

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 Wednesday, December 6, 2023.

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1 Wednesday Morning Session,  
2 December 6, 2023.

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

13 My name is Gregory Price. With me are  
14 Megan Addison and Jacky St. John. We are the  
15 Attorney Examiners assigned to preside over today's  
16 hearing. This is our 14th day of hearing in this  
17 matter.

18 Staff, you may call your next witness.

19 MS. BOTSCHNER-O'BRIEN: Thank you, your  
20 Honor. At this time Staff would like to call  
21 Mr. Devin Mackey to the stand, please.

22 EXAMINER ST. JOHN: Good morning,  
23 Mr. Mackey. Please raise your right hand.

24 (Witness sworn.)

25 EXAMINER ST. JOHN: Thank you.

1 MS. BOTSCHNER-O'BRIEN: Your Honor, I  
2 have placed before the Bench, the court reporter, and  
3 the witness a multi-page document captioned "Direct  
4 Testimony of Devin Mackey" and request that it be  
5 marked for purposes of identification as Staff  
6 Exhibit 8.

7 EXAMINER ST. JOHN: That will be so  
8 marked.

9 (EXHIBIT MARKED FOR IDENTIFICATION.)

10 MS. BOTSCHNER-O'BRIEN: Thank you, your  
11 Honor.

12 - - -

13 DEVIN MACKEY  
14 being first duly sworn, as prescribed by law, was  
15 examined and testified as follows:

16 DIRECT EXAMINATION

17 By Ms. Botschner-O'Brien:

18 Q. Mr. Mackey, would you please state your  
19 name and business address?

20 A. Sure. Devin Mackey and my business  
21 address is 180 East Broad Street, Columbus, Ohio.

22 Q. And do you have before you what -- what's  
23 been marked as Staff Exhibit No. 8?

24 A. I do.

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

1           A.    Yes.  This is my written testimony for  
2 the current case.

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

5           A.    That is correct.

6           Q.    Have you had an opportunity to review  
7 this document prior to taking the stand today?

8           A.    I have.

9           Q.    And as a result of your review, do you  
10 have any changes, corrections, amendments of any  
11 kind?

12          A.    I do not.

13          Q.    Okay.  If I were to ask you the questions  
14 contained in Staff Exhibit 8 today, would your  
15 responses be the same?

16          A.    Yes.

17          Q.    And in your opinion are these responses  
18 truthful and reasonable?

19          A.    Yes.

20                MS. BOTSCHNER-O'BRIEN:  Your Honor, I  
21 respectfully move for the admission of Staff Exhibit  
22 No. 8, subject to cross-examination, and tender this  
23 witness available for cross.

24                EXAMINER ST. JOHN:  Thank you.  And we  
25 will take up that motion at the conclusion of cross.

1 Any questions from OELC?

2 MR. PROANO: No questions, your Honor.

3 Thank you.

4 EXAMINER ST. JOHN: FirstEnergy?

5 MR. ALEXANDER: Thank you, your Honor.

6 - - -

7 CROSS-EXAMINATION

8 By Mr. Alexander:

9 Q. Good morning, Mr. Mackey.

10 A. Good morning.

11 Q. So I would like to start by discussing  
12 Rider DCR.

13 A. Okay.

14 Q. Rider DCR was originally established as  
15 part of the Companies' ESP II proceeding with an  
16 effective date of January 1, 2012, correct?

17 A. I do not recall the exact case that --  
18 where DCR was initially implemented.

19 Q. Okay. But do you agree that Rider DCR  
20 was implemented effective January 1, 2012?

21 A. I do not recall the exact date that it  
22 was implemented.

23 Q. Rider DCR was continued with  
24 modifications in ESP III and ESP IV, correct?

25 A. I do not recall the exact recommendations

1 in those prior ESPs.

2 Q. Do you recall that Rider DCR was included  
3 in ESP III and ESP IV?

4 A. I believe that's correct.

5 Q. So currently Rider DCR includes plant and  
6 FERC Accounts 360 to 374 along with other accounts  
7 including transmission plant, general plant,  
8 intangible plant, and an allocation of Service  
9 Company plant, correct?

10 A. Yes.

11 Q. And since ESP II, Rider DCR has included  
12 the categories of expense proposed by the Companies  
13 in ESP V, correct?

14 A. As I said earlier, I do not recall  
15 exactly when the DCR was approved, but my  
16 understanding is that there has not been any changes  
17 to the plant accounts since it was approved.

18 Q. So in your testimony at page 7, line 14,  
19 you take the position that Rider DCR should only  
20 include plant-in-service from FERC Accounts 360 to  
21 374, correct?

22 A. Yes.

23 Q. So Staff supports continuing DCR  
24 including annual revenue cap increases to account for  
25 new investments during the period from June 1 in 2024

1 through the effective date of the anticipated 2024  
2 distribution rate case, correct?

3 A. Can you repeat the question, please?

4 Q. Absolutely. Staff supports continuing  
5 DCR including annual revenue cap increases to account  
6 for new investment during the period from June 1,  
7 2024, through the effective date of the anticipated  
8 2024 base rate case?

9 A. Yes.

10 Q. So can we agree to call the period from  
11 June 1, 2024, through the effective date of the  
12 anticipated 2024 rate case the bridge period?

13 A. Yes.

14 Q. Okay. Under Staff's proposal during the  
15 bridge period, the Companies would lose the  
16 opportunity to continue recovering costs of  
17 investment outside of FERC Accounts 360 to 374?

18 A. Correct.

19 Q. Now, currently Rider DCR allows the  
20 recovery of investments made in accounts outside of  
21 306 to 374 since May 31, 2007?

22 A. Can you repeat the question, please?

23 Q. Absolutely. Currently Rider DCR allows  
24 the recovery of investments made in accounts outside  
25 of 360 to 374 dating back to May 31, 2007, correct?

1           A.     The DCR that is correct. For the  
2     accounts you had listed previously for distribution,  
3     transmission, intangible, general plant and the  
4     service company.

5           Q.     If Staff's proposal is adopted, those  
6     other accounts would be removed from the calculation  
7     of Rider DCR before the Companies could include those  
8     investments in the 2024 rate case, correct?

9           MS. BOTSCHNER-O'BRIEN: Your Honor,  
10    objection, your Honor.

11          EXAMINER PRICE: Grounds?

12          MS. BOTSCHNER-O'BRIEN: The question is  
13    about the bridge period and recovery should better be  
14    addressed to another Staff witness. This is not part  
15    of Mr. Mackey's testimony.

16          EXAMINER ST. JOHN: I will go ahead and  
17    overrule the objection, and he can answer to the  
18    extent he knows. And if he would prefer flagging it  
19    for another Staff member, he can go ahead and do so  
20    in his answer.

21          A.     Can you repeat the question, please?

22          MR. ALEXANDER: Could we have the  
23    question read, please?

24          EXAMINER ST. JOHN: Yes, please.

25          (Record read.)



1           A.    Can you define what you mean by include  
2           in the rate -- in the upcoming rate case?

3           Q.    Certainly.  Maybe we'll break this into  
4           separate questions to make it a little bit easier.  
5           Currently for the investments that are in Rider DCR  
6           but outside of Accounts 360 to 374, the Companies are  
7           permitted to recover those through Rider DCR,  
8           correct?

9           A.    For the accounts that I previously listed  
10          in my testimony for the transmission, general,  
11          intangible, Service Company, correct.

12          Q.    Okay.  And effective June 1, 2024, under  
13          Staff's proposal, the Companies would no longer be  
14          permitted to include those investments in Rider DCR?

15          A.    Yes.

16          Q.    And it's your testimony that those  
17          investments could be included in the Companies' base  
18          rates, correct?

19          A.    The Company in their upcoming rate case  
20          could propose to include those in their rate -- in  
21          their base rates.

22          Q.    Okay.  And so there will be a period from  
23          June 1, 2024, until the effective date of the rate  
24          case where the Companies would not be permitted to  
25          recover for those investments?

1 MS. BOJKO: Objection, your Honor.

2 EXAMINER ST. JOHN: Grounds?

3 MS. BOJKO: Clear -- seeking  
4 clarification of the question. Counsel keeps saying  
5 effective date of the rate case. Does counsel mean  
6 effective date of new rates established pursuant to  
7 the rate case?

8 MR. ALEXANDER: I do.

9 MS. BOJKO: Thank you.

10 THE WITNESS: Can you please reread the  
11 question?

12 EXAMINER ST. JOHN: Yes, please.

13 (Record read.)

14 A. Correct.

15 Q. And Staff is making that recommendation  
16 despite the fact that those investments have been  
17 found to be reasonable in the annual DCR audits?

18 MS. BOJKO: Objection, your Honor. I  
19 think that lacks foundation and assumes a fact that's  
20 not yet in evidence in this case.

21 EXAMINER PRICE: Can I have the question  
22 back?

23 MR. ALEXANDER: I can rephrase, your  
24 Honor.

25 EXAMINER PRICE: Okay.

1 Q. (By Mr. Alexander) Mr. Mackey, the  
2 Companies' DCR investments are subject to annual  
3 audit, correct?

4 A. Correct.

5 Q. And those audits examine, among other  
6 things, whether the investments made were reasonable?

7 A. That is part of the audit.

8 Q. And so for the accounts we're talking  
9 about right now that are currently permitted to be  
10 recovered in Rider DCR but are outside FERC Accounts  
11 360 to 374, past DCR audits have found those  
12 investments to be reasonable, correct?

13 A. I believe that there are some investments  
14 that in past DCR audits have not been ruled on by the  
15 Commission, that there are some investments that have  
16 been found not to be reasonable that may still be in  
17 rates.

18 EXAMINER PRICE: Could I have that answer  
19 read back, please?

20 (Record read.)

21 Q. (By Mr. Alexander) So, Mr. Mackey, in  
22 your testimony, you calculate the annual impact of  
23 Staff's proposed changes to the eligibility for Rider  
24 DCR to be \$51 million per year? If you want to  
25 reference, page 5, line 5.

1           A.    I believe Staff Witness Healey is more  
2 appropriate to ask that question to.

3           Q.    Did Staff Witness Healey create the table  
4 at page 5, line 5, or is that your calculation?

5           A.    That is my calculation.

6           Q.    Okay. And so for the annual impact  
7 that's shown there for Staff's modifications, is that  
8 \$51 million per year?

9           A.    Staff's recommendation is to reduce the  
10 cap by approximately 51 million.

11          Q.    Thank you.

12               EXAMINER PRICE: Per year.

13               THE WITNESS: Per year, yes.

14          Q.    (By Mr. Alexander) Over the period -- I  
15 know you don't know the start date of Rider DCR, but  
16 over the period of Rider DCR's existence, the  
17 Commission has never once limited Rider DCR to the  
18 recovery of plant-in-service from FERC Accounts 360  
19 to 374 only, correct?

20               MR. FINNIGAN: I am going to object, and  
21 the question is vague. Are you asking for  
22 FirstEnergy or other utilities?

23               MR. ALEXANDER: I am. FirstEnergy. I  
24 guess that was unclear.

25          A.    Can you repeat the question, please?

1 Q. Sure.

2 A. Yes, please.

3 (Record read.)

4 A. FirstEnergy's the only electric company  
5 in Ohio that that is correct for.

6 Q. Rider DCR was most recently extended as  
7 part of ESP IV, correct?

8 A. I believe so.

9 Q. And ESP IV was resolved via a  
10 Stipulation?

11 A. I am not aware of how ESP IV was -- was  
12 resolved.

13 Q. Turning to page 7, lines 16 to 18, of  
14 your testimony, here you provide Staff's belief that  
15 "Plant investment in accounts outside of FERC  
16 accounts 360-374 do not directly relate to  
17 maintaining the reliability of the distribution grid,  
18 which is the purpose of the DCR." Do you see that?

19 A. I do.

20 Q. So investments in FERC accounts outside  
21 of 360 to 374 such as transmission plant, general  
22 plant, intangible plant we discussed earlier are  
23 still used in the provision of distribution service,  
24 correct?

25 A. Can you define to me what you mean by

1 "provision of distribution electric service"?

2 Q. They are part of the Companies'  
3 distribution network used to serve customers.

4 A. Those assets are part of the -- my  
5 understanding is those are part of the distribution  
6 company.

7 Q. Okay. So let's maybe get a little more  
8 granular. Let's start with transmission plant. The  
9 Companies' investment in transmission plant include  
10 investments in substations, transformers, poles, and  
11 wires, correct?

12 A. I believe that's some of the equipment  
13 that's included in those accounts.

14 Q. So, for example, if a customer takes  
15 service at transmission voltage, then the utilities  
16 would make investments to provide distribution  
17 service to that customer in accounts outside of 360  
18 to 374?

19 A. I believe the Companies can make  
20 investments in those accounts for customers that do  
21 not take distribution service and take it at  
22 transmission level.

23 Q. Investments in bulk transmission service  
24 serving the Companies' service territory are owned by  
25 a company called ATSI, correct?

1           A.    I'm not familiar with the exact assets  
2   that ATSI owns or controls.

3           Q.    But you would agree the Companies do not  
4   own assets that provide bulk transmission service to  
5   the region, correct?

6           A.    I do not know.

7           Q.    That ATSI assets are separate from the  
8   investments on the Companies' books, correct?

9           MS. BOTSCHNER-O'BRIEN:  Objection, your  
10   Honor.

11          EXAMINER ST. JOHN:  Grounds?

12          MS. BOTSCHNER-O'BRIEN:  He's indicated he  
13   doesn't have a familiarity with ATSI.

14          MR. ALEXANDER:  I don't think the witness  
15   testified to that.

16          EXAMINER ST. JOHN:  I don't think he said  
17   that exactly, so I'll overrule the objection, and if  
18   he doesn't know, he can certainly say so.

19          THE WITNESS:  Can you reread the  
20   question, please?

21          EXAMINER ST. JOHN:  Yes, please.

22          (Record read.)

23          A.    When you are saying "ATSI," can you spell  
24   out what that acronym means?

25          EXAMINER PRICE:  I think it's American

1 Transmission System, Inc.

2 MR. ALEXANDER: I believe that's correct,  
3 your Honor. I had to double-check with my team. I  
4 wanted to make sure I got it correct.

5 A. My understanding that's a separate  
6 company from the Ohio Companies.

7 Q. Correct. And the assets owned by ATSI do  
8 not appear in the calculation of Rider DCR, correct?

9 A. Correct.

10 Q. Now, let's talk about general plant.  
11 General plant investments include the buildings where  
12 the Companies' employees work such as line shops,  
13 garages, and office, correct?

14 A. I believe that's included in general  
15 plant.

16 Q. And general plant would also include  
17 equipment the Companies and employees use to perform  
18 their job duties including computers, vehicles, tools  
19 used for construction and location devices?

20 A. Correct.

21 Q. And now let's talk about intangible  
22 plant. Intangible plant investments include  
23 information technology systems that perform functions  
24 such as time reporting, work management, cost  
25 tracking, and system design and mapping, correct?



1           A.    I know it does include IT, informational  
2           technology, equipment. I am not familiar with what  
3           all is included in terms of what the scope of IT  
4           equipment.

5           Q.    And would you agree that investments in  
6           general plant and intangible plant are assets that  
7           support the Companies' ability to manage and operate  
8           the distribution system?

9           A.    I believe those assets can be used for  
10          many number of things for FirstEnergy and the  
11          Companies. Distribution could be one item, but it  
12          could be used for other things, other outside of  
13          distribution purposes.

14          Q.    Would you agree that investments in  
15          general plant and intangible plant can contribute to  
16          distribution system reliability and customer  
17          satisfaction?

18          A.    I'm not sure.

19          Q.    Would you agree that investments in  
20          transmission, general, and intangible plant are  
21          critical to the Companies' ability to manage and  
22          operate a reliable and safe distribution system?

23          A.    I'm not fully sure.

24          Q.    At page 7, staying on page 7, line 18,  
25          you provide your belief that investments would be

1 more -- strike that.

2 At page 7, line 18, you provide your  
3 belief that investments in FERC accounts outside of  
4 360 to 374 are more appropriately recovered through  
5 other cost recovery mechanisms such as base rates,  
6 correct?

7 A. Yes.

8 Q. So how does your position that these  
9 costs would be appropriate to recover in a base rate  
10 case relate to your statement at page 7, line 16,  
11 that these investments "do not directly relate to  
12 maintaining the reliability of the distribution  
13 grid"?

14 A. The review of those assets in the base  
15 rate case is outside the scope of my testimony.

16 EXAMINER PRICE: Could I have the  
17 question back, please?

18 (Record read.)

19 EXAMINER PRICE: So you're saying now  
20 that you do not believe they are necessarily  
21 recoverable in the base rate case?

22 THE WITNESS: No, I am not saying they  
23 are not -- they potentially could not be recoverable  
24 in a base rate case. I am saying that their  
25 treatment in a base rate case is outside of what

1 would occur in a base rate case, would be outside of  
2 the scope of this ESP.

3 MR. ALEXANDER: Your Honor, were you  
4 finished?

5 EXAMINER PRICE: I'm not sure. Proceed  
6 while I mull this over.

7 Q. (By Mr. Alexander) Okay. Mr. Mackey, I  
8 would like to follow up on that a bit. I am not  
9 asking for a determination on recoverability in the  
10 rate case at this point. I am just trying to  
11 understand these -- these two positions. If the  
12 investments would be more appropriate recovered  
13 through base rates, why are you taking the position  
14 that they "do not directly relate to maintaining the  
15 reliability of the distribution grid"?

16 A. The investments in the accounts outside  
17 of the distribution accounts 360 to 374, if they  
18 impact the distribution system, are more indirect  
19 impacts and not direct impacts.

20 Q. Okay. Understanding that you are  
21 recommending that investments outside of FERC  
22 Accounts 360 to 374 should be recovered in a base  
23 rate case, did you consider whether there might be  
24 any benefits to customers if those investments were  
25 continued to be recovered in Rider DCR?

1           A.    I did not.

2           Q.    Rider DCR is updated on a quarterly  
3 basis, correct?

4           A.    Yes.

5           Q.    And if these plant-in-service investments  
6 outside of FERC Accounts 360 to 374 were recovered in  
7 base rates as you propose, then there would be no  
8 quarterly updates for those accounts, correct?

9           A.    Consistent with the other three Ohio  
10 utilities, that would be correct.

11          Q.    And Rider DCR is subject to comprehensive  
12 audits every year by a third-party auditor, correct?

13          A.    Yes.

14          Q.    And if these plant-in-service investments  
15 outside of FERC Accounts 360 to 374 were recovered in  
16 base rates, then there would be no comprehensive  
17 independent audit of those investments annually,  
18 correct?

19          A.    Those investments would be audited if and  
20 when the Company would propose a new rate case, and  
21 Staff would complete that review typically but may  
22 out -- may -- Staff reserves the right to have an  
23 outside auditor to do that as well.

24          Q.    But that base case review you mentioned  
25 would not be conducted annually, correct?

1 A. Correct.

2 Q. The annual Rider DCR audits are focused  
3 specifically on costs included in Rider DCR, correct?

4 A. Yes.

5 Q. Whereas, in a rate case those costs would  
6 be evaluated as part of a broader review of all  
7 costs, correct?

8 A. Correct.

9 Q. Quarterly updates in the annual  
10 independent audits facilitate a timelier review of  
11 distribution investments than would otherwise occur  
12 between base rate cases, correct?

13 EXAMINER PRICE: Can I have the question  
14 back, please?

15 (Record read.)

16 A. Whether in the DCR audit or outside -- or  
17 in the base rate case, costs would be timely audited  
18 before they would be potentially going into rates.

19 Q. The costs would be audited more  
20 frequently if they were included in Rider DCR,  
21 correct?

22 A. Correct.

23 EXAMINER PRICE: Mr. Mackey, the Company  
24 could file a rate case every 275 days, can't they?

25 THE WITNESS: Correct, yes. So if they

1 chose to do that then --

2 EXAMINER PRICE: Or they can do an annual  
3 rate case.

4 THE WITNESS: Yes, yeah. They do have  
5 that right.

6 EXAMINER PRICE: If they did that, the  
7 period of review would be the same.

8 THE WITNESS: Correct. Or under your  
9 example for the 275, it would be actually more  
10 frequent through the rate case.

11 MR. ALEXANDER: Thanks for bringing that  
12 up, your Honor.

13 Q. (By Mr. Alexander) Mr. Mackey, is  
14 FirstEnergy currently operating under a base rate  
15 freeze?

16 A. That is my understanding.

17 Q. And do you know how long FirstEnergy has  
18 been operating under a Commission-approved base rate  
19 freeze?

20 A. I do not.

21 Q. Would you agree that it's been a period  
22 of several years?

23 A. I do not know the exact time.

24 Q. And -- strike that.

25 So recovery of costs through Rider DCR

1 also allows for the costs to be reconcilable,  
2 correct?

3 A. Can you define what you mean by  
4 "reconcilable"?

5 Q. Certainly. If there is a disallowance,  
6 then customers can receive a credit?

7 A. If the Commission orders a disallowance  
8 in the case, in the annual audit, then the Companies  
9 would be required to make that adjustment in the  
10 Rider DCR.

11 Q. And recovery of costs through Rider DCR  
12 is subject to revenue caps which do not appear in  
13 base rates, correct?

14 A. There are cost caps in the DCR. Base  
15 rates are what they were approved in the last rate  
16 case.

17 Q. So changing topics slightly, pages 7 and  
18 8, you make the recommendation "to bring the  
19 Companies more in line with similar riders the  
20 Commission has approved for AEP Ohio, AES Ohio, and  
21 Duke Energy Ohio." Do you see that?

22 A. Yes.

23 Q. Would you agree that each individual  
24 electric distribution utility filing an SSO  
25 application has different financial needs?

1           A.    I'm not sure.

2           Q.    Would you agree that each individual  
3   utility filing an SSO application has different  
4   distribution operations?

5           A.    If you are asking do they have different  
6   operational territories, that is correct.

7           Q.    Similar but slightly different.  I was  
8   asking if the way they operate their systems are  
9   different.

10          A.    I'm not sure.

11          Q.    Would you agree that each distribution  
12   utility filing an SSO application has different  
13   maintenance needs?

14          A.    I'm not sure.

15          Q.    Would you agree that the electric  
16   distribution utility ESPs that you reference in your  
17   testimony are not all the same?

18                MS. BOTSCHNER-O'BRIEN:  I'm going to  
19   object.

20                EXAMINER ST. JOHN:  Grounds?

21                MS. BOTSCHNER-O'BRIEN:  It was kind of  
22   vague, what he means by all the same.

23                MR. ALEXANDER:  I can clarify, your  
24   Honor.

25                EXAMINER ST. JOHN:  Thank you.



1           Q.     (By Mr. Alexander) Mr. Mackey, there are  
2 differences in the electric security plans for the  
3 three utilities that you reference, correct?

4           A.     I believe there are.

5           Q.     For example, some distribution utilities  
6 currently have storm recovery riders while others do  
7 not, correct?

8           A.     I do not know that.

9           Q.     And some distribution utilities have  
10 Vegetation Management Cost Recovery Riders while  
11 others do not?

12          A.     I'm not sure.

13          Q.     And some electric distribution utilities  
14 are subject to base rate freezes while others are  
15 not?

16          A.     I'm not -- I'm not fully sure.

17          Q.     Would you agree that each ESP contains a  
18 package of various provisions that are designed to  
19 address the needs, concerns, and interests specific  
20 to that utility and its customers?

21                 THE WITNESS: Can you reread the  
22 question, please?

23                 EXAMINER ST. JOHN: Yes, please.

24                 (Record read.)

25          A.     That is outside the scope of my

1 testimony.

2 Q. Would you agree that it would be  
3 unreasonable to examine the merits of an ESP  
4 application without considering all the proposed  
5 components of that application?

6 A. I believe that's also outside the scope  
7 of my testimony.

8 EXAMINER PRICE: Can I have the question  
9 back, please?

10 (Record read.)

11 EXAMINER PRICE: Why do you believe  
12 that's outside the scope of your testimony? You  
13 compare the FirstEnergy's ESP to ESPs with three  
14 other utilities in your testimony.

15 THE WITNESS: My scope here is limited to  
16 these specific riders and not those ESPs as a whole.

17 EXAMINER PRICE: So you are unaware  
18 whether those ESPs contain other provisions which may  
19 be more beneficial to the other three EDUs than the  
20 FirstEnergy ESP is to FirstEnergy?

21 THE WITNESS: I'm aware that each of the  
22 ESPs may have differences. As far as what is more or  
23 less beneficial, I am not aware of that.

24 EXAMINER PRICE: Fair enough.

25 Thank you, Mr. Alexander.

1 Q. (By Mr. Alexander) Does Staff review the  
2 individual riders proposed in an ESP in isolation or  
3 as part of an overall package?

4 A. Staff reviews the whole application as a  
5 package.

6 EXAMINER PRICE: But you are not  
7 necessarily the Staff witness testifying to the  
8 entire package.

9 THE WITNESS: Correct. My -- my  
10 testimony is limited to the three riders that I  
11 describe in my testimony.

12 EXAMINER PRICE: Would Mr. Healey be the  
13 appropriate person to ask questions regarding the  
14 entire package?

15 THE WITNESS: Correct.

16 Q. (By Mr. Alexander) Okay. Shifting topics  
17 slightly, Mr. Mackey, under the current DCR the  
18 Companies are subject to annual revenue caps,  
19 correct?

20 A. Correct.

21 Q. And in the ESP V, the companies have  
22 proposed annual revenue caps of beginning in the  
23 first year of ESP V between 15 million to 21 million  
24 depending on the results of certain reliability  
25 metrics, correct?

1           A.     Correct.

2           Q.     And Staff agrees with this specific  
3     proposal by the Companies since these amounts are  
4     "below the 3 percent to 4 percent annual growth rate  
5     the Commission has previously approved." And I  
6     didn't give you that line reference, so I'll give it  
7     to you. I will withdraw that question and give you  
8     the right spot. Please turn to page 3, line 18, of  
9     your testimony.

10          A.     Okay. Can you repeat the quote, please?

11          Q.     I can. Sorry about that. Staff agrees  
12     with this specific proposal by the Companies since  
13     these amounts are "below the 3 percent to 4 percent  
14     annual growth rate the Commission has previously  
15     approved." Do you see that?

16          A.     Yes.

17          Q.     You then cite in footnote 2 of your  
18     testimony a Commission order in the AEP Ohio ESP  
19     proceeding Case No. 13-2385-EL-SSO, correct?

20          A.     Yes.

21          Q.     Now, in that case the Commission  
22     reiterated that the annual revenue caps for riders  
23     like Rider DCR, or Rider DIR for AEP Ohio, should  
24     reflect the annual growth rate as a percentage of  
25     customer-based distribution charges of 3 to 4

1 percent, correct?

2 A. I do not remember the exact language that  
3 was used in the ESP order.

4 Q. Sure. But the recommendation of 3 to  
5 4 percent came from that order that you cite in your  
6 testimony, correct?

7 A. Correct.

8 Q. And just to clarify, it's 3 to 4 percent  
9 of base distribution revenue, correct?

10 A. Correct.

11 Q. Now, the Companies' proposal would be  
12 equal to 1.5 to 2.1 percent of its current base  
13 distribution revenue, correct?

14 A. I do not recall the exact percentages of  
15 the base distribution revenue from that -- that the  
16 Company had proposed.

17 Q. Do you recall that, you don't know the  
18 exact percentage, the Companies' proposal is less  
19 than 3 percent of base distribution revenue?

20 A. Yes, as I state in my testimony.

21 Q. And would you agree the Companies' annual  
22 cap percentage increases are less than the annual cap  
23 percentage increases for the other distribution  
24 utilities you cite in your testimony?

25 A. Are you talking on a year by year --

1 specific year basis or overall?

2 Q. Year by year.

3 A. I do not recall exactly. There may be  
4 some -- there may be some of them that do have a  
5 year-to-year increase below what the Companies  
6 have -- have proposed.

7 Q. Okay. Let's maybe drill down on that a  
8 little bit. You are familiar with the recent AES  
9 Ohio ESP?

10 A. I'm generally familiar with some  
11 provisions of that.

12 Q. And you would agree that the AES Ohio ESP  
13 approved annual cap increases are between 3 and  
14 4 percent per year?

15 A. I believe so, yes.

16 Q. And you also cite the recent AEP Ohio  
17 ESP?

18 A. Yes.

19 Q. And the AEP Ohio ESP had annual cap  
20 increases of more than 3 percent per year?

21 A. I do not recall the exact percentages of  
22 the annual increases in the AEP case.

23 Q. Would you agree that the annual increases  
24 from the AEP case are higher than the annual  
25 increases proposed by the Companies in this case as a

1 percentage basis?

2 MS. BOTSCHNER-O'BRIEN: Objection.

3 EXAMINER ST. JOHN: Grounds?

4 MS. BOTSCHNER-O'BRIEN: He's already --  
5 he's testified he does not recall the percentages.

6 MR. ALEXANDER: Your Honor, he testified  
7 he didn't know the exact percentage, and so this  
8 question is my attempt to determine if he knows which  
9 one is higher.

10 EXAMINER ST. JOHN: He can answer if he  
11 knows.

12 A. I don't recall. The caps are structured  
13 differently in each case.

14 Q. When the Companies' base rate case is  
15 completed, then the investments currently being  
16 recovered through Rider DCR would be transitioned to  
17 base distribution revenue, correct?

18 A. Can you repeat the question, please?

19 Q. Certainly. When the Companies' base rate  
20 case is completed, the investments currently being  
21 recovered through Rider DCR would be transitioned to  
22 base distribution revenue, correct?

