 Then I relied on -- I looked for
10 definition of prudent costs, or direction within the
11 law to what prudent costs -- previous cases and
12 orders the Commission might have ruled on prudence,
13 and so I reviewed those to form my opinion.

14 And then also I think it's important to
15 state that with the OMAEG Energy Group we meet
16 quarterly and we do talk to members, and those
17 members have a keen business sense in what they think
18 is reasonable and prudent for their utility costs,
19 and so I gathered their insights and opinions on
20 whether they think paying into Rider LGR is prudent
21 or reasonable.

22 Q. And, Mr. Seryak, do you remember a
23 series of questions from AEP's counsel asking if you
24 knew about various OVEC decisions that were made
25 during the audit period; do you recall that?

1 A. Yes.

2 Q. Why do you not know what OVEC did or did
3 not do during the audit period?

4 A. Yeah, so if I recall correctly, there
5 were questions I was asked about did I know the
6 number of OVEC plants that were run as must run
7 versus economic, and why those decisions were made.

8 There's several reasons I didn't know.
9 First of all, the audit report, as I stated, is
10 misleading. It says OVEC was run as economic. It
11 doesn't say some of OVEC was run as economic.

12 Second, there was no data or rationale
13 provided, so I don't think the Utilities provided to
14 the auditor, you know, a defense or rationale for why
15 they ran certain plants one way or another.

16 And then lastly, to be quite honest, I
17 was confused why OVEC would run the plants at a loss
18 for months, months in a row, and so I could not
19 honestly figure out any rationale or logic or reasons
20 those plants weren't just shut down.

21 So that is why I did not review --
22 that's why I didn't know the answer to those specific
23 questions.

24 Q. And, Mr. Seryak, do you believe that the
25 prudence of the costs and sales flowing through the

1 LGR Rider during the audit period were prudent?

2 A. No.

3 Q. And, sir, you were asked questions about
4 decision making that the Utilities made during the
5 audit period.

6 Do you believe that the audit report
7 sufficiently reviewed and investigated whether the
8 Utilities' actions were in the best interest of
9 retail ratepayers during the audit period?

10 MR. SHARKEY: I'm going to object, your
11 Honor, that's beyond the scope of cross.

12 MR. MCKENZIE: I join.

13 MS. BOJKO: Your Honor, they both asked
14 about various OVEC -- I objected to them and they
15 kept asking about the prudence decisions of OVEC and
16 the Utilities with regard to whether they should or
17 should not meet the obligations of the ICPA, so I'm
18 asking him if whether he believes the Utilities'
19 actions were prudent or in the best interest of
20 retail ratepayers, which is the purpose of the audit.

21 EXAMINER ADDISON: I think those are two
22 separate issues, so I will allow the witness to
23 answer the question.

24 THE WITNESS: I'm sorry, could you
25 please repeat the question?

1 (Record read back.)

2 THE WITNESS: Thank you. No, I don't
3 think the audit report fairly looked into this.

4 The audit report should have asked for
5 and documented, you know, dispatch decisions, and the
6 rationale from the Utilities on why they would run as
7 must run versus economic.

8 There's several others, but short answer
9 is no, I don't think the audit report went far
10 enough.

11 By Ms. Bojko:

12 Q. And from your regulatory perspective and
13 your investigation into this proceeding, and the
14 audit report and all the data responses, do you
15 believe that the Utilities' actions were prudent in
16 this case?

17 MR. MCKENZIE: Objection. Your Honor,
18 that's basically just asking him to redo his
19 testimony. It's an extremely broad question. If Ms.
20 Bojko has a question about specific costs or a
21 specific topic that we covered in cross, otherwise
22 it's outside the scope.

23 EXAMINER ADDISON: Ms. Bojko.

24 MS. BOJKO: Your Honor, I thought that
25 they just objected because -- and you said

1 yourself -- pointed out that the questions might be
2 slightly different, that they were talking about the
3 Utilities' -- prudence of the Utilities' action, so
4 that's why I was asking him about the Utilities'
5 action if he believes that -- Mr. Sharkey asked him
6 several times about whether the Utilities' actions
7 with regard to the ICPA were prudent.

