

BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

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In the Matter of the :
Application of Ohio Edison:
Company, The Cleveland :
Electric Illuminating :
Company, and The Toledo :
Edison Company for : Case No. 23-301-EL-SSO
Authority to Establish a :
Standard Service Offer :
Pursuant to R.C. 4928.143 :
in the Form of an Electric:
Security Plan. :

- - -

PROCEEDINGS

before Mr. Gregory Price, Ms. Megan Addison, and Ms.
Jacky Werman St. John, Attorney Examiners, at the
Public Utilities Commission of Ohio, 180 East Broad
Street, Room 11-A, Columbus, Ohio, called at 9:22
a.m. on Wednesday, November 8, 2023.

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VOLUME II

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1 Wednesday Morning Session,
2 November 8, 2023.

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4 EXAMINER PRICE: Let's go on the record.
5 Good morning. The Public Utilities
6 Commission has set for hearing at this time and place
7 Case No. 23-301-EL-SSO, being in the Matter of the
8 Application of Ohio Edison Company, The Cleveland
9 Electric Illuminating Company, and The Toledo Edison
10 Company for Authority to Provide for a Standard
11 Service Offer Pursuant to Revised Code 4928.143 in
12 the Form of an Electric Security Plan.

13 My name is Gregory Price. With me are
14 Jacky St. John and Megan Addison. We are the
15 Attorney Examiners assigned to preside over today's
16 hearing.

17 This is day two of our hearing in this
18 proceeding. At this time I will turn the floor over
19 to my colleague.

20 EXAMINER ADDISON: Thank you. We'll be
21 taking up Mr. Hays' request to take judicial notice
22 of what has been marked as NOAC Exhibit 1.

23 In response to that request, I note that
24 taking administrative notice would circumvent the
25 stay issued in Case No. 17-974-EL-UNC, et al. The

1 issue regarding ESP IV, namely, the apparent
2 nondisclosure of a side agreement in that case was
3 brought to the public's attention by the Commission.
4 The Commission has consistently indicated that it
5 will follow the facts wherever they may lead but this
6 is not the proper time nor place.

7 The Commission has made it clear that
8 avoiding interference with the ongoing federal
9 criminal investigation by the U.S. Attorney or the
10 civil action brought by Ohio Attorney General Dave
11 Yost is of the utmost importance.

12 Furthermore, this does not meet the
13 standard for administrative notice. The facts in the
14 DPA are -- excuse me, are subject to reasonable
15 dispute. The statements or allegations, many of
16 which have not been adjudicated, it's irrelevant at
17 this point if FirstEnergy Corp. cannot dispute them.
18 Moreover, the statements are incomplete. While names
19 have been properly redacted, this may raise risk for
20 confusion and prejudice in this proceeding.

21 Finally, this does not appear relevant
22 for the statutory test set forth in R.C. 4928.143.
23 This document has no bearing on the ESP versus MRO
24 test nor any bearing on the contents of the
25 Application before us today.

Furthermore, no charges authorized by HB 6 are contained in the Application. While we are going to deny Mr. Hays' motion to take judicial or administrative notice of this document, we will be talking notice of the existence of the DPA and the date it was entered into which was July 22, 2021.

EXAMINER PRICE: Thank you.

EXAMINER ADDISON: Thank you very much.

EXAMINER PRICE: Mr. Hays.

MR. HAYS: Your Honor, thank you for your prompt ruling. Appreciate it. I guess at this point I have got to make a proffer to protect the record. So we would proffer NOAC Exhibit 1 which is the Deferred Prosecution Agreement, and we would have two separate bases for doing so. First, it's used for impeachment because it shows acts of moral turpitude committed directly upon this forum in a proceeding we do believe is relevant since most, if not all, of the riders that are proposed and other terms and conditions are pulled forward into ESP V. Excuse the frog in my throat.

Two, we would proffer on the motions. So again, we would ask questions and show that the riders were carried over from ESP IV and were subject to improper influence and corruption. Two, that

1 FirstEnergy agreed that it would not dispute any of
2 the statement of facts in any proceeding; and,
3 therefore, they are known facts.

4 Three, as we informed -- as part of that,
5 we informed the court we were not interested in
6 anything that has to do with House Bill 6, perfectly
7 willing to redact those portions except for the bribe
8 from -- the bribe or the financial remuneration
9 offered to Mr. Randazzo whose identity can be clearly
10 identified by the dates that he served as Chairman.

11 And we would also proffer that it is
12 relevant and material to the MRO versus ESP test in
13 that it -- in that it shows that the Company abused
14 the Electric Security Plan process and the
15 Stipulation process that goes with it.

16 Again, I thank the Bench. I know this
17 has really been a contentious issue.

18 EXAMINER PRICE: We went way beyond what
19 we should in the proffer so let's wrap it up.

20 MR. HAYS: So again, that completes my
21 proffer. Thank you, your Honors.

22 EXAMINER ADDISON: Thank you. Your
23 proffer is noted.

24 EXAMINER PRICE: Mr. Hays, you may
25 proceed with Mr. Fanelli.

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SANTINO L. FANELLI

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

CROSS-EXAMINATION (Continued)

By Mr. Hays:

Q. Mr. Fanelli, good to see you again.

A. Good morning, Mr. Hays.

Q. Could you tell me if FirstEnergy has
determined how much an MRO would cost?

A. The Market Rate Offer would be a
competitive procurement for SSO generation service,
so the price would be determined through that
competitive bidding process.

Q. If you -- instead of doing an ESP, you
could do an MRO in a base rate case; is that correct?

A. Our utilities under an MRO could file for
a base rate case, yes.

Q. Have you determined what a base rate case
might cost?

MR. ALEXANDER: Objection.

EXAMINER PRICE: Grounds?

MR. ALEXANDER: Vague. It does not
specify whether he's referring to the rate case and
expense or the ultimate rates which would be charged

1 to customers.

2 EXAMINER PRICE: Sustained.

3 MR. HAYS: I couldn't hear what
4 Mr. Alexander said.

5 MR. ALEXANDER: I apologize. I will try
6 and speak up. It was objection, vague, in that the
7 question failed to differentiate between rate case
8 expense and the rates which would be ultimately
9 charged to customers.

10 Q. (By Mr. Hays) Mr. Fanelli, can you tell
11 me if FirstEnergy determined what a base rate case
12 itself would cost or if it has determined in the base
13 rate case what the rate charged to customers would
14 be?

15 A. The Companies have not yet developed
16 their base rate case filing that's going to be made
17 in May of 2024. For purposes of the ESP versus MRO
18 in the aggregate test, I did explain and for purposes
19 of that evaluation how the base rate case was taken
20 into consideration.

21 Q. But you did not provide any cost estimate
22 for either of the two items I just mentioned?

23 A. If by cost estimate you are referring to
24 an estimated outcome from the base rate case that we
25 would file in May of 2024, the Companies have not

1 developed that estimate.

2 Q. Can you tell me what efforts FirstEnergy
3 made to do that, if any?

4 MR. ALEXANDER: Objection.

5 EXAMINER PRICE: Grounds?

6 MR. ALEXANDER: Relevance and to the
7 extent it requests communications between Mr. Fanelli
8 and the Companies' counsel, privileged.

9 EXAMINER PRICE: You can answer the
10 question to the extent you do not touch upon
11 attorney-client privileged matters.

12 A. The Companies are filing their base rate
13 case in May of next year, so we have not yet
14 developed that case or have an estimate for it. That
15 type of analysis was not something that needed to be
16 prepared for purposes of my testimony specifically as
17 it relates to the ESP versus MRO test.

18 Q. I take it that means no effort was made
19 to develop that cost estimate.

20 A. If you are referring to the estimated
21 outcome of the May 2024 base distribution rate case,
22 that estimate has not yet been developed. That case
23 has not been developed yet.

24 Q. Is there any proposal or commitment in
25 ESP -- in the ESP V Application to improve the credit

1 rating of Toledo Edison?

2 A. I am not aware of a provision that
3 specifically targeted that objective. Some of the
4 provisions in the proposed ESP, if approved, could
5 have an impact.

6 Q. Could they have a negative impact as well
7 as a positive impact?

8 A. Depending on the ultimate decision in the
9 case, potentially it could.

10 Q. Mr. Fanelli, I believe you indicated you
11 were the witness that was going to respond to the
12 financial statements that are attached to your
13 testimony?

14 A. Yes, I sponsored the projected financial
15 statements for this filing.

16 Q. Do you know what FASB or the Financial
17 Accounting and Standards Board is?

18 A. Generally I am aware they establish
19 accounting standards.

20 Q. Do you know if FirstEnergy's --
21 FirstEnergy Corp. does a consolidated -- does a
22 consolidated reporting for purposes of 10-Q and
23 annual reports and things of that nature?

24 A. FirstEnergy Corp. does file an annual
25 report.

1 Q. Is it subject to FASB's standards? If
2 you don't know, you don't know.

3 A. I'm not sure I can answer that, Mr. Hays,
4 as far as which standards apply. I am not involved
5 in the preparation of that.

6 Q. Similarly, are you aware of what GAAP,
7 G-A-A-P, I think it stands for Generally Accepted
8 Accounting Principles, are?

9 A. I have a general awareness.

10 Q. Would you agree with me these standards
11 are well recognized and used in the corporate world?

12 A. I don't think I have an opinion on that,
13 Mr. Hays.

14 Q. Have you ever heard of PCOAB?

15 A. That acronym does not sound familiar, I'm
16 sorry.

17 Q. I think -- I believe it stands for Public
18 Company Accountants Oversight Board? It might be
19 Accounting Oversight Board? Does that ring a bell?

20 A. Not that I can recall, no.

21 Q. Do you know what goodwill is?

22 A. I have a general understanding.

23 Q. Could you explain to me how you would
24 define goodwill?

25 A. My initial thought when you ask about

1 goodwill is in the general sense goodwill is doing
2 something for the betterment of others.

3 Q. How about on a corporate balance sheet?
4 What would goodwill be there?

5 A. I think that may depend on the individual
6 balance sheet.

7 Q. In general what is goodwill on a
8 corporate balance sheet, if you know?

9 A. I understand goodwill from a balance
10 sheet perspective to be recognized as an asset. The
11 specific circumstances as to how the goodwill was
12 originated I think would be a case-by-case basis.

13 Q. Can you give me an example of such a
14 case?

15 A. Potentially if there was an asset sale
16 could result in goodwill.

17 Q. And how would it result in goodwill?

18 A. My general understanding if -- in this
19 hypothetical example, goodwill could be recognized as
20 a difference between the purchase price of the assets
21 and the book value of the assets.

22 Q. Have you read the testimony submitted on
23 behalf of Ohio Energy Group by Randy A. Futral?

24 A. I recall I read it briefly.

25 Q. Does he discuss goodwill in his

1 testimony?

2 A. I don't recall if he refers to goodwill
3 specifically.

4 Q. Let me ask you to assume that on page 5,
5 lines 19 and 20, of his testimony, he states that the
6 Toledo Edison and CEI still retain 1.6 billion in
7 legacy nuclear power plant costs as goodwill. Would
8 you agree with that assumption?

9 MR. ALEXANDER: Objection.

10 EXAMINER PRICE: Grounds?

11 MR. ALEXANDER: Calls for speculation.
12 The witness has already testified he does not know
13 what was covered in this testimony, and he had only
14 read it briefly.

15 EXAMINER PRICE: Sustained.

16 Q. (By Mr. Hays) In your papers attached to
17 your testimony, do you not give the -- do you not
18 give a corporate balance sheet for The Toledo Edison
19 Company and The Cleveland Electric Illuminating
20 Company?

21 A. Attachment SLF-3 to my testimony includes
22 projected balance sheets for each of the companies
23 for the term of the ESP V.

24 Q. Do those two balance sheets include
25 1.6 billion in legacy nuclear power plant costs?

1 A. I don't know that they do.

2 Q. Does ESP V itself present any plan to
3 eliminate 1.6 billion in legacy nuclear power plant
4 costs from Toledo Edison and CEI?

5 MR. ALEXANDER: Objection.

6 EXAMINER PRICE: Grounds?

7 MR. ALEXANDER: Assumes facts. There's
8 been no evidence that there are, to quote the
9 question, \$1.6 billion in legacy nuclear costs
10 included in the balance sheets presented by
11 Mr. Fanelli, and in the prior question Mr. Fanelli
12 disagreed or stated that he could not agree with that
13 statement.

14 EXAMINER PRICE: Sustained.

15 Q. (By Mr. Hays) Does ESP V in any way
16 address stranded nuclear costs or goodwill?

17 A. I am not aware of any provision in our
18 proposed ESP V plan that specifically addresses
19 goodwill.

20 Q. Or stranded nuclear costs?

21 A. That phrase stranded nuclear costs does
22 not appear anywhere in our filing.

23 Q. Did nuclear costs appear anywhere?

24 A. Can you help me understand what you mean
25 by nuclear costs?

1 Q. I mean costs related to a nuclear power
2 facility, nuclear power plant.

3 A. I don't know that there are.

4 Q. Who would know that in your company?

5 MR. ALEXANDER: Objection.

6 EXAMINER PRICE: Grounds?

7 MR. ALEXANDER: The first question asked
8 what was in the ESP Application. He answered that
9 question. And there is no justification for asking
10 if someone else in the Company knows what is included
11 in the Application.

12 EXAMINER PRICE: Sustained.

13 Q. (By Mr. Hays) Do you prepare the balance
14 sheets for Toledo Edison or CEI?

15 EXAMINER PRICE: Which balance sheets?

16 MR. HAYS: The corporate balance sheet or
17 for the annual report.

18 EXAMINER PRICE: Well, which one? I
19 mean, we have balance sheets attached to his
20 testimony. We have balance sheets to the 10-K. We
21 have balances sheets in their annual report.

22 MR. HAYS: I'll divide them up, your
23 Honor. Thank you.

24 Q. (By Mr. Hays) Did you prepare the balance
25 sheets attached to your testimony for Toledo Edison

1 and CEI?

2 A. They were prepared under my direction.

3 Q. Who did you direct to prepare them?

4 A. I worked primarily with other members of
5 the finance organization in the planning group.

6 Q. So the -- is that the group that actually
7 prepared these?

8 A. The process for the preparation of the
9 projected financials attached to my testimony were to
10 start with the Companies' most current forecast
11 that's developed in the normal course of their
12 business. Our group then worked with the planning
13 group to extend -- extend that forecast out for the
14 full eight-year term of our proposed ESP and to make
15 sure that we built in assumptions for the estimated
16 impacts of the ESP V proposals.

17 MR. HAYS: Could I have my last question
18 read back, please?

19 EXAMINER PRICE: You may.

20 (Record read.)

21 EXAMINER PRICE: Mr. Hays, there is no
22 question pending.

23 MR. HAYS: I'm sorry, your Honor?

24 EXAMINER PRICE: There is no question
25 pending. He answered your question.

1 Q. (By Mr. Hays) The name of your finance
2 department that you were mentioning earlier, what did
3 you call it specifically?

4 A. I was referring generally to what I refer
5 to as the planning group, the long-term planning
6 group.

7 Q. No. You specifically mentioned the word
8 financial. Is there a finance department at
9 FirstEnergy Services?

10 A. Yes, there is a finance group.

11 Q. Did you work with that finance group in
12 preparing the -- these statements, excuse me, the
13 financial statements attached to your testimony?

14 A. Yes. I worked with members of the
15 planning team who are within the finance group.

16 Q. Does the finance group prepare the
17 balance sheets for the federal filings like the 10-K
18 filings or the annual report?

19 A. There is an accounting group within the
20 broader finance organization that is primarily
21 responsible for the annual reporting.

22 Q. Are you involved with that annual
23 reporting in any way?

24 A. I don't have any responsibilities in that
25 reporting, no.

1 Q. In the Application are there any changes
2 to the accounting or fiscal process proposed for
3 ESP V that differ from those in ESP IV?

4 MR. ALEXANDER: Objection.

5 EXAMINER PRICE: Grounds?

6 MR. ALEXANDER: Vague with reference to
7 physical process.

8 EXAMINER PRICE: We'll give Mr. Hays some
9 leeway on this one.

10 You can answer the question if you know.

11 THE WITNESS: Could I please have the
12 question reread?

13 (Record read.)

14 A. I'm not sure, Mr. Hays, what you meant by
15 accounting or fiscal process. There are provisions
16 proposed in our ESP V such as a new vegetation
17 management deferral and rider mechanism and a storm
18 rider recovery mechanism that does have impacts on
19 accounting that are different than what happens today
20 in ESP IV.

21 Q. Are there any changes in the audits or
22 the fiscal oversight, internal fiscal oversight for
23 these procurement -- excuse me, for these riders that
24 are proposed in ESP V that differ from those in ESP
25 IV?

1 MR. ALEXANDER: Objection.

2 EXAMINER PRICE: Grounds?

3 MR. ALEXANDER: Overbroad. There are
4 numerous audits applicable to the riders and there is
5 no way to give a universal answer which applies to
6 all of them.

7 EXAMINER PRICE: Let's have the question
8 back again, please.

9 (Record read.)

10 EXAMINER PRICE: I am not sure what you
11 are asking, Mr. Hays. Can you rephrase? Are you
12 asking if there are changes in the Application or
13 if -- are you asking over the last eight years has
14 FirstEnergy made any changes in their accounting
15 system?

16 MR. HAYS: I was asking none of those,
17 your Honor, so maybe it wasn't a very good question.

18 Q. (By Mr. Hays) Mr. Fanelli, what is your
19 level of corporate authority or authorization?

20 MR. ALEXANDER: Objection.

21 EXAMINER PRICE: Grounds?

22 MR. ALEXANDER: Vague.

23 EXAMINER PRICE: Sustained.

24 Q. (By Mr. Hays) What is your level of
25 corporate spending authority do you have? For

1 example, if you wanted to purchase a piece of
2 equipment for your department that would cost
3 \$50,000, would you have the authority to do that?

4 MR. ALEXANDER: Objection.

5 EXAMINER PRICE: Grounds?

6 MR. ALEXANDER: Relevance.

7 EXAMINER PRICE: Sustained.

8 Q. (By Mr. Hays) In ESP V, the ESP V
9 Application, in your testimony you have a fairly long
10 list of riders. I believe it's at the end. I'm
11 sorry. That would be the Attachment SLF-1 and it
12 says Tariff Rider in the top box and then beneath it
13 is a long list. Do you see that, Mr. Fanelli?

14 A. I have a copy of Attachment SLF-1 in
15 front of me, yes.

16 Q. Did you prepare that?

17 A. Yes.

18 Q. There are a number -- would you agree
19 with me there are a number of these riders that you
20 have not testified about?

21 A. No, I wouldn't agree with that. The way
22 I think about it I am presenting this attachment here
23 that lists all of the riders and that's part of my
24 testimony.

25 Q. Okay. For some of them, you've -- excuse

1 me. For some of them there's not an X -- getting
 2 more complicated. I am just trying -- maybe if I
 3 explain to you what I am trying to understand, you
 4 can help me out a little bit. There's been testimony
 5 about the vegetation management rider and DCR and
 6 other things. There's a fairly large number of these
 7 that you've not talked about while you have been on
 8 the stand. And there has been no discussion of the
 9 price of these other audits or these costs during ESP
 10 IV or their projected costs during ESP V. Is there a
 11 projected cost for each one of these riders
 12 FirstEnergy has or produced?

13 A. Could you please help me understand the
 14 question? I am not sure I follow. I apologize,
 15 Mr. Hays.

16 Q. I'll make it simple. For each rider on
 17 this list, did FirstEnergy look at the cost incurred
 18 during ESP IV and project a cost for ESP V?

19 A. For purposes of the typical bill analysis
 20 that's included in our filing here, we made
 21 assumptions for applicable rider pricing over the
 22 eight-year term in an attempt to try to isolate the
 23 estimated impact of the proposed ESP V provisions.

24 Q. Did you do this rider by rider?

25 A. The typical bill analysis is based on an

1 individual rate and rider, yes.

2 Q. And so you did that. There is a
3 number -- you actually have somewhere a list of each
4 rider, what it used to cost under ESP IV, and what it
5 is projected to cost under ESP V.

6 MR. ALEXANDER: Objection.

7 EXAMINER PRICE: Grounds?

8 MR. ALEXANDER: Misstates facts. The
9 witness did not testify there was a summary of what
10 happened in the ESP IV. The witness testified that
11 this projection was done for ESP V.

12 EXAMINER PRICE: Sustained.

13 Q. (By Mr. Hays) For ESP V, did you put a
14 cost to each one of these riders individually?

15 A. For the typical bill analysis that we did
16 for the ESP V case, we developed typical bill impacts
17 for the whole eight-year term of the plan and that
18 analysis was based on estimates at the individual
19 rider level.

20 Q. Is there a breakout of those individual
21 riders anywhere in the Application filed by
22 FirstEnergy?

23 A. I don't believe the assumptions for the
24 typical bill analysis are identified in the
25 Application. They are identified in supporting

1 testimony.

2 Q. Could you point me to where that is or at
3 least which witness it is?

4 A. Ms. Patel conducted the typical bill
5 analysis in her testimony. I reviewed the results
6 and opined on the reasonableness of those results in
7 my testimony.

8 Q. And where in her testimony would I find a
9 list of each individual rider and its projected
10 costs?

11 MR. ALEXANDER: Objection.

12 EXAMINER PRICE: Grounds?

13 MR. ALEXANDER: Misstates facts. The
14 witness never testified there was a list of each
15 individual rider and discussed repeatedly what the
16 Companies did.

17 EXAMINER PRICE: Sustained.

18 Q. (By Mr. Hays) Can you tell me where in
19 Ms. Patel's testimony she provides the cost of each
20 rider?

21 MR. ALEXANDER: Objection. Same
22 objection.

23 EXAMINER PRICE: He never said that there
24 is a list of costs of each rider. He said she took
25 into account each rider in developing her bill

1 impacts. All of this could have and should have been
2 handled in discovery. There is no need to have
3 everybody sit around here while you are fishing for
4 facts.

5 MR. HAYS: I was not fishing for facts,
6 your Honor, and I would simply say I wanted to know
7 if on the record that's going forward for the
8 appellate court perhaps, but even in this decision,
9 what the justification was for each of the riders and
10 if it was on the record. But I am moving on because
11 that was actually the last question I had on that.

12 Q. (By Mr. Hays) Mr. Fanelli, could you tell
13 me which departments were involved in putting
14 together -- excuse me a second, in putting together
15 the Application for ESP V?

16 A. I'm not sure I could provide you an all
17 inclusive list on the fly here. The individual
18 witnesses who are sponsoring different aspects of the
19 case, of course, their groups would have been
20 responsible for those pieces of the Application.
21 I've also mentioned some of the groups that I worked
22 with in the development of the projected financial
23 statements.

24 Q. And which groups were those again?

25 MR. ALEXANDER: Objection, asked and

1 answered.

2 EXAMINER PRICE: He can answer to the
3 extent that he has in his head an admittedly
4 incomplete list of team -- or teams that worked on
5 this.

6 A. I understood the last question to be
7 specific to the projected financial statements, and
8 for purposes of that I worked with the planning group
9 and our finance department.

10 Q. What other departments did you work with
11 overall on the Application?

12 MR. ALEXANDER: Objection.

13 EXAMINER PRICE: Grounds?

14 MR. ALEXANDER: Relevance.

15 EXAMINER PRICE: We'll give him some
16 leeway, and he will tie it together into something
17 relevant soon.

18 A. Some of the groups that would have been
19 included are those where the witnesses work so the
20 Rates and Regulatory Affairs Group, the Regulated
21 Commodity Sourcing Group, the Energy Efficiency
22 Group, the Engineering Group, the Vegetation
23 Management Group, and the Settlements Group are all
24 represented by the witnesses that we have in this
25 case, so those groups would have been included in

1 preparation. I can't say that's an exhaustive list
2 as I sit here at the moment.

3 Q. Did anyone from the Corporate Compliance
4 or Ethics Department work with you on this
5 Application?

6 A. I don't recall.

7 MR. HAYS: Your Honor, I have just a few
8 more follow-up questions unrelated to what we have
9 been talking about. I will try to be brief.

10 Q. (By Mr. Hays) Do you recall, Mr. Fanelli,
11 you had some -- some dialogue with OCC, Mr. Finnigan,
12 and I believe you indicated that in addition to the
13 projected costs for ESP V, that on top of that, there
14 is also got -- will be a cost for Grid Mod II when --
15 when and if approved; is that correct?

16 A. If I'm remembering the discussion you are
17 referring to correctly, I think what I tried to
18 explain was that the estimated impacts of Grid Mod II
19 are not reflected in the estimates that are in my
20 testimony because those matters are being handled in
21 a separate case.

22 Q. Okay. That's what I understood you to
23 say too. Looking at a customer's bill, does --
24 FirstEnergy also built transmission lines for
25 customers? Isn't that part of its services?

1 EXAMINER PRICE: When you say
2 FirstEnergy, are you referring to the three operating
3 utilities?

4 MR. HAYS: Yeah, to the Companies. Your
5 Honor, I am going to see if I can shorten this up.

6 Q. (By Mr. Hays) In your -- in your
7 forecasts of costs for customers, did you include any
8 costs for transmission lines that would be built by
9 ATSI?

10 A. Within the projected financial statements
11 that I sponsor, there would be estimates for retail
12 revenues and expenses incurred by the Ohio Operating
13 Companies associated with the provision of
14 transmission service.

15 MR. HAYS: Do those -- tell you what,
16 your Honor, I'm sorry here. I get so horse I can
17 hardly talk.

18 EXAMINER PRICE: Let's go off the record.
19 (Discussion off the record.)

20 EXAMINER PRICE: Let's go back on the
21 record.

22 MR. HAYS: No more questions. Thank you
23 very much, Mr. Fanelli.

24 THE WITNESS: Thank you, Mr. Hays.

25 EXAMINER PRICE: Thank you.

1 Staff?

2 MS. BOTSCHNER-O'BRIEN: Thank you, your
3 Honor.

4 EXAMINER PRICE: Before you proceed, I
5 just want to be sure, Mr. Fanelli, you were asked a
6 question about Toledo Edison's credit rating and
7 other sorted questions related to their credit
8 situation. Can you clarify, is there any rider in
9 the ESP Application that is intended to support the
10 credit rating of Toledo Edison or the other two
11 companies?

12 THE WITNESS: No, there is no mechanism
13 with that stated purpose. The mechanisms are
14 proposed to recover the cost to provide distribution
15 service.

16 EXAMINER PRICE: The cost-based riders.

17 THE WITNESS: Correct, they are all cost
18 based.

19 EXAMINER PRICE: Thank you.

20 MS. BOTSCHNER-O'BRIEN: Thank you, your
21 Honor.

22 - - -

23 CROSS-EXAMINATION

24 By Ms. Botschner-O'Brien:

25 Q. Good morning. My name is Amy

1 Botschner-O'Brien, and I am representing Staff.

2 A. Good morning.

3 Q. Good morning. You state on page 8,
4 beginning at line 6 of your testimony, that the
5 Companies are committing 52 million in shareholder
6 funds over the term of the ESP for various programs,
7 correct?