23 A. And you're referencing just the  
24 distribution assets, correct?

25 Q. All assets currently being recovered in

1 Rider DCR would be transitioned to base distribution  
2 revenue, correct?

3 EXAMINER ST. JOHN: Just to clarify, are  
4 you -- are you talking about including FERC  
5 Account -- excuse me, including Accounts 360 to 374  
6 or excluding those?

7 MR. ALEXANDER: Including both the 360 to  
8 374 accounts as well as the investments in the other  
9 accounts that would be excluded under Staff's  
10 proposal, all of those would be transitioned to base  
11 distribution rates, of course, subject to any  
12 adjustment the Commission may make for specific  
13 investments.

14 EXAMINER ST. JOHN: Thank you for that  
15 clarification.

16 Mr. Mackey, do you need the question  
17 reread after my interruption?

18 THE WITNESS: Can the question be reread  
19 and rephrased with that addition?

20 Q. (By Mr. Alexander) How about I just  
21 rephrase it?

22 A. That might be helpful. Thank you.

23 Q. Okay. So the amounts currently being  
24 recovered in Rider DCR will be transitioned to the  
25 Companies' base rates subject to any adjustments the



1 Commission may make for specific investments after  
2 the 2024 rate case, correct?

3 A. After the Commission order in the base  
4 rate case, the plant-in-service approved in the rate  
5 case as of the date certain would go into base rates.

6 MR. ALEXANDER: Could I just have that  
7 answer back, please?

8 EXAMINER ST. JOHN: Yes, please.

9 (Record read.)

10 Q. And the plant-in-service to be approved  
11 in that rate case would include the assets currently  
12 being recovered through Rider DCR, correct?

13 A. That would be subject to the review that  
14 Staff would complete in the base rate case.

15 Q. So is that a yes with that clarification?

16 A. Depending on the date certain of it, I  
17 would agree.

18 Q. And so the Companies' proposed caps are  
19 not proposed to be modified after the effective date  
20 of the base rate case, correct?

21 A. Can you rephrase that, please?

22 Q. Certainly. The Companies' proposed caps  
23 are between 15 and 21 million dollars per year for  
24 the entirety of the ESP V, correct?

25 A. The Company is proposing an annual

1 increase of the caps between 15 to 21 million for the  
2 entire length of the ESP to be reset after the next  
3 base rate case.

4 Q. Well, when you say to be reset, Rider DCR  
5 would be reset, but the increases in the caps would  
6 remain between 15 and 21 million dollars per year  
7 through the entirety of the ESP V, correct?

8 A. The annual increase, yes.

9 Q. Okay. And so as a percentage of base  
10 distribution revenue, if amounts currently in Rider  
11 DCR are included in base rates, then the annual  
12 increases as a percentage of base distribution  
13 revenue will be decreased, correct?

14 A. It's possible.

15 Q. That would just be the math, right?

16 A. Yes.

17 Q. Okay. In your testimony you take the  
18 position for the Distribution Investment Riders,  
19 consistency with other electric distribution  
20 utilities in the state is an important objective?

21 A. I'm sorry. Can you repeat the question?

22 Q. Certainly. Your testimony takes the  
23 position that for the Distribution Investment Riders,  
24 consistency with other electric distribution  
25 utilities in the state is an important objective,

1 correct?

2 A. Can you cite in my testimony where I  
3 state that?

4 Q. Certainly. I believe it's page 8, line  
5 1.

6 MS. BOTSCHNER-O'BRIEN: I'm going to  
7 object.

8 EXAMINER ST. JOHN: Grounds?

9 MS. BOTSCHNER-O'BRIEN: Mischaracterizing  
10 the actual testimony. It isn't exactly what he says  
11 at that point.

12 MR. ALEXANDER: I didn't claim it was a  
13 quote, your Honor.

14 MS. BOTSCHNER-O'BRIEN: I didn't say I am  
15 objecting because it's a quote. I am objecting  
16 because it mischaracterizes his testimony.

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

19 (Record read.)

20 MS. BOTSCHNER-O'BRIEN: And, your Honor,  
21 just to clarify, that isn't what exactly he is saying  
22 there, that it is an important objective.

23 EXAMINER ST. JOHN: I would agree. I'll  
24 sustain the objection. Could you --

25 MR. ALEXANDER: I will rephrase, your

1 Honor.

2 EXAMINER ST. JOHN: Thank you.

3 Q. (By Mr. Alexander) Mr. Mackey, do you  
4 believe that for Distribution Investment Riders,  
5 consistency with other electric distribution  
6 utilities in the state is an important objective?

7 A. In my testimony I describe the areas  
8 where Staff does believe that consistency with the  
9 other electric companies in the state should be  
10 occurring.

11 Q. So do you believe that that consistency  
12 is an important objective?

13 A. I think it's important in the areas that  
14 I described in my testimony.

15 Q. Do you believe that consistency of  
16 Distribution Investment Riders should apply to all  
17 aspects of those Distribution Investment Riders?

18 A. I would say for the majority of them but  
19 there are differences in -- in the different  
20 companies.

21 EXAMINER PRICE: Can I have that question  
22 and answer back, please?

23 (Record read.)

24 Q. (By Mr. Alexander) So, Mr. Mackey, are  
25 you agreeing that Staff would support consistency for

1 all aspects of the Distribution Investment Riders?

2 A. No.

3 Q. Does Staff support consistency for the  
4 annual percentage revenue cap increases?

5 A. Staff supports distribution caps that are  
6 no more than 3 to 4 percent of base distribution  
7 revenues.

8 Q. And Staff would support that consistently  
9 among all the distribution utilities?

10 A. Based upon the Commission -- what the  
11 Commission has said, yes.

12 Q. Do you believe that all electric  
13 distribution utilities should have similar annual cap  
14 increases as a percentage of base distribution  
15 rates -- revenues? Sorry. If you need me to repeat  
16 that, I am happy to.

17 A. Yes. Can you repeat the question?

18 Q. Certainly. Do you believe that all  
19 electric distribution utilities should have similar  
20 annual cap increases as a percentage of base  
21 distribution revenue?

22 A. Can you define how this is different than  
23 your previous question?

24 Q. Yes. We added as a percentage of base  
25 distribution revenue. In your answer you mentioned

1 Staff would support no more than 3 to 4 percent, and  
2 so I am following up to determine whether you believe  
3 that the utilities should have a similar annual cap  
4 increase as a percentage of base distribution  
5 revenue.

6 A. I think that depends on what the  
7 companies propose in those cases.

8 Q. Turning back to the table at page 5 of  
9 your testimony. Staff's recommended minimum and  
10 maximum is \$51 million per year less than the  
11 Companies' proposed minimum and maximum; is that  
12 right?

13 A. Per year, yes.

14 Q. And \$51 million reduction is equal to  
15 about 5 percent of the Companies' base distribution  
16 revenue, correct?

17 A. I don't know.

18 Q. But you would agree the effect of the  
19 adjustment during the bridge period would be an  
20 annual reduction of approximately \$51 million per  
21 year?

22 A. It depends upon the level of spend in the  
23 DCR.

24 Q. But your estimate was \$51 million,  
25 correct?

1           A.    My estimate of \$51 million is based upon  
2 the caps. The Company can spend underneath those  
3 caps.

4           Q.    Have you done any analysis as to the  
5 financial impact on the Companies of a revenue  
6 reduction of \$51 million per year?

7                   MS. BOTSCHNER-O'BRIEN:  Objection.

8                   EXAMINER ST. JOHN:  Grounds?

9                   MS. BOTSCHNER-O'BRIEN:  This is beyond  
10 the scope of his testimony.

11                  MR. ALEXANDER:  My question was whether  
12 he had done the analysis.  If it's outside the scope,  
13 he can just tell me that and move on.

14                  EXAMINER ST. JOHN:  Can I have the  
15 question reread, please?

16                           (Record read.)

17                  MS. BOJKO:  Objection, your Honor.  It  
18 assumes facts not in evidence.  He just -- he just  
19 stated that it depends on what the Company spends,  
20 and it may not be a \$51 million reduction.  He just  
21 testified to that.

22                  MR. ALEXANDER:  That question does not  
23 assume any facts.  The question asked if he had done  
24 the analysis of the \$51 million level.  The level  
25 could be different, but I asked about the \$51 million

1 level shown in the witness's testimony.

2 EXAMINER ST. JOHN: I will overrule the  
3 objections and -- I'm sorry. Go ahead.

4 MS. BOTSCHNER-O'BRIEN: I just would  
5 renew my objection. This is beyond the scope of his  
6 testimony and these questions might be better  
7 addressed to Staff Witness Healey.

8 EXAMINER ST. JOHN: Thank you. I will  
9 overrule the objections and the witness can answer if  
10 he knows and the answer may direct questions to other  
11 Staff witnesses if they are more appropriate.

12 A. I believe this question is more  
13 appropriate to be answered by Staff Witness Healey.

14 Q. But I am asking whether -- I am not  
15 asking what Mr. Healey has done. I am asking if you  
16 have done that analysis.

17 A. No, I have not.

18 Q. For the other three utilities cited in  
19 your testimony with Distribution Investment Riders,  
20 the annual increases included in those Electric  
21 Security Plans were not offset by a reduction in  
22 which accounts were eligible for inclusion in the  
23 Distribution Investment Riders, correct?

24 A. Can you repeat the question, please?

25 Q. Sure. I'll try and be more specific.



1 That might make this easier. So earlier today we  
2 discussed the AES Ohio Electric Security Plan. Do  
3 you recall that?

4 A. Correct.

5 Q. And AES Ohio has a Distribution  
6 Investment Rider?

7 A. Yes.

8 Q. And that Distribution Investment Rider  
9 increases between 3 and 4 percent per year as a  
10 percentage of base distribution revenues?

11 A. Yes.

12 Q. And when the Commission approved that  
13 Electric Security Plan, it did not make changes to  
14 the accounts which were eligible to be included in  
15 that Distribution Investment Rider, correct?

16 A. In AES Ohio the DIR was a new rider.

17 Q. AES Ohio had a Distribution Investment  
18 Rider suspended. You know what? Strike that.

19 Let's move to AEP. So AEP Ohio has a  
20 Distribution Investment Rider, correct?

21 A. Correct.

22 Q. And AEP Ohio received annual increases in  
23 the caps as part of its most recent Electric Security  
24 Plan?

25 MR. PRITCHARD: Objection.

1 EXAMINER ST. JOHN: Grounds?

2 MR. PRITCHARD: Vague as to whether we  
3 are talking about ESP IV or the pending Stipulation  
4 in the ESP V.

5 Q. (By Mr. Alexander) Mr. Mackey, let's stay  
6 focused on ESP IV, not the pending AEP Stipulation  
7 which has not yet been approved by the Commission.

8 A. Okay.

9 Q. And so with that clarification, would you  
10 like me to repeat the question?

11 A. Yes, please.

12 Q. AEP Ohio's current ESP includes a  
13 Distribution Investment Rider, correct?

14 A. Correct.

15 Q. And when the Commission approved that  
16 Distribution Investment Rider, it also approved  
17 annual cap increases, correct?

18 A. Correct.

19 Q. And the Commission did not change the  
20 eligibility requirements as part of its Distribution  
21 Investment Rider decision?

22 MS. BOJKO: Objection. Vague as to  
23 change. Change from what? We don't know what the  
24 application, what counsel is talking about. Change  
25 from what?

1 EXAMINER ST. JOHN: Could you clarify?

2 MR. ALEXANDER: Certainly. You know  
3 what? I can cite those orders, your Honor. I am  
4 going to move on.

5 Q. (By Mr. Alexander) Staff recommends that  
6 the Companies should be prohibited from recovering  
7 any revenue requirement above their revenue caps in a  
8 given year, correct?

9 A. Can you cite where I say that in my  
10 testimony, please?

11 Q. Certainly. I believe it's page 9, line  
12 17. Let's see if that's correct. Yes, that was the  
13 correct reference. Do you see that?

14 A. You said line 9 --

15 Q. Page 9.

16 A. Line 17?

17 Q. Line 17, yeah.

18 A. What specific language are you quoting  
19 there?

20 Q. I wasn't quoting. It's Staff's  
21 recommendation that the Companies should be  
22 prohibited from recovering any revenue requirements  
23 above the revenue cap in a given year, correct?

24 A. Correct.

25 Q. And currently if the Companies exceed

1 their Rider DCR revenue requirement cap in a given  
2 year, they can recover the overage in the following  
3 year subject to that year's applicable cap, correct?

4 A. FirstEnergy is the only Ohio utility that  
5 that is correct for.

6 Q. And currently for any year the cumulative  
7 revenue collected under Rider DCR is less than the  
8 cumulative revenue cap allowance, then the difference  
9 between the revenue collected and the cap shall  
10 increase the level of the subsequent period's cap,  
11 correct?

12 A. FirstEnergy is the only utility that that  
13 is correct for.

14 Q. And so this modification has the  
15 potential to decrease the Companies' recovery beyond  
16 the \$51 million shown in your testimony, correct?

17 A. If FirstEnergy was to spend below their  
18 revenue cap in a -- in any given year, that could be  
19 correct.

20 Q. And turn to page 16, line 2, where you  
21 propose to modify the individual Company revenue caps  
22 to be 60 percent for CEI, 65 percent for Ohio Edison,  
23 and 15 percent for Toledo Edison. Do you see that?

24 A. Yes.

25 Q. How were those percentages calculated?

1           A.    I compared their distribution plant of  
2 each of the EDUs to the total distribution plant of  
3 the first -- or the -- excuse me. Strike that.

4                    I do not recall exactly how I came up  
5 with those figures at this point.

6           Q.    And did you ever analyze the impact of  
7 that proposed modification?

8           A.    Impact to what?

9           Q.    To the manner in which the revenue caps  
10 would impact customers.

11          A.    Impact customers in what specific ways?

12          Q.    I'll ask this a different way. Have you  
13 analyzed the impact this change in the revenue caps  
14 would impact the rates charged to customers?

15          A.    No, I have not.

16          Q.    Changing topics, can you please turn to  
17 page 22, line 17?

18          A.    Okay.

19          Q.    So the Companies have proposed four years  
20 of energy efficiency programs with cost to be  
21 recovered over an eight-year period, correct?

22          A.    For the Rider EEC, that's correct.

23          Q.    And Staff Witness Braun testifies that  
24 the energy efficiency programs should be modified and  
25 limited to three years, correct?

1           A.     That is my understanding.

2           Q.     And I would like to clarify your  
3 position, page 22 at line 15, as to the appropriate  
4 way the rider would operate under both the Companies'  
5 proposal and the Staff's proposal. So starting with  
6 the Companies' proposal, please assume the Commission  
7 approves cost recovery for four-year program as  
8 proposed by the Companies. If that happened, is it  
9 Staff's recommendation the Company should recover  
10 Rider EEC costs over four years or over eight years?

11          A.     Four years.

12          Q.     Now turning to the Staff proposed  
13 limitation of the program to three years. Is it  
14 Staff's recommendation the Companies should recover  
15 Rider EEC costs over three years or six years?

16          A.     Three years.

17          Q.     At page 22, line 3, you have a  
18 recommendation that I didn't see expanded on later in  
19 your testimony where you state "The Companies should  
20 only be authorized to recover expenses in the rider  
21 that the Companies have already incurred and that are  
22 known and measurable." Do you see that?

23          A.     Yes.

24          Q.     So is your intention here that the  
25 Companies should not utilize projected expenses in

1 the calculation of the rider?

2 A. Yes.

3 Q. At page 23, line 6, you state that "Staff  
4 recommends that the Companies should not benefit and  
5 accrue any carrying charges for deferring recovery of  
6 expenses that could be recovered in a prior EEC  
7 filing." Do you see that?

8 A. Yes.

9 Q. So is it your recommendation that the  
10 Companies could recover carrying charges between the  
11 period after the investment was made until the  
12 expense could have been recovered in an EEC filing?

13 A. No.

14 Q. And so your recommendation is that there  
15 would be -- strike that.

16 There would be a lag between the time in  
17 which the Companies made the investment and the time  
18 in which the cost was eligible for recovery, correct?

19 A. There would be some lag.

20 Q. And what is your recommendation regarding  
21 how the Companies would recover the costs associated  
22 with that lag if they are not permitted to use  
23 projected balances for recovery of carrying costs?

24 A. Staff doesn't have a proposal for that.

25 Q. Okay. Please turn to page 19, line 5.

1 Here Staff recommends when the Companies file their  
2 next rate case all Grid Mod plant-in-service and  
3 expense costs should no longer be eligible for  
4 recovery in Rider AMI; is that correct?

5 A. What was the line again?

6 Q. Line 5.

7 A. Yes. That's what I state.

8 Q. Isn't the determination of which assets  
9 should be included in rate base something the  
10 Commission will determine in the base rate case?

11 A. The Company can propose to move these  
12 costs into base rates in their rate case, and then  
13 the Commission can rule on that request.

14 Q. And so it's not Staff's intention to  
15 limit what the Commission can consider as part of the  
16 base rate case proceeding, correct?

17 A. Correct.

18 Q. Turning to page 18, line 11, here you  
19 recommend that no new Ohio site deployment pilot  
20 costs should be included in Rider AMI, correct?

21 A. Correct.

22 Q. So I would like to clarify something  
23 about that proposal. For pilot costs that have  
24 already been incurred by the Companies and that are  
25 included in Rider AMI, subject to adjustments



1 directed in the Rider AMI audits, those costs would  
2 continue to be recovered by the Companies until they  
3 are included in base rates, correct?

4 A. Repeat the question, please.

5 Q. I'll come at it a slightly different way.

6 A. Okay.

7 Q. So your proposal is that during the term  
8 of ESP V, any new Ohio site deployment costs should  
9 not be permitted to be included in Rider AMI,  
10 correct?

11 A. Correct.

12 Q. Okay. So I would like to focus on the  
13 costs which have already been incurred prior to the  
14 effective date of ESP V.

15 A. Okay.

16 Q. And are currently recovered -- I will  
17 start with this. Are those costs currently recovered  
18 through Rider AMI?

19 A. The Company is currently recovering those  
20 costs in Rider -- some of those costs in Rider AMI.

21 Q. Okay. And is your proposal that those  
22 costs which are currently recovered in Rider AMI may  
23 continue to be recovered there until the costs are  
24 included in base rates?

25 A. Subject to the annual audits and the

1 findings in those annual audits, the pilot costs may  
2 continue -- the prior pilot costs minus any  
3 Commission adjustments may continue in that rider  
4 until new base rates.

5 MR. ALEXANDER: Thank you, Mr. Mackey.  
6 No further questions.

7 EXAMINER ST. JOHN: Thank you. And let's  
8 go off the record for a brief moment.

9 (Discussion off the record.)

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

12 Mr. Kurtz, any questions?

13 MR. KURTZ: No questions.

14 EXAMINER ADDISON: Thank you.

15 Mr. Pritchard?

16 MR. PRITCHARD: Yes, your Honor.

17 - - -

18 CROSS-EXAMINATION

19 By Mr. Pritchard:

20 Q. Good morning Mr. Mackey. Are you aware  
21 that Staff Witness Braun and -- strike that.

22 Were you here yesterday when I was asking  
23 Ms. Braun questions about her testimony on the  
24 Companies' energy efficiency proposal didn't include  
25 any shared savings or financial incentives in the

1 Companies' proposed budgets?

2 A. I was not.

3 Q. Okay. Let me just get to it directly  
4 then. As proposed by the Company, they have carrying  
5 charges proposed that you were just discussing with  
6 Mr. Alexander, correct?

7 A. Correct.

8 Q. And as to the carrying charge component  
9 of the Company's proposal, you understand that  
10 there's an interest rate at the weighted average cost  
11 of capital, correct?

12 A. Yes.

13 Q. And that would, if adopted as proposed by  
14 the Company, provide a financial incentive for the  
15 Company, correct?

16 A. Can you define financial incentive?

17 Q. Yes. The weighted average cost to  
18 capital carrying charge includes a return on equity  
19 component, correct?

20 A. Yes.

21 Q. And so if the Commission approved the  
22 Companies' proposal as proposed with the carrying  
23 charge, there would be a financial incentive to the  
24 Company, correct?

25 A. I believe so.

1 MR. PRITCHARD: That's all I have. Thank  
2 you, your Honor.

3 EXAMINER ADDISON: Thank you very much.  
4 Mr. Finnigan?

5 MR. FINNIGAN: No questions, your Honor.

6 EXAMINER ADDISON: Thank you.  
7 Ms. Bojko?

8 MS. BOJKO: Yes, just a few clarifying  
9 questions.

10 - - -

11 CROSS-EXAMINATION

12 By Ms. Bojko:

13 Q. Good morning, Mr. Mackey.

14 A. Good morning.

15 Q. I want to refer back to that chart on  
16 page 5 and clarify here what you are demonstrating.  
17 As I understand this chart in your testimony this  
18 morning, the Companies' proposed minimum and maximum  
19 includes costs for plants outside of FERC Accounts  
20 360 to 374; is that correct?

21 A. Yes.

22 Q. And then the Staff's min and max do not  
23 include those items; is that correct?

24 A. Correct. It's limited to distribution  
25 accounts.

1           Q.    In -- are there any other differences in  
2   your -- the amounts shown in your chart besides the  
3   FERC Accounts 360 to 374 from the Companies' proposal  
4   to Staff's proposal?

5           A.    No.

6           Q.    And if we were to remove those --  
7   those -- strike that. The amounts in the charts are  
8   assuming the baseline with and without those  
9   accounts, and then it adds 15 million per year for  
10   the minimum and then 21 million per year for the  
11   maximum; is that correct?

12          A.    Yes.

13          Q.    And with that understanding, the  
14   Companies proposed minimum is 390 million; is that  
15   right?

16          A.    Their starting point is based upon the  
17   current caps that are in effect and that amount is  
18   390 million.

19          Q.    Okay. And Staff's starting point is the  
20   339 million you cite to in your testimony, correct?

21          A.    Correct.

22          Q.    And then on page 8 of your testimony, you  
23   recommend -- you also recommend excluding projected  
24   plant; is that correct?

25          A.    Yes.

1           Q.    But that projected plant, an amount  
2 associated with plant, is not reflected in your chart  
3 on page 5, is it?

4           A.    No.

5           Q.    Do you know what the estimated value of  
6 the projected plant that you are recommending  
7 excluding is?

8           A.    I do not.

9           Q.    Now I want to turn to page 18 of your  
10 testimony, please. The last Q and A, No. 30, here  
11 you explain why Staff recommends no pilot costs be  
12 included in the AMI Rider; is that correct?

13          A.    By no new costs, correct.

14          Q.    And you explain that there's an  
15 outstanding pretty old 2009 case that the Commission  
16 hasn't ruled upon; is that right?

17          A.    Can you --

18          Q.    Oh, strike that.

19               EXAMINER ADDISON: Thank you.

20          Q.    (By Ms. Bojko) Oh, sorry. This case that  
21 you are referring to, the 09-1820, the Commission  
22 approved pilot costs, and the Companies have  
23 continued to include those costs that have occurred  
24 past the Commission's end date of the approval; is  
25 that right?

1 A. Yes.

2 Q. And you're recommending that the costs  
3 should be disallowed; is that correct?

4 A. I'm recommending that no new pilot costs  
5 be included in this rider.

6 Q. But on line 16 through 18 -- I am trying  
7 to understand your testimony on line 16 through 18.  
8 You state that Staff has recommended in the annual  
9 AMI Rider audits that the costs be disallowed; is  
10 that right?

11 A. In the annual rider audits, we have  
12 recommended that costs out -- since June 1, 2019,  
13 should be disallowed.

14 Q. Okay. And that's the case that is still  
15 pending in front of the Commission.

16 A. Yes.

17 Q. Okay. But then you say "To end this  
18 issue," do you see that phrase?

19 A. Yes.

20 Q. You are not suggesting that by ending  
21 this issue. You are withdrawing your recommendation  
22 of disallowance in those pending cases, are you?

23 A. No, I am not.

24 Q. Could you turn to page 19, please, of  
25 your testimony.

1 A. Okay.

2 Q. On line 17 through 19, you talk about in  
3 the next rate case that the cost savings and benefits  
4 of Grid Mod I should be recognized in base rates. Do  
5 you see that?

6 A. I do.

7 Q. Have you quantified the cost savings that  
8 you are referencing in this sentence?

9 A. No, I have not.

10 Q. Have you quantified the benefits that you  
11 are referencing in this sentence?

12 A. I have not.

13 MS. BOJKO: That's all I have. Thank  
14 you.

15 Thank you, Mr. Mackey.

16 EXAMINER ADDISON: Thank you very much.  
17 Ms. Whitfield?

18 MS. WHITFIELD: No questions, your Honor.

19 EXAMINER ADDISON: Mr. Lang?

20 MR. LANG: No questions, your Honor.

21 EXAMINER ADDISON: Mr. Hays?

22 MR. HAYS: No, thank you, your Honor.

23 EXAMINER ADDISON: Mr. Dunn?

24 MR. DUNN: No questions, your Honor.

25 EXAMINER ADDISON: Thank you.



1 Mr. Whitt?

2 MR. WHITT: No questions.

3 EXAMINER ADDISON: Mr. Lavanga?

4 MR. LAVANGA: No questions, your Honor.

5 EXAMINER ADDISON: Mr. Gibbs?

6 MR. GIBBS: No questions, thank you.

7 EXAMINER ADDISON: Mr. Dove, all the way  
8 in the back?

9 MR. DOVE: No questions, your Honor.  
10 Thank you.

11 EXAMINER ADDISON: Thank you.

12 Any redirect from Staff?

13 MS. BOTSCHNER-O'BRIEN: Could we just  
14 take 5 minutes, please?

15 EXAMINER ADDISON: Absolutely. Let's go  
16 off the record.

17 (Recess taken.)

18 EXAMINER ADDISON: Let's go back on the  
19 record.

20 Redirect?

21 MS. BOTSCHNER-O'BRIEN: We do not have  
22 any redirect for Staff Witness Mackey and --

23 EXAMINER ADDISON: Thank you. One  
24 moment.

25 - - -

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EXAMINATION

By Examiner Addison:

Q. I do have one clarifying question,  
Mr. Mackey, if you will indulge me.

A. Sure.

Q. Staying on page 18, to follow up with  
some questions posed by, Ms. Bojko, on line 17 of  
page 18, you indicate that the various annual AMI  
Rider audits that you reference in your testimony  
remain pending a Commission decision. Do you see  
that?

A. Yes.

Q. Are you aware of any Commission decision  
that was issued after your testimony was filed in  
this proceeding that would have been issued in one of  
the annual AMI Rider audits?

A. Yes, yes.

Q. Do you recall the case numbers?

A. I remember that there's '16 and '17  
cases. I do not recall the exact number.

Q. If I said they were Case  
Nos. 16-2166-EL-RDR and 17-20 -- 2276-EL-RDR, would  
that be correct to your recollection?

A. Yes, to my recollections.

1           Q.    Thank you.  Do you recall what the  
2   Staff's -- I apologize.  Do you recall what the  
3   Commission's determination was on Staff's  
4   recommendations that those costs related to the pilot  
5   program be disallowed?

6           A.    Yes.  They ruled that the capital portion  
7   of the pilot costs should not be permitted to be  
8   recovered in Rider AMI.

9                   EXAMINER ADDISON:  Thank you very much.  
10   That's all I had.  You are excused.

11                  MS. BOTSCHNER-O'BRIEN:  And just like to  
12   renew my motion to admit Staff Exhibit 8.

13                  EXAMINER ADDISON:  Thank you.

14                  Any objection to the admission of Staff  
15   Exhibit 8 at this time?

16                  Hearing none, it will be admitted.

17                  (EXHIBIT ADMITTED INTO EVIDENCE.)

18                  EXAMINER ADDISON:  Let's go off the  
19   record for a moment.

20                  (Discussion off the record.)

21                  EXAMINER PRICE:  Let's go back on the  
22   record.  Staff may call your next witness.

23                  MS. BOTSCHNER-O'BRIEN:  Thank you, your  
24   Honor.  At this time Staff would like to call  
25   Ms. Annie Baas to the stand, please.

1 EXAMINER PRICE: Please raise your right  
2 hand.

3 (Witness sworn.)

4 EXAMINER PRICE: Please be seated and  
5 state your name and business address for the record.

6 THE WITNESS: My name is Annie -- my name  
7 is Annie Baas, B-A-A-S. My business address is 180  
8 East Broad Street, Columbus, Ohio.

9 EXAMINER PRICE: Please proceed.

10 MS. BOTSCHNER-O'BRIEN: Thank you, your  
11 Honor. Your Honors, I have placed before the Bench,  
12 the court reporter, and the witness a multi-page  
13 document captioned "Direct Testimony of Annie Baas"  
14 and request that be marked for purposes of  
15 identification as Staff Exhibit 9.

16 EXAMINER PRICE: It will be so marked.

17 (EXHIBIT MARKED FOR IDENTIFICATION.)