8 MR. MCKENZIE: She can ask about that,
9 the ICPA -- you know, whether following the ICPA was
10 prudent, but her question was do you think their
11 actions were prudent, which is every conceivable
12 issue in this case.

13 EXAMINER ADDISON: I think we need to
14 carve it down a little bit. Sustained.
15 By Ms. Bojko:

16 Q. Mr. Seryak, do you recall questions from
17 Mr. Sharkey asking if you believe that the decisions
18 of the Utilities were prudent with regard to meeting
19 ICPA obligations and passing costs on to customers?

20 A. Yes.

21 Q. And do you believe that the Utilities'
22 actions were prudent in this regard?

23 A. No, I don't. I don't think the
24 Utilities should have passed on costs of
25 unconditional obligation, I think they should have

1 only passed on costs related to the available -- the
2 entitlement to available power.

3 However, the decision of the Utilities
4 apparently to take title to available energy, knowing
5 they were losing ratepayer money, was certainly
6 imprudent.

7 They did this for months at a time, day
8 after day after day. I believe they did that
9 likely -- I mean, it's not even clear if they did
10 this in the best interest of their shareholders, it
11 wasn't in the best interest of ratepayers.

12 So I think where the auditor should have
13 looked was the coal contracts and were there
14 restrictions on the coal piles, and the requirement
15 to take fixed amounts of coal, the reason these
16 plants were run as must run; is it functionally just
17 to burn coal.

18 A lot of that coal is for overpriced
19 coal that was no different than other cheaper coal.
20 And so all of that should have been looked into
21 because I think it's grossly imprudent.

22 MS. BOJKO: Thank you. I have no
23 further questions, your Honor.

24 EXAMINER ADDISON: Thank you, Ms. Bojko.

25 Mr. Finnigan, any questions?

1 MR. FINNIGAN: No, your Honor.

2 EXAMINER ADDISON: Ms. Whitfield?

3 MS. WHITFIELD: No, your Honor.

4 EXAMINER ADDISON: Ms. Nordstrom?

5 MS. NORDSTROM: No, thank you, your
6 Honor.

7 EXAMINER ADDISON: Mr. Dougherty?

8 MR. DOUGHERTY: Thank you. No, your
9 Honor.

10 EXAMINER ADDISON: Mr. Sharkey.

11 MR. SHARKEY: Briefly, your Honor.

12 - - -

13 RECROSS-EXAMINATION

14 By Mr. Sharkey:

15 Q. Mr. Seryak, in one of your answers to
16 one of Ms. Bojko's questions you mentioned
17 unconditional obligations and whether the Utilities
18 were obligated to or entitled to collect those
19 amounts from customers. Do you recall that?

20 A. Yes.

21 Q. To be real clear, the term unconditional
22 obligations, you pulled that from the ICPA paragraph
23 3.04, correct?

24 A. Yes, I believe that's where it is.

25 Q. And that's the paragraph that identifies

1 unconditional obligations to pay demand and other
2 charges, correct?

3 A. Yes.

4 MR. SHARKEY: No further questions, your
5 Honor.

6 EXAMINER ADDISON: Thank you,
7 Mr. Sharkey. Mr. McKenzie?

8 MR. MCKENZIE: No questions.

9 MS. AKHBARI: No questions, your Honor.

10 EXAMINER ADDISON: Mr. Lindgren.

11 MR. LINDGREN: I have no questions, your
12 Honor.

13 EXAMINER ADDISON: Thank you. The Bench
14 doesn't have any questions, Mr. Seryak, you are
15 excused. Thank you very much for your testimony
16 today.

17 (Witness excused.)

18 MS. BOJKO: Your Honor, at this time
19 OMAEG would like to move into the record OMAEG
20 Exhibit 1 in its entirety, and 2C, the confidential
21 portion of Mr. -- the confidential version of
22 Mr. Seryak's testimony, in their entirety, as well as
23 the two errata sheets, one public and one errata
24 OMAEG Exhibit 1A, and OMAEG Exhibit 16C.

25 EXAMINER ADDISON: Thank you, Ms. Bojko.

1 Are there any objections to the
2 admissions of these exhibits subject to the Bench's
3 granting portions of the motions to strike -- the
4 motion to strike?