8 A. We're committing to spend \$52 million
9 over the eight-year term without recovering those
10 costs from customers.

11 Q. Okay. So the money is not coming
12 directly from FirstEnergy Corp.?

13 A. These commitments would be spent by the
14 Ohio Companies and not recovered from our -- from
15 customers.

16 Q. Okay. So you are not seeking re -- cost
17 recovery from customers regarding these programs.

18 A. For the 52 million, that's correct.

19 Q. Okay. Will any of the 52 million be
20 spent on capital investments?

21 A. Under the current plans, no. In our
22 original Application there was up to \$4 million that
23 was identified to help offset the cost of a capital
24 investment if that project were accepted by the DOE,
25 but as we talked about yesterday, that project was

1 not accepted so that 4 million portion of this
2 commitment we are moving into the electric vehicle
3 support, so we don't anticipate capital investment
4 with any of the funds at this time.

5 Q. You say at this time. Would it be the
6 Company's intent to seek cost recovery for capital
7 investments in a future case should those capital
8 investments be made?

9 A. We are not seeking recovery of any of the
10 \$52 million.

11 Q. Okay. Thank you. Moving on to page 7 of
12 your testimony at line 15, you reference certain
13 tariffs that the Companies are proposing to continue
14 with no changes, correct?

15 A. Yes. This is a reference to the
16 Attachment 1 to my testimony.

17 Q. Okay. And perfect. Attachment SLF-1 to
18 your testimony identifies those riders, correct?

19 A. Yes.

20 Q. Yes. Looking at SLF-1, line 12, line 12
21 appears to identify the Delivery Capital Recovery
22 Rider, also known as Rider DCR, correct?

23 A. Yes, that's right.

24 Q. Okay. And you identified this one rider
25 that the Companies are proposing to continue without

1 modification, correct?

2 A. Yes.

3 Q. Okay. But the Companies are, in fact,
4 recommending an increase to the required DCR caps,
5 correct?

6 A. We are proposing to increase the DCR caps
7 annually over the term. That would not have an
8 impact on the DCR tariff sheet.

9 Q. So when you say you are proposing Rider
10 DCR to continue without modification, you mean that
11 the -- it's a change -- what do you mean? Just a
12 change to the cap? Any other changes? What do you
13 mean without modification? So when you refer to
14 without modification, are you -- what do you really
15 mean?

16 A. In this context was a reference more to
17 the tariff sheet itself. We're proposing to continue
18 Rider DCR under specific terms and conditions as
19 described in -- in the testimony including a change
20 to the caps as you previously mentioned. But as far
21 as the mechanism itself and the tariff sheet, we
22 aren't proposing any changes to that. It's more the
23 calculation of how the caps will be set for each year
24 of the ESP term.

25 Q. Okay. Thank you. On page 6 of your

1 testimony, line 13 through 16.

2 A. I see your reference.

3 Q. Okay. You state that the estimated
4 monthly impacts for a residential customer using 750
5 kilowatt-hours are 2.2 percent in the first year of
6 ESP V and an average of .5 percent over the ESP term,
7 correct?

8 A. For a standard nonshopping residential
9 customer, yes, and that 0.5 is an annual year over
10 year average for the eight-year term.

11 Q. Thank you. Do those bill impacts include
12 any impacts from riders that you have identified as
13 continue without change other than Rider DCR?

14 A. Yes.

15 Q. Could you elaborate?

16 MR. ALEXANDER: Objection.

17 EXAMINER PRICE: Grounds?

18 MR. ALEXANDER: The witness fully
19 answered the question.

20 EXAMINER PRICE: Sustained.

21 Q. (By Ms. Botschner-O'Brien) What are the
22 impacts from other riders that you have identified as
23 continuing without change?

24 A. I am not sure I could provide you an
25 exhaustive list without having the details in front

1 of me. As an example, on Attachment SLF-1, line 2
2 refers to Rider AER which is the rider we have in
3 place to recover the costs of RECs that are purchased
4 under state mandates. The Companies are aware that
5 those mandates are ending at some point in the future
6 during the term of ESP -- proposed term of ESP V, and
7 so we accounted for that in the estimated bill
8 impacts. However, there is no proposed change to the
9 Rider AER tariff sheet.

10 EXAMINER PRICE: Just to be clear for the
11 record then, where you have a tariff that has an
12 adjustable rate mechanism, you included that under no
13 change even though there will be adjustments maybe
14 quarterly, maybe annually to the actual rate.

15 THE WITNESS: Correct. The column
16 heading -- I'm sorry if that was confusing, wasn't
17 intend to be. The prices are proposed to stay flat.
18 It was more the tariff sheet language and the
19 mechanics of the rider, we weren't proposing any
20 changes to those, and they would just continue
21 operating as they are today under the existing tariff
22 language. Those are things we marked as continue, no
23 changes.

24 EXAMINER PRICE: Thank you.

25 THE WITNESS: You're welcome.

1 Q. (By Ms. Botschner-O'Brien) Mr. Fanelli,
2 you identified the AER. Can you identify any of the
3 other riders that will have bill impacts over the
4 term of the ESP? You spoke about the AER. What
5 other riders would there be?

6 MR. ALEXANDER: Objection.

7 EXAMINER PRICE: Grounds?

8 MR. ALEXANDER: Vague. Are we -- are we
9 asking what other riders will have changes in rate
10 over the term of the ESP or what riders are changing
11 as a result of the ESP?

12 MS. BOTSCHNER-O'BRIEN: The first.

13 MR. ALEXANDER: Thank you for the
14 clarification.

15 MS. BOTSCHNER-O'BRIEN: You're welcome.

16 EXAMINER PRICE: You can answer if you
17 know.

18 A. And I'm thinking about your question in
19 the context of the typical bill analysis that was
20 referenced in my testimony before. And in that
21 context another example of a rate change under one of
22 these riders that we incorporated into the typical
23 bill impact analysis is line 8, the Consumer Rate
24 Credit Rider. That's a rider where there is a known
25 schedule of level of credit that's provided and that

1 amount of credit changes during the term of ESP V, so
 2 we are not proposing any changes to that tariff sheet
 3 or the way that rider works as part of our proposal.
 4 So that's why it is marked as continue, no changes.
 5 However, it's a known pricing change that will impact
 6 bills over the term of ESP V. So we did incorporate
 7 that estimated impact into the typical bill analysis.

8 Q. Thank you. Anything else?

9 A. Two other examples, line 35, the Legacy
 10 Generation Resource Rider, and line 52, the Solar
 11 Generation Fund Rider, are riders that we are
 12 required to have. We are not proposing any changes
 13 to those in the ESP V. However, our understanding is
 14 those riders are set to expire at a certain point
 15 during the eight-year term of our proposed ESP V, and
 16 so we incorporated that known pricing change into the
 17 assumptions of our typical bill analysis.

18 Q. Anything else?

19 A. Another example that comes to mind is
 20 line 16 which is our Rider DSE, that's a rider where
 21 we recover from other customers credits provided to
 22 interruptible customers participating in our Rider
 23 ELR tariff. So we are not proposing any changes to
 24 the Rider DSE tariff sheet as part of ESP V.
 25 However, we are proposing changes to the level of ELR

1 credits which in turn would impact and lower the
2 amount of charges under Rider DSE. And so we've
3 attempted to incorporate those pricing impacts into
4 the typical bill analysis.

5 Q. Anything else?

6 A. There may be others. Those are the only
7 ones that come to mind at this time.

8 Q. Okay. Thank you. Turning to your
9 Attachment SLF-3, you attached certain financial
10 projections to your testimony as Attachment SLF-3,
11 correct?

12 A. Yes, projected income statements, balance
13 sheets, and sources and uses of cash.

14 Q. And these projections assume that the
15 Rider DCR cap will increase by 21 million per year
16 under ESP V, correct? And I can direct you to page
17 11, line 14, of your testimony where you say this.

18 A. Thank you for the reference. Yes, the
19 assumption Rider DCR revenue increases by \$21 million
20 per year over the term of the ESP.

21 Q. Let's look at page 1 of Attachment SLF-3
22 which is the projected income statement for Ohio
23 Edison.

24 A. I'm on page 1.

25 Q. Assume that the DCR cap we only increase

1 by 15 million instead of 21 million. Could you walk
2 me through which numbers for '24 and '25 would be
3 different as a result of that change?

4 A. May I ask to clarify? Did you say 2024
5 and 2025? Is that --

6 Q. 2024 and 2025. Which numbers for 2024
7 and 2025 would be different as a result of that
8 change for assuming that the DCR cap would only
9 increase by 15 million instead of 21 million?

10 A. Es --

11 Q. Just -- I'm sorry. Go ahead. I didn't
12 mean to interrupt you.

13 A. I'm sorry to speak over you as well.
14 Estimated Rider DCR revenue amounts would be included
15 in line 2, Sales of Electricity. So if there was
16 going to be an adjustment to that line, line 2 would
17 change and there would also be an impact to line 14,
18 Income Taxes.

19 Q. And a corresponding change to line 15.

20 EXAMINER PRICE: It is going to change
21 more than that, won't it? It will change line 4 --

22 THE WITNESS: Yes.

23 EXAMINER PRICE: -- which is part of the
24 settlement. And that will change line 10 and that
25 will change line 12 and line 15.

1 THE WITNESS: 14 and 15, yes.

2 Q. (By Ms. Botschner-O'Brien) And would
3 these line items increase, decrease, or what would
4 you expect for all of these line items that you and
5 the Attorney Examiner have identified?

6 A. If the hypothetical is an assumption that
7 DCR Rider would be lower than what we assumed here,
8 then line 2 would go down, line 4 would go down, line
9 10 would go down, line 12 would go down, line 14
10 would go down, and line 15 would go down.

11 Q. Can you confirm whether there would be
12 any impact on lines 5 through 9 of this statement?

13 A. I understood the prior question to be
14 premised on an assumption that only the revenue
15 changed on line 2. I think the evaluation of lines 5
16 through 9 would need to be made in a broader context
17 as to what the overall set of assumptions are.

18 Q. Are any of the line items on page 1 that
19 we are looking at of SLF-3 impacted by the Companies'
20 proposal to provide shareholder funds for certain
21 projects under ESP V? And if so, which ones?

22 A. No, I don't believe so.

23 Q. Okay. We are still referring to SLF-3,
24 this time page 10.

25 A. I'm on page 10. Thanks.

1 Q. Thank you. Looking at Rider SCR
2 referenced -- that's referenced on lines 41 through
3 52.

4 A. I see that reference.

5 Q. Okay. Rider SCR includes two components,
6 amortization of the deferral balance and a
7 going-forward component for storm costs incurred
8 during ESP V, correct?

9 A. Yes.

10 Q. This is a workpaper and this workpaper
11 appears to show the five-year amortization of the
12 deferral balance from 2024 to 2029, correct?

13 A. The amounts on these lines that you
14 reference are the estimated impact of the
15 amortization and recovery of that deferral balance.

16 Q. It does not appear to include any storm
17 costs incurred in the future, correct?

18 A. For purposes of these projected
19 financials, the assumption was there were no
20 incremental storm costs, so actual storm costs would
21 be equal to the amounts recovered in base rates.

22 MS. BOTSCHNER-O'BRIEN: Thank you.
23 That's all I have for this witness.

24 THE WITNESS: Thank you.

25 EXAMINER PRICE: Okay. Redirect?

1 MR. ALEXANDER: May I have just one
2 moment, your Honor?

3 EXAMINER PRICE: You may. Let's go off
4 the record.

5 (Recess taken.)

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

8 Mr. Alexander.

9 MR. ALEXANDER: No redirect, your Honor.

10 EXAMINER PRICE: Thank you, Mr. Fanelli.
11 You are excused.

12 THE WITNESS: Thank you.

13 EXAMINER PRICE: Let's go off the record.

14 (Discussion off the record.)

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

17 Companies can call their next witness.

18 MR. ALEXANDER: Your Honor, the Companies
19 move for the admission of Companies' Exhibits 1 and
20 2.

21 EXAMINER PRICE: Any objection to the
22 admission of Companies' Exhibits 1 and 2?

23 Seeing none, they will be admitted.

24 (EXHIBITS ADMITTED INTO EVIDENCE.)

25 EXAMINER PRICE: Ms. Bojko.

1 MS. BOJKO: I'm sorry?

2 EXAMINER PRICE: Are you going to move
3 admission?

4 MS. BOJKO: Oh, I apologize. I move the
5 admission of OMAEG Exhibit 3.

6 MR. ALEXANDER: No objection.

7 EXAMINER PRICE: It will be admitted.

8 (EXHIBIT ADMITTED INTO EVIDENCE.)

9 EXAMINER PRICE: Mr. Lang.

10 MR. LANG: Your Honor, NRG Exhibit 2 and
11 3. I note that the Companies stipulated earlier to
12 No. 3.

13 MR. ALEXANDER: No objection to either.

14 EXAMINER PRICE: No objections. Seeing
15 none, they will be admitted.

16 (EXHIBITS ADMITTED INTO EVIDENCE.)

17 EXAMINER PRICE: Mr. Stinson. I will
18 come back around to you. Is Mr. Stinson here?

19 MR. ALEXANDER: Your Honor, the exhibit
20 Mr. Stinson used was actually from Mr. Lee's
21 testimony.

22 EXAMINER PRICE: I didn't know if he was
23 going to ask for it to be admitted separately. When
24 he comes back, he can.

25 Mr. Finnigan.

1 MR. FINNIGAN: Your Honor, at this time
2 we would like to move for administrative notice of a
3 couple of items for which ruling was deferred. One
4 was the annual report for FirstEnergy for the year
5 2022 which was marked for identification as OCC
6 Exhibit 6.

7 EXAMINER PRICE: Any objection to taking
8 administrative notice of OCC Exhibit 6?

9 MR. ALEXANDER: Yes, your Honor. There
10 are requirements for administrative notice in the
11 evidentiary rules, none of which are met here. This
12 is not a fact generally known in the jurisdiction.
13 As such, it does not meet the evidentiary standards
14 for administrative notice.

15 MR. FINNIGAN: Your Honor, may I respond?

16 EXAMINER PRICE: You may.

17 MR. FINNIGAN: Your Honor, administrative
18 notice or judicial notice is covered by Rule 201 of
19 the Ohio Rules of Evidence. And Subsection B speaks
20 to the kind of facts for which administrative notice
21 may be taken. There are two different kinds of
22 facts. Mr. Alexander addressed one kind, fact
23 generally known within the territorial jurisdiction
24 of the trial court. But I'm relying on the other
25 subsection of sub -- or the other part of Subsection

1 B and that is the facts that are capable of accurate
2 and ready determination by resort to sources whose
3 accuracy cannot reasonably be questioned.

4 Now, the 10-K is a source whose accuracy
5 cannot reasonably be questioned. The reason for that
6 is because there's a requirement by law that the
7 information contained in the annual report be
8 reported accurately. And we can see that from page 1
9 of the 10-K where it says this report is filed under
10 the Section 134 of the Securities and Exchange -- and
11 Exchange Act. So there is a legal requirement to
12 report it accurately.

13 Also the document is signed by I believe
14 Mr. Lisowski or Mr. Somerhalder, one of the top
15 executives of the company, and it's signed under
16 penalties of perjury and violation of those
17 securities laws if there is any information reported
18 inaccurately. That's another indicator that the
19 information cannot reasonably -- can be reasonably
20 relied on and whose accuracy cannot reasonably be
21 questioned.

22 Also as I understand it, there is a
23 requirement that utilities file their annual reports
24 with the Commission, the reason being because the
25 Commission regularly relies on the accuracy of that

1 information.

2 There's also a requirement that companies
3 coming in for a rate case file these annual reports
4 as part of their standard filing requirements.
5 Again, because the information is capable -- is known
6 to be accurate and can be verified by ready
7 determination and cannot reasonably be questioned.

8 So for those reasons, the information in
9 these 10-Ks is widely relied on as being accurate and
10 cannot reasonably be questioned, and the Commission
11 commonly takes administrative notice of these kinds
12 of SEC filings.

13 So for those reasons, your Honor, I would
14 submit that this is a matter for which the Commission
15 can take administrative notice under Rule 201(B)(2).

16 EXAMINER PRICE: Mr. Alexander.

17 MR. ALEXANDER: Thank you, your Honor.
18 The reference that Mr. Finnigan gave to the second
19 subsection of Rule 201, the case law, and
20 unfortunately I don't have the cases in front of me
21 to cite it, but the case law references those as
22 things like market indices that are regularly
23 published. It has to my knowledge never been
24 extended so far as any document signed by a party
25 which is the standard espoused by OCC here. Under

OCC's standard literally any document issued by a party or by anyone would be the standard for judicial notice and that's simply not the law. And so I don't think they have met the legal standard here.

EXAMINER PRICE: At this time we are going to deny administrative notice on two grounds. First, I agree with Mr. Alexander that this is not the typical use of the subsection that Mr. Finnigan cites which would be more like stock indexes and things like that.

Second, I just don't see the relevance to this proceeding. The information in the 10-K has no bearing on the ESP-MRO test. It doesn't -- he was not able to elicit any testimony from Mr. Fanelli regarding the impact of the 10-K on the Companies' Application. Therefore, we will deny taking administrative notice.

MR. FINNIGAN: Your Honor, may I speak to that? Mr. Alexander did not object to the 10-K on grounds of relevance, but you did raise that so let me address that, if I may.

EXAMINER PRICE: No. I made my ruling. It's -- whether he raised it or not, I made my ruling.

MR. FINNIGAN: Okay. I will make a

1 proffer at this time. At this time I would like to
2 proffer that the Form 10-K be admitted into evidence.

3 EXAMINER PRICE: Your proffer is noted.
4 Thank you. You can brief the relevancy issue.

5 MR. FINNIGAN: Yes, thank you, your
6 Honor. At this time I would like to proffer the Form
7 10-K into the evidentiary record of this case
8 through --

9 EXAMINER PRICE: It's noted.

10 MR. FINNIGAN: Your Honor, I haven't
11 finished my proffering.

12 EXAMINER PRICE: You are proffering the
13 10-K. I don't need anything other than that.

14 MR. FINNIGAN: Well, I am allowed to
15 explain the reasons why I am making the proffer.

16 EXAMINER PRICE: You can brief -- I said
17 you can brief.

18 MR. FINNIGAN: I shall be brief.

19 EXAMINER PRICE: No. You can brief your
20 proffer in your initial post-hearing brief. You
21 don't need to explain your rationale now. But feel
22 free if it makes you feel better.

23 MR. FINNIGAN: Your Honor, I just have
24 one comment. So under Rule 103 of the Rules of
25 Evidence, with regard to the need to make a proffer

1 and really a duty to make a proffer, Rule 103 says in
2 part A the -- under the effect of an erroneous
3 ruling, it says that error may not be predicated on a
4 ruling which admits or excludes evidence unless a
5 substantial right of the party is affected and there
6 is an objection and offer of proof. And the offer of
7 proof is under part 2 of the rule.

8 It says in the case the ruling is one
9 excluding evidence, the substance of the evidence was
10 made known to the court by offer or was apparent from
11 the context in which the questions were answered. So
12 I would submit that it's not apparent from the
13 context in which the questions were answered as to
14 why this document is relevant, and I have a duty to
15 explain what that is in my proffer, if I am allowed
16 to do that.

17 EXAMINER PRICE: I said you could go
18 ahead. I said you could go ahead. First of all, No.
19 1, the Rules of Evidence aren't strictly applied in
20 this hearing, and my argument would be that the
21 Commission procedural rules allow you to raise in
22 your brief any ruling of the Bench that you object to
23 which is why I said you can deal with this in your
24 brief. But if you feel like you have a duty to make
25 your proffer in detail, please proceed.

1 MR. FINNIGAN: Thank you, your Honor. I
2 will be brief. And I'll simply state that if it's
3 not apparent from the nature of the document itself,
4 there are several items within that document that
5 relate to this proceeding.

6 And I will just give you one as an
7 example. One is the adjustment of the plant in
8 service balances in the rate base for Rider DCR that
9 resulted from the FERC audit. And that's addressed
10 in the 10-K. And the nature of the FERC audit is
11 explained, and Mr. Fanelli did address this in his
12 testimony because I asked him a couple of questions
13 about the Blue Ridge audit in Case No. 22-892. And
14 he did acknowledge that there was a -- an adjustment
15 of over \$100 million in the plant in service balance
16 as a result of the FERC audit. And that plant in
17 service balance was the rate base for Rider DCR.

18 And the Company proposes in ESP V that
19 Rider DCR be continued with the same plant in service
20 amounts and this is one of the things that the Form
21 10-K speaks to is the nature of that FERC audit and
22 what happened and so on and so forth.

23 Also, I would submit it's relevant in
24 that it shows a lack of accuracy in the Companies'
25 accounting practices and allocation practices for

1 that large of an adjustment to be made as a result of
2 the FERC audit, and it calls into question whether
3 the Companies should be allowed to simply come in
4 with periodic rider updates where there is no
5 thorough review of the Companies' accounts as would
6 happen in a base distribution rate case.

7 So for that reason, I feel like the Form
8 10-K is relevant.

9 EXAMINER PRICE: I'll allow Mr. Alexander
10 to respond as I allowed you to make your proffer.

11 MR. ALEXANDER: Your Honor, that
12 statement included, and I will call it a statement,
13 counsel's view on several things which is beyond the
14 scope of an appropriate proffer. The proffer is
15 intended to describe the evidence, not counsel's view
16 on the evidence. And so I am not going to respond to
17 each of those points other than to say the Companies
18 disagree and do not believe that they are accurate.

19 EXAMINER PRICE: Thank you.

20 Any objection to us -- to the Commission
21 taking administrative notice of OCC Exhibit 7?

22 MR. ALEXANDER: Yes, your Honor. For the
23 same reasons, the evidentiary standard for
24 administrative notice has not been met that I
25 discussed previously. But this document I also want

1 to discuss the relevance because documents related to
2 this topic were produced in discovery. They were
3 available to OCC to include in their witnesses'
4 testimony had they so chosen. They chose not to do
5 that and are now seeking to bring them in through a
6 witness who is not an expert in these areas who
7 provided no testimony regarding the substance of
8 those comments.

9 And so because of that, we really have
10 two problems. One, the document was never
11 authenticated. Second, we had a witness who didn't
12 provide any substantive testimony regarding the
13 document. And so for those two reasons the Companies
14 object.

15 EXAMINER PRICE: Mr. Finnigan.

16 MR. FINNIGAN: Yes. I beg to differ with
17 Mr. Alexander's characterization that there was no
18 testimony on the subject of the FERC audit. I
19 directed Mr. Fanelli's attention to the Blue Ridge
20 audit and the section of the Blue Ridge audit which
21 he talks about the FERC audit report. And
22 Mr. Fanelli acknowledged in his testimony about the
23 FERC audit report that, yes, it did cause the Company
24 to readjust its rate base or plant in service
25 balances under Rider DCR in the amount of over

1 \$100 million.

2 So contrary to what Mr. Alexander just
3 said, there was testimony by Mr. Fanelli about the
4 FERC audit report. So I differ with his
5 characterization of that. Further, your Honor, I
6 submit that the FERC audit report meets the indicia
7 or meets the standard for administrative notice for
8 the same reason that the Form 10-K would.

9 Now, we did file a motion for a subpoena
10 for Mr. Jason Lisowski, and he is the chief
11 administrative -- or the Chief Accounting Officer for
12 the company, for the holding company. And I would
13 submit that if our motion for subpoena is granted,
14 then Mr. Lisowski would be an excellent witness who
15 could answer questions about the FERC audit report
16 because he was the one who responded to it on behalf
17 of the Company.

18 However, since there has not been a
19 ruling on our motion for subpoena at this time, we
20 are compelled to try to get this into evidence
21 through administrative notice or through other
22 witnesses such as Mr. Fanelli who did talk about the
23 FERC audit report in his testimony.

24 So for those reasons, we would submit
25 that the FERC audit report is a proper subject for

1 administrative notice in this proceeding, and it is
 2 highly relevant. Again, it goes to this whole point
 3 of an MRO versus an ESP. If the Company is proposing
 4 here to stay out of a distribution rate case for
 5 another eight years after this one in May of 2024 is
 6 processed, then there will be a long time when --

7 EXAMINER PRICE: I don't think the
 8 Company has made that proposal.

9 MR. FINNIGAN: I'm sorry?

10 EXAMINER PRICE: I don't recall the
 11 Company witnesses making that proposal.

12 MR. ALEXANDER: In fact, the opposite,
 13 your Honor. Mr. Fanelli's testimony specifically
 14 says the Company reserves the right to come back in
 15 during the term of the ESP after the 2024 rate case.

16 MR. FINNIGAN: Yeah. My point, your
 17 Honor, there is no requirement to come in for base
 18 rate.

19 MS. BOJKO: Yes. Said may.

20 MR. FINNIGAN: That's the point I am
 21 making here. So if ESP V is approved under the ESP
 22 versus MRO test, then the Company would have no
 23 requirement to come in for a base rate case for
 24 another eight years after the May 2024 case is
 25 processed. So if that occurs, then all of the

1 consumers and so forth would have to rely on the
2 accuracy --

3 EXAMINER PRICE: You are confusing me in
4 one sense, Mr. Finnigan, and that is --

5 MR. FINNIGAN: I'm sorry. I couldn't --
6 could you -- I am having a little trouble hearing
7 you.

8 EXAMINER PRICE: I'm sorry. That's my
9 fault. You are confusing me in one sense,
10 Mr. Finnigan, and that is if there are accounting
11 issues, why are they more likely to be discovered in
12 a base rate case versus an annual audit? If there is
13 accounting problems, there is accounting problems. I
14 don't know why you think that it's -- the base rate
15 case is more likely to discover problems that you
16 claim may be eight years old as opposed to annual
17 audit that's done the next year.

18 MR. FINNIGAN: Your Honor, I think -- in
19 our view at least, there is a more thorough review of
20 the Companies' filings when there is a base rate
21 case.

22 EXAMINER PRICE: Have you ever objected
23 to a Blue Ridge audit in the history of -- we have
24 been doing these now for at least 10 years. Have you
25 ever objected to a Blue Ridge audit as being

1 inadequate or lacking thoroughness?

2 MR. FINNIGAN: We are going to in a case
3 that is stayed now before the Commission.

4 EXAMINER PRICE: Well, that case is
5 stayed. And I don't -- well, I am not going to agree
6 with that characterization but whatever.

7 Please finish up. I interrupted you.
8 Please finish your argument. I interrupted you.

9 MR. FINNIGAN: Well, your Honor, I would
10 just incorporate the arguments I made for the
11 administrative notice of the Form 10-K as well.

