

1893

BEFORE THE PUBLIC UTILITIES

COMMISSION OF OHIO

- - -

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 9:30
a.m. on Thursday, November 30, 2023.

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VOLUME XI

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1901

1 Thursday Morning Session,
2 November 30, 2023.

3 - - -

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

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

17 I believe today is day 11 of the
18 hearing, and we will begin with our witnesses slotted
19 for today. Mr. Lavanga?

20 MR. LAVANGA: Thank you, your Honor.
21 Nucor Steel Marion calls Dr. Dennis Goins.

22 EXAMINER ADDISON: Welcome, Doctor. If
23 you could turn off your microphone and maybe just
24 project. Thank you.

25 Welcome, Dr. Goins.

1 THE WITNESS: Thank you.

2 EXAMINER ADDISON: Can you raise your
3 right hand? Do you swear the testimony you're about
4 to provide in this proceeding is the truth?

5 THE WITNESS: I do.

6 EXAMINER ADDISON: Thank you. Please
7 state your name and your business address for the
8 record, please.

9 THE WITNESS: May name a Dennis Goins,
10 my business address is 2828 Moorings Way SC,
11 Southport, North Carolina 28461.

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

14 MR. LAVANGA: Your Honor, may I
15 approach?

16 EXAMINER ADDISON: You may. Thank you.

17 MR. LAVANGA: And, your Honor, may I
18 have marked for identification Nucor Exhibit 1, which
19 is the prefiled direct testimony of Dr. Goins?

20 EXAMINER ADDISON: It will be so marked.

21 (EXHIBIT MARKED FOR IDENTIFICATION.)

22 - - -

23 DENNIS GOINS, Ph.D.
24 being first duly sworn, as prescribed by law, was
25 examined and testified as follows:

1 DIRECT EXAMINATION

2 By Mr. Lavanga:

3 Q. Dr. Goins, do you have before you what's
4 been marked as Nucor Exhibit 1?

5 A. I do.

6 Q. And can you identify this document?

7 A. It is the direct testimony and exhibits
8 to that testimony that I prepared for this docket.

9 Q. Do you have any changes or corrections
10 to your testimony?

11 A. I do not.

12 Q. And if I were to ask you the same
13 questions as in the prefiled direct testimony today,
14 would your answers be the same?

15 A. They would.

16 MR. LAVANGA: Your Honor, Nucor moves
17 for admission of Nucor Exhibit 1 subject to
18 cross-examination, and the witness is available for
19 cross.

20 EXAMINER ADDISON: Thank you. We'll
21 defer ruling on the motion for admission following
22 cross-examination.

23 Any questions on behalf of OEG?

24 MS. COHN: No.

25 EXAMINER ADDISON: RESA?

1 MR. PRITCHARD: No questions, your
2 Honor.

3 EXAMINER ADDISON: OCC.

4 MR. FINNIGAN: No questions.

5 EXAMINER ADDISON: OMAEG?

6 MS. BOJKO: No questions, your Honor.

7 EXAMINER ADDISON: NRG.

8 MR. BARBARA: No questions, your Honor.

9 EXAMINER ADDISON: Mr. Dove.

10 MR. DOVE: No questions, your Honor.

11 EXAMINER ADDISON: NOAC?

12 MR. HAYS: None, thank you.

13 EXAMINER ADDISON: OELC?

14 MR. WILLISON: Yes, your Honor, briefly.

15 - - -

16 CROSS-EXAMINATION

17 By Mr. Willison:

18 Q. Good morning, Mr. Goins. My name is
19 Paul Willison, and I represent Ohio Energy Leadership
20 Council in this matter. I just have a few questions
21 for you today.

22 If you turn to page 12 of your direct
23 testimony, lines 9 to 15, you summarize the testimony
24 of FirstEnergy witness McMillen on the proposed
25 step-down of Rider ELR credits, is that correct?

1 A. It is.

2 Q. And you write there that Witness
3 McMillen asserts that the proposed reductions are
4 reasonable because it will, quote, mitigate rate
5 shock to participating Rider ELR participants -- or
6 excuse me, customers. Do you see that?

7 A. I do.

8 Q. So under FirstEnergy's Rider ELR
9 proposal the credits would gradually be reduced from
10 \$10 per kilowatt per month by decreasing by \$1 per
11 kilowatt per month starting on June 1st, 2025; is
12 that right?

13 A. The aggregate credits, that is correct.

14 Q. And by the end of the ESP V term, as
15 proposed by FirstEnergy, the program, we end up at \$3
16 per kilowatt per month by the last year, the
17 eight-year ESP term; is that right?

18 A. It is.

19 Q. Mr. Goins, are you familiar with the
20 testimony from PUCO Staff witness Healey recommending
21 immediate drop of the Rider ELR credits from \$10 per
22 kilowatt per month down to -- immediately to \$5 per
23 kilowatt per month on day one of ESP V?

24 A. I am. I reviewed the testimony.

25 Q. And do you have an opinion or view of

1 that proposal by Staff witness Healey?

2 MR. FINNIGAN: Your Honor, I object.
3 This is friendly cross. Dr. Goins is testifying on
4 behalf of Nucor, an industrial customer, and
5 Mr. Willison is representing OELC, also a group of
6 industrial customers.

7 They presented the testimony of
8 Mr. Brakey the other day, and he testified to the
9 same thing, so this testimony is just echoing what
10 Mr. Brakey already testified to.

11 It's the same position they are
12 advocating that there should be no reduction in the
13 credits, or if there is that it's a gradual tapered
14 one, so this is friendly cross and we object.

15 MS. BOTSCHNER O'BRIEN: Your Honor,
16 Staff supports the objection.

17 EXAMINER ADDISON: Thank you.
18 Mr. Willison.

19 MR. WILLISON: Yes, your Honor, I'll
20 withdraw the question and OELC has no further
21 questions.

22 EXAMINER ADDISON: Thank you very much.
23 Any questions on behalf of the Company?

24 MR. ALEXANDER: No, thank you, your
25 Honor.

1 EXAMINER ADDISON: Staff?

2 MS. BOTSCHNER O'BRIEN: Yes, Staff has a
3 few questions.

4 - - -

5 CROSS-EXAMINATION

6 By Ms. Botscher O'Brien:

7 Q. Dr. Goins, my name is Amy Botschner
8 O'Brien on behalf of Staff.

9 A. How do you do?

10 Q. How do you do? Hope you are doing well
11 this morning.

12 A. Thank you.

13 Q. You are testifying on behalf of Nucor
14 Steel Marion, Inc., correct?

15 A. I am.

16 Q. One topic you address is the Companies'
17 Economic Load Reduction, or ELR program, correct?

18 A. It is.

19 Q. And is Nucor a current ELR participant?

20 A. Yes.

21 Q. Is Nucor a member of the Ohio Energy
22 Leadership Council?

23 A. That, I don't know.

24 Q. But you are only testifying on behalf of
25 Nucor today in any event, not OELC, correct?

1 A. Yes, absolutely. I testify on behalf of
2 Nucor in several of these cases.

3 Q. Okay. In preparing your testimony did
4 you confer by any chance with OELC witness Brakey?

5 A. I did not.

6 Q. Okay. On page 7 of your testimony --
7 let me know when you're there.

8 A. Okay.

9 Q. Okay. Lines 3 to 5 you identify two
10 credits that ELR participants receive, correct?

11 A. Yes.

12 Q. One is a \$5 per kilowatt-hour credit
13 under Rider ELR, and the second is a \$5 per
14 kilowatt-hour credit under Rider EDR, correct?

15 A. Yes.

16 Q. At line 4 to 5 on that page you state
17 that ELR participants, quote, receive a \$5 per
18 kilowatt-hour monthly economic development credit
19 under Rider EDR, correct?

20 A. Yes.

21 Q. So is it your testimony that the entire
22 \$5 per kilowatt-hour under Rider EDR is for the
23 purposes of economic development?

24 A. No.

25 Q. Okay. And is it your testimony then

1 that -- is it your testimony that the entire \$5 per
2 kilowatt-hour credit under Rider ELR is for purposes
3 of reliability?

4 A. Under ELR it seems to be more reasonable
5 to make that assumption. The problem we have here,
6 at least in my mind, is that there's no absolute
7 distinction among the split between the reliability
8 and the economic development components of these
9 credits.

10 We simply know that through prior
11 Commission orders and statements on this issue and
12 testimony of multiple witnesses over the years that
13 both of these components are elements in the overall
14 reliability program called ELR.

15 Q. Okay. Thank you. On page 14 of your
16 testimony -- let me know when you're there.

17 A. I'm there.

18 Q. Okay. Line 24 to 27, you state,
19 "FirstEnergy's proposal to phase down Rider ELR will
20 likely cause existing ELR customers to consider
21 leaving Rider ELR altogether - especially in the
22 later years of ESP V when curtailable credits fall to
23 their lowest levels." Do you see that?

24 A. I do.

25 Q. You say that it would likely cause

1 existing ELR customers to consider leaving Rider ELR
2 altogether, but you don't know for sure that any
3 customers will leave Rider ELR, correct?

4 A. Yes, that is correct.

5 Q. Okay. You don't include any
6 quantitative analysis in your testimony on the extent
7 to which customers might leave the ELR based on a
8 reduction in credits, correct?

9 A. No, but I've been doing this kind of
10 work for a lot of years and I've worked with a lot of
11 interruptible customers, large and small, and what
12 we're talking about here are things that will --
13 throughout the testimony of most of the witnesses
14 dealing with this issue, about incentives that
15 customers will have over time, and certainly when
16 they are talking about a 70 percent cut in a credit,
17 if you didn't believe that it would likely cause some
18 customer to consider leaving this program, I think
19 you might have your head in the sand. It's simply a
20 reasonable assumption to make.

21 MS. BOTSCHNER O'BRIEN: Your Honors, we
22 would move to strike after the word, "No," at the
23 beginning of that answer.

24 MR. LAVANGA: Your Honor, may I speak?

25 EXAMINER ADDISON: No, I'm going to

1 provide Dr. Goins the same courtesy that we provided
2 our other witnesses, and that is your one bite at the
3 apple, Dr. Goins.

4 If you could listen to counsel's
5 questions, and her questions very carefully and
6 answer those questions, I'm sure Mr. Lavanga can
7 bring any additional information out that you wish to
8 be in front of the Commission during their
9 deliberation of this application at that time.

10 THE WITNESS: Point taken.

11 MR. LAVANGA: Thank you, your Honor.

12 EXAMINER ADDISON: You may proceed.

13 By Ms. Botschner O'Brien:

14 Q. Dr. Goins, there is no quantitative
15 analysis in your testimony on the extent to which
16 customers might leave the ELR based on a reduction in
17 credits; is that correct?

18 A. That is correct.

19 MS. BOTSCHNER O'BRIEN: Thank you.

20 That's all I have for this witness.

21 EXAMINER ADDISON: Thank you very much.

22 Redirect, Mr. Lavanga?

23 MR. LAVANGA: No redirect.

24 EXAMINER ADDISON: Dr. Goins, we have no
25 additional questions for you at this time so you are

1 excused. We really appreciate your testimony this
2 morning.

3 THE WITNESS: Thank you very much, I
4 appreciate it.

5 EXAMINER ADDISON: Absolutely. Have a
6 good day.

7 THE WITNESS: You too, thanks.

8 (Witness excused.)

9 MR. LAVANGA: Your Honor, at this time
10 Nucor moves for admission of Nucor Exhibit 1.

11 EXAMINER ADDISON: Any objection to the
12 admission of Nucor Exhibit 1 at this time? Hearing
13 none, it will be admitted.

14 (EXHIBIT ADMITTED INTO EVIDENCE.)

15 EXAMINER ADDISON: Let's go off the
16 record for a moment.

17 (Discussion off the record.)

18 EXAMINER ST. JOHN: Let's go back on the
19 record. Mr. Settineri, I'll turn things over to you.

20 MR. SETTINERI: Thank you, your Honor.
21 At this time on behalf of Constellation Energy
22 Generation, LLC and Constellation Energy, Inc., we
23 would call Muralikrishna Indukuri to the stand,
24 please?

25 EXAMINER ST. JOHN: Thank you.

1 Mr. Indukuri, please raise your right hand. Do you
2 swear or affirm the testimony you're about to provide
3 is the truth?

4 THE WITNESS: Yes.

5 EXAMINER ST. JOHN: Please state your
6 name and business address for the record.

7 THE WITNESS: My name is Muralikrishna
8 Indukuri, business address 1310 Point Street, Floor
9 8, Baltimore, Maryland, 20221.

10 EXAMINER ST. JOHN: Thank you. And
11 please proceed.

12 MR. SETTINERI: Thank you.

13 - - -

14 MURALIKRISHNA INDUKURI,
15 being first duly sworn, as prescribed by law, was
16 examined and testified as follows:

17 DIRECT EXAMINATION

18 By Mr. Settineri:

19 Q. Good morning, Mr. Indukuri. And if you
20 can make sure you speak into the microphone that will
21 help everybody in the room and the Court Reporter.

22 MR. SETTINERI: Your Honor, at this time
23 I believe we're at Constellation Exhibit 11, and that
24 would be the direct testimony of Muralikrishna
25 Indukuri.

1 EXAMINER ST. JOHN: That will be so
2 marked.

3 (EXHIBIT MARKED FOR IDENTIFICATION.)

4 By Mr. Settineri:

5 Q. Mr. Indukuri, do you have before you
6 what's been marked Constellation Exhibit 11, please?

7 A. Yes. This is my direct testimony.

8 Q. And was that prepared by you or at your
9 direction?

10 A. Yes, it was.

11 Q. And do you have any changes or revisions
12 to that testimony today?

13 A. No, I do not.

14 Q. And if I asked you the questions in that
15 testimony today would your answers be the same as
16 written in that testimony?

17 A. Yes, they would be.

18 MR. SETTINERI: Thank you. At this
19 time, your Honor, we would move for the admission of
20 Constellation Exhibit 11 subject to
21 cross-examination, and Mr. Indukuri is available for
22 cross-examination.

23 EXAMINER ST. JOHN: Thank you. Any
24 questions from OELC?

25 MR. WILLISON: Yes, your Honor, briefly.

1 EXAMINER ST. JOHN: Go ahead.

2 - - -

3 CROSS-EXAMINATION

4 By Mr. Willison:

5 Q. Good morning, Mr. Indukuri.

6 A. Good morning.

7 Q. My name is Paul Willison. I represent
8 Ohio Energy Leadership Council in this matter. I
9 just have a few questions for you this morning, and
10 to start out, why don't we turn to page 19 of your
11 direct testimony? Please let me know when you're
12 ready.

13 A. Yes, I'm there.

14 Q. Fantastic. So on page 19, lines 5 to 12
15 you summarize FirstEnergy's volumetric risk cap
16 proposal; is that right?

17 A. That is correct, yes.

18 Q. And under FirstEnergy's proposal, as you
19 describe it, FirstEnergy would, quote, evaluate the
20 daily peak load contribution (PLC) per tranche with
21 the baseline level, end quote, and then supply energy
22 for any load in excess of a 20 megawatt per tranche
23 cap, is that correct?

24 A. Yes, that is correct.

25 Q. For FirstEnergy's proposal, is the daily

1 PLC value a key metric? It is a key metric, correct?

2 A. Yes, it is.

3 Q. And so it's important to understand what
4 it is and how you set it, correct?

5 A. Yes.

6 Q. So now if we turn to pages 22 and 23 of
7 your testimony, you have three different charts, and
8 those were labeled Figures 3, 4, and 5; is that
9 right?

10 A. Yes.

11 Q. And those charts reference daily PLC
12 values to show how FirstEnergy's proposal and
13 Constellation's modification to that proposal would
14 work in practice. Do you see that?

15 A. They are actually daily PLC change, and
16 they are not a PLC, so there's a distinction.

17 Q. Thank you for the correction.

18 And so looking at those three figures,
19 Figures 3, 4, and 5, are daily PLC values there
20 expressed in megawatts, or megawatt-hours?

21 A. They are in megawatts.

22 Q. And you understand how daily PLC values
23 are determined and set, correct?

24 A. I know in general, yes.

25 Q. And so can you please describe that

1 understanding in general?

2 A. So you have a capacity market in PJM,
3 and as a part of the capacity market PJM ensures that
4 there's sufficient generation installed in the market
5 to meet demand that could show up and in any
6 circumstance you have enough of generation such that
7 you would not have a scarcity that would lead to
8 rolling outages and that kind of thing.

9 And what PJM does is it calculates at a
10 high level what the PLC values for each of the zones
11 would be, and the utilities then, for a given plan of
12 the year, will use the five peak days as PJM defines
13 it, and calculate what the users -- customers' rather
14 usage was in those five peak days and determine what
15 the PLC is, and then they apply some factors such
16 that to some of -- all their customer PLCs matches
17 PJM's calculated value.

18 Q. Thank you. And so if we look at figure
19 5, I believe that's on page 23, if the Commission
20 adopts FirstEnergy's volumetric risk cap proposal,
21 but then tightens it further to 5 megawatts, or a 5
22 megawatt cap, as Constellation recommends, then
23 Figure 5 shows that the risk cap would have been
24 exceeded as early as about September 1st, 2022, for
25 all SSO load suppliers in the '22 to '23 performance

1 year, correct?

2 A. So I would make a distinction there,
3 because if the cap existed, then customers would take
4 that into account.

5 So this kind of a behavior would not
6 have been seen, or it would have been muted, so just
7 looking at history and saying that this is what would
8 have happened would actually be a
9 mischaracterization.

10 Q. However, Figure 5 indicates that it
11 would exceed that 5 megawatt threshold line at
12 roughly September 1st, 2022, correct, that dotted
13 line?

14 A. Yes.

15 Q. Thank you. So let's switch gears here.

16 Another way that Constellation's
17 proposal differs from FirstEnergy's proposal on
18 volumetric risk cap is that Constellation recommends
19 that SSO load suppliers, not FirstEnergy, should
20 supply excess load, correct?

21 A. Yes, that is correct.

22 Q. And so if we turn to page 24, lines 6 to
23 7, you write that under Constellation's proposal the
24 load that is above the cap is settled at the day
25 ahead realtime price, do you see that?

1 A. Yes.

2 Q. Okay. So what is the, quote, day ahead
3 realtime price, as you use it here in your testimony?

4 A. So basically the way it works in PJM, as
5 a supplier you submit what is called demand bids in
6 the day-ahead market, and it's essentially an
7 estimate of what you think the load would be on the
8 operating day.

9 And there could always be a difference
10 between your demand bid and the actual load, and that
11 gets settled at what we call balancing mechanism
12 realtime prices, that's what I mean over there.

13 Q. Thank you. And so FirstEnergy would
14 need to recover those costs from its SSO customers in
15 the event that a 5 megawatt cap under Constellation's
16 proposal is exceeded, correct?

17 A. That is correct. But when you think of
18 it as a cost to the customer because of the 5
19 megawatt cost -- 5 megawatt cap, sorry, you also
20 should take into account the fact that because of the
21 presence of that, the suppliers would be -- there
22 would be more suppliers potentially willing to
23 participate in the auction, and also suppliers
24 willing to provide more competitive pricing because
25 their risks are low.

1 MR. WILLISON: Your Honor, I would move
2 to strike everything after the phrase, "That is
3 correct." It was simply a yes or no question.

4 EXAMINER ST. JOHN: Could I have the
5 question reread, please?

6 (Record read back.)

7 EXAMINER ST. JOHN: At this time I will
8 not strike the answer but, Mr. Indukuri, I will
9 instruct you in moving forward in the future, please
10 make sure you answer counsel's question directly, and
11 if you have additional information that you'd like to
12 provide, your counsel can bring that out on redirect.

13 THE WITNESS: Yes, your Honor. Thank
14 you.

15 MR. WILLISON: Thank you, your Honor.
16 By Mr. Willison:

17 Q. And just one final question for you,
18 Mr. Indukuri.

19 So under Constellation's proposal, SSO
20 customers would ultimately have exposure to realtime
21 market prices for electricity in the event that the
22 proposed 5 megawatt cap is exceeded, correct?

23 A. So the customers have exposure to
24 realtime prices, and it's just the way we are
25 defining how the magnitude of the exposure is based

1 off of the 5 megawatt cap.

2 Like the customers are -- when you say
3 exposed I think of it in terms of cost, and the way I
4 would say it is the customers are bearing the cost
5 whether you have a cap or not a cap.