5 Hearing none, they will be admitted.

6 (EXHIBITS ADMITTED INTO EVIDENCE.)

7 MS. BOJKO: And, your Honor, just
8 regarding the admissibility of the documents, again,
9 without repeating all the arguments, that we would --
10 OMAEG proffers the entirety of Mr. Seryak's
11 testimony.

12 I think except for one sentence you
13 granted the motions to strike in their entirety, even
14 with regard to references and reliance on PUCO
15 orders, particularly those that relate to similar
16 prudency costs with regard to OVEC.

17 And so we would again renew our
18 objection to the exclusion of the Commission's own
19 orders talking about similar costs and similar
20 prudency items.

21 EXAMINER ADDISON: Thank you, Ms. Bojko.
22 Your objection and your proffer are noted for the
23 record.

24 MS. BOJKO: Thank you.

25 EXAMINER ADDISON: Mr. Finnigan, I

1 believe you had some items you'd like to raise for
2 the Bench's attention.

3 MR. FINNIGAN: Yes, your Honor. Thank
4 you, but they don't address Mr. Seryak's testimony,
5 so may he be --

6 EXAMINER ADDISON: I've excused him,
7 yes. He's just hanging out.

8 MR. FINNIGAN: I just have a couple of
9 documents I'd like to bring to the Bench's
10 attention --

11 EXAMINER ADDISON: Certainly.

12 MR. FINNIGAN: -- and ask if you would
13 consider granting administrative notice.

14 The first thing is a document that was
15 previously marked as OCC Exhibit 8. This is the FERC
16 Form 1 for OVEC, which is a public utility in the
17 State of Ohio.

18 The Commission has frequently granted
19 administrative notice of FERC Form 1s in other cases.
20 They are required to be filed with the Commission. I
21 believe they are part of the standard filing
22 requirements when companies come in for rate case.

23 And the whole point here is that this is
24 a good source of information about some of the costs
25 at issue in the case, such as Component D.

1 Now, we have heard this past week about
2 Component D from risk managers and mechanical
3 engineers, and bless their souls, but it might be
4 better to hear from the FERC Form 1 how this kind of
5 cost is classified.

6 So for that reason I move for
7 administrative notice of OCC Exhibit 8, the FERC Form
8 1 for OVEC for 2020.

9 MR. NOURSE: Your Honor, are there going
10 to be other parts of the motion for administrative
11 notice?

12 MR. FINNIGAN: Yes.

13 MR. NOURSE: I'd like to deal with all
14 of them at once if that is possible.

15 MR. FINNIGAN: Yes, I have two other
16 items I'd like to bring to the Bench's attention and
17 ask for administrative notice. And I believe these
18 have been marked as OCC Exhibits 18 and 19.

19 EXAMINER ADDISON: I don't believe we
20 have marked any exhibits.

21 MR. FINNIGAN: I did describe copies
22 earlier today but I did not ask that they be marked,
23 thank you. And so OCC Exhibit 18 -- I'm sorry,
24 strike that.

25 At this time, your Honor, I'd like to

1 have marked for identification as OCC Exhibit 18 an
2 SEC Form 10-Q filed last Thursday by AEP.

3 EXAMINER ADDISON: So marked.

4 (EXHIBIT MARKED FOR IDENTIFICATION.)

5 MR. FINNIGAN: Then I'd also like to
6 have marked an OCC Exhibit 19 a criminal complaint
7 filed by the United States of America against Larry
8 Householder and others on July 16th, 2020.

9 EXAMINER ADDISON: It is so marked.

10 (EXHIBIT MARKED FOR IDENTIFICATION.)

11 MR. FINNIGAN: The reason we're asking
12 for administrative notice of these two documents is
13 the auditor in her audit report discusses how the
14 Legacy Generation Rider was a part of House Bill 6,
15 and when the scandal associated with House Bill 6
16 broke back on July 16th, 2020 and became public, ever
17 since that time, up until last Thursday, we heard
18 from AEP saying that we have done an internal
19 investigation and we're completely confident that we
20 had absolutely nothing to do with this HB 6 scandal.