12 MR. ALEXANDER: And may I respond very
13 briefly?

14 EXAMINER PRICE: Briefly.

15 MR. ALEXANDER: With regard to the
16 argument this was included in the witness's
17 testimony, that's not quite accurate. The witness
18 testified that an adjustment was made in response to
19 the Blue Ridge but offered no testimony with regard
20 to the FERC audit itself or its holdings.

21 And that's important here because this is
22 not an accounting witness and if there is a
23 difference of interpretation with regard to
24 capitalization requirements, that's fine. This
25 witness was not able to offer any testimony regarding

1 what the changes were or why that accounting
2 adjustment was required.

3 And then finally, and this is perhaps the
4 most important thing, again, they are seeking
5 administrative notice because OCC did not include
6 this information in their own testimony or offer
7 their own witness to opine directly on these issues.
8 Had they done so, we would not have to have this
9 fight with the witness. This is completely
10 unrelated. So for those reasons we object.

11 EXAMINER PRICE: Okay. We are going to
12 deny administrative notice at this time based on
13 relevance. I don't see how, as I expressed to
14 Mr. Finnigan, even assuming for the sake of argument
15 there is accounting irregularities, how it impacts
16 the ESP versus MRO test. It seems to the Bench more
17 likely that you would discover an accounting
18 irregularity in an annual audit than in a base rate
19 investigation several years after the fact.

20 In addition, the witness was totally
21 unable to authenticate or discuss anything in the
22 FERC audit.

23 And, finally, you raised the issue of the
24 Blue Ridge \$100 million disallowance and that will be
25 addressed in that DCR case when that case -- as that

1 case moves forward. So there will be an opportunity
2 for you to raise that issue at that time.

3 Thank you.

4 MR. FINNIGAN: Thank you, your Honor.

5 EXAMINER PRICE: Did you want to proffer
6 that? Do you want to proffer the FERC?

7 MR. FINNIGAN: Yes. Thank you. I will
8 make the same proffer, and I will incorporate the
9 same arguments I made with respect to the Form 10-K.

10 EXAMINER PRICE: Thank you.

11 MR. FINNIGAN: And, your Honor, I have
12 one more proffer and that is the Blue Ridge audit
13 report in Case No. 22-892. Mr. Fanelli addressed
14 that on cross-examination in his testimony with
15 respect to that \$108 million adjustment in the
16 balance of the Rider DCR account.

17 EXAMINER PRICE: Mr. Alexander.

18 MR. ALEXANDER: A proffer?

19 MR. FINNIGAN: I am moving for
20 administrative notice.

21 EXAMINER PRICE: Not a proffer. He is
22 moving for administrative notice of the Blue Ridge
23 audit report.

24 MR. ALEXANDER: Same objection, your
25 Honor.

1 EXAMINER PRICE: In -- as to this
2 document, Mr. Fanelli was able to address that he had
3 familiarity with the Blue Ridge document. Most of
4 the issues raised by that will be addressed in this
5 case, but we will go ahead and take administrative
6 notice of that document.

7 MR. FINNIGAN: Thank you, your Honor.

8 EXAMINER PRICE: Can you recite for the
9 record -- I didn't catch the case number.

10 MR. FINNIGAN: Your Honor, that Case No.
11 is 22-892-EL-RDR and the date of the audit report is
12 May 23 of 2023.

13 EXAMINER PRICE: Thank you.

14 MR. FINNIGAN: And, your Honor, I ask
15 that that document be marked for identification as
16 OCC Exhibit 8. I don't believe it was marked at the
17 time I asked Mr. Fanelli questions about the
18 document.

19 EXAMINER PRICE: It was not, and if you
20 can provide a copy of the document to the court
21 reporter.

22 MR. FINNIGAN: Yes, your Honor. I will
23 do that.

24 MR. ALEXANDER: Hold on. We are now
25 marking an administratively noticed document? That

1 came out argumentative. I did not intend it to be.

2 EXAMINER PRICE: You know, it depends on
3 the flow, Mr. Alexander. Sometimes people in order
4 to make sure the court can keep straight offers them
5 and asks them to be marked, and sometimes, as the
6 Bench did when we did it on our own motion, we
7 didn't. So I wouldn't say there is a consistent
8 practice.

9 MR. ALEXANDER: Okay. So we will refer
10 to that as OCC Exhibit 8, your Honor?

11 EXAMINER PRICE: Yeah. Yes.

12 (EXHIBIT MARKED FOR IDENTIFICATION.)

13 EXAMINER PRICE: Yes.

14 MR. FINNIGAN: Thank you, your Honor.

15 EXAMINER PRICE: Thank you.

16 Okay. At this time you may call your
17 next witness.

18 MR. KEANEY: Thank you, your Honor. The
19 Companies call witness Mr. Brandon McMillen.

20 EXAMINER ADDISON: Welcome, Mr. McMillen.
21 Please raise your right hand.

22 (Witness sworn.)

23 EXAMINER ADDISON: Thank you. Please be
24 seated. If you could turn on your microphone as
25 well.

1 You may approach.

2 MR. KEANEY: Your Honors, the Companies
3 ask the testimony of Mr. McMillen be marked as
4 Companies' Exhibit 3.

5 EXAMINER ADDISON: It will be so marked.

6 (EXHIBIT MARKED FOR IDENTIFICATION.)

7 - - -

8 BRANDON S. McMILLEN

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

11 DIRECT EXAMINATION

12 By Mr. Keaney:

13 Q. Good morning, Mr. McMillen. Could you
14 please state your name and business record --
15 business address for the record?

16 A. Yes. Good morning. My name is Brandon
17 McMillen. My business address is 76 South Main
18 Street, Akron, Ohio 44308.

19 Q. Do you see the document before you that's
20 been marked for identification as Companies'
21 Exhibit 3?

22 A. Yes.

23 Q. Do you recognize this document?

24 A. I do.

25 Q. What is it?

1 A. It is my direct testimony in this case.

2 Q. Was your testimony in this case prepared
3 by you or under your direction?

4 A. Yes.

5 Q. Do you have any corrections to make to
6 your testimony?

7 A. I do. If you would turn to page 17. One
8 second. I am having trouble finding the line.

9 EXAMINER ADDISON: Take your time.

10 A. Sorry. Found it. It's on line 19. The
11 sentence that continues from line 18 to 19, ends with
12 the phrase "to determine." That should be deleted.

13 Q. Are there any other corrections to your
14 testimony?

15 A. Yes.

16 MR. HAYS: Excuse me, your Honor. I
17 couldn't hear what he said.

18 THE WITNESS: Oh, sorry. So I am on line
19 19 at page 17. The sentence that continues from line
20 18, ends with "to determine" on line 19. That, "to
21 determine" should be deleted.

22 A. The next correction is on Exhibit -- or
23 Attachment, sorry, BSM-3.

24 Q. And what would that change be?

25 A. Yeah. In the section under Rate, it

1 starts with "Rider VMC." That should be Rider EEC."
 2 And that would be the same for each of the companies
 3 in Exhibit -- or Attachment BSM-3.

4 Q. Are there any other modifications to your
 5 testimony?

6 A. Yes. Going to Attachment BSM-4, on line
 7 3 under the Column TE for Toledo Edison --

8 EXAMINER PRICE: Which page?

9 THE WITNESS: Sorry, page 1. Page 1 of
 10 Attachment BSM-4.

11 A. Line 3 under the Column TE for Toledo
 12 Edison, the value there says "7,550,000." That value
 13 should be "6,560,000," the same value that is on page
 14 4.

15 Then also for line 4 under the same
 16 column for Toledo Edison, the value "4,000,000"
 17 should be "4,990,000," the same value that's on page
 18 4 of Attachment BSM-4.

19 And going back to line 3 on the Total
 20 column, it currently states "52,720,000." That
 21 should be "51,730,000," the same value that's on page
 22 5 of Attachment BSM-4 in the first column.

23 Then going to back to page 1, line 4, for
 24 the Total column, it currently says "45,760,000."
 25 That value should be "46,750,000." All other values

1 remain the same on that page.

2 EXAMINER ADDISON: Well, Mr. McMillen,
3 that would ultimately change the total amounts on
4 line 5, would it not?

5 THE WITNESS: No. The totals were
6 correct.

7 EXAMINER ADDISON: Thank you.

8 THE WITNESS: Thanks for checking.

9 Q. (By Mr. Keaney) Are there any other
10 corrections to your testimony?

11 A. Not at this time.

12 Q. Mr. McMillen, if I asked you the
13 questions that appear in your testimony, subject to
14 the corrections you just made, that has been marked
15 for identification as Companies' Exhibit 3, would
16 your answers today be the same as they are set forth
17 in your testimony?

18 A. Yes.

19 MR. KEANEY: Your Honor, the Companies
20 move for the admission of Companies' Exhibit 3,
21 subject to cross-examination.

22 EXAMINER ADDISON: Thank you, Mr. Keaney.
23 Mr. Proano, any questions?

24 MR. PROANO: Yes, your Honor. Thank you.

25 - - -

CROSS-EXAMINATION

By Mr. Proano:

Q. Good morning, Mr. McMillen.

A. Good morning.

Q. My name is David Proano from the law firm Baker Hostetler. I represent intervening party Ohio Energy Leadership Council. We have never met before, correct?

A. I think that's correct.

Q. If you turn to page 1 of your testimony, please. You list your education background there, correct?

A. That's correct.

Q. And you have a mathematics degree, Bachelor of Science in mathematics from Mount Union and a Master of Science Degree mathematics from Youngstown State, correct?

A. Yes.

Q. So if I ask you some basic math questions, you should be able to handle those, correct?

A. Yeah. Yes.

Q. Now, you describe on line 16 the -- your role at FirstEnergy Service Company as including the management of preparation of various riders for Ohio.

1 Do you see that?

2 A. Yes.

3 Q. Could you just describe in a little more
4 detail what that entails?

5 A. Yes, certainly. My role in the rates --
6 rates group since I have been a part of it has
7 been -- has been preparing and managing various --
8 various riders including our Companies' Rider AMI,
9 Rider DCR, Rider DSE, Rider ELR, and the subsequent
10 calculations that go behind that and the subsequent
11 annual audits that occur with those.

12 Q. And as part of those job
13 responsibilities, is it required for you to
14 understand the language in the tariff that's proposed
15 by the Companies for use by the Companies?

16 A. Yes.

17 Q. And also the mathematical formulas that
18 are employed for those tariffs, correct?

19 A. Yes.

20 Q. How long have you specifically been
21 working on the Rider ELR tariff language?

22 A. I can't recall the exact time I started
23 taking over that rider.

24 Q. And attached to your testimony are
25 proposed redlines to that Rider ELR, correct, for all

1 three operating companies?

2 A. Attachment BSM-1 is the proposed redline
3 of Rider ELR proposed in this proceeding.

4 Q. And what was your -- what was your role
5 in the preparation of those proposed redline changes
6 to tariff sheet for Rider ELR for the three
7 Companies?

8 A. My role was to work with individuals at
9 the Companies that -- that are -- that have
10 understanding of Rider ELR and its mechanics to come
11 up with the redline tariffs and subsequently make the
12 redlines to the tariffs.

13 Q. So you yourself made the redlines? I am
14 just trying to understand who did what.

15 A. Yes, I would have made the redlines.

16 Q. And you would have received some support
17 from your team, correct?

18 A. From individuals within the Companies,
19 not necessarily within my team directly but.

20 Q. So for purposes of BSM-1, we can assume
21 the redlines are ultimately your redlines to Rider
22 ELR, correct?

23 A. I would have physically made the
24 redlines, but they would be the Companies' redlines.

25 Q. Who did you have to have approve your

1 proposed redlines to Rider ELR? Let me ask it
2 better. Who do you report to? Who would have
3 approved this before it was part of the Application
4 in your redlines to Rider ELR?

5 A. So I report to Sonny Fanelli, the
6 Director of Ohio Rates and Regulatory Affairs.

7 Q. And did you run your proposed redlines by
8 Mr. Fanelli?

9 A. He would have reviewed them, yes.

10 Q. Turn to page 12 of your testimony,
11 please. I am not going to spend a lot of time on
12 Rider ELR because I think we all understand it in
13 terms of the background of it. But essentially it's
14 a program that provides credits to certain customers
15 for being interruptible; is that a general fair
16 statement of the program?

17 A. Interruptible for emergency situations
18 called by either PJM or the Companies or ATSI.

19 Q. And you understand that this Rider ELR
20 program has been in place since 2009, since ESP II
21 was approved, correct?

22 A. Yeah. It would have been effective in
23 2009.

24 Q. And since 2009, the FirstEnergy Companies
25 have been the -- essentially the CSP for Rider ELR

1 participants, correct, curtailment service provider,
2 the CSP?

3 A. Thank you. As part of Rider ELR, one of
4 the requirements were -- was for the Companies to --
5 to take ownership of the participant's resources and
6 offer those into the PJM market in order for PJM to
7 be able to call upon those customers if they deemed
8 an emergency.

9 Q. And since the inception of Rider ELR,
10 FirstEnergy has played that role for the program,
11 correct?

12 A. Yes.

13 Q. Now the Companies are -- in their
14 Application, ESP V Application, they are proposing a
15 phase down of those credits, correct?

16 A. Yes. My testimony on page 12 discusses
17 that phase down.

18 Q. And specifically bottom of page 12, line
19 19, there is a -- you have a chart there in your
20 testimony, correct?

21 A. Yes.

22 Q. And could you just for the record explain
23 why there is two rows, an ELR row and EDR(b) row?

24 A. Yes. As part of participation within the
25 Rider ELR program, customers participating receive

1 credits through the Rider ELR tariff, and they also
2 receive credits through the Rider EDR(b) tariff as
3 part of participation.

4 Q. And the cost recovery for those two
5 different tariff provisions through different
6 mechanisms, correct?

7 A. Rider ELR is recovered through the
8 Companies' Rider DSE1, and then the credits on the
9 EDR(b) line would be recovered through Companies'
10 EDR(e).

11 Q. Who prepared at FirstEnergy the proposed
12 phase down that is seen in the chart here at the
13 bottom of page 12 of your testimony?

14 A. In collaboration with Witness Stein who
15 discusses the -- and compares the Rider ELR credits
16 in his testimony to market -- to the market in
17 collaboration with him, we created the table that's
18 on line 12 for the phase down of the Rider ELR
19 credits.

20 Q. So this proposed phase down is, would be
21 fair to say, a joint work product between you and
22 Witness Stein?

23 A. I don't recall if it was just Witness
24 Stein and myself, but he does discuss the -- the
25 credits as compared to the market, and I in my

1 testimony lay out how those credits will gradually
2 decrease over the ESP.

3 Q. Okay. And it sounds like there is a
4 collaborative effort coming up with proposed phase
5 down; is that a fair statement?

6 A. That would be fair.

7 Q. Are you familiar with the PUCO principle
8 of gradualism?

9 A. I don't know if I understand it in that
10 context.

11 Q. How long have you been working with
12 tariffs at FirstEnergy?

13 A. Since I joined the Company in 2012.

14 Q. So over 11 years?

15 A. Yes.

16 Q. And have you heard of the term gradualism
17 ever used --

18 A. Yes.

19 Q. -- in your discussions?

20 A. Yes.

21 Q. Do you understand generally what that
22 means, that term?

23 A. Yes.

24 Q. And have you -- have you ever heard it in
25 the context of tariff changes or rate changes?

1 A. Yes.

2 Q. Was that -- was gradualism a
3 consideration for this proposed phase down of the
4 credits for the ELR program?

5 A. Yes.

6 Q. Are you familiar with Mr. Fanelli's
7 testimony that one of the key objectives for ESP V is
8 mitigating rate impacts of the proposed ESP V rate
9 design?

10 A. I am generally familiar with his
11 testimony.

12 Q. Are you familiar with his testimony on
13 that issue specifically?

14 A. I am gen -- yeah, generally familiar.

15 Q. And would you agree with me that by
16 having a gradual phase down of credits, that would
17 mitigate rate impacts for those Rider ELR
18 participants?

19 THE WITNESS: Can I have that read back,
20 please?

21 EXAMINER ADDISON: You may.

22 (Record read.)

23 A. In -- in combination with the Companies'
24 proposal and Rider ELR with the customers being able
25 to participate with a CSP and retain those revenues

1 in combination with the gradualism of the Companies'
2 proposal here for the ELR and EDR(b) credits probably
3 would consider that gradualism to help rate impacts.

4 Q. And was the mitigation of rate impacts on
5 ELR participants a consideration when you worked with
6 Mr. Stein on preparing this phase down?

7 A. Mitigating the rate impacts of the ELR
8 customers was one -- one phase of the Companies'
9 proposal here. The Companies also took into
10 consideration the -- the impact to customers that are
11 paying for the credits through Rider DSE1 and EDR(e)
12 and also took into consideration the continuing to
13 offer Rider ELR -- continued to offer support for
14 demand response and economic development for these
15 customers that are participants.

16 Q. We'll come back to the economic
17 development piece in a second. But sticking with the
18 bill impact, mitigating bill impact portion of the
19 analysis, for example, if FirstEnergy had proposed to
20 phase down the credits immediately from a total of
21 \$10 per kilowatt to \$5 per kilowatt on June 1, 2024,
22 that wouldn't really align with the goal of
23 mitigating rate impacts for those participants,
24 correct?

25 A. While I agree that decreasing the credits

1 as you explained would be a larger impact to
2 customers, I can't speak to exactly the benefit that
3 they would be able to get with participating through
4 the market and be able to retain those revenues as
5 they participate with the CSP through the capacity,
6 energy, and ancillary service markets.

7 Q. What we do know is the approximate value
8 of credits on an annual basis would be expected to go
9 from about 60 million a year down to 30 million a
10 year immediately if that proposal was proposed, a \$5
11 total kilowatt credit, correct?

12 A. Through the credits provided through
13 Rider ELR and EDR(b), yes.

14 Q. And you would agree with me that could
15 have a significant impact on the bills -- bills for
16 those participating companies in Rider ELR, correct?

17 A. Withholding the credits for ELR and
18 EDR(b) in isolation, yes.

19 Q. Okay. You mentioned one of the
20 considerations was market mechanisms. Are you
21 referring to the PJM capacity prices when you
22 referred to that as a factor in this phase down
23 proposal?

24 A. The ability for customers to have an
25 additional revenue stream by participating through

1 the PJM markets versus CSP.

2 Q. Was there also an effort to reference the
3 capacity prices in setting this proposed phase down?

4 MR. KEANEY: Your Honor, I would object.
5 To the extent that this would require the witness to
6 divulge any attorney-client communications, I would
7 instruct you not to answer.

8 EXAMINER ADDISON: Thank you.

9 With that instruction, you may answer.

10 THE WITNESS: Can I have that reread,
11 please?

12 EXAMINER ADDISON: You may.

13 (Record read.)

14 Q. Do you understand my question,
15 Mr. McMillen? If you don't understand, just let me
16 know. I am happy to rephrase.

17 A. Okay. Yeah, please.

18 Q. When you were working with Witness
19 Stein --

20 A. Yes.

21 Q. -- on this proposal, did you take a look
22 at the PJM capacity prices in the PJM market?

23 A. I did not.

24 Q. Do you know if Mr. Stein did?

25 A. I believe he references PJM market prices

1 in his testimony.

2 Q. Independent of his testimony, do you know
3 if he actually did that independent of his testimony,
4 if you witnessed him doing that? Or is that just
5 based on his testimony? Strike that. We are going
6 to move on.

7 A. Sorry.

8 Q. You mentioned economic development as a
9 consideration or factor in this proposed phase down.
10 What were the considerations on that factor?

11 A. Excuse me.

12 MR. KEANEY: I'm sorry. Can I have that
13 question read back, please?

14 EXAMINER ADDISON: You may.

15 (Record read.)

16 MR. KEANEY: Your Honor, I would object
17 to that being vague and ambiguous and overly broad.

18 EXAMINER ADDISON: I'll allow the
19 question.

20 A. Most of the customers participating in
21 the ELR have been participating since 2009. There
22 were some additional customers added as part of ESP
23 IV. So the Companies' proposal here was to continue
24 ELR for -- to help maintain and -- maintain the
25 program for those customers in order to promote --

1 support economic development and retain those
2 customers.

3 Q. If you could turn to the next page,
4 Mr. McMillen.

5 A. Is that page 14?

6 Q. Yes, sir. I'm sorry, 13.

7 A. Sorry.

8 Q. I am going to go to the answer that
9 starts on line 13. So page 13, line 13. And you
10 talk here in your testimony about how the proposed
11 phase down credits, we'll call them, will be
12 calculated. And you say in the second sentence the
13 customer's curtailable load will be determined by
14 subtracting the customer's firm load registered with
15 PJM from its highest -- in support of its monthly
16 highest 30 minute integrated kilowatt load, and then
17 it goes on to say during what time period. Do you
18 see that sentence?

19 A. Yes.

20 Q. Do you understand what a customer's firm
21 load registered with PJM is? What is that?

22 A. My understanding based on the Companies'
23 program is -- from the customers' firm load is -- is
24 the load in which during emergency events they are --
25 they are required to curtail at or below.

1 Q. So this is information provided by the
2 customer to PJM that sets a firm load level meaning
3 the level at which the customer has to curtail down
4 to? Is that essentially what you are saying?

5 A. Excuse me.

6 EXAMINER ADDISON: Let's go off the
7 record for a moment.

8 (Discussion off the record.)

9 EXAMINER ADDISON: Let's go back on the
10 record.

11 THE WITNESS: May I have that question
12 reread, please?

13 EXAMINER ADDISON: Absolutely. Thank
14 you, Karen.

15 (Record read.)

16 A. As part of the Companies' proposal for
17 ESP V, the customers would register through a CSP to
18 participate in -- within the PJM markets where they
19 would designate their firm service level. And as
20 part of being -- participating in the program, they
21 would provide the Companies that firm service level
22 in which the credits would be provided as described
23 on page 13.

24 Q. And that's a change from what's currently
25 done, correct?

1 A. So how it's currently done customers
2 would provide the Company -- they sign up for firm
3 service level based on provisions in the current
4 tariff that there is times when they can adjust their
5 firm, or the Companies can adjust their firm, but
6 essentially they would be providing the Companies
7 what their firm service level is and set it with the
8 Companies instead of directly setting it with the CSP
9 and then informing what it was set at.

10 Q. Okay. I'm going to go over this because
11 it's important, and we are going to make sure it's
12 clear. So under the current program the ELR
13 participants work directly with FirstEnergy to set
14 the customers' firm load, correct?

15 A. Yes, subject to the conditions in the
16 current tariff.

17 Q. And under the current tariff, it can be
18 changed every year, right? You recall that from the
19 tariff? It's struck out in your tariff redline but,
20 yeah, that's the way I have read it. Feel free to
21 reference it. So the definition of firm load is
22 three or four pages in.

23 A. Thank you. A reduction in the firm
24 service load can be changed as described here. The
25 Companies may -- may also increase the firm load at

1 any time at its sole discretion.

2 Q. Okay. So the customer may request the
3 reduction in the firm load once a year, correct,
4 under the current tariff?

5 A. Correct.

6 Q. And the customer may at its option
7 increase the firm load, correct?

8 A. Correct.

9 Q. And under the proposed Rider ELR for
10 ESP V, FirstEnergy no longer would have a role in
11 setting the customer's firm load, correct?

12 A. The firm load of the customer would equal
13 whatever they used with their CSP in -- for
14 participation in PJM's demand response programs.

15 Q. Okay. But FirstEnergy would no longer
16 have a role in setting that firm load. It would be
17 whatever the customer registers with PJM through the
18 third-party CSP, correct?

19 A. Correct.

20 Q. And then for purposes of the Rider ELR
21 credits, whatever that registered firm load amount is
22 with PJM is what FirstEnergy will use for the program
23 credits for Rider ELR in ESP V as proposed, correct?

24 A. That would be the firm load used to
25 calculate the credits under ELR and EDR.

1 Q. Page 13, lines 18 and 19, you have a
2 sentence that says "The curtailable load will
3 continue to be capped at the customer's contract
4 amount as of May 31, 2024." Do you see that in your
5 testimony?

6 A. Yes.

7 Q. What does that mean? What's the
8 customers' contract amount?

9 A. So as part of Rider ELR and EDR, the --
10 each customer has a -- a contract for electric
11 service. Within that they sign an addendum as
12 participation with Rider ELR. In that addendum it
13 includes a -- a max curtailable load based off
14 historical usage in which customers can't receive
15 credits above that max curtailable load.

16 Q. And under your -- FirstEnergy's ESP V
17 proposal for this program, would that then be fixed
18 as of May 31, 2024, and at that time it's for eight
19 years, that curtailable load amount for the
20 customer's contract?

21 A. The max curtailable load would remain the
22 same.

23 Q. But the actual credits will depend on the
24 usage or load during the month, but the max will be
25 fixed for eight years, right?

1 A. The max will be -- would be fixed.

2 Q. Okay. Go to page 14, if you could,
3 Mr. McMillen.

4 A. I'm there.

5 Q. Now, under the current Rider ELR program,
6 FirstEnergy keeps 20 percent of any PJM revenues
7 associated with FirstEnergy acting as the CSP for the
8 program, correct?

9 A. If any such revenues are realized from
10 offering those resources into the PJM capacity
11 market, the Companies would pass back 80 percent of
12 those revenues through -- through Rider DSE1 to
13 offset credits applied to the ELR customers and then
14 retain the remaining 20 percent.

15 Q. Okay. And you reference here in line 5
16 of page 14, 80 percent of those revenues are
17 "provided to customers." Is that done as a credit to
18 the cost recovery riders? I mean, the cash is not
19 physically provided to any customers. It's done as a
20 credit in the cost recovery rider?

21 A. As part of Rider DSE1, there is a credit
22 recognized for those revenues to offset.

23 Q. Is it only on that DSE1, or is it on the
24 second cost recovery rider as well?

25 A. So the entire amount runs through DSE1 to

1 offset the costs for the entire program. They don't
2 split those between DSE1 and EDR(e).

3 Q. But the EDR(b) rates do see an impact
4 from the credit from PJM revenues?

5 A. The Companies receive -- if their revenue
6 is realized for offering into the PJM capacity
7 markets, the Companies receive that revenue, they
8 would retain 20 percent of it, and the remaining 80
9 percent is then included as an offset to our rider
10 DSE1. Rider DSE1 just recovers the cost associated
11 with ELR, but the Companies -- well, Rider DCE1 has
12 been approved to include those -- those PJM revenues.

13 Q. So they are not -- they are not credited
14 to Rider EDR(b) even though that's the mechanism that
15 recovers the other half of the credit costs, correct?