18 MS. BOTSCHNER-O'BRIEN: Thank you, your  
19 Honor.

20 - - -

21 ANNIE BAAS

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

24 DIRECT EXAMINATION

25

1 By Ms. Botschner-O'Brien:

2 Q. Good morning, Ms. Baas.

3 A. Good morning.

4 Q. Do you have before you what's been marked  
5 as Staff Exhibit No. 9?

6 A. I do.

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

8 A. It is my direct testimony filed in this  
9 case.

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

12 A. Yes.

13 Q. And have you had an opportunity to review  
14 this document prior to taking the stand today?

15 A. Yes, I have.

16 Q. And as a result of your review, do you  
17 have any changes, additions, amendments of any kind?

18 A. No, I do not.

19 Q. If I were to ask you the questions  
20 contained in Staff Exhibit 9 today, would your  
21 responses be the same?

22 A. Yes.

23 Q. In your opinion are those responses  
24 truthful and reasonable?

25 A. Yes.

1 MS. BOTSCHNER-O'BRIEN: Your Honor, I  
2 respectfully move for the admission of Staff  
3 Exhibit 9, subject to cross-examination, and tender  
4 this witness available for cross.

5 EXAMINER PRICE: We'll defer ruling on  
6 Staff Exhibit 9 until after cross-examination.

7 Mr. Kurtz?

8 MR. KURTZ: Thank you, your Honor.

9 - - -

10 CROSS-EXAMINATION

11 By Mr. Kurtz:

12 Q. Is it Baas or --

13 A. Baas like I'm the Baas.

14 Q. Easy to remember. Thank you. Good  
15 morning, Ms. Baas.

16 A. Good morning.

17 Q. So for transmission costs you're  
18 recommending that the Commission change how those  
19 costs are allocated to each of the three utility  
20 Companies?

21 A. Yes, that is correct.

22 Q. And then after that, you are recommending  
23 that the Commission change how costs are allocated  
24 from each individual utility to all of the rate  
25 classes or rate schedules?

1           A.     That is correct.

2                     MS. BOJKO: Your Honor, I'm sorry.

3     Mr. Kurtz, could you please?

4           Q.     (By Mr. Kurtz) Okay. And you're  
5 recommending that essentially the transmission cost  
6 allocation follow how PJM allocates costs?

7           A.     Yes. Since this is a passthrough  
8 mechanism, we want to copy what PJM allocates and  
9 pass through through the rider.

10          Q.     Okay. Will you turn to page 6 of your  
11 testimony, line 13.

12          A.     I'm there.

13          Q.     Okay. Your testimony is that the  
14 magnitude of that Staff recommendation on the cost  
15 allocation is unknown, correct?

16          A.     That is correct.

17          Q.     Okay. Then you further go on to say that  
18 you recommend that the Companies provide bill impacts  
19 with the compliance tariffs, and if the bill impacts  
20 reveal unreasonable increases, that the Staff would  
21 recommend the Commission order a phase-in; is that  
22 correct?

23          A.     That is correct.

24          Q.     Okay. Why did you make a recommendation  
25 to change the cost allocation without knowing whether

1 it would increase costs on residential customers or  
2 decrease costs?

3 A. The reasoning behind that is that this is  
4 a passthrough mechanism so how costs are allocated by  
5 PJM is how we are trying to pass through the NMB  
6 Rider.

7 Q. Okay. Now, mechanically if the Com -- an  
8 order is issued say April and the compliance tariffs  
9 are filed within 30 days, how -- how would the  
10 Commission determine whether or not the bill impacts  
11 are reasonable? Would there be a new proceeding?  
12 How would that work?

13 A. In -- I wasn't very specific in my  
14 testimony actually. The allocations that I propose  
15 would take affect April 2025 when the annual rider  
16 review comes in. So the allocations would stay the  
17 same until that point. We would do bill impact  
18 review with the compliance tariffs. I don't believe  
19 it would be a separate proceeding. We might file a  
20 letter within this proceeding depending on what's  
21 ordered.

22 Q. Would other Intervenors get a chance to  
23 weigh in?

24 A. I'm not sure of the process, but I  
25 believe they could respond on the docket to our



1 letter.

2 Q. Okay.

3 EXAMINER PRICE: Where in your testimony  
4 is April 1, 2025?

5 THE WITNESS: It is not there. I looked.  
6 I included it for the NMB 2 rates but realized I did  
7 not include an exact date in my testimony for the  
8 allocations.

9 EXAMINER PRICE: Thank you.

10 MS. BOJKO: I'm sorry, your Honor. I  
11 didn't hear your question.

12 EXAMINER PRICE: Where in her testimony  
13 is the April 1, 2025, date.

14 MS. BOJKO: Thank you.

15 Q. (By Mr. Kurtz) It is on page 13, line 11  
16 but that's with respect to the NMB 2 rate design  
17 changes.

18 A. Correct.

19 Q. So moving from allocation to rate design,  
20 the Companies proposed a new rate design for the  
21 nonresidential customers for transmission, is that  
22 correct, the NMB 2?

23 A. Yes.

24 Q. Okay.

25 A. That's correct.

1           Q.    And so they propose a uniform rate for  
2 customers that qualify who have advanced meters or  
3 interval meters that would be the same rate for each  
4 of the nonresidential rate schedules for each of the  
5 three utilities.

6           A.    With the exception of lighting, yes.

7           Q.    Okay. And these are -- these are --  
8 there's no voltage issue between secondary and  
9 transmission because this is at the NSPL, at the  
10 generator, correct?

11          A.    I don't know.

12          Q.    Okay. If the -- so your recommendation  
13 is that there be separate NMB 2 rates for each of the  
14 utilities for each of the nonresidential schedules  
15 except lighting.

16          A.    Yes.

17          Q.    Okay. You don't know at this point what  
18 the bill impacts of that recommendation -- of the  
19 Companies' recommendation, we -- let's start there.  
20 The Companies' recommendation for the uniform NMB 2  
21 rates, we do not know the bill impacts?

22          A.    The Company did provide bill impacts.  
23 Staff did review those in our analysis. We did not  
24 think they were a true representation of what the  
25 bill impacts would be because there was an assumption

1 made that the demand would equal the NSPL. So our --  
2 included in my recommendation within my testimony is  
3 that we reanalyze bill impacts and try to get a  
4 real -- some real customer data within it.

5 Q. And that's stated on page 11, line 19,  
6 that you don't think the Companies' bill impact was a  
7 true representation; is that correct?

8 A. Correct.

9 Q. This is a response to Staff Data Request  
10 10? That was the bill impact the Company did?

11 A. Correct.

12 Q. Okay. First of all, that bill impact  
13 analysis did not incorporate your recommendation to  
14 reallocate transmission costs among the rate  
15 schedules.

16 A. No, it did not. It was at the Company  
17 proposal.

18 Q. And that in response to Commission 10,  
19 which is OEG Exhibit 4, also compared current NMB  
20 prices with projected prices in 2026; is that your  
21 understanding?

22 A. I would have to relook at it. I believe  
23 that was in there, but I can't state for certain  
24 right now.

25 Q. And then explain the flaw you -- you also

1 identified that they assumed the same billing  
2 determinants. What was that?

3 A. They assumed that whatever the customers'  
4 current demand was, that that would be their NSPL.  
5 And I -- that's not actual customer data. So we want  
6 to know what the impacts would truly be, if there is  
7 any outliers. We would want to do a full review.

8 Q. Okay. That's -- so under the Companies'  
9 proposed unified rate NMB 2, you don't -- based upon  
10 this record there is not a true representation of the  
11 bill impacts; is that correct?

12 A. I would agree with that. There were  
13 assumptions made. That doesn't show the realistic  
14 picture.

15 Q. Okay. And under your proposal to change  
16 the allocation of transmission costs and then also  
17 change the rate design for the recovery of those  
18 costs from the nonresidential customers except street  
19 lighting, you don't know the bill impact of that  
20 either, do you?

21 A. I do not. We will have to work with the  
22 Company after the order is made to be able to review  
23 those impacts.

24 Q. And there is time because you're  
25 recommending that go into effect April 1, '25.

1           A.    Correct.

2           Q.    Okay.  So -- and you don't know the  
3 process or the procedure how that would occur,  
4 whether or not Intervenorors -- there would be a new  
5 case, whether it would be addressed in the upcoming  
6 base rate case, for example?

7           A.    I'm not sure of the process.  My  
8 assumption would be that it would be done within the  
9 annual rider review where we would have bill impacts  
10 assessed there, and Intervenorors can intervene in that  
11 case.

12          Q.    Okay.  So let's -- you list six changes  
13 that you would make to the Companies' NMB rate  
14 structure to make it reasonable beginning on page 12;  
15 is that correct?

16          A.    Yes.

17          Q.    Okay.  First, the allocation of  
18 transmission costs to the utility and then the  
19 allocation of transmission costs to each customer  
20 class would need to be changed to correspond to your  
21 primary recommendation to use the PJM method?

22          A.    Yes.

23          Q.    Okay.  And then, No. 2, you don't want a  
24 unified NMB 2.  You want a separate NMB 2 rate by  
25 rate schedule by utility?

1           A.     That is correct, yes.

2           Q.     Okay.  No. 3, work with Staff to review  
3     the bill impacts using the actual NSPL data.  So  
4     certainly the Commission would want to know bill  
5     impacts of any cost allocation change or any rate  
6     design change; would you -- would you agree?

7           A.     I would assume so.  I can't speak for the  
8     Commission.

9           Q.     So how -- how can they approve your  
10    recommendation now without knowing that?  It would be  
11    sort of a contingent approval?  How would that work?

12          A.     The bill impacts could be mitigated in my  
13    proposal, so if something -- if we got all the data  
14    and it showed it was too high, that's where the  
15    phase-in would come in.  So we could phase that  
16    allocation in over a period of time depending on what  
17    the numbers are.

18               EXAMINER PRICE:  But how would that work?  
19    Are you saying the -- as part of the phase-in, the  
20    Commission would defer part of the revenue  
21    requirement for future recovery?

22               THE WITNESS:  It wouldn't be deferred.  
23    We would just slowly move the allocation percentages  
24    to where they should be.  So, for example, like in a  
25    rate case when we move towards the cost-of-service

1 study, you do that in steps. So that's my proposal,  
2 we would do it over a period of time. That would be  
3 appropriate. That wouldn't cause high bill impacts.

4 EXAMINER PRICE: But would not create the  
5 deferral.

6 THE WITNESS: No.

7 Q. (By Mr. Kurtz) There would be really two  
8 kind of phase-in potential, a phase-in of the new  
9 allocation to the rate schedules and then a potential  
10 phase-in of the new rate design for the  
11 nonresidential NMB 2 rates.

12 A. If those numbers are too high for the  
13 nonresidential rates, we would propose a type of  
14 phase-in.

15 Q. Your fourth recommendation to fix the  
16 Companies' proposal on page 13 is you would give the  
17 general service secondary customers the option to opt  
18 in to the program on a voluntary basis; is that  
19 correct?

20 A. Yes.

21 Q. You say this would avoid the severe bill  
22 impacts, but we don't really know what the bill  
23 impacts are at this point at all, whether they be  
24 severe or modest, et cetera?

25 A. That is correct. The opt in for the GS

1 class is more so because some of those customers are  
2 very small and might not have the knowledge or the  
3 capability to control their NSPL, so we wanted to  
4 give them the option.

5 Q. There are some customers, speaking of  
6 that, that would benefit from the NSPL billing  
7 without changing the usage characteristics at all.

8 A. That would be true, yes.

9 Q. A public high school, for example, if the  
10 NSPL was in the summer, a school that was not  
11 operating in the summer, elementary, high school,  
12 might just get a natural benefit.

13 A. It's possible depending on what the  
14 numbers are.

15 Q. And, of course, it could go the other way  
16 as well.

17 A. Yes.

18 Q. Was this -- did you take your  
19 recommendation No. 4 from the recently approved AES  
20 ESP settlement that was approved by the Commission?

21 A. That was considered in -- in our review  
22 for this program, yes.

23 Q. Because there was a similar provision in  
24 that case.

25 A. There is, yes.



1           Q.    No. 5, you criticize the Company for  
2 immediately moving people to NSPL -- to NMB 2  
3 immediately after putting in a meter, and your  
4 recommendation is to wait until the April period so  
5 that it wouldn't be immediate.

6           A.    Yes. It would be every April when the  
7 rider is reviewed and that would also give a true-up  
8 for rates so people aren't switching between and  
9 causing rate issues in between cases.

10          Q.    Okay. Then No. 6, Companies work with  
11 Staff to -- to develop the mechanics before  
12 everything would start in April of '25. So that  
13 gives -- that gives you and the Commission time?

14          A.    Yes. We would need probably several  
15 months to just get the mechanism itself set up, the  
16 allocations set up, and to see what the bill impacts  
17 are, yes.

18          Q.    You also sort of have a plan B discussed  
19 on page 14.

20          A.    Yes.

21          Q.    If the Commission doesn't accept all six  
22 of your recommendations, you would -- you would just  
23 maintain the current NMB pilot program with a gradual  
24 increase in the number of participants?

25          A.    Yes, with the caveat that we would have

1 to change the allocations. Those allocation changes  
2 would stop cost shifting because currently the costs  
3 are shifting everywhere because of those allocations  
4 so when that is corrected, the pilot program could  
5 continue. The idea being that since the allocations  
6 within the rider are corrected, it would no longer  
7 cause costs to shift within classes.

8 Q. But you would maintain the pilot program  
9 while that -- the bill impacts of your new allocation  
10 would be examined by the Commission, would you not?

11 A. Yes. It would be in place. Nothing  
12 would change until the April 2025.

13 Q. Okay. And when you say gradually  
14 extended to all customers, do you have a  
15 recommendation of how gradual that would be?

16 A. I do not at this time. It would be  
17 something we would annually look at with each review.

18 Q. Did Staff agree to a 100 megawatt  
19 increase to the pilot in the AEP ESP case as a  
20 gradual extension of the pilot?

21 A. I believe so.

22 Q. Thank you.

23 EXAMINER PRICE: Is there something about  
24 the status quo where Companies file reasonable  
25 arrangements in order to get into the pilot program

1 that Staff finds problematic?

2 THE WITNESS: I am not a big part of  
3 reasonable arrangements. I have been recently. I  
4 don't know if they're problematic. It's that it does  
5 shift things in between cases. So when you are  
6 adding someone, you are taking billing determinants  
7 out of one area and adding it to another.

8 EXAMINER PRICE: If we added 100  
9 megawatts, that would have the same problem, right?

10 THE WITNESS: Well, it would be within  
11 the annual review so there would be that true-up  
12 during that period. It's when they are added in  
13 between that there can be shifts.

14 EXAMINER PRICE: Okay. Fair enough.

15 Q. (By Mr. Kurtz) So just to close this out,  
16 beginning April of 2025, depending on the bill  
17 impacts and the phase-in for the allocation in the  
18 new design, there would be NMB 2 rates that would be  
19 based upon NSPL billing?

20 A. The Companies 5CP and NSPL billing, yes.

21 Q. And if that did not occur, you would just  
22 maintain the pilot with a gradual increase in  
23 customer participation --

24 A. Yes, with the allocation change.

25 Q. -- with the allocation --

1           A.     That would be my proposal.

2           MR. KURTZ:   Thank you, Ms. Baas.

3           Thank you, your Honor.

4           EXAMINER PRICE:   Thank you.

5           Mr. Pritchard?

6           MR. PRITCHARD:   Thank you.

7                               - - -

8                               CROSS-EXAMINATION

9     By Mr. Pritchard:

10           Q.     Just following up on some of Mr. Kurtz's  
11     questions on allocations, make sure I understand a  
12     couple of your recommendations.  At -- annually PJM  
13     resets the NITS rate for the ATSI transmission zone,  
14     correct?

15           A.     Yes.

16           Q.     And the NITS rate is the predominant cost  
17     that's flowing through Rider NMB, correct?

18           A.     It is the majority, yes.

19           Q.     And so if we had a rider and the only  
20     cost was the NITS component and it's stated at a rate  
21     at PJM, to get the cost billed to Ohio Edison, you  
22     are going to take Ohio Edison's aggregate NSPL for  
23     all its customers times the rate, correct?

24           A.     I believe so.

25           Q.     And then to get the total Ohio Edison

1 cost to each rate schedule, you are going to allocate  
2 based on the aggregate NSPLs of each rate schedule,  
3 correct?

4 A. Yes.

5 Q. And then if everyone was billed on an  
6 NSPL demand, once you aggregated that cost down to  
7 each rate schedule and you divided back by NSPL  
8 demand, mathematically you are going to convert back  
9 if everyone was billed on an NSPL demand to the same  
10 rate that PJM states each year, correct?

11 A. Theoretically but it's not that perfect.  
12 There's forecasts. There's over/unders. There's  
13 carrying costs that are involved so it's not just  
14 that simple math but theoretically if everything was  
15 perfect.

16 Q. And line losses would be another thing?

17 A. Yes.

18 Q. So -- so when you are recommending here  
19 that there shouldn't be a unified rate, we should  
20 expect similar rates if the -- most of the costs are  
21 based on the NITS charge and are being allocated on  
22 an NSPL demand even though if we don't have a unified  
23 rate, we would expect similar rates for the various  
24 utilities.

25 A. Theoretically. Again, there's over/under

1 balances that go into effect and it's not just NITS.  
2 I mean, there are line items by a 12CP. There is  
3 line items by megawatts hours. That's not going to  
4 be that perfect but theoretically with only that line  
5 item.

6 Q. And focusing a little bit on your  
7 alternative recommendation of expanding the  
8 transmission pilot, you understand today because the  
9 costs are collected in Rider NMB, they are not  
10 currently the responsibility of either SSO suppliers  
11 or CRES providers, setting aside the transmission  
12 pilot customers?

13 A. Correct. It runs through the EDU Rider.

14 Q. So if access to the transmission pilot is  
15 expanded, would you agree that there needs to be some  
16 sort of transition mechanism to allow future CRES  
17 contracts and future SSO supplier bids in the  
18 auctions to reflect that they would have that cost  
19 responsibility?

20 A. I'm not sure. That's not really my area  
21 of expertise.

22 Q. Did you do -- well, let me just focus on  
23 the CRES contract side. So if they are not currently  
24 in CRES contracts, and a CRES contract extended  
25 beyond April of 2025, those CRES -- existing CRES

1 contracts for a normal non-pilot customer are not  
2 going to reflect NITS or any of the other costs in  
3 Rider NMB, correct?

4 A. Correct.

5 Q. And so for those existing contracts, if  
6 the alternative recommendation was approved,  
7 beginning in April of 2025, you would have to have --  
8 if that customer wanted access to the transmission  
9 pilot, would you expect that their existing contract  
10 would need modified to reflect the change in  
11 transmission cost responsibility?

12 A. I would assume so. Again, I am not an  
13 expert in this area. That would be better towards  
14 another Staff witness.

15 Q. And on the SSO side, do you -- do you  
16 have any expertise or knowledge on whether the SSO  
17 suppliers would have the ability to modify existing  
18 contracts that they were ordered to take on cost  
19 responsibility?

20 MR. KURTZ: I'm going to object. This  
21 assumes facts not in the record. The SSO are for  
22 generation only, and this witness is testifying  
23 transmission. Transmission has got nothing to do  
24 with the SSO auctions.

25 EXAMINER PRICE: Mr. Pritchard?

1 MR. PRITCHARD: The witness's alternative  
2 recommendation -- well, I can clarify but. Let me  
3 just clarify, your Honor.

4 EXAMINER PRICE: Okay.

5 Q. (By Mr. Pritchard) You understand in  
6 the -- that there are proposals in this case to  
7 eliminate Rider NMB from Intervenor, correct?

8 A. Yes.

9 Q. And is it your recollection that in a  
10 separate proceeding there was an audit of the current  
11 pilot?

12 A. Yes.

13 Q. Are you aware of that audit, and are you  
14 aware of one of the auditor's recommendations was to  
15 eliminate Rider NMB?

16 A. Yes.

17 Q. If Rider NMB was eliminated, that would  
18 require the SSO suppliers and CRES providers to pick  
19 up that cost responsibility, correct?

20 A. Again, I'm not an expert in this. I  
21 would say you are probably correct, but I'm not sure.

22 Q. And have you done any -- if Rider NMB  
23 were eliminated, have you done any analysis or do you  
24 have any knowledge of whether that could be shifted  
25 over to SSO suppliers for any of their already



1 cleared auctions?

2 A. I don't know.

3 EXAMINER PRICE: Can you explain for the  
4 Bench why the Staff did not adopt the primary  
5 recommendation of the independent auditor in the  
6 Rider NMB review?

7 THE WITNESS: The primary recommendation  
8 was to eliminate NMB in totality. With discussion  
9 and review with Staff, we felt that there would be  
10 risk premiums added to the transmission cost if they  
11 were solely through CRESSs. With that in mind, we  
12 wanted to keep the lowest cost possible for  
13 customers, so we went an alternate route.

14 EXAMINER PRICE: Thank you.

15 Q. (By Mr. Pritchard) And your answer right  
16 there, I believe, was for your primary  
17 recommendation, not the alternative, correct?

18 A. The primary, yes.

19 Q. And switching over to the alternative  
20 recommendation that if the Commission does not adopt  
21 your primary recommendation --

22 A. Can I correct that? It is also for my  
23 secondary one. We felt that residential class would  
24 be better in the NMB as well to reduce the risk  
25 premiums that could have been added.

1           Q.    Thank you.  And so under your alternative  
2           recommendation, you have the specific classes that  
3           this would apply to, correct?

4           A.    What would apply to?

5           Q.    Let me strike that and let me just ask it  
6           directly.  If the Commission does not adopt Staff's  
7           primary NMB recommendation and goes with the  
8           alternative of expansion of the transmission pilot,  
9           that would only -- would that only -- the Staff's  
10          alternative recommendation only apply to  
11          nonresidential customers?

12          A.    Yes.  It would exclude lighting as well.

13          Q.    And so that would be Rate Schedules GS,  
14          GP, GSU, and GT?

15          A.    Yes.

16          Q.    And would there be any limitation on  
17          which of those customers could participate subject to  
18          the discussion you had with Mr. Kurtz of price  
19          mitigation?

20          A.    It would not be limited to any certain  
21          customer.  We would need to do a phase-in to make  
22          sure rates are not impacted too abruptly.

23          Q.    And Mr. Kurtz identified one possible  
24          phase-in approach under the alternative of a megawatt  
25          cap.  Does Staff have a proposed process for the

1 alternative recommendation?

2 A. We do not. We need to analyze all the  
3 allocation changes that we've proposed and then that  
4 would come after that because you would need to see  
5 the rates as proposed by -- in our -- in my  
6 testimony.

7 Q. Make sure I -- I understand that. Staff  
8 has not then done that -- today Staff has not done  
9 that analysis of what expansion of the pilot approach  
10 would do for customers' rates?

11 A. No.

12 Q. And then one final question, circle back  
13 to discussion you had with Mr. Kurtz in your  
14 testimony. If you fixed the allocation to each rate  
15 schedule and so all the costs are allocated -- costs  
16 incurred on an NMB basis are allocated on NSPL basis,  
17 and you mentioned others are incurred on a 12CP  
18 basis. If all those costs are allocated to the rate  
19 schedules that way and the Commission approves the  
20 alternative recommendation, was your testimony that  
21 there's no more interclass cost shifts?

22 A. It would mitigate interclass cost shifts,  
23 yes. If all the allocations were adopted and it --  
24 and follow PJM's, then it would follow through all to  
25 the classes, and the way that the pilot program

1 customers would be removed from the NMB would be  
2 according to that same methodology so how their costs  
3 are flowing through would follow them all the way  
4 out.

5 Q. And so is that a mitigation or would that  
6 just instead eliminate the cost shift?

7 A. I haven't fully analyzed it to say that  
8 it would fully stop the cost shift. In theory it  
9 would, but nothing is perfect in these.

10 MR. PRITCHARD: Thank you. Those are all  
11 my questions.

12 EXAMINER PRICE: Thank you.

13 Mr. Finnigan?

14 MR. FINNIGAN: No questions.

15 EXAMINER PRICE: Ms. Bojko?

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

17 Mine have been answered.

18 EXAMINER PRICE: Ms. Whitfield?

19 MS. WHITFIELD: No questions, your Honor.

20 EXAMINER PRICE: Mr. Lang?

21 MR. LANG: No questions.

22 EXAMINER PRICE: Mr. Hays?

23 MR. HAYS: No questions, your Honor.

24 MR. DUNN: No questions, your Honor.

25 EXAMINER PRICE: One Energy. Sorry.

1 Mr. Whitt?

2 MR. WHITT: I do have questions, your  
3 Honor. Could I relocate over?

4 EXAMINER PRICE: Yes, please.

5 Let's go off the record for a minute.

6 (Discussion off the record.)

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

9 - - -

10 CROSS-EXAMINATION

11 By Mr. Whitt:

12 Q. Good almost afternoon, Ms. Baas. My name  
13 is Mark Whitt. I represent Calpine Retail Holdings.  
14 I understand you've been with the Commission since  
15 2016; is that right?

16 A. That's correct.

17 Q. Was that your first real job so to speak  
18 after getting your accounting degree?

19 A. It is not.

20 Q. Okay.

21 A. But thank you for saying that -- well, my  
22 accounting degree actually I got when I was with the  
23 Commission, but I have had real jobs before that.

24 Q. Fair enough. Under Rider NMB as it  
25 exists today, PJM bills the FirstEnergy utilities

1 based on their NSPL, correct?

2 A. A portion is based on the 1CP NSPL. Not  
3 all of it comes through that way.

4 Q. Okay. A portion of costs are also billed  
5 on a 12CP basis?

6 A. I would have to double-check, but I  
7 believe there is 12CP, there is megawatt-hour, and  
8 there might be one or two others that come through.

9 Q. Okay. And but the manner in which the  
10 utilities recover those costs from customers are --  
11 is based on different factors, different rate design,  
12 correct?

13 A. That's correct.

14 Q. And Staff's recommendations, as I  
15 understand them and as I believe you testified, is to  
16 sort of bring into alignment the same factors that  
17 PJM uses to determine the charges to the utilities is  
18 what staff would like to see in the Companies' rate  
19 schedules that recover those costs from customers; is  
20 that a fair generalization?

21 A. For the most part I would say that our  
22 recommendations flow through exactly how PJM until  
23 the cus -- through the customer class the actual  
24 billing methodology is different dependent on the  
25 customer class.

1           Q.    Understood.  And as it currently exists,  
2   Rider NMB is not bypassable until the customer  
3   participates in the pilot program, correct?

4           A.    That's correct.

5           Q.    And for pilot program participants, their  
6   transmission is arranged through the CRES provider,  
7   correct?

8           A.    Yes.

9           Q.    And the FirstEnergy utilities devoted  
10  administrative personnel and resources to administer  
11  the pilot, correct?

12          A.    I don't have a lot of knowledge on that.  
13  I do know that they -- the personnel has to do --  
14  they have to remove them from the NMB so there's that  
15  piece that I do know of.

16          Q.    Okay.  And just to delve into that for a  
17  moment, it's correct, is it not, that under the  
18  FirstEnergy utilities' existing supplier tariff in  
19  the Rider NMB construct, CRES suppliers within the  
20  utilities' service area have to assign their PJM  
21  billing line items to the utilities, correct?

22          A.    That's out of my expertise.  I don't  
23  know.

24          Q.    Okay.  Okay.  But when you said that the  
25  utilities have to remove pilot program customers from

1 NMB, what did you mean by that?

2 A. They have to remove their bill  
3 determinants, and they have to be removed from the  
4 allocations. And when they are doing that, that  
5 doesn't match up with the allocations that are  
6 currently there so it causes cost shifts.

7 Q. Okay. Is it your understanding that the  
8 Companies have to devote some manual resources to  
9 pilot program participants because their customers  
10 are simply billed differently than everybody else?

11 A. That's correct.

12 Q. Now, under the Companies' proposals here,  
13 the pilot would be eliminated, correct?

14 A. Yes.

15 Q. And the Rider NMB would become  
16 nonbypassable for everyone, correct?

17 A. Correct.

18 Q. And commercial and industrial customers  
19 would lose their ability to obtain transmission  
20 service through their CRES provider, correct?

21 A. That's my understanding, yes.

22 Q. Okay. Now, under the Staff's  
23 recommendation I think you've covered with Mr. Kurtz  
24 the changes -- the introduction of NMB 1 and NMB 2  
25 and the rationale for those changes. To summarize



1 that discussion again, the intent that Staff has is  
2 to align the billing determinants between PJM  
3 utilities and the utilities' recovery from customers?

4 A. Again, up through the class allocation  
5 and the actual recovery mechanisms can differ  
6 according to rate schedule.

7 Q. Okay. And do you agree that the current  
8 pilot causes some cost shifting?

9 A. With how the current rider is set up,  
10 yes.

11 Q. And whenever there is cost shifting, that  
12 means somebody benefits from the shift, somebody else  
13 is disadvantaged, correct?

14 A. I don't know if I would put it that  
15 simple here. The shifting is occurring because  
16 customers are moving and whether or not they -- it  
17 might be benefiting them. Maybe it's worse when they  
18 move onto the pilot depending on what their bill is.  
19 So it would all be dependent on the situation.

20 Q. Okay. My question really was just more  
21 general in nature. Just the general notion of cost  
22 shifting means among some pool of costs, somebody is  
23 not paying their fair share and whoever is not paying  
24 their fair share, somebody else is paying more than  
25 their fair share generally speaking, correct?

1           A.    I don't know if I would say fair share  
2 since we are not looking at cost causation  
3 specifically. That's what PJM does. I would say  
4 that it does shift costs, so some customers pay more.  
5 Some customers pay less. I would agree with that.

6           Q.    Okay. Okay. Whatever is happening  
7 currently, fair to say that Staff would like to  
8 see -- would like to interfuse some element of cost  
9 causation but to a larger degree than may exist today  
10 under the pilot?