21 And they also made that same statement
22 in numerous reports that they filed with the SEC, and
23 all their annual reports since that time, other
24 quarterly reports over the last three years, up until
25 Thursday.

1 And then on Thursday they said something
2 different. And so if you turn to page 12 of that
3 document --

4 EXAMINER ADDISON: Which document?

5 MR. FINNIGAN: This is OCC Exhibit 18.

6 EXAMINER ADDISON: Thank you.

7 MR. FINNIGAN: And so this is -- this is
8 the Form 10-Q filed by AEP on Thursday at the close
9 of business, so Thursday afternoon, and of course we
10 were in hearing here on Friday so we had no way of
11 learning about this.

12 And it wasn't until we read the papers
13 on the weekend that there was a story on the front
14 page of the Columbus Dispatch, and that was what
15 brought it to our attention.

16 And so turning to page 12 of that
17 document, there's -- the second paragraph down from
18 the top. Which begins, "In May of 2021" -- I'm not
19 going to read the whole paragraph, but it talks about
20 this organization called Empowering Ohio's Economy,
21 Inc., which is a 501(C)(4) social welfare
22 organization, and what it says in that next sentence
23 in the middle of the paragraph, which begins, "AEP
24 and the SEC," it says, "AEP and the SEC are engaged
25 in discussions about a possible resolution of the

1 SEC's investigation and potential claims under the
2 securities laws, the outcome of which cannot be
3 predicted and could subject AEP to civil penalties
4 and other remedial measures."

5 So now for the very first time, at 5:00
6 on Thursday afternoon, we hear that lo and behold,
7 after being told for three years that AEP had no
8 involvement in the House Bill 6 scandal, maybe they
9 do have some involvement, at least according to the
10 SEC and according to AEP's own admission in this
11 document.

12 Now, that brings us to OCC Exhibit 19,
13 which is the criminal complaint against
14 Mr. Householder.

15 He was found guilty of the charges here,
16 and this lays out this corrupt scheme involving House
17 Bill 6 and all the 501(C)(4)s and so forth, so that
18 is how it's tied into Exhibit 18.

19 But the bottom line is this, your Honor,
20 at the end of the day what the Commission must decide
21 is whether any of these charges are just and
22 reasonable.

23 And if AEP had any involvement in the
24 events that led to the passage of House Bill 6, we
25 would submit that maybe the charges are not just and

1 reasonable as to AEP. At the end of the day there
2 would be a question as to whether they come into this
3 with unclean hands.

4 So for that reason we would ask the
5 Bench to take administrative notice of these
6 documents. Thank you.

7 EXAMINER ADDISON: Thank you,
8 Mr. Finnigan.

9 MS. BOJKO: Your Honor, before Mr.
10 Nourse --

11 MR. NOURSE: Go ahead.

12 EXAMINER ADDISON: Thank you.

13 MS. BOJKO: He might want me to speak
14 first. I'm just going to support, I'm not going to
15 add anything else to it except for that's one of the
16 points of Mr. Seryak referencing in his testimony
17 that these issues are interrelated and there is a
18 question about whether AEP was involved, and now they
19 have admitted their involvement. Thank you.

20 EXAMINER ADDISON: Thank you very much.

21 MS. WHITFIELD: And your Honor, Kroger
22 will support OCC's request for administrative notice
23 of these two documents -- actually three documents.

24 EXAMINER ADDISON: Thank you.

25 MR. DOUGHERTY: CUB and UCS follows

1 that, recognizing that this is the first opportunity
2 for us to litigate House Bill 6.

3 Whether you took what was in
4 Mr. Seryak's testimony or not, this is the rider that
5 comes from HB 6 and we think it's absolutely
6 appropriate to have this be part of the record.

7 EXAMINER ADDISON: Thank you.

8 MS. NORDSTROM: OEC joins.

9 EXAMINER ADDISON: Thank you.

10 Mr. Nourse.

11 MR. NOURSE: Yes. First of all, no
12 objection to the OVEC FERC Form 1.

13 The other two documents I think are
14 precluded. They go beyond the scope of this case per
15 the July 7th entry.

16 The House Bill 6 scandal is not part of
17 this case, it's not part of what we're litigating.

18 In particular with respect to the 10-Q,
19 it's completely false that AEP has not disclosed this
20 SEC investigation before.