16 A. EDR(e) would recover the costs.

17 Q. But those PJM credits aren't credited to
18 that specific cost recovery rider.

19 A. No, since the entirety of the amount is
20 credited through Rider DSE1.

21 MR. PROANO: May I approach, your Honor?

22 EXAMINER ADDISON: You may.

23 MR. PROANO: Your Honors, I'll mark for
24 identification two documents. The first is OELC
25 Exhibit 1. It's a two-page document that's

1 identified as FirstEnergy's Discovery Response to
2 Interrogatory Nucor Set 1-INT-004.

3 EXAMINER ADDISON: It will be so marked.

4 (EXHIBIT MARKED FOR IDENTIFICATION.)

5 MR. PROANO: OELC Exhibit 2 identified as
6 a multi-page document that includes FirstEnergy's
7 responses to Interrogatories OELC Set 1-INT-11
8 through 17. And I provided copies to all counsel
9 prior to the start of the hearing today.

10 EXAMINER ADDISON: Thank you very much,
11 Mr. Proano. Both exhibits will be marked
12 accordingly.

13 (EXHIBIT MARKED FOR IDENTIFICATION.)

14 Q. (By Mr. Proano) Mr. McMillen, just take a
15 moment to look at OELC Exhibit 1 and 2 just to
16 familiarize yourself again with these documents. Let
17 me know when you are ready.

18 A. Okay.

19 Q. And you've seen these before, correct?
20 To help you your --

21 A. Yes.

22 Q. -- your name is identified at the top as
23 being a preparer of the response.

24 A. Yes, I see that.

25 Q. You have seen these before today, is that

1 correct, Mr. McMillen?

2 A. That's correct.

3 Q. Start with Exhibit 2, please. Turn a few
4 pages to the response to Interrogatory 14 from OELC,
5 the second page, and subparagraph G.

6 A. I'm there.

7 Q. I am going to try to short circuit this
8 just a little. You recall that OELC requested in
9 discovery whether or not the ELR participant
10 customers were curtailed on December 23, 2022. Do
11 you recall those questions?

12 THE WITNESS: Can I have that reread?

13 EXAMINER ADDISON: You may.

14 (Record read.)

15 Q. (By Mr. Proano) Let me help you out.
16 It's on page 1, Mr. McMillen. It's response to
17 Interrogatory 11 at the bottom of it.

18 A. Sorry. 23rd and 24th, yes.

19 Q. Okay. Just so we can set the
20 background --

21 A. Okay.

22 Q. -- you remember around December 23
23 through 24 and 25, there was a winter storm called
24 Elliott. Do you recall that?

25 A. I recall the 23rd and 24th. I don't

1 recall the 25th.

2 Q. And as part of the management of load by
3 PJM in response to that winter storm, PJM did issue
4 some demand response notices on December 23, correct?
5 Do you recall that?

6 A. Yes.

7 Q. And FirstEnergy though as the CSP for the
8 ELR participants did not initiate an emergency
9 curtailment event on December 23, correct?

10 A. The Companies' electric utilities did not
11 issue an event on the 23rd.

12 Q. And you recall that was because of a
13 malfunction of an automated notification system,
14 correct? And you are welcome to refer to OELC
15 Exhibit 1.

16 MR. KEANEY: If counsel would ask one
17 question at a time and allow the witness to respond.

18 EXAMINER ADDISON: And, Mr. Proano,
19 going forward if you could refer him to a specific
20 part of the interrogatory, it would be helpful.
21 Thank you.

22 MR. PROANO: Just trying to speed things
23 along.

24 EXAMINER ADDISON: I appreciate the
25 effort, but I think it would benefit the witness to

1 have the reference.

2 MR. PROANO: I understand.

3 Q. (By Mr. Proano) Let me refresh your
4 recollection here, Mr. McMillen. If you look at
5 Exhibit 1, OELC Exhibit 1, that's Nucor Set 1-INT-04.
6 Do you have that in front of you?

7 A. Yes.

8 Q. On the second page FirstEnergy responded,
9 and you provided the answer to this response with
10 some others, regarding why -- whether -- the question
11 was whether the Companies have encountered any
12 problems serving as CSP. And in that answer on the
13 next page at the very bottom, and I quote, "The
14 Companies experienced a malfunction of the automated
15 notification system for a recent PJM emergency event
16 causing response to the event to be delayed." Do you
17 see that?

18 A. Yes.

19 Q. And that's related to the December 23
20 curtailment, correct?

21 A. So on December 23, PJM did initiate an
22 event for a subset of the Companies' ELR customers,
23 and as part of the Companies' automated notification
24 system that would essentially notify the customers,
25 there was -- there was a malfunction with -- with the

1 automated notification system through an IT error
2 where those messages weren't automatically sent to
3 customers.

4 Q. Has that -- has that been rectified, that
5 malfunction, whatever caused it?

6 A. The following day PJM initiated an event,
7 the 24th, at which the Companies were made aware of
8 the issue and were able to -- once known the
9 Companies were able to bypass the automated
10 notification system to have the -- to notify the
11 customers to curtail based off of their -- based off
12 their approved notification time, and subsequently
13 the Companies have fixed the IT issue in order to --
14 in order for the automated system to work properly.

15 Q. And so the December 24 curtailment did
16 take place as required by PJM, correct?

17 A. Once discovered that automated notices
18 did not go out on the 24th, the Companies as soon as
19 that was identified sent out messages manually to
20 customers.

21 Q. If you look back at Exhibit 2, turning to
22 Interrogatory 1-14, in response to subpart A, you
23 identified that 24 ELR customers were curtailed on
24 December 24, 2022, correct?

25 A. Yes.

1 Q. And if you look at subpart G on the next
2 page, you identified revenues to the Companies
3 associated with that curtailment event, correct?

4 A. I don't know if those revenues were
5 received or -- just for the December 24 event. There
6 may be revenues associated with the December 23 event
7 as well.

8 Q. Now, if you look back at what was
9 requested in this interrogatory, subpart G says
10 please identify "a detailed itemization of all
11 payments, revenues, and/or penalties received by
12 FirstEnergy from PJM related to the load curtailment
13 on December 24, 2022, or the interruptible notice
14 originating from PJM on that date." Does that help
15 clarify your response? Since there was --

16 MR. KEANEY: Your Honor.

17 MR. PROANO: I'm sorry.

18 MR. KEANEY: I am going to object to the
19 extent it misstates what the Companies' response is
20 in subpart G. If you read the last sentence "Subject
21 to and without waiving the foregoing objections, the
22 Companies received approximately 11.4 million in
23 payments from PJM for the curtailment events in
24 December 2022." It's not specific to December 24.

25 MR. PROANO: Let me try to reask this

1 line of questioning.

2 EXAMINER ADDISON: Thank you.

3 Q. (By Mr. Proano) There were no curtailment
4 events that the Company participated in on
5 December 23, correct, Mr. McMillen? We established
6 that?

7 A. The Companies did not call customers to
8 curtail on that day.

9 Q. So would you expect the Companies to have
10 received revenue from PJM for not curtailing on
11 December 23?

12 A. I'm not familiar with how PJM settles
13 those events because there would have been customers
14 that may have already been down to at or below their
15 confirmed service level on that date. So I guess I
16 am not familiar with how PJM settles that revenue.

17 Q. Okay. Fair enough. But we can say that
18 the revenues of 11.4 million and change to
19 FirstEnergy were related to payments from PJM related
20 to curtailment events that occurred either on
21 December 23 or December 24, 2022, correct?

22 A. Yes.

23 Q. That 11.4, was that then split 80 percent
24 credited to DSE1 and 20 percent retained by
25 FirstEnergy?

1 A. So this 11.4 million would be the total
2 revenue received from PJM for those events that
3 occurred on December 23 and 24. It is my
4 understanding that not all those revenues were
5 associated with the curtailment of -- of Rider ELR
6 customers. Some of that revenue would be associated
7 with energy efficiency as well which -- which in
8 part -- part of these revenues would then be -- would
9 flow through the Companies' Rider DSE1 to offset the
10 credits for ELR and then a portion of that would also
11 flow through DSE2 which is the Companies' energy
12 efficiency mechanism.

13 Q. Do you know -- do you know the breakdown
14 of what portion of the 11.4 was credited to DSE1
15 versus DSE2?

16 A. I don't.

17 Q. Would you expect the majority of that to
18 be credited to DSE1 for Rider ELR customers given
19 your experience?

20 A. While I don't know the amounts that are
21 flowing through each rider, it is my understanding
22 the -- more of it would be flowing through DSE1 than
23 DSE2.

24 Q. Going back to page 14 of your testimony,
25 lines 10 through 12, you testified that on average

1 the annual PJM revenues that would offset Rider ELR
2 costs that were credited to customers was
3 approximately \$2 million, correct?

4 A. At the time of preparing my testimony,
5 yes.

6 Q. And would that mean about 400,000 or so
7 on an annual basis was then retained by FirstEnergy
8 as that 20 percent portion we've been discussing?

9 A. Yes.

10 Q. Now, on line 17 and going onto 19 of page
11 14, you reference the testimony of Witness Stein and
12 his testimony that the Companies under the continued
13 Rider ELR for ESP V would no longer act as the CSP,
14 correct?

15 A. For PJM initiated emergency curtailment
16 events, yes.

17 Q. And why was that change proposed by
18 FirstEnergy?

19 A. As my testimony states, the Companies'
20 goals in its proposal of Rider ELR in ESP V was to be
21 able to balance the rate impact to customers
22 currently participating in Rider ELR with the -- the
23 rate impact to customers that are paying for those
24 credits and to -- to continue to support economic
25 development and demand response, so with -- with that

1 balance and the fact that the Companies are here
2 proposing that the ELR customers' credits gradually
3 decrease throughout the -- the ESP V and to mitigate
4 rate impact of that -- of that decrease, the
5 Companies felt that having the customers -- ELR
6 customers have the ability to participate within --
7 with the CSP and be able to receive those revenues as
8 well would help that balance as I described.

9 Q. Now, under this proposal, Rider ELR for
10 ESP V, the Companies do propose to keep the ability
11 to curtail those ELR participants, correct? You say
12 that on page 14, lines 19 through 20.

13 A. Thank you. Yes.

14 Q. So as one of the burdens of continuing to
15 remain a Rider ELR customer in ESP V is you are
16 subject to interruption not only by PJM but
17 independently also by FirstEnergy, correct, for
18 emergency events?

19 A. I wouldn't -- I wouldn't characterize it
20 as a burden. So that these customers are receiving
21 credits to be able to provide curtailment services to
22 the -- to the -- to PJM and the Companies in case of
23 an emergency. If there is an emergency on the
24 distribution system, the Companies would be able to
25 call upon these customers to curtail to help

1 alleviate any stress on the system.

2 Q. Okay. And maybe you got tripped up on my
3 word burden, but one of the obligations on the ELR
4 participants for ESP V would be not only to be
5 curtailable by PJM under its DR program but also be
6 curtailable by the Companies in the event of
7 emergency events on the distribution system, correct?

8 A. Yes.

9 Q. And that can be done independent of PJM,
10 correct?

11 A. The Companies would call those events.

12 Q. And has -- does the Company have some
13 kind of definition that it proposes to use for
14 emergency events on the distribution system for ESP V
15 for this program?

16 A. I don't know.

17 Q. You don't know if there is such a
18 description or not, or do you think there is not such
19 a -- kind of a policy description out there? I just
20 wanted to clarify.

21 A. I don't know if there is a policy
22 description within the Companies' distribution
23 operators.

24 Q. Would it be within FirstEnergy's
25 discretion under your proposal through your testimony

1 as to whether or not to call a curtailment of these
2 participants for an emergency event on the
3 distribution system?

4 THE WITNESS: May I have it reread,
5 please?

6 EXAMINER ADDISON: You may.

7 (Record read.)

8 A. Yes.

9 Q. And would you use the same notification
10 system for that FirstEnergy called event, or are you
11 proposing to change that?

12 A. That has not been determined.

13 MR. PROANO: Your Honors, I possibly have
14 40 minutes. Do you want to take a break, or do you
15 want me to just keep going?

16 EXAMINER ADDISON: Let's go on a break
17 for lunch, Mr. Proano.

18 MR. PROANO: Thank you.

19 EXAMINER ADDISON: We will go ahead and
20 take a full hour today. Come back around 1:10.
21 Thank you.

22 We're off the record.

23 (Thereupon, at 12:10 p.m., a lunch recess
24 was taken.)

25 - - -

1 Wednesday Afternoon Session,
2 November 8, 2023.

3 - - -

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

6 Mr. Proano.

7 MR. PROANO: Thank you, your Honor.

8 - - -

9 BRANDON S. McMILLEN
10 being first duly sworn, as prescribed by law, was
11 examined and testified as follows:

12 CROSS-EXAMINATION (Continued)

13 By Mr. Proano:

14 Q. Mr. McMillen, welcome back from lunch.
15 Turn now to Attachment BSM-1 of your testimony. And
16 BSM-1 are the proposed redlines to the Rider ELR
17 tariff for the three Operating Companies, CEI, Ohio
18 Edison, and Toledo, correct?

19 A. Yes.

20 Q. Are all the redline changes the same
21 across all three utility Companies? Just so we can
22 cover one and extrapolate?

23 A. That's the intent, that they are the
24 same.

25 Q. Okay. Let's go to the -- let's work then

1 on Cleveland Electric Illuminating Company's proposed
2 redline Rider ELR. And if you see something I am
3 asking you about that you think is different in the
4 other two, please let me know; is that fair?

5 A. That's fair.

6 Q. This is page 1 of that exhibit. Now,
7 these -- this document shows the proposed changes to
8 Rider ELR, the tariff sheet, to align it with what's
9 being proposed for ESP V by FirstEnergy, correct?

10 A. Yes.

11 Q. And I just want to direct your attention
12 it's about seven or eight lines down in the first
13 paragraph called "Applicability." And subpoint 2
14 where you add an underlining that says "is
15 participating in a demand response program offered by
16 PJM Interconnection, LLC." Do you see where I am
17 reading?

18 A. Yes.

19 Q. And so FirstEnergy is adding a
20 requirement since it's proposing not to be the CSP
21 any longer, that the customers participating in Rider
22 ELR be enrolled in PJM's DR program through a
23 third-party CSP, right?

24 A. In order for customers participating in
25 ELR to be subject to curtailments initiated by PJM as

1 consistent with the current program, yes.

2 Q. Do you know when the demand response
3 program years begin and end? What calendar date?

4 A. They would begin June 1 and end the
5 following May 31.

6 Q. So their program runs June 1 through
7 May 31 of each year?

8 A. Yes.

9 Q. Are you familiar with a deadline for
10 enrollment in a PJM DR program?

11 A. Yeah. I am not familiar with those
12 specifics. It would be better addressed by Witness
13 Stein.

14 Q. So you don't know whether or not the
15 timing of the Commission's approval of ESP V could
16 allow for these 24 ELR program participants to then
17 sign up with PJM for demand response? You don't know
18 whether or not that would be an issue, correct?

19 MR. KEANEY: Objection, your Honor. The
20 witness has already testified he is not familiar, and
21 the counsel continues to ask him about something with
22 which there is no foundation that's been laid.

23 EXAMINER ADDISON: Mr. Proano.

24 MR. PROANO: I am just asking him to
25 confirm that he wouldn't know whether or not the

1 timing of the PUCO order would make it impossible to
2 meet this requirement set out in subsection 2.

3 EXAMINER ADDISON: I will allow -- I will
4 allow the question. The witness can clarify if he
5 needs.

6 A. Yeah. I am not aware of the timing
7 requirements set by PJM for participation.

8 Q. Did you review the filed testimony for
9 Christopher Healey on behalf of PUCO Staff before you
10 came today to the hearing?

11 A. I generally reviewed it.

12 Q. Do you recall Mr. Healey's testimony
13 regarding moving the proposed change from FirstEnergy
14 being the CSP to third-party CSPs taking place in
15 June 2025 versus June 2024?

16 A. I do not recall that point.

17 Q. Look down at subpoint 3 then of your
18 testimony. It's about 12 or 13 lines down. And one
19 of the other requirements to be in the program is
20 "the customer executes the Company's standard program
21 contract." Do you see that?

22 A. Yes.

23 Q. Now, that language is unchanged. It's
24 not stricken out or red. It's the same language in
25 the current tariff, correct?

1 A. Correct.

2 Q. Now, has the Company prepared a standard
3 program contract that would align with the way
4 FirstEnergy is proposing to change Rider ELR?

5 A. So as I mentioned before, for customers
6 to participate in Rider ELR, if they sign an addendum
7 to their contract for electric service for -- for
8 participation which states their max curtailable load
9 and their firm service load and commits their demand
10 capabilities to the customers -- or to the Companies,
11 sorry, for the Companies' proposal in ESP V, that
12 contract has not been developed.

13 Q. Okay. Go down to the bottom of that same
14 page 1, please. The Charges section in the very last
15 paragraph that leads into the next page, it's ECE
16 Charge. Do you see that section?

17 A. Yes.

18 Q. Now, before lunch in your testimony you
19 had agreed with me that the firm service level under
20 FirstEnergy's proposal for ESP V would be set through
21 a registration with PJM, correct, not the FirstEnergy
22 companies, correct?

23 A. Customers through participation with a
24 CSP would determine their appropriate firm service
25 level.

1 Q. Okay. I want to draw your attention then
2 to the phrase that starts at the very end of the
3 second line of that paragraph around that line says
4 "the portion of the customer's actual measured load
5 that exceeds its preestablished contract firm load."
6 Do you see where that says that?

7 A. Yes.

8 Q. Wouldn't that preestablished contract
9 phrase need to be removed to make that work? It
10 would just have to say firm load because that's going
11 to be defined later on as whatever it's registered
12 with PJM?

13 A. I wouldn't agree with that. So it -- the
14 way -- the way the intent is that when customers
15 participate with -- through a CSP, they would
16 establish their -- their firm service level and then
17 provide it to the Companies, so it would -- it would
18 be preestablished based off of that.

19 Q. Okay. So what you are referring to here
20 is the preestablished contract firm load that's going
21 to flow from whatever is registered with PJM through
22 the third-party CSP?

23 A. Yeah, that would be the same firm service
24 level.

25 MR. PROANO: May I approach, your Honor?

1 EXAMINER ADDISON: You may.

2 MR. PROANO: And, your Honor, I have
3 marked for identification OELC Exhibit 3 which is a
4 report prepared by PJM Interconnection of Winter
5 Storm Elliott entitled "Event Analysis and
6 Recommendation Report" dated July 17, 2023.

7 EXAMINER ADDISON: It will be so marked.

8 MR. PROANO: Pardon me?

9 EXAMINER ADDISON: It will be so marked.

10 MR. PROANO: Thank you.

11 (EXHIBIT MARKED FOR IDENTIFICATION.)

12 MR. PROANO: Just so the Bench is aware,
13 I provided an electronic copy to all counsel last
14 night, asked if anyone wanted extra copies. Nobody
15 said they did other than Mr. Keaney, and I have a
16 copy for him already.

17 Q. (By Mr. Proano) Have you seen this report
18 before, Mr. McMillen?

19 A. I have not.

20 Q. If you could turn to page 79 of the
21 report, please. It's chart -- sorry, Figure 67.

22 A. I'm there.

23 Q. Now, Figure 67, according to this PJM
24 report, shows the LMP price during December 24, 2022.
25 Do you see that?

1 MR. KEANEY: Objection, your Honor. The
2 witness has just said he does not -- he has not read
3 this report before. The report has not been
4 authenticated and there is no foundation for asking
5 any questions about a report that the witness has
6 never read or reviewed.

7 EXAMINER ADDISON: Mr. Proano, I believe
8 the witness did state he has not seen this report
9 before.

10 MR. PROANO: I don't need him to see the
11 report to testify about it, your Honor. I am just --
12 I am going to move to have the Bench take
13 administrative notice of this at the appropriate
14 time. I just want him to refer -- what I am going to
15 do, I am going to ask some questions about the
16 penalty calculations that depend on the PJM LMP
17 prices and I just want the witness to see that per
18 the PJM public report, the LMP prices were \$3,700 per
19 megawatt-hour.

20 EXAMINER ADDISON: Well, Mr. Proano, I am
21 not going to allow you to read from the document.
22 You can ask him questions whether or not he knew of
23 LMP prices at the time without referencing this
24 document, but I believe you have not laid a proper
25 foundation to ask the witness any questions on this

1 particular document.

2 MR. PROANO: Let me see if I can lay some
3 foundation. If not, I will do it as a hypothetical.

4 EXAMINER ADDISON: Please proceed.

5 Q. (By Mr. Proano) Do you know what the LMP
6 prices achieved -- were on December 24, 2022?

7 A. I do not.

8 Q. Okay. Turn back to Attachment BSM-1 of
9 your testimony. We are going to go to what's the
10 third page of BSM-1 where there is a calculation for
11 the ES -- ECE charge. Do you see that?

12 A. Yes.

13 Q. And what is the ECE charge? What is
14 that?

15 A. During events called by the Companies
16 under the Companies' proposal in this case, if an
17 event is called and customers fail to curtail at or
18 below their firm service level, they would be subject
19 to penalties including this ECE charge, PJM
20 curtailment event charge, as part of those penalties
21 for failure to curtail.

22 Q. And there is a formula, correct, on the
23 top of that page?

24 A. Yes.

25 Q. And AL in that formula stands for the

1 customer's actual hourly load during that curtailment
2 event that exceeds the customer's preestablished
3 contract firm load, correct?

4 A. Yes.

5 Q. And the PJM LMP in that formula refers to
6 the real-time locational margin price as defined by
7 PJM for the applicable hours, correct?

8 A. Yes.

9 Q. And then the formula has 300 percent
10 added to that as well, right?

11 A. Yes.

12 Q. There's also a line adjustment factor
13 that's added to that formula plus the commercial
14 activity tax, correct, the formula?

15 A. There is a loss adjustment factor added
16 to that.

17 Q. Okay. I am not going to ask you to do
18 this math because I have done it but if there is a
19 customer in one hour of a curtailment event that
20 fails to curtail 50,000 kilowatts, assuming an LMP
21 price of \$3,700 per megawatt-hour times 300 percent,
22 I'll represent to you that number is \$555,000 per
23 hour. Does that sound accurate?

24 A. I'm sorry. I missed the number. Can I
25 have that reread?

1 Q. It's 50,000 kilowatts times \$3.70 per
2 kilowatt-hour times 300 percent which my math shows
3 is \$555,000 per hour, and I want to confirm that I am
4 doing the math correctly in that first part of the
5 formula.

6 A. The 5,000 kilowatt-hours.

7 Q. 50,000 kilowatts.

8 A. Thank you. 50,000 kilowatt-hours is the
9 customer's actual load during an emergency event that
10 exceeded their contract firm load in your example and
11 300 -- \$3.73 per kW is the PJM LMP during the
12 applicable hours, you would take those three numbers
13 and multiply them together.

14 Q. That's what the penalty would be, right?
15 Adjusted for the loss adjustment factor and the CAT
16 tax, right?

17 A. In that hypothetical example, yes.

18 Q. Okay. In this formula, there is -- there
19 is no limit or cap on the potential penalty ECE
20 charge, correct?

21 A. There is no cap.

22 Q. And the ECE charge penalty formula
23 isn't -- isn't tied to the actual credits received by
24 the ELR participant, correct?

25 A. It is separate from the credit the

1 customers receive.

2 Q. Okay. Go to the next page of that tariff
3 sheet, please, where it says "Other Provisions."
4 Actually I'm sorry. I am going to jump ahead a
5 couple pages, three pages, going to go to sheet --
6 sheet 6 of 7 for CEI. And looking at that second
7 paragraph which says, and I'll read the sentence to
8 make sure you are on the right page. "If at any time
9 during the Emergency Curtailment Event customer's
10 actual measured load exceeds its contract Firm Load,
11 the Company may disconnect the customer" and strike
12 out "from the transmission system," and it continues
13 "for the duration of the Emergency Curtailment Event,
14 at the customer's expense." Do you see that?

15 A. Yes.

16 Q. And what that says, in essence, is even
17 if the customer doesn't voluntarily curtail under
18 this program ELR, participants can have their
19 electricity disconnected by the utility company,
20 correct?

21 A. If there is an emergency curtailment
22 event called on the Companies' distribution system
23 and -- and for whatever reason a customer fails to
24 curtail, the Companies would have the option to -- to
25 disconnect the customer.

1 Q. Looking at the second -- at the next
2 paragraph, which is the third paragraph of that
3 sentence -- or that page, there is a number of
4 proposed changes you have here. One of them is you
5 strike out this "exceeds 110 percent" phrase. Do you
6 see that?

7 A. Yes.

8 Q. So as originally phrased or as currently
9 phrased, it says "If at any time during the Emergency
10 Curtailment Event a customer's actual measured load
11 exceeds 110 percent of its Firm Load." That's the
12 current language, correct?

13 A. That's the current approved ELR tariff
14 language. However, the Companies have filed redline
15 changes to the ELR tariff that are -- that have not
16 been approved yet by the Commission.

17 Q. Okay. Do you know that case number you
18 are talking about?

19 A. Yeah. It's in my testimony on page 5,
20 line 1, Case No. 19-1968-EL-ATA.

21 Q. Now you don't in your testimony
22 specifically discuss this change of striking the
23 exceeding 110 percent threshold, do you?

24 A. I discuss in my testimony the change is
25 to be consistent with what the Companies filed in

1 that previous case I just mentioned.

2 Q. What page are you on?

3 A. That was -- sorry. Page 15 -- sorry.
4 Page 14, starting on line 21, ending on page 15, line
5 3.

6 Q. And is it -- is it your understanding
7 that that 110 percent grace is part of a change
8 proposed in 19-1968?

9 A. Yes.

10 Q. Now you don't specifically discuss the
11 110 percent striking of that in this testimony,
12 correct, in this ESP filing?

13 MR. KEANEY: Objection, asked and
14 answered.

15 MR. PROANO: I am just asking him he
16 doesn't talk about the 110 percent change
17 specifically in his testimony --

18 EXAMINER ADDISON: Overruled.

19 MR. PROANO: -- is my question.

20 EXAMINER ADDISON: Overruled. You may
21 answer the question.

22 A. Other than striking it in Attachment
23 BSM-1, no.

24 Q. Why -- why did you propose striking that
25 110 percent which would be something of a grace, a

1 10 percent grace for the participants?

2 A. The penalty language proposed here in
3 that previous case I mentioned was in compliance with
4 the order in -- in Case No. 13-2145-EL-CSS as
5 mentioned in my testimony.

6 Q. Okay. Other than just referring to the
7 prior case, was there a reason why in this case you
8 are proposing that 110 percent change, striking that
9 language?

10 A. The purpose of the -- of the penalty
11 language change as a result of those cases I
12 mentioned, the goal -- the goal of it was to -- well,
13 what the Companies were directed to was to change
14 the -- to change the penalty language to more address
15 customers' actual participation in -- during the --
16 during the event and measure -- because one thing it
17 addressed was I think the previous language provided
18 harsher penalties if you were above 110 percent and
19 didn't take into consideration if a customer
20 attempted to curtail but maybe missed by 11 --
21 111 percent so tried to help alleviate some of the
22 burden of the penalty to recognize that the customer
23 attempted to at or below their firm but -- but did
24 not.