6 So they are bearing the cost when you
7 don't have a cap because they are going to pay high
8 SSO prices, and they are bearing the cost when you
9 don't have a cap -- or rather when you have a cap,
10 because they are exposed to the realtime prices when
11 the cap is exceeded, but that is a contingent event,
12 and they would only be exposed -- there's multiple
13 things that have to happen for them to be exposed to
14 realtime prices, right?

15 One, the cap is exceeded. Second, the
16 prevailing realtime prices during that cap exceedence
17 should exceed the prevailing SSO price, that's the
18 only time their costs would increase.

19 So that is a clarification that I think
20 is important, it's not just -- just because the cap
21 is exceeded, the customers don't get exposed to
22 realtime prices.

23 MR. WILLISON: Your Honor, I'd move to
24 strike that answer since it didn't actually provide a
25 responsive yes or no answer to the yes or no question

1 that I provided.

2 MR. SETTINERI: Your Honor, if I may?
3 His answer did respond to the question. It was
4 based, as he noted in his answer, how he interpreted
5 the word exposure. He said that in his answer, so
6 the answer is very helpful, helpful to the
7 Commission, helpful to the Bench.

8 EXAMINER ST. JOHN: I would agree, and
9 I'm going to overrule the objection. I don't think
10 there was a simple yes or no question, I think the
11 witness is explaining his answer.

12 MR. WILLISON: Thank you, your Honors.
13 Mr. Indukuri, thank you very much for your testimony.
14 At this time OELC has no further questions.

15 THE WITNESS: Thank you.

16 EXAMINER ST. JOHN: Anything from the
17 Company?

18 MR. ALEXANDER: No, your Honor.

19 EXAMINER ST. JOHN: OEG?

20 MS. COHN: No, your Honor.

21 EXAMINER ST. JOHN: RESA?

22 MR. PRITCHARD: No, your Honor. Thank
23 you.

24 EXAMINER ST. JOHN: OCC?

25 MR. FINNIGAN: No questions, your Honor.

1 EXAMINER ST. JOHN: OMAEG?

2 MS. BOJKO: No questions, your Honor.

3 EXAMINER ST. JOHN: Mr. Barbara?

4 MR. BARBARA: Yes, your Honor.

5 - - -

6 CROSS-EXAMINATION

7 By Mr. Barbara:

8 Q. Good morning, Mr. Indukuri. My name is
9 Matt Barbara. I'm here on behalf of IGS, also NRG
10 Retail Companies. I'd like to ask you a few
11 questions about your testimony starting on page 1, if
12 you have that in front of you.

13 On page 1, line 19, you reference your
14 unique perspectives of the risks associated with
15 participating in default service procurements,
16 correct?

17 A. Correct.

18 Q. Would you agree that your perspective is
19 informed at least in part by your work at
20 Constellation and your prior work at NRG?

21 A. Yes.

22 Q. Do Constellation and NRG have
23 risk management teams?

24 A. I'll answer for Constellation. Yes,
25 they do.

1 Q. Okay. When you worked at NRG, did NRG
2 have a risk management team?

3 A. Yes, and I was part of that when I was
4 there.

5 Q. How large is Constellation's risk
6 management team, if you know?

7 A. I can't answer that question. I know a
8 few folks, but I don't know what the head count is,
9 sorry.

10 Q. Okay. Head count being more than ten
11 people?

12 A. Potentially.

13 Q. Do you recall how large NRG's risk
14 management team was?

15 A. It's been many years when I was there.
16 It was a sizable team to take into -- I mean, they
17 are a large market player, so I don't remember the
18 exact number, sorry.

19 Q. Okay. That's fine. What expertise do
20 the members of Constellation's risk management team
21 contribute?

22 MR. SETTINERI: I'll just object. The
23 witness indicated that he wasn't familiar -- didn't
24 know how many people were on the team, so to answer a
25 question about what the members know, he can't answer

1 that.

2 MR. BARBARA: May I respond, your Honor?

3 EXAMINER ST. JOHN: You may.

4 MR. BARBARA: I'm not asking about what
5 the members know, I'm asking about the types of
6 expertise that the risk management team contributes
7 to the Company. If he doesn't know, he doesn't know,
8 but I believe it's a proper question.

9 MR. SETTINERI: That's a different
10 question than he asked, your Honor.

11 EXAMINER ST. JOHN: Can I have the
12 question, please?

13 (Record read back.)

14 MR. SETTINERI: If he wants to rephrase.

15 EXAMINER ST. JOHN: I do agree that the
16 question that was initially posed is different from
17 the question you responded to just now.

18 Would you care to rephrase your
19 question, or would you like to stick with the initial
20 question?

21 By Mr. Barbara:

22 Q. If you know, what expertise do the
23 members of Constellation's risk management team
24 possess?

25 A. So I'll answer in generalities.

1
2 The risk management team is responsible
3 for basically monitoring, reporting, and informing
4 the management of the risks that are inherent in the
5 commodity markets and ensuring that the Company
6 operates within predefined Board approved risk
7 limits.

8 In terms of the expertise, you have
9 groups that are engaged in reporting functions,
10 groups that are engaged in quantitative analysis, and
11 groups that do modeling of risks, and then you just
12 have people -- or compliance -- risk compliance
13 groups. That's broadly how I put it.

14 Q. Thank you for that explanation.

15 So you would agree that Constellation
16 has a sophisticated risk management group, right?

17 A. Correct. Yes, I would agree.

18 Q. Is it your opinion that SSO suppliers
19 are incapable of managing the risks that capacity
20 pricing will be higher or lower than anticipated?

21 A. Could you repeat the question, please?

22 Q. Of course. Is it your opinion that SSO
23 suppliers are incapable of managing the risk that
24 capacity pricing will be higher or lower than
25 anticipated?

1 A. I would say they are capable of managing
2 the risk, but they -- one of the ways that you manage
3 the risk is to model the risk and price it, and that
4 is where I think, when you have a price component or
5 commodity whose price is unknown, and suppliers fix
6 that risk, they actually -- the customers may not be
7 benefitting in the process, so that's how I would see
8 it.

9 They can manage the risk, but one of the
10 tenets of managing the risk is to price the risk, and
11 you include what I would call risk premiums as a part
12 of managing that risk if the price is unknown.

13 MR. BARBARA: Your Honor, I'm going to
14 move to strike here because I believe I asked a yes
15 or no question, and the answer went beyond the scope
16 of the question.

17 EXAMINER ST. JOHN: Can I have the
18 question reread, please?

19 (Record read back.)

20 MR. SETTINERI: Your Honor, if I may,
21 again, his answer provided clarification. He
22 specifically noted -- discussed one component of
23 managing the risk is locking in the price, so the
24 answer was a complete answer to the question. It was
25 not a yes or no answer given the type of question

1 asked.

2 EXAMINER ST. JOHN: At this time I will
3 go ahead and sustain the objection. I'll go ahead
4 and strike the response. Please ask the question
5 again and, Mr. Indukuri, please answer the question
6 directly.

7 THE WITNESS: Thank you, your Honor.

8 By Mr. Barbara:

9 Q. Mr. Indukuri, is it your opinion that
10 SSO suppliers are incapable of managing the risk that
11 capacity pricing will be higher or lower than
12 anticipated?

13 A. I would answer that they are capable of
14 managing the risk.

15 Q. And isn't it true that SSO suppliers
16 have specialists who are responsible for forecasting
17 capacity pricing to be included in their auction
18 bids?

19 A. We do forecast capacity prices.

20 Q. And SSO suppliers would have specialists
21 who help the Companies forecast capacity prices,
22 correct?

23 A. I can't answer for other suppliers, I'm
24 just telling you our -- Constellation's.

25 Q. Okay. Now, you were testifying today on

1 behalf of CNE which is a CRES provider in Ohio and
2 other states, correct?

3 A. Yes.

4 Q. CRES providers offer fixed rate products
5 that can be for multiple years, right?

6 A. So the way I would say it, like when you
7 speak of CRES offers they often go with the
8 associated contract, and the contracts can have
9 nuances to it where certain prices -- certain
10 components can be fixed or certain components can be
11 passed through.

12 So yes, they do provide multiyear
13 products, but the products are not all fixed price
14 because you sign a contract as a retail -- like as a
15 customer you sign a contract with a retail entity,
16 and the terms of that contract define what they mean
17 by fixed price.

18 MR. BARBARA: Your Honor, I'm going to
19 move to strike the answer to the extent that it
20 was -- it was a yes or no question that was asked.
21 We got a narrative answer that did not directly
22 address the substance of the question.

23 EXAMINER ST. JOHN: I'll grant the
24 motion to strike. Please read back the question, and
25 Mr. Indukuri, if you could answer the question

1 directly.

2 MR. SETTINERI: Your Honor, if I may on
3 that ruling be heard, briefly.

4 EXAMINER ST. JOHN: The ruling has
5 already been made. You're welcome to elicit
6 questions on redirect.

7 MR. SETTINERI: My objection -- I just
8 want to object to that ruling, your Honor, on the
9 record.

10 It was not a yes or no question, so the
11 witness gave an answer. He should not be forced,
12 because counsel wants a yes or no answer, to give a
13 yes or no answer to a question. Some questions
14 cannot be answered yes or no, as we all know. I just
15 want to make that objection on the record.

16 EXAMINER ST. JOHN: Noted. Thank you.
17 By Mr. Barbara:

18 Q. Mr. Indukuri, CRES providers offer fixed
19 rate products that can be for multiple years,
20 correct?

21 A. Would you define what you mean by fixed
22 rate products?

23 Q. Products offered by a given CRES
24 provider.

25 A. Can you -- CRES providers offer multiple

1 products, so when you say fixed price can you be more
2 specific about what fixed is?

3 Q. Sure. Let me give you a hypothetical
4 that might shed some light on this. Are you familiar
5 with the Apples to Apples website?

6 A. PUCO maintains it. Yes, I am familiar
7 with it.

8 Q. Have you been to the Apples to Apples
9 website?

10 A. Yes, I have.

11 Q. And the Apples to Apples website for
12 electric service does include offerings from CRES
13 providers, right?

14 A. It has offerings, and along with the
15 offerings it also specifies the contract term of each
16 of the offerings.

17 Q. And some of those offerings on the
18 Apples to Apples website from CRES providers are
19 fixed rate products, correct?

20 A. They are fixed rate, but they also have
21 a set of terms and conditions that go along with that
22 fixed rate.

23 Q. I understand there are terms and
24 conditions, but you would agree with me that the --
25 the given CRES providers on the Apples to Apples

1 website may be advertising a fixed rate product,
2 right?

3 A. Yes.

4 Q. And in some cases those fixed rate
5 products offered by CRES providers on the Apples to
6 Apples website, can be for multiple years, correct?

7 A. Yes, they can be.

8 Q. And in some cases those fixed rate
9 products can be -- strike that.

10 In some cases those fixed rate products
11 can be for terms up to and including 48 months,
12 correct?

13 A. I know they can be more than 12 months.
14 I don't remember -- like I can't tell you right off
15 sitting here if they can go all the way up to 48.

16 Like I know there are offers out there
17 for multiple years, like more than 12 months, but I
18 can't specifically say about 48 months specifically.

19 Q. All right. Would you accept, subject to
20 check, that the Apples to Apples website does list
21 fixed rate products that exist for contract terms up
22 to 48 months?

23 MR. SETTINERI: Object. He already gave
24 an answer. He didn't know.

25 EXAMINER ST. JOHN: I'll sustain the

1 objection. The witness said he doesn't know.

2 MR. BARBARA: I'll move on.

3 By Mr. Barbara:

4 Q. Mr. Indukuri, fixed rate products
5 offered by CRES providers are fixed in the sense that
6 they don't adjust upwards or downwards if capacity
7 prices differ from what was priced into the fixed
8 price, correct?

9 A. So fixed price products offer -- again,
10 there's a distinction between fixed price and fixed
11 price full requirements, that's why I'm trying to be
12 more clear in my answer. And if I'm allowed I could
13 specify more.

14 Q. Let me ask the question slightly
15 differently.

16 If a CRES provider is advertising a
17 fixed rate products -- a fixed rate product, excuse
18 me, the price for that product will not adjust
19 upwards or downwards if capacity prices are different
20 than what was priced into that fixed rate product,
21 correct?

22 A. So contracts have change in law
23 provisions, and if they can invoke a change in law
24 they can adjust the price. That's why I'm not able
25 to give you a direct answer.

1 When it's a fixed price, there is also a
2 change in law provision that goes with a lot of CRES
3 contracts, and when you have a change in law
4 provision which can be defined based on the supplier,
5 they can actually pass through the -- whatever they
6 can prove as being driven by the change in law.
7 That's why my answer is more specific to your
8 question.

9 MR. BARBARA: I am going to move to
10 strike that answer, your Honor, as nonresponsive to
11 what I believe was a fairly straightforward yes or no
12 question asking whether a fixed rate product is in
13 fact fixed rate.

14 MR. SETTINERI: Your Honor, he answered
15 the question, and he provided an answer based on his
16 knowledge to what -- as far as he could understand,
17 what the question meant.

18 He's already indicated difficulty with
19 the type of questions that are being asked in terms
20 of the wording. I'll stop there.

21 MS. BOJKO: Your Honor, we cannot hear
22 Mr. Settineri at all.

23 MR. SETTINERI: I'll take care of that
24 with the microphone.

25 EXAMINER ST. JOHN: I will deny the

1 motion to strike. I think the witness is struggling
2 to give a simple yes or no answer because of the
3 elements that he described in his answer. So for
4 that reason the motion to strike is denied.

5 MR. BARBARA: Thank you, your Honor.

6 By Mr. Barbara:

7 Q. Mr. Indukuri, would you agree that a
8 fixed rate product offered by a CRES provider is
9 fixed in the sense that the rate will not adjust
10 upwards or downwards if capacity prices are different
11 than what was priced into that product, unless there
12 is some other contract term, like you mentioned, that
13 might come into play that would allow the provider to
14 adjust the price?

15 MR. SETTINERI: Your Honor, I'm just
16 going to object at this time. Fixed rate products
17 can vary as Mr. Indukuri described so I'll object to
18 the form of the question.

19 Prices can have a capacity pass through,
20 there was a variety of products, that's the
21 difficulty with the line of questioning here.

22 EXAMINER ST. JOHN: Your objection is
23 noted, but overruled. I believe Mr. Barbara is
24 wrapping this line of questioning up here quickly.

25 He gave a more complete question at this

1 time, so I will allow the witness to answer this
2 question and then I'm sure we will be moving on.

3 THE WITNESS: If you could repeat the
4 question for me, please? Thank you.

5 MR. BARBARA: Could I have the question
6 read back, please?

7 EXAMINER ST. JOHN: Yes, please.

8 (Record read back.)

9 THE WITNESS: So if you had no contract
10 terms at all and -- which is highly unusual with a
11 CRES supplier, then I would agree that a fixed price
12 would not change.

13 By Mr. Barbara:

14 Q. All right. CRES providers manage the
15 risk of capacity pricing being higher or lower than
16 anticipated, correct?

17 A. So in PJM, the market that is relevant
18 here, the most contracts that are offered by CRES
19 providers are for the terms where capacity prices are
20 known, when capacity prices clear in three years in
21 advance of the delivery period, so you know the
22 price, there is nothing to manage the risk for.

23 Q. Would you agree that CRES providers who
24 offer fixed-price contracts do not shift capacity
25 pricing risk to their customers?

1 MR. SETTINERI: I'll object. There's no
2 foundation laid that he can speak as to the pricing
3 of other CRES providers.

4 EXAMINER ST. JOHN: I'll overrule the
5 objection. To the extent you know, Mr. Indukuri, go
6 ahead and answer. And if you do not know, feel free
7 to say that.

8 THE WITNESS: Without knowing the exact
9 contract I would -- or offers from CRES suppliers I
10 would not speculate what they would have been.

11 By Mr. Barbara:

12 Q. Would you agree that suppliers are
13 generally more qualified to address volumetric risks
14 than customers?

15 A. It would depend on the customer, would
16 be my answer, because industrial customers are as
17 sophisticated as suppliers and they are capable of
18 managing the risk.

19 Q. Would you agree that suppliers are
20 generally more qualified to address volumetric risks
21 than residential customers?

22 A. Yes.

23 Q. Would you agree that shifting risk away
24 from suppliers means that that risk is being shifted
25 on to customers, at least in some cases?

1 MR. SETTINERI: Object, lack of
2 foundation as to shifting of risk. What risk are we
3 talking about?

4 MR. BARBARA: I can ask a different
5 question, your Honor.

6 EXAMINER ST. JOHN: Go ahead.
7 By Mr. Barbara:

8 Q. Mr. Indukuri, would you agree that
9 shifting the risk that capacity prices are higher or
10 lower than anticipated, away from suppliers, means
11 that that risk is being shifted onto customers?

12 A. So can I answer -- risk and price are
13 related, so because the way suppliers manage risk is
14 through price, and the answer -- the way I would
15 answer your question is that the customers are
16 eventually paying the price.

17 If the suppliers are fixing risk then
18 they price that risk in, so the customers are paying
19 there.

20 Now, if the suppliers are not fixing
21 because the prices are known, then the customers are
22 paying the actual price so they are not paying
23 anything for the associated risk. So I mean, they
24 are interrelated and they matter.

25 Q. Let me unpack that a little bit. You

1 said that risk and price are correlated, right?

2 A. They are not correlated. The way you
3 express risk is in terms of the price, yes.

4 Q. Would you agree that if there is more
5 risk, then the price will necessarily be higher than
6 if there were less risk?

7 A. If you're fixing the risk, yes.

8 Q. And those higher prices would be passed
9 on to consumers, correct?

10 A. If you're fixing the risk the customer
11 is getting the benefit of not being exposed to the
12 variant -- to that risk.

13 So when you're fixing a risk you have to
14 pay a price for it. Whether it's lower or higher, I
15 can't opine. I mean, it would be a function of what
16 the risk that is being fixed is.

17 Q. I understand, but in either situation
18 the price is being paid at the end of the day by the
19 customer, right?

20 A. They are paying a price for a benefit.
21 The benefit is that they are getting that risk
22 essentially taken over by someone else to manage it
23 on their behalf.

24 Q. I'd like to go to page 11 of your
25 testimony, if you wouldn't mind turning there, and

1 letting me know when you've reached that page.

2 A. Yes, I'm there.

3 Q. On page 11, line 6, you discuss how SSO
4 suppliers are sophisticated portfolio managers who
5 have the tools to mitigate certain risks, right?

6 A. Yes, I do state that.

7 Q. Would you agree that Constellation is
8 asking the Commission to approve mechanisms that
9 would result in risk protections for SSO suppliers in
10 this proceeding?

11 A. No, we are not asking the Commission to
12 approve any risk protections for SSO suppliers, we
13 are suggesting ways in which the existing
14 procurements could be modified such that the benefit
15 accrues to the customers.

16 Q. Would you agree that the modifications
17 you just mentioned would also result in risk
18 protections to SSO suppliers?

19 MR. SETTINERI: Just object, form of the
20 question. I don't believe he mentioned any specific
21 modifications.

22 MR. BARBARA: I could ask a different
23 question.

24 By Mr. Barbara:

25 Q. Mr. Indukuri, would you agree that the

1 modifications you just referenced would also result
2 in risk protections for SSO suppliers?

3 MR. SETTINERI: Same objection, your
4 Honor.

5 EXAMINER ST. JOHN: Mr. Indukuri, do you
6 understand the question in terms of the modifications
7 that you just described in your last answer? Do you
8 understand the question?

9 THE WITNESS: I understand the question,
10 yes, your Honor.

11 EXAMINER ST. JOHN: I'll overrule the
12 objection. You can go ahead and answer.

13 THE WITNESS: Sorry, could you repeat
14 the question for me, please?

15 MR. BARBARA: Could we have the question
16 read back, please?

17 EXAMINER ST. JOHN: Yes, please.

18 (Record read back.)

19 THE WITNESS: No, they would not provide
20 risk protections for SSO suppliers. What they do is
21 actually provide more data or clarity to the SSO
22 suppliers such that they can quantify the risks, and
23 thereby provide a better price to the customers.