21 Just because the Intervenors didn't see
22 it and they merely read it because the newspaper
23 happened to pick up and report on it, it's false that
24 it wasn't disclosed previously, this is merely an
25 update from prior filings.

1 And certainly it's also false that AEP
2 has admitted anything as they have said, and
3 Mr. Finnigan's salacious description of his
4 interpretation and imagination.

5 The document actually says management
6 does not believe the results of this investigation or
7 a possible resolution will have a material impact on
8 the results of the operation, cash flows or financial
9 condition.

10 And, you know, certainly this document
11 doesn't establish anything, or the pending SEC
12 investigation doesn't even establish anything
13 relative to even their -- their view of how they'd
14 like to see this come out.

15 And so it's not -- it doesn't advance
16 any relevant purpose and it's beyond the scope of
17 this case to get into the 10-Q update to the prior
18 statement they missed.

19 And obviously the criminal complaint in
20 Federal Court I think speaks for itself. It's
21 clearly beyond the scope of this case per the July
22 7th entry.

23 EXAMINER ADDISON: Thank you,
24 Mr. Nourse.

25 Mr. Finnigan, anything to add in?

1 MR. FINNIGAN: No, your Honor. I have
2 nothing to add to the original points I made.

3 MS. BOJKO: Your Honor, I would just
4 note that we didn't miss anything, or at least speak
5 to some Intervenors because other Intervenors have
6 included this concept of AEP's involvement in the
7 House Bill 6 scandal in their testimony that was
8 struck here today.

9 So clearly we didn't miss anything. We
10 pointed out that they have a conflict of interest,
11 that they were -- had a part in creating,
12 establishing the LGR Rider, and that brought profit
13 to their company while they were involved in the
14 House Bill 6 scandal. So we absolutely pointed that
15 out and we didn't miss anything.

16 MR. FINNIGAN: Your Honor --

17 MR. NOURSE: Your Honor, I'm glad --

18 EXAMINER ADDISON: Okay.

19 MR. NOURSE: -- Ms. Bojko agrees with
20 me, because four of them just sat there and said this
21 is the first time this has come out, and then we're
22 admitting things, so those are false statements.

23 EXAMINER ADDISON: All right. We're
24 going to move on. Mr. Finnigan.

25 MR. FINNIGAN: Thank you, your Honor.

1 In my remarks I said that this has been -- it's been
2 disclosed before over the last three years that
3 there's been an SEC subpoena. We know that. It's
4 been in all these reports.

5 But that's not why it made the front
6 page of the Columbus Dispatch, something that's
7 happened every quarter for the last three years,
8 because that's not front page news.

9 What is front page news is the new
10 information that was filed Thursday afternoon that I
11 just read, I'm not going to reread, but that's the
12 first disclosure that AEP has stated for the first
13 time that they are engaged in discussions about a
14 possible resolution of the SEC's investigation and
15 potential claims under securities laws, the outcome
16 of which cannot be predicted and could subject AEP to
17 civil penalties and other remedial measures.

18 So that's the new information. That's
19 what is front page news, and that's why it's relevant
20 to this proceeding. Thank you.

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

23 We will be taking administrative notice
24 of OCC Exhibit No. 8. But again, the July 7th, 2023
25 entry issued in this proceeding, we noted that this

1 case is limited to reviewing the prudence and
2 reasonableness of the actions of EDUs with ownership
3 interest in OVEC during calendar year 2020, rather
4 than the events leading up to the creation and
5 implementation of the LGR mechanism that occurred in
6 2019.

7 Based on prior rulings, I do seem to
8 agree with Mr. Nourse as to the scope of this
9 proceeding, and OCC Exhibits 18 and 19 fall outside
10 of that scope.

11 I fail to find how taking administrative
12 notice of these documents, if the information
13 contained therein are relevant to this proceeding
14 before us, so I will not be taking administrative
15 notice of those two documents.

16 OCC 18 and 19 of course, similar to my
17 other rulings, if the parties disagree with this, you
18 can certainly bring that up in brief.