25 Q. Okay. Just from looking at what you

1 proposed here, these redlines, would the effect of
2 removing that 110 percent have the effect of making
3 this penalty provision harsher or more strict?

4 A. As compared to what the current language
5 is versus what this is, a customer exceeded
6 110 percent of their firm service level, they would
7 have to pay the sum of all of their program credits
8 received by the -- by the customer under the program
9 during the immediately preceding 12 billing months
10 which would include credits from Rider ELR -- or
11 Rider ELR and Economic Development Rider. The
12 Companies removed that provision.

13 MR. KEANEY: Your Honor, if the witness
14 can finish his answer.

15 Q. (By Mr. Proano) Are you done? I don't
16 want to cut you off. Are you done, Mr. McMillen?

17 A. Well, I guess the one thing with just
18 striking -- we are not just striking the 110 percent.
19 We are striking other language of the -- of the
20 penalty.

21 Q. Yeah.

22 A. In conjunction. It's not just in
23 isolation. We are just striking 110 percent of the
24 firm service level.

25 Q. Yeah. And we are going to go through all

1 of them, but I just want to make sure we are all on
2 the same page.

3 MR. KEANEY: Your Honor, if we could make
4 sure the witness has answered before the next
5 question is asked, I would appreciate it.

6 EXAMINER ADDISON: I will make sure the
7 witness is able to finish all of his answers. Thank
8 you.

9 MR. KEANEY: Thank you, your Honor.

10 EXAMINER ADDISON: Mr. Proano, please
11 wait for the witness to finish.

12 MR. PROANO: Yes, your Honor.

13 Q. (By Mr. Proano) Are you ready for your
14 next question?

15 A. Yes.

16 Q. Okay. And I don't mean to cut you off.
17 If you're not done answering, just let me know, okay?

18 A. Okay.

19 EXAMINER PRICE: Let's go off the record.
20 (Discussion off the record.)

21 EXAMINER PRICE: Go back on the record.

22 Q. (By Mr. Proano) Okay. Let's try to get
23 this straight. If you look at the fourth paragraph
24 on the page, that's completely struck, correct?

25 A. Yes.

1 Q. And under that fourth paragraph, if the
2 customer is between 100 and 110 percent, they only
3 have to give back one month's worth of the ELR
4 credits under the current tariff?

5 A. Yes.

6 Q. As proposed, you are proposing to get rid
7 of that -- that penalty provision related to the
8 first 10 percent essentially over the firm service
9 level, correct?

10 A. Yes.

11 Q. And what you are proposing instead is to
12 say if you are above the firm service level or firm
13 load at all, even by 1 kilowatt, then all those
14 penalty provisions in paragraph 3 apply, correct?

15 A. Yes.

16 Q. And under those penalty provisions, the
17 customer could be subject to one forfeiture of all
18 program credits during the current month and the
19 preceding 12 months, correct?

20 A. Preceding 12 months associated with the
21 uninterrupted demand.

22 Q. Correct?

23 A. Yes.

24 Q. Two, you would have to pay the ECE charge
25 that we just talked about, correct, as well?

1 A. Yes.

2 Q. And at the very bottom, the Company also
3 would have the right at its sole discretion to remove
4 the customer from the program for 12 months, correct?

5 A. Yes.

6 Q. And proposed there would be no grace
7 above that firm load level, correct?

8 A. The penalty is not applied on a percent
9 of its firm service level.

10 Q. No. I mean you are 1 kilowatt above, and
11 you could be subject to all those penalties based on
12 that uninterrupted demand, correct?

13 A. Yes.

14 Q. Including even if you are 1 kilowatt
15 over, you could be removed from the program for at
16 least 12 months, correct?

17 A. At the Companies' sole discretion, yes.

18 Q. Now, who -- if there is a penalty applied
19 and the credits are returned, who gets that money?

20 MR. KEANEY: Objection, your Honor, vague
21 and ambiguous talking about under the current level
22 or current as proposed in ESP V.

23 MR. PROANO: As proposed.

24 EXAMINER ADDISON: Thank you.

25 MR. KEANEY: Thank you.

1 A. Those would be returned through the
2 mechanisms that -- that have collected the credits.
3 Rider DSE1 and EDR.

4 Q. The full amount of the penalty and the
5 return of credits would be credited to DSE1?

6 A. And EDR(e).

7 EXAMINER PRICE: Would it be returned in
8 even amounts to both of those riders?

9 THE WITNESS: Equal amounts is a better
10 way to put it.

11 EXAMINER PRICE: Equal amounts, yes, is a
12 better way to put it.

13 MR. KEANEY: I'm sorry. What was the
14 question? I'm having trouble hearing.

15 EXAMINER PRICE: I'm sorry. Would the
16 credits be returned to those two riders in equal
17 amounts dollar for dollar?

18 MR. KEANEY: Thank you.

19 THE WITNESS: It would depend. So with
20 ELR there is a minimum bill provision where the
21 customer bill goes below 2 cents, their ELR credits
22 are reduced. So there may be a difference in their
23 ELR credits and their EDR credits so it may not be
24 the same that runs through both but the appropriate
25 credits flow through the appropriate riders.

1 EXAMINER PRICE: Thank you.

2 Q. (By Mr. Proano) Okay. We are almost
3 done. I am going to stay within my 40 minutes that I
4 promised. Now on December 24, 2022, all four -- all
5 24 ELR customers met their curtailment obligation,
6 correct?

7 A. Yes.

8 Q. And they met it for the entire duration
9 of the emergency event, correct?

10 A. Yes.

11 Q. And under Rider ELR, there are no
12 limitations on how many times PJM or FirstEnergy as
13 proposed could choose to interrupt the customers or
14 the duration of the interruption, correct?

15 A. Well, the redline tariffs only
16 contemplate curtailment events called by the
17 Companies.

18 Q. All right. If you want to look at page
19 sheet 5 of 7 of Attachment BSM-1 for CEI, the second
20 paragraph. And with the changes it says "An
21 Emergency Curtailment Event requested solely by the
22 Company may occur at any time during the year with no
23 restrictions on the number of events or the duration
24 of event." Did I read that correctly?

25 A. Yes.

1 Q. So to confirm for the ESP V term ELR
2 program participants could be interrupted by
3 FirstEnergy at its discretion for an emergency
4 curtailment event at any time with no restrictions on
5 the number of curtailments and no restriction of the
6 duration of the curtailment, correct?

7 A. Correct.

8 MR. PROANO: Thank you. No further
9 questions.

10 EXAMINER ADDISON: Thank you.

11 Ms. Kyler Cohn?

12 MS. COHN: Yes, thank you, your Honor.

13 - - -

14 CROSS-EXAMINATION

15 By Ms. Cohn:

16 Q. Good afternoon.

17 A. Good afternoon.

18 Q. I am doing some cleanup. If I repeat a
19 question, sorry. Do you know how long FirstEnergy
20 has offered interruptible rate credits?

21 A. I know ELR started in 2009. I don't know
22 beyond that though.

23 Q. Okay. So you don't know that
24 interruptible rate credits were available prior to
25 the first ESP?

1 A. Correct.

2 Q. Correct. Okay. You know that
3 interruptible rate credits have been repeatedly
4 approved by the Commission since that first ESP,
5 correct?

6 A. Yes.

7 Q. Do you know if participating ELR
8 customers have made business decisions in reliance on
9 the longstanding interruptible rate credits?

10 MR. KEANEY: Objection, calls for
11 speculation.

12 MS. COHN: Just asking. He can say if he
13 doesn't know.

14 EXAMINER ADDISON: Sustained.

15 Q. (By Ms. Cohn) Do you know if
16 participating ELR customers have shifted any other
17 production to Ohio in part due to FirstEnergy's
18 interruptible rate credits?

19 MR. KEANEY: Objection. Calls for
20 speculation.

21 MS. COHN: We are not speculating about
22 the future. I am just asking if he has heard of that
23 happening.

24 MR. KEANEY: She's asking if customers
25 have done this. Our customers moving into -- there

1 is no way for this witness to know.

2 EXAMINER ADDISON: He can -- I think the
3 last question was kind of trying to get into the
4 minds of customers. He can answer the question if he
5 is aware of anyone coming into Ohio on this basis.

6 So you may answer the question.

7 A. I don't know.

8 Q. (By Ms. Cohn) Okay. Are you aware that
9 for energy intensive manufacturers, even a slight
10 change in a given electric rate can result in large
11 bill impacts?

12 A. I understand large -- large industrial
13 customers try to mitigate their -- their electric
14 bills.

15 Q. I am going to try again. Because of
16 their large substantial electric usage, you know
17 that -- do you know that a slight rate increase or
18 decrease could have big bill impacts for a large
19 manufacturer?

20 MR. KEANEY: Objection, same objection.
21 Calls for speculation.

22 EXAMINER ADDISON: I think he has given
23 his answer, Ms. Kyler Cohn.

24 MS. COHN: Okay. I'll move on.

25 EXAMINER ADDISON: Let's move on.

1 Q. (By Ms. Cohn) On page 12 of your
2 testimony, you describe FirstEnergy's proposed step
3 down of the ELR credits?

4 A. Yes.

5 Q. Okay. And the Companies' proposing to
6 step down the credits by 10 percent each year over
7 the proposed ESP term, correct?

8 A. The credit remained the same in the first
9 year and then --

10 Q. Right. And then 10 percent, 10 percent
11 reduction for the eight-year term.

12 A. Yes.

13 Q. On page 13 of your testimony, and I am
14 looking at lines 7 through 10, okay, you state a part
15 of the rationale for stepping down the credits by
16 10 percent each year is to mitigate rate shock to
17 participating ELR customers, correct? It's really
18 line 9.

19 A. As part of the Companies' proposal,
20 they -- they -- they struck a balance between
21 providing rate reductions to customers paying for the
22 credits mitigating rate shock for customers
23 participating with Rider ELR. And one way they did
24 that was having customers be able to participate
25 through a CSP with their demand capabilities and have

1 an additional revenue stream on top of ELR.

2 Q. Yes. I am just saying part of the
3 motivation was to mitigate rate shock along with
4 these other factors, correct?

5 A. To gradually decrease the credit and
6 provide an additional revenue stream through
7 participation with -- with a CSP.

8 Q. Okay. Do you believe that cutting ELR
9 credits by 50 percent on the first day of the new ESP
10 would be consistent with the principle of mitigating
11 rate shock?

12 A. If there were no other revenue streams,
13 yes.

14 Q. You are saying without another revenue
15 stream, cutting by 50 percent would mitigate rate
16 shock?

17 A. Oh, sorry. Misunderstood the question.

18 THE WITNESS: May I have her question
19 reread?

20 EXAMINER ADDISON: You may.

21 (Record read.)

22 A. Just cutting a credit by 50 percent, I
23 wouldn't say that would mitigate rate shock.

24 Q. Okay. You -- you mentioned -- you've
25 mentioned that under the Companies' proposal, ELR

1 customers could receive some revenue in addition to
2 the Company ELR credits by bidding their resources
3 into PJM, right?

4 A. As described in Witness Stein's
5 testimony, yes.

6 Q. Yes. You haven't quantified the amount
7 of those potential PJM revenues, right?

8 A. I've not.

9 Q. Do you know if PJM capacity clearing
10 prices are -- are known throughout the Companies'
11 proposed ESP?

12 A. I don't know.

13 Q. So the level of the PJM revenues to which
14 you refer is currently unknown.

15 A. Yes.

16 MS. COHN: Thanks. No further questions.

17 EXAMINER ADDISON: Thank you very much.

18 Mr. Pritchard?

19 MR. PRITCHARD: Your Honor, earlier off
20 the record people had asked if they could jump in
21 front of me for timing reasons. I am happy to go
22 next.

23 EXAMINER ADDISON: I am happy to honor
24 the order.

25 MR. KEANEY: Matt, can you turn your

1 microphone on?

2 EXAMINER ADDISON: Who will be going
3 first?

4 MS. BOJKO: Can we go off the record?

5 EXAMINER ADDISON: Let's go off the
6 record.

7 (Discussion off the record.)

8 EXAMINER ADDISON: Let's go back on the
9 record.

10 Ms. Grundmann.

11 MS. GRUNDMANN: Thank you.

12 - - -

13 CROSS-EXAMINATION

14 By Ms. Grundmann:

15 Q. Good afternoon, Mr. McMillen. My name is
16 Carrie Grundmann. I represent Walmart. How are you?

17 A. Good. How are you?

18 Q. Good. I think I just have -- really just
19 a couple of questions. You discuss at page 17, line
20 6 through 8, the Energy Efficiency Cost Recovery
21 Rider and that you would propose to recover that at
22 the currently approved weighted average cost of
23 capital?

24 A. Yes.

25 Q. And so that -- that includes embedded in

1 that is the Companies' currently approved
2 10.5 percent ROE; is that correct?

3 A. That would be part of the weighted --
4 currently approved weighted cost of capital.

5 Q. And is the Company in this proceeding
6 proposing to update that based on whatever weighted
7 cost of capital is determined in the next
8 distribution rate case to be filed next year?

9 A. Yes.

10 Q. Turning to the discussion of Rider AMI,
11 were you in the room yesterday?

12 A. Yes.

13 Q. And do you recall that there was a
14 discussion that the Rider AMI is not currently
15 charged at the Companies' 10.5 percent authorized
16 ROE, but I think is -- has a 10.38 percent embedded
17 ROE in it?

18 A. Yes.

19 Q. Okay. And so you are discussing here
20 about right now it recovers associated Grid Mod Phase
21 I, and you go on and indicate at page 9, lines 14 to
22 18, you would also propose to include any Grid Mod
23 Phase II costs in Rider AMI; is that correct?

24 MR. KEANEY: Sorry. Can I get the page
25 citation?

1 MS. GRUNDMANN: Page 9, lines 14 to 18.

2 MR. KEANEY: Thank you.

3 A. The Company -- the Companies have
4 proposed in the Grid Mod II case to include the costs
5 in Rider AMI.

6 Q. To the extent that the Company's approved
7 for an ROE lower than 10.38 percent as part of its
8 upcoming base distribution case, will the Company
9 reduce the ROE applicable to Rider AMI as it has
10 proposed to do for Rider DCR?

11 A. The Companies would include the WACC that
12 would be decided in those Grid Mod cases.

13 Q. Okay. So the Companies proposed to
14 separately determine the ROE for -- applicable to
15 Rider AMI in the Grid Mod case, not as part of its
16 base distribution case?

17 A. For its Grid Mod II case, that's what the
18 Companies' proposed.

19 Q. What was the ROE that you proposed in the
20 Grid Mod II case?

21 A. It's the one currently approved for
22 that's included in Rider AMI for Grid Mod I.

23 Q. So you are proposing to continue the
24 10.38 percent ROE as part of whatever cost would be
25 approved in Grid Mod II?

1 A. Yes.

2 MS. GRUNDMANN: Thank you. Those are all
3 the questions I have.

4 EXAMINER PRICE: If I could follow up
5 with Ms. Grundmann, and if you are not the correct
6 witness, then you can refer me to Mr. Miller, let's
7 go to the Energy Efficiency Program Rider. You
8 indicate that you are going to spread out the costs
9 of the energy efficiency programs over eight years;
10 is that correct?

11 THE WITNESS: Yes.

12 EXAMINER PRICE: And you propose four
13 years of program -- of energy efficiency programs.
14 What will happen to the energy programs at the end of
15 that fourth year? Is the Company committing there
16 will be no other energy efficiency programs, or are
17 you intending on coming forward with a new
18 application?

19 THE WITNESS: I believe you better ask
20 that of Mr. Miller.

21 MS. BOJKO: Your Honor, I'm sorry. We
22 can't hear you. I don't think your mic's on.

23 EXAMINER PRICE: It's not.

24 Karen, can we have the question and
25 answer back, please?

1 (Record read.)

2 MS. BOJKO: Thank you.

3 EXAMINER ADDISON: Thank you.

4 Mr. Pritchard.

5 MR. PRITCHARD: Thank you, your Honor.

6 - - -

7 CROSS-EXAMINATION

8 By Mr. Pritchard:

9 Q. Good afternoon, Mr. McMillen.

10 A. Good afternoon.

11 Q. We've been discussing today that ELR
12 program consists of two \$5 credits, correct?

13 A. It currently does, yes.

14 Q. And each of those \$5 credits, if we are
15 to translate them into dollars per megawatt-day,
16 would be \$164 per megawatt-day, correct?

17 A. I believe Witness Stein has that in his
18 testimony. I just can't recall the number.

19 Q. But that's not something that you would
20 have reviewed?

21 A. Yeah. I don't recall the number.

22 Q. And we've been discussing today that the
23 two \$5 credits are going to be collected through the
24 DSE Rider as well as the EDR Rider, correct?

25 A. DSE1 and EDR(e), yes.

1 Q. And the DSE1 component of the rider is
2 allocated to and collected from all customer classes,
3 correct?

4 A. Excluding ELR customers, yes.

5 Q. And the EDR, the \$5 credit collected
6 through the EDR is allocated to and collected from
7 all customer classes, correct?

8 A. So EDR(e) has two provisions, provision 1
9 and provision 2. Provision 1 would recover -- would
10 recover credits associated with ELR participants that
11 were participating since ESP III. That would be
12 recovered over Rate GS and GP. And provision 2 for
13 additional customers that were added as part of ESP
14 IV, that is recovered over all rate classes, or rate
15 schedules.

16 Q. And as to the total dollar magnitude,
17 your testimony on page 14 is that when looking at the
18 term of ESP IV, the total dollar magnitude of the ELR
19 credits has been between 50 and 60 million dollars
20 historically, correct?

21 A. Yes.

22 Q. And here on page 14, lines 14 and 15, you
23 state that your phase down proposal is going to
24 reduce that historic level by roughly 5 to 6 million
25 dollars per year, correct?

1 A. Yes.

2 Q. And so if we started at \$60 million in
3 year one of the proposed ESP and decreased it by
4 \$5 million a year, you would get \$340 million,
5 correct, over the eight years?

6 A. What was your value?

7 Q. 340.

8 A. Yes.

9 Q. And so that \$340 million over the term of
10 the ESP, that is the level of bill impact that would
11 show up in the bill impacts attached to Ms. Patel's
12 testimony, correct?

13 A. I understand Ms. Patel's testimony
14 includes estimates for Rider DSE1 and the EDR(e) that
15 would include the rate -- or the credit reductions
16 associated with the proposal here.

17 Q. Yeah. But just to be clear, her proposal
18 would phase down consistent with the credit levels
19 you have here on page -- the bottom of page 12, which
20 as we just walked through, total on a cost value of
21 approximately \$340 million.

22 A. Yes.

23 Q. Sitting here without looking at anything
24 else, do you know the magnitude of these historic ELR
25 credits that were collected through the Rider DSE by

1 customer class?

2 A. Since when? Sorry. Since when?

3 Q. I just said historically.

4 A. Historically I don't know the total
5 number off the top of my head.

6 MR. PRITCHARD: Your Honor, may we
7 approach?

8 EXAMINER ADDISON: You may.

9 MR. PRITCHARD: Your Honor, can I have
10 the document that is the narrative response to RESA
11 Interrogatory 2-10 marked as RESA Exhibit 1? And
12 then the other document we handed out marked as RESA
13 Exhibit 2 is identified at the top left corner, and
14 it is RESA 2-10 Attachment 1 that was provided by the
15 Company in discovery.

16 EXAMINER ADDISON: It will be so marked.

17 (EXHIBITS MARKED FOR IDENTIFICATION.)

18 Q. (By Mr. Pritchard) Mr. McMillen, in
19 discovery in this case you were asked to identify the
20 historic revenue collected through Rider DSE,
21 correct?

22 A. I was asked to identify the total revenue
23 by year back to 2009, collected from customers
24 through the rider.

25 Q. And that request for information is

1 reflected here on RESA Interrogatory 2-10, correct?

2 A. Yeah. There was an objection and then an
3 attachment.

4 Q. Correct. And the attachment referenced
5 on this document is RESA 2 Interrogatory 10
6 Attachment 1, correct?

7 A. Yes.

8 Q. I would like to turn your attention to
9 the Excel file document we handed out that's labeled
10 RESA Exhibit 2. Do you have that in front of you
11 now? At the top left corner says "RESA 2-INT-10
12 Attachment 1."

13 A. That's Exhibit 2.

14 Q. Correct.

15 A. Sorry. Didn't mark it. Yes.

16 Q. And at the bottom of the first page of
17 this document, it says "DSE2," and at the bottom of
18 the second page it says "DSE1," correct?

19 A. Yes.

20 Q. And the historic revenue collected on the
21 first page, the DSE2 page, that would have been
22 historic revenue collected by the Company in
23 compliance with the prior energy efficiency plans,
24 correct?

25 A. Correct.

1 Q. And the second page of the document
2 that's labeled DSE1 at the bottom, that would be the
3 historic revenue collected from customers associated
4 with one of the two \$5 credit components of ELR,
5 correct?

6 A. That would be the revenue from 2009
7 through 2022 for Rider DSE1.

8 Q. And again, the DSE -- the revenue that
9 appears on this page is associated with one of those
10 \$5 ELR program credits, correct?

11 A. It collects the credit for Rider ELR,
12 yes.

13 Q. And this DSE1 page has four sections,
14 CEI, OE, TE, and Total, correct?

15 A. Yes.

16 Q. So if we wanted to find residential --
17 total residential revenue collected for an individual
18 operating company, we would go to that section in the
19 relevant year, correct?

20 A. Yes.

21 Q. And to see the aggregate collected from
22 all of that relevant customer class, that's what is
23 summed up in the bottom table, correct?

24 A. By class by year, yes.

25 Q. And in the very last line has total

1 revenue collected by all customer classes for all
2 three of the operating companies, correct?

3 A. Yes.

4 Q. And if we add up all of the information
5 in the total columns, it adds up to roughly
6 \$330 million, correct?

7 A. There is not a total on the -- on the
8 page.

9 Q. Fair enough. If we wanted -- let me
10 rephrase the question like this, if we wanted to see
11 what the total revenue collected between 2009 and
12 2023 -- '22 as reflected here, we would sum up the
13 bottom total number in each of these columns,
14 correct?

15 A. Yes.

16 Q. And this document, as we just were
17 discussing the DSE1 component, so this would have
18 been just part of the total ELR program credits
19 historically provided to customers, correct, or
20 provided to the ELR program participants?

21 A. It would be that. Also there would be
22 offsets to what PJM revenue received.

23 Q. But the figure -- let me just rephrase
24 it. Sitting here today, do you know the total ELR
25 credits provided between 2009 and 2023 without

1 looking at additional information?

2 A. I don't.

3 MR. PRITCHARD: Your Honors, may we
4 approach with another document?

5 EXAMINER ADDISON: You may. Did you want
6 to go ahead and mark this, Mr. Pritchard?

7 MR. PRITCHARD: Yes. I would like to
8 have this document marked as RESA Exhibit 3, which is
9 the Companies' response to RESA Interrogatory 2-5.

10 EXAMINER ADDISON: It will be so marked.

11 (EXHIBIT MARKED FOR IDENTIFICATION.)

12 Q. (By Mr. Pritchard) Mr. McMillen, does
13 this request for information request the total annual
14 ELR credits by year back to 2009?

15 MR. KEANEY: Objection, your Honor. The
16 question started from 2009 to 2023. It misstates
17 what's in the Discovery Response which is 2009 to
18 2016.

19 EXAMINER ADDISON: Mr. Pritchard.

20 MR. PRITCHARD: I believe my first
21 question before I handed out this exhibit was does
22 the witness know off the top of his head without
23 looking at additional information. He said no, and
24 now my question here -- and I apologize if I
25 misstated. It was asking for -- trying to paraphrase

1 the request for information of asking for information
2 back to 2009.

3 EXAMINER ADDISON: Thank you. Let's just
4 be clear what time period we are operating under with
5 the Discovery Request.

6 MR. PRITCHARD: So happy to strike my
7 past question and rephrase.

8 EXAMINER ADDISON: Thank you.

9 Q. (By Mr. Pritchard) Mr. McMillen, this
10 request for information, annual credits by year back
11 to 2009, correct?

12 A. The request asks to identify total annual
13 credits by year back to 2009 provided to customers.

14 Q. And the chart at the bottom of this page
15 has information for calendar years 2009 to 2015 and
16 the first five months of 2016, correct?

17 A. Yes.

18 Q. And so this document shows the total ELR
19 credits provided to the ELR customers for each of
20 these time periods identified here, correct?

21 A. Correct.

22 Q. And the Companies' narrative response on
23 this document indicated that the Companies' response
24 to PUCO DR-6 had ELR credit information for the
25 period of June '16 -- June of 2016 through 2022,

1 correct?

2 A. There was an objection before that, yes.

3 MR. PRITCHARD: Your Honor, may we
4 approach with two additional documents?

5 EXAMINER ADDISON: You may.

6 MR. PRITCHARD: Your Honors, I would like
7 to have marked as RESA Exhibit 4, the Companies'
8 response to PUCO DR-6, and I would like to have
9 marked as RESA Exhibit 5, the Companies' response
10 PUCO DR-6 Attachment 1.

11 EXAMINER ADDISON: They will be so
12 marked.

13 (EXHIBITS MARKED FOR IDENTIFICATION.)

14 Q. (By Mr. Pritchard) Mr. McMillen, do you
15 have these two documents in front of you?

16 A. Yes.

17 Q. And as we just referenced from RESA
18 Exhibit 3, which was the Companies' response to
19 Interrogatory 2-5, the Company directed that for part
20 of the ELR credit information to see PUCO DR-6
21 question 1a, correct?

22 A. Yes.

23 Q. And as requested by PUCO Staff, 1a asks
24 for each year since start of ESP IV the total amount
25 of credits paid to ELR participants, correct?

1 A. Yes.

2 Q. And the Companies' response was to see
3 PUCO DR-6 Attachment 1, correct?

4 A. Yes.

5 Q. And will you turn to the document marked
6 as RESA Exhibit 5 which is DR-6 Attachment 1.

7 A. I'm there.

8 Q. And this document identifies what each of
9 those \$5 per kilowatt -- kilowatt month credits
10 translated to in terms of the total revenue collected
11 from -- through ELR -- I should say provided through
12 ELR as well as EDR(b), correct?

13 A. There is a note that ELR line would also
14 include impacts of the minimum bill provision if it's
15 triggered. So in addition to that, it would include
16 those \$5 credits.

17 Q. And if we are looking at the information
18 on this, we see that June of 2020 through May of '21
19 had the lowest annual credit of \$55.1 million,
20 correct?

21 A. Yes.

22 Q. And the highest level of credit was the
23 first year of the ESP IV at 67.48 million, correct?

24 A. Yes.

25 Q. And if the Commission wanted to calculate

1 at least for the period of ESP IV reflected on this
2 document, you would total up the aggregate
3 information in each of the total items?