24 By Mr. Barbara:

25 Q. Do you know one way or the other whether

1 SSO suppliers, other than Constellation, believe risk
2 protections are necessary?

3 A. Yes. I mean, there was a docket that
4 the Commission had basically opened where they
5 proposed two basic supplier comments for two basic
6 proposals, which was a six-month term and relaxing
7 some credit requirements.

8 And in that docket there have been quite
9 a few suppliers, right off the top of my head I can
10 think of Vitol, who have proposed risk -- or the same
11 or somewhat similar strategy -- not strategy,
12 somewhat similar conditions that we have here to
13 essentially better define the risk for the suppliers.

14 Q. Okay. But it's also fair to say that
15 some other SSO suppliers might disagree that those
16 conditions, to use your term, are unnecessary,
17 correct?

18 A. Yes. I mean, that is true. That's what
19 makes a market.

20 Q. Thank you. I'd like to go to page 20 of
21 your testimony. Can you turn there and let me know
22 when you're on that page, please?

23 A. I'm there.

24 Q. There's a reference to early 2022 in
25 line 21 of page 20. My question is the reference to

1 early 2022, correct?

2 And I can explain that slightly further.
3 You have a figure on page 15 that's Figure 1 that
4 shows a small increase in early 2022, and a big jump
5 in late 2022, and I'd like to make sure that your
6 reference on page 20 is not a typo.

7 A. Yeah, it's not a typo. So if you look
8 at my graph you'll see the line for industrial
9 customers, and starting January 2022 you'll see a
10 sharp spike, it's almost vertical. That's what I was
11 referring to in that line over there.

12 Q. Are you referring to the increase from a
13 small number to 200?

14 A. Yes.

15 Q. Okay.

16 A. And then like you said, there's a
17 subsequent increase, yes.

18 Q. Got it. Thank you. And I just have a
19 couple questions on page 23. If you could turn to
20 that page and let me know when you're there.

21 A. Yeah, I'm on page 23.

22 Q. What do you mean when you state in lines
23 11 through 12 that, quote, that particular risk has
24 been mitigated, unquote?

25 A. I'm specifically referring to NOPEC,

1 which is a huge aggregation in FE Ohio territory.
 2 They dropped all their customers starting in
 3 September, and that caused the Public Commission to
 4 open a docket and they requested all the utilities in
 5 Ohio to essentially propose minimum stay provisions,
 6 and that the minimum stay provisions were approved by
 7 the Commission, and that's what I'm referring to that
 8 because of the minimum stay provisions --
 9 now aggregators cannot just drop customers and then
 10 re-enroll them immediately when prices are favorable
 11 to them.

12 Q. So in other words, you mean that the new
 13 minimum stay requirement for large governmental
 14 aggregations has mitigated the volumetric risk
 15 associated with those large governmental
 16 aggregations, correct?

17 A. I would say it hasn't fully mitigated
 18 it, but it has somewhat mitigated it because the
 19 approved Commission rules do not preclude an
 20 aggregator from dropping customers in the first
 21 place, and also dropping customers when their CRES
 22 supply contract expires. So those two risks haven't
 23 been mitigated by the minimum stay provisions.

24 Q. Mr. Indukuri, thank you very much for
 25 your time and your testimony today. I have no

1 further questions at this time.

2 A. Thank you.

3 EXAMINER ST. JOHN: Any questions, Mr.
4 Dove?

5 MR. DOVE: No questions, your Honor.

6 EXAMINER ST. JOHN: NOAC?

7 MR. HAYS: No questions, your Honor.

8 EXAMINER ST. JOHN: Mr. Lavanga?

9 MR. LAVANGA: No questions, your Honor.

10 EXAMINER ST. JOHN: Staff?

11 MS. BOTSCHNER O'BRIEN: No questions,
12 your Honor.

13 EXAMINER ST. JOHN: Any redirect,
14 Mr. Settineri.

15 MR. SETTINERI: If we could take ten
16 minutes, that would be helpful.

17 (Recess taken.)

18 EXAMINER ST. JOHN: Let's go back on the
19 record. Go ahead, Mr. Settineri.

20 MR. SETTINERI: Thank you, your Honor.

21 - - -

22 REDIRECT EXAMINATION

23 By Mr. Settineri:

24 Q. Mr. Indukuri, you were asked some
25 questions about, I believe, just PLCs in general, but

1 FirstEnergy today calculates the daily PLC,
2 correct -- for nonshopping customers, correct?

3 A. Yes, they do.

4 Q. And that information is readily
5 available?

6 A. Yes.

7 Q. As well, FirstEnergy has PLCs' numbers
8 for its customers, correct?

9 A. That is correct, yes.

10 Q. So all the information is available to
11 implement the volumetric risk cap, correct?

12 A. Yes. They already have.

13 Q. You were also asked some questions about
14 the cap in general, and I think the load and excess
15 of the cap being, I'll say my words, purchased at
16 market, but is it the load in excess of the cap
17 that's being purchased, or is it based on a
18 percentage of the load, could you clarify that,
19 please?

20 A. It is a very small percentage of the
21 total SSO load that is being -- that ends up being
22 served at market.

23 Q. But again, if the cap is exceeded
24 suppliers are paying -- they will be responsible for
25 a percentage of their load based on the percentage

1 that the cap is exceeded by; is that correct?

2 A. That is correct, yes.

3 Q. And is the cap based on PLC numbers?

4 A. Yes, the cap is completely calculated
5 off of -- so just to clarify, the way FE's proposal
6 and our proposal works is the PLCs, which are
7 determined for a given planning year, are
8 effectively -- there's a benchmark quantity, and then
9 you have a threshold, and if you -- you make a
10 comparison of the daily PLC with the benchmark
11 quantity and you check if it exceeds a given
12 threshold, and if it exceeds the threshold, then that
13 tiny excess -- when I say tiny, because it's a small
14 part -- is then served at realtime prices.

15 But the -- the quantity that is served
16 at realtime prices is actually the hourly usage
17 for -- so you basically are calculating the
18 contingency first, say making sure that the threshold
19 is exceeded, and once the threshold is exceeded you
20 calculate what the percent exceedence is.

21 That percent exceedence is applied on
22 the hourly consumption, and that is what affectively
23 becomes the cost that is calculated as the difference
24 between the realtime prices and the prevailing SSO
25 prices.

1 So it's not that all of the load is --
2 effectively is being served at realtime prices, but
3 that difference should be a positive number for that
4 cost to actually end up being a cost.

5 Q. Now, you were asked questions more than
6 once about the risk cap being exceeded. And
7 specifically going back to 2022, 2023, was
8 there significant customer migration during that
9 period, right?

10 A. Yes, there was a lot of -- as I've shown
11 in my charts in the testimony, there was, on the
12 aggregation side, NOPEC which is one of the largest
13 aggregators who dropped their customers through the
14 SSO, and you had a lot of industrial and small
15 commercial customers who were more sophisticated
16 basically taking advantage and moving into the SSO.

17 Q. If the volumetric risk cap with the --
18 the Constellation recommended is to use the 5
19 megawatt risk cap?

20 A. We are giving the risk cap both in
21 megawatts as well as percentage.

22 Q. Okay. And if a volumetric risk cap was
23 in place as recommended by Constellation, and
24 obviously very similar to FirstEnergy's, correct,
25 with the difference in the cap, would that -- would

1 that have muted the migration of customers in your
2 opinion?

3 A. Yes, because the -- most of the
4 customers who we have seen migrate in planning year
5 '22, '23, into the SSO were predominantly aggregation
6 customers, NOPEC specifically, which is a
7 sophisticated player being one of the largest
8 aggregators in FE territory, and industrial
9 commercial customers, had the contractual provisions
10 for the thresholds been in place, these customers
11 would have actually had to take that into account,
12 and it would be a very slam dunk decision, like I
13 think Brakey Energy was suggesting to customers that
14 SSO prices are lower than the prevailing market
15 pricing, so moving to SSO that would not be
16 happening, so yes, it would model their customer
17 behavior.

18 Q. Now, again, going back to a lot of
19 questions about risk and risk premiums, risk -- if a
20 supplier is building risk premiums into their auction
21 bids would that result in customers paying for those
22 risk premiums?

23 A. Yes, because that would eventually make
24 its way into the auction clearing price and the
25 customers would eventually be paying for it.

1 Q. Let me ask this question then. You had
2 questions, I think from IGS counsel about, again, the
3 migrations in 2022, 2023. Have you seen impacts to
4 the auctions as a result of that 2022 and 2023
5 migration?

6 A. So I mean, we participate in Ohio
7 auctions and we participate at pre and post, and yes,
8 I've seen a significant difference in -- and the
9 Commission recognized that as well, and opened a
10 bunch of dockets to essentially address the high SSO
11 clearing prices.

12 And the way I think of this migration
13 affecting it is, one, we have seen less suppliers
14 show up in the SSO procurements in Ohio, and
15 secondly, the auction clearing prices have been
16 significantly higher post the migration event, and
17 that was predominantly to account for this -- for
18 unpredictable risk of customers moving into the SSOs.

19 So I would say the impacts have been
20 higher clearing prices for SSO in Ohio, fewer
21 suppliers showing up in the SSO auctions.

22 And specifically like the NOPEC event,
23 there was a docket where a lot of suppliers actually
24 contested NOPEC dropping its customers.

25 Some of the suppliers' names that I

1 remember were Vistra, I think it's all in the docket,
2 and I think it was Trans Alden. These were the
3 suppliers that seemed to be -- at least they claimed
4 in their filings that they were adversely affected by
5 the NOPEC event.

6 Q. And when you have an event like the
7 customer migration -- and there was more going on in
8 2022 and 2023 than just the NOPEC event?

9 A. Yes. I mean, there was also the
10 industrial/commercial customers moving into the SSO
11 at rates significantly higher than they have ever
12 done in history.

13 Q. And with an event like that, do you have
14 an opinion generally how that will impact suppliers
15 as to future auction prices?

16 A. So I mean, this goes into the risk and
17 how risk is perceived by suppliers. A recent event
18 where the risk has manifested itself at a
19 significantly higher magnitude would, from a prudent
20 risk management standpoint, necessitates suppliers to
21 incorporate appropriate risk premiums into their
22 offers going forward, and the impact would be that
23 post event the prices would actually be significantly
24 higher.

25 I mean, the analogy I would draw here is

1 to like your car insurance. Like you have your basic
2 premium, the car gets in an accident, all of a sudden
3 your premiums go up, so it's similar here.

4 Once the risk has manifested you
5 basically take into account that risk, price it in,
6 and the result is that you will have offers higher
7 than you had prior to the event.

8 Q. And is that also because when an
9 event -- risk event has manifested itself, that that
10 event could occur in the future as well?

11 A. Yes, the risk is all about probability.
12 So we assign probabilities to that event happening in
13 the future, and that is what eventually makes it into
14 the market clearing prices.

15 (Pause.)

16 MR. SETTINERI: Thank you for the time.
17 Your Honor, no further questions on redirect.

18 EXAMINER ST. JOHN: Thank you. OELC?

19 MR. WILLISON: Nothing, your Honor,
20 thank you.

21 EXAMINER ST. JOHN: FirstEnergy?

22 MR. KEANEY: Nothing, your Honor.

23 EXAMINER ST. JOHN: OEG.

24 MS. COHN: No question.

25 EXAMINER ST. JOHN: RESA.

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1 MR. PRITCHARD: No questions, your
2 Honor.

3 EXAMINER ST. JOHN: OCC.

4 MR. FINNIGAN: No questions, your Honor.

5 EXAMINER ST. JOHN: OMAEG?

6 MS. BOJKO: No questions, your Honor.

7 MR. BARBARA: No questions, your Honor.

8 EXAMINER ST. JOHN: Mr. Dove?

9 MR. DOVE: No questions, your Honor.

10 MR. HAYS: No questions, your Honor.

11 EXAMINER ST. JOHN: Mr. Lavanga.

12 MR. LAVANGA: No questions, your Honor.

13 Thank you.

14 EXAMINER ST. JOHN: Staff.

15 MS. BOTSCHNER O'BRIEN: No questions,
16 your Honor.

17 EXAMINER ST. JOHN: At this time I'd
18 like to take up the motion to admit Constellation
19 Exhibit 11.

20 Are there any objections to the
21 admission of this Exhibit? Hearing none, that is so
22 admitted.

23 (EXHIBIT ADMITTED INTO EVIDENCE.)

24 EXAMINER ST. JOHN: And, Mr. Indukuri,
25 you are excused. Thank you.

1 (Witness excused.)

2 EXAMINER ST. JOHN: At this time let's
3 take a brief five-minute recess.

4 (Recess taken.)

5 EXAMINER ST. JOHN: Let's go back on the
6 record. First thing we'd like to take up at this
7 point is RESA's next exhibit, the direct testimony of
8 one of their witnesses. Would you like to introduce
9 that at this time?

10 MR. PRITCHARD: Yes, thank you, your
11 Honor. At this time RESA would like to mark the
12 direct testimony of Jesse Rodriguez as RESA
13 Exhibit 15.

14 And all parties have -- have indicated
15 they have waived cross-examination for Mr. Rodriguez,
16 so at this time I would move for the admission of the
17 direct testimony of Mr. Rodriguez.

18 EXAMINER ST. JOHN: Thank you. Are
19 there any objections to the admission of this
20 Exhibit? Hearing none, it is admitted.

21 (EXHIBIT ADMITTED INTO EVIDENCE.)

22 EXAMINER ST. JOHN: And, Mr. Finnigan,
23 I'll turn things over to you.

24 MR. FINNIGAN: Thank you, your Honor.
25 Your Honor, at this time OCC would like to call as

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1 its next witness Mr. Joseph Buckley.

2 EXAMINER ST. JOHN: Do you swear or
3 affirm the testimony you're about to give is the
4 truth?

5 THE WITNESS: I do.

6 MR. FINNIGAN: Your Honor, at this time
7 I would like to have marked as OCC Exhibit 5 the
8 prefiled direct testimony of Mr. Joseph Buckley. I
9 previously distributed that to a number of the
10 parties.

11 EXAMINER PRICE: Off the record.

12 (Discussion off the record.)

13 EXAMINER ST. JOHN: Back on the record.
14 That will be so marked.

15 (EXHIBIT MARKED FOR IDENTIFICATION.)

16 - - -

17 JOSEPH BUCKLEY,
18 being first duly sworn, as prescribed by law, was
19 examined and testified as follows:

20 DIRECT EXAMINATION

21 By Mr. Finnigan:

22 Q. Mr. Buckley, could you please state your
23 name and business address for the record?

24 A. Yes. My name is Joseph Buckley, my
25 business address is 65 East State Street.

1 Q. Now, do you have before you a copy of
2 your prefiled direct testimony in this case which has
3 been marked an OCC Exhibit 5?

4 A. I do.

5 Q. Did you prepare that, or was it prepared
6 under your direction and control?

7 A. It was.

8 Q. If I were to ask you the same questions
9 today would your answers be the same?

10 A. They would.

11 Q. Do you have any changes or corrections
12 you would like to make?

13 A. Not at this time.

14 MR. FINNIGAN: Your Honor, at this time
15 OCC would like to move for admission of OCC
16 Exhibit 5, the testimony of Mr. Buckley, subject to
17 cross-examination.

18 EXAMINER ST. JOHN: Thank you. OELC?

19 MR. WILLISON: None, your Honor.

20 EXAMINER ST. JOHN: Company.

21 MR. KEANEY: Yes, your Honor. Thank
22 you.

23 - - -

24 CROSS-EXAMINATION

25 By Mr. Keaney:

1 Q. Good morning, Mr. Buckley. My name is
2 Mark Keaney. I'm the counsel for the Companies. Can
3 you turn to page 3 first of your testimony, and let
4 me know when you're there?

5 And I want to direct your attention to
6 lines 9 through 11, which states, "I will provide an
7 alternative rate of return that is consistent with
8 established regulatory principles and protect
9 consumers from paying unreasonable rates to
10 FirstEnergy Utilities." Did I read that correctly?

11 A. I believe you did.

12 Q. When you refer to established regulatory
13 principles there on line 10, would those be the
14 regulatory principles that are outlined in your
15 Attachment JPB-1?

16 A. Those would be a part of them.

17 Q. Now, sticking with Attachment JPB-1,
18 that's a presentation titled, "Price Regulation and
19 Accounting III: Cost of Capital Overview," correct?

20 A. Correct.

21 Q. And that's authored by Chancy Bittner,
22 Utility Specialist for the Iowa Utility Board,
23 correct?

24 A. Yes. One of the reasons I selected this
25 attachment is because I think it does the best job of

1 kind of laying things out.

2 There are other similar presentations
3 like this that I don't think -- that are more current
4 probably, but I don't think they are done as well,
5 kind of explaining the whole process, so that's why I
6 selected this one.

7 Q. Now, you had previously said that JPB-1
8 does not constitute all of the established regulatory
9 principles that you're referring to on -- in your
10 testimony, correct?

11 A. Correct.

12 Q. What would be the other established
13 regulatory principles that you're referring to that
14 are not included within JPB-1?

15 A. I think that's a -- that's a large
16 universe, I'm not sure I could go through and quote
17 every one of them.

18 Some of the things I think about when
19 you ask a question like that is things that the
20 Commission has done in the past, things that other
21 jurisdictions have done, kind of the benchmark rates
22 that are being earned throughout the country, things
23 like that.

24 Q. Did you personally attend that
25 presentation that was given about 13 years ago on

1 November 8 of 2010?

2 A. I did not.

3 Q. Okay. Now, this was a presentation that
4 was given as part of NARUC's Energy Regulatory
5 Partnership Program between the Public Services
6 Regulatory Commission of Armenia, and the Iowa Public
7 Utilities Board, correct?

8 A. I believe so, yes.

9 Q. Since you are citing to this
10 presentation, it's attached to your testimony, is it
11 fair to say that you agree with the information, the
12 summary of information provided in Attachment JPB-1?

13 A. For the most part. Again, the reason I
14 selected -- the reason I selected this specific
15 attachment was it did the best job of explaining it
16 and kind of simplified it.

17 There are other presentations that might
18 be a little bit different, but this one I think did
19 the best job of kind of explaining it down to a more
20 basic level.

21 Q. Are there any inaccuracies or things
22 that you disagree with specifically in that
23 presentation?

24 A. I'd have to go through page by page and
25 do a page turn to look at that, but I do believe that

1 the parts that I cited I agree with.

2 Q. Let's -- can you turn to page 15 of 38
3 in that Attachment JPB-1? Let me know when you're
4 there, page 15 of 38.

5 A. Yes.

6 Q. There are different models that various
7 experts or Regulatory Commissions use to calculate
8 the cost of equity, correct?

9 A. Correct.

10 Q. And for instance, there's the Discounted
11 Cash Flow Model, the Risk Premium Model, Capital
12 Asset Pricing Model, and Comparative Earnings Model,
13 for example, correct?

14 A. Correct.

15 Q. And would you agree that some State
16 Regulatory Commissions rely on just one model, while
17 others use many models or a combination of models?

18 A. Yeah, and some states don't use any of
19 these models, but I would say in general, one or a
20 combination is used often, but not always.

21 Q. Now, let's stick with Ohio. For the
22 last 25 years PUCO Staff has typically taken the
23 average outcomes of the Discounted Cashflow Model and
24 the Capital Asset Pricing Model, correct?

25 A. Yes, but they varied from that from time

1 to time.

2 Q. You submitted direct testimony in AEP
3 Ohio's most recent ESP case, correct?

4 A. I did.

5 Q. And in that case you filed two separate
6 sets of testimony, both of which were admitted into
7 the record, correct?

8 A. Subject to check. I don't recall, but I
9 have no reason to disagree with you, but subject to
10 check I'll agree with that.

11 MR. KEANEY: Your Honor, may I approach?

12 EXAMINER ST. JOHN: You may.

13 MR. KEANEY: For purposes of
14 identification this would be Company Exhibit 11.

15 (EXHIBIT MARKED FOR IDENTIFICATION.)

16 By Mr. Keaney:

17 Q. Mr. Buckley, do you have in front of you
18 Company Exhibit 11?

19 A. I do.

20 Q. And would this be your direct testimony
21 in the AEP Ohio ESP Case No. 23-23-EL-SSO?

22 A. It's marked that way. Again, I would
23 have to go through every page to verify, but I have
24 no reason to disagree that it's not.

25 Q. Do you recognize the document?

1 A. I file a lot of testimony, so again, I
2 have no reason to disagree with you, but I don't
3 really recognize it. I suppose if I went through it
4 I could become more familiar with it.