19 MR. FINNIGAN: Thank you, your Honor.

20 For the record I would simply like to
21 proffer OCC Exhibits 18 and 19 into the record and I
22 reincorporate the arguments I just raised. Thank
23 you.

24 EXAMINER ADDISON: Thank you. Your
25 proffer is noted, Mr. Finnigan. Let's go off the

1 record for a moment.

2 (Discussion off the record.)

3 EXAMINER ADDISON: After a quick
4 discussion with the parties off the record we have
5 decided that initial briefs will be due January 8th,
6 2024, and reply briefs will be due January 29th,
7 2024.

8 And the parties are instructed to keep
9 the Attorney-Examiners appraised of any developments
10 in their discussions, and possibly reducing the
11 confidential treatment of certain exhibits as
12 referenced throughout this transcript in order to
13 limit the number -- the amounts of redacted
14 information contained in the public domain.

15 MR. NOURSE: Your Honor, could I just
16 for the record -- I think we have a limited list of
17 documents for that assignment.

18 I don't want it to be interpreted later
19 to open up confidentiality issues, but I think
20 there's the audit report, and there are two sets of
21 emails that I think are the three things that I have
22 that we were going follow up on.

23 MS. BOJKO: There were three audit
24 reports, and my understanding -- I thought I raised
25 this one time, my -- the tables that are in my

1 witness' audit report, I would want them -- their
2 headers to be unredacted as well so it corresponds to
3 the audit report in the -- the audit report in the
4 public.

5 EXAMINER ADDISON: I think that's
6 consistent with what we have discussed throughout
7 this proceeding. So with that understanding --

8 MR. NOURSE: I agree, there are three
9 audit reports and then things that are directly
10 referring to those audit reports to the extent the
11 status changes that would flow through.

12 MS. BOJKO: Like the Resource Fuels, we
13 talked about that being unredacted.

14 MR. NOURSE: The name Resource Fuels
15 which was already done in your testimony.

16 EXAMINER ADDISON: That is correct.

17 MR. DOUGHERTY: And excuse me, I have
18 one request that is still out there. Again, working
19 with the Utilities to perhaps get a few provisions of
20 Ms. Glick's testimony unredacted as well.

21 MR. NOURSE: Yeah, that was my number 3.
22 I gotcha.

23 MR. DOUGHERTY: Okay.

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

1 MS. BOJKO: Your Honor, are you done
2 with that discussion?

3 EXAMINER ADDISON: I believe I am.

4 MS. BOJKO: I didn't want to interrupt.
5 One more question.

6 I know there was a motion for an IMM
7 report to be taken in this case, and there's some
8 cross-examination on that today.

9 Is the record -- is that going to be
10 handled on paper and you'll just issue a ruling in
11 this case, or how is that going to be handled?

12 EXAMINER ADDISON: Well, the motion has
13 been taken under advisement, and I believe a
14 subsequent entry or order will address that request.

15 MS. BOJKO: Because part of the request
16 was to have the witness appear at the hearing. So
17 that's why I'm asking so I take it --

18 EXAMINER ADDISON: I believe nothing has
19 changed from my response with that.

20 MS. BOJKO: So are you closing the
21 hearing record today, is that my understanding, or
22 are we leaving it open?

23 EXAMINER ADDISON: I believe I'm going
24 to close it. In the event that the motion would be
25 granted then that would be something the Commission

1 would take up at that time.

2 MS. BOJKO: And reopen the hearing?

3 EXAMINER ADDISON: Perhaps. Anything
4 else before we go off the record?

5 MR. NOURSE: No, thank you, your Honor.

6 MR. SHARKEY: Thank you.

7 EXAMINER ADDISON: Thank you all. We
8 are adjourned.

9 (Thereupon, the hearing was
10 adjourned at 5:00 p.m.)

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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 Monday, November 6,
2023, and carefully compared with my original
stenographic notes.

Valerie J. Grubaugh,
Court Reporter and Notary
Public in and for the State
of Ohio.

My commission expires August 11, 2026.

**This foregoing document was electronically filed with the Public Utilities
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Volume V electronically filed by Mr. Ken Spencer on behalf of Armstrong & Okey,
Inc. and Grubaugh, Valerie.