11          A.    I can't speak to cost causation  
12 specifically because that's what PJM does. We --  
13 this is a passthrough mechanism so we are just  
14 aligning the costs with what PJM does.

15          Q.    Okay. Now, to the extent customers who  
16 were in the pilot choose a CRES supplier and the CRES  
17 supplier arranges the transmission, there's no cost  
18 that the utility needs to be concerned about  
19 recovering, correct? Because the CRES provider is  
20 incurring those costs.

21          A.    That's correct. The costs would then be  
22 collected by the CRES provider.

23          Q.    The -- just to close the loop on Staff's  
24 recommendations, the changes you discussed with  
25 Mr. Kurtz, Staff believes those should be implemented

1 by April 2025, correct?

2 A. Correct.

3 Q. Okay. Let's go to the Exeter  
4 recommendations which you started to discuss with the  
5 Bench. And I believe we have established you were  
6 familiar with the Exeter report filed in Case No.  
7 22-391-EL-RDR, correct?

8 A. I am familiar with it. I have read it.  
9 I was not the Staff assigned to it, but I have read  
10 it in review of my proposal.

11 Q. Okay. And Exeter to your knowledge has  
12 no financial interest or incentive with regard to how  
13 the FirstEnergy utilities recover transmission  
14 charges, fair to say?

15 A. Yeah. I don't know.

16 Q. Fair to say that unlike all the parties  
17 in this proceeding, Exeter has no skin in the game  
18 here, fair to say?

19 A. I don't believe so, but again, I don't  
20 know.

21 Q. Okay. Exeter is a reputable organization  
22 that the Commission has retained in many proceedings;  
23 is that your understanding?

24 A. I only know this one proceeding.

25 Q. Fair enough. Does the -- your review of

1 the Exeter report, does it reflect -- it reflects a  
2 high degree of skill and knowledge by Exeter on the  
3 matters they write about; would you agree with that?

4 A. I would agree with that.

5 Q. And do you have by the way in the stack  
6 in front of you OELC Exhibit 27?

7 A. Is that the audit report?

8 Q. Yes.

9 A. I don't know.

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

11 (Discussion off the record.)

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

14 A. Yes, I have it.

15 Q. Okay. If you will turn with me to page  
16 50 of that document.

17 A. I'm there.

18 Q. On page 50 of OELC Exhibit 27, toward the  
19 bottom of the page, you will see recommendation  
20 No. 1. Are you there?

21 A. Yes.

22 Q. And Exeter's recommendation is to  
23 "eliminate Rider NMB for all customers assigned PJM  
24 transmission charges (and all other PJM billing line  
25 items currently included in Rider NMB) to the retail

1 suppliers of these customers." Did I read that  
2 correctly?

3 A. Yes.

4 Q. And when Exeter says "assigned PJM  
5 transition charges," do you understand that to mean  
6 that PJM would directly bill the CRES supplier for  
7 transmission?

8 A. That's my understanding.

9 Q. Okay. And the recommendations 2A and 2B  
10 on pages 51 and 52.

11 A. Yes.

12 Q. Give you a moment to review those just  
13 bold recommendation parts. Those alternate  
14 recommendations also recommended eliminating Rider  
15 NMB for all but residential and small commercial  
16 customers, correct?

17 A. That's correct.

18 Q. Is it fair to say that what Exeter is  
19 basically recommending is that we go back to the  
20 pre-Rider NMB days when CRES providers were  
21 responsible for arranging transmission for their  
22 customers?

23 MS. BOTSCHNER-O'BRIEN: Your Honor, I am  
24 going to object, relevance, and how this ties to her  
25 testimony.

1 EXAMINER PRICE: Well, I mean, she's  
2 testifying as to what should be done in the future  
3 with Rider NMB, and the Exeter report makes  
4 recommendations as to what should be done with the  
5 future with Rider NMB.

6 MS. BOTSCHNER-O'BRIEN: She testified she  
7 read the report, but I don't know that she's  
8 testifying beyond really that.

9 EXAMINER PRICE: She is able to explain  
10 to the Bench why the Staff did not pursue the primary  
11 recommendation. I think Mr. Whitt is entitled to  
12 explore why they didn't follow other recommendations.  
13 Overruled.

14 THE WITNESS: Can I have the question  
15 reread?

16 EXAMINER PRICE: You may.

17 (Record read.)

18 A. I don't know. That's -- I am not sure  
19 how it was set up prior to the current NMB. I'm not  
20 sure if it was bypassable for all customers or only  
21 specific customers, so I can't answer that.

22 Q. Okay. But if CRES suppliers were  
23 responsible for obtaining transmission service on  
24 behalf of their customers, that would eliminate the  
25 need for utilities to reconcile and recover

1 transmission charges from customers to the extent  
2 CRES providers are incurring those charges, not the  
3 utilities, correct?

4 A. I'm not fully sure with customers on the  
5 SSO how it would be processed then. For those  
6 specific customers with CRESSs, if that were to  
7 happen, then they would be responsible for those  
8 costs, but I can't speak to it as a whole.

9 Q. Okay. But there could potentially be  
10 differences between shopping and nonshopping  
11 customers, correct?

12 A. What do you mean by differences?

13 Q. In terms of who is incurring the  
14 transmission costs.

15 A. It could be if it comes through the  
16 Company or comes through the CRES, yes.

17 Q. Okay.

18 EXAMINER PRICE: At this time we are  
19 going to take our lunch break. We will return at  
20 1 o'clock.

21 We are off the record.

22 (Thereupon, at 12:04 p.m., a lunch recess  
23 was taken.)

24 - - -

25

1                               Wednesday Afternoon Session,  
2                               December 6, 2023.

3                               - - -

4                               EXAMINER PRICE:  Let's get back on the  
5 record.

6                               Thank you, Mr. Whitt.  Please proceed.

7                               MR. WHITT:  Could you read back the last  
8 question and answer?

9                               EXAMINER PRICE:  Yes, please.

10                              (Record read.)

11                              - - -

12                              ANNIE BAAS

13 being previously duly sworn, as prescribed by law,  
14 was examined and testified further as follows:

15                              CROSS-EXAMINATION (Continued)

16 By Mr. Whitt:

17                              Q.    Okay.  Let's go through a little thought  
18 exercise.  If the Commission were to adopt Exeter's  
19 recommendation, in order that Rider NMB be eliminated  
20 and declare CRESs responsible for their customers'  
21 transmission costs, as a consequence, the FirstEnergy  
22 utilities would no longer incur transmission costs  
23 for shopping customers, correct?

24                              A.    That was my interpretation of the report.

25                              Q.    Okay.  And again, with respect to those



1 shopping customers, there would be no further  
2 concerns about cost shifting or rate design or any of  
3 the other concerns relative to the current Rider NMB,  
4 correct?

5 A. The CRES would be responsible for it so  
6 we wouldn't see it so, therefore, we wouldn't know if  
7 they were shifting or not. I don't know if the  
8 concern is gone, but it wouldn't be our  
9 responsibility as Staff to check.

10 EXAMINER PRICE: Well, if the CRES  
11 providers were providing transmission, we're in a  
12 competitive market. Do we care about cost shifting  
13 in a competitive market?

14 THE WITNESS: I'm probably not the best  
15 for that. I am not really informed on the  
16 competitive market.

17 EXAMINER PRICE: Thank you.

18 Q. (By Mr. Whitt) Now, understanding there's  
19 limitation to all of our expertise but generally  
20 speaking in a competitive market, a CRES provider can  
21 decide to pass along its transmission cost to its  
22 customers on any basis it wants, correct?

23 A. I believe so, but again, I'm not sure.  
24 It's not -- it's not something I review.

25 Q. Okay. But the point being whatever

1 transmission costs the CRES providers would be  
2 incurring or passing along, that wouldn't show up on  
3 the books of the FirstEnergy utilities or in any sort  
4 of reconciliation proceeding because those costs  
5 would not be among the costs we're concerned about  
6 for recovery, fair to say?

7 A. It would be costs that would not be  
8 recovered through a rider through the -- through the  
9 Companies, I would agree with that, yes.

10 Q. Okay. And the utilities' NSPL which is  
11 something PJM looks at in billing transmission costs  
12 to utilities for shopping customers, the utility NSPL  
13 would become irrelevant to those customers, wouldn't  
14 it, other than perhaps the basis of comparison should  
15 you take SSO service or CRES service but assuming the  
16 decision had been made to go with the CRES supplier,  
17 at that point the utility NSPL is no longer relevant,  
18 fair to say?

19 A. I don't know for sure. I -- I can't say  
20 what they would consider when they're switching or  
21 going through a CRES.

22 Q. Fair enough. So we talked about shopping  
23 customers, how their transmission costs would be  
24 handled and by whom. With respect to SSO customers,  
25 nonshoppers, and again, within the bounds of our

1 hypothetical, Rider NMB is eliminated, CRES suppliers  
2 are responsible for shopping customers, we'd still  
3 have to deal with transmission costs the utility  
4 incurs on behalf of SSO customers, correct?

5 A. I believe so, yes.

6 Q. And you didn't see anything in the Exeter  
7 report, did you, that addressed one way or the other  
8 whether the SSO product should include or exclude  
9 transmission costs?

10 A. Not that I remember but I don't have this  
11 report memorized.

12 Q. Okay. Is it your understanding that  
13 currently transmission costs are not part of the SSO  
14 product that bidders bid for the supply SSO load?

15 A. The transmission costs that run through  
16 the NMB Rider are not included in that auction.

17 Q. Okay. Eliminating Rider NMB would not  
18 change what costs are included or excluded in the  
19 current SSO product, correct, because those costs are  
20 recovered through different mechanisms?

21 A. I don't know.

22 Q. Okay. Now, Exeter's third recommendation  
23 that will be around page 54, very bottom of page 53  
24 on to page 54, and I guess to paraphrase that  
25 recommendation, would it be fair to say that the

1 Exeter recognized that getting rid of Rider NMB is a  
2 type of change that would need to be implemented in  
3 some orderly scheduled fashion?

4 A. I don't think I'm comfortable  
5 paraphrasing their recommendation. I wasn't involved  
6 in the review. I wouldn't feel comfortable doing  
7 that.

8 Q. The third recommendation states  
9 "Implement recommendations according to a schedule  
10 with an eye toward existing retail supply contracts  
11 avoids financial harm to customers or to their CRES  
12 suppliers to the maximum practical extent." Did I  
13 read that correctly?

14 A. Yes.

15 Q. So fair to say that Exeter recognizes  
16 that there are significant consequences and a change  
17 to the market place and for stakeholders of  
18 eliminating Rider NMB, correct?

19 MS. BOTSCHNER-O'BRIEN: Your Honor, I  
20 object.

21 EXAMINER PRICE: Grounds?

22 MS. BOTSCHNER-O'BRIEN: We are carrying  
23 on with these questions. At this point the document  
24 speaks for itself. I don't think this witness needs  
25 to characterize the report the way that Mr. Whitt

1 wants her to.

2 EXAMINER PRICE: Can I have the question  
3 back again?

4 (Record read.)

5 EXAMINER PRICE: She can answer if she  
6 knows.

7 A. I can't say what Exetor intended. I can  
8 only say what I interpret it as.

9 Q. And how would you interpret that?

10 A. That we need to be cognizant of what's  
11 currently existing when making our recommendations.

12 Q. Fair enough. And the Commission rules, I  
13 assume you are aware that Commission rules  
14 contemplate a mechanism designed specifically for  
15 recovering transmission costs through a bypassable  
16 rider?

17 A. I have read the transmission rules. I  
18 can't recall at this time if it specifically says  
19 bypassable.

20 Q. Okay. Well, assume that it does because  
21 it does. There's nothing in the Exeter report that  
22 suggests the Companies could not, if Rider NMB were  
23 eliminated, file for approval of a new bypassable  
24 rider to recover SSO transmission costs?

25 EXAMINER PRICE: Do you have an

1 objection?

2 MS. BOTSCHNER-O'BRIEN: I have an  
3 objection.

4 EXAMINER PRICE: Grounds?

5 MS. BOTSCHNER-O'BRIEN: Well, counsel is  
6 testifying because he said assume that it does.  
7 That's -- he is putting his -- ask more of a  
8 question.

9 EXAMINER PRICE: We are going to sustain  
10 your objection on lack of foundation. She's already  
11 expressed she is not familiar with the transmission  
12 cost recovery rules. It's not fair to ask questions  
13 about rules she is not -- she has no personal  
14 knowledge of.

15 MR. WHITT: May I approach?

16 EXAMINER PRICE: You may.

17 MR. WHITT: I won't be moving for the  
18 admission of this document, but for identification we  
19 can call it Calpine Exhibit 2.

20 EXAMINER PRICE: It will be so marked.

21 (EXHIBIT MARKED FOR IDENTIFICATION.)

22 Q. (By Mr. Whitt) I've handed you a copy of  
23 Rule 4901:1-36-04 and drawing your attention to  
24 subdivision (B) of the rule.

25 A. Dash 02? Mine says "02."

1           Q.    My apologies.  Subdivision (B) of the  
2   rule states "The transmission cost recovery rider  
3   shall be avoidable by all customers who choose  
4   alternative generation suppliers and the electric  
5   utility no longer bears the responsibility of  
6   providing generation and transmission service to the  
7   customers."  Did I read that correctly?

8           A.    Yes.

9           Q.    And is it your understanding that within  
10  the context of this rule the term avoidable has the  
11  same meaning as bypassable?

12                   EXAMINER PRICE:  Only answer if it's  
13  within the scope of your personal knowledge.

14          A.    I don't know.

15          Q.    Okay.  If the order in this proceeding  
16  declared that Rider NMB be terminated effective  
17  April 2025, the FirstEnergy utilities would have an  
18  incentive to get a tariff on file before that  
19  deadline in order to recover their transmission costs  
20  for SSO service, would they not?

21          A.    I don't know that I can speak to the  
22  Companies' incentives.  I would assume they would  
23  want cost recovery but that would be up to them.

24          Q.    Fair enough.  And if the termination of  
25  Rider NMB, if it were announced in the order in this

1 proceeding that termination would become effective in  
2 April of 2025, stakeholders affected by that change  
3 would have some period of time to adjust their  
4 affairs accordingly, would they not?

5 A. They would have some time. That is  
6 actually why my recommendation aligns with the  
7 April 2025 so there is time to adjust.

8 Q. Earlier before our break in response to  
9 questions from the Bench, it sounded like Staff had  
10 some opinion of Exeter's recommendation even though  
11 there's no mention of the report in your testimony.  
12 I believe that you testified to some concern about  
13 the risk premium, and I wanted to explore that with  
14 you. And I guess ask the open-ended question, what,  
15 if any, concern does Staff have with Exeter's primary  
16 recommendation?

17 A. In our review we did read through this  
18 auditor report, and in discussions with Staff, we  
19 were concerned that risk premiums could be added and  
20 increase transmission costs. That was our main  
21 objection to the first recommendation.

22 Q. Risk of what?

23 A. That the cost would be increased.

24 Q. Costs of what for whom?

25 A. I'm not an expert in risk premiums. We



1 had a whole team that looked at this. That was our  
2 decision that risk premiums could be added if they --  
3 if the cost went through CRES providers.

4 Q. Is there a reason that that concern isn't  
5 addressed in your testimony?

6 MS. BOTSCHNER-O'BRIEN: Your Honor,  
7 objection. That's privileged information.

8 EXAMINER PRICE: Privileged information?

9 MS. BOTSCHNER-O'BRIEN: Well, what is  
10 between -- what goes into her -- what goes into her  
11 testimony is between -- is not really a part of --  
12 it's not a proper question. It would -- Staff is  
13 part of a case team, so it would be trying to deal --  
14 talk about conversations between Staff members and  
15 that's not appropriate if that's what he is trying to  
16 get at.

17 EXAMINER PRICE: Perhaps you could  
18 rephrase.

19 Q. (By Mr. Whitt) Let me just maybe cut to  
20 the chase. Your testimony doesn't even mention  
21 Exeter or the audit report at all, correct?

22 A. It does not.

23 Q. So the Commission is faced with -- with  
24 respect to Rider NMB and the issues in front of it,  
25 the Commission has basically your testimony and the

1 Exeter report and that's what it has to base its  
2 decision on, correct?

3 MR. PRITCHARD: Objection.

4 EXAMINER PRICE: Grounds?

5 MR. PRITCHARD: Misstates the record in  
6 this case, those are the only evidence.

7 EXAMINER PRICE: Sustained.

8 MR. WHITT: It's not?

9 Q. (By Mr. Whitt) This risk premium you  
10 mentioned earlier, did staff do anything to attempt  
11 to quantify this premium?

12 A. Not that I know of but I was not the  
13 Staff expert for that.

14 Q. Okay. You also testified, and it's in  
15 your testimony, you confirmed on cross-examination  
16 that Staff doesn't know what bill impact its own  
17 recommendations will have, correct?

18 A. That's correct.

19 Q. And fair to say you don't know what, if  
20 any, risk premium actually exists if Exeter's  
21 recommendation were adopted, correct?

22 A. I don't know.

23 Q. Sitting here today you cannot say whether  
24 Staff's recommendations would have a greater or  
25 lesser bill impact than the adoption of Exeter's

1 recommendations, correct?

2 A. Correct.

3 MR. WHITT: No further questions.

4 EXAMINER PRICE: Thank you.

5 OELC?

6 MR. PROANO: Thank you, your Honor. Yes,  
7 I do have some questions.

8 - - -

9 CROSS-EXAMINATION

10 By Mr. Proano:

11 Q. Hello, Ms. Baas.

12 A. Hello.

13 Q. When you drafted your report, were you  
14 aware of the Exeter report?

15 A. Yes, when I drafted my testimony, I was.

16 Q. And Staff did consider recommendation  
17 No. 1 in the Exeter audit report, correct?

18 A. Yes, we did.

19 Q. Is there anything in Ohio law that  
20 prevents a CRES supplier from adding a -- whatever  
21 margin they wanted on the transmission cost billed to  
22 customers if Exeter recommendation No. 1 were  
23 adopted?

24 A. I don't know.

25 Q. Now, you in your testimony you recommend

1 a gradual approach to the NMB issues, correct?

2 A. Yes.

3 Q. And this is concept of gradualism?

4 A. Yes.

5 Q. And I believe I wrote this down, you  
6 basically said you may need a phase-in so that rates  
7 are not impacted too abruptly. Did you say that?

8 A. I believe so.

9 Q. And that's consistent with gradualism,  
10 correct?

11 A. Yes.

12 Q. Now, what -- what happened -- let's say  
13 the Commission adopts this Rider NMB 2 proposal and  
14 you get the actual rate impacts from FirstEnergy as  
15 you are recommending and let's say they are pretty  
16 significant for a large group of customers, and  
17 perhaps NMB 2 doesn't make sense then. Just walk me  
18 through what happens in that situation.

19 A. I think your hypothetical is not quite  
20 complete. We have a need to assess the customer  
21 classes and what type of mitigation would need to  
22 take place.

23 Q. Okay. Let's just limit it. Let's just  
24 look at the NMB 2 transition. Let's limit it to that  
25 because there is the cost allocation, correct?

1 A. Uh-huh.

2 Q. And transition to NMB 2, correct?

3 A. Yes.

4 Q. And then in your testimony you say Rider  
5 NMB 2 on the FirstEnergy's evaluation, even though  
6 it's flawed, does show NMB 2 customers would pay more  
7 on a total bill basis, correct?

8 A. Mostly, yes.

9 Q. Okay. Assuming for the NMB 2 rate you  
10 get the bill impact down the road if this proposal is  
11 adopted and they show a very significant rate impact  
12 for many, many nonresidential customers. At that  
13 point how would that idea of a phase-in work for that  
14 rate class?

15 A. Is your hypothetical only for the NMB 2  
16 customers?

17 Q. Yes.

18 A. All the NMB 1 customers are not having a  
19 high bill impact?

20 Q. Let's talk NMB 2 for now.

21 A. I'm not sure that scenario would actually  
22 happen, but if it were to happen, we would have to  
23 assess at the time what the rates would be. There  
24 could be a gradual movement of customers to NMB 2.  
25 You could have a phase-in of certain charges. That

1 all depends on what the numbers are.

2 Q. Okay. But we don't know because we don't  
3 have the actual bill impact, correct?

4 A. Correct.

5 Q. And would it be more prudent for the  
6 Commission to wait until ESP VI perhaps to do this  
7 NMB 2 process, that we actually work with actual bill  
8 impacts before we make such a big change?

9 A. I don't think I would agree with that.  
10 We are going to review bill impacts. I mean, that's  
11 in my -- in my recommendations that we will review  
12 them, and we will make adjustments accordingly.

13 Q. Okay. But what if the NMB 2 bill impacts  
14 are so significant it doesn't really make sense to do  
15 that rate design? At that point will there be an  
16 opportunity to change directions on that NMB 2 rate?

17 A. What do you mean by "change direction"?

18 Q. Oh, for example, just get rid of the NMB  
19 2 proposal entirely and go back to the status quo  
20 until there can be a more comprehensive rate design.

21 A. I am not an attorney, so I can't speak to  
22 the legality of it. In theory I don't see where it  
23 would be eliminated but maybe there would be a more  
24 gradual movement towards it, to moving customers  
25 towards it.

1 MR. PROANO: Thank you.

2 EXAMINER PRICE: Are you done?

3 MR. PROANO: Yes, sir.

4 EXAMINER PRICE: Oh, I'm sorry. I  
5 thought you were thinking about her answer to the  
6 last question.

7 MR. PROANO: Yeah. No further questions.

8 EXAMINER PRICE: Mr. Alexander?

9 MR. ALEXANDER: Thank you, your Honor.

10 - - -

11 CROSS-EXAMINATION

12 By Mr. Alexander:

13 Q. Good afternoon, Ms. Baas. In your role  
14 with Staff, do you regularly work on the Companies'  
15 Rider NMB and Rider NMB pilot issues?

16 A. Yes. I have worked on the NMB Rider  
17 since I started, and I think the first review was in  
18 2017.

19 Q. And you participate in the annual Rider  
20 NMB filings?

21 A. Yes.

22 Q. And you also have familiarity with the  
23 pilot audit case that we've been talking about today,  
24 Case No. 22-391?

25 A. Yes.

1           Q.    All right.  So a customer is permitted to  
2   receive nonshopping service from the companies and  
3   participate in the Rider NMB pilot, correct?

4           A.    There's participating customers that are  
5   allowed, yes.

6           Q.    And there are, in fact, reasonable  
7   arrangements.  There is a decision to specifically  
8   allow that.

9           A.    Yes.

10          Q.    And you are aware those customers have to  
11   be manually billed by the Companies?

12          A.    I am aware, yes.

13          Q.    Did you participate in assisting with the  
14   design or implementation of the manual bill process?

15          A.    No, I did not.

16          Q.    Have you completed any analysis of the  
17   Companies' ability to implement an expansion of the  
18   Rider NMB 2 -- strike that, an expansion of the Rider  
19   NMB pilot?

20          A.    No, I have not.

21          Q.    Do you know if the Companies' billing  
22   systems would be able to accommodate an expansion of  
23   the Rider NMB pilot?

24          A.    I don't know.

25          Q.    Are you aware that even for customers who



1 are participating in the pilot using a CRES provider,  
2 the Companies still have to manually adjust those  
3 customers out of the Rider NMB calculation?

4 A. Yes, I am aware of that.

5 Q. I would now like to shift our discussion  
6 a bit and talk about the PJM billing allocation  
7 process you discussed in your testimony. In your  
8 position do you review the PJM bills issued to Ohio  
9 distribution utilities?

10 A. Yes, I do.

11 Q. And on page 4, line 6 to 7, you discuss  
12 how PJM allocates each billing line item, correct?

13 A. Yes.

14 Q. So I would like to be a bit more  
15 specific.

16 MR. ALEXANDER: Your Honor, may I  
17 approach?

18 EXAMINER PRICE: You may.

19 MR. ALEXANDER: Your Honor, we are not  
20 going to move this as an exhibit. For the benefit of  
21 the record this is currently from Witness Lawless's  
22 testimony. It's our Exhibit A, page 3 of 5, which  
23 has previously been admitted into the record.

24 EXAMINER PRICE: Thank you.

25 Q. (By Mr. Alexander) So, Ms. Baas, you have

1 just been handed an exhibit from Company Witness  
 2 Lawless's testimony that I thought might ease our  
 3 conversation a bit and make it a bit easier to  
 4 follow. So are these the billing line items shown on  
 5 this page that you are referencing in your testimony?

6 A. Yes.

7 Q. And as we go through this next series of  
 8 questions, please feel free to refer to it if you  
 9 like. If you don't need it, that's fine too. You  
 10 discuss in your testimony some different PJM billing  
 11 methodologies including NSPL demand and 12CP,  
 12 correct?

13 A. Yes.

14 Q. And so is it your recommendation that for  
 15 each of these billing line items the Companies should  
 16 allocate the cost based on the manner in which PJM  
 17 bills the Companies?

18 A. In part. Some of these billing line  
 19 items that come through are directly to each EDU so  
 20 they would not need to be reallocated. When it comes  
 21 to customer classes, you would want to include all  
 22 the line items that are 1CP in one bucket, all the  
 23 line items that are 12CP in one bucket, all the  
 24 different buckets, and then you would allocate them  
 25 accordingly.

1           Q.    Okay.  So let's -- I just want to make  
2   sure I am understanding.  So let's start with NITS  
3   charges.  NITS charges are billed on an NSPL basis,  
4   correct?

5           A.    Yes.  According to PJM it's a 1CP NSPL.

6           Q.    Okay.  And then legacy RTEP charges and  
7   non-legacy RTEP, those are both NSPL as well?

8           A.    Yes, the 1CP.

9           Q.    Okay.  And so it's your proposal that the  
10   Companies would allocate first by Company and then by  
11   class in accordance with whatever methodology PJM  
12   uses?

13          A.    That's correct.

14          Q.    Do you know if the Companies have the  
15   data to be able to allocate in that manner?

16          A.    I did not directly ask if they have the  
17   exact data.  I know that in their 5CP allocation that  
18   they use the PJM 1CP allocator, so I would assume  
19   they would have that one.  If there's others that  
20   they don't have, we could discuss how those should be  
21   treated at that time which is why my testimony says  
22   we need to work with the Company to figure out how  
23   it's going to flow through.

24          Q.    Thank you.  When you say "12CP," what is  
25   that reference?

1           A.    It's the coincident peak every month for  
2 the system.

3           Q.    Are there any line items allocated based  
4 on demand, or would that be the same as 12CP?

5           A.    Demand can be defined in different ways.  
6 So you can say that the demand you are charging is a  
7 12CP, or you could say it's a 12NCP. It all depends  
8 on how you are defining that, so I guess it could be  
9 demand.

10          Q.    Okay. For the billing line items which  
11 are billed based on 12CP, do you know whether those  
12 are billed by PJM to each Company or in the aggregate  
13 for all three Companies?

14          A.    I don't know. I would have to look.

15          Q.    And would the same answer apply if I  
16 asked about NSPL?

17          A.    I can't go line by line and tell you  
18 which one is which. I know that there's 12CP, I know  
19 there is 1CP, and I know there's a megawatt-hour.  
20 Other than that I am not sure which one applies to  
21 each line.

22          Q.    Okay. Once the Rider NMB costs have been  
23 allocated to each Company and rate schedule, I am not  
24 completely clear what your recommendation is as far  
25 as how the Companies should bill their customers. Is

1 your recommendation -- we'll start here, the  
2 Companies have proposed to bill customers based on  
3 NSPL value, correct?

4 A. Correct.

5 Q. And PJM uses several different  
6 methodologies like NSPL, 12CP, energy, correct?

7 A. Yes.

8 Q. And so what's your proposal as far as how  
9 the Companies should bill NMB 1 customers?

10 A. The way that NMB 1 is billed currently  
11 would stay. My allocation changes are only up to the  
12 point of the customer class allocations, and after  
13 that, what the Company proposed is -- is what we  
14 accepted.

15 Q. Okay. And then with regard to NMB 2  
16 customers, what's your proposal for those customers?

17 A. The customers on NMB 2, we would accept  
18 the rate -- the billing methodology that the Company  
19 had with the exception of splitting them out. We  
20 would also separate the revenue requirement for GS  
21 because there is an opt in/opt out, so you would have  
22 a revenue result for NMB 1 that would be the --  
23 follow the methodology of PJM. And then for the  
24 customers on NMB 2, you would have the revenue  
25 requirement that would follow those customers, so the

1 cost would follow each group.

2 Q. And then they would be billed by NSPL?

3 A. For the NMB 2 opt-in customers, yes,  
4 in that class.

5 Q. Yes. Thank you. Under your methodology  
6 would the Rider NMB 1 rate for each rate schedule be  
7 the same for each Company?

8 A. Sorry. Can you repeat that?

9 Q. Certainly. Under your methodology would  
10 the Rider NMB 1 rate for each rate schedule be the  
11 same for each Company?

12 A. They would be formatted the same; is that  
13 what you mean by the -- so each schedule would be  
14 formatted the same, but all the numbers would be  
15 inputted differently.

16 Q. I was asking about the numbers, so okay.

17 A. Yeah.

18 Q. We've covered some things, so we are  
19 making progress. I would like to discuss the  
20 phase-in that you discussed with Mr. Proano a bit.  
21 Does Staff have a position as to what level of impact  
22 would trigger a phase-in?

23 A. There's not a specific number. It would  
24 be something we would have to look at at the time.  
25 You know, there could be other impacts that would be

1 occurring that we would need to take into  
2 consideration. So there is not a set number. It  
3 would just be within the review we would have to take  
4 a look.