5 Q. I tell you what, why don't you turn to
6 page 9, and let me know when you're there?

7 A. Okay.

8 Q. Do you remember question 15 on page 9?

9 A. I do.

10 Q. Question 15 reads, "What method did you
11 use to calculate the rate of return for Ohio Power?"
12 Answer: "I used the standard PUCO Staff method of
13 averaging the outcomes of the Discounted Cashflow
14 method and the Capital Asset Pricing Model. This
15 method has been relied on predominantly for at least
16 the last 25 years." Did I read that correctly?

17 A. Yes. Not exclusively, but
18 predominantly.

19 Q. Now, in this AEP Ohio ESP case we're
20 looking at that would be 23-23-EL-SSO, you had
21 calculated OCC's proposed rate of return for AEP
22 Ohio's ESP, correct?

23 A. I believe so, yes.

24 Q. And in that case you had used the PUCO
25 Staff method that has been predominantly used for the

1963

1 last 25 years, which is the -- averaging the outcomes
2 of the Discounted Cashflow method and the Capital
3 Asset Pricing Model, correct?

4 A. Correct.

5 Q. Now, the rate of return is comprised of
6 a number of components such as the capital
7 structures, the senior securities rates, and cost of
8 equity, for example, correct?

9 A. I don't understand that question, I'm
10 sorry.

11 Q. Sure. Can you turn to your Attachment
12 JPB-1 and go to page 5?

13 A. Okay.

14 Q. Are you there?

15 A. Yes.

16 Q. Okay. And now this is titled,
17 "Components of 'ROR.'" ROR would mean rate of
18 return, correct?

19 A. Correct.

20 Q. And on this page 5 of 38 there lists a
21 number of component issues, capital structure issues,
22 senior securities rates and cost of equity, correct?

23 A. Correct.

24 Q. Do you -- I'm sorry, go ahead.

25 A. Again, if I were to redo this slide I

1 would probably say debt securities instead of senior
2 securities.

3 But the rate of return is typically made
4 up of cost of debt, cost of equity, and then the
5 capital structure would see how you allocate those
6 costs for a final rate of return.

7 Q. So would it be fair to say that in order
8 to determine a rate of return you need to at least
9 calculate the cost of equity?

10 A. Correct.

11 Q. Now, the presentation that's attached to
12 your testimony as Attachment JPB-1, it provides a
13 high level overview of many different ways that
14 various Commissions or experts can calculate and
15 determine the cost of equity, correct?

16 A. Could you repeat the question, please?

17 Q. Sure. I'm looking at JPB-1, so I'm
18 talking about that presentation. That's a
19 presentation that at a high level, high level
20 overview, of many different ways that Commissions or
21 experts can calculate cost of equity?

22 A. I would say it gives some examples.
23 It's not an exclusive list, but it gives some
24 examples, yes.

25 Q. Okay. Now, those cost of equity models,

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1 and there's many examples as you said, is it fair to
2 say that there's variability in how those cost of --
3 cost of equity models are applied?

4 A. I don't understand that question, I'm
5 sorry.

6 Q. Can you go to page 15 of Attachment
7 JPB-1?

8 A. Yes.

9 Q. And the title of this slide is
10 "Variability in Application," correct?

11 A. On page 15?

12 Q. I'm sorry, so on page 15 -- I'm one step
13 ahead of you. On page 15 it's, "Typical Cost of
14 Equity Models," correct?

15 A. Correct.

16 Q. And it lists four examples, correct?

17 A. Correct.

18 Q. Now, on the next slide, page 16, it's
19 titled, "Variability In Application," and it's got a
20 series of bullet points, do you see that?

21 A. I do.

22 Q. What I'm asking is, do you agree that
23 there are variability in how these costs of equity
24 models are applied?

25 A. Again, this is an example. It's not the

1966

1 end all, it was a presentation that gives examples.
2 So for a -- to make overall statements that this is
3 the only way that you can calculate a rate of return
4 I think would be shortsighted.

5 MR. KEANEY: Your Honor, I move to
6 strike that entire answer, it's not responsive to the
7 question.

8 EXAMINER ST. JOHN: I'll deny the motion
9 this one time. I'll ask that you reask the question,
10 and ask Mr. Buckley to please make sure to answer the
11 specific question that's asked of you. Thank you.

12 By Mr. Keaney:

13 Q. So, Mr. Buckley, to be clear, I'm not
14 asking you, for each of these, to agree that this is
15 what is used and this is what is considered in all
16 cost of equity models, do you understand? I'm not
17 asking you that this is an end all, to use your
18 words.

19 A. Is there a question?

20 Q. Do you understand --

21 A. I do understand.

22 Q. -- that I'm not asking you here if this
23 is comprehensive, the bullet points on page 16 of 38.

24 So my question is, of these bullet
25 points that are on this sheet, would you agree that

1 the form of models for cost of equity varies?

2 A. I'm struggling with the question of what
3 form of models means.

4 Q. So is it fair to say you don't know what
5 that means in this presentation?

6 A. I don't think that's fair at all. I
7 have trouble with the question form of models. If
8 you could be more specific, I would appreciate that.

9 Q. The form of cost of equity models that
10 we just talked about which is listed again as an
11 example page 15 of your -- of 38 of Attachment JPB-1.

12 THE WITNESS: Can I have that reread,
13 please?

14 (Record read back.)

15 EXAMINER ST. JOHN: Is that the question
16 you wanted reread, or the prior question,
17 Mr. Buckley?

18 THE WITNESS: If I could have the
19 question reworted. I don't know how to answer it,
20 I'm sorry.

21 By Mr. Keaney:

22 Q. When I use the term form of models in my
23 question I mean it exactly as how it's used here on
24 page 16 of 38 of Attachment PJB-1, do you understand?

25 A. So when I'm looking at this

1 presentation, and using it as an example, I'm not
2 saying that I understand exactly everything in here,
3 and like I say, I don't understand what the term --
4 analogy form of models is referring to here.

5 Q. Let's just stick to page 16 of 38 then
6 of Attachment PJB-1. Can you identify on this
7 specific page what you do not understand, or what you
8 disagree with, please?

9 A. I think, in general, it says that you
10 can use more than one model to calculate the rate of
11 return, and the percentages that you use for those
12 models can change. In other words, that you have
13 flexibility in selecting how that you calculate for
14 rate of return.

15 Q. And there's a degree of judgment that
16 must be exercised for all of those different factors,
17 correct?

18 A. I say for the most part there is. Some
19 jurisdictions, and sometimes even Commissions, kind
20 of use one model predominantly -- or one method or
21 model predominantly.

22 Q. So sticking with, let's just say the
23 State of Ohio, can you answer it in the context of
24 just Ohio?

25 A. Could you repeat the question, please?

1 Q. I'm looking at page 16 of 38 on
2 Attachment PJB-1, and I'm asking you for each of
3 these bullet points which ones do you disagree with
4 or do you not understand in the context of the
5 regulatory environment here in the State of Ohio?

6 MR. FINNIGAN: Your Honor, I object.
7 Mr. Buckley has already testified that Ohio tends to
8 use the DCF and CAPM model, so I think we're just
9 getting to the point of being argumentative or just
10 repeating the same question. I would ask that we
11 move on to another topic.

12 EXAMINER ST. JOHN: I think those
13 questions are being repeated because an answer hasn't
14 been given at this point, so I'll go ahead and
15 overrule the objection.

16 THE WITNESS: If Ohio typically uses the
17 CAPM and DCF models, it doesn't always use the same
18 percentages. However, recently the Staff has used
19 different models, including an earnings model.

20 In addition, they typically set rates in
21 rate case proceedings because the use of riders has
22 increased substantially in recent years.

23 So they haven't really looked too much
24 at changing the rate of return for riders due to the
25 lack of riders that are out there, and the lack of

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1 riders that have been in place for a long period of
2 time.

3 By Mr. Keaney:

4 Q. So for each of these different models
5 that we have been discussing, the data inputs would
6 vary, correct?

7 A. Yes. It would be probably up to the
8 modeler to decide what inputs to use.

9 Q. And would you say the same thing for
10 adjustments, the adjustments vary?

11 A. The adjustments could vary based on the
12 modeler.

13 Q. And the risk assessment varies based on
14 the modeler?

15 A. Correct.

16 Q. And the proxy vary based on the modeler?

17 A. Correct.

18 Q. And judgment is needed at every step of
19 the way when you are applying one of these cost of
20 equity models, correct?

21 A. Correct.

22 Q. Thank you. Now, you believe that there
23 are many reasonable ways to calculate a rate of
24 return, correct?

25 A. I do.

1 Q. Can you turn to page 6 of your
2 testimony, Mr. Buckley, and let me know when you're
3 there?

4 A. I'm there.

5 Q. Now, just starting with question 11 at
6 the top of page 6, and in this question 11 you
7 address what utilities' cost of common equity or ROE
8 is intended to reflect, correct?

9 A. Yes.

10 Q. And I won't go through this answer here,
11 but if you could just turn over to page 7, which is
12 still part of question 11, beginning at line 1. Let
13 me know when you're there.

14 A. Yes.

15 Q. You state here that, "Thus, the
16 appropriate ROE for a regulated utility requires
17 determining the market-based cost of equity." Did I
18 read that correctly?

19 A. Yes.

20 Q. And is it fair to say that you cannot
21 calculate an appropriate ROE without calculating the
22 cost of equity?

23 A. Correct.

24 Q. Still on page 7 of your testimony there,
25 but if you can go down to beginning at line 6. Let

1 me know when you're there?

2 A. I'm there.

3 Q. You state, "The purpose of all the
4 economic models and formulas used in calculating cost
5 of capital or cost of equity for a regulated firm is
6 to estimate, using market data for firms with similar
7 risk, the rate of return on equity investors require
8 for that risk class of firms." Did I read that
9 correctly?

10 A. Yes.

11 Q. What economic models and formulas are
12 you specifically referring to here?

13 A. You can use -- again, there's a huge
14 universe of what you can use.

15 You could use what has been granted
16 other states, kind of what the average is being
17 granted by similar situated companies nationwide.

18 You could use CAPM, you could use DCF,
19 you could use a lot of different models. There's a
20 lot of different ways to calculate a rate of return.

21 Q. And on -- let's go to actually page 8 of
22 your testimony, and if I could direct you to line 5
23 on page 8. Let me know when you're there.

24 A. I'm there.

25 Q. Here you say, "I believe the average ROE

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1 granted distribution only electric utilities
2 nationwide over the last six months (9.22 percent)
3 would be an adequate proxy for the ROE authorized for
4 the FirstEnergy Utilities." Did I read that
5 correctly?

6 A. I think you did, but I think I meant to
7 say "proxy."

8 Q. Thank you. What cost of equity model
9 did you use to determine that 9.22 percent is an
10 adequate proxy for the Companies' ROE?

11 A. So what I did was I looked at S&P. S&P
12 produces averages of what has been granted throughout
13 the country.

14 Those were created using a lot of
15 different models and methods, so I looked at those
16 and thought that that was an adequate way to suggest
17 an ROE in this proceeding.

18 Q. Does that model have a specific name?

19 A. I would call it the Major Energy Rate
20 Case Decisions in the USA.

21 Q. So it's solely based -- so it's solely
22 based on the S&P reports that are attached to your
23 testimony's Attachment JPB-2, correct?

24 A. Yes.

25 Q. You didn't use the model that Staff has

1 used predominantly over the last 25 years, is it fair
2 to say?

3 A. I used the Major Rate Case Decisions in
4 the USA that some of those were produced using
5 similar models, but that's what I used.

6 Q. Now, those ROE percentages weren't just
7 models proposed by applicants, that's what the
8 Regulatory Commissions in those states approved,
9 correct?

10 A. Approved or stipulated.

11 Q. Okay. Now, any model that you used for
12 purposes of your testimony here, would you agree that
13 that model that you used is not identified in
14 Attachment JPB-1 of your testimony, what we looked at
15 on page 15 of 38?

16 A. I don't believe it was, no. Wait. I'm
17 sorry. I would have to go back and review it. I
18 don't have it memorized, so --

19 Q. If you could just go back to page 15 of
20 38 of JPB-1, and we can just go through the four
21 bullet point models on that page?

22 A. And as I stated earlier, I understand
23 those four models. That is not a comprehensive list,
24 that's examples. So other models could be utilized.

25 Q. But you didn't use any of these models

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1 on page 15 of 38 of JPB-1, correct?

2 A. Correct.

3 Q. You determined that 9.22 percent was an
4 acceptable ROE based on averaging the ROE granted to
5 distribution-only electric utilities nationwide over
6 the last six months according to S&P's data, correct?

7 A. That is correct, because it's hard to
8 find -- it's hard to utilize those models for
9 distribution-only utilities because there's not a lot
10 of distribution-only utilities that are solely
11 publicly traded, usually they are under a parent type
12 structure, and the parent will issue the equity.

13 So it's hard to kind of use some of
14 those models when you're looking at distribution-only
15 utilities. That's one of the reasons why you have to
16 sometimes be a little bit more creative in how you're
17 making those calculations.

18 MR. KEANEY: Your Honor, I would move to
19 strike everything after, "That's correct." It is not
20 responsive to the question.

21 If Mr. Finnigan wants to explore the
22 reasons on redirect he's certainly entitled to do
23 that, but I would move to strike everything after,
24 "That's correct."

25 EXAMINER ST. JOHN: Granted.

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1 MR. FINNIGAN: Your Honor, may I ask
2 that the question and answer be reread?

3 EXAMINER ST. JOHN: I did grant the
4 motion to strike, but yes, please do reread the
5 question and answer.

6 MR. FINNIGAN: Thank you, your Honor.
7 (Record read back.)

8 MR. FINNIGAN: Thank you, your Honor.
9 By Mr. Keaney:

10 Q. Mr. Buckley, did you independently
11 verify the accuracy of the information that's
12 contained in the S&P reports that are attached to
13 your testimony as Attachment JPB-2?

14 A. I kind of crossmatched them with another
15 filing to make sure there weren't any typos or
16 anything like that.

17 Q. Which filing was that?

18 A. So in the model it -- I guess not model.
19 In S&P they have multiple ways that they show this
20 information.

21 One is like a past spreadsheet and one
22 is kind of a current spreadsheet, and you can go back
23 and kind of make -- kind of make cross-references.

24 I didn't go back to the actual orders,
25 but I was hoping that if they showed up in both spots

1 that they were predominantly correct.

2 Q. Predominantly correct?

3 A. That they were correct, I guess.

4 Q. Would it be fair to say then that the
5 testimony in this case that you've submitted relies
6 on the accuracy of the S&P data that's contained in
7 the Attachment JPB-2?

8 A. Yes.

9 Q. Can you go to page 4 of your testimony,
10 please? Let me know when you're there.

11 A. Okay.

12 Q. And I want to ask you just about the
13 sentence beginning at line 12, which states, "For
14 example, the average ROE granted for
15 distribution-only rate cases for electric utilities
16 for the first six months of 2023 (January 1, 2023
17 through June 30, 2023) was 9.22 percent," correct?

18 A. Correct.

19 Q. There is no footnote or citation for
20 that specific sentence, correct?

21 A. There is not.

22 Q. Where can I find support for that claim
23 that the average ROE was 9.22 percent for
24 distribution-only rate cases for electric utilities
25 during the first half of 2023?

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1 A. I'd have to go back and look. I have
2 not committed that to memory.

3 Q. Fair enough. Tell you what, why don't
4 you go to Table 3 of JPB-2 which is on page 5 of 8,
5 and let me know when you're there. Table 3,
6 Attachment JPB-2, page 5 of 8.

7 A. Okay. I'm there.

8 Q. Now, Table 3 here provides a breakdown
9 of vertically integrated cases versus
10 distribution-only cases for electric utilities at the
11 very bottom of the table. Do you see that?

12 A. I do.

13 Q. And on the far right-hand side at the
14 bottom of Table 3 do you see where it says,
15 "Vertically integrated cases versus distribution-only
16 cases"?

17 A. At the bottom of the page?

18 Q. Far right-hand side of the bottom of
19 Table 3.

20 A. So when I'm seeing the far right-hand
21 side it says, "Distribution-only cases."

22 Q. Okay. And then right next to that is
23 "Vertically Integrated Cases," correct?

24 A. Correct.

25 Q. Now, you see the reference to 9.22

1 percent under the average ROE column, correct?

2 A. I do.

3 Q. And that 9.22 percent would be for the
4 last 12 months ending June 30th of 2023, correct?

5 A. Correct.

6 Q. And in the year column on the far right
7 do you see where it says H1'23 -- far left, excuse
8 me?

9 A. Yeah, I do.

10 Q. And this means first half of 2023, or
11 the first six months of 2023, correct?

12 A. Correct.

13 Q. According to S&P the average ROE for the
14 first half of 2023 is actually 9.47 percent, not 9.22
15 percent as stated throughout your testimony, correct?

16 A. Yeah, it should have probably read the
17 last six months -- or last 12 months ending 6-30.

18 Q. So is your testimony then changing
19 throughout that you are no longer using the average
20 of six months from the first 2023, you are now using
21 the last 12 months from June 30th of 2023?

22 A. Correct.

23 Q. Now, the average ROE of 9.22 percent for
24 the -- for the year that -- for the last 12 months
25 ending 6-30-2023 has a number of observations. Do

1 you see that?

2 A. I do.

3 Q. And the number of observations are nine,
4 correct?

5 A. Correct.

6 Q. And nine observations would be basically
7 nine data points that they are using to come up with
8 that average; is that fair to say?

9 A. Yes.

10 Q. Do you know what nine examples or data
11 points were used there in determining that the
12 average was 9.22 percent?

13 A. I'd have to go back and look at the
14 other spreadsheet. I don't have that -- I didn't
15 commit that to memory.

16 Q. Did you use that in relying on that
17 spreadsheet in formulating your testimony?

18 A. I looked at it.

19 Q. Was it a workpaper in your testimony?

20 A. It was not.

21 Q. And you used it to prepare your
22 testimony in this case, correct?

23 A. No, I used it to check my testimony in
24 this case.

25 Q. And during that time you had looked up

1 each of those nine example data points, correct?

2 A. I believe I did, yes.

3 Q. Did you -- at that time, or any time,
4 did you analyze or evaluate the risk profiles for
5 these nine electric distribution-only utilities?

6 A. I don't recall whether I did that or
7 not.

8 Q. It's not in your testimony, correct?

9 A. It is not, but that doesn't mean I
10 didn't do it.

11 Q. Sitting here today you cannot recall the
12 nine utilities or nine data points or observations,
13 nor can you recall the risk profile of those nine?

14 A. This is not the only project that I
15 worked on throughout the year, I've worked on many
16 projects. I don't remember exactly everything I do
17 in every one of them. It would be very difficult for
18 me to remember whether I did that or not.

19 Q. You don't know, correct?

20 A. I think I stated that earlier, correct.

21 Q. Okay. Now, on page 8 of your testimony,
22 and I want to start at line 5. Let me know when
23 you're there.

24 A. I got a lot of papers up here right now.
25 Okay, I'm there.

1 Q. Now, here you explain your belief --
2 again, I won't read it verbatim -- but that the
3 average ROE granted to distribution-only utilities
4 nationwide over the last six months, you feel that is
5 an adequate proxy for the Companies' ROE, correct?

6 A. Correct.

7 Q. Would you agree that the more data
8 points or observations there are to pull from that
9 it's less likely an outlier or outliers will skew the
10 average?

11 A. Yeah, that's one of the reasons I
12 constantly monitor this information, and I look at
13 it, you know, to see what's going on, and see what
14 kind of the averages are.

15 In fact, I've looked to see what the
16 averages are in September -- or after I -- that were
17 published after I submitted my testimony, so I'm kind
18 of constantly trying to monitor that information.

19 Q. So having more data points is helpful to
20 make sure that one observation or two observations,
21 or whatever, whatever outlier there may be doesn't
22 skew the average; is that fair to say?

23 A. Correct. So you could use the median.

24 Q. Would you agree then that the fewer data
25 points or fewer observations are more likely to be

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1 skewed by potential outliers?

2 A. Yeah, but if you could use the median --
3 you could look at the median as opposed to the mean,
4 it kind of gives you an idea if there's a lot of
5 outliers.