4 A. If you wanted the total from June '16
5 through May '23, you could add the total line to get
6 that total.

7 Q. Have you calculated the total ELR credits
8 provided between 2009 and May of 2023?

9 A. If you mean to sum the total together?

10 Q. Yeah. Do you know what the rough
11 dollar -- total dollar amount provided since between
12 2009 and 2023 reflected on these documents provided
13 in response to discovery?

14 A. I don't have that sum in front of me.

15 Q. Switching to a slightly different line of
16 questions that Mr. Proano was asking about earlier,
17 currently the Company acts as the curtailment service
18 provider for the participants in the ELR program,
19 correct?

20 A. In order to offer those capabilities into
21 PJM so the customers would be subject to curtailments
22 initiated by PJM, yes.

23 Q. If one of your customers wants to
24 participate in the PJM demand response market and
25 they aren't in the ELR program, there are curtailment

1 service providers that offer that service to
2 customers that assist them bidding into the PJM
3 market, correct?

4 A. To my knowledge, yes.

5 Q. And so if you -- if the Companies cease
6 being a CSP for ELR customers, those ELR participants
7 will choose from one of several or many CSPs to take
8 on that function?

9 A. As part of the Companies' proposal, the
10 customers want to continue to be on ELR, they would
11 have to participate through a CSP in order to
12 participate -- to be able to be eligible to see
13 credits through Rider ELR.

14 Q. And your understanding is there is
15 multiple CSPs that they can choose from.

16 A. I have no reason to believe otherwise.

17 Q. But do you know one way or the other if
18 there is many CSPs or not in the market?

19 MR. KEANEY: Objection. That question
20 has been asked and answered.

21 EXAMINER ADDISON: Overruled.

22 A. I don't know that -- the number of CSPs
23 that would be available, but I know there would be
24 CSPs available.

25 Q. And earlier we discussed -- or you

1 discussed with Mr. Proano that FirstEnergy had an
2 issue with this notification on December --
3 notification system on December 23 of last year,
4 correct?

5 A. Yes.

6 Q. And if FirstEnergy fails to notify ELR
7 program participants to curtail and they don't
8 curtail, does PJM assess penalties?

9 A. There could be penalties assessed.

10 Q. Do you know if penalties were assessed
11 relative to any ELR program customers' failure --
12 failure to curtail on December 23?

13 A. The Companies weren't assessed penalties
14 for that event.

15 Q. What costs does the Companies -- do the
16 Companies incur relative to acting as a CSP?

17 A. There would be costs associated with the
18 Companies' notification system in order to call
19 customers and to the extent there is PJM fees in
20 order to be able to participate in the market.

21 Q. Could you turn -- this was a document
22 Mr. Proano introduced that's OELC Exhibit 1 and it
23 was the response to Nucor 1 -- Interrogatory 1-4.
24 Let me know when you have that document in front of
25 you.

1 A. I have it.

2 Q. The Companies' response to part D, let me
3 know when you're at that page.

4 A. I'm there.

5 Q. Here there is a -- a figure of
6 \$1.6 million and the response indicates that between
7 June 2016 and May 2023, the Companies have incurred
8 costs totaling \$1.6 million related to charges from
9 PJM, the costs associated with the notification
10 system. Do you see that?

11 A. There is an objection preceding that but,
12 yes, I do see that.

13 Q. Would any of that \$1.6 million be
14 penalties?

15 A. No.

16 Q. Do you know if the Companies have ever
17 received penalties from PJM associated with the
18 Companies' role as a CSP for the ELR program?

19 A. I do not know.

20 Q. If the Company's proposal is approved
21 in -- and you cease to act as a CSP, will the Company
22 still continue to incur the type of costs reflected
23 in this \$1.6 million figure?

24 A. Any related charges from PJM would go
25 away but there would be costs for the Companies to

1 have a notifying system in order to call their
2 customers -- call the ELR customers for emergencies
3 initiated by the Companies.

4 Q. And those emergencies initiated by the
5 Companies would be emergencies related to the
6 distribution grid, correct?

7 A. Yes.

8 Q. And during ESP IV, were there any calls
9 by the Companies related to an emergency on the
10 distribution grid?

11 A. No.

12 Q. Your testimony also addresses the
13 creation of a new rider, the Energy Efficiency Cost
14 Recovery Rider, or Rider EEC, correct?

15 A. Yes.

16 Q. And Attachment to your testimony BSM-2
17 breaks down the costs of Rider EEC, correct?

18 A. Attachment BSM 2 would include the
19 estimated expenses that would flow through the rider.

20 Q. And there is a breakdown between
21 residential and nonresidential customer groups,
22 correct?

23 A. Yes.

24 Q. As the Company proposes, there is an
25 opt-out mechanism for some nonresidential customers,

1 correct?

2 A. I understand there is an opt-out
3 mechanism for nonresidential customers, yes.

4 Q. And do the figures here on the various
5 pages of Attachment BSM-2 assume that no opt-outs
6 from the nonresidential customer class have occurred?

7 A. For purposes of estimating the rates for
8 nonresidential customers, I didn't estimate how many
9 opt-outs would occur over a period.

10 Q. So these costs are the total costs for
11 the nonresidential programs proposed by Mr. Miller.

12 A. Yeah, yes, that was the source for the
13 costs.

14 Q. And if there are nonresidential customer
15 opt-outs, would these costs for the nonresidential
16 sector go down?

17 A. I don't know.

18 Q. Are the figures you reflect in the
19 residential section tied on -- on Attachment BSM-2
20 tied to only the residential energy efficiency
21 programs proposed by Mr. Miller?

22 A. Yes.

23 Q. So stated another way, the residential
24 programs Mr. Miller proposes will be allocated
25 exclusively to the residential customers.

1 A. Residential customers would -- would --
2 through Rider EEC would pay for the expenses
3 associated with the residential energy efficiency
4 programs.

5 Q. And the nonresidential customers would be
6 allocated all of the costs associated with the
7 nonresidential energy efficiency programs Mr. Miller
8 proposes?

9 A. Yes.

10 Q. Will you flip to Attachment BSM-2, page
11 2.

12 A. I'm there.

13 Q. This chart reflected costs that would be
14 allocated to it says at the top left of the first
15 table "OE," so Ohio Edison, correct?

16 A. Yes.

17 Q. And there in the second column it's
18 labeled "Spend," correct?

19 A. Yes.

20 Q. And we only see four years of costs in
21 the Spend column, correct?

22 A. Yes.

23 Q. And is that because Mr. Miller only
24 proposes at this time a four-year energy efficiency
25 plan?

1 A. Those costs would be consistent with this
2 proposal.

3 Q. Which is at this time a four-year plan,
4 correct?

5 A. Yes.

6 Q. And it's the Companies' proposal to
7 collect each of the annual spend over eight years,
8 correct?

9 A. Yes.

10 Q. And so we have here collections for years
11 1 through 11, correct?

12 A. This would include the revenue
13 requirement associated with the spreading those costs
14 over eight years. That's shown over an 11-year
15 period.

16 Q. Yeah. And so if we look at this first
17 table labeled Ohio Edison residential, the total
18 spend is 71.87 million, correct?

19 A. Yes.

20 Q. And that's incurred over four years
21 collected over this 11-year period, correct?

22 A. Yes.

23 Q. And if we look a few columns to the
24 right, there is a column labeled "Return," correct?

25 A. Yes.

1 Q. And your testimony proposes that
2 spreading this cost over an eight-year collection
3 period will be subject to a carrying charge at a
4 weighted average cost of capital rate, correct?

5 A. Yes.

6 Q. And that 8.48 percent we see on this
7 table is the weighted average cost of capital rate,
8 correct?

9 A. The Companies' currently approved
10 weighted cost of capital.

11 Q. And of the 8.48 percent, 3.34 percent
12 relates to debt in this carrying charge, correct?

13 A. Yes.

14 Q. And the remaining 5.14 percent relates to
15 equity, correct?

16 A. Yes.

17 Q. And we see at the bottom of the return a
18 column, a total of 21.3 million, correct?

19 A. Yes.

20 Q. So that 21.3 reflects the interest from
21 the carrying charge rate over these 11 years,
22 correct?

23 A. That is a result of the spreading these
24 costs over an eight-year period.

25 Q. Yeah. And the relative ratio of equity

1 of 5.14 percent to the total 8.48 percent would
2 reveal the portion of the 21.3 million that would be
3 a contribution to equity in this table, correct?

4 A. Yes.

5 Q. And to figure out the total, you would
6 collect from Ohio Edison residential customers over
7 the 11 years, you would take the 71.87 million of
8 costs, add the 21.33 million of return to get to a
9 total 11-year revenue requirement of the
10 93.2 million, correct?

11 A. Yes.

12 Q. And we could take that same math for the
13 Ohio Edison nonresidential customers and also apply
14 it to your next four pages of Attachment BSM-2 which
15 are the other Operating Companies, correct?

16 A. Yes.

17 EXAMINER PRICE: Mr. Pritchard.

18 MR. PRITCHARD: Yes.

19 EXAMINER PRICE: If you don't mind.

20 MR. PRITCHARD: I don't.

21 EXAMINER PRICE: I would just like the
22 record to be clear, your proposal, we will still be
23 collecting three years after the expiration of the
24 ESP costs that were incurred in year four of the ESP;
25 is that correct?

1 THE WITNESS: Yes.

2 EXAMINER PRICE: Thank you.

3 Thank you, Mr. Pritchard.

4 MR. PRITCHARD: One second, your Honor.

5 EXAMINER ADDISON: Let's go off the
6 record for a minute.

7 (Recess taken.)

8 EXAMINER ADDISON: Let's go back on the
9 record.

10 Mr. Pritchard.

11 MR. PRITCHARD: Thank you.

12 Q. (By Mr. Pritchard) And so we've been
13 talking, Mr. McMillen, about Rider EEC which will
14 collect prospective energy efficiency costs if the
15 Commission approves the energy efficiency plan in
16 Mr. Miller's testimony, correct?

17 A. Yes.

18 Q. Historically though energy efficiency
19 costs under prior plans were collected through the
20 DSE2 component of Rider DSE, correct?

21 A. The Companies' Rider DSE2 collected
22 energy efficiency costs.

23 Q. Will you turn back to the document that
24 was marked RESA Exhibit 2. At the top left corner
25 it's labeled RESA Set 2-INT-10 Attachment 1.

1 A. I'm there.

2 Q. Do you have that in front of you? At the
3 bottom of the first page of this exhibit is the label
4 "DSE2," correct?

5 A. Yes.

6 Q. And as we discussed earlier the
7 Interrogatory RESA-2-10 sought the total historic
8 annual revenue through Rider DSE, correct?

9 A. Yes.

10 Q. And here on the first page of RESA
11 Exhibit 2, the DSE2 revenue is broken down by
12 calendar year between the years 2011 and 2022,
13 correct?

14 A. Yes.

15 Q. And it's broken down further by rate
16 schedule and by Operating Company, correct?

17 A. Yes.

18 Q. So if the Commission wanted to see what
19 the residential customers of CEI, OE, Toledo Edison,
20 or total paid in a given year or aggregate, that
21 information would be available on this page for these
22 relevant time periods, correct?

23 A. Yes.

24 Q. And have you added up the total costs
25 that appear on this document before?

1 A. No.

2 Q. But that math could be accomplished by
3 adding up the information in the table labeled
4 "Total" and the last line of that table labeled
5 "Total," correct?

6 A. Yes.

7 Q. Your testimony in this case also
8 addresses Rider AMI, correct?

9 A. Yes.

10 Q. And the current version of Rider AMI is
11 collecting costs associated with the Commission's
12 authorization of Grid Mod I, correct?

13 A. Grid Mod I and the associated costs or
14 the costs associated with the Ohio site deployment of
15 the SmartGrid modernization initiative.

16 Q. So both the Grid Mod I and that Ohio site
17 that you just referenced are currently collected in
18 Rider AMI.

19 A. Yes.

20 Q. And your testimony proposes to extend
21 Rider AMI for the duration of the proposed ESP V,
22 correct?

23 A. The Companies' proposal is to continue
24 Rider AMI and include the Ohio site deployment of the
25 gridSMART modernization initiative cost and the Grid

1 Mod I costs pursuant to the terms and conditions of
2 those cases.

3 Q. And as -- in this case you are proposing
4 to continue just the rider mechanism for the entire
5 term of ESP V, correct?

6 A. The proposal is to continue the mechanism
7 including those two initiatives, the grid
8 modernization initiatives that I listed.

9 Q. And the Companies' proposal would be that
10 if there is costs approved as part of your pending
11 Grid Mod II case, they would flow into Rider AMI that
12 you are seeking to extend in this proceeding,
13 correct?

14 A. In the Companies' Grid Mod II case, they
15 propose to include those costs in Rider AMI.

16 Q. And so your proposal here is to continue
17 Rider AMI in a separate proceeding if the Commission
18 approves a cost that's going to flow into the Rider
19 AMI the Company proposes for approval in this case.

20 A. Subject to terms and conditions of the
21 Grid Mod II case and any additional grid
22 modernization case.

23 MR. PRITCHARD: Your Honor, may we
24 approach with a document?

25 EXAMINER ADDISON: You may.

1 MR. PRITCHARD: Your Honor, can I have
2 this document marked as RESA Exhibit 6?

3 EXAMINER ADDISON: It will be so marked.
4 (EXHIBIT MARKED FOR IDENTIFICATION.)

5 Q. (By Mr. Pritchard) Mr. McMillen, do you
6 have the document marked as RESA Exhibit 6 in front
7 of you?

8 A. Yes.

9 Q. And this is a copy of your prefiled
10 direct testimony in the Grid Mod II case, correct?
11 And let me just make the record clear. This is an
12 excerpt of your testimony without the second
13 voluminous attachment at the end that was bill
14 impacts, correct?

15 A. Yes. It's missing Exhibit B.

16 Q. And the Grid Mod II case -- case number
17 is reflected on this is Case 22-704-EL-UNC, correct?

18 A. Yes.

19 Q. And at page 2 of that testimony, you
20 address the costs that were approved as part of Grid
21 Mod I, correct?

22 A. The testimony on line 13 of page 2,
23 "Consistent with Grid Mod I, the amount of capital
24 investment and incremental O&M expense recoverable
25 under Rider AMI will be capped, with capital costs

1 recovered not to exceed \$626.4 million and
2 incremental O&M expense recovered not to exceed
3 144 -- 144.1 million for the first four years of
4 deployment."

5 Q. And that 626.4 million of capital,
6 144.1 million of O&M, as we discussed a minute ago,
7 those are the caps of authorizable costs that are
8 flowing into Rider AMI today, correct?

9 A. No. Those are the proposed costs in Grid
10 Mod -- for Grid Mod II.

11 Q. Okay. What were the costs -- sitting
12 here today, do you know the costs currently being
13 collected associated with Grid Mod I?

14 A. The capital costs included in Grid Mod I
15 was capped at \$516 million. I don't -- I don't
16 recall the O&M caps.

17 Q. And those authorized costs are currently
18 flowing into Rider AMI and will continue to be
19 collected in Rider AMI beyond the current rates,
20 correct?

21 A. The Companies' proposal is to continue
22 Rider AMI and continue to recover Grid Mod I costs
23 subject to terms and conditions of the Grid Mod I
24 proceeding. However, if the -- as I describe in my
25 testimony, if it's deemed that the Companies move

1 those balances into base rates, it would then
2 subsequently be removed from Rider AMI and be
3 included in base rates.

4 Q. Okay. Let me break this up. Let's set
5 aside authorization of Grid Mod II. In this case you
6 propose to continue Rider AMI if that's approved in
7 the ESP case. Rider AMI up until the base rate case
8 would continue to collect historic costs from Grid
9 Mod I, correct?

10 A. That's the Companies' proposal.

11 Q. And Rider AMI rates, all else equal,
12 would increase if Grid Mod II is approved subject to
13 the caveat of rolling in parts in the base rates?

14 A. I agree if Rider AMI is approved, Grid
15 Mod I is continued to be collected in Rider AMI, and
16 then in the separate proceeding if Grid Mod II costs
17 are approved to be included in Rider AMI, Rider AMI
18 would -- would increase.

19 Q. And if we turn to Exhibit A to your
20 testimony in 22-704, there are several pages
21 associated with a four-year proposed revenue
22 requirement for the Grid Mod II proposal, correct?

23 A. Yes.

24 Q. So, for example, on the first page of
25 Exhibit A to that testimony, it's for Cleveland

1 Electric Illuminating, and the total four-year
2 revenue requirement in the bottom right is
3 178.1 million, correct?

4 A. Yes.

5 Q. And there's similar figures in the
6 following pages for Toledo Edison and Ohio Edison,
7 correct?

8 A. Yes.

9 Q. And if Grid Mod II is approved, those
10 costs would flow into the Rider AMI that is being
11 proposed to be continued in this proceeding, correct?

12 A. That is the Companies' proposal in the
13 Grid Mod II case.

14 MR. PRITCHARD: And, your Honor, may we
15 approach with one -- one final line of questioning,
16 two exhibits?

17 EXAMINER ADDISON: Absolutely.

18 MR. PRITCHARD: Your Honor, can I have
19 marked as RESA's Exhibit 7, the Companies' response
20 to RESA Interrogatory 2-8; and can I have marked as
21 RESA Exhibit 8, the Companies' response -- responsive
22 document RESA Set 2-INT-8 Attachment 1.

23 EXAMINER ADDISON: They will be so
24 marked.

25 (EXHIBITS MARKED FOR IDENTIFICATION.)

1 Q. (By Mr. Pritchard) Mr. McMillen, do you
2 have the response to RESA Interrogatory 2-8 in front
3 of you?

4 A. Yes.

5 Q. The document indicates it was prepared by
6 a Company employee by the name of Lindsey Arch,
7 correct?

8 A. Yes.

9 Q. Do you know who Lindsey Arch is?

10 A. Yes.

11 Q. Do you work with her?

12 A. Yes.

13 Q. Is she part of your team?

14 A. She is part of the Ohio rates team.

15 Q. Does she report to you?

16 A. Not directly.

17 Q. This interrogatory sought for Rider
18 AMI -- for the Company to identify the total annual
19 revenue back to 2009 collected from all customers
20 through Rider AMI, correct?

21 A. Yes.

22 Q. Earlier in response to Mr. Proano, you
23 indicated at the very beginning of his questioning
24 that part of your job is to oversee a number of
25 riders. Historically did you oversee Rider AMI?

1 A. Yes.

2 Q. Are you aware -- let me rephrase this
3 differently.

4 In your past role of working and managing
5 Rider AMI, did you have cause to know the annual
6 revenue collected through the rider?

7 A. I would be familiar with the costs that
8 would flow through Rider AMI and then the subsequent
9 revenues associated with that.

10 Q. Will you turn to what was marked as RESA
11 Exhibit 8 which in the top left corner is identified
12 as RESA Set 2-INT-8 Attachment 1.

13 A. I'm there.

14 Q. And does this document identify the
15 historic Rider AMI revenue collected from customers
16 between the years 2011 and 2022?

17 A. Yes, by class, by company.

18 Q. Thank you. And if the Commission wanted
19 to look at the aggregate amount collected either by a
20 customer class or from all customers, that would be
21 reflected in the last table of this page labeled
22 "Total," correct?

23 MR. KEANEY: Your Honor, I am just going
24 to object. It's vague. It says "Total" four
25 different times. If you could just be more specific.

1 MR. PRITCHARD: Sure. I am happy to
2 rephrase.

3 EXAMINER ADDISON: Let's just go off the
4 record for a second.

5 (Discussion off the record.)

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

8 And before you rephrase your question,
9 Mr. Pritchard, Mr. McMillen, if you go to the first
10 column on the left-hand side where 2011 is denoted at
11 the top, you scroll all the way down to where it has
12 a row in the table labeled "Total AMI," I believe the
13 first year referenced there should be 2011 as well;
14 is that correct?

15 THE WITNESS: Yes.

16 EXAMINER ADDISON: Okay. Thank you.

17 THE WITNESS: Thank you.

18 EXAMINER ADDISON: Go ahead,
19 Mr. Pritchard.

20 Q. (By Mr. Pritchard) So the way we would
21 read this table, Mr. McMillen, if you wanted to see
22 what the total of the three Operating Companies
23 aggregated to, that's the information in the last
24 table on this page, correct?

25 A. The table at the bottom would be the sum

1 of the three Operating Companies above.

2 Q. And if we wanted to -- or if the
3 Commission wanted to aggregate the total collected
4 either by customer class or from all customers, they
5 could aggregate 2011 to 2022 information reflected in
6 that bottom table, correct?

7 A. To calculate the total Rider AMI revenue
8 from 2011 to 2022, you would be able to sum up the
9 revenue in -- in the total table on the bottom.

10 MR. PRITCHARD: Those are all my
11 questions, your Honor. Thank you.

12 EXAMINER ADDISON: Thank you,
13 Mr. Pritchard.

14 Ms. Bojko.

15 MS. BOJKO: Thank you, your Honor.

16 - - -

17 CROSS-EXAMINATION

18 By Ms. Bojko:

19 Q. Good afternoon, Mr. McMillen. My name is
20 Kim Bojko. I represent the Ohio Manufacturers'
21 Association Energy Group.

22 Sir, you are the Manager of Rates and
23 Regulatory Affairs in the Ohio Rates and Regulatory
24 Affairs Department of FirstEnergy Service Corp.; is
25 that correct?

1 A. Yes.

2 Q. I believe you stated earlier you manage
3 the riders for all three Ohio Operating Companies; is
4 that correct?

5 A. I think I may have listed a few riders
6 that we do manage, but it wasn't an exhaustive list.

7 Q. Okay. Do you manage riders for other
8 Operating Companies under the FirstEnergy Service
9 Corp. umbrella?

10 A. It would just be for Ohio.

11 Q. Let's turn to your testimony. It's been
12 previously marked as Company Exhibit 2 -- or 3. Do
13 you have that in front of you?

14 A. Yes.

15 Q. And on page 5 of the testimony, you list
16 the various riders that you are -- actually sorry.
17 Page 2 of the testimony you list the various riders
18 that you are testifying here to today; is that
19 correct?

20 A. Yes.

21 Q. Let's turn to the DCR Rider that starts
22 on page 3 of your testimony.

23 A. I'm there.

24 Q. First -- FirstEnergy earns -- when I say
25 FirstEnergy, I am referring to the three Ohio

1 Operating Utilities. Is that okay with you?

2 A. Yes.

3 Q. I think that's how you've been answering
4 today. FirstEnergy earns a return of and on plant in
5 service associated with distribution, transmission,
6 general and intangible plant; is that correct?

7 A. Including the allocated plant from
8 FirstEnergy Service Company that supports the
9 Companies, yes.

10 Q. And these same kinds of costs are also or
11 can also be recovered through FirstEnergy's rate
12 base; is that correct?

13 MR. KEANEY: Your Honor, objection. Rate
14 base or base rates?

15 Q. (By Ms. Bojko) Well, through base rates
16 can be part of your rate base; is that correct?

17 A. Rider DCR provides the Companies an
18 opportunity to earn a return on and of plant
19 investments associated with distribution,
20 transmission, general and intangible plant including
21 plant associated with FirstEnergy Service Company
22 that supports the Companies' incremental since the
23 last distribution rate case. And I think in my
24 testimony further -- further along that once the
25 Companies file a base rate case, DCR balances would

1 be -- would move into that -- would move into base
2 rates.

3 Q. So the answer to my question is, yes,
4 these are the same kinds of costs that you could and
5 do recover through base rates?

6 A. Yes.

7 Q. And the DCR has been in effect for 11
8 years; is that correct?

9 A. Since 2012.

10 Q. You discussed earlier I -- I think
11 earlier -- I am trying not to repeat questions, but I
12 know I have to lay some foundation. So earlier you
13 mentioned that the return on equity for the Rider DCR
14 is 10.5 percent. Do you recall that?

15 A. Yes.

16 Q. And that is based on the 2007 base rate
17 case; is that correct?

18 A. It's the Companies' current approved
19 return on equity from that case.

20 Q. And the Companies also recover property
21 taxes, CAT, and income taxes associated with the
22 capital additions through Rider DCR; is that correct?

23 A. They are part of the revenue requirement,
24 yes.

25 Q. On page 4, line 14, here you discuss the

1 annual aggregate revenue caps for the Rider DCR. Do
2 you see that?

3 A. Yes.

4 Q. And as I understand your testimony, the
5 proposed annual aggregate Rider DCR caps are based on
6 the existing revenue caps with annual increases of 15
7 to 21 million annually; is that correct?

8 A. Can I have that reread, please?

9 Q. Actually let me restate it. As I
10 understand your testimony, the proposed annual
11 aggregate Rider DCR caps are based on the existing
12 revenue caps with annual increases of 15 to
13 21 million, correct?

14 A. The Companies propose to increase the
15 aggregate DCR revenue caps between 15 and 21 million
16 based off the Companies' ability to meet their
17 reliability standards as described in my testimony.

18 Q. But the 15 to 21 is an increase to the
19 starting number of 390 million; is that correct?

20 A. Yeah. It would be incremental to the --
21 390 million is what the Companies' cap would be at
22 the end of ESP IV. Those caps would be incremental
23 to that up until the Companies' Rider DCR balances
24 are moved into rate base and revenue caps are reset.

25 Q. So over the proposed eight-year term of

1 the ESP V, the aggregate annual caps could increase
2 by as much as 168 million assuming all six
3 reliability metrics are met, correct?

4 A. If all six reliability metrics are met,
5 the Companies cap, incremental cap, would increase
6 21 million. In total that would be the 168 you
7 referred to.

8 Q. And even if the Companies failed to meet
9 any reliability metrics, I read your testimony to
10 state that the Companies still receive \$15 million in
11 aggregate increase for a particular year that that --
12 that they failed their metrics; is that correct?

13 A. Yes.

14 Q. So in year one the proposed cap structure
15 guarantees at least a \$15 million increase above the
16 current cap of 390 million even if the metrics are
17 failed; is that right?

18 A. If the Companies fail to meet at least
19 four of their six CAIDI or SAIFI standards in the
20 previous year, the incremental cap would grow
21 \$15 million. It would be increased \$15 million.

22 Q. So the first year if we assume none of
23 the metrics were met, the Companies are guaranteed to
24 collect 405 million from customers through the DCR
25 Rider; is that correct?

1 A. No.

2 Q. I'm sorry? I didn't hear you.

3 A. No.

4 Q. So in year one of ESP V, if we start with
5 390 and the Company does not meet its metrics, it
6 will receive an increase of 15 million for a total of
7 405 million from the DCR?

8 A. The revenue cap would increase to
9 405 million.

10 Q. And on page 8, line 16, of your
11 testimony, you state that -- or you assume that new
12 base rates do not go into effect until June 1, 2026;
13 is that correct?