5 Q. Does Staff have a proposal over what  
6 period of time the phase-in would occur?

7 A. Not at this time. It would be all  
8 dependent on how much or how high the bill impacts  
9 could be.

10 Q. Help me understand how the phase-in would  
11 work mechanically. If there was a phase-in ordered,  
12 are Staff anticipating costs being shifted from one  
13 year to the next or costs being shifted between  
14 customer classes or some third thing I haven't  
15 thought of?

16 A. It depends on what type of phase-in we  
17 would implement. If say the switching to a 1CP  
18 allocation is too much for the customer classes, you  
19 could move that allocation percentages gradually over  
20 a few years so the revenue requirements for those  
21 classes wouldn't be as high so the revenue  
22 requirement would still be collected. It would just  
23 be a gradual movement towards where we want to get  
24 to.

25 Q. So we would collect the revenue

1 requirement and increase from the other classes?

2 A. It wouldn't be an increase since they  
3 would already be paying probably more than that  
4 amount, but it would be a slow movement.

5 Q. Do you know if Staff's Rider NMB proposal  
6 would require the Companies to design and implement a  
7 new bill system or process?

8 A. I don't know.

9 Q. And turning to page 13, line 4, here you  
10 take the position that Rate GS customers should be  
11 opted in "the program." Do you see that?

12 A. Yes.

13 Q. Is the program referenced here Rider NMB  
14 billing, NMB 2 billing?

15 A. Yes.

16 Q. And is your proposal that Rider NMB 2  
17 billing would be permanently optional for those  
18 customers, or would it become mandatory starting in  
19 April 2025 or some other period?

20 A. What do you mean by permanently?

21 Q. If a customer elected to opt in to Rider  
22 NMB 2, is that customer permitted to change that  
23 determination at a later point?

24 A. I'm not sure that's something I  
25 considered. They wouldn't be able to do it -- it



1 would have to be yearly if they did. And again,  
2 whichever bucket of customers they end up in, their  
3 cost would follow them because we would correct the  
4 allocation, but I don't know if I have a position on  
5 that right now.

6 Q. And currently you are aware that the  
7 Commission has ruled that if a customer participates  
8 in the pilot and leaves the pilot, they are not  
9 permitted to return to the pilot, correct?

10 A. I don't know that for sure.

11 Q. With regard to Staff's recommendation to  
12 continue the pilot, is it Staff's position that  
13 customers should be permitted to depart and return,  
14 or once they depart, should the Companies no longer  
15 allow them to participate?

16 A. I don't think that's something I  
17 considered, so I don't have a position on it right  
18 now.

19 Q. One of your proposals is that the  
20 Companies should implement Rider NMB 2 changes  
21 starting on April 1, 2025, correct?

22 A. Yes.

23 Q. Do you know whether the Companies'  
24 billing system is capable of making the determination  
25 of how a customer should be billed at that time?

1           A.    I don't know for sure, but it was the  
2   Companies' proposal to switch to NMB 2 rates on the  
3   same date so.

4           Q.    Well, it was the Companies' proposal to  
5   switch to NMB 2 rates for each customer once they got  
6   an interval or advanced meter, correct?

7           A.    There are customers that have them now  
8   though so I would assume at that date they would be  
9   switching the magnitude of customers that they --  
10   that already have those meters.

11          Q.    I think we may be talking past each  
12   other, but I didn't understand. In the Companies'  
13   original proposal a customer would be billed under  
14   Rider NMB 2 if it had interval or advanced meter in  
15   the month after the customer got that meter, correct?

16          A.    For customers getting a new meter, yes.  
17   Maybe I interpreted the proposal wrong but for  
18   customers with existing meters on that April 2025  
19   date, they would be switched to NMB 2 rates.

20          Q.    That's correct, yeah.

21          A.    Okay.

22          Q.    But the Companies' billing system then  
23   could be coded such that after this date, any  
24   customer with interval or advanced meter would  
25   automatically not manually be billed under Rider NMB

1 2, correct?

2 A. That -- I don't know.

3 Q. Okay. And so you also don't know then if  
4 the Companies' billing system could accommodate  
5 that -- that date certain of April 1 that you are  
6 suggesting?

7 A. Yeah, I don't know that.

8 Q. If the Companies had -- had IT costs  
9 associated with your proposals, does Staff anticipate  
10 recovery of those IT costs through Rider NMB?

11 A. That's not something I can -- I  
12 considered. I don't think it would be an appropriate  
13 place within the NMB Rider.

14 Q. Is there another mechanism you believe  
15 the Companies would be able to get cost recovery for  
16 the costs associated with your proposals?

17 A. I don't know for sure. I would assume if  
18 it's been the test year in a rate case, when you come  
19 in, you could get it there but.

20 Q. Now, your second recommendation, let's  
21 focus on that briefly, if we use a 1CP cost  
22 allocation with your second recommendation, wouldn't  
23 the Companies still need to remove pilot customers  
24 since they are removed from the forecast expenses?

25 A. Yes, they would still have to be removed

1 from NMB.

2 MR. ALEXANDER: Can I have one moment,  
3 your Honor?

4 Q. Just one last question. Is it -- is it  
5 Staff's intention that the details regarding sort of  
6 the mechanics of how this worked would be addressed  
7 at a later point?

8 A. It was our intention that the mechanics  
9 we would work together with, and they would be  
10 finalized within the annual review.

11 MR. ALEXANDER: Thank you, Ms. Baas. I  
12 appreciate it. No further questions.

13 - - -

14 EXAMINATION

15 By Examiner Price:

16 Q. Before we go on to redirect, I have a  
17 couple of questions. I don't know how much you've  
18 been in the hearing these last 14 days, but were you  
19 in the hearing room when discussion was had as to the  
20 relative number of nonresidential customers that have  
21 interval or smart meters, advanced meters?

22 A. I was here for some it, yes.

23 Q. So you were aware, maybe it's for certain  
24 classes, two-thirds don't have smart meters,  
25 one-third does?

1           A.    Yes.

2           Q.    Does Staff have any concerns about in  
3           your proposal to similarly-situated customers, one  
4           with an interval meter and one without, paying --  
5           with identical load flows, identical usage, paying  
6           two different transmission rates, and one of those  
7           customers, therefore, having a competitive advantage  
8           over the other?

9           A.    If -- the meters are something we  
10          considered when we made our recommendation. I think  
11          for that one customer that doesn't have the  
12          interval -- the interval or smart meter, we are not  
13          sure they would be exactly the same. They do have a  
14          chance to request a meter at their own expense, so it  
15          is possible if it would -- if they thought there  
16          could be cost savings for them, they could do that.

17          Q.    If there was significant competitive  
18          disadvantage, they could request the smart meter.

19          A.    Yes.

20               EXAMINER PRICE: That's fair.

21               Redirect?

22               MS. BOTSCHNER-O'BRIEN: Could we have 5  
23          minutes, please?

24               EXAMINER PRICE: Yes. Let's go off the  
25          record.

1 (Recess taken.)

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

4 MS. BOTSCHNER-O'BRIEN: Thank you, your  
5 Honor. We have no redirect for Ms. Baas, and I would  
6 like to renew my motion to admit Staff Exhibit 9.

7 EXAMINER PRICE: Ms. Baas, you are  
8 excused. Any objection to the admission of Staff  
9 Exhibit 9?

10 Seeing none, it will be admitted.

11 (EXHIBIT ADMITTED INTO EVIDENCE.)

12 EXAMINER PRICE: Mr. Healey. Long  
13 awaited Mr. Healey, you may take the stand. Long  
14 awaited because you are our final witness.

15 Raise your right hand, please.

16 (Witness sworn.)

17 EXAMINER PRICE: Please be seated and  
18 state your name and business address for the record.

19 THE WITNESS: My name is Christopher  
20 Healey. Business address is 180 East Broad Street,  
21 Columbus, Ohio.

22 EXAMINER PRICE: Please proceed.

23 MS. BOTSCHNER-O'BRIEN: Thank you, your  
24 Honor.

25 Your Honors, I placed before the Bench,

1 the court reporter, and the witness a multi-page  
2 document captioned the "Direct Testimony of  
3 Christopher Healey" and request that it be marked for  
4 purposes of identification as Staff Exhibit 10.

5 EXAMINER PRICE: So marked.

6 (EXHIBIT MARKED FOR IDENTIFICATION.)

7 MS. BOTSCHNER-O'BRIEN: Thank you, your  
8 Honor.

9 - - -

10 CHRISTOPHER HEALEY

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

13 DIRECT EXAMINATION

14 By Ms. Botschner-O'Brien:

15 Q. Mr. Healey, do you have before you what's  
16 been marked as Staff Exhibit No. 10?

17 A. Yes.

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

19 A. This is my direct testimony filed in this  
20 case on October 30.

21 Q. Thank you. And it was prepared by you or  
22 under your direction?

23 A. Yes.

24 Q. Have you had an opportunity to review  
25 this document prior to taking the stand today?

1           A.    Yes, I have.

2           Q.    And as a result of this review, do you  
3 have any changes, corrections, amendments of any  
4 kind?

5           A.    Yes, I have a few.

6           Q.    And could you walk us through those,  
7 please?

8           A.    Sure. The first one is on page 16, line  
9 18, after the word "under," I would add the words  
10 "Rider ELR, which is recovered under." So now it  
11 would read "\$5 per kW credit under Rider ELR, which  
12 is recovered under the Company's existing Demand Side  
13 Management."

14          Q.    Thank you. Anything else?

15          A.    Yes. The next one is on page 25,  
16 starting at line 18, the sentence that begins with  
17 the word "OMAEG witness," I would delete that entire  
18 sentence that continues through page 26, line 2,  
19 includes footnote 38. Just delete that whole  
20 sentence.

21          Q.    Thank you.

22               EXAMINER PRICE: Line 18, beginning with  
23 "OMAEG witness Seryak"?

24               THE WITNESS: Yes. Delete that whole  
25 sentence.



1           A.    I have another change on page 27, line  
2   11.  Where it says "five years," that should say "six  
3   years."

4                   And one more on page 31, line 12, the  
5   No. "145" should be changed to the No. "110."  And  
6   then corresponding change in footnote 44, the  
7   No. "64.6" should be changed to "29.6."

8                   And those are -- those are my changes.

9                   MR. HAYS:  Your Honor, could he redo or  
10  could he restate the last one again?

11                  EXAMINER PRICE:  Yes, please.

12                  THE WITNESS:  Sure.  On page 31, line 12,  
13  the No. "145" should be changed to No. "110," 1 M.  
14  And then footnote 44 this is a corresponding change  
15  where "64.6" should be changed to "29.6."

16                  Q.    (By Ms. Botschner-O'Brien) Thank you.  
17  And does that complete your corrections?

18                  A.    Yes, it does.

19                  Q.    And if I were to ask you the questions  
20  contained in Staff Exhibit 10 today, would your  
21  responses be the same?

22                  A.    With those corrections, yes, they would.

23                  Q.    In your opinion are those responses  
24  truthful and reasonable?

25                  A.    They are.

1 MS. BOTSCHNER-O'BRIEN: Your Honor, I  
2 respectfully move for the admission of Staff Exhibit  
3 10, subject to cross-examination, and tender this  
4 witness available for cross-examination.

5 EXAMINER PRICE: Thank you.

6 Mr. Kurtz?

7 MR. KURTZ: Yes, your Honor.

8 - - -

9 CROSS-EXAMINATION

10 By Mr. Kurtz:

11 Q. Good afternoon, Mr. Healey.

12 A. Hi.

13 Q. So I want to ask you questions about ELR.

14 A. Okay.

15 Q. So you reviewed the testimonies, data  
16 responses of Witnesses McMillen and Stein from the  
17 Company?

18 A. Yes, I have.

19 Q. And you've reviewed the testimony of OEG  
20 Witness Mr. Murray?

21 A. Yes.

22 Q. Okay. Did you review the ELR tariff, the  
23 proposed tariff?

24 A. The proposed tariff included with the  
25 Companies' testimony?

1 Q. Yes.

2 A. Yes, I did.

3 Q. Okay.

4 EXAMINER PRICE: Mr. Kurtz, could you use  
5 your microphone?

6 MR. KURTZ: Oh, I'm sorry. Thank you.  
7 Sorry.

8 Q. (By Mr. Kurtz) Just by way of background  
9 also, on page 29, line 15, of your testimony, you  
10 indicate that the ELR credit has averaged about  
11 \$60 million a year?

12 A. That's correct.

13 Q. Okay. So the credit is \$10 a kW month?

14 A. Currently, yes.

15 Q. Okay. So that's 60 million assumed an  
16 average ELR load of about 500 megawatts?

17 A. That's correct.

18 Q. Are you familiar with the AEP  
19 interruptible rate program?

20 A. Yes, I am.

21 Q. Okay. And you filed testimony regarding  
22 that program?

23 A. I filed testimony supporting the  
24 Stipulation in the AEP case. I believe I did  
25 reference that as one of the parts of the

1 Stipulation, yes.

2 Q. Is it correct that AEP has two  
3 interruptible rate programs, IRP-L legacy and IRP-E  
4 expanded?

5 A. Yes, it does.

6 Q. You are familiar with the expanded?

7 A. I am. I'm more familiar with the  
8 expanded as proposed in the pending Stipulation, but  
9 I do have some familiarity with the existing program  
10 as well.

11 Q. Okay. Okay. Let me -- I want to ask you  
12 some questions about the proposed ELR tariff.

13 MR. KURTZ: May I approach?

14 EXAMINER PRICE: You may.

15 MR. KURTZ: This is in the record. It  
16 was filed with somebody's testimony.

17 Q. (By Mr. Kurtz) Do you have the redlined  
18 proposed ELR tariff?

19 A. I have the document you just handed me.  
20 I see that it's Attachment BSM-1, so I assume it's  
21 the same thing that was filed with Mr. McMillen's  
22 testimony, yes.

23 Q. Okay. So I've highlighted in yellow just  
24 to make this a little bit easier one of the  
25 requirements for participating in ELR, according to

1 the Company, is that the customer demonstrates that  
2 it is participating in a PJM demand response program;  
3 is that correct?

4 A. Yes.

5 Q. Okay. Is there any megawatt minimum? In  
6 other words, could a customer with a 50-megawatt ELR  
7 load participate with 1 megawatt with PJM demand  
8 response and that would qualify?

9 A. I think it would depend on the demand  
10 response program at PJM that you are referring to  
11 because there are more than one.

12 Q. Okay. For whatever demand response  
13 program there is, it could -- there is no minimum  
14 amount of megawatts in the proposed tariff that would  
15 qualify -- excuse me, qualify the customer for ELR;  
16 is that correct?

17 A. The tariff does not state that there is  
18 some minimum number of megawatts that must be bid  
19 into PJM for demand response, that's correct.

20 Q. So the customer could have a large ELR  
21 load and credit and a relatively small PJM demand  
22 response participation and still qualify?

23 A. I don't think that's true because the --  
24 the testimony of the FirstEnergy witnesses clarifies  
25 that it's referring to participating in the PJM

1 demand response program and must set a firm service  
2 level and that that same firm service level will be  
3 used for PJM and for the FirstEnergy program, so you  
4 have to curtail to the same firm service under either  
5 program, so the megawatts -- at least the benefits of  
6 the program are the same under both.

7 Q. I totally agree with the firm service  
8 level, that's later, has to be whatever you register  
9 with PJM is your firm service level, is your ELR firm  
10 service level. But that does not dictate the number  
11 of megawatts that you bid into the PJM demand  
12 response program, does it?

13 A. I think you're right that it's possible  
14 the number of megawatts calculated in your bid into  
15 PJM would not necessarily be identical to the way  
16 FirstEnergy is calculating the delta on the  
17 megawatts, you're right.

18 Q. Let's just page 3 -- excuse me, 4 of 7,  
19 this is what we were just talking about, the firm  
20 load for the ELR is equal to the level registered  
21 with PJM?

22 A. Correct.

23 Q. Okay. Page 5 of 7 of the emergency  
24 curtailment event, do you agree that under the  
25 Companies' proposal that the utility used to be able

1 to interrupt for regional transmission and/or  
2 transmission emergencies as well as distribution, but  
3 under their proposal the utility would only interrupt  
4 for distribution level events.

5 A. I don't agree with that.

6 Q. Why not?

7 A. So the way I read -- two reasons. I am  
8 looking at the page that -- page 5 of this tariff.  
9 It says that there is an emergency situation exists  
10 that may jeopardize the integrity, this is the new  
11 line, of the distribution system, and so I would  
12 interpret that to mean if you have a transmission  
13 issue that could thereby jeopardize the integrity of  
14 the distribution system, you could call an event for  
15 that reason.

16 And I would also -- the second reason is  
17 during his cross-examination, I recall Mr. McMillen  
18 stating that the Company -- I believe it was  
19 Mr. McMillen, might have been Mr. Stein, under their  
20 proposal, their interpretation is that they would  
21 still be able to call an event based on a  
22 transmission issue.

23 Q. Well, the tariff used to say emergency  
24 could be with a regional transmission organization  
25 and/or transmission operator and that's proposed to

1 be stricken, correct?

2 A. That language is proposed to be stricken,  
3 yes.

4 Q. And then it goes on that an emergency  
5 situation exists that may jeopardize the integrity  
6 and used to say of either the distribution or  
7 transmission system, but transmission system has been  
8 deleted.

9 A. Yes.

10 Q. So under this proposed tariff, the  
11 utility can only interrupt for distribution  
12 emergencies because they have taken out the  
13 transmission language.

14 A. I don't -- I don't read it that way. The  
15 deletion of the words "regional transmission  
16 organization" refers to who is making the  
17 determination, first of all, not what type of event  
18 it is. And then as I just explained, I think you  
19 could call an event related to transmission. If  
20 FirstEnergy were to interpret, that would have the  
21 effect of jeopardizing the integrity of the  
22 distribution system.

23 Now, I would agree if for some reason  
24 there is an event that only affects transmission and  
25 FirstEnergy doesn't think that it would have any



1 impact on distribution, then striking that language  
2 would have the effect that you are describing, yes.

3 Q. Okay. So if it was only a transmission  
4 emergency, the utility would not be able to interrupt  
5 under this proposed tariff. Only a transmission  
6 emergency that doesn't affect distribution.

7 A. I would agree that is what the language  
8 of their proposed tariff change would lead me to  
9 conclude, yes.

10 Q. And Rate GT for FirstEnergy is general  
11 service transmission voltage level, so anything  
12 occurring there would have no impact on distribution,  
13 but it is a transmission event, correct? Strike that  
14 question.

15 That one -- that one -- so under the  
16 current tariff -- well, no. Under the proposed  
17 tariff and the current tariff, there is no limitation  
18 on the number of interruptions that FirstEnergy can  
19 call, is there?

20 A. There is not.

21 Q. Okay. So it could be every day for 24  
22 hours a day for a week theoretically.

23 A. Theoretically, yes.

24 Q. Do you know that the PJM does have  
25 limitations on how long interruptions can be for

1 their -- for their demand response program?

2 A. I'm aware there are some limits. I don't  
3 know exactly what they are.

4 Q. Okay. And it changes by season; the  
5 summer and winter are different?

6 A. I believe there is different hours of the  
7 day that they are eligible. I don't know if the  
8 total number of hours is different but there are some  
9 different eligibility.

10 Q. And under the ELR tariff, there is no  
11 such limitation?

12 A. Correct.

13 Q. Okay. So on page 6 of 7, talking about  
14 the penalty for noncompliance, so under the penalty  
15 for noncompliance with a distribution -- distribution  
16 level event called by the utility, the penalty is  
17 forfeiture of the current month credit plus the  
18 preceding 12 months credits plus an energy ECE,  
19 energy charge penalty?

20 A. Sorry. Are you talking about currently  
21 or as proposed?

22 Q. Let's see. As proposed.

23 A. Yes, that's correct.

24 Q. Okay. Excuse me. The energy charge  
25 penalty is 300 percent of LMP? Do you know the

1 details? If you don't know, that's fine.

2 A. I don't see it on this page, and I don't  
3 recall exactly what the details are.

4 Q. It's in the definition, page 3 of 7 at  
5 the top.

6 A. Yes, 300 percent, that's right. I recall  
7 now.

8 Q. Okay. So if there's an event that is  
9 both a transmission and a distribution event, would  
10 the customer be subject to the state penalties here  
11 as well as the PJM penalties?

12 A. If they failed to deliver you mean?

13 Q. Yes.

14 A. I don't know.

15 Q. Okay. The PJM penalty, the capacity  
16 performance penalty is what it would be?

17 MS. BOJKO: Objection, your Honor. I'm  
18 sorry. Is he asking what the Companies' proposal is  
19 or what Staff's proposal is? It sounds like we are  
20 going through a tariff and asking the Staff witness  
21 to interpret what the redlining of the Company is or  
22 did.

23 Q. (By Mr. Kurtz) Do you understand my  
24 question, Mr. Healey? Do you want me to rephrase?

25 A. I was waiting for everyone on the

1 objection.

2 Q. I'll rephrase.

3 EXAMINER PRICE: Okay.

4 Q. (By Mr. Kurtz) I am talking about the  
5 Companies' proposed tariff that -- have you opposed  
6 any of these changes that we've talked about?

7 A. On the penalties; is that what you are  
8 talking about?

9 Q. Yeah, penalty, for instance.

10 A. I don't think I take any position on the  
11 penalty provision in my testimony, no --

12 Q. Okay.

13 A. -- either way.

14 Q. Now, for the AEP IRP expanded, that also  
15 includes a state Commission-approved interruptible  
16 credit of some level?

17 A. Yes, it does.

18 Q. Okay. And are you aware of AEP under its  
19 interruptible tariff can interrupt for both  
20 transmission and distribution events?

21 A. I believe that's true. I don't have the  
22 tariff in front of me though.

23 Q. Okay. Do you agree that similar to the  
24 FirstEnergy interruptible tariff, there is no limits  
25 on how often AEP can call interruptions?

1 MS. BOTSCHNER-O'BRIEN: Objection. Your  
2 Honor, at this point Mr. -- Mr. Kurtz is asking about  
3 AEP. He's gone through different --

4 MR. KURTZ: Well. My point is this,  
5 consistency across the state for these various  
6 programs. If you recall, Witness Mackey five or six  
7 times talks about consistency, and I think that's  
8 certainly relevant when deciding what the FirstEnergy  
9 interruptible program should be, what the Commission  
10 has already approved for AEP, and whether or not  
11 there is any level of consistency is appropriate.

12 MS. BOJKO: Your Honor, I am going to  
13 object then because one was done by a Stipulation,  
14 and one is a litigated case, so I think those  
15 distinctions are important and --

16 EXAMINER PRICE: Those distinctions are  
17 important, but the Commission can properly assess the  
18 weight of those distinctions. I do agree Staff is  
19 not in a great position to argue about consistency  
20 given Mr. Mackey's testimony. Overruled.

21 MR. FINNIGAN: Your Honor, I am just  
22 going to object for the record too that I don't know  
23 that there's been any proposal that's been approved  
24 for AEP yet. I understood that case was pending, and  
25 I also was under the belief that in a settlement, the

1 resolution of issues in a settlement are not to be  
2 cited as precedent.

3 EXAMINER PRICE: As pointed out by Mr.  
4 Kurtz yesterday -- the other day, that's upon the  
5 approval of the Commission. It's not been approved  
6 yet.

7 MR. KURTZ: And also, your Honor, I want  
8 to point out the AEP interruptible tariffs are the  
9 filed rate. They are the lawful rate. They are on  
10 file now. They are proposed to be changed in the  
11 pending Stipulation, but they are a filed rate  
12 publicly available right now. And so that was --  
13 that was the nature of my question.

14 EXAMINER PRICE: All the objections are  
15 overruled.

16 Q. (By Mr. Kurtz) One last question about  
17 the AEP IRP expanded as currently the filed rate and  
18 as proposed to be changed, are you aware if that rate  
19 gives the customer the option but not the requirement  
20 to participate in PJM demand response?

21 A. That's correct.

22 Q. The option.

23 A. They have the option, yes, for the IRP-E,  
24 yes.

25 Q. IRP-L no option to participate in PJM

1 demand response.

2 A. They are required to.

3 Q. You're right. And money gets credited  
4 back, but for IRP-E it's the customer's option.

5 A. Correct.

6 Q. And the credit for IRP-L AEP is higher  
7 than IRP expanded, correct?

8 MS. BOJKO: Objection, your Honor. Now  
9 consistencies, we have gone way beyond that and there  
10 is no similar proposals in this case that we could  
11 even say are consistent or not, so it's completely  
12 irrelevant.

13 EXAMINER PRICE: Overruled. Did you  
14 answer the question?

15 THE WITNESS: I don't think I did.

16 EXAMINER PRICE: Overruled the objection.  
17 So you can answer.

18 THE WITNESS: Can I have the question  
19 reread or reasked?

20 Q. I think it was IRP-L credit is higher  
21 than the IRP-E credit.

22 A. Currently, yes, because of the current  
23 PJM clearing price. I believe under the current  
24 proposal, the IRP-E credit theoretically could be  
25 higher if the BRA clearing price were extraordinarily

1 high.

2 EXAMINER PRICE: Mr. Healey, it's --  
3 extremely high could mean anything. What -- could  
4 you sum -- I mean, would it be \$300 is extremely  
5 high?

6 THE WITNESS: Yeah. So the current AEP  
7 credit I think is \$9 and the -- for the IRP-L. For  
8 the IRP-E they get 70 percent of the BRA price. So  
9 it would have to be somewhere in the vicinity of \$14  
10 per kilowatt month, and then you convert that. That  
11 would be about high 400s for the --

12 EXAMINER PRICE: So higher than we have  
13 experienced.

14 THE WITNESS: Yeah. Higher than I have  
15 seen in the last 15 plus years.

16 MR. KURTZ: Thank you, your Honor.

17 Q. (By Mr. Kurtz) Thank you, Mr. Healey. I  
18 want to have -- show you an exhibit we've prepared to  
19 talk about the difference between your proposal,  
20 Staff's proposal, and the OEG proposal in this case.

21 MR. KURTZ: And if we could have it  
22 marked as OEG --

23 EXAMINER PRICE: It will be so marked  
24 OEG --

25 MR. KURTZ: I don't know. I know we are



1 not at 7, so maybe we can just use 7.

2 EXAMINER PRICE: We'll use 7. It will be  
3 marked as OEG 7.

4 (EXHIBIT MARKED FOR IDENTIFICATION.)

5 Q. (By Mr. Kurtz) Okay. First, so first  
6 thing I want to talk about is the credit level that  
7 you've proposed, or Staff has proposed, that OEG has  
8 proposed, and the Companies proposed. Your credit  
9 level in year one is \$5 a kW month; is that correct?

10 A. Correct.

11 Q. Okay. And the current credit is \$10 a kW  
12 month?

13 A. Correct. Just so the record is clear,  
14 there is currently two \$5 credits that add up to 10.  
15 I tend to refer to them as a single credit for  
16 simplicity in my testimony.

17 Q. I understand. I do too. So the  
18 Company's proposing to reduce the IRP -- excuse me,  
19 ELR credit by a dollar a year beginning in year two  
20 taking it down to \$3 in year eight; is that correct?

21 A. That is the Companies' proposal, yes.

22 Q. The OEG proposal is to mimic the Company  
23 but only for the first three years and then keep the  
24 credit at \$7; is that your understanding?

25 A. My understanding is that you are

1 proposing a four-year ESP also, so I think yours cuts  
2 off the fourth year. I don't remember if Mr. Murray  
3 had a recommendation for what happens after that.

4 Q. I think he said if it's longer, it would  
5 just continue at 7.

6 A. He may have.

7 Q. But you -- you would cut the credit in  
8 half year one and then reduce it by \$1 in year two,  
9 keep it at \$4 for three years, and then reduce it to  
10 \$3 a kW month for the last two years of your proposed  
11 six-year ESP?

12 A. That's correct.

13 Q. Okay. So I've assumed 500 megawatts of  
14 ELR load like we talked about earlier to keep the  
15 math simple. Your \$60 million on average, remember  
16 that 500,000 kW times 10 times 12 is 60 million?

17 A. Yes, I recall.

18 Q. So you would reduce the credit by  
19 30 million in the first year or 50 percent; is that  
20 correct?

21 MS. BOJKO: Objection, your Honor. Are  
22 we looking at a document? There has been no  
23 foundation for this document or that the witness has  
24 seen the document or that the witness has analyzed  
25 and reviewed the accuracy of the numbers on the

1 document.

2 MR. KURTZ: The foundation is his  
3 testimony. These numbers came right from his  
4 testimony.

5 EXAMINER PRICE: Mr. Healey, you have not  
6 seen this document before?

7 THE WITNESS: I have not.

8 EXAMINER PRICE: Can you confirm for the  
9 Bench that the numbers that Mr. -- which I thought  
10 Mr. Kurtz was walking through them, but can you  
11 confirm that the numbers in this document are from  
12 your testimony?

13 THE WITNESS: Not all of them. I haven't  
14 gone through all of them yet. The one he has gone  
15 through so far, I've done, without looking at the  
16 document, and they appear to be accurate in that top  
17 part. I have not looked at the various pieces under  
18 the payment reductions.

19 EXAMINER PRICE: Why don't you take 2  
20 minutes and review the numbers so Ms. Bojko will be  
21 satisfied there is a proper foundation.