6 Q. Now, in your testimony on page 8,
7 beginning line 5, you're taking the average ROE,
8 correct?

9 A. I looked at how it compared to the
10 median.

11 Q. Okay. But what you're proposing here is
12 9.22 percent, which is the average ROE, correct?

13 A. Correct.

14 Q. And the median would be 9.5 percent,
15 correct?

16 A. Correct.

17 Q. Now, you believe that you typically want
18 to have more than 10 observations to determine the
19 authorized ROE, correct?

20 A. I think the more the better.

21 Q. I'm specifically asking about a number,
22 though. If you have more than ten observations to
23 determine the average ROE, is that reliable?

24 Let me rephrase that, Mr. Buckley. You
25 believe that if you were using fewer than ten data

1 points you would be potentially susceptible to
2 outliers which could have a bigger impact or effect
3 on the outcome, correct?

4 A. Then you would want to do a little bit
5 more digging. So I think, again, the more -- the
6 more data points the better. If you have fewer you
7 want to see kind of what they are to make sure there
8 weren't any outliers. Obviously you don't want to --
9 go ahead.

10 Q. I'm sorry, I interrupted you. Are you
11 finished?

12 A. I am not.

13 Q. Okay. I'm sorry, go ahead.

14 THE WITNESS: I lost my train of
15 thought. Can I have the question reread, please?

16 (Record read back.)

17 THE WITNESS: You don't want to average
18 1 in 19 -- or 1 in 21 and get 11. You know, if they
19 are closer in value then I could see using them.

20 By Mr. Keaney:

21 Q. Can you turn back to page 4 of your
22 testimony, please? Let me know when you're there.

23 A. Okay.

24 Q. And I'm at line 12. Do you see that?

25 A. Yes.

1 Q. Now, reading that sentence you
2 specifically state that this is for, quote,
3 distribution-only rate cases for electric utilities
4 for the first six months of 2023, correct?

5 A. Correct.

6 Q. Now, you're today changing your
7 testimony for the first 12 months of 2023, correct?

8 A. I think it's the last -- hang on. I
9 think it's the last 12 months.

10 Q. The last 12 months of 2023?

11 A. Let me see.

12 EXAMINER PRICE: Bottom of page 8,
13 Attachment JPB-2.

14 THE WITNESS: Thank you. I think it's
15 the last 12 months ending 6-30-2023.

16 By Mr. Keaney:

17 Q. But you're looking at distribution-only
18 rate cases for electric utilities during that time
19 period, correct?

20 A. Correct.

21 Q. Where can I find the data that supports
22 the specific claim regarding distribution-only rate
23 cases?

24 A. In the S&P website. Is that the
25 question, where can you find the data?

1 Q. Where in your testimony. Can you direct
2 me in your testimony to support for that statement?

3 A. I don't understand the question. I'm
4 sorry.

5 Q. Beginning at line 12, on page 4, see
6 where I'm at?

7 A. I do.

8 Q. You say, "For example, the average ROE
9 granted for distribution-only rate cases for electric
10 utilities," and then you since now changed the
11 testimony from the 12 months ending on June 30th,
12 2023, correct?

13 A. Correct.

14 Q. Now, you specifically state that this is
15 distribution-only rate cases, and what my question
16 is, is where can I find support for that contention
17 in your testimony?

18 A. It's in JPB Attachment 2.

19 Q. Which table?

20 A. The -- starting at the top, there's one,
21 two, three tables down, the table on the right-hand
22 side, distribution-only cases, average ROE 9.22,
23 median is 9.5, number of observations is 9.

24 Q. So see right above that table where it
25 says, "General rate cases verses limited-issue

1 riders"?

2 A. I do.

3 Q. And then there's a separate table above
4 that for, "Settled versus fully litigated cases"?

5 A. Correct.

6 Q. So each of these three tables is
7 analyzing three different things. The first one at
8 the very top is looking at settled versus fully
9 litigated cases, the second -- right in the middle on
10 page 5 of 8 of JPB-2 is General rate cases versus
11 limited-issue riders, and on the bottom it's data
12 regarding vertically integrated cases in
13 distribution-only cases. Do you see that?

14 A. I do.

15 Q. Is it your contention that the
16 vertically integrated cases versus distribution-only
17 cases, specifically with respect to the
18 distribution-only cases, are specific to rate cases?

19 A. I think I understand where you're going
20 now. They are not -- there is another category for
21 limited-issue riders. The distribution-only cases
22 are rate cases.

23 There's also another category for
24 limited-issue riders. I believe that's where you're
25 going with that question.

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1 Q. If you could help me, where does it say
2 that the distribution-only cases data right here at
3 the bottom right-hand corner JPB-2 is limited to rate
4 cases as opposed to also including limited-issue
5 rider cases?

6 A. I don't believe it is. I think it's --
7 that's part of that universe.

8 Q. Okay. Just so the record is clear,
9 under the distribution-only cases the ROE averages
10 presented there include both rate cases and limited
11 issue-rider proceedings?

12 A. I believe they do.

13 Q. Nowhere does Table 3, or any other table
14 in your testimony, address the average ROE for
15 distribution-only rate cases for electric utilities,
16 correct?

17 A. For just the rate cases, I don't believe
18 so.

19 Q. Now, the alternative rate of return that
20 you propose in your testimony, that would apply to
21 all riders in which a rate of return is requested by
22 the Companies in this ESP case, correct?

23 A. Correct.

24 Q. And if I could just direct your
25 attention, Mr. Buckley, to page 3, and let me know

1 when you're there.

2 A. I am there.

3 Q. And beginning at line 22, you address
4 why the Companies' rate of return should not be based
5 on the Companies' most recent base rate case, but
6 instead should reflect current market conditions; is
7 that fair to say?

8 A. I think what I wanted to say in my
9 testimony is that the current rate of return is not
10 appropriate when compared to other returns being
11 granted nationwide.

12 Q. You worked for the Commission as a Staff
13 member for approximately 35 years, correct?

14 A. I did.

15 Q. And during that time would you agree
16 that it was the Commission's practice not to
17 recalculate rates of return in between base rate
18 cases?

19 A. Most of my career at the Commission
20 riders were not utilized as much as they are now,
21 therefore there wasn't a need to recalculate them.

22 With the expansion of their use I now
23 believe that they should be looked at if the current
24 rates don't reflect current market conditions.

25 MR. KEANEY: Your Honor, I would move to

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1 strike. I'm simply asking him if he agrees that it
2 was the Commission's practice to recalculate rates in
3 between base rate cases, I'm not asking him to
4 explain under his theory why things may have changed
5 later. Again, he's certainly entitled to testify to
6 that on redirect.

7 MR. FINNIGAN: Your Honor, may I be
8 heard on that?

9 EXAMINER ST. JOHN: You may.

10 MR. FINNIGAN: He did respond to the
11 question. The question asked was it the Commission's
12 practice not to recalculate the rate of return for
13 rider cases, and Mr. Buckley responded by saying that
14 those cases involved a time when there was much more
15 limited use of riders, and in this situation which we
16 have here the riders are used much more frequently,
17 and we have a situation where the current rates of
18 return are different than what's reflected in this
19 rate case from 14 years ago.

20 So he responded to the question.
21 Counsel may not like the response, but he was
22 responsive.

23 EXAMINER ST. JOHN: I don't believe that
24 was a direct answer to the question posed, so I will
25 grant the motion to strike.

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1 By Mr. Keaney:

2 Q. Mr. Buckley, you're not aware of any
3 change in the Commission's practice of not
4 recalculating rates of return in between base rate
5 cases, correct?

6 A. I believe that's an apples and oranges
7 question because things have changed in recent times.

8 Q. When did this change, approximately, so
9 I can better understand it?

10 A. I was looking at some data that the use
11 of riders has really increased in the recent years,
12 so it kind of has been increasing from, let's say,
13 2014-ish period of time.

14 Q. So not in the last few months, though;
15 is that fair to say?

16 A. That's fair to say, yes.

17 MR. KEANEY: Your Honor, may I approach?

18 EXAMINER ST. JOHN: You may.

19 MR. KEANEY: We'll be handing out what's
20 been marked Companies' Exhibit 12.

21 (EXHIBIT MARKED FOR IDENTIFICATION.)

22 By Mr. Keaney:

23 Q. Mr. Buckley, do you have a document in
24 front of you that's been marked for identification as
25 Companies' 12?

1 A. I do.

2 Q. And earlier you had testified that you
3 had testified in the AEP Ohio ESP case, Case No.
4 23-23-EL-SSO, correct?

5 A. Correct.

6 Q. And you were also testifying at the
7 evidentiary hearing in that case, correct?

8 A. Correct.

9 Q. And you were testifying on behalf of
10 OCC, correct?

11 A. Correct.

12 Q. And that hearing was about a
13 month-and-a-half on, October 13th, 2023, correct?

14 A. Correct.

15 Q. Can you turn to page 644 -- I'm sorry,
16 let me step back.

17 Do you see the document that's in front
18 of you, Company Exhibit 12?

19 A. I do.

20 Q. What is it?

21 A. It is a transcript of case 23-23-EL-SSO.

22 Q. And that's the transcript from Friday,
23 October 13th, 2023, first page?

24 A. It is.

25 Q. Can you turn to page 644 of the

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1 transcript? Let me know when you're there.

2 A. I'm there.

3 Q. Go down to line 7, please.

4 A. Yes.

5 Q. It reads question: "Are you aware of
6 any change in the Commission's policy of not
7 recalculating rates of return in between base rate
8 cases?" Answer: "I am not."

9 Did I read that correctly?

10 A. I believe you did.

11 Q. Can you turn to page 8 of your
12 testimony?

13 A. Yes.

14 Q. And I'm specifically looking at line 17
15 where it says question 14. Do you see where I am?

16 A. Yes.

17 Q. On that line you explain that it's your
18 recommendation to use the actual capital structure --
19 sorry, the actual capital structure of the combined
20 FirstEnergy utilities, correct?

21 A. Correct.

22 Q. So just to clarify, is it your
23 recommendation to use the actual capital structure of
24 the combined FirstEnergy Utilities rather than
25 looking at each individual utility separately?

1 A. In this proceeding?

2 Q. So that's yes, in this proceeding; is
3 that fair to say?

4 A. Yes.

5 Q. Still on page 8, but if you can move up
6 to line 7, and let me know when you're there.

7 A. I'm there.

8 Q. Here you state, "Based on my review, I
9 did not find the FirstEnergy Utilities to have much
10 higher or lower risk profiles as compared to the
11 average overall risk profile distribution-only
12 electric utilities." Did I read that correctly?

13 A. You did.

14 Q. Would you agree that the FirstEnergy
15 Utilities' risk profile is similar to other
16 investment grade distribution-only electric
17 utilities?

18 A. Is it similar, or exactly the same?

19 Q. I said similar.

20 A. I think, for the most part, investment
21 grade utilities -- there's a big drop off between
22 being investment grade and not being investment
23 grade.

24 I think the average is BBB plus. I
25 think the last time I looked the FirstEnergy

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1 Utilities may have been a notch below that.

2 Q. And that's still investment grade,
3 correct?

4 A. Correct.

5 Q. So on page 10 of your testimony, that's
6 where you refer to the current average bond rating
7 for U.S. electric companies by S&P's BBB plus,
8 correct?

9 A. Correct.

10 Q. And in the next sentence, the
11 FirstEnergy Utilities bond rating is BBB, one notch
12 below but still at investment grade?

13 A. Correct.

14 Q. And based off of that, that supports
15 your conclusion that FirstEnergy Utilities don't have
16 much higher or lower risk profiles as compared to the
17 overall risk profile of distribution-only electric
18 utilities that are investment grade?

19 A. Correct.

20 Q. Sticking -- back to page 8 of your
21 testimony. Let me know when you're there.

22 A. I'm there.

23 Q. You calculate the Companies' individual
24 and total long-term cost of debt, correct?

25 A. I do.

1 Q. And in the table that you have provided
2 here on page 8, you calculate a total cost of
3 long-term debt to be 5.36 percent, correct?

4 A. Correct.

5 Q. Now, if you could flip over to page 9 of
6 your testimony, please, where you provide a rate of
7 return summary on -- starting on line 4 on page 9.

8 A. Yes.

9 Q. Do you see that?

10 A. I do.

11 Q. There's a category labeled "Percentage
12 Cost." Do you see that?

13 A. I do.

14 Q. And this is supposed to reflect the
15 long-term cost of debt percentage that's been
16 calculated on page 8 that we just looked at of your
17 testimony, correct?

18 A. Yes.

19 Q. So for all three Companies you
20 identified on page 9 5.63 percent as the long-term
21 cost of debt?

22 A. Correct.

23 Q. And that's different from the 5.36
24 percent calculated on page 8 of your testimony?

25 A. Yeah, I transcribed those two numbers.

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1 Q. Also still sticking on page 9, looking
2 at the Rate of Return Summary table there below line
3 4, do you see where I am?

4 A. Yes.

5 Q. You identified total capital as
6 \$6,314,400, correct?

7 A. Yes.

8 Q. So if you go -- still on page 9, in the
9 Rate of Return Summary you identify -- I'm sorry, let
10 me step back.

11 If you review the table at the very top
12 of page 9, so above the Rate of Return Summary -- do
13 you see where I am?

14 A. I don't.

15 Q. Okay. So on page 9 there's two tables,
16 correct?

17 A. Yes.

18 Q. And there's the Rate of Return Summary
19 table which is in the middle of the page, correct?

20 A. Correct.

21 Q. And then there's a table right above
22 that, still on page 9, do you see that?

23 A. I do.

24 Q. That's the table I'm talking about. So
25 you identify in that table total capital of

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1 \$6,578,000, correct?

2 A. Correct.

3 Q. So which is the correct number,
4 \$6,314,400, or \$6,578,000?

5 A. I'd have to go back and recalculate it,
6 but I think it has to do with transcribing that -- I
7 don't know. I'd have to go back and recalculate it.

8 Q. Now, given these errors, the Rate of
9 Return Summary on page 9, as it is today, is not
10 accurate, correct?

11 A. It's not exactly accurate, no.

12 Q. So if you could go to page 8, just flip
13 back one page, and on page 8 you explain how you
14 calculated the Companies' current cost of debt using
15 the total interest expense divided by the total debt,
16 correct?

17 A. Yes.

18 Q. And you reference long-term debt as a
19 column in the table on page 8 of your testimony. Do
20 you see that?

21 A. I do.

22 Q. Now, the data used for total debt, which
23 again is the term I'm pulling exactly from line 13 on
24 page 8, total debt was pulled from S&P Global
25 Financial data per Footnote 9 of your testimony,

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1 correct?

2 A. Correct.

3 Q. Did you include a copy or a screen shot
4 of that S&P financial data in your testimony?

5 A. I did not.

6 Q. Did you provide any website, hyperlink,
7 or detailed source information regarding what
8 specific S&P Global financial data was used and
9 relied upon in Footnote 9, correct?

10 A. Could I have that question reread,
11 please.

12 EXAMINER ST. JOHN: Yes.

13 (Record read back.)

14 THE WITNESS: I did not provide that,
15 no.

16 By Mr. Keaney:

17 Q. Do you know if the debt balances
18 included a securitized debt held at the Companies'
19 financing subsidiaries?

20 A. No, I don't know.

21 Q. Do you know if the Ohio Edison debt
22 balance includes Penn Power?

23 A. I do not.

24 Q. The term total debt in your testimony,
25 which again I'm just referring to line 13, page 8 --

1 do you see that?

2 A. Yes.

3 Q. So when I use the term total debt I'm
4 meaning in the same way you meant there on page 8,
5 line 13. So short-term debt -- I'm sorry, let me
6 step back.

7 Total debt, as that term is used in your
8 testimony, would also include short-term debt,
9 correct?

10 A. I'd have to go back and check that. I
11 don't know.

12 MR. KEANEY: No further questions, your
13 Honor. Thank you. Thank you, Mr. Buckley.

14 EXAMINER ST. JOHN: Any questions from
15 OEC?

16 MS. COHN: No.

17 EXAMINER ST. JOHN: RESA.

18 MR. PRITCHARD: No questions.

19 EXAMINER ST. JOHN: OMAEG?

20 MS. BOJKO: No questions.

21 EXAMINER ST. JOHN: Mr. Barbara?

22 MR. BARBARA: No questions, your Honor.

23 EXAMINER ST. JOHN: OPAC?

24 MR. DOVE: No questions, your Honor.

25 EXAMINER ST. JOHN: NOAC?

1 MR. HAYS: No questions, your Honor.

2 EXAMINER ST. JOHN: Mr. Lavanga?

3 MR. LAVANGA: No questions.

4 EXAMINER ST. JOHN: Staff.

5 MS. BOTSCHNER O'BRIEN: Staff has no
6 questions. We had questions, but they have been
7 covered. Thank you.

8 EXAMINER ST. JOHN: Any redirect,
9 Mr. Finnigan?

10 MR. FINNIGAN: Your Honor, may we take a
11 short break?

12 EXAMINER ST. JOHN: Let's take a
13 ten-minute break. Let's go off the record.

14 (Discussion off the record.)

15 EXAMINER PRICE: Go back on the record.
16 Mr. Finnigan, redirect?

17 MR. FINNIGAN: Yes, your Honor, just a
18 few questions.

19 - - -

20 REDIRECT EXAMINATION

21 By Mr. Finnigan:

22 Q. Mr. Buckley, please turn to page 4 of
23 your testimony, at Q 9 and A 9.

24 A. Okay.

25 Q. What is the currently authorized rate of

2002

1 return for the FirstEnergy Utilities?

2 A. 8.48.

3 Q. And how does that rate of return compare
4 to the rates of return awarded to other electric
5 distribution utilities over the last several years?

6 A. Since 2005, it would be above the
7 average rate of return --

8 EXAMINER PRICE: Can you identify where
9 you're reading from?

10 THE WITNESS: From my Attachment JPB-2,
11 page 4 of 8.

12 EXAMINER PRICE: Thank you.

13 THE WITNESS: It would be above the
14 average rate of return granted every year since 2005,
15 sometimes substantially higher, especially since
16 2018, there hasn't been a rate of return granted
17 above that except for Q3 2021. There hasn't been a
18 rate of return granted above 7.

19 By Mr. Finnigan:

20 Q. So just so that we can identify which
21 page of this attachment you're referring to, did you
22 say that this is on page 4 of 8 of Attachment JPB-2?

23 A. Correct.

24 Q. And is it the table that is labeled
25 Table 2, Electric and Gas Utility Summary?

2003

1 A. It is.

2 Q. And is it the top part of the table that
3 you were referring to?

4 A. Correct.

5 Q. Which is electric utilities?

6 A. Correct.

7 Q. And the currently authorized rate of
8 return for the FirstEnergy utilities is higher than
9 which ones of these in this table?

10 A. Every one except 2004.

11 Q. Now, is it -- do you have an opinion as
12 to whether it would be reasonable to use the
13 currently authorized rate of return for the riders
14 for which FirstEnergy seeks approval in this case?

15 A. I think it would be detrimental to
16 consumers.

17 MR. FINNIGAN: That's all the questions
18 I have. Thank you, your Honor.

19 EXAMINER PRICE: Recross, Company?

20 MR. KEANEY: Just a few.

21 - - -

22 RE CROSS-EXAMINATION

23 By Mr. Keaney:

24 Q. Still sticking with Table 2 here, this
25 is for electric utilities, right? You're looking at

2004

1 the top of page 4 of 8 of JPB-2, correct?

2 A. Correct.

3 Q. Now, this doesn't distinguish between
4 electric utilities that are vertically integrated and
5 those that are distribution-only utilities, correct?

6 A. It does not.

7 Q. And neither does this distinguish
8 between single rider proceedings where ROE was
9 established, versus the ROE established in a rate
10 case, correct?

11 A. It does not.

12 MR. KEANEY: No further questions, your
13 Honor.

14 EXAMINER PRICE: Any other recross,
15 Staff?

16 MS. BOTSCHNER O'BRIEN: No.

17 - - -

18 EXAMINATION

19 By Examiner Price:

20 Q. I just have a couple questions for you,
21 Mr. Buckley. Let's stick with -- we can start with
22 the Table 2 on Attachment JPB page 4 of 8?

23 A. Okay.

24 Q. And FirstEnergy's last rate case was
25 what year?

2005

1 A. I don't recall.

2 Q. You don't know what year the last rate
3 case that you're referring to?

4 A. I don't know the year, no. Again, I've
5 worked on a lot of cases recently, that's not
6 something I committed to memory.