14 A. For the example laid out on page 8, lines
15 1 through -- or lines 15 to 18, yes.

16 Q. And your assumption if the Companies file
17 their rate case, we heard from Mr. Fanelli in
18 May 2024, your testimony is assuming that the rates
19 from that rate case wouldn't go into effect until two
20 years later?

21 A. I don't know when those rates would go
22 into effect.

23 Q. Were you just picking a date for -- as an
24 example?

25 A. Yes.

1 Q. So under your example if -- if new rates
2 do not go into effect June 1, 2026, the \$405 million
3 aggregate cap would increase to 420 million for the
4 DCR in year two; is that correct?

5 A. If the Companies would fail to meet four
6 of the six CAIDI and SAIFI reliability standards in
7 the previous year, it would increase another
8 15 million.

9 Q. So 420 million if my math was correct?

10 A. Yes.

11 MS. BOJKO: Your Honor, at this time I
12 would like to have marked as OMAEG Exhibit 4, a Data
13 Response numbered RESA Set 02-INT-003.

14 EXAMINER ADDISON: It will be so marked.

15 (EXHIBIT MARKED FOR IDENTIFICATION.)

16 MS. BOJKO: May I approach?

17 EXAMINER ADDISON: You may.

18 Q. (By Ms. Bojko) Sir, do you have in front
19 of you what's been marked OMAEG Exhibit 4?

20 A. Yes.

21 Q. Does this appear to be a Data Request
22 Response by the Companies and you are listed as the
23 responsible party?

24 A. Yes.

25 Q. This interrogatory asks for the total DCR

1 annual revenues dating back to 2009; is that correct?

2 A. Yes.

3 Q. And if you look at Attachment 1 attached
4 to the Data Response, here we have three tables, one
5 for each Operating Company, that lists the total DCR
6 revenues beginning in 2012 and ending with the year
7 2022; is that correct?

8 A. Yes.

9 Q. And the bottom table or row is a total of
10 all three Operating Companies for each of those years
11 from 2012 to 2022; is that correct?

12 A. Yes.

13 Q. And it appears that -- these numbers are
14 in millions, right? I am looking at the total row at
15 the last column. The Company has been collecting
16 from customers through Rider DCR revenues in the
17 amount of 128.6 million through 358 million; is that
18 correct?

19 A. In 2012, the Companies collected
20 128.6 million, and in 2022 the Companies collected
21 358.5 million.

22 Q. All through Rider DCR, correct?

23 A. Yes.

24 Q. Going back to your testimony on -- going
25 back to your testimony on page 5, lines 10 through

1 15, here -- are you there?

2 A. Yes.

3 Q. Here you testify that if the Companies'
4 spending produces revenue over the caps that we just
5 discussed in any year, the costs carry forward or
6 roll over to the next year; is that correct?

7 THE WITNESS: Can I have that reread,
8 please?

9 EXAMINER ADDISON: You may.

10 (Record read.)

11 A. If the Companies --

12 Q. No. Go ahead.

13 A. If the Companies' cumulative revenue
14 requirements resulted in excess over the Companies'
15 cumulative revenue cap, that overage would be
16 recovered in the following cap period subject to that
17 period's cap.

18 Q. Thank you for clarifying my question.

19 EXAMINER PRICE: Ms. Bojko, I have a
20 quick question. I hate to interrupt you. The use of
21 the word cumulative, I think I understand what you
22 are saying, but the percentages are also hard set,
23 right? So if OE's annual cap is 50 percent so let's
24 say out of 15 million, they should get \$7.5 million,
25 correct?

1 THE WITNESS: The revenue that OE would
2 be able to collect would not be able to go above
3 7.5 million.

4 EXAMINER PRICE: That's true even if
5 Toledo Edison underspends for that year. If Toledo
6 Edison underspends \$5 million, OE's cap for that year
7 does not go up by a million dollars, right?

8 THE WITNESS: That's correct, yes.

9 EXAMINER PRICE: Thank you.

10 Q. (By Ms. Bojko) So if the costs exceed the
11 cap and they roll over to the next year, the effect
12 for the next year is to increase the next year's
13 revenue requirement, but it still must be under the
14 next year's cap?

15 THE WITNESS: May I have that reread?

16 EXAMINER ADDISON: You may.

17 (Record read.)

18 A. If the Companies have revenue
19 requirements in excess of the revenue cap on a
20 cumulative basis, that overage would be subject to
21 the next year's cumulative revenue cap.

22 Q. Does it increase the level of the
23 subsequent period's cap?

24 A. On a cumulative basis, no.

25 Q. Look at lines 12 through 15 of your

1 testimony.

2 MR. KEANEY: Which page?

3 Q. Oh, I am still on page 5.

4 A. I'm there.

5 Q. Could you read the last sentence to
6 yourself.

7 A. Okay.

8 Q. The last phrase that says "and the cap
9 shall increase the level of the subsequent period's
10 cap," I am trying to understand if the next -- the
11 subsequent year's cap increases or if any excess has
12 to be collected underneath that cap.

13 A. If the cumulative revenue collected under
14 Rider DCR is less than the cumulative revenue cap,
15 that difference between the revenue collected and cap
16 would increase the level of the next year's cap.

17 EXAMINER PRICE: So just to be clear,
18 let's do an example because I am simpleminded. In
19 year one leave aside the performance --

20 MS. BOJKO: I'm sorry. Could you turn
21 your microphone on?

22 EXAMINER PRICE: Sure. I was saying I
23 was simpleminded. In year one if the performed --
24 leaving aside the performance incentives, year one
25 the cap is \$15 million. You actually spend

1 \$14 million. That means the year two cap will be
2 30 -- will still be \$30 million. The \$15 million for
3 year two plus the unexpended year one; is that right?

4 THE WITNESS: Yes.

5 EXAMINER PRICE: Thank you.

6 MR. KEANEY: Your Honor, could I get the
7 last question and answer reread, please?

8 EXAMINER ADDISON: You may.

9 MR. KEANEY: Thank you.

10 (Record read.)

11 MR. KEANEY: Thank you.

12 EXAMINER ADDISON: Please proceed.

13 MS. BOJKO: Your Honor, at this time I
14 would like to have marked as OMAEG Exhibit 5, a Data
15 Response to OCC 07-INT-021.

16 EXAMINER ADDISON: It will be so marked.

17 (EXHIBIT MARKED FOR IDENTIFICATION.)

18 MS. BOJKO: Your Honor, I will enlist the
19 help to try to speed this up. Do you mind if
20 Ms. Whitfield approaches?

21 EXAMINER ADDISON: Not at all.

22 Q. (By Ms. Bojko) Mr. McMillen, do you have
23 in front of you what has been marked as OMAEG
24 Exhibit 5?

25 A. Yes.

1 Q. And is this a Data Response from the
2 Companies prepared by you?

3 A. Yes.

4 Q. In this Data Request the interrogatory is
5 requesting the Company to provide the amount of
6 investment placed in service pursuant to the DCR
7 Rider by year since the year 2012; is that correct?

8 A. Yes.

9 Q. And the table below for the -- states the
10 annual change in gross plant in service for the
11 Companies included in the calculation of Rider DCR
12 for each year since '12; is that correct?

13 A. Incremental gross plant balance is since
14 the Company's last base distribution rate case.

15 Q. Incremental by year or are these
16 aggregated numbers?

17 A. By year.

18 Q. Thank you. And the annual changes are
19 defined in this interrogatory too, right? Including
20 plant additions, retirements, adjustments, transfers,
21 and impact of changes implemented from prior audits;
22 is that correct?

23 A. Yes.

24 Q. And so the changes implemented from prior
25 audits means that there was a disallowance in an

1 audit, then that would be reflected in these numbers
2 as well; is that correct?

3 A. Yes.

4 Q. And the Commission or person could add up
5 all of the numbers provided on an annual basis to get
6 the aggregate number or the aggregate amount in
7 millions of the gross plant in service that has been
8 added to the Companies' system from 2012 to 2022,
9 correct? Well, until November 30, 2022.

10 A. If you summed all the values in this
11 table, that would be the incremental plant in
12 service -- gross plant in service increase since the
13 last distribution rate case.

14 Q. Thank you.

15 MS. BOJKO: Your Honor, at this time I
16 would like to have marked as OMAEG Exhibit 6, a Data
17 Response OCC 05-INT-024.

18 EXAMINER ADDISON: It is so marked.

19 (EXHIBIT MARKED FOR IDENTIFICATION.)

20 MS. BOJKO: May we approach?

21 EXAMINER ADDISON: You may.

22 Q. (By Ms. Bojko) Mr. McMillen, do you have
23 in front of you what's been labeled -- identified as
24 OMAEG Exhibit 6?

25 A. Yes.

1 Q. Does this appear to be a Data Response
2 from the Companies in response to OCC 05-024?

3 A. INT-24, yes.

4 Q. And this response was at least in part
5 prepared by you; is that correct?

6 A. Yes.

7 Q. This interrogatory asks for how the costs
8 of various riders are allocated to the customer
9 classes; is that correct?

10 A. Yes.

11 Q. Referring to Rider DCR, response A states
12 that DCR revenue requirement is allocated among each
13 nonresidential rate schedule based on base
14 distribution revenue; is that correct?

15 A. So the Rider DCR revenue requirement is
16 first allocated between the residential and
17 nonresidential rate classes that pay Rider DCR by
18 forecasted kWh, and then among -- among the
19 nonresidential rate class or rate schedules GS, GP,
20 and GSU is further allocated based on a base
21 distribution revenue.

22 Q. And then you refer -- you refer us to the
23 Schedule A attached to the Stipulation in the last
24 rate case filed in 07-551-EL-AIR on February 12,
25 2008, to get those distribution revenue allocation

1 factors, correct?

2 A. Yes.

3 Q. And just to be clear those allocation
4 factors have not been updated since the base rate
5 case, correct?

6 A. Correct.

7 EXAMINER PRICE: When they are
8 allocated -- when they are -- when the next
9 distribution rate case is completed, will you adapt
10 whatever the new allocations are to Rider DCR?

11 THE WITNESS: Yes.

12 Q. (By Ms. Bojko) Similarly, if you look at
13 Rider AMI in response B, they are allocated to all
14 rate schedules except Rate GT based on base
15 distribution revenue; is that correct?

16 A. Yes.

17 Q. And those base distribution revenue
18 allocation factors can also be found in the
19 Stipulation Schedule A from the last rate case; is
20 that correct?

21 A. Yes. I would also note that at the end
22 of that subpart B, operational savings are allocated
23 on a different basis. They are allocated based off
24 of the Stipulation approved as part of Grid Mod I.

25 Q. Okay. Thank you for that. I was going

1 to ask you that next. But going back to the base
2 distribution revenue allocation factors, similar to
3 Judge Price's question, would these similarly be
4 updated after the next rate case is completed?

5 A. Yes.

6 Q. And I see Rider SCR is also proposed to
7 be allocated on a base distribution revenue basis
8 with the same allocation factors from the last rate
9 case. Will Rider SCR be updated with the new base
10 rate case completion?

11 A. I don't know. That's to be addressed
12 with Witness Lawless.

13 Q. Okay. And I believe you do testify to
14 Rider VMC. The Rider VMC is also allocated to all
15 rate schedules based on base distribution revenue; is
16 that correct?

17 A. That's the Companies' proposal.

18 Q. And will the current allocation factors
19 be updated with the completion and implementation of
20 the new rate case?

21 A. Yes.

22 Q. It is your understanding that
23 FirstEnergy's required to provide adequate, reliable,
24 safe, efficient, nondiscriminatory, and reasonably
25 priced retail electric service; is that correct?

1 A. Yes.

2 Q. And even without Rider DCR, FirstEnergy
3 is still required to provide adequate, reliable,
4 safe, efficient, nondiscriminatory, and reasonably
5 priced retail electric service?

6 MR. KEANEY: Your Honor, objection. It
7 calls for the witness to render a legal conclusion.
8 He is not an attorney.

9 MS. BOJKO: I think he is a regulatory
10 expert, and he can answer that question, your Honor.

11 EXAMINER ADDISON: Thank you. With that
12 noted, you may answer the question.

13 THE WITNESS: Can I have it reread?

14 EXAMINER ADDISON: You may.

15 (Record read.)

16 EXAMINER PRICE: What do you mean by
17 required, Ms. Bojko?

18 MS. BOJKO: Well, your Honor, it's in the
19 State policy, and I am asking if his understanding --
20 he answered, yes, he believed they are required to do
21 it previously, and I'm asking if that requirement
22 still exists if it's --

23 EXAMINER PRICE: Are State policy
24 requirements necessarily binding, or are they the
25 policy we should strive for?

1 MS. BOJKO: Are you cross-examining me,
2 your Honor? I am asking the witness.

3 EXAMINER PRICE: I am asking what you
4 mean by required because I think it's vague.

5 MS. BOJKO: Well, there is two provisions
6 in regulatory law that talk about electric utilities
7 providing adequate, reliable, safe, efficient,
8 nondiscriminatory, and reasonably priced electric
9 service. It can be found in 4928.02(A), and it can
10 also be found in 4905.22, not just the State policy.
11 And as an expert regulatory witness, I asked if he
12 believed that the Company was required to provide
13 those services, and he said yes. And I asked if he
14 believed as a regulatory expert that they were --
15 that FirstEnergy would still be required even if they
16 did not have Rider DCR in place.

17 EXAMINER PRICE: Can I have the
18 reference? Not the policy, the other one.

19 MS. BOJKO: 4905.22 requiring all public
20 utilities to furnish necessary and adequate service
21 and facilities.

22 EXAMINER PRICE: Which is not necessarily
23 what you asked him.

24 MS. BOJKO: That was part of my question,
25 your Honor.

1 EXAMINER PRICE: Well, your question was
2 broader than that.

3 MS. BOJKO: I asked him -- a portion of
4 my question was based on 4928.02, and a portion of my
5 question was based on 4905.22.

6 EXAMINER PRICE: Which would be compound.
7 He answered the question, so I think it's a vague
8 question.

9 Q. (By Ms. Bojko) Well, let's turn to page
10 8, sir.

11 MS. BOJKO: Are you going to allow him to
12 answer? I am not sure he answered after I removed
13 the DCR.

14 EXAMINER PRICE: I believe he did, but I
15 should ask the reporter first.

16 COURT REPORTER: No.

17 EXAMINER ADDISON: You may answer.

18 THE WITNESS: May I have it reread?

19 EXAMINER ADDISON: Absolutely.

20 Thanks, Karen.

21 (Record read.)

22 A. The Companies are committed to maintain a
23 reliable system for their customers.

24 Q. Let's turn to page 8 of your testimony.

25 A. I'm there.

1 Q. Lines 3 through 4. Here you state "While
2 the costs included in Rider DCR would be recoverable
3 even if the rider was not effective." Do you see
4 that?

5 A. Yes.

6 Q. The reason why you are making that
7 statement is because the costs could be recovered
8 through base rates; is that correct?

9 A. Rider DCR does recover incremental plant
10 in service since the last base distribution rate
11 case. The statement further continues "continuation
12 of Rider DCR and the associated audit process provide
13 significant benefits to customers."

14 Q. I agree that's your -- the rest of the
15 question. I was asking you about you say "While the
16 costs included...would be recoverable even if the
17 rider was not effective." There you are referencing
18 that those costs could be recoverable through base
19 rates; is that correct?

20 A. Those costs would be moved into a base
21 distribution rate case.

22 Q. Well, if there wasn't a Rider DCR, they
23 wouldn't be moved into a base distribution rate case.
24 They would actually be recoverable through base
25 rates, correct? If there is no Rider DCR, these

1 types of costs would be able to be recoverable
2 through base rates, correct?

3 A. Rider DCR includes similar costs that
4 would be included in the base distribution rate case.

5 Q. Let's turn to page 9 of your testimony
6 focusing on the Rider AMI. On page 9, lines 12
7 through 14, here currently Rider AMI costs -- excuse
8 me. Let me start over.

9 On page 9, lines 12 through 14, you state
10 that currently Rider AMI costs are collected.
11 Currently Rider AMI collects costs associated with
12 FirstEnergy's first phase of the Grid Mod business
13 plan; is that correct?

14 A. In addition to the Ohio site deployment
15 of the SmartGrid modernization initiative.

16 Q. Are there still costs -- I thought you
17 said earlier today that there are no longer any costs
18 being collected regarding the Ohio site deployment of
19 the SmartGrid modernization initiative. Okay. You
20 didn't say that.

21 A. I don't think I said that.

22 Q. Okay. I misheard you then. My
23 apologies. So the Ohio site -- there still are costs
24 associated with the Ohio site deployment of the
25 SmartGrid modernization initiative?

1 A. Yes.

2 Q. Okay. And how long is that plan supposed
3 to last? Do you know?

4 A. The SGMI plan?

5 Q. Yes.

6 A. The Companies have current commitments in
7 this -- in the SGMI to report on -- to report on the
8 distribution automation and IVVC investments that
9 were included. In addition, the Companies still have
10 commitments to offer a -- a time bearing rate in the
11 summer to -- to residential customers in that -- in
12 that pilot territory, but I don't know when those
13 commitments end.

14 Q. When do the costs collected through Rider
15 AMI cease? Do you know?

16 A. I don't know if I understand your
17 question. Sorry.

18 Q. Sorry. Well, I thought maybe this is
19 what I heard earlier. The SGMI plan and the costs
20 associated with it are not proposed to be continued
21 in ESP V, are they?

22 A. To the extent those costs are still
23 incurred, the Companies' proposal is to include them
24 in Rider AMI.

25 Q. Oh, okay. So if you don't know when the

1 program ends, is it safe to assume you don't know
2 when the costs will cease being incurred with regard
3 to SGMI?

4 A. Yeah. I don't know when those -- when
5 those commitments end, so I would not know when those
6 costs would stop being incurred.

7 EXAMINER PRICE: The SGMI costs currently
8 are strictly expenses or is there a capital
9 investment too?

10 THE WITNESS: It's mostly expenses.
11 There may be some capital for -- for replacements.

12 EXAMINER PRICE: And it's possible that
13 those costs would be rolled into your next
14 distribution rate case when it's completed next year.

15 THE WITNESS: That's not the Companies'
16 proposal but that could occur.

17 Q. (By Ms. Bojko) That's not the Companies'
18 proposal; is that what you said?

19 A. Yeah. Yes.

20 Q. Yes, that's not the Companies' proposal?
21 So the Company is not proposing to roll the costs
22 associated with SGMI into the next base rate case; is
23 that correct?

24 A. Unless authorized by the Commission in
25 the base distribution rate case.

1 Q. Focusing on the Grid Mod I component of
2 Rider AMI, when is Grid Mod I scheduled to end? Do
3 you know?

4 A. So the Companies have implemented the
5 Grid Mod I associated projects, and the Companies
6 continue to recover costs associated with that
7 subject to the caps approved in Grid Mod I.

8 Q. So there's no additional Grid Mod I costs
9 that would be incurred and passed on through Rider
10 AMI?

11 A. There's ongoing expenses subject to caps
12 approved in that -- in that case but the investments
13 have been made so the Companies are continuing to
14 recover those investments.

15 Q. And when you say subject to caps, are you
16 saying that the costs have already been incurred but
17 you continue to collect the excess of the caps in
18 subsequent years?

19 A. So as part of Grid Mod I, there were --
20 there were a couple caps so there was caps to the
21 capital spend and there was caps to the O&M spend.
22 So companies are recovering the expenses associated
23 with those caps through Rider AMI.

24 Q. And they are continuing to recover X --
25 costs that are in excess of the caps in subsequent

1 years; is that correct?

2 A. No.

3 Q. Do you know when the -- you stated
4 earlier today the 516 million was the investment cap.
5 Do you know when the last portion of that was
6 incurred?

7 A. I can't recall.

8 Q. Do you have an estimate today of how long
9 Grid Mod I costs will be continued to be collected
10 from customers through Rider AMI?

11 A. So the Companies' proposal is to continue
12 Rider AMI through the duration of this ESP V proposal
13 which would be eight years. Unless otherwise
14 directed by the Commission those Grid Mod I costs
15 would be included in Rider AMI through that --
16 through that approval of this ESP.

17 Q. But do you know -- do you have an
18 estimated end date to that collection? When will the
19 516 million plus interest be collected from
20 customers?

21 A. So those investments that are the subject
22 to the depreciation rates that the Companies
23 currently have approved, I can't really speak to
24 how -- I don't know how long some of the investments
25 have to depreciate.

1 Q. So you would envision that there would
2 still be Grid Mod I costs collected for the entirety
3 of ESP V?

4 A. Unless they were -- unless they were
5 moved into base rates.

6 Q. And you referred to the O&M cap. O&M
7 would also be collected through the Rider AMI going
8 forward through ESP V?

9 A. I can't recall what the -- what the
10 Stipulation states on the O&M caps and how long those
11 are approved for.

12 EXAMINER PRICE: Just to be clear so that
13 I'm -- I understand the record, you are proposing for
14 Rider DCR that when there is a base distribution rate
15 case, those costs will be rolled into base rates, but
16 you are not proposing that for Rider AMI.

17 THE WITNESS: Only if the Commission
18 authorized it to be moved into base rates.

19 EXAMINER PRICE: You would do what the
20 Commission directed no matter what.

21 THE WITNESS: Yeah. Yes.

22 Q. (By Ms. Bojko) But that's not the
23 Companies' proposal; is that right?

24 A. The --

25 MR. KEANEY: Object. Just going to say

1 it's vague. What specifically are you talking about,
2 proposal?

3 EXAMINER ADDISON: If you could just
4 clarify with your question, Ms. Bojko.

5 Q. (By Ms. Bojko) The Companies' proposal
6 either through ESP V or -- or I guess it would have
7 to be through ESP V or maybe in a future rate case is
8 not to roll in the costs associated with AMI and to
9 continue collecting them through Rider AMI through
10 the ESP V term.

11 A. The Companies' proposal is to continue
12 recovering those costs in Rider AMI subject to the
13 terms and conditions in the cases that they were
14 approved. If the Commission would authorize those
15 costs to be moved into base rates, the Companies
16 would. Otherwise they would remain in AMI.

17 Q. And you are aware that, I think you
18 mentioned this earlier, in response to one of my
19 questions, you are aware that the -- there was an
20 operational benefits audit of Grid Mod I conducted
21 recently?

22 A. I am aware there was a commitment of the
23 approval of Grid Mod I.

24 Q. And you are aware that an audit report
25 was issued recently? Or are you aware that an audit

1 report was issued recently?

2 MR. KEANEY: Objection, your Honor,
3 vague. Audit report from what?

4 MS. BOJKO: We just talked about the
5 operational benefits audit.

6 Q. (By Ms. Bojko) So you are aware that the
7 operational benefits audit report was filed recently?

8 A. I am aware there was an audit report
9 filed for -- for the operational benefits analysis.

10 Q. And are you aware that the audit report
11 found that -- demonstrated operational savings, level
12 of transparency, measurable benefits, and overall
13 functionality and performance of Grid Mod I are not
14 consistent with the Stipulation that authorized Grid
15 Mod I?

16 MR. KEANEY: Objection. Assumes facts
17 not in evidence.

18 MS. BOJKO: I asked him if he was aware.

19 EXAMINER ADDISON: I think Mr. Keaney's
20 objection is to the characterization of the audit
21 report. Do you have a copy for the witness?

22 MS. BOJKO: Sure. Your Honor, I have an
23 excerpt of the audit report. It was quite lengthy.
24 At this time I would like to mark as --

25 MR. KEANEY: Sorry. I am just going to

1 object if the entire audit report isn't produced and
2 there is select provisions. The Companies would
3 object to that.

4 EXAMINER ADDISON: Let's let her mark her
5 exhibit and we will take it from there.

6 Ms. Bojko.

7 MS. BOJKO: Could we mark it as OMAEG
8 Exhibit 7, please?

9 EXAMINER ADDISON: That's an excerpt
10 from the audit report filed?

11 MS. BOJKO: November 14, 2022, in Case
12 No. --

13 EXAMINER ADDISON: 16-481?

14 MS. BOJKO: -- 16-481-EL-UNC. Thank you,
15 your Honor.

16 EXAMINER ADDISON: It is so marked.

17 (EXHIBIT MARKED FOR IDENTIFICATION.)

18 MS. BOJKO: May we approach?

19 EXAMINER ADDISON: You may.

20 Q. (By Ms. Bojko) Mr. McMillen, do you have
21 in front of you what's marked as OMAEG Exhibit 7?

22 A. Yes.

23 Q. And does this appear to be the audit
24 report issued in Case 16-481-EL-UNC on November 14,
25 2022, that you stated you were familiar with?

1 EXAMINER ADDISON: You want to rephrase
2 your question, Ms. Bojko, based on your description
3 of the document?

4 MS. BOJKO: Oh, I'm sorry, an excerpt.
5 Thank you, your Honor.

6 MR. KEANEY: Your Honor, I'm sorry. If I
7 could just bring to the attention the Rule of
8 Evidence that's 106 requires that it be the entire
9 document and not just select excerpts of a document
10 in order to be admitted so the Companies just want --
11 for the record would say this admission of a partial
12 audit report does not comply with Rule 106 of the
13 Ohio Rules of Evidence.

14 EXAMINER ADDISON: Thank you. I don't
15 think we are talking about admission of any exhibits
16 at this time but thank you, Mr. Keaney.

17 Ms. Bojko.

18 MS. BOJKO: Thank you, your Honor.

19 Q. (By Ms. Bojko) I'll rephrase since I
20 said -- did not state my question very eloquently.
21 Does this appear to be an excerpt from the audit
22 report issued regarding the operational benefits
23 assessment of FirstEnergy Ohio's Grid Mod I in Case
24 16-418-EL-UNC, et al., on November 14, 2022, that you
25 stated you knew was filed?

1 MR. KEANEY: Your Honor, I just want to
2 object. The witness hasn't even confirmed he has
3 seen this document before.

4 MS. BOJKO: That's what I think I was
5 just asking.

6 EXAMINER ADDISON: I'll allow him to
7 answer the question.

8 A. The front page of the document is --
9 states "Daymark Energy Advisors Operational Benefits
10 Assessment of FirstEnergy Ohio's Grid Mod I" dated
11 November 14, 2022. There is no -- there is no case
12 number.

13 Q. The case number is in the footnotes on
14 the first page. I mean, is this the -- you stated in
15 answer to a prior question that you knew that an
16 audit report was filed in Grid Mod I; is that
17 correct?

18 A. I know there was a commitment in Grid Mod
19 I and I know an audit was conducted and that audit
20 had subsequently been filed, but I haven't reviewed
21 the audit report.

22 Q. Okay. So you are not aware of the
23 auditor's findings in the Grid Mod I audit report.

24 A. I'm not.

25 Q. And what -- which FirstEnergy witness

1 would be knowledgeable or involved in the Grid Mod I
2 audit regarding the operational benefits?