22 THE WITNESS: I've reviewed. Would you  
23 like me to explain whether I think their accurate?

24 EXAMINER PRICE: Yes, I would.

25 THE WITNESS: So the dollar numbers,

1 6 million, 30 million are all accurate. The  
2 percentages I do not agree with all of them.

3 Q. (By Mr. Kurtz) I'm sorry. What don't you  
4 agree with?

5 A. Well, for example, if you look at  
6 FirstEnergy ELR position from year one to year two  
7 6 million reduction is 10 percent, but then when you  
8 reduce by another 6 million, that would be more than  
9 10 percent because you have a new denominator. So  
10 it's only 10 percent if you're going back to the  
11 first 10. Otherwise, you have to recalculate those  
12 percentages each year, but the 6 million numbers are  
13 correct and the 30 million number and the years they  
14 are placed in are all correct, so the percentage  
15 notwithstanding, I agree.

16 Q. I forgot you were a math major.

17 EXAMINER PRICE: The text at the bottom  
18 of the first page and the top of the second page, is  
19 there anything in there that is outside of your  
20 personal knowledge?

21 THE WITNESS: I would say on the second  
22 page under Staff ELR position, in the orange row  
23 requirement or option to participate in PJM demand  
24 response through a CSP, maybe a quibble but I  
25 wouldn't use the word offset because that makes it

1 sound like it's being credited through the rider  
2 which it is not. It's more an additional revenue  
3 stream before participants. I would not refer to  
4 that as an offset.

5 EXAMINER PRICE: That's fair.

6 THE WITNESS: But otherwise -- otherwise  
7 I agree that these all appear to accurately portray  
8 the testimony. Of course, you know, what's actually  
9 written in my testimony is my testimony, and I'm not  
10 modifying that but agree these are accurate.

11 EXAMINER PRICE: Thank you.

12 Q. (By Mr. Kurtz) So question on the  
13 50 percent reduction in year one of the credit, is  
14 that consistent with your concept of the concept of  
15 gradualism?

16 A. Yes.

17 Q. Okay. The customer firm baseline level,  
18 we talked about this from the tariff, but you have  
19 not added that in your testimony; is that correct?

20 A. I do not address changing the firm load  
21 level. I think I may touch upon it briefly when I  
22 talk about Mr. Murray's recommendation to increase  
23 the interruptible load as the year to year when  
24 adding new customers.

25 Q. That I thought you addressed in the -- in

1 the context of increasing the program size by  
2 50 megawatts a year.

3 A. Yes, you are correct. So, yeah, I guess  
4 that's accurate. I do not take a position different  
5 from what the Companies suggest on using the  
6 registered PJM firm load.

7 Q. Okay. And on the penalty, again, you  
8 have not addressed that issue so should -- is it that  
9 you don't -- if you don't address it, should we  
10 assume the default position is you agree with the  
11 Companies' proposal?

12 A. I guess I would say it slightly  
13 different. The default is we take no position and,  
14 you know, allow the Commission to rule based on other  
15 parties' proposals.

16 Q. Okay. Cost recovery you do -- you do  
17 take a position. You believe it should be the full  
18 recovery of the credit from ratepayers should be  
19 through the Economic Development Rider?

20 A. That's correct.

21 Q. Okay. New customer expansion, the  
22 Companies' proposal is to not expand the program for  
23 new customers; is that correct?

24 A. That's correct.

25 Q. Okay. And your proposal is to increase

1 it by 50 megawatts a year beginning in year two of  
2 the ESP --

3 A. Correct.

4 Q. -- for the remaining five years of your  
5 proposed six-year ESP?

6 A. Yes.

7 Q. Okay. So total of 250 megawatts?

8 A. Correct.

9 Q. Okay. That's about 50 percent of the  
10 current program size?

11 A. Yes. Based on the math we did before,  
12 the current program size fluctuates a little bit but.

13 Q. Okay. Now, the requirement or the option  
14 to participate in demand response, if we take out the  
15 word offset, be available to what -- you say I'm  
16 lowering the credit, but I'm also allowing customers  
17 to get PJM demand response revenue beginning in year  
18 two and that is a way to mitigate the impact to the  
19 ELR customers.

20 A. I think that's a fair characterization,  
21 yes.

22 Q. Now, you -- you have not addressed the  
23 reasons for interruptions in terms of transmission or  
24 distribution events?

25 A. Correct. I don't discuss that in my

1 testimony.

2 Q. So the default would be you just don't  
3 take a position on it?

4 A. Correct.

5 MR. KURTZ: Okay. All right. Thank you,  
6 Mr. Healey.

7 Thank you, your Honor.

8 EXAMINER PRICE: Thank you.

9 Mr. Pritchard?

10 - - -

11 CROSS-EXAMINATION

12 By Mr. Pritchard:

13 Q. Good afternoon, Mr. Healey. You  
14 testified in response to the Companies' proposed  
15 change to unaccountable -- unaccounted for energy,  
16 correct?

17 A. Correct.

18 Q. Were you here during Mr. Stein's  
19 cross-examination including the questions I asked him  
20 on cross?

21 A. I was here.

22 Q. And do you recall questions I asked  
23 Mr. Stein about both billing errors associated with  
24 his unaccounted for energy change as well as in the  
25 supplier tariff provision titled "Consent for



1 Settlement, Resettled, or Reconciliation"?

2 A. It's been a long hearing. I'm sorry. I  
3 don't recall those specific questions, no.

4 Q. Sure. Have you analyzed in your written  
5 testimony and addressed the Companies' proposed  
6 change in the supplier tariff titled "Consent for  
7 Settlement, Resettlement, or Reconciliation"?

8 A. I do not address the change to the  
9 supplier tariff, no.

10 Q. And so there's no analysis in your  
11 testimony of that provision that's proposed in the  
12 redlines to the supplier tariff and the -- your  
13 proposed change on unaccounted for energy, correct?

14 A. Correct. I am not addressing that.

15 MR. PRITCHARD: That's all I have. Thank  
16 you.

17 EXAMINER PRICE: When you say you are not  
18 addressing, again, your previous testimony was you  
19 are neither in support or in opposition of the  
20 proposal.

21 THE WITNESS: I guess that would be  
22 slightly different here. I did not review the  
23 supplier tariff that he is referencing; whereas, I  
24 did review everything that I was discussing with  
25 Mr. Kurtz, so I would just say I don't know with

1     respect to the supplier tariff issue as opposed to  
2     neither opposing or supporting.

3             EXAMINER PRICE:   Glad I asked.

4             THE WITNESS:   Maybe that's a distinction  
5     without a difference but.

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

8             EXAMINER PRICE:   Thank you.

9             Mr. Finnigan?

10            MR. FINNIGAN:   Thank you, your Honor.

11                             - - -

12                             CROSS-EXAMINATION

13     By Mr. Finnigan:

14             Q.    Good afternoon, Mr. Healey.

15             A.    Hi.

16             Q.    Mr. Healey, have you had occasion to  
17     review the tariffs of all four Ohio electric  
18     distribution utilities?

19             A.    Not in their entirety but I have probably  
20     read at some point a substantial majority of most of  
21     them, yes.

22             MR. FINNIGAN:   Your Honor, may I  
23     approach?

24             EXAMINER PRICE:   You may.   Thank you.

25             MR. FINNIGAN:   Your Honor, I would ask

1 that the document I just handed out be marked for  
2 identification as OCC Exhibit 26. It's a copy of the  
3 current Duke Energy tariff.

4 EXAMINER PRICE: So marked.

5 (EXHIBIT MARKED FOR IDENTIFICATION.)

6 MR. FINNIGAN: 26.

7 Q. (By Mr. Finnigan) Mr. Healey, can you --  
8 do you have before you the Duke Energy tariff that's  
9 dated on the front page at the top December 19, 2022?

10 A. I do have that document, yes.

11 Q. Can you identify this, subject to check,  
12 as a copy of the current Duke Energy tariff?

13 A. I guess I don't want to be difficult, but  
14 if this is from December 19 of 2022, I assume there  
15 must have been some changes between now and then in  
16 the last year or so. I would doubt this is a current  
17 copy of Duke's entire tariff book.

18 Q. Could you turn to the last page of that  
19 document.

20 A. Sure.

21 Q. The last page reflects that this was  
22 filed with the Commission on December 19 of 2022; is  
23 that correct?

24 A. That's correct.

25 Q. Now, I'm not interested in changes to all

1 the various riders which may have occurred since that  
2 time, but with respect to this rider which you have  
3 before you, does this reflect whether Duke Energy has  
4 any load -- any interruptible tariff similar to Rider  
5 ELR?

6 MS. BOTSCHNER-O'BRIEN: Your Honor,  
7 objection.

8 EXAMINER PRICE: Grounds?

9 MS. BOTSCHNER-O'BRIEN: He's handed him a  
10 complete tariff packet. Maybe counsel can refer him  
11 to a specific -- something specific here.

12 MR. FINNIGAN: Your Honor, my point is  
13 that I am not aware of any interruptible tariff for  
14 Duke, and I am simply asking if Mr. Healey can  
15 confirm that.

16 EXAMINER PRICE: Well, without referring  
17 to the tariff, Mr. Healey, are you aware of whether  
18 or not Duke has an interruptible program?

19 THE WITNESS: Duke does not currently  
20 have an interruptible program to my knowledge in  
21 Ohio.

22 MR. FINNIGAN: Now, your Honor, I would  
23 like to approach with another exhibit, please.

24 EXAMINER PRICE: Is this AES?

25 MR. FINNIGAN: I'm sorry?

1 EXAMINER PRICE: Is this AES?

2 MR. FINNIGAN: How did you guess?

3 EXAMINER PRICE: Mr. Healey, do you know  
4 whether AES Ohio currently has an interruptible  
5 tariff program?

6 THE WITNESS: They do not to my  
7 knowledge.

8 MR. FINNIGAN: I withdraw my proposed  
9 exhibit.

10 Q. (By Mr. Finnigan) So, Mr. Healey, do you  
11 have an opinion as to whether Duke and AES are in a  
12 position to offer their consumers safe, adequate, and  
13 reliable electrical service despite the fact they do  
14 not have an interruptible tariff?

15 A. I don't have any opinion on that.

16 Q. Do you have an opinion as to whether an  
17 interruptible tariff is necessary for an electric  
18 utility to offer safe, adequate, and reliable service  
19 for its utility consumers?

20 A. I think that would depend on the utility.

21 Q. In what way would it depend on the  
22 utility?

23 A. Would depend on what other resources they  
24 have to maintain safe and adequate and reliable  
25 service. There may be some utilities where having an

1 interruptible tariff is the best way to maintain that  
2 system amongst all the various other things that they  
3 do to maintain reliability, whereas, there may be  
4 others where they can do it without it. So without  
5 looking at each individual utility, I can't say  
6 across the -- I can't say that across the board is  
7 never necessary for purposes of reliability.

8 Q. Are you aware of whether either Duke or  
9 AES has resources available to them for providing  
10 reliable service to consumers which FirstEnergy would  
11 not have available to it?

12 MR. ALEXANDER: Can I have that question  
13 reread, please?

14 EXAMINER PRICE: You may.

15 (Record read.)

16 MR. ALEXANDER: Objection.

17 EXAMINER PRICE: Grounds?

18 MR. ALEXANDER: Vague as to resources.  
19 Specifically resources without the identification of  
20 the time period because we're talking about a long  
21 period of time for each program and there have been  
22 many different programs specific to utilities such as  
23 Rider RSC which has provided different resources to  
24 different utilities.

25 MR. FINNIGAN: Your Honor, if I may

1 respond? I am simply pursuing follow-up to  
2 Mr. Healey's prior answer.

3 EXAMINER PRICE: Where he used the term  
4 resources. Where he used the term resources.

5 MR. FINNIGAN: Yeah.

6 EXAMINER PRICE: Yes. So you are simply  
7 asking if resources as he intended it to be used.

8 MR. FINNIGAN: Yes.

9 EXAMINER PRICE: You can answer the  
10 question.

11 A. Yes. I believe that currently both AES  
12 and Duke have riders in place like vegetation  
13 management and storm costs that FirstEnergy does not,  
14 and other Staff witnesses have testified those --  
15 vegetation management at the very least does  
16 contribute to reliability so that would be something  
17 that those utilities currently have that FirstEnergy  
18 does not.

19 Q. Okay. But FirstEnergy does propose those  
20 in this case, correct?

21 A. Correct.

22 Q. And Staff supports those recommendations?

23 A. It supports approval of those riders with  
24 modification as proposed by other Staff witnesses,  
25 yes.

1           Q.    So if those recommendations of Staff were  
2 approved, then FirstEnergy would have the same  
3 resources which Duke and AES have available to them  
4 for providing the level service, wouldn't it?

5           A.    They would have -- they would have  
6 similar riders. Whether they provide the same level  
7 of support for reliability, I don't know and whether  
8 there might be others I am not aware either. Those  
9 are the two I can think of sitting here today.

10          Q.    Now, could we go back to the document  
11 that Mr. Kurtz was asking questions about? It's the  
12 excerpt from the tariff for Rider ELR. I did not  
13 catch which OEG exhibit number that was.

14               EXAMINER PRICE:   OEC 7, I'm sorry.

15          Q.    (By Mr. Finnigan) I want to ask about the  
16 same page which Mr. Kurtz was questioning you about.  
17 That's page 5 of 7 at the top and Section D where it  
18 talks about emergency curtailment event, and I am  
19 looking at the part that's highlighted in yellow  
20 there. And it reads about -- this is about line 5 or  
21 6 down from the top. And the proposed language says  
22 "an emergency situation exists that may jeopardize  
23 the integrity of the distribution system." Have I  
24 read that part correctly?

25          A.    I see that language, yes.



1 MS. BOJKO: Your Honor, I'm sorry to  
2 interrupt Mr. Finnigan. I think we are talking about  
3 Exhibit -- OEG Exhibit 7 was --

4 EXAMINER PRICE: That was my -- that was  
5 my misspeaking. Just so the record is clear,  
6 attached to the exhibit that Mr. Finnigan is  
7 referring to is Attachment BSM-1 from the testimony  
8 of Mr. McMillen earlier in this proceeding.

9 MS. BOJKO: Thank you, your Honor.

10 EXAMINER PRICE: Thank you.

11 Q. (By Mr. Finnigan) That's my mistake. So  
12 anyway you mention that you were here for the  
13 testimony of FirstEnergy Witness Mr. Stein?

14 A. I was.

15 Q. And do you recall Mr. Stein saying that  
16 the FirstEnergy Companies are within PJM?

17 A. I don't recall him specifically saying  
18 that. I am aware of it though.

19 Q. And do you recall him saying that one of  
20 the governing documents of PJM is the reliability  
21 assurance agreement?

22 A. I recall him discussing various governing  
23 documents. I don't remember that one specifically  
24 being mentioned, no.

25 Q. Now, going back to this tariff language

1 in BSM-1, if there is an emergency situation which  
2 would cause the entire FirstEnergy distribution grid  
3 to go offline, do you know whether that would also be  
4 considered an emergency event under the PJM governing  
5 documents?

6 A. I don't know.

7 MR. FINNIGAN: That's all the questions I  
8 have. Thank you, Mr. Healey.

9 EXAMINER PRICE: Thank you.

10 Ms. Bojko?

11 MS. BOJKO: Yes, your Honor.

12 - - -

13 CROSS-EXAMINATION

14 By Ms. Bojko:

15 Q. Good afternoon, Mr. Healey. A few  
16 clarifications from your testimony. I'm looking at  
17 page 6 of your testimony, question 10. Here you talk  
18 about benefits and investments to customers regarding  
19 having riders in place. Do you see that?

20 EXAMINER PRICE: Let's go off the record  
21 for one second.

22 (Discussion off the record.)

23 EXAMINER PRICE: Go back on the record.

24 Please proceed, Ms. Bojko.

25 Q. (By Ms. Bojko) Mr. Healey, I will

1 rephrase my prior question. On page 6, question and  
2 answer 10, you discuss riders and rider investments  
3 that are beneficial to customers. Do you see that?

4 A. Yeah. I discuss benefits of using riders  
5 in the regulatory context.

6 Q. Isn't it true that the utility benefits  
7 when it makes investments from earning a rate of  
8 return on those investments?

9 A. Yes.

10 Q. And riders are guaranteed rate of return;  
11 is that correct? They get a return on every  
12 investment they make?

13 A. I would not agree they are guaranteed,  
14 no.

15 Q. The utilities get a return on the capital  
16 investments made through a rider.

17 A. If those capital investments are  
18 prudently incurred, used and useful past the annual  
19 audit process, and aren't disallowed and are  
20 otherwise approved for a rate of return, the capital  
21 riders, for example, then, yes.

22 EXAMINER PRICE: Not all -- but not all  
23 riders have capital investments, correct?

24 THE WITNESS: Correct.

25 Q. (By Ms. Bojko) Sure. Thank you for those

1 clarifications. My point being is that if it is  
2 approved cost and it's put into the rider and it's  
3 collected from customers, the utility earns a return  
4 on that approved investment, correct?

5 A. I'm not trying to be difficult.  
6 Sometimes when you say "approved," for example, rider  
7 might get approved in -- doing air quotes, approved  
8 in an ESP case but there could still be investment  
9 that gets disallowed later from an audit. So the  
10 fact that it's been approved for recovery of certain  
11 types of assets does not guarantee that they are  
12 getting a return so maybe that's not what you are  
13 getting at, but I can't say yes to the way you asked  
14 it.

15 Q. I thought I said an approved cost passed  
16 through the rider, but if an asset is put in place  
17 and it is approved, it's not deemed imprudent through  
18 the audit process after the fact. If it is approved,  
19 then the utility earns a return on that investment;  
20 is that right?

21 A. Generally, yes.

22 Q. Okay. And the utility would earn that  
23 return on the investment immediately when they put it  
24 in the rider even if it is later disallowed, they  
25 earn that return immediately; is that correct?

1           A.    Not immediately and there is some --  
2   still some language, for example, you know, they are  
3   filed every three months or six months or yearly, so  
4   it's not immediate. And if there is a disallowance,  
5   the disallowance would include the rate of return  
6   being disallowed, so they would not earn that  
7   eventually if it got disallowed.

8           Q.    Eventually but when they first put it in,  
9   whether it's monthly, quarterly, annually, before an  
10   audit occurs, they put the asset in, they get  
11   recovery of that asset, they get to use the  
12   customers' money, and they get a return on that asset  
13   until such time as it is disallowed, if it is ever  
14   disallowed.

15          A.    Yeah, I would agree with that.

16          Q.    And that's different, isn't it, than a  
17   base distribution rate case where the utility only  
18   has an opportunity -- opportunity to earn a return on  
19   its investment at the rate that's set in the rate  
20   case.

21          A.    I'm going to say I don't know because for  
22   all the various utility capital riders, I don't know  
23   exactly which ones are trued up year to year. For  
24   example, if they have a kWh component and  
25   underrecover, I don't know whether all those capital

1 riders guarantee recovery of that full underrecovery.  
 2 So I think there -- you could structure a rider the  
 3 same way you structure a base rate approval such that  
 4 it's only an opportunity and not a guarantee, and I  
 5 just don't know all the various capital riders to  
 6 know if that's the case in Ohio.

7 Q. Well, let's talk about Rider DCR. Rider  
 8 DCR is structured in a way that as soon as  
 9 FirstEnergy puts the asset into Rider DCR, they not  
 10 only recover the investment of that asset, but they  
 11 also recover return on that asset until such time as  
 12 there's a possible true-up and a disallowance; is  
 13 that right?

14 A. Are you talking current?

15 Q. Yes.

16 A. They actually recover based on projected  
 17 currently, so they get it even sometimes before.

18 Q. So even worse they get it before.

19 EXAMINER PRICE: Something you would like  
 20 to put a stop to.

21 THE WITNESS: Yes. That's something that  
 22 Mr. Mackey testified should be changed.

23 Q. (By Ms. Bojko) And under your proposal,  
 24 under Staff's proposal, that's how you envision it  
 25 will work, no projected but as soon as they put the

1     asset in, in the rider, they get to recover the  
2     investment as well as the return.

3             A.     Every three months, yes.

4             Q.     Right. Thank you. And if we didn't have  
5     a rider, a DCR Rider, and those distribution  
6     investment costs, I am just talking about a base rate  
7     case without riders, and if we didn't have a rider to  
8     collect the capital investment costs, then those  
9     would go into a rate base filing, and the utility  
10    would only earn the -- could only really have the  
11    opportunity to earn the rate of return that's  
12    established in that rate case on a total basis; is  
13    that correct?

14            A.     That's right.

15            Q.     Could you turn to the next page? On page  
16    7 of your testimony, here you talk about riders being  
17    used to provide benefits between rate cases and the  
18    dollar-for-dollar reduction. Do you see that?

19            A.     On line 2?

20            Q.     Yes.

21            A.     Yes, I see it.

22            Q.     Are you talking about the reconciliation  
23    of riders where the rates are increased and then  
24    there's a true-up? Is that what this phrase is meant  
25    to reference?

1           A.    No.  I was referring to annual  
2   fluctuations in actual -- for example, O&M costs, if  
3   a utility incurs 10 million in one year, then  
4   customers pay 10 million.  If they incur 8 million,  
5   customers pay 8 million.  And comparing that to if  
6   something goes through a base rate and there is 10  
7   million, customers are paying that 10 million  
8   regardless.  That's what I meant by dollar-for-dollar  
9   reduction.

10           Q.   Okay.  But that only applies for O&M  
11   costs; that wouldn't apply for capital investments,  
12   would it?

13           A.    I suppose you could have a capital rider  
14   where the utility takes something out of service and  
15   flows that reduction through a rider, but I don't  
16   know that I have seen that.  I was envisioning O&M  
17   when I made that comment, yes.

18           Q.    Have you ever seen Rider DCR be reduced  
19   by the utility taking something out of the rider?

20           A.    I have not seen that.

21           Q.    In most capital -- or most distribution  
22   riders, staff's position is that O&M should be  
23   excluded from those riders; is that fair?

24           A.    I can't speak to what Staff's position  
25   has been in general on that issue.



1           Q.   Staff has not recommended in this case  
2   that O&M pass through Rider DCR, have they?

3           A.   I am not aware of whether we are or not.  
4   That would be something Mr. Mackey would have  
5   addressed.

6           Q.   And the second part of that same sentence  
7   beginning with -- or on line 3, the special  
8   circumstances is the only one you are aware of  
9   sitting here today, the Tax Cuts & Jobs Act of 2017?

10          A.   No. I believe another example would be  
11   the -- I forget what it's called, it's the rate  
12   credit that FirstEnergy is paying as a result of the  
13   \$300 million settlement. I believe they created a  
14   new rider for purposes of providing some of those  
15   credits. So that would be another example.

16          Q.   The SEET credit, is that what you're --  
17   the excessive earnings credit; is that what you're  
18   referencing?

19          A.   I think some of that credit was SEET and  
20   some of it was just part of the settlement. It  
21   wasn't technically tied to SEET but, yes, that's what  
22   I am referring to.

23          Q.   Okay. So that was a settlement that  
24   specifically flowed back to customers a credit that  
25   was due to them via the settlement?

1           A.     Correct.

2           Q.     Okay.  No other Commission-mandated  
3 special circumstances that you can think of?

4           EXAMINER PRICE:  Are you aware when  
5 FirstEnergy's decoupling rider was repealed whether  
6 the decoupling -- \$27 million decoupling costs were  
7 flowed back through a rider?

8           THE WITNESS:  I believe that FirstEnergy  
9 agreed to -- to return those charges, but I don't  
10 recall if they were done through a rider or not.

11          Q.     (By Ms. Bojko) But that return was  
12 through -- was an offset or credit to the outstanding  
13 balance of the Energy Efficiency Rider, was it not?

14          A.     I don't remember.

15          EXAMINER PRICE:  It wasn't done through a  
16 base rate case?

17          THE WITNESS:  That is true.  It was not.

18          Q.     (By Ms. Bojko) Couldn't have been because  
19 there hasn't about a base rate case for 16 years.

20          A.     No there haven't.

21          EXAMINER PRICE:  Opening the door for me  
22 on this question I have for Mr. Healey.  Staff does  
23 got propose a mechanism to incentivize FirstEnergy to  
24 come back in during the ESP for an additional rate --  
25 we know they are coming in May '24, for another rate

1 case after that.

2 THE WITNESS: That's correct, we did not  
3 propose that.

4 EXAMINER PRICE: Is Staff opposed to the  
5 Commission ordering a mechanism that would require  
6 FirstEnergy to come in during the term of the  
7 six-year ESP?

8 THE WITNESS: We would not oppose that.

9 EXAMINER PRICE: Do you think it would be  
10 beneficial to have a second rate case prior to the  
11 expiration of the six-year ESP or even prior to the  
12 filing of the next ESP so that there is a firm basis  
13 to make any decisions regarding future riders?

14 THE WITNESS: I would say we will have a  
15 better sense of whether that makes sense after the  
16 2024 rate case, but I do agree that some of our  
17 concerns in this case are based on the fact there is  
18 not -- that there is an upcoming rate case shortly  
19 thereafter so I could see some benefits of having  
20 another rate case done or largely done before the  
21 next ESP case, yeah.

22 EXAMINER PRICE: And most other -- I am  
23 not going to say all, but most other gas and electric  
24 utilities currently have some mechanism to  
25 incentivize them to file a new rate case pending

1 before the -- pending before? I am not asking all.

2 THE WITNESS: I am aware there are some.  
3 I don't know whether it's most.

4 EXAMINER PRICE: Okay. That's fair.  
5 Thank you, Ms. Bojko.

6 Q. (By Ms. Bojko) Mr. Healey, in your  
7 regulatory experience, the Commission -- and your  
8 knowledge of Ohio law, the Commission is allowed to  
9 require a utility to come in for a base rate case at  
10 any time, aren't they?

11 A. I've certainly seen that. I haven't seen  
12 anybody try to raise a legal challenge to it, so I  
13 guess I can't say whether that would -- how that  
14 would play out, but certainly I have seen it happen.  
15 It's been done.

16 Q. Speaking of the ESP term, it's true this  
17 case you're recommending six; is that correct?

18 A. Correct.

19 Q. And in the AEP proposed case, the term is  
20 four years, is that correct, that Staff supported?

21 A. That's in the settlement the Staff  
22 signed, yes.

23 Q. And AES's settlement that Staff signed,  
24 it was three years; is that correct?

25 A. That's correct.

1           Q.    Looking -- turning to page 8 of your  
2 testimony, here on page 8 you state that there needs  
3 to be a larger review of DCR in the next rate case as  
4 you just discussed with the Bench; is that right?

5           A.    Looking at a specific line? Is there a  
6 specific reference?

7           Q.    It's the Q and A on 11 -- No. 11 that  
8 goes from 7 over to page 8.

9           A.    I guess I'm not sure what I know -- I  
10 don't think I use the term "larger review." If I do,  
11 you could let me know, but I don't think I use that  
12 phrase.

13          Q.    I'm sorry. I think I used the phrase  
14 more thorough assessment.

15               EXAMINER PRICE: Can you explain where  
16 you see "more thorough"?

17          Q.    Yes, on line 22, page 7.

18               EXAMINER PRICE: I don't see the word  
19 "more" on page 7 at all.

20               MS. BOJKO: My apologies. I'll rephrase.

21               EXAMINER PRICE: Thank you.

22          Q.    You -- you're advocating there be a  
23 thorough assessment in the next rate case, so I am  
24 assuming it must be something different than the  
25 thorough assessment you did in this case; is that a

1 fair assumption?

2 A. I think it's different. I am referring  
3 here to all utility plant, whereas, this case is  
4 focused on DCR. There is additional plant that's not  
5 in the DCR so I think I was referencing more to the  
6 breadth of the review of what's being looked at in a  
7 rate case as opposed to comparing a rate case to what  
8 I did in the CSP case.

9 Q. Well, you state that "this  
10 investigation," the thorough investigation. You say  
11 "this," so I'm assuming you are going back to the  
12 thorough assessment and that that "investigation  
13 should provide insight into whether FirstEnergy needs  
14 Rider DRC"; is that right?

15 A. I say that, yes.

16 Q. And then there is the word "more." It  
17 says "it will allow for a more informed decision  
18 regarding the appropriate cap on Rider DCR"; is that  
19 right?

20 A. Yes.

21 Q. So even though you think that there needs  
22 to be a thorough assessment of all utility plant for  
23 used and useful which will allow for a more informed  
24 decision, you're recommending that Rider DCR continue  
25 on an interim basis.

1           A.    Yes, only for what I referred to as the  
2 bridge period.

3           Q.    And you are recommending that it be at  
4 the increased amount meaning allowing the utility to  
5 increase their baseline by 15 to 21 million except  
6 for removing some of the FERC accounts that you  
7 reference.

8           A.    Correct. We remove -- remove those FERC  
9 accounts, get to the 339 number that's in my  
10 testimony, and then add 15 to 21 to get to a new cap  
11 of, I believe, 354 to 360 for that bridge -- first  
12 year of the bridge period.

13          Q.    And even though you think that a thorough  
14 assessment of all utility plant be used and useful is  
15 needed to provide a more informed decision of whether  
16 the Rider DCR is even needed, you still believe that  
17 15 to 21 million dollar increase over the baseline is  
18 appropriate?

19          A.    Yes, that's my testimony.

20          Q.    And if you go to page 10 of your  
21 testimony, I'm trying to understand how your  
22 testimony fits with Mr. Mackey's. I believe Staff is  
23 recommending that Rider DCR is only approved through  
24 the next rate case order; is that right?