7 Q. Do you know if the FirstEnergy last rate
8 case was before the event commonly termed the great
9 recession?

10 A. I believe it was.

11 Q. Okay. That's perfect. What was the
12 great recession?

13 A. It was an economic event that started in
14 the mortgage industry.

15 Q. It was the largest recession since the
16 great depression; is that right?

17 A. I believe it was.

18 Q. And how did the Federal Reserve react to
19 the great recession?

20 A. They went through an interest rate
21 cutting time period. And I believe they are going
22 to -- from what the Wall Street Journal said, I'm
23 looking at an article right now, that --

24 Q. That's right now. Please put that away.
25 That's not a proper --

2006

1 A. Well, asking to recall things that are
2 happening --

3 Q. Well, you're an expert.

4 A. Can I finish with my question, sir? Go
5 ahead.

6 Q. Without referring to the Wall Street
7 Journal, can you explain what the Federal Reserve did
8 in reaction to the great recession?

9 A. Interest rates were lower, and currently
10 investors believe that interest rates are going to be
11 lowered again.

12 Q. That was not my question, Mr. Buckley.
13 I asked you how -- what was the Federal Reserve
14 reaction to the great recession. You need to answer
15 my question, and only my question, is that clear?

16 A. I believe that they lowered interest
17 rates and they did some other financial easing. I
18 believe the term was called quantitative easing.

19 Q. Quantitative easing. And interest rates
20 were lowered almost to zero down, isn't that true?

21 A. I would have to go verify that.

22 Q. Okay. In an instance where the Federal
23 Reserve has lowered interest rates dramatically,
24 would you expect the rates of returns awarded to
25 utilities to drop commensurate with those interest

2007

1 rate reductions?

2 A. It depends if they came in for a rate
3 case or not. If they didn't come in for a rate case
4 I don't think the Commissions would go out and seek
5 out their --

6 Q. I'm strictly referring to the ones you
7 mentioned that were awarded from 2005 -- 2007 on.

8 A. In a rate case proceeding I believe that
9 they would have some effect, but not -- it wouldn't
10 be -- it wouldn't be a -- rates of return typically
11 are sticky. They look at information over time, the
12 way they are calculated.

13 So it wouldn't be a gross movement in
14 any one direction. If you look at how they were
15 calculated over the last 20 years they didn't -- they
16 don't jump around with interest rates one for one, so
17 they don't move in the exact same pattern.

18 Q. If you could turn to Attachment JPB-1.
19 Page -- page 27 to 28 is a description of the Capital
20 Asset Pricing Model.

21 A. Yes.

22 Q. Is this a fair description of the
23 Capital Asset Pricing Model the Staff has used, in
24 part, predominantly for the last 25 years?

25 A. Yes.

2008

1 Q. Thank you. And one of the variables is
2 the risk free rate; is that right?

3 A. Correct.

4 Q. And the risk free rate is the --
5 commonly the ten-year treasury rate; is that correct?

6 A. So in this model that you're referring
7 to there's two RFs. Those RFs are not the same. The
8 first one is the risk free rate, the other one is the
9 market risk premium, which is -- those are
10 calculated -- those are often different factors.

11 Q. I'm just asking about the second bullet
12 point. That's the risk free rate, correct?

13 A. Correct.

14 Q. And that's the 10-year treasury note,
15 generally?

16 A. And in response to that, the first RF,
17 typically -- we would typically use 10-year or the
18 average of the 10-year, 30-year. The second one we
19 would --

20 Q. I'm not asking about the second one.

21 A. That's an RF.

22 Q. Well, I told you -- I said look at the
23 second bullet point. That's what I'm talking about.

24 A. Okay.

25 Q. I'll let you talk about that later, but

2009

1 I want you to answer my question, and I'll give you
2 an opportunity to explain your points later, okay?
3 Is that clear?

4 A. It is.

5 Q. So the 10 percent treasury rate is a
6 fundamental component of the Capital Asset Pricing
7 Model that the Staff has used predominantly for 25
8 years; is that correct?

9 A. It's 10 or 30. I think they averaged
10 the 10 and 30. So 10 year would be part of that
11 calculation.

12 Q. What -- do you know, in 2007, what the
13 10-year treasury rate was at the time the FirstEnergy
14 last rate case was?

15 A. I do not.

16 Q. You do not?

17 A. No.

18 Q. Do you know what the 10-year treasury
19 rate is today?

20 A. I do not.

21 Q. And you have no idea what the difference
22 between the treasury rate today and the treasury rate
23 10 years ago -- or the time of the rate case was?

24 A. I do not, no.

25 Q. So it's possible that interest rate

2010

1 markets have come full circle and there's no
2 substantial difference between what the interest rate
3 markets were in 2007 from what they are today?

4 A. I don't know. I don't know what the
5 interest rates were then, I'd have to go look that
6 up, and I don't know exactly what they are today,
7 either.

8 Q. They change -- you don't know exactly
9 what they are today. But you had some insight that
10 you wanted to mention about where you think they are
11 going.

12 A. Yeah, investors believe that interest
13 rates are going down.

14 Q. And how do you know that?

15 A. From publications that I read.

16 Q. Publications? Okay. Fair. And you've
17 had some additional information you wanted to share
18 with the Bench regarding the second RF.

19 A. Yeah, that's one of the things that is
20 always difficult, because RF should be RF, and then
21 the value should be the same, but in this model they
22 are not.

23 The second RF is part of this
24 market-based return. So I always kind of want to
25 point that out that the RFs aren't always exactly

2011

1 equal.

2 Q. So you're saying where it says market
3 risk premium is equal to RM minus RF, there is a
4 different variable for RF?

5 A. There can be, yes.

6 Q. There can be?

7 A. Uh-huh.

8 EXAMINER PRICE: Thank you. You're
9 excused.

10 (Witness excused.)

11 EXAMINER PRICE: Mr. Finnigan, at this
12 time we'll take up your motion to admit Mr. Buckley's
13 testimony. Any objection to submission?

14 MR. KEANEY: Sorry, your Honor, no
15 objection.

16 EXAMINER PRICE: Thank you. It will be
17 admitted.

18 (EXHIBIT ADMITTED INTO EVIDENCE.)

19 EXAMINER PRICE: Mr. Keaney, do you have
20 any exhibits you care to admit?

21 MR. KEANEY: No, your Honor.

22 EXAMINER PRICE: Thank you.

23 MS. BOJKO: Your Honor, I just had a
24 clarifying question about one of the exhibits the
25 Company identified, obviously the one with the

2012

1 transcript, but then No. 11 was just testimony in the
2 AEP Ohio ESP case; is that correct? We didn't get
3 copies, I wanted to make sure.

4 EXAMINER PRICE: It was Mr. Buckley's
5 testimony from 23-23 filed June 9th, 2023.

6 MS. BOJKO: Thank you.

7 EXAMINER PRICE: At this time we will
8 take the testimony of Mr. Sarver.

9 Good afternoon. Please raise your right
10 hand. Do you swear the testimony you give is the
11 truth, the whole truth, and nothing but the truth?

12 THE WITNESS: Yes.

13 EXAMINER PRICE: Please be seated. And
14 state your name and business address for the record.

15 THE WITNESS: My name is John Sarver,
16 Ohio Partners For Affordable Energy, 8379 Lakeside
17 Avenue -- or Lakeside Lane in Findlay, Ohio.

18 EXAMINER PRICE: Thank you. Please
19 proceed, Mr. Dove.

20 MR. DOVE: Thank you, your Honor. At
21 this time I would like to mark as OP&E Exhibit 1 the
22 prefilled direct testimony of John F. Sarver.

23 I previously provided copies to the
24 Bench, the Court Reporter, and the witness.

25 EXAMINER PRICE: So marked.

2013

1 (EXHIBIT MARKED FOR IDENTIFICATION.)

2 - - -

3 JOHN F. SARVER III

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

6 DIRECT EXAMINATION

7 By Mr. Dove:

8 Q. Mr. Sarver, do you have a copy of your
9 prefiled testimony that has been marked as OPAE
10 Exhibit 1 in front of you?

11 A. Yes.

12 Q. Is it a true and accurate copy of your
13 testimony?

14 A. Yes.

15 Q. Was it prepared by you or under your
16 direction?

17 A. Yes.

18 Q. Do you have any corrections or
19 modifications you'd like to make?

20 A. Yes, I do. Page 6, line 17, after
21 "weatherization services" insert the words, "like our
22 nonprofits."

23 EXAMINER PRICE: Give us a chance to
24 catch up. Page 6, line 17.

25 THE WITNESS: Yes, sir.

2014

1 EXAMINER PRICE: What was the
2 correction?

3 THE WITNESS: After "weatherization
4 services" insert the word "like."

5 By Mr. Dove:

6 Q. And subject to your change, if I asked
7 you the same questions today would you give me the
8 same answers provided in your testimony?

9 A. Yes.

10 MR. DOVE: Your Honor, at this time I
11 would move for admission of OPAE Exhibit 1 subject to
12 cross-examination.

13 EXAMINER PRICE: OELC?

14 MR. WILLISON: Nothing, your Honor.
15 Thank you.

16 EXAMINER PRICE: OEG.

17 MS. COHN: No.

18 EXAMINER PRICE: RESA.

19 MR. PRITCHARD: Yes, very briefly.

20 - - -

21 CROSS-EXAMINATION

22 By Mr. Pritchard:

23 Q. Good morning, Mr. Sarver.

24 A. Good morning.

25 Q. Are you aware that Ohio has a low-income

2015

1 bill assistance program called the Percentage of
2 Income Payment Plan, or PIPP?

3 A. Yes.

4 Q. And are you aware that there is a
5 Universal Service Fund Rider that collects the cost
6 of PIPP?

7 A. Yes.

8 Q. And are you aware that the Commission --
9 there's a Commission proceeding on the USF each year?

10 A. Yes.

11 Q. And in the USF proceeding one of the
12 components of the Universal Service Fund Bill Payment
13 Assistance Program includes home weatherization,
14 correct?

15 A. Yes.

16 MR. PRITCHARD: Those are all the
17 questions I have, your Honor, thank you.

18 EXAMINER PRICE: Thank you.
19 Mr. Finnigan, or Mr. Michael.

20 MR. MICHAEL: Yes, your Honor. And,
21 your Honor, I do have a brief cross-examination, and
22 then I also have a brief cross-examination that would
23 be appropriate for confidential session, so I just
24 wanted to make the Bench aware of that at this point.

25 - - -

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CROSS-EXAMINATION

By Mr. Michael:

Q. Hello, Mr. Sarver.

A. Hello.

Q. Mr. Sarver, could I direct your attention to page 4, lines 8 through 10 of your testimony, please? Let me know when you're there.

A. Okay.

Q. The Companies provide a home energy analyzer for consumers to identify ways that they can reduce their electric consumption, right?

A. When you say "the Companies," you mean FirstEnergy?

Q. It's a little bit more delicate subject, Mr. Sarver, than you might think, but yes, the FirstEnergy Operating Companies.

EXAMINER PRICE: Let's go off the record real fast.

(Discussion off the record.)

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

By Mr. Michael:

Q. Mr. Sarver, I'm going to repeat the question, if I might, please.

FirstEnergy provides a home energy

2017

1 analyzer for consumers to identify ways they can
2 reduce their electric consumption, right?

3 A. I'm not sure.

4 Q. ENERGY STAR provides educational
5 information to consumers regarding their electric
6 consumption, right?

7 A. I'm not sure.

8 Q. There are no stated measurements,
9 Mr. Sarver, to determine if the education component
10 you reference on page 4, lines through 8, is a
11 success, right?

12 A. Can you repeat that?

13 Q. Certainly. There are no stated
14 measurements to determine if the education component
15 is a success, correct?

16 A. Correct.

17 Q. If I could direct your attention,
18 Mr. Sarver, to page 8, Q and A 12, please, and let me
19 know when you've had the opportunity to get there.

20 A. Question 12 was that?

21 Q. Yes, sir.

22 A. Okay. I'm there.

23 Q. Thank you. There aren't any tenant
24 consumer specific protections in place if a tenant
25 consumer uses the Community Connections Program,

2018

1 right?

2 A. I don't understand the question.

3 Q. Well, an individual could be a renter
4 rather than an owner of a home or an apartment or a
5 condominium, correct?

6 A. Yes.

7 Q. And then there are owners of homes and
8 condominiums, correct?

9 A. Yes.

10 Q. And the Community Connections Program is
11 available to both owners and renters, correct?

12 A. Yes.

13 Q. And my question is, are there any
14 renter-specific protections in place if a renter
15 consumer uses the Community Connections Program?

16 A. I'm still not quite grasping the
17 question.

18 The renter pays the bill, and thus
19 applies for the program, so they sign and the work is
20 done on their income, if they income qualify for the
21 program, so they are the applicant.

22 Q. And if there are, for example, energy
23 efficient -- energy efficient appliances installed in
24 connection with the application you just referenced,
25 would those energy efficient appliances generally

2019

1 stay on the premises, or would they be removed when
2 the tenant moves?

3 A. If the tenant owns the appliance, say
4 the refrigerator, then the tenant would keep that
5 refrigerator with them.

6 Q. Are there ever circumstances,
7 Mr. Sarver, where that is not the case, which is to
8 say are there ever improvements made or energy
9 efficiency services provided under the Community
10 Connections Program where they remain with the
11 property?

12 A. It would be insulation.

13 Q. And when, for example, the energy
14 efficient service or benefit is insulation, are
15 landlords required to pay any of the cost of that
16 insulation?

17 A. No.

18 Q. OPAC doesn't track expenses to make sure
19 that tenant consumers don't pay for things that the
20 landlord is obligated to do at their own expense,
21 correct?

22 A. Well, there's times where we require the
23 landlord to make certain repairs before we can go in
24 and do certain work to the home.

25 Q. And does OPAC track those expenses that

2020

1 are associated with those instances you just
2 described?

3 A. Not OPAC directly. Usually one of our
4 organizations do.

5 Q. And, Mr. Sarver, I wanted to follow up
6 on your point regarding insulation. There aren't any
7 limitations on the ability for a landlord to sell the
8 property after weatherization occurs, correct?

9 A. I believe there is a two-year obligation
10 by the landlord signing that says they can't increase
11 the rent or sell the property.

12 Q. Okay. And where does that -- where does
13 that -- what you just described, where does that
14 occur? Is there an application or a document or
15 contract?

16 A. Yes, it's at the application process.
17 The landlord would have to complete his portion of
18 the form. We can't go on the property and work
19 without the approval of the landlord.

20 Q. Okay. So for weatherization, would it
21 be the landlord that is the applicant rather than the
22 tenant; is that correct?

23 A. No, the tenant would be the applicant
24 because the work was based on their income.

25 Q. Okay. But there's nonetheless a

2021

1 provision of the application that the landlord has to
2 fill out; is that correct?

3 A. There would be, yes, some documentation
4 that the landlord has to complete for that work to be
5 done.

6 Q. If I could direct your attention,
7 Mr. Sarver, to page 3, question 5, please.

8 A. Okay.

9 Q. Could you describe for me the parameters
10 to determine if a consumer needs assistance through
11 the Community Connections Program?

12 A. Could you -- could you repeat the
13 question, please?

14 Q. Certainly. Can you describe for me the
15 parameters to determine if a consumer needs
16 assistance through Community Connections?

17 A. They would apply to the program. We
18 would send an auditor out to the home, or the
19 organization, one of our members, Community Action
20 Agency, would send an auditor to the home if the
21 application was a good application provided by the
22 tenant.

23 Q. And what sorts of things would the
24 auditor look for?

25 A. The auditor would look for health and

1 safety measures necessary in the home so we could
2 proceed to do the completion of the weatherization
3 type work.

4 So they would also estimate the amount
5 of insulation going into the home, whether the roof
6 needed repaired prior to that work, whether the
7 electrical panel needed updated, whether the furnace
8 was properly venting or operating at all.

9 Q. Mr. Sarver, please turn to page 4,
10 question 7 of your testimony. And let me know when
11 you're there.

12 A. I'm there.

13 Q. Does OPAE evaluate the energy efficiency
14 of the current appliances and compare that to the
15 proposed new appliances?

16 A. Yes. The refrigerators are metered, the
17 furnaces are checked for efficiency all prior to, you
18 know, putting in a submission for a replacement if a
19 meter is hot.

20 Q. Is there a threshold when comparing the
21 efficiency of current appliances to new appliances
22 when deciding if the consumer should receive the
23 Community Connections benefit?

24 A. Yes.

25 Q. And what is that?

1 A. I don't know the exact number off the
2 top of my head, sir.

3 Q. How would that be measured?

4 A. Well, a special meter is installed. One
5 of the brands is called What's Up. You plug it into
6 the wall, you plug the refrigerator into it, you
7 meter for an hour while you do the rest of your
8 inspection on the home.

9 With a furnace it's drilled into the
10 flue, you take a sampling of the gases passing
11 through the flue.

12 EXAMINER PRICE: One second. I'd like
13 to ask the witness to make sure counsel has finished
14 his question. It's not Jeopardy, we're not trying to
15 race.

16 And, counsel, make sure the witness has
17 finished his answer before asking the next question.
18 By Mr. Michael:

19 Q. Mr. Sarver, what is the unit of
20 measurement, or what exactly is being measured with
21 that -- you gave an example, I think you called it
22 What's Up --

23 A. It's electric. It's done by wattage
24 usage.

25 Q. Okay.

1 A. And for a furnace it would be, you know,
2 how many parts per million vents out of the flue and
3 what the efficiency of rate of burn is.

4 Q. Thank you. If you'd turn, Mr. Sarver,
5 to page 3, line 23 of your testimony, please.

6 A. Did you say line 3 -- page 3, line 3?

7 Q. Actually if I did, I was mistaken, I
8 said line 23.

9 A. Okay.

10 Q. Why is the threshold set at 200 percent
11 of the federal poverty level?

12 A. It's based on the income, and we base it
13 off of the government's -- federal government
14 standard. The federal government poverty level is
15 200 percent. With the State it's 175 for PIPP.

16 Q. Isn't it true, Mr. Sarver, that families
17 that were at 225 percent of the federal poverty level
18 would also benefit from Consumer Connections?

19 A. I believe so.

20 Q. Is there an efficiency requirement for
21 appliances and HVAC systems to qualify for the
22 Community Connections Program?

23 A. Repeat that, please.

24 Q. Certainly. Is there an efficiency
25 requirement for new appliances and HVAC systems to

1 qualify for the Community Connections Program?

2 A. Yes.

3 Q. And what is that?

4 A. I don't have the number. I know like
5 for furnaces, 70, 80 percent of furnaces aren't
6 efficient enough so they are installing 90 percent
7 efficient furnaces.

8 Q. Okay. And would that information be
9 published anywhere, for example, on an OPAE website
10 or anything like that?

11 A. I don't believe it's on our website, but
12 I would think with State of Ohio's HWAP program, Home
13 Weather Assistance Program.

14 Q. What percentage of participants in the
15 Community Connections Program did not seek utility
16 assistance and/or come off the PIP Program due to
17 using the Community Connections Program?

18 A. I don't know. I don't have that number.

19 Q. Do you track the number of households
20 who receive the Community Connection Program were
21 disconnected for nonpayment at a later date?

22 A. No, sir.

23 MR. MICHAEL: I have no further
24 questions during the open session, your Honor. Thank
25 you, Mr. Sarver.

1 EXAMINER PRICE: Let's go off the
2 record.

3 (Discussion off the record.)

4 EXAMINER PRICE: Let's go back on the
5 record. At this time we will go to the confidential
6 portion of the transcript. Mr. Michael, you may
7 proceed.

8 MR. MICHAEL: Thank you, your Honor.

9 - - -

10 (CONFIDENTIAL TRANSCRIPT.)

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(END OF CONFIDENTIAL TRANSCRIPT.)

EXAMINER PRICE: At this time we will
leave the confidential portion of the transcript and
go on the public record.

Ms. Bojko.

MS. BOJKO: No questions, your Honor.

EXAMINER PRICE: Mr. Barber.

MR. BARBARA: No questions, your Honor.

EXAMINER PRICE: Mr. Hays?

MR. HAYS: Just a few, your Honor.