3 A. Of the remaining witnesses, I don't think
4 there are any.

5 Q. So you are the only witness today
6 testifying -- testifying to Rider AMI?

7 A. I'm testifying to Rider AMI, yes.

8 Q. No other witnesses testify to Rider AMI?

9 A. I think Mr. Fanelli references Rider AMI
10 in his testimony, but my knowledge it wouldn't be
11 anybody else.

12 Q. Are you involved in Grid Mod II, the
13 application that was filed? Are you involved in that
14 proceeding? Oh, excuse me. Strike that.

15 You filed testimony in Grid Mod II; isn't
16 that correct?

17 A. Yes.

18 Q. And filing testimony in Grid Mod II, did
19 you recognize that there was an operational benefits
20 audit filed in Grid Mod I?

21 MR. KEANEY: Objection, asked and
22 answered.

23 EXAMINER ADDISON: Overruled.

24 EXAMINER PRICE: Let's back up a second.
25 When did you file testimony in Grid Mod II?

1 THE WITNESS: I can't recall the date. I
2 believe it was early 2022.

3 EXAMINER PRICE: Can you give me a
4 season? Was it winter? Spring?

5 MS. BOJKO: If I said it was filed July
6 5, 2022, would that refresh your recollection?
7 Summer?

8 THE WITNESS: Yes, thank you. Sorry.

9 EXAMINER PRICE: Thank you.

10 Q. (By Ms. Bojko) So your Grid Mod II
11 testimony was filed prior to the audit report
12 regarding the operational benefits assessment filed
13 in Grid Mod I; is that correct?

14 A. Yes.

15 Q. And given that you are the responsible
16 witness for Rider AMI costs, if the -- if an auditor
17 determined that there should be a disallowance in
18 Grid Mod I, you would expect that disallowance to
19 carry through or be a credit to Rider AMI; is that
20 correct?

21 A. Rider AMI is subject to reconciliation
22 and refunds, subject to audits conducted by the
23 Commission, so if there was recommendations or
24 findings that resulted in credits, those would flow
25 through Rider AMI.

1 MS. BOJKO: Your Honor, at this time I
2 would like to have marked as OMAEG Exhibit 8, a Data
3 Response from the Companies to OCC 04-INT-003.

4 EXAMINER ADDISON: It is so marked.

5 (EXHIBIT MARKED FOR IDENTIFICATION.)

6 MS. BOJKO: May we approach?

7 EXAMINER ADDISON: Yes, you may.

8 Q. (By Ms. Bojko) Sir, do you have in front
9 of you what's been marked as OMAEG Exhibit 8?

10 A. Yes.

11 Q. And is this a Data Response that the
12 Companies made to OCC Set 04-INT-003?

13 A. Yes.

14 Q. And you are listed as the responsible
15 person; is that correct?

16 A. Yes.

17 Q. This interrogatory asks you to identify
18 the amount of annual revenue FirstEnergy expects to
19 collect through Rider AMI for the next five years; is
20 that correct?

21 A. Yes.

22 Q. And over the next five years, FirstEnergy
23 expects to collect almost \$450 million from
24 customers; is that correct?

25 A. I don't have that total in front of me,

1 but to get the total, you could sum the table that's
2 included in their response, the years 2023 through
3 2027, to get the Companies' five-year forecast that
4 it would expect to collect through Rider AMI through
5 the next five years.

6 Q. And the sentence right prior to the table
7 that's listed on this interrogatory references SGMI
8 and Grid Mod I costs so this is the expectation to
9 recover costs associated with both SGMI and the Grid
10 Mod I?

11 A. This revenue forecast would reflect the
12 costs associated with SGMI and Grid Mod I.

13 Q. And the amount summed which is
14 approximately \$450 million, that amount does not
15 include the projected Grid Mod II costs; is that
16 correct?

17 A. The table in this response does not
18 include Grid Mod II.

19 Q. And, sir, do you know how much in
20 addition during this five-year projection that the
21 Companies are projecting to collect for Grid Mod II?

22 A. I don't recall the exact conversation
23 Mr. Pritchard and I had, but he provided RESA
24 Exhibit 6 which was my testimony in Grid Mod II and
25 that would include the -- the Companies' projected

1 revenue.

2 Q. Is that the reference under the table to
3 Exhibit A? It's a reference to your testimony in the
4 Grid Mod II case which is 22-704?

5 A. Yes.

6 Q. Okay.

7 A. Thank you.

8 Q. Thank you.

9 MS. BOJKO: Your Honor, at this time I
10 would like to mark as OMAEG Exhibit 9, and this is a
11 Data Response from the Companies to OCC Set
12 04-INT-018.

13 EXAMINER ADDISON: Can you give me that
14 reference one more time, Ms. Bojko?

15 MS. BOJKO: Sure. It's a Data Response
16 to OCC 04-INT-018.

17 EXAMINER ADDISON: Thank you very much.
18 It is so marked.

19 (EXHIBIT MARKED FOR IDENTIFICATION.)

20 MS. BOJKO: May we approach?

21 EXAMINER ADDISON: You may.

22 Q. (By Ms. Bojko) Sir, do you have in front
23 of you what's been marked as OMAEG Exhibit 9?

24 A. Yes.

25 Q. And you are listed as the responsible

1 witness for this interrogatory; is that correct?

2 A. Yes.

3 Q. And the question here is asking if
4 FirstEnergy will implement the auditor's
5 recommendation from the Daymark audit report filed on
6 November 14, 2022, in Case 16-481 that I showed you
7 previously; is that correct?

8 A. Yes.

9 Q. And here after objections, the Data
10 Response says that the recommendation in the audit
11 report regarding implementation of Rider AMI, was
12 that the deemed operational savings required by the
13 Commission approved Grid Mod I Stip and Attachment D
14 be applied for years four to six? Do you see that?

15 A. Yes.

16 Q. And here the Companies' stated that they
17 will comply with the obligation under the Stipulation
18 unless ordered otherwise by the Commission; is that
19 correct?

20 A. Yes.

21 Q. And the recommendation you are referring
22 to here is regarding the stipulated fixed savings; is
23 that correct?

24 A. The response is referring to the
25 stipulated deemed savings for years four through six

1 from the Grid Mod I Stipulation.

2 Q. And the auditor stated that there was a
3 lack of documentation and a lack of direct reporting
4 as to the operational savings for this
5 recommendation; is that correct?

6 MR. KEANEY: Objection, your Honor.
7 Again, this witness does not have a full, complete
8 copy of the audit report. To ask questions about
9 specific provisions without having an entire copy is
10 prejudicial to the witness, and the Companies would
11 object.

12 MS. BOJKO: Your Honor.

13 EXAMINER ADDISON: Ms. Bojko.

14 MS. BOJKO: He is the responsible witness
15 for the discovery request that asks about
16 implementation of the recommendations of the auditor.
17 I am trying to ask him what recommendation he is
18 stating will be implemented.

19 MR. KEANEY: Your Honor, she is asking
20 specific content questions about what the auditor
21 report said with respect to the Companies with
22 respect to the recommendations. Again, this -- this
23 witness has not seen that auditor report. If you
24 want to ask about the discovery response, that's
25 fine. But if you are going to go into the content of

1 the audit report without providing the witness a full
2 copy, the Companies would object.

3 MS. BOJKO: Your Honor, I don't know how
4 he answers a discovery response about the audit
5 report that he's never seen, but we stopped going
6 down the path of asking him about the audit report
7 because he claimed he had not seen it. The Discovery
8 Request states that he has read it and he is making
9 statements about the audit report and I am
10 questioning him about the Data Response.

11 We can go back to OMAEG Exhibit 7, which
12 is the audit report excerpt, which would allow him to
13 answer these questions, and I have not asked him
14 anything beyond what is in the excerpt.

15 EXAMINER PRICE: But he doesn't say he
16 read it.

17 EXAMINER ADDISON: Correct.

18 MS. BOJKO: How could he answer these
19 questions?

20 EXAMINER PRICE: Ask him what the basis
21 for his knowledge was.

22 MR. KEANEY: Your Honor, if I could just
23 interject here, to the extent that answer would
24 require you to disclose attorney-client privileged
25 information, we would ask you not to answer.

1 Q. (By Ms. Bojko) So, Mr. McMillen, you were
2 the responsible witness for OMAEG Exhibit 9; is that
3 correct?

4 A. I prepared the response.

5 Q. And you prepared -- did you read the
6 audit report in preparation of your response?

7 THE WITNESS: Sorry. May I have that
8 reread?

9 EXAMINER ADDISON: You may.

10 (Record read.)

11 A. No.

12 Q. Did you read Daymark's recommendations
13 regarding Rider AMI -- excuse me. Strike that.
14 Rephrase.

15 Did you read Daymark -- the audit
16 report's recommendations in preparing your response?

17 A. No.

18 Q. Then where did you obtain the information
19 to obtain your response?

20 MR. KEANEY: Your Honor, same objection
21 with respect to privilege.

22 EXAMINER ADDISON: Thank you.

23 With that in mind, you may answer the
24 question.

25 A. While I can't recall how I was made aware

1 of this specific recommendation, as I mentioned
 2 before in earlier cross-examination, I do manage
 3 Rider AMI. As a component of Rider AMI, that
 4 includes operational savings that were stipulated as
 5 part of the Grid Mod I case. So in order to be able
 6 to calculate Rider AMI, it's consistent with that
 7 Stipulation, I was made aware of -- made aware of
 8 that recommendation.

9 Q. Okay. Let's go to the OMAEG Exhibit 9.
 10 It says "Subject to the" -- the second paragraph in
 11 the response.

12 A. Sorry. I have it.

13 Q. It says "Subject to and without waiving
 14 the foregoing objections, the only recommendation in
 15 the audit report regarding implementation of Rider
 16 AMI was that the deemed operational savings required
 17 by the Commission-approved Grid Mod I Stipulation and
 18 Attachment D in Case 16-481-EL-UNC, et al., be
 19 applied for years 4-6." Did I read that correctly?

20 MR. KEANEY: Sorry, your Honor. The
 21 Companies would object. The Daymark audit report is
 22 in a completely separate proceeding which is
 23 scheduled for hearing in January. To litigate these
 24 issues here, to try to bootstrap what the Commission
 25 is going to be deciding in a completely separate

1 proceeding and trying to litigate it here is
2 improper, and the Companies would object.

3 EXAMINER ADDISON: Mr. Keaney, she is
4 just asking him to confirm the Companies' response to
5 a Data Request that was submitted in this proceeding.

6 MR. KEANEY: That's just repeating the
7 objection to this Data Response just to preserve it
8 for the record.

9 EXAMINER ADDISON: Your -- it's noted.
10 Thank you.

11 You may answer the question.

12 A. That's what the Data Request says.

13 Q. Okay. So even though it says "the only
14 recommendation in the audit report," you did not read
15 the audit report, correct?

16 A. I did not read the audit report.

17 Q. But you have no reason to believe that
18 the Company would not comply with their obligations
19 under the Stipulation, do you?

20 THE WITNESS: May I have that reread,
21 please?

22 EXAMINER ADDISON: You may.

23 (Record read.)

24 A. I have no reason to believe that.

25 MS. BOJKO: Your Honor, at this time I

1 would like to have marked as OMAEG Exhibit 10,
2 Company Response to a Data Request. It's OCC Set
3 04-INT-12.

4 EXAMINER ADDISON: It is so marked.

5 (EXHIBIT MARKED FOR IDENTIFICATION.)

6 MS. BOJKO: May we approach, your Honor?

7 EXAMINER ADDISON: You may.

8 Q. (By Ms. Bojko) Sir, do you have in front
9 of you what's been marked as OMAEG Exhibit 10?

10 A. Yes.

11 Q. And, sir, are you the responsible witness
12 for this discovery response?

13 A. Yes.

14 Q. And in the request is the interrogatory
15 asking if the Company is willing to include in Rider
16 AMI a fixed amount for customer credit for
17 operational benefits resulting from Grid Mod I and/or
18 Grid Mod II through Rider AMI?

19 A. Yes.

20 Q. And after objections, is the response
21 that the Companies' approved Grid Mod I program
22 includes terms and conditions for operational savings
23 credits to customers that will be passed through
24 Rider AMI?

25 A. Yes.

1 Q. And is that true for the Grid Mod II
2 proposal pending before the Commission as well?

3 A. Yes.

4 Q. Is it your understanding that Rider AMI
5 is for grid modernization investments?

6 A. Rider AMI includes costs associated with
7 Grid Mod I and the SGMI pilot which are Grid -- Grid
8 Mod investments.

9 Q. And are they meant to -- the grid
10 investments, are they meant to enhance reliability
11 for the benefits of customers?

12 A. Yes.

13 Q. And turning back to your testimony on
14 page 11.

15 A. I'm there.

16 Q. On lines 5 through 7, you state that the
17 Commission could choose to include costs currently
18 recovered through Rider AMI in future base rates,
19 correct?

20 A. Yes.

21 Q. So AMI-type costs could be recovered
22 through base distribution rates, right?

23 THE WITNESS: Can I have that question
24 reread, please?

25 EXAMINER ADDISON: You may.

1 (Record read.)

2 A. If these costs are authorized by the
3 Commission to be included in a future base rate case.

4 Q. But they are the types of costs that
5 FirstEnergy would consider are the types recoverable
6 through base distribution rates, and you could
7 propose to include those in a base distribution rate
8 filing, couldn't you?

9 A. Through the Companies' grid modernization
10 filings such as Grid Mod I, the Companies sought to
11 make investments into the -- into the Companies'
12 distribution system including distribution
13 automation, Volt/VAR control and switch out meters to
14 smart meters to be -- to be recovered through --
15 through Rider AMI. I don't know if those costs would
16 be recovered through a base distribution rate case if
17 the Companies did not receive approval of those costs
18 through the grid modernization filings.

19 Q. Well, the capital investments, they are
20 the type of costs that would be requested to be
21 recovered through base distribution rates, correct?

22 A. Yes.

23 MS. BOJKO: Your Honor, at this time I
24 would like to mark as OMAEG Exhibit 11, a Data
25 Response from the Companies to an interrogatory

1 labeled OCC Set 05-INT-006.

2 EXAMINER ADDISON: It is so marked.

3 (EXHIBIT MARKED FOR IDENTIFICATION.)

4 MS. BOJKO: May we approach?

5 MR. KEANEY: Your Honor.

6 MS. BOJKO: Go ahead.

7 MR. KEANEY: I was just going to ask, we
8 wanted to give the witness a break, but if we were
9 going to end it in 15 minutes if the plan was to end
10 at 5:00.

11 EXAMINER ADDISON: Let's go off the
12 record for a moment.

13 (Discussion off the record.)

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

16 Q. (By Ms. Bojko) I just have a few
17 follow-up questions with regard to the ELR. I think
18 you received a lot today, so I just have a couple
19 follow-up questions.

20 MS. BOJKO: Did you need to interrupt
21 now, your Honor?

22 EXAMINER PRICE: I was going back to your
23 previous topic.

24 MS. BOJKO: Sure. I am changing topics.

25 EXAMINER PRICE: Just to bring some

1 clarity to the AMI costs being recoverable in
2 distribution cases. Were you here yesterday for
3 Mr. Fanelli's testimony?

4 THE WITNESS: Yes.

5 EXAMINER PRICE: And Mr. Fanelli
6 testified, in fact, that Rider -- ESP V seeks to
7 continue to establish a mechanism to recover
8 distribution-related costs, namely, Riders DCR, AMI,
9 SCM, and VCM, which the acronyms are wrong and says
10 since those costs were recoverable outside of an ESP,
11 there is no quantifiable net costs or benefits.
12 Having heard that, you -- would you agree that Rider
13 AMI costs are recoverable in a distribution base --
14 rate base -- base rate case?

15 THE WITNESS: Yes.

16 MS. BOJKO: I thought that's what he said
17 before, but okay.

18 EXAMINER PRICE: I thought there was some
19 confusion, so I was trying to help you.

20 Q. (By Ms. Bojko) Okay. Switching to Rider
21 ELR, you have in front of you what's been marked as
22 OCC Set 05-INT-006; is that correct?

23 A. Yes.

24 Q. And you are the responsible person for
25 this interrogatory?

1 A. Yes.

2 Q. Okay. This is asking -- the A response
3 is asking how many customers are on ELR. Do you see
4 that?

5 A. Yes.

6 Q. And the response is 24, and I believe in
7 response to Mr. Proano's question earlier you also
8 said 24; is that your understanding?

9 A. Yes. There are 24 customers currently on
10 Rider ELR.

11 Q. So could you turn to RESA Exhibit -- it's
12 Exhibits 4 and 5. He separated them, but it's just
13 one, PUCO DR-006 and the attachment. Hold on. Can
14 we go off the record for one second?

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

17 (Discussion off the record.)

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

20 MS. BOJKO: Your Honor, at this time I
21 would like to mark as OMAEG Exhibit 12, a Data
22 Response from the Companies to PUCO -- PUCO DR-006.

23 EXAMINER ADDISON: It is so marked.

24 (EXHIBIT MARKED FOR IDENTIFICATION.)

25 MS. BOJKO: And, your Honor, this is the

1 Data Response plus Attachments 1 and 2 and I will
2 note for the record that Attachment 2 is
3 confidential. I don't plan to elic -- or hope not to
4 ask any confidential questions at this time.

5 EXAMINER ADDISON: Thank you.

6 MS. BOJKO: May we approach?

7 EXAMINER ADDISON: With that, Ms. Bojko,
8 consistent with prior rulings, could we remark OMAEG
9 Exhibit 12 as OMAEG Exhibit 12C?

10 MS. BOJKO: Yes, your Honor. Thank you.
11 My apologies.

12 EXAMINER ADDISON: Thank you.

13 EXAMINER PRICE: Do you have a redacted
14 copy of OMAEG Exhibit 12?

15 MS. WHITFIELD: No, we do not.

16 EXAMINER PRICE: Can you provide a
17 redacted copy later in the hearing?

18 MR. KEANEY: Can we go off the record for
19 a minute?

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

22 (Discussion off the record.)

23 EXAMINER PRICE: Let's go back on the
24 record.

25 Q. (By Ms. Bojko) Mr. McMillen, are you

1 listed as the responsible person for this Data
2 Response? I'm sorry. I am looking at the OMAEG
3 Exhibit 12C, and this Data Response to the PUCO, PUCO
4 DR-006, does not appear to have a responsible person
5 on it, does it?

6 A. Responsible person is not listed.

7 Q. Okay. So did you -- have you had an
8 opportunity -- you were questioned about this before.
9 Are you familiar with this DR?

10 A. Yes.

11 Q. Okay. And without divulging any
12 confidential information, I would like you to look at
13 Attachment 2. And the Attachment 2 is a list of the
14 ELR participants; is that correct?

15 A. Yes.

16 Q. And as I understand your testimony
17 previously, when I count the number of customers
18 listed in the top half of this graph, there are 24
19 and then there are additional customers listed
20 underneath that. Can you explain without divulging
21 confidential information whether there are 24 or 26
22 participants or what the difference between 24 and 26
23 is?

24 A. Yes. Currently there are 24 active
25 participants in Rider ELR. At the beginning of ESP

1 IV, there were 26. But as noted in this Data
2 Request, two of them are no longer operational.

3 Q. Thank you for that clarification. So
4 participation in the current program is limited to
5 the 24 customers; is that correct?

6 A. That's the Companies' proposal, yes.

7 Q. Well, currently the program is listed --
8 or limited to 24 customers, correct, under ESP IV?

9 A. At the start of ESP IV, there were
10 customers eligible for Rider ELR by meeting the
11 conditions of the current ELR -- or Rider ELR or
12 tariff where customers were participating as of May
13 31, 2016, or were part of the additional curtailable
14 load of 136,250 kW. So those customers -- of those
15 customers eligible only 24 are currently
16 participating.

17 Q. Okay. And eligibility of the current
18 customers is from when the ELR started, I think you
19 said in 2009; is that correct?

20 A. So for the program -- the current program
21 customers had to be participating in the program as
22 of May 31, 2016, or part of the additional
23 curtailable load that was authorized in -- as
24 approved in ESP IV.

25 Q. And it's your understanding that the ESP

1 IV was a continuation of prior ESPs regarding
2 eligibility status?

3 A. Yes.

4 Q. And under the ESP V, FirstEnergy does not
5 intend to open the program up to any additional
6 customers; is that correct?

7 A. The Companies' proposal is to continue
8 Rider ELR with customers that are participating as of
9 May 31, 2024.

10 Q. So only the 24 participating, not those
11 that were eligible that you just mentioned as of
12 2016?

13 A. Yes.

14 Q. This means that existing customers that
15 are not current ELR customers but that are able to
16 interrupt their load cannot participate in the
17 program, correct?

18 A. Correct.

19 Q. And new customers moving into
20 FirstEnergy's service territory will also not be able
21 to participate in the ELR program, correct?

22 A. Correct.

23 Q. And previously you talked about it as an
24 economic development tool. Isn't it true that new
25 customers that move in this could not be used as an

1 economic development tool?

2 MR. KEANEY: Objection, your Honor,
3 requires him to speculate about what customers are
4 doing and thinking.

5 EXAMINER PRICE: He can answer if he
6 knows. Overruled.

7 A. I don't know.

8 Q. Previously I believe Mr. Pritchard asked
9 you about \$1.64 million in charges from PJM for
10 serving as a CSP. Do you recall that? It's on OELC
11 Exhibit 1 if you would like a reference.

12 A. I recall that amount.

13 Q. My question, just as a follow-up, that
14 amount of PJM charges related to being -- serving as
15 a CSP provider, those costs were recovered under
16 Rider DSE1; is that correct?

17 A. Those costs are associated with -- with
18 charges from PJM as for companies to serve as CSP and
19 costs for the Companies' notification system. Those
20 costs are included in Rider DSE1 for recovery.

21 Q. Thank you. Just one more brief section.
22 Can you turn to Rider VMC. It's on page 19, I
23 believe, of your testimony.

24 A. I'm there.

25 Q. Rider VMC is supposed to recover costs

1 related to vegetation management O&M expenses; is
2 that correct?

3 A. Incremental vegetation management from
4 the Companies' last base distribution rate case for
5 costs as described in Witness Standish's testimony.

6 Q. I'm sorry. I just didn't hear. I
7 couldn't hear you. Incremental from the last base
8 distribution rate; is that what you stated?

9 A. Yes.

10 Q. Okay.

11 A. Yes. Sorry.

12 Q. Is there -- does FirstEnergy have a
13 baseline contained in base rates that this is
14 incremental to?

15 A. Yes. That's on page 20 of my testimony.

16 EXAMINER PRICE: Can you give a line
17 reference for the record?

18 THE WITNESS: Sorry. Starts with the
19 question on line 1 and goes through line 5 on page
20 20.

21 Q. 3 to 5 you state that FirstEnergy
22 collects 30 million for vegetation management under
23 base rates; is that right?

24 A. Approximately \$30 million is -- was
25 included in the Companies' most recent distribution

1 rate case.

2 Q. And over the eight-year term of the ESP,
3 the Companies are proposing to collect up to
4 759.8 million more from customers; is that correct?

5 A. Yes. Companies propose to recover
6 through Rider VMC a capped amount of 759 -- the total
7 capped amount -- total O&M expense cap at
8 \$759.8 million. However, that would -- that cost
9 would also be offset or -- the incremental cost would
10 be recovered through Rider VMC. 759 is just what --
11 the cap of what the actual expenses will be.

12 Q. So by your last statement, are you
13 stating that -- if there is an excess over the
14 759.8 million in O&M expenses, you will defer them as
15 a reg asset?

16 A. No.

17 Q. What will happen to the amount over
18 \$759.8 million?

19 A. The Companies wouldn't get that recovered
20 through Rider VMC as proposed.

21 Q. You are saying there is a hard cap at the
22 end of the eight-year -- strike that.

23 Okay. Let me ask it this way, it's true
24 there are not annual caps, is that correct, in your
25 proposal?

1 A. There are not annual caps in the O --
2 incremental O&M expense that would be collected.
3 Over the eight-year period, there is a cap on the O&M
4 expenses that would be included in the calculation
5 which is the \$759.8 million.

6 Q. So if the Companies reach 759.8 million
7 in year five of the ESP, there would be no additional
8 expenses deferred in years six through eight?

9 A. That's not in the Companies' proposal.

10 Q. Okay. If the Companies reach
11 759.8 million cap in year five, what happens to the
12 O&M expenses that are incurred over that capped
13 amount in year six through eight?

14 A. The Companies wouldn't receive recovery
15 of those.

16 Q. And vegetation management costs, if you
17 were not awarded Rider VMC, these costs could be
18 recoverable through base rates; is that correct?

19 A. Yes.

20 EXAMINER PRICE: I have a question about
21 this -- the cap.

22 THE WITNESS: Yes.

23 EXAMINER PRICE: There's going to be an
24 amount of vegetation management expenses as a
25 baseline coming out of your next distribution rate

1 case. And then there is going to be recovery under
2 the VMC. Is the 7 -- is the cap -- does that include
3 both costs that are recovered through the baseline
4 rates and distribution and VMC, or is it VMC only?

5 THE WITNESS: It would be both. It would
6 be the total.

7 EXAMINER PRICE: Thank you.

8 MR. FINNIGAN: Your Honor, may we have
9 just one moment?

10 MS. BOJKO: Thank you, your Honor. I
11 have no further questions.

12 EXAMINER PRICE: Do you believe that
13 having a cap on total vegetation management expenses
14 that can be collected over the term of the ESP
15 promotes rate certainty?

16 THE WITNESS: Yes.

17 EXAMINER PRICE: Do you believe it
18 promotes predictability?

19 MS. BOJKO: Objection. Mr. Alexander
20 objected. I am going to object.

21 EXAMINER PRICE: Grounds?

22 MS. BOJKO: Friendly cross.

23 EXAMINER PRICE: Friendly cross? You and
24 I are going to have a conversation later you are not
25 going to enjoy.

1 THE WITNESS: Yes.

2 EXAMINER PRICE: Do you believe it
3 promotes stability?

4 THE WITNESS: As far as?

5 EXAMINER PRICE: Yes. Do you believe it
6 promotes stability?

7 THE WITNESS: Yes.

8 EXAMINER PRICE: Thank you.

9 Okay. Let's go off the record at this
10 time.

11 (Discussion off the record.)

12 (Thereupon, at 5:10 p.m., the hearing was
13 adjourned.)

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CERTIFICATE

I do hereby certify that the foregoing is
a true and correct transcript of the proceedings
taken by me in this matter on Wednesday, November 8,
2023, and carefully compared with my original
stenographic notes.

Karen Sue Gibson, Registered
Merit Reporter.

(KSG-7546)

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Summary: Transcript of Ohio Edison Co, CEI and Toledo Edison Co hearing held on 11/08/23 - Volume II electronically filed by Mr. Ken Spencer on behalf of Armstrong & Okey, Inc. and Gibson, Karen Sue Mrs..