25          A.    Yeah. The effective date of the new base

1 rates, correct.

2 Q. Okay. And then Staff is recommending  
3 what Mr. Mackey references in his testimony that you  
4 cite to on footnote 9 that that -- those  
5 recommendations apply only if the Commission rejects  
6 your initial proposal?

7 A. No. So -- so he makes various  
8 recommendations, for example, one we discussed  
9 earlier about projected plant that would go into  
10 effect on June 1, 2024, as would all his other  
11 recommendations about rider mechanics and timing and  
12 the review and the FERC accounts. Those would all go  
13 into effect during that bridge period.

14 EXAMINER PRICE: But he does have a  
15 contingent recommendation as to what the cap should  
16 be if the Commission were to reject your initial  
17 proposal.

18 THE WITNESS: That's correct. The one  
19 recommendation in his testimony that is contingent is  
20 what the cap should be if the Commission approves the  
21 DCR for the duration of the ESP as opposed to  
22 adopting my recommendation which is to approve it  
23 only for the bridge period. But I believe, subject  
24 to what's written in his testimony, that all his  
25 other recommendations Staff is recommending



1 implementation as of June 1, 2024.

2 Q. (By Ms. Bojko) When you say as of June 1,  
3 2024, so you are saying his recommendations except  
4 for the one would apply during the bridge period.

5 A. Correct.

6 Q. Thank you for that clarification. I want  
7 to talk -- turn to page 25. You -- when you took the  
8 stand today, you modified your testimony on page 25  
9 to eliminate the citation in reference to  
10 Mr. Seryak's testimony; is that correct?

11 A. Yes, I did.

12 Q. And the change you made to your testimony  
13 to remove OMAEG's position, did you strike that  
14 reference because OMA's witness was also recommending  
15 that the current ELR program be modified so it really  
16 wasn't an apples-to-apples comparison here?

17 A. I would say after seeing his cross and  
18 his recommendation that there be a study done and his  
19 testimony that he would potentially support a cap  
20 based on that study, that while this quote is  
21 accurate from his testimony, it could be seen as  
22 misleading so that's why I deleted it.

23 Q. But you would agree that Mr. Seryak  
24 stated that he believed -- well, he first believed  
25 that the ELR program should be eliminated; is that

1 correct?

2 A. I believe he testified that as currently  
3 proposed and exists, it should be eliminated, yes.

4 Q. Right. And then but if the program is  
5 going to be continued, he believed there was some  
6 important modifications that should occur such as  
7 some of the questions Mr. Kurtz asked you today with  
8 regard to when emergency calls could be made; is that  
9 fair?

10 A. Yeah, that's a fair summary.

11 Q. Okay. And Mr. Seryak also recommended  
12 expanding the ELR similar to what Staff is  
13 recommending expanding, although he did not put a  
14 number to it.

15 A. Yes. He proposes opening up the program  
16 as -- with his modifications to additional  
17 participants.

18 Q. Okay. And Staff's recommendation in this  
19 case through your testimony is to continue the  
20 existing program as is with the additional expansion;  
21 is that correct?

22 A. No. I am proposing various modifications  
23 to the existing program.

24 Q. Okay. And can you briefly say the  
25 modifications you are proposing?

1           A.     Sure. I am proposing to change the  
2     credit amounts. Currently they are \$10. I am  
3     proposing 5, 4, 4, 4, 3, 3, and I am agreeing with  
4     the Companies' proposal that they no longer serve as  
5     the CSP as well.

6                 I am also proposing changes to the cost  
7     recovery. Currently they recover it in three  
8     different places. One through Rider DSE1 and two in  
9     the EDR. I am proposing to change it all into the  
10    EDR so that would be another change that I am  
11    proposing. I think those are the only ones, but I  
12    would have to double-check.

13                MS. BOJKO: Thank you. And the  
14    Company -- strike that.

15                I have nothing. Thank you. Thank you,  
16    Mr. Healey.

17                EXAMINER PRICE: Do you -- I'm not going  
18    to leave the witness. Why do you recommend  
19    collecting the credits solely through the Rider EDR?

20                THE WITNESS: Primarily just to simplify  
21    the recovery. It's very complicated with three  
22    different pieces and they -- each one has its own  
23    allocation and they have different rate design. So  
24    we move them all to EDR. They are at least in one  
25    place. And also I mention in my testimony that once

1 there is a final reconciliation of Rider DSE2, then  
 2 that is another rider that could be removed from the  
 3 Companies' books consistent with the Companies' goal  
 4 in reducing the total number of riders as stated by  
 5 Mr. Fanelli.

6 EXAMINER PRICE: So the fact that EDR is  
 7 an Economic Development Rider does not reflect the --  
 8 your position that ELR has important economic  
 9 benefits, or does that have no role in your  
 10 recommendation?

11 THE WITNESS: That does not play any role  
 12 in my recommendation as pertains to the cost  
 13 recovery. It does have economic development  
 14 benefits, but I'm not -- it should not be inferred  
 15 that I think that the entire program is for purposes  
 16 of economic development just because it's in that  
 17 rider. There are various other things in that rider  
 18 currently that are not economic development either so  
 19 it's a name so I would say that we shouldn't -- we  
 20 can't always read into the name of a rider it's  
 21 fundamental purposes.

22 EXAMINER PRICE: Thank you.

23 Let's go off the record.

24 (Discussion off the record.)

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

1 Kroger?

2 MS. WHITFIELD: No questions, your Honor.

3 EXAMINER PRICE: Mr. Lang?

4 MR. LANG: No questions.

5 EXAMINER PRICE: Mr. Dunn?

6 MR. DUNN: No questions, your Honor.

7 EXAMINER PRICE: Mr. Lavanga?

8 MR. LAVANGA: Yes, your Honor. Relocate?

9 EXAMINER PRICE: Please.

10 Let's go off the record for a second.

11 (Discussion off the record.)

12 EXAMINER PRICE: Now let's go back on the  
13 record.

14 Mr. Lavanga, please proceed.

15 MR. LAVANGA: Thank you, your Honor.

16 - - -

17 CROSS-EXAMINATION

18 By Mr. Lavanga:

19 Q. Good afternoon, Mr. Healey.

20 A. Hi.

21 Q. My name is Mike Lavanga. I'm an attorney  
22 for Nucor Steel. I have just a couple quick  
23 questions.

24 First of all, let's start with a question  
25 you got a little while ago about vegetation

1 management. You are not testifying that if a  
2 Vegetation Management Rider gets approved, that you  
3 don't need the interruptible tariff, correct?

4 A. I am not testifying to that, no.

5 Q. You would agree there are other -- other  
6 types of emergencies other than vegetation-related  
7 emergencies that might require an emergency  
8 interruption.

9 A. I don't want to quibble with the word  
10 require, but I think that, yes, the benefits of --  
11 there are certain benefits of the ELR program that  
12 would not be covered by vegetation management, yes.

13 Q. Okay. Thank you. Let's go to page 19 of  
14 your testimony, lines 4 through 16. Actually this is  
15 just following up on the question from Hearing  
16 Examiner Price. You're proposing to basically  
17 recover all of the cost of Rider ELR through the EDR  
18 Rider and get rid of the DSE Rider; is that correct?

19 A. Correct.

20 Q. And as you said, that's not to imply that  
21 there's only an economic development benefit  
22 associated with the ELR.

23 A. That's correct.

24 Q. Okay. You would agree there is a  
25 reliability benefit as well from Rider ELR.

1           A.    I do agree with that.

2           Q.    Okay.  Let's turn to page 22 of your  
3 testimony, lines 4 through 7.  Your position is that  
4 if FirstEnergy remains the CSP, FirstEnergy should  
5 bid the ELR load into the PJM capacity markets,  
6 correct?

7           A.    Correct.

8           Q.    Okay.  And you would agree there is a  
9 benefit to the FirstEnergy system and other  
10 FirstEnergy customers if the ELR load is bid into  
11 PJM.

12          A.    Yes.

13          Q.    Okay.  Now let's bounce over to page 27  
14 and I apologize for bouncing around.  Lines 12  
15 through 15, you testify that the ELR customers would  
16 get to keep any PJM revenues they derive from  
17 participating in the PJM capacity markets or other  
18 demand response programs.  Depending on future  
19 capacity prices, those credits could be substantial.  
20 Did I read that correctly?

21          A.    Yes, you did.

22          Q.    Okay.  Now, let's assume that FirstEnergy  
23 remains the CSP and continues to bid the ELR load  
24 into PJM.  And then let's also assume that the  
25 capacity prices increase significantly from their

1 current levels. In this case the payments back to  
2 other customers would increase as well, correct?

3 A. Increase as compared to what they are  
4 currently with the current prices?

5 Q. Correct.

6 A. Yes. If the PJM prices increase, then  
7 assuming FirstEnergy prudently bids into the PJM  
8 market, then all else equal, the credits back to  
9 customers would increase, yes.

10 Q. Okay. All right. Let's move back to  
11 page 24 of your testimony. Lines 2 through 5 contain  
12 your recommendation on reducing the credit. You  
13 recommend an initial credit of \$5 per kW in year one,  
14 \$4 in years two through four, and \$3 in years five  
15 and six; is that correct?

16 A. Yes.

17 Q. What analysis did you perform in  
18 developing this recommendation?

19 A. So I did various things. I looked at the  
20 current credits which are \$10 and those are based on  
21 FirstEnergy operating as the CSP. Under my proposal  
22 there would be multiple revenue streams for  
23 participation which would be the ELR credits, and as  
24 we have just discussed, credits they can get from  
25 participating in PJM. I looked at historical PJM



1 clearing prices back to the past 10 to 15 years both  
 2 in the RTO and the ATSI area to see how those prices  
 3 compared to the current \$10 credit. I looked at the  
 4 AEP current ELR -- sorry, IRP-L and IRP-E programs,  
 5 and the proposed IRP-L and IRP-E programs and the  
 6 pending AEP Stipulation, and based on all those  
 7 various factors, balancing different interests, which  
 8 would include the gradualism interests we've  
 9 discussed for the current participants, the  
 10 reliability benefits, the economic development  
 11 benefits, and the impact on nonparticipating  
 12 customers arrived at my proposal.

13 Q. So aside from looking at the capacity  
 14 prices, did you do any quantitative analysis?

15 A. Yes. I looked at what the estimated  
 16 credits would be for participating customers based on  
 17 the proposed credits that I am proposing. I -- you  
 18 know, like I said, I compared them to the other  
 19 program in Ohio that is similar, the AEP program, so  
 20 that would be quantitative comparison of the credits  
 21 that customers are getting there versus what they are  
 22 getting here, again looked at numerical historical  
 23 credits that customers have received as well so, yes,  
 24 various quantitative analyses.

25 Q. Okay. How about a cost/benefit analysis,

1 did you run a cost/benefit analysis?

2 A. Can you explain what you have in mind for  
3 cost/benefit analysis in this context?

4 Q. I'm thinking an evaluation of the  
5 benefits you use from ELR compared to the cost of the  
6 credits.

7 A. I did not attempt to quantify the  
8 benefits of economic development into a reliability  
9 under the ELR program as compared to the cost of the  
10 program under my recommendation, no.

11 Q. Okay. Did you evaluate or analyze any  
12 costs associated with equipment or processes ELR  
13 customers are to put in place to respond to  
14 interruptions?

15 A. I don't know whether they would have to  
16 do that or not, so I didn't -- I did not attempt to  
17 do any analysis because I don't know if any such  
18 analysis would be necessary.

19 Q. Okay. How about did you evaluate cost  
20 associated with training employees to respond to  
21 interruptions?

22 A. Again, I don't know whether there would  
23 be such a cost, so I did not attempt to do any such  
24 analysis.

25 Q. How about lost production costs that

1 Rider ELR customers may experience when they are  
2 interrupted?

3 A. Again, I don't know -- I don't know  
4 whether there would be lost -- such lost production  
5 costs for ELR participants, so I did not attempt to  
6 do that analysis.

7 Q. How about the impact on the economy at  
8 large of avoiding rolling blackouts? Did you look at  
9 that?

10 A. I did not attempt to quantify that, no.

11 Q. Okay. And you would agree that Rider ELR  
12 customers have responsibilities and obligations under  
13 the rider, correct?

14 A. Yes, I agree.

15 Q. They are required to curtail when they  
16 are called upon?

17 A. Correct.

18 Q. And if they don't respond, they're  
19 subject to severe penalties or could be?

20 A. I don't know that I would necessarily say  
21 they are severe. I would say they are a deterrent.

22 Q. They are subject to penalties?

23 A. They are subject to penalties.

24 Q. And would you agree that Rider ELR  
25 customers assume risks by participating in the

1 program?

2 A. Yeah, the one we just talked about, risk  
3 of potentially paying a penalty.

4 Q. Okay. What about risks of lost  
5 production? That's a risk too, correct?

6 A. Could be for some of them. It's possible  
7 some have operations that they are able to curtail  
8 without any risk. I don't know whether that's the  
9 case or not.

10 Q. How do you know there is some that are  
11 able to curtail without any --

12 A. Sorry. I said there could be some. I  
13 don't know either way whether each participant  
14 necessarily has some lost production or any risks  
15 associated with curtailing, so I can't say either way  
16 whether that would happen.

17 Q. Okay. Okay. And do you agree that it's  
18 important to keep these interruptible resources?

19 A. Yes. That's why I am supporting  
20 continuation of them for the entirety of the  
21 six-term -- six-year term that I am proposing.

22 MR. LAVANGA: Okay. I think that's all I  
23 have. Thank, Mr. Healey.

24 THE WITNESS: Thank you.

25 EXAMINER PRICE: I have a follow-up

1 question for you, Mr. Healey. The relationship to  
2 the phase down and FirstEnergy no longer being the  
3 curtailment service provider if the Commission were  
4 to reject the Companies' proposal to no longer be the  
5 curtailment service provider, would that alter the  
6 numbers you have in the phase down? And if so, how  
7 would it alter those numbers?

8 THE WITNESS: I would say directionally  
9 based on my testimony that it makes sense to lower  
10 them because there is an alternative revenue stream.  
11 If we take that alternative revenue stream, logically  
12 speaking one could argue for slightly higher credits.  
13 At the same time there are other PJM demand response  
14 programs that they could continue to participate in  
15 even if FirstEnergy continues to be the CSP, and I  
16 haven't attempted to quantify, you know, what the  
17 value of that might be. So directionally I can see  
18 an argument for increasing them slightly, but I  
19 couldn't tell you sitting here today what those  
20 numbers should be.

21 EXAMINER PRICE: Thank you. That's very  
22 helpful.

23 Mr. Proano?

24 MR. PROANO: Thank you, your Honor.

25 - - -

CROSS-EXAMINATION

By Mr. Proano:

Q. Mr. Healey, is it fair to describe the principle of gradualism as a gradual elimination of a credit or gradual increase of a charge to avoid sudden rate changes or rate shock?

A. Could you repeat that?

Q. Sure. Is it fair to describe the principle of gradualism as a gradual elimination of a credit or gradual increase of a charge to avoid sudden rate changes or rate shock?

A. I would say that's part of the gradualism analysis. I think you would more likely look at it on a total bill basis as opposed to an individual charge or credit basis, so if you are trying to promote gradualism, you wouldn't go rider by rider and say this one is not gradual, this one is not gradual. You would have to look at the whole picture.

Q. With that caveat, you would agree with that statement though?

A. I am not sure I would say it's a caveat. I would say that's a disagreement.

Q. Okay. So is it fair to describe the principle of gradualism then as a gradual elimination

1 of a credit or gradual increase of a charge to avoid  
2 a sudden rate change or rate shock on a total bill  
3 basis?

4 A. No, I don't agree with that. I think you  
5 could potentially have individual riders that have a  
6 dramatic change in one direction or the other that  
7 might be offset by other charges, and then it would  
8 all be consistent with the principle of gradualism.

9 Q. Okay. So your position or Staff -- are  
10 you talking Staff -- from a Staff's position or your  
11 position?

12 A. These are all Staff positions.

13 Q. Okay. So Staff's position is you could  
14 have some big changes on a specific rider, but you  
15 are really only concerned about is the total bill  
16 basis impact; is that a fair characterization of your  
17 testimony?

18 A. I don't think it's quite that simple. We  
19 certainly look at each rider, think about those  
20 things. It's not as black and white as one rider  
21 equals gradualism, or one rider doesn't. It's kind  
22 of a holistic view. I think we are more focused on  
23 the total bill impact, but I can't say that we would  
24 never say, well, this individual rider has a  
25 particular impact, so it's kind of both at the same

1 time. And it's -- there's no -- there's no formula  
2 for which one, you know, gets more prec -- more  
3 precedence in this specific situation.

4 Q. Okay. Looking at holistically, would you  
5 agree that the goal of gradualism is to avoid a  
6 sudden rate change or rate shock on a total bill  
7 basis generally?

8 A. I would agree with that statement, yes.

9 Q. Now, has Staff analyzed on a total bill  
10 basis what Staff's proposal for Rider ELR would do to  
11 these 24 customers in the program?

12 A. No, I don't believe we have the data for  
13 each of those individual customers to assess their  
14 individual bill impacts.

15 Q. Does Staff believe the ratemaking  
16 principle of gradualism should be applied to give  
17 utility customers time to adjust and respond to  
18 ultimate changes?

19 A. Could you repeat that, please?

20 Q. Does Staff believe the ratemaking  
21 principle of gradualism should be applied to give  
22 utility customers time to adjust and respond to the  
23 ultimate change?

24 A. I would say that's certainly a goal. I  
25 wouldn't say that that is going to be achievable for



1 every customer in every case; but, yes, I agree with  
2 you that that would be a principle that we try to  
3 achieve through -- through the ratemaking process.

4 Q. With respect to the 24 businesses that  
5 are part of the program, Staff could have asked for  
6 those specific bills and specific rate impacts for  
7 those customers, correct?

8 A. Could have, you mean through --

9 Q. Through a Data Request to FirstEnergy.

10 A. I assume so.

11 Q. Now, take a look at OEG Exhibit 7 that  
12 you have in front of you. It sets out three  
13 different proposals of Rider ELR. The FirstEnergy  
14 proposal, the OEG proposal, and the Staff proposal.  
15 Do you see that?

16 A. Yes.

17 Q. Referencing the Staff proposal to reduce  
18 the credits immediately by 50 percent, has Staff  
19 analyzed whether its Rider ELR proposal to  
20 immediately reduce the credits to \$50 per kilowatt  
21 per month would lead to sudden rate changes or rate  
22 shock to any Rider ELR customers on a total bill  
23 basis?

24 MS. BOJKO: Your Honor, I am going to  
25 object to the use of the document. I think the

1 question can be asked without referring to the  
2 document. The document is -- the witness did not  
3 prepare it. We've already discussed that it has  
4 inaccuracies, so I would ask that we not question the  
5 witness on the document itself.

6 EXAMINER PRICE: Overruled. I agree with  
7 Ms. Bojko in a general principle that these sort of  
8 demonstrative exhibits are very difficult, but we've  
9 walked very carefully with Mr. Healey through the  
10 numbers, walked through them through the text. He  
11 confirmed all the numbers. He expressed his  
12 disagreements with the text. That's in the record.  
13 And I think it's fair for Mr. Proano to use the  
14 document.

15 MS. BOJKO: Your Honor, I -- well, I'll  
16 save my arguments for admissibility. There is more  
17 on this than just Staff's position and I don't think  
18 it's a fair summary of the positions necessarily of  
19 other parties that were not cross-examined on this  
20 document.

21 EXAMINER PRICE: You had your chance to  
22 cross-examine -- well, we will get to that, but you  
23 didn't ask him any questions about the document to  
24 undermine what he said, so we'll get to that on  
25 admissibility.

1 MS. BOJKO: I was referring to  
2 FirstEnergy, your Honor, because this document was  
3 not created and so there was no ability to ask  
4 similar questions to other parties that are --  
5 allegedly their positions are listed here.

6 EXAMINER PRICE: So again, we'll deal  
7 with all of that on admissibility.

8 Mr. Proano.

9 MR. PROANO: Thank you.

10 EXAMINER PRICE: Ms. Botschner-O'Brien.

11 MS. BOTSCHNER-O'BRIEN: I was going to  
12 say Staff supports Ms. Bojko's objection.

13 EXAMINER PRICE: Staff is overruled.

14 Please proceed, Mr. Proano.

15 MR. PROANO: Thank you, your Honor.

16 Q. (By Mr. Proano) Do you need that question  
17 read back?

18 A. I do.

19 Q. Has Staff analyzed whether its Rider ELR  
20 proposal to immediately reduce the credits to \$5 per  
21 kilowatt per month would lead to sudden rate changes  
22 or rate shock to any Rider ELR customers on a total  
23 bill basis?

24 MS. BOTSCHNER-O'BRIEN: Objection.

25 EXAMINER PRICE: Grounds?

1 MS. BOTSCHNER-O'BRIEN: This witness has  
2 already testified that they didn't perform an  
3 analysis of the individual 24 customers so he's  
4 already determined -- he's already testified to that,  
5 so Mr. Proano is asking question that --

6 EXAMINER PRICE: Mr. Proano, care to  
7 respond?

8 MR. PROANO: If that's this witness's  
9 testimony, you already gave it to them, I'll move on.

10 EXAMINER PRICE: Sustained.

11 Q. (By Mr. Proano) Now look at FirstEnergy's  
12 proposed phase down on OEG 7. And it starts at  
13 keeping the credit level the same for year one and  
14 then over the eight-year term of the ESP reducing it  
15 by one dollar per year, correct?

16 A. Correct.

17 Q. Do you agree that FirstEnergy's proposal  
18 is both gradual and gives Rider ELR participants time  
19 to adjust by commencing reductions in year two?

20 A. Yes.

21 Q. And now that would give those businesses  
22 at least the full year to plan for the start of a  
23 phase down, correct?

24 A. Correct.

25 Q. The same is true for OEG's proposal,

1 correct? It starts in year two, and it also avoids  
2 sudden changes in net credit, correct?

3 A. Correct.

4 Q. Do you know whether the Commission in  
5 prior decisions has referenced a specific percentage  
6 benchmark for a rate increase in the context of the  
7 principle of gradualism?

8 A. Sitting here I don't recall.

9 EXAMINER PRICE: Can I have that question  
10 back again?

11 (Record read.)

12 EXAMINER PRICE: Thank you.

13 Q. (By Mr. Proano) And if I said 5 percent,  
14 would that refresh your recollection, or you have no  
15 recollection on the issue?

16 A. I don't know.

17 Q. Does Staff believe it would be prudent  
18 for the Commission to investigate the level of  
19 credits for Rider ELR necessary to maintain robust  
20 participation in FirstEnergy's interruptible rate  
21 program?

22 A. I'm not sure I know what you mean when  
23 you say investigate.

24 Q. You know what a Commission investigation  
25 is?

1           A.    You are talking about a formal  
2 Commission-ordered investigation?

3           Q.    Or a report like an audit or something  
4 like Witness Seryak recommended, like a study?

5           A.    So your question is whether the  
6 Commission should do that?

7           Q.    Yeah.  Would it be prudent for the  
8 Commission to do a study or investigation of the  
9 level of credits for Rider ELR necessary to maintain  
10 robust participation in FirstEnergy's interruptible  
11 rate program?

12          A.    I don't know whether that would be  
13 prudent or not.

14          Q.    You have no position on that one way or  
15 the other?

16          A.    No.  I think my testimony in this case is  
17 more than sufficient for the Commission to rule on  
18 Staff's recommendations on the ELR program as  
19 proposed by the Company and Staff's recommendations,  
20 so I can't say that an additional investigation would  
21 be necessary.  At the same time if the Commission  
22 were to propose one or think that it needs one, I  
23 would not be one to second guess them so.

24          Q.    But we don't know sitting here today  
25 whether or not at the levels of the credits proposed

1 by Staff, all the participants would remain in the  
2 program, correct?

3 A. We can't predict the future, but I do  
4 think that there are -- I do think it's reasonable to  
5 assume that Staff's proposed levels, we would not see  
6 probably any dropoff in participation, certainly not  
7 a significant dropoff. And the reason is because if  
8 we come back and look at the AEP IRP-E program, which  
9 has been in place for several years, the credits in  
10 that program are 70 percent of the BRA price which is  
11 less than a dollar.

12 And despite those very low -- very low  
13 compare credits in that program, it remains highly  
14 subscribed customers have been asking to increase  
15 participation in that program which says to me a \$5  
16 credit would be more than enough to maintain the  
17 current participation levels.

18 Q. But you are aware there are some  
19 differences in how the programs work and penalty  
20 levels and things like that between the IRP-E and  
21 Rider ELR, correct?

22 A. They are not identical, that's correct.

23 Q. Are you aware of whether Ohio Revised  
24 Code Section 4928.144 authorizes the just and  
25 reasonable phase-in of rates to ensure rate stability

1 for consumers?

2 A. I would have to take a look at the  
3 statute if you have a copy. I don't recall.

4 Q. Are you familiar with that statutory  
5 provision at all?

6 A. I would have to look at it. It might  
7 refresh my memory. I am sure I have looked at it at  
8 some point, yes, but off the top of my head, I don't  
9 recall what it covers or the piece that you just  
10 stated.

11 Q. Have you heard of that concept before,  
12 just and reasonable phase-in of rates?

13 A. I may have. I don't -- I don't know what  
14 it means sitting here without looking at the statute.

15 Q. If you look at your testimony, please,  
16 Mr. Healey, page 24. And in lines 13 through 16, you  
17 testify "It is true that the Commission has found  
18 that the ELR program supports both reliability and  
19 economic development, which would justify ELR  
20 benefits higher than capacity clearing prices." Do  
21 you see that?

22 A. Yes.

23 Q. And that's consistent with what you  
24 testified to in response to Nucor's questions about  
25 economic development and reliability being components



1 of the program, right?

2 A. Yes.

3 Q. As for the economic development  
4 consideration of Rider ELR, how does Staff believe  
5 the Commission should value that benefit for -- from  
6 the program?

7 A. You mean quantitatively?

8 Q. Correct.

9 A. Staff has not attempted to specifically  
10 quantify which portion of the credits are for  
11 economic development and which ones are for  
12 reliability, so it's not -- there's not individual  
13 components of that -- of that number from a  
14 quantitative standpoint.

15 Q. Do you believe the Commission should  
16 undertake an attempt at value at what those benefits  
17 are as far as the program?

18 A. I think in reviewing the program it would  
19 not be unreasonable to look into that, you know,  
20 through the annual review process.

21 Q. As for the reliability considerations of  
22 Rider ELR, how does Staff believe the Commission  
23 should value the reliability benefits from the  
24 program?

25 A. Similar. I think there's at least some

1 quantitative tie there to the BRA prices -- or the  
 2 clearing price, I guess, not necessarily BRA price.  
 3 The clearing price at PJM is at least one component  
 4 of the quantitative reliability benefit. As Staff  
 5 has testified, or I have testified, there are  
 6 additional benefits to local reliability. So again,  
 7 there is not a strict number that says of the \$5  
 8 credit, this much is economic development, this much  
 9 is reliability but there is at least some -- you do  
 10 have at least one numerical data point for  
 11 reliability which is the clearing price at PJM.

12 Q. Does Staff have a position on the issue  
 13 of how -- I'm sorry. Strike that.

14 Circling back to the principle of  
 15 gradualism, the Rider ELR credits have been at the  
 16 same level since ESP IV was approved in 2016,  
 17 correct?

18 A. Correct.

19 Q. What is the urgency that has led Staff to  
 20 take the position that the Rider ELR credits should  
 21 be reduced by 50 percent on day one of the ESP V?

22 MS. BOTSCHNER-O'BRIEN: Object to  
 23 characterization of urgency.

24 EXAMINER PRICE: Sustained.

25 Q. (By Mr. Proano) What is -- is there any

1 kind of external factor, any other factor that you  
2 haven't discussed in your testimony that has led  
3 Staff to take the position that the Rider ELR credits  
4 should be reduced by 50 percent on day one of the  
5 ESP V?

6 A. I mean, my testimony on that issue speaks  
7 for itself.

8 Q. I'm asking is there anything outside of  
9 what you have put in your testimony to understand why  
10 Staff has been led to take that position of a  
11 50 percent reduction on day one?

12 A. I'm not sure what you mean by led to take  
13 that position.

14 Q. Well, you understand my question?

15 A. Not --

16 EXAMINER PRICE: I don't think it's a  
17 fair question. Why don't you rephrase that.

18 Q. (By Mr. Proano) Let me rephrase. Is  
19 there any factor of consideration that's not  
20 discussed in your testimony which was considered by  
21 Staff in taking the position that Rider ELR credits  
22 should be reduced by 50 percent on day one of ESP V?

23 A. No. I believe my position on why it  
24 should be a \$5 credit is stated fully in my  
25 testimony.

1 Q. There is --

2 A. If you have specific questions, I may  
3 have an answer but nothing comes to mind right now.

4 Q. Okay. And there is no other factor on  
5 that issue other than what's stated in your  
6 testimony, correct?

7 A. That -- well, that and any Commission  
8 precedent we might cite in our brief, I suppose.

9 Q. Staff was a signatory party to the  
10 proposed settlement in AEP Ohio's ESP V case, right?

11 A. Correct.

12 Q. And you're familiar with the negotiated  
13 proposal on the phase down of those legacy  
14 interruptible credits, correct?