- - -

CROSS-EXAMINATION

By Mr. Hays:

Q. Good afternoon, Mr. Sarver.

A. Good afternoon.

Q. My name is Tom Hays and I'm with the

1 Northwest Ohio Aggregation Coalition, or NOAC, and
2 we're all the local governments up in the -- everyone
3 in Lucas County and all of -- almost all of northern
4 Wood County.

5 A. Okay.

6 Q. Also Delta. Nice to meet you.

7 A. Nice to meet you.

8 Q. I had a couple of questions that haven't
9 been addressed and have to do with could there be a
10 better synergy to get more bang for our buck, and
11 more things done for people who may need the help.

12 Are you familiar with the Inflation
13 Reduction Act?

14 A. No, sir.

15 Q. Have you heard about the federal
16 government offering new programs, particularly
17 low-income programs, for things like whole house
18 energy use reduction?

19 A. A little, yes.

20 Q. Has OPAC looked into how it might use
21 those -- how the owners and the renters use those
22 programs and use OPAC -- the OPAC monies we're
23 talking about here as a supplement to that?

24 A. Yes, we have been in some discussions.

25 Q. Could you tell -- I don't want to get

1 into the details of it. Are you talking about you've
2 been down to talk to like the Ohio Department of
3 Commerce about this?

4 A. Spoken to the EPA, Ohio EPA. And it was
5 an organization out of Columbus here whose name I
6 can't recall.

7 Q. If the Commission were to decide -- if
8 the Commission were to decide to put together a work
9 group to study how to maximize the amount of dollars
10 that would come into these kind of programs for these
11 kind of uses, would you be opposed to that?

12 A. No, sir.

13 Q. If it were to include some of the major
14 cities and some rural people in a rural organization
15 like Ohio Farm organizations, would you be opposed to
16 that?

17 A. No, sir.

18 Q. And I take it that would also go for
19 things like furnaces and other appliances that might
20 be covered by federal programs?

21 A. I would listen, yes.

22 MR. HAYS: Thank you very much.

23 THE WITNESS: Thank you.

24 EXAMINER PRICE: Company?

25 MR. KEANEY: No questions, your Honor.

1 EXAMINER PRICE: Staff.

2 MS. BOTSCHNER O'BRIEN: No questions,
3 your Honor.

4 EXAMINER PRICE: Redirect?

5 MR. DOVE: No questions, your Honor.

6 EXAMINER PRICE: Thank you, sir.

7 THE WITNESS: Thank you.

8 (Witness excused.)

9 MR. ALEXANDER: Your Honor, may we go
10 off for a moment.

11 EXAMINER PRICE: Yes.

12 (Discussion off the record.)

13 EXAMINER PRICE: Go back on the record.

14 At this time we will take up the motion from OPAC to
15 admit OPAC Exhibit 1. Any objections? Seeing none,
16 it will be admitted.

17 (EXHIBIT ADMITTED INTO EVIDENCE.)

18 EXAMINER PRICE: Mr. Michael.

19 MR. FINNIGAN: Your Honor, on behalf of
20 Mr. Michael, OCC moves for admission of OCC
21 Exhibit 25C.

22 EXAMINER PRICE: Any objections?

23 MR. DOVE: Your Honor, I would object on
24 the basis of I'm not sure how a past contract is
25 relevant to the current case.

1 I was waiting to see if we got to the
2 relevance of questions before making the objection,
3 and I don't think we did, as to how it pertains to
4 whether or not the proposed low-income program should
5 be approved. I don't think a contract for a prior
6 program has any relevance.

7 MR. FINNIGAN: Your Honor, I understood
8 the witness to say that they were still providing
9 services on behalf of FirstEnergy.

10 EXAMINER PRICE: Well, I think Mr.
11 Dove's point is what is the relevance for ESP V to
12 the contract that was entered into for ESP III and
13 IV.

14 MR. FINNIGAN: Well, I would say that
15 this is something that, you know, could have been
16 established on redirect, that the contract will
17 terminate and a new contract will be entered into,
18 but all that we have is that OPAE is still providing
19 services under this agreement.

20 EXAMINER PRICE: Mr. Dove?

21 MR. DOVE: He didn't ask if he was going
22 to continue to provide services. He didn't establish
23 they would provide services.

24 This is a contract for a prior program
25 that has no impact or relevancy to a proposed future

1 program that the Company has not, to my knowledge,
2 indicated who that administrator would be.

3 EXAMINER PRICE: Anybody else going to
4 weigh in?

5 We're going to go ahead and admit the
6 document at this time. The parties can discuss in
7 the brief how much weight should be given to this
8 particular document.

9 (EXHIBIT ADMITTED INTO EVIDENCE.)

10 MR. DOVE: Thank you, your Honor.

11 EXAMINER PRICE: At this time we'll
12 adjourn for lunch and return at 2:00.

13 (Lunch recess from 1:20 to 2:00.)

14 EXAMINER PRICE: Let's go on the record.
15 At this time the Staff can call its next witness --
16 first witness.

17 MS. BOTSCHNER O'BRIEN: Thank you, your
18 Honor. At this time Staff would like to call
19 Ms. Natalia Messenger to the stand, please.

20 EXAMINER PRICE: Would you please raise
21 your right hand? Do you swear to testify to the
22 truth, the whole truth, and nothing but the truth?

23 THE WITNESS: I do.

24 EXAMINER PRICE: Please state your name
25 and business and address for the record.

1 THE WITNESS: My name is Natalia
2 Messenger, my business address is 180 East Broad
3 Street, Columbus, Ohio 43215.

4 EXAMINER PRICE: Please proceed.

5 MS. BOTSCHNER O'BRIEN: Your Honors, I
6 have placed before the Bench, the Court Reporter, and
7 the witness a multi-page document captioned Direct
8 Testimony of Natalia Messenger on behalf of the Staff
9 of the Public Utilities Commission of Ohio, and I
10 request it be marked for purposes of identification
11 as Staff Exhibit 1.

12 EXAMINER PRICE: It will be so marked.

13 (EXHIBIT MARKED FOR IDENTIFICATION.)

14 MS. BOTSCHNER O'BRIEN: Thank you, your
15 Honor.

16 - - -

17 NATALIA MESSENGER,
18 being first duly sworn, as prescribed by law, was
19 examined and testified as follows:

20 DIRECT EXAMINATION

21 By Ms. Botschner O'Brien:

22 Q. And I believe you've already done this,
23 Ms. Messenger, but please state your name and
24 business address.

25 A. My name is Natalia Messenger. My

1 business address is 180 East Broad Street, Columbus,
2 Ohio 43215.

3 Q. And do you have before you what's been
4 marked as Staff Exhibit 1?

5 A. Yes.

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

8 A. It is the direct -- my direct testimony
9 filed in this case.

10 Q. And was it prepared by you or under your
11 direction?

12 A. Yes.

13 Q. Have you had an opportunity to review
14 this document prior to taking the stand today?

15 A. Yes.

16 Q. And as a result of your review do you
17 have any changes, corrections, or amendments of any
18 kind?

19 A. I do not.

20 Q. If I were to ask you the same questions
21 today as is contained in your direct testimony would
22 your responses be the same?

23 A. Yes.

24 Q. And in your opinion, are those responses
25 truthful and reasonable?

1 A. They are.

2 MS. BOTSCHNER O'BRIEN: Your Honors, I
3 respectfully move for the admission of Staff
4 Exhibit 1 subject to cross-examination, and tender
5 the witness.

6 EXAMINER PRICE: We'll defer ruling on
7 the admission of Staff Exhibit 1 until we have
8 concluded cross-examination.

9 Mr. Willison?

10 MR. WILLISON: No questions from OELC,
11 your Honor.

12 EXAMINER PRICE: Mr. Alexander?

13 MR. ALEXANDER: No questions, your
14 Honor.

15 EXAMINER PRICE: OEG?

16 MS. COHN: None, your Honor.

17 EXAMINER PRICE: RESA?

18 MR. PRITCHARD: Yes, your Honor.

19 - - -

20 CROSS-EXAMINATION

21 By Mr. Pritchard:

22 Q. Good afternoon, Ms. Messenger. Will you
23 turn to page 4 of your testimony, and draw your
24 attention to the lines 10 through 12?

25 A. Yes, I'm there.

1 Q. Here you address FirstEnergy's proposed
2 shareholder-funded programs, correct?

3 A. Yes.

4 Q. And you state that the programs are not
5 required to be implemented as part of an MRO,
6 correct?

7 A. Correct.

8 Q. And they would not -- shareholder-funded
9 programs would not be required to be implemented
10 under an ESP either, correct?

11 A. Correct.

12 Q. And you're aware that other Staff
13 witnesses have testimony addressing the
14 shareholder-funded programs, correct?

15 A. Yes.

16 Q. And is your statement here about the
17 shareholder-funded programs being a benefit of the
18 ESP inclusive of Staff's recommended modifications to
19 the shareholder-funded programs?

20 A. Can you repeat that?

21 Q. Yeah. Let me rephrase the question.

22 Are you aware that Staff witness
23 Shaeffer addresses the EV portion of the
24 shareholder-funded program?

25 A. Yes.

1 Q. And is it your understanding that she
2 recommends a modified scope of the shareholder-funded
3 EV program?

4 A. Yes.

5 Q. And so your testimony here on page 4,
6 when you say the ESP -- a quantitative benefit of the
7 quantitative ESP is the shareholder-funded program,
8 are you including Staff's recommended modifications
9 to the programs?

10 A. Yes. My testimony on the ESP MRO test
11 takes into account the modifications that Staff is
12 proposing to the ESP allocation.

13 Q. And will you turn to the next page, page
14 5, and draw your attention to lines 5 through 6, and
15 let me know when you're there?

16 A. I'm there.

17 Q. And here your testimony states that
18 there are many other provisions of the ESP which you
19 don't specifically call out in your testimony, and to
20 the extent those other provisions you are not
21 addressing have costs, that they are outweighed by
22 benefits, correct?

23 A. Yes.

24 Q. And just so the record is clear, your
25 testimony does not include any qualitative or

1 quantitative analysis of all those other ESP
2 provisions that you don't specifically call out in
3 your testimony, correct?

4 A. Correct.

5 MR. ALEXANDER: Can I have the question?

6 EXAMINER PRICE: Pardon me?

7 MR. ALEXANDER: I just asked for the
8 question to be reread.

9 EXAMINER PRICE: Can we have the
10 question back again, please?

11 (Record read back.)

12 MR. ALEXANDER: I'm going to object to
13 vague. The witness provides a detailed summary of
14 Staff's position on ESP, and the failure to identify
15 one item, that question could be read multiple ways.

16 MS. BOTSCHNER O'BRIEN: It is ambiguous.

17 EXAMINER PRICE: Mr. Pritchard, do you
18 think your question is ambiguous?

19 MR. PRITCHARD: I don't. I thought the
20 witness answered.

21 EXAMINER PRICE: I believe the witness
22 answered because I think Mr. Alexander successfully
23 garbelled the record.

24 MR. PRITCHARD: I can rephrase, your
25 Honor.

1 EXAMINER PRICE: You're about to win,
2 but go ahead.

3 MR. PRITCHARD: Then I withdraw my --

4 EXAMINER PRICE: Go ahead and rephrase.
5 By Mr. Pritchard:

6 Q. Ms. Messenger, to the extent there
7 are -- back up.

8 There are many provisions of
9 FirstEnergy's application that you don't specifically
10 address in your testimony, correct?

11 A. That are not specifically listed in my
12 testimony, correct.

13 Q. And for all those provisions you don't
14 specifically address, you don't have any quantitative
15 or qualitative analyses in your testimony on those
16 provisions, correct?

17 A. So I don't specifically lay out the
18 analysis or the quantitative and qualitative factors
19 for each provision of the application, but to the
20 extent that they are a part of Staff's proposals,
21 they are included in my analysis.

22 Q. And so you would be relying on the other
23 Staff witnesses' independent analyses for the various
24 recommendations of Commission Staff?

25 A. That is correct.

1 Q. And so just to make sure I'm
2 understanding you, giving you an example, Company
3 witness Miller has a proposed energy efficiency plan
4 where he testifies -- testified that he believes
5 there's benefit based on his assumption of
6 kilowatt-hours savings and market price of energy and
7 capacity and other items.

8 Your testimony here where you reference
9 there's benefits that outweigh the cost, you aren't
10 offering any sort of independent statement about the
11 reasonableness or unreasonableness of Mr. Miller's
12 testimony on that issue, correct?

13 A. That is correct. There's another Staff
14 witness that will speak to that.

15 Q. And that would be Staff witness Braun?

16 A. That is correct.

17 MR. PRITCHARD: Your Honor, I have no
18 other questions. Thank you.

19 EXAMINER PRICE: I just want to follow
20 up with a question Mr. Pritchard asked.

21 Your conclusion that the ESP is more
22 favorable in the aggregate than an MRO, is that just
23 generally contingent upon the Commission adopting the
24 modifications proposed by Staff?

25 THE WITNESS: That is my testimony.

1 EXAMINER PRICE: So if the Commission
2 were to not adopt all of the modifications, then you
3 no longer would argue that this is more favorable in
4 aggregate than MRO?

5 THE WITNESS: I think it would depend on
6 the modification.

7 EXAMINER PRICE: Thank you.
8 Mr. Finnigan?

9 MR. FINNIGAN: No questions, your Honor.

10 EXAMINER PRICE: Mr. Hays.

11 MR. HAYS: Thank you, your Honor.

12 - - -

13 CROSS-EXAMINATION

14 By Mr. Hays:

15 Q. Ms. Messenger, I'm Tom Hays with NOAC,
16 and I saw you were sitting back there so I won't go
17 into what is the NOAC speech.

18 MR. HAYS: Before I ask a question, your
19 Honor, I'd like to move -- and I previously described
20 that to all counsel, and the Court Reporter is going
21 to hand you each a copy so I don't run into the
22 screen again.

23 I would like you to take judicial notice
24 of this map and the one page attachment from the Ohio
25 Department of Natural Resources called "Shaded

1 Elevation Map of Ohio." Whoops, I marked -- sorry,
2 Kim. Thank you -- as NOAC Exhibit 2.

3 EXAMINER PRICE: It will be marked as
4 NOAC Exhibit 2.

5 (EXHIBIT MARKED FOR IDENTIFICATION.)

6 EXAMINER PRICE: I believe Ms. Botschner
7 O'Brien has a point for us. Did you have an
8 objection?

9 MS. BOTSCHNER O'BRIEN: No, not at this
10 time.

11 EXAMINER PRICE: Okay.

12 MR. ALEXANDER: I'm not sure, is -- are
13 we just marking a document at this point?

14 EXAMINER PRICE: We have marked the
15 document.

16 MR. HAYS: And I asked for judicial
17 notice of it, your Honor.

18 EXAMINER PRICE: Okay. Well, I would
19 like to hear the relevance of this document to the
20 ESP V.

21 MR. HAYS: This, your Honor, is -- the
22 relevance of this is that there was testimony by
23 Mr. Standish about West Virginia and other locations,
24 and as you can see by the map, the Toledo Edison
25 territory is essentially very flat and not at all

1 comparable to that.

2 We also think that it has to do with the
3 underlying costs of doing vegetative management. For
4 example, Mr. Standish, at page 3 of his testimony,
5 Footnote 4, says, "Incompatible vegetation is
6 vegetation (such as brush or trees) that may grow
7 tall enough to interfere with overhead electric
8 facilities or otherwise impede access and/or the
9 ability to visually inspect the distribution corridor
10 from structure to structure to ensure continued safe
11 and reliable electric service."

12 And, your Honor, we will later -- I
13 didn't realize until after the close of business
14 yesterday that we were going to do Ms. Messenger, so
15 I'm also going to bring in a map from the Ohio
16 Department of Agriculture showing the land up in
17 Toledo -- northwest Ohio in the territory is
18 predominantly farmland, and this directly bears on
19 the cost and the cost accounting for the vegetative
20 management program.

21 MS. BOTSCHNER O'BRIEN: Your Honor, we
22 object to any questions for this witness regarding
23 this map.

24 Ms. Messenger -- there's no foundation
25 for this. Ms. Messenger is not a topographer or a

1 geologist. There's no foundation for this.

2 EXAMINER PRICE: In all fairness --

3 MS. BOTSCHNER O'BRIEN: He hasn't had a
4 chance to lay foundation, that is it true, but we
5 object to any questions regarding this map. This is
6 not in this witness' purview.

7 MR. HAYS: Your Honor, I may have no
8 questions for her on the map. I'm asking if you'll
9 take judicial notice of it because it's relevant to
10 the case, although I would say that a significant
11 portion of her testimony has to do with vegetation
12 management and auditing of it.

13 EXAMINER PRICE: One of the elements to
14 taking administrative notice is will -- the opposing
15 nonmoving party had an opportunity to prepare and
16 respond to a document which you asked us to take
17 administrative notice on.

18 What you're trying to do here is
19 introduce a document that you wished you'd introduced
20 with Mr. Standish and trying to backdoor in now with
21 this witness, which you admit you have no questions
22 for her about the document, and you failed to use it
23 during Mr. Standish's testimony. So at this time we
24 will deny the request for administrative notice.

25 MS. BOTSCHNER O'BRIEN: Thank you, your

1 Honor.

2 EXAMINER PRICE: You can try to ask her
3 questions and get it in through her.

4 By Mr. Hays:

5 Q. Ms. Messenger, are you aware that
6 FirstEnergy Corp. entered into a deferred prosecution
7 agreement filed in the United States --

8 MS. BOTSCHNER O'BRIEN: Objection.

9 EXAMINER PRICE: Let him finish the
10 question first, please, then you can object. I'll
11 call on you first.

12 By Mr. Hays:

13 Q. -- the United States District Court,
14 Southern District of Ohio on 7-22-21.

15 MS. BOTSCHNER O'BRIEN: I have an
16 objection, relevant to this proceeding.

17 MR. ALEXANDER: Same objection, your
18 Honor.

19 EXAMINER PRICE: Mr. Hays, haven't we
20 already decided this document was not relevant to
21 this proceeding?

22 MR. HAYS: I believe, your Honor, the
23 ruling was that the date that it was entered into was
24 judicially noticed, and so --

25 EXAMINER PRICE: No, that is true.

1 MR. HAYS: And so I'm simply asking if
2 she's aware of that.

3 EXAMINER PRICE: Fair point. Objection
4 is overruled. You can answer the question if you
5 know.

6 THE WITNESS: Can you ask the question
7 again, please?

8 By Mr. Hays:

9 Q. Sure. Are you aware that FirstEnergy
10 Corp. entered into a deferred prosecution agreement
11 filed in the United States District Court, Southern
12 District of Ohio on 7-22-21?

13 A. I am.

14 Q. Do you think that FirstEnergy's honesty
15 and integrity during the current ESP IV should be a
16 factor in weighing whether or not a proposed ESP V is
17 more favorable in aggregate than an MRO?

18 EXAMINER PRICE: Would you like the
19 question read back?

20 MS. BOTSCHNER O'BRIEN: Could you repeat
21 that question?

22 EXAMINER PRICE: The court reporter will
23 read the question back, please.

24 (Record read back.)

25 MS. BOTSCHNER O'BRIEN: Objection.

1 EXAMINER PRICE: Grounds?

2 MS. BOTSCHNER O'BRIEN: This is way
3 beyond the scope of her testimony.

4 EXAMINER PRICE: Well, she's testifying
5 on the MSA, so it is part of her testimony. However,
6 now I believe we have previously ruled that the
7 deferred prosecution agreement is not relevant to the
8 statutory test in the MSA, and therefore the
9 objection is sustained.

10 By Mr. Hays:

11 Q. Are you familiar with the PCAOB
12 standards? And I believe PCAOB stands for the Public
13 Companies Auditing Oversight Board?

14 A. I am not aware of them.

15 Q. Okay. Ms. Messenger, could you please
16 turn to page 4 of your testimony, question 8,
17 beginning at line 14?

18 A. I'm there.

19 Q. I'd ask if you could read --

20 MR. HAYS: Well, maybe it would be
21 easier, your Honor, if I just read the section
22 through line 1 on page 5.

23 By Mr. Hays:

24 Q. "The Application, with Staff's proposed
25 modifications, provides important benefits to

1 ratepayers, including low-income assistance programs,
2 limiting bill impacts to consumers, and establishing
3 riders that promote transparency through annual
4 audits.

5 "For example, Staff's proposed for Storm
6 Cost Recovery Rider and the Vegetation Management
7 Recovery Rider limit recovery of incremental spending
8 until a base distribution rate case is filed and
9 provided for an annual prudence audit."

10 Did I read that correctly?

11 A. Yes.

12 Q. What do you mean by a prudence audit?
13 What is involved in a prudence audit?

14 A. For which rider?

15 Q. Vegetation management.

16 A. So we -- in the annual rider audit
17 FirstEnergy doesn't have a vegetation management
18 rider currently.

19 For other companies that do, we do a
20 sample of the years, you know, 12-month period, and
21 we sample the O&M expenses for vegetation management.

22 We also do a fiscal verification through
23 our service monitoring and enforcement department.
24 They work with the Companies to inspect circuits.
25 They will sample a few circuits and make sure the

1 tree trimming activity occurred. That's generally
2 what our prudence audit entails.

3 Q. Does that also include a fiscal audit?
4 Do you know what I mean by a fiscal audit?

5 A. We do a sampling of their expenses.

6 Q. And so that's what you're proposing
7 to -- something similar for FirstEnergy?

8 A. Correct.

9 Q. Do you ever look into -- excuse me, let
10 me back up and lay a foundation for this.

11 I believe that -- is it your
12 understanding from FirstEnergy's testimony that it
13 intends to use contractors to perform some of the
14 vegetative management control?

15 A. I don't recall specifically.

16 Q. Well, let's assume that FirstEnergy is
17 going to use outside vendors to conduct some of the
18 work or all of the work.

19 Do you require -- will the Staff require
20 that those contractors have their books -- I'm
21 getting tongue tied here, so excuse me.

22 Will you require that in the vendors'
23 contracts that there be a provision that allows the
24 Staff to also audit their books?

25 A. We do generally take a look at the

1 vendor contracts.

2 Q. Yes.

3 A. We do not audit the vendor's -- an
4 individual vendor's books, but we'll -- you know,
5 part of the sampling is -- you know, comes from their
6 invoices from vendors, so it's expenditures from
7 vendors to FirstEnergy.

8 So it's included as part of the audit,
9 but specifically auditing -- like generally auditing
10 a vendor's books, I'm not aware we do that.

11 EXAMINER PRICE: Do you know whether the
12 costs billed by the vendor are reasonable?

13 THE WITNESS: Yes.

14 EXAMINER PRICE: And whether the lowest
15 cost available in the market today?

16 By Mr. Hays:

17 Q. And as you testified --

18 EXAMINER PRICE: I have a question
19 pending.

20 MR. HAYS: I didn't mean to interrupt
21 you.

22 THE WITNESS: Whether they are the
23 lowest cost available today, you know, we do have the
24 benefit of auditing several --

25 EXAMINER PRICE: I asked a very general

1 question, so let me back up and say do you look into
2 whether, based upon all the information available to
3 the Company at the time the vendors are hired,
4 contracted, they were the lowest possible price?

5 THE WITNESS: I guess I'm just
6 struggling with lowest possible cost.

7 EXAMINER PRICE: Do you review whether
8 they bid these out?

9 THE WITNESS: Yes, that's part of the --
10 yes, that is part of our review.

11 EXAMINER PRICE: So one would presume
12 that they are taking the lowest bid?

13 THE WITNESS: Yes.

14 EXAMINER PRICE: Or if there's a reason
15 there's a bid the other -- the next low bid was
16 superior qualifications?

17 THE WITNESS: Right. I mean --

18 EXAMINER PRICE: Don't let my bad
19 question --

20 THE WITNESS: Yes, the contracts
21 generally are competitively bid and we, you know,
22 kind of generally ask about the contracts and the
23 process.

24 EXAMINER PRICE: Thank you. Thank you,
25 Mr. Hays.

1 MR. HAYS: I thank you, Mr. Price.

2 You've now moved me down on a whole page of
3 questions.

4 By Mr. Hays:

5 Q. I didn't see any requirement for the
6 things Mr. Price asked you about, that is ensuring
7 there's competitive bidding and ensuring that, you
8 know, the bid that was accepted was the lowest cost
9 from somebody capable of performing the work.

10 Is that part of what your
11 recommendation -- is that part of what you are
12 recommending but don't say here, that the
13 FirstEnergy -- that these same things be done in the
14 FirstEnergy territories?

15 A. So no, I guess it isn't part of my
16 written testimony. It is part of our -- it is
17 something we request during our annual audits.

18 I think generally when they are
19 contracting with vendors for vegetation management we
20 do expect that they would take -- that they would be
21 prudent in contracting with vendors.

22 Q. So you assume that they would be
23 prudent, did I hear you correctly?

24 MS. BOTSCHNER O'BRIEN: Objection. It's
25 a characterization of prudent. I mean, can he

1 rephrase?

2 EXAMINER PRICE: She used the term
3 prudence meant in whatever context --

4 MR. HAYS: I'm sorry.

5 EXAMINER PRICE: Ms. Messenger used the
6 word prudent. I'm assuming Mr. Hays is asking to
7 followup what she means by prudent.

8 MS. BOTSCHNER O'BRIEN: Okay.

9 MR. HAYS: Yes.

10 THE WITNESS: As I said, part of our
11 annual review process is -- the part of our annual
12 prudence audit, which I do mention, is reviewing
13 vendor -- you know, their vendor contracting.

14 It is not specifically listed in my
15 testimony as a requirement, but we will look at it
16 during our annual audit.

17 By Mr. Hays:

18 Q. Do you think that if the Commission were
19 to include a requirement for competitive bidding and
20 a requirement that the vendors make their books
21 available for auditing, you would support such a
22 recommendation?

23 MR. ALEXANDER: Objection.

24 EXAMINER PRICE: Grounds?

25 MR. ALEXANDER: Assumes facts as to the

1 ability of the Commission to acquire
2 nonjurisdictional entities to make their books --
3 which again I'm not sure what that means -- available
4 for Commission audit.

5 EXAMINER PRICE: Sustained. You can
6 answer the part of the question that did not relate
7 to auditing.

8 By Mr. Hays:

9 Q. Let me just ask the question.

10 Would you be willing to recommend to the
11 Commission that they put in a requirement that there
12 be competitive bidding for the vegetation management
13 contracts that FirstEnergy may propose?

14 A. I would not be opposed to the Commission
15 putting that -- adding that requirement.

16 Q. Similarly, would you support the
17 Commission putting in a requirement that the lowest
18 and best bidder be selected?

19 MS. BOTSCHNER O'BRIEN: Objection
20 because she already answered that.

21 EXAMINER PRICE: Sustained.

22 By Mr. Hays:

23 Q. Have you ever undergone training for
24 detecting fraud in --

25 MR. HAYS: Excuse me, your Honor, frog

1 in my throat.

2 By Mr. Hays:

3 Q. Have you ever undergone training for
4 locating potential fraud in contracting?

5 MS. BOTSCHNER O'BRIEN: Objection,
6 relevance.

7 EXAMINER PRICE: Mr. Hays.

8 MR. HAYS: The relevance is, your Honor,
9 that it's obviously important that people be
10 trained -- have -- trained to understand if the
11 contracts that are entered into are legitimate or not
12 legitimate, or contain costs or other factors that
13 aren't really for the work performed, but are there
14 for other purposes.

15 EXAMINER PRICE: Care to respond?

16 MS. BOTSCHNER O'BRIEN: It's okay, she
17 can answer.

18 MR. ALEXANDER: I'll object for lack of
19 foundation. There's been no foundation laid that
20 this witness is responsible for reviewing those
21 matters.

22 EXAMINER PRICE: Sustained.

23 By Mr. Hays:

24 Q. In supervising the audits that you
25 mentioned, would you be responsible for ensuring that

1 they were -- that there was fiscal integrity during
2 the course of performance of the contract?

3 A. What do you mean by fiscal integrity?

4 Q. That the funds were spent for the
5 purpose they were contracted for; that is vegetative
6 management.

7 A. Can you ask your question again?

8 MR. HAYS: Could I ask the reporter to
9 read it back, your Honor?

10 EXAMINER PRICE: Please.

11 (Record read back.)

12 THE WITNESS: We do ensure that the
13 costs that are being spent are being spent on
14 vegetation management as part of the vendor
15 contracts.

16 EXAMINER PRICE: You ensure the costs
17 are actual and prudently incurred?

18 THE WITNESS: Yes.

19 By Mr. Hays:

20 Q. In that regard, have you received
21 training in how to locate costs that would not be
22 directly related to the vegetative management costs?

23 MS. BOTSCHNER O'BRIEN: Objection as to
24 relevance, and then objection because I think the
25 question is a little bit vague as to training.

1 EXAMINER PRICE: I'm going to sustain
2 the objection.

3 Ms. Messenger is the Staff expert who
4 has been assigned to provide testimony in this
5 matter. The Bench is satisfied with her expertise
6 given her education and work experience as set forth
7 in her testimony.

8 By Mr. Hays:

9 Q. Could you turn to page 7 of your
10 testimony, please? And it's under line 1, which has
11 question No. 12, "Please explain Staff's proposal,"
12 and I would like to direct your attention to lines 5
13 through 12, based on -- which reads, "Based on
14 Staff's review of the Companies' recent historical
15 vegetation management spending and reliability
16 performance, the cost estimates for completing
17 minimum regulatory work are reasonable estimates for
18 required vegetation management spending during the
19 term of the ESP."

20 Did I read that correctly?

21 A. Yes.

22 Q. What did the Staff do during this
23 review?

24 A. I -- Staff looked at the last five or
25 six years of vegetation management spend from the

1 Company.

2 We also, as a team with the reliability
3 experts and the vegetation management experts, came
4 to the conclusion that based on their historical
5 spend, that the estimates were reasonable.

6 Q. Did you do field inspections during this
7 review?

8 A. Our vegetation management team -- they
9 are not called vegetation management team, but our
10 service monitoring and enforcement department works
11 with the Companies on their vegetation management
12 plan and working on the vegetation management cycles
13 that they are on.

14 Q. So did they actually go out and do site
15 visits?

16 MS. BOTSCHNER O'BRIEN: Your Honor, I'm
17 going to object because this is not this witness'
18 testimony. He might want to address these questions
19 to other Staff witnesses.

20 She's not from the service monitoring
21 and enforcement division, and those are the people
22 doing that kind of work.

23 EXAMINER PRICE: But she can answer if
24 she knows. If she doesn't answer then he'll know to
25 ask different Staff witnesses.

1 Do you know whether the service
2 monitoring enforcement department employees
3 periodically go and review the Companies' work,
4 whether vegetation, with the circuits, have been
5 properly maintained through the vegetation management
6 program?

7 THE WITNESS: Yes, I believe our field
8 team goes out and reviews the tree trimming activity
9 and works with the Company to make sure that they are
10 within the cycles that they should be in for the
11 vegetation management.

12 By Mr. Hays:

13 Q. For this review that you're mentioning
14 here, was that done for this review in particular, or
15 were you talking about sometime in the past?

16 MR. ALEXANDER: Objection.

17 EXAMINER PRICE: Grounds?

18 MR. ALEXANDER: Vague as what this
19 review in particular means.

20 EXAMINER PRICE: You can clarify.

21 MR. HAYS: I think we're talking about
22 the line 5, page 7 that says, "Based on Staff's
23 review of the Companies' recent historical vegetation
24 management spending."

25 So what I was asking is for this review

1 did people go out to the field and do field
2 inspections.

3 MR. ALEXANDER: Objection. The review
4 that's referenced, to complete the sentence, is an
5 historical management spending and reliability
6 performance. That has nothing to do with field
7 management.

8 EXAMINER PRICE: That's what he's
9 seeking clarification on. Overruled.

10 THE WITNESS: I'm not certain if the
11 field team went out as part of this specific review
12 in this case, but I do know that they did review the
13 testimony in this case on vegetation management and
14 were satisfied that the Companies were keeping up
15 with their tree trimming obligations.

16 By Mr. Hays:

17 Q. On line 8 -- I'm sorry, I think you just
18 answered that.

19 MR. HAYS: Sorry, let me take a moment.
20 Your Honor, if I could take a minute here, I think I
21 can get rid of some of the questions.

22 EXAMINER PRICE: Please.

23 By Mr. Hays:

24 Q. Would you agree with me that the cost
25 per mile of distribution line vegetation management

1 will be impacted by the terrain and the vegetation?

2 A. I don't know.

3 Q. Are you familiar with the area around
4 White House? If you were driving towards Cincinnati,
5 you know the area around White House?

6 A. No.

7 Q. No? Have you driven up 75 to Detroit,
8 ever?

9 MS. BOTSCHNER O'BRIEN: Objection.

10 EXAMINER PRICE: Relevance?

11 MS. BOTSCHNER O'BRIEN: Relevance.

12 MR. HAYS: We're going to find out if
13 she knows about the terrain and the costs. I want --

14 EXAMINER PRICE: She's already testified
15 that she does not know the relationship between the
16 terrain and the cost per mile.

17 You can elicit from her all the
18 testimony you want that Toledo is flat, it's not
19 going to get you where you need to go. However,
20 there are other Staff witnesses.

21 MR. HAYS: Your Honor, I read all of the
22 Staff witnesses last night looking for somebody who
23 talked about this and I could not find anybody who
24 did talk about it.

25 So if there's another Staff witness, I

1 would be glad to ask them, but as the testimony
2 stands I don't recall seeing any other discussion of
3 this. If I'm wrong, please --

4 By Mr. Hays:

5 Q. Are you the only Staff witness who talks
6 about vegetation management?

7 A. I am.

8 EXAMINER PRICE: Are you the only Staff
9 witness that talks about reliability?

10 THE WITNESS: I am not.

11 EXAMINER PRICE: Is there a Staff
12 witness that works in the reliability of service
13 monitoring department?

14 THE WITNESS: Yes.

15 EXAMINER PRICE: Is there one that works
16 specifically on distribution reliability?

17 THE WITNESS: Yes.

18 EXAMINER PRICE: And the name of that
19 witness would be?

20 THE WITNESS: Jacob Nicodemus.

21 By Mr. Hays:

22 Q. Will Mr. Nicodemus be able to answer
23 questions about vegetation management?

24 MR. ALEXANDER: Objection.

25 EXAMINER PRICE: Grounds?

1 MR. ALEXANDER: Calls for speculation.

2 EXAMINER PRICE: Sustained.

3 MR. HAYS: I have no more questions.

4 Thank you, Ms. Messenger.

5 EXAMINER PRICE: Mr. Bojko?

6 MS. BOJKO: Yes, your Honor. Thank you.

7 - - -

8 CROSS-EXAMINATION

9 By Ms. Bojko:

10 Q. Good afternoon, Ms. Messenger. I just
11 have a couple clarifying questions about your
12 testimony on page 7. I'm looking at the paragraph
13 that begins on line 14 through 17.

14 Here you talk about any caps set by the
15 Commission in this case should be revisited in the
16 upcoming base distribution rate case to, at a
17 minimum, account for any change in baseline
18 vegetation management spending approved in the rate
19 case. Do you see that?

20 A. Yes.

21 Q. When you're talking about the caps that
22 are revisited and you use the phrase "at a minimum,"
23 what other changes are you envisioning should be
24 revisited in the rate case?

25 A. So at a minimum, with that phrase I'm

1 referring to if the baselines for vegetation
2 management spending are increased, then even if we do
3 not revisit the spending all together, which I
4 believe we should, we, at a minimum, need to account
5 for a reduction to the caps if we're increasing the
6 baseline.

7 I do think that there needs to be a
8 holistic view of vegetation management spending in a
9 base distribution case. It is one of the things that
10 we'll take a look at. I just want to make sure that
11 the caps are subject to that review.

12 Q. Could one of the -- or is one of the
13 changes that Staff is recommending through the rate
14 case be an elimination of vegetation management
15 rider?

16 A. I think that that could be a
17 possibility.

18 MS. BOJKO: That's all I have, your
19 Honor. Thank you.

20 EXAMINER PRICE: Thank you. Mr. Barber.

21 MR. BARBARA: No questions, your Honor.

22 EXAMINER PRICE: Mr. Dove.

23 MR. DOVE: No questions, your Honor.

24 EXAMINER PRICE: Redirect?

25 MS. BOTSCHNER O'BRIEN: Could we just

1 take a few minutes, your Honor?

2 EXAMINER PRICE: Let's go off the
3 record.

4 (Discussion off the record.)

5 EXAMINER PRICE: Redirect?

6 MS. BOTSCHNER O'BRIEN: Staff has no
7 redirect for this witness.

8 EXAMINER PRICE: Go back off the record.

9 (Recess taken.)

10 EXAMINER PRICE: Back on the record.
11 Redirect from Staff?

12 MS. BOTSCHNER O'BRIEN: Staff has no
13 redirect, and I renew my motion for admission of
14 Staff Exhibit 1.

15 EXAMINER PRICE: Before we get to the
16 Staff 1 I have a couple questions for Ms. Messenger.

17 - - -

18 EXAMINATION

19 By Examiner Price:

20 Q. If you can turn to page 4, lines 6
21 through 8. I'm not going to read them into the
22 record for you, but essentially your testimony here
23 is consistent with the previous testimony given by
24 Staff witnesses Fortney and Turkenton in prior ESPs,
25 that in the long run it's a wash whether the costs

1 are recovered through distribution rate cases or if
2 they are in ESP?

3 A. That is correct.

4 Q. Page 5, line 1, you've had a lengthy
5 discussion about prudence audits. When we issue an
6 RFP for a given prudence audit, the RFP sets forth in
7 detail what the auditor needs to review; is that
8 correct?

9 A. That is correct. For vegetation
10 management we typically do those audits inhouse.

11 Q. But I'm just talking generally for other
12 ones.

13 A. Yep.

14 Q. So anybody who is interested in what the
15 Staff believes should be in a prudence audit could
16 look at past RFPs, we have been doing these for many
17 years, and get an idea of the entire scope; is that
18 correct?

19 A. Yes, that is correct.

20 Q. And there are many requirements that you
21 don't set forth here that are included in a prudence
22 audit?

23 A. Right.

24 Q. And in fact, there's a NARUC manual
25 discussing what prudence is; is that correct?

1 A. Yes.

2 Q. And the Staff follows that?

3 A. Yes.

4 Q. Finally, if you'd turn to page 6,
5 question and answer 11, Staff recommends a vegetation
6 management total cap significantly less than what the
7 Company proposes. A significant portion of that is
8 the fact that Staff's only proven six year opposed to
9 eight?

10 A. Correct.

11 Q. But there's a significant amount beyond
12 that. Can you explain for the Bench where Staff
13 differs from the Company as to what costs should be
14 recovered under the caps?

15 A. The only difference is we are not
16 agreeing at this time with the Companies' witness
17 Standish on the additional reliability improvements.

18 The caps that the Staff is agreeing with
19 are the caps for the minimum regulatory work that he
20 stated is required -- or that the caps in his
21 testimony represent.

22 Q. Thank you. That's very helpful. You're
23 excused.

24 (Witness excused.)

25 EXAMINER PRICE: At this time we will

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1 take up Staff's motion to admit Staff Exhibit 1. Any
2 opposition? Seeing none it will be admitted.

3 (EXHIBIT ADMITTED INTO EVIDENCE.)

4 EXAMINER PRICE: At this time we will
5 adjourn for the day.

6 But before we adjourn, Mr. Proano had
7 asked the Staff to designate a time for public
8 testimony on the first day of hearing, he made that
9 request, and we're going to say that time is the
10 conclusion of the Intervenor witnesses on Monday.
11 With that, we are adjourned until tomorrow at 9:30.

12 (Discussion off the record.)

13 EXAMINER PRICE: Back on the record. At
14 this time we will adjourn for the day. We'll meet
15 again tomorrow at 9:30. Thank you all. Off the
16 record.

17 (Thereupon, the hearing was
18 adjourned at 3:10 p.m.)

19 - - -

CERTIFICATE

I do hereby certify that the foregoing
is a true and correct transcript of the proceedings
taken by me in this matter on Thursday, November
30th, 2023, and carefully compared with my original
stenographic notes.

Valerie J. Grubaugh,
Court Reporter and Notary
Public in and for the State
of Ohio.

My commission expires August 11, 2026.

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Summary: Transcript of Ohio Edison Company, CEI and The Toledo Edison Company hearing held on 11/30/23 - Volume XI electronically filed by Mr. Ken Spencer on behalf of Armstrong & Okey, Inc. and Grubaugh, Valerie.