15 A. Yes.

16 Q. And you recall that the proposed phase  
17 down would bring the current interruptible credit  
18 level from \$9 per kilowatt per month to \$8 per  
19 kilowatt per month on the effective date of the new  
20 ESP, then to 7 per month on the second year of the  
21 ESP, and finally \$6 per kilowatt per month on the  
22 third and fourth years of the ESP, correct?

23 A. For the IRP-L, correct.

24 Q. Regarding cost recovery for the program,  
25 did you hear the testimony earlier in the hearing,

1 day three, that Ohio Edison residential customers are  
2 paying about 25 cents per month for the program?

3 A. I recall I believe it was Mr. Lavanga  
4 elicit that cross. I did not check the math on that  
5 myself though.

6 Q. You have no basis sitting here to dispute  
7 that math, correct?

8 A. No basis to dispute -- dispute it or  
9 agree with it.

10 EXAMINER PRICE: Did Staff perform any  
11 analysis or seek the Data Request regarding that  
12 information?

13 THE WITNESS: I'm sure at some point I  
14 looked at the tariff rates and, you know -- at some  
15 point in preparing my testimony, I certainly looked  
16 at the tariff rates, compared them to what they would  
17 be under this rider for residential customers based  
18 on my recommendations. I just don't recall what  
19 those numbers are.

20 EXAMINER PRICE: Fair enough.

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

22 EXAMINER PRICE: You may.

23 MR. PROANO: Your Honor, I believe I am  
24 at 33, so I am going to mark this for identification  
25 as OELC Exhibit 33.

1 EXAMINER PRICE: It will be so marked.

2 (EXHIBIT MARKED FOR IDENTIFICATION.)

3 Q. (By Mr. Proano) Mr. Healey, I have handed  
4 you an Opinion and Order from the Commission in Case  
5 No. 10-176-EL-ATA in a FirstEnergy rider case  
6 identified there in the caption. And if you look at  
7 the very end, it's dated, the majority opinion,  
8 May 25, 2011. Are you familiar with this decision,  
9 Mr. Healey?

10 A. Yes.

11 Q. Are you aware in this decision the  
12 Commission applied the principle of gradualism to a  
13 proposed phase down and credits for certain  
14 residential customers including all electric  
15 customers?

16 A. I don't recall that off the top of my  
17 head, but if you have a reference, I can look at it.

18 Q. Okay. So I will walk you through the  
19 decision. If you turn to page 3, the first full  
20 paragraph that starts with "Further, on January 21."  
21 That paragraph references the base rate decision from  
22 January 2009 and then in the third sentence it says,  
23 "However, in order to mitigate the impact upon  
24 residential customers who would be adversely affected  
25 by the consolidation of the rate schedules, the

1 Commission approved a residential distribution credit  
2 (Rider RDC) for certain residential customers." Do  
3 you see that?

4 A. Yes, I do.

5 Q. And if you look at the next paragraph,  
6 near the bottom there is a sentence that says "The  
7 Commission also approved a residential generation  
8 credit (Rider EDR) to customers who adversely -- who  
9 were adversely impacted by the generation rate  
10 schedule consolidation in order to mitigate the  
11 impact of consolidation." Do you see that?

12 A. Yeah, I see that.

13 Q. If you turn to page 8 under that Section  
14 (2) heading, this is to set up the application of  
15 that principle, the Commission writes under that  
16 heading "The next issue before the Commission is  
17 determination of the appropriate amount of discount  
18 that should be provided to electric heating  
19 customers." Do you see that?

20 A. Yes.

21 Q. And then if you will turn to page 18,  
22 Section e, that starts the "Commission Decision."  
23 The fourth paragraph starts with the sentence "The  
24 Commission believes that the proposal by the OCC is  
25 flawed because it abandons any pretense of gradualism

1 and runs the risk of rate shock in the first year."

2 You see that?

3 MS. BOJKO: Objection.

4 MS. BOTSCHNER-O'BRIEN: Objection.

5 EXAMINER PRICE: Ms. Bojko, grounds?

6 MS. BOJKO: Well, relevancy with regard  
7 to an all electric order about residential -- all  
8 electric residential customers. Secondly, we are  
9 just reading an order into the record. There have  
10 been no questions on this which we can cite to it in  
11 briefs without doing that.

12 EXAMINER PRICE: Ms. Botschner-O'Brien?

13 MS. BOTSCHNER-O'BRIEN: I would support  
14 that objection. At this point Mr. Proano has just  
15 read four sections into the record. We have no --  
16 nothing further is going on here.

17 MR. PROANO: It's just I asked him  
18 whether or not he was aware in this decision that the  
19 Commission applied the principle of gradualism to  
20 propose a phase down and credits for certain  
21 residential customers including all electric  
22 customers. I was showing him just a few select  
23 sections so he can answer that question. He said he  
24 is familiar with this decision.

25 EXAMINER PRICE: We'll give Mr. Proano a



1 little leeway but let's wrap this up quickly.

2 MR. PROANO: And that's just my question.

3 Q. (By Mr. Proano) Are you aware then based  
4 on these select excerpts we read, that this decision  
5 concerns the Commission decision to apply the  
6 principle of gradualism to a proposed phase down and  
7 credits for certain residential customers including  
8 all electric customers?

9 A. Based on those -- I can't answer that.  
10 This is a long order. I have read it. I don't know  
11 taking four sentences out of -- potentially out of  
12 context, I can't agree with that without having time  
13 to review the whole order and assess it, read the  
14 parties' positions. That's how I would come to that  
15 conclusion in looking at a case like this and I  
16 recall this docket was quite extensive with many,  
17 many orders and rulings and things changed from order  
18 to order, so I can't based on the four sentences you  
19 had me read today.

20 Q. Okay. Does Staff support the lack of any  
21 cap or limit on the number of times FirstEnergy could  
22 call those curtailments under Rider ELR?

23 A. Staff hasn't taken a position on that.

24 Q. Neither opposes nor supports?

25 A. We have not taken a position, correct.

1           Q.    Does Staff support the lack of any cap or  
2   limit on the potential duration or interruption  
3   events under Rider ELR?

4           A.    I don't take any position on that in my  
5   testimony, and Staff has no position.

6           Q.    Going to the operation of Rider ELR, does  
7   Staff believe there is a benefit to allowing  
8   FirstEnergy to call load curtailment independent of  
9   PJM for load -- local load constraints or reliability  
10   issues?

11          A.    Yes.

12          Q.    You were asked earlier about the  
13   interruptible rate programs in Duke's service  
14   territory. Do you recall that?

15          A.    I was asked to confirm there aren't any,  
16   yes.

17          Q.    Are you familiar with a current  
18   reasonable rate arrangement in place for AK Steel in  
19   the Duke territory, Case No. 18-450, that provides  
20   that as an interruptible resource and provides such  
21   credits to AK Steel?

22          A.    I don't know whether that's true or not.

23          Q.    You are not familiar with it?

24          A.    I don't know whether it's true or not.

25   Maybe -- I can't say whether I am familiar with it if

1 I don't know that it exists.

2 Q. Okay. You just don't know one way or the  
3 other.

4 A. Correct.

5 MR. PROANO: Give me a moment, your  
6 Honor.

7 I have no further questions, your Honor.  
8 Thank you.

9 EXAMINER PRICE: Before we move on to  
10 Mr. Alexander, I have a follow-up. If you turn to  
11 your testimony page 21, lines 19 through 20, carrying  
12 on to page 22, lines 1 and 2. There you indicate  
13 that you believe that Mr. Brakey's proposal to  
14 transfer -- postpone the transition to third-party  
15 CSPs until 2025 is reasonable; is that correct?

16 THE WITNESS: That's correct.

17 EXAMINER PRICE: If the Commission were  
18 to adopt Mr. Brakey's proposal, would you recommend  
19 retaining the existing level of \$10 per  
20 megawatt-hour -- per megawatt of credit for the ELR  
21 customers or going straight to the \$5 in the first  
22 year?

23 THE WITNESS: It would still be 5.

24 EXAMINER PRICE: Thank you.

25 Mr. Alexander.

1 MR. ALEXANDER: Thank you, your Honor.

2 - - -

3 CROSS-EXAMINATION

4 By Mr. Alexander:

5 Q. Mr. Healey, I would like to start by  
6 talking about Rider DCR today.

7 A. Okay.

8 Q. Rider DCR was originally established as  
9 part of the Companies' ESP II, correct?

10 A. Like Mr. Mackey, I don't recall exactly  
11 when it began. I know it's been in place for a  
12 while.

13 Q. I will ask you the same follow-up  
14 question I asked Mr. Mackey. Do you recall that  
15 Rider DCR's original effective date was January 1,  
16 2012?

17 A. I do not know that.

18 Q. Since the inception of Rider DCR, the  
19 Companies have filed quarterly updates of Rider DCR,  
20 correct?

21 A. I know that they currently file  
22 quarterly. I don't know whether it's been since the  
23 inception.

24 Q. And the quarterly Rider DCR filings  
25 submitted by the Companies Are based on estimated

1 balances with any reconciliations between actual and  
2 forecasted information recognizing the following  
3 quarter, correct?

4 A. That's correct.

5 Q. And as part of their Rider DCR proposal  
6 in this case, the Companies propose to continue  
7 filing these quarterly Rider DCR updates?

8 A. I don't know for sure. I assume so.

9 Q. Commission Staff and other parties are  
10 afforded an opportunity to review these publicly  
11 filed quarterly updates, correct?

12 A. I'm not sure whether everything is  
13 publicly filed. My impression -- my understanding is  
14 that some workpapers and things are sent only to the  
15 Staff and not filed on the docket.

16 Q. There is something filed on the docket  
17 every quarter though, correct?

18 A. That's my understanding.

19 Q. And the information that is publicly  
20 filed in the docket is available to anyone who cares  
21 to look.

22 A. Sure.

23 Q. Okay. Would you agree that quarterly  
24 Rider DCR updates provide transparency to customers  
25 and the Commission?

1           A.    Commission, yes.  I don't know how many  
2 customers are looking at them so there might be a  
3 small subset of customers who gain some transparency  
4 from those, but I would suspect the vast majority are  
5 not looking at them.

6           Q.    No need to look when programs run well,  
7 correct?

8                   MS. BOJKO:  Objection.

9           A.    I assume that's not the question I need  
10 to answer.

11                   EXAMINER PRICE:  Well, in all fairness,  
12 Mr. Healey, many customers mistake -- including all  
13 the residential customers are represented by a  
14 counsel.  They have an opportunity to review the  
15 quarterly DCR.

16                   MS. BOJKO:  Objection.

17                   EXAMINER PRICE:  Go ahead.  What's your  
18 concern?

19                   MS. BOJKO:  I was going to say assumed  
20 facts not in evidence.  Not all customers are  
21 represented until they are hired to be represented  
22 and it is on a case-by-case basis.

23                   EXAMINER PRICE:  Okay.  Then I will  
24 rephrase.  Mr. Healey, isn't it true that all the  
25 residential customers in this state are represented

1 by the Ohio of Consumers' Counsel who has an  
2 opportunity to review these quarterly updates?

3 THE WITNESS: All FirstEnergy customers,  
4 yes.

5 EXAMINER PRICE: Thank you.

6 Q. (By Mr. Alexander) The Commission Staff,  
7 and I know you don't know how far back Rider DCR  
8 extends, but the Commission Staff has retained  
9 third-party independent auditors to review and verify  
10 the amounts which recovery is sought are not  
11 unreasonable, correct?

12 A. Correct.

13 Q. And are the Rider DCR compliance audits  
14 conducted annually?

15 A. That's my understanding.

16 Q. And Rider DCR has been subject to annual  
17 audit more than 10 times?

18 A. I don't know how many times.

19 Q. Commission Staff and other parties are  
20 afforded an opportunity to participate in the annual  
21 audit of Rider DCR?

22 A. They can -- they can participate in the  
23 docket, yes. I don't know that I would say they can  
24 participate in the audit necessarily, but they can  
25 participate in the regulatory process, yes.

1           Q.    That's a fair clarification.  Thank you.  
2   The Commission selects the independent third-party  
3   auditor, not the Companies, correct?

4           A.    For the ones that I have seen, yes.  I  
5   don't know again back for all however many years.

6           Q.    And the rider DCR annual audit is  
7   conducted under Staff's direction and with Staff's  
8   participation, correct?

9           A.    Correct.

10          Q.    The parties who do intervene in the Rider  
11   DCR proceedings have the ability to conduct  
12   discovery?

13          A.    I would assume so.

14          Q.    And as part of their Rider DCR proposal  
15   in this case, the Companies proposed to continue the  
16   annual audits of Rider DCR?

17          A.    That's my understanding.

18          Q.    Rider DCR under the Companies' proposal  
19   would remain subject to reconciliation including  
20   issuing customers refunds based on results of the  
21   annual DCR audits?

22          A.    Yes.

23          Q.    The annual DCR audit focuses specifically  
24   and exclusively on the costs included in Rider DCR,  
25   correct?



1           A.     Yes.

2           Q.     Now, in your testimony -- I am looking at  
3     page 11, line 18. You mention anticipating  
4     complexities in the Companies' forthcoming 2024 rate  
5     case. Do you see that?

6           A.     Sure.

7           Q.     In the 2024 rate case the Commission will  
8     conduct a broader view of all costs captured in base  
9     rates, not just the costs included in Rider DCR,  
10    correct?

11          A.     Correct.

12          Q.     And the parties in this ESP V proceeding  
13    were provided an opportunity to weigh in on the  
14    appropriateness of continuing Rider DCR, correct?

15          A.     Yes, they were.

16          Q.     And is it your opinion that this ESP V  
17    proceeding deny parties the opportunity to develop a  
18    complete record with respect to Rider DCR?

19          A.     I am not aware of anyone being denied the  
20    opportunity to create a record.

21          Q.     And is it your opinion that this ESP V  
22    proceeding denied the Commission the ability or  
23    opportunity to make a well informed decision about  
24    whether Rider DCR should be continued and if so on  
25    what terms?

1           A.    I think the Commission will -- I think  
2   the Commission has a very robust record in this case  
3   as many days of hearing and the many pieces of  
4   testimony filed demonstrate and they have a  
5   sufficient basis to make a ruling on whether to  
6   continue Rider DCR and at what level.

7           Q.    OCC Exhibit 8 is the 2022 Blue Ridge  
8   Rider DCR audit report. I am going to ask you just a  
9   couple questions about it, if you would like to see a  
10   copy of the document. I am happy to provide it to  
11   you. I suspect you may not need it for these.

12          A.    Okay.

13          Q.    But we'll try without it. The 2022 Blue  
14   Ridge Rider DCR annual compliance audit is over 200  
15   pages, correct?

16          A.    I don't know.

17          Q.    Would you agree that the 2022 Blue Ridge  
18   Rider DCR audit report is comprehensive?

19                MS. BOTSCHNER-O'BRIEN: Your Honor, I am  
20   going to object. I don't think he's laid a  
21   foundation whether this witness is familiar with the  
22   document yet.

23          Q.    (By Mr. Alexander) I'll ask that  
24   question. Mr. Healey, have you reviewed the 2022  
25   Blue Ridge Rider DCR annual compliance audit report?

1           A.    I am not sure. My recollection is that  
2 one of the annual DCR Rider cases is on hold as a  
3 result of the request from -- I don't want to say  
4 Southern District of Ohio. I don't recall if that is  
5 the one. If it is, then I've read it. If it isn't,  
6 then I haven't.

7           EXAMINER PRICE: As I understand what you  
8 just said, the OE DCR audit that you would be  
9 familiar with is the one that's current, where the  
10 proceedings are currently stayed at the request of  
11 the U.S. Attorney for the Southern District.

12           THE WITNESS: That's correct. The others  
13 I have not read.

14           EXAMINER PRICE: Thank you.

15           THE WITNESS: I should clarify I don't  
16 know that I have read that in its entirety. I think  
17 I flipped through it.

18           Q.    (By Mr. Alexander) Would you agree  
19 that -- I am changing topics slightly, staying on  
20 DCR. Would you agree that Rider DCR helps support  
21 distribution investments to maintain safe and  
22 reliable service to customers?

23           A.    I would say some of the investments under  
24 Rider DCR do that, yes.

25           Q.    Would you agree that updating Rider DCR

1 on a quarterly basis as is done currently helps align  
2 the cost customers pay with the investment made by  
3 the companies?

4 A. I don't know. That would have been a  
5 good question for Mr. Mackey. He would have a better  
6 answer for that, so I don't know.

7 Q. Would you agree that updating Rider DCR  
8 on a quarterly basis with revenue caps helps promote  
9 gradualism in setting customer rates?

10 MS. BOTSCHNER-O'BRIEN: Your Honor, I am  
11 going to object again because this -- this line of  
12 questioning throughout the past 5 minutes, these are  
13 all questions that Mr. Alexander has posed to  
14 Mr. Mackey this morning, so we are sort of repeating  
15 some of these same questions.

16 MR. ALEXANDER: Mr. Mackey did not answer  
17 all these questions so we are --

18 EXAMINER PRICE: Mr. Mackey did punt some  
19 of the questions to Mr. Healey, and I believe as to  
20 gradualism, Mr. Healey specifically testified as to  
21 it promotes gradualism, so your objection is  
22 overruled.

23 THE WITNESS: Can I have it reread or  
24 reasked?

25 EXAMINER PRICE: Let's read the last

1 question, please.

2 (Record read.)

3 A. Yes. I guess I would ask promotes  
4 gradualism as compared to what?

5 Q. If there were no DCR and the rates were  
6 only updated via rate cases, then at the earliest  
7 investments could be updated every approximately 275  
8 days, correct?

9 A. Yeah, approximately, sure.

10 Q. And, in fact, that period could be longer  
11 if there is a longer period between rate cases?

12 A. Yeah. I guess conceivably Staff could  
13 process a rate case really, really fast and could get  
14 done faster than that but, yes.

15 Q. And with the quarterly updates of Rider  
16 DCR, rates change more gradually than if they could  
17 only be updated with every rate case, correct?

18 A. That's correct.

19 EXAMINER PRICE: I would like to  
20 interrupt you, Mr. Alexander. I do want the record  
21 to be clear that the quarterly updates do not provide  
22 the Staff sufficient opportunity to do any sort of  
23 prudence or used and useful analysis before the rates  
24 change, do they?

25 THE WITNESS: No. That's done through

1 the annual audit process.

2 EXAMINER PRICE: Thank you.

3 Q. (By Mr. Alexander) So focusing on the  
4 interaction between the audits done in the annual DCR  
5 audit and base rate cases for a moment, are you aware  
6 of any review of the Companies' investments in a rate  
7 case which is not done as part of the annual Rider  
8 DCR audit?

9 A. Are you talking about with respect to DCR  
10 assets?

11 Q. I am.

12 A. I would say I don't know, and I will  
13 leave it at that.

14 Q. So I believe you referenced this in  
15 response to questions earlier today, can we refer to  
16 the period from June 1, 2024, through the effective  
17 date of the new rate case as the bridge period?

18 A. Yes. I use that term in my testimony, so  
19 it's consistent with that.

20 Q. And under Staff's proposal during the  
21 principal period, the Companies would lose the  
22 opportunity to continue recovering on investments  
23 outside of FERC Accounts 360 to 374?

24 A. Through the DCR I guess I can't say  
25 whether or not you are recovering any of those

1 through AMI or something. I just don't know.

2 Q. I will rephrase the question so it's more  
3 clear. During the bridge period, the Companies would  
4 lose the ability to recover for investment made in  
5 accounts outside of 360 to 374 through Rider DCR  
6 during the bridge period, correct?

7 A. Correct.

8 Q. And at page 10, lines 5 to 6, of your  
9 testimony, you recommend that in this ESP case the  
10 Commission should not approve charges under Rider DCR  
11 beyond the bridge period, correct?

12 A. That's correct.

13 Q. And moving to line 6 and 7 of your  
14 testimony, Staff believes the Commission should  
15 assess whether to approve Rider DCR charges as part  
16 of the forthcoming base rate case?

17 A. Yes.

18 Q. Would you agree that if your proposal is  
19 adopted, there would be no way to determine at this  
20 time if charges under Rider DCR will continue for the  
21 entire ESP term?

22 A. That's correct.

23 Q. Does this recommendation result in less  
24 certainty and stability for the Companies?

25 A. Less certainty and stability as compared

1 to approving it for the entire ESP?

2 Q. Yes.

3 A. I would say not necessarily because the  
4 DCR caps will be reset in the rate case either way,  
5 and it's conceivable that even if the Commission  
6 approves the DCR for the entire duration of the ESP,  
7 it could still approve with a zero cap for the period  
8 after the bridge period, in which case the functional  
9 result would be the same, so the certainty and  
10 stability there would be identical.

11 Q. Why do you believe that the caps for  
12 Rider DCR must be addressed in the base rate case?

13 A. I believe I explained that generally in  
14 my testimony that because there has been a -- because  
15 there has been a long lag since the last rate case,  
16 there is a lot we don't know about the Companies'  
17 assets but full review of all plant, not just the  
18 plant that's in the DCR, and the Commission will look  
19 at the Companies' expense, revenues, rate of return,  
20 and potentially all those factors and others could  
21 inform the Commission's decision on the level of DCR  
22 that it believes is appropriate.

23 And since we haven't done that analysis  
24 yet, since we haven't had the rate case, it makes  
25 more sense to do it once that information is all



1 available to the Commission.

2 Q. Sure. I understand that's your  
3 recommendation, but do you believe there is some  
4 legal obligation for the Commission to establish caps  
5 as part of the rate case as opposed to this  
6 proceeding?

7 MS. BOTSCHNER-O'BRIEN: Objection. It  
8 calls for a legal conclusion. He is not testifying  
9 as to a legal conclusion.

10 EXAMINER PRICE: He is certainly a  
11 regulatory expert.

12 MS. BOTSCHNER-O'BRIEN: Yes. He can  
13 testify as a regulatory expert.

14 EXAMINER PRICE: To be clear, he is not  
15 giving his legal opinion which would be -- which  
16 would be contained in your briefs, but we will ask  
17 questions for a regulatory expert.

18 THE WITNESS: Can I have that question  
19 reread, please?

20 (Record read.)

21 A. No. I don't believe it's a legal  
22 obligation. It's my recommendation as a regulatory  
23 expert.

24 EXAMINER PRICE: To go back to  
25 Mr. Alexander's question, because I think you two are

1 talking past each other, do you think your proposal  
2 provides less certainty and stability to the Company  
3 than the Companies' proposal?

4 THE WITNESS: I agree on certainty. I'm  
5 not sure about stability.

6 EXAMINER PRICE: Fair enough.

7 Q. (By Mr. Alexander) Would you agree that  
8 the inclusion of Rider DCR in the ESP is a material  
9 issue?

10 A. Yes.

11 Q. Witness Messenger testified that  
12 establishing riders that promote transparency through  
13 annual audits is a benefit of ESP V. Do you recall  
14 that testimony?

15 A. Not specifically, no.

16 Q. Do you agree that riders can provide  
17 qualitative benefits to customers?

18 EXAMINER PRICE: Can I have the question  
19 back?

20 (Record read.)

21 EXAMINER PRICE: Mr. Alexander will  
22 repeat his question.

23 Q. (By Mr. Alexander) Do you agree that  
24 riders can provide qualitative benefits to customers?

25 A. Yes.

1 Q. If the -- strike that.

2 Are you aware of any Electric Security  
3 Plan approved by the Commission where the question of  
4 whether a Distribution Investment Rider would  
5 continue for the ESP term was left open as you  
6 suggest here?

7 A. No. It's typical to state that the caps  
8 will be reset but not -- I am not aware of any that  
9 make the same -- that draw the same conclusion that I  
10 am recommending.

11 Q. You also recommend -- I am now at page  
12 10, lines 9 to 12 -- that if the Commission does not  
13 make a ruling in the 2024 rate case affirmatively  
14 ordering continuation of Rider DCR beyond the bridge  
15 period, then Rider DCR will be set to zero when new  
16 base rates become effective, correct?

17 A. Correct.

18 Q. So maybe you can help me under your  
19 hypothetical here. In your hypothetical are you  
20 assuming that in ESP V the Commission adopts Staff's  
21 proposal to continue Rider DCR during the bridge  
22 period and to reevaluate Rider DCR in the 2024 rate  
23 case?

24 A. Yes.

25 Q. And further in your hypothetical even

1     though the Commission in this case would explicitly  
2     defer further consideration to the 2024 rate case,  
3     your hypothetical assumes the Commission fails to  
4     address Rider DCR in that case?

5             A.     Yeah.  It -- I realize that's not a  
6     likely result.  I was just setting the -- I was  
7     setting the default for what happens if there is no  
8     ruling, so it's always good to have kind of a default  
9     position.  You know, for example, when you sign a  
10    stipulation, it defaults back to the Application, so  
11    I wanted it to be clear if for some reason the issue  
12    doesn't get addressed in the rate case, the default  
13    would be it goes to zero, not that it stays at  
14    whatever the current level is in the bridge period.

15            Q.     That default to zero would have a pretty  
16    material effect on the Companies though, wouldn't it?

17            A.     It might.

18                   EXAMINER PRICE:  Why would it have a  
19    material effect on the Companies?

20                   THE WITNESS:  Why would it not?

21                   EXAMINER PRICE:  Why would it?

22                   THE WITNESS:  Oh, why would it?

23                   EXAMINER PRICE:  They could still recover  
24    the investments in a future rate case.

25                   THE WITNESS:  Sure.  That's why I said

1 might. I guess I could have clarified the reason it  
2 might is it would depend on how long it might take  
3 for them to file the next rate case, how much capital  
4 investment they have to make after the date certain  
5 in the rate case so there would be various timing  
6 issues that would impact whether it is material or  
7 not.

8 EXAMINER PRICE: In fact, if the  
9 Commission were to not extend DCR, the Company  
10 probably could file immediately another rate case.

11 THE WITNESS: Yes.

12 EXAMINER PRICE: And one annually  
13 thereafter.

14 THE WITNESS: Sure.

15 EXAMINER PRICE: Thank you,  
16 Mr. Alexander.

17 MR. ALEXANDER: Thank you, your Honor.

18 Q. (By Mr. Alexander) Is it Staff's position  
19 that the Companies would need to make some sort of  
20 additional filing to the base rate case in order for  
21 the Rider DCR to continue?

22 A. No.

23 Q. And Ohio base rate cases are subject to  
24 some pretty extensive requirements regarding what  
25 they have to include and the process by which they

1 have to be conducted, correct?

2 A. Correct.

3 Q. Is there any element of the Ohio base  
4 rate case rules which address the continuation of ESP  
5 riders such as DCR?

6 A. I don't know.

7 Q. Is it Staff's preference for the  
8 Companies to file a base distribution rate case every  
9 year?

10 A. Staff doesn't have a preference on a  
11 specific number of years between rate cases.

12 Q. At page 6 of your testimony --

13 EXAMINER PRICE: I have a follow-up  
14 question to that. Under Ohio law, to the best of  
15 your knowledge as a regulatory expert, the Companies  
16 would be entitled to the rate case expenses if they  
17 filed a rate case; is that correct?

18 THE WITNESS: I hesitate because I am not  
19 100 percent sure they are guaranteed under law to  
20 collect their actual expenses for -- some kind of  
21 proxy could be used, but generally they collect rate  
22 case expenses.

23 EXAMINER PRICE: And if they filed rate  
24 cases every year, annually, they would recover their  
25 rate case expenses; is that correct?

1 THE WITNESS: Assuming we amortize them  
2 over a one-year period based on the expectation they  
3 are going to keep filing them every year, yes.  
4 Generally I think we amortize over a longer period  
5 than that but.

6 EXAMINER PRICE: Could the Companies  
7 recover their expenses for an annual audit of the DCR  
8 other than the cost of the audit?

9 THE WITNESS: You said other than the  
10 cost of the audit?

11 EXAMINER PRICE: Right. Do they recover  
12 their legal expenses, Company time similar to a rate  
13 case expense?

14 THE WITNESS: If it were in the test year  
15 of a rate case, yes. Otherwise I don't know.

16 EXAMINER PRICE: Thank you.

17 Q. (By Mr. Alexander) In Ohio --

18 MR. ALEXANDER: Were you done, your  
19 Honor?

20 EXAMINER PRICE: I am done for now.

21 Q. (By Mr. Alexander) In Ohio, staying with  
22 the topic raised by the Bench, over how many years  
23 does Staff typically recommend rate case expense  
24 being amortized?

25 A. I don't know. It's more than one, but I

1 don't know. I don't know the number.

2 Q. And if the Companies did file annual rate  
3 cases and rate case expense was amortized over more  
4 than one year, then the Companies may not recover all  
5 of the rate case expense, correct?

6 A. It's possible. I believe that when we  
7 see a rate case filed before the previous rate case  
8 expense has been fully amortized and collected, it  
9 does tend -- it does generally get rolled into that  
10 next rate case as a regulatory asset.

11 Q. Back to page 6, here you discuss how base  
12 rate cases provide an opportunity to capture all  
13 aspects of the cost of service. Do you see that?

14 A. Can you give me a line number?

15 Q. I'm referring to lines 8 and 9 where you  
16 reference the intent to capture both increases and  
17 decreases. Do you see that?

18 A. Yes, I do see that language.

19 Q. Is it possible for there to be  
20 reconciliation of all costs of providing a service  
21 including, for example, O&M expense in a rider?

22 A. Could you repeat that?

23 Q. Sure.

24 A. Have it reread?

25 Q. Is it possible for a reconciliation of



1 all costs of service including things like O&M  
2 expense in a rider?

3 A. So under your hypothetical everything  
4 that gets processed in a rate case is processed  
5 through a rider; is that --

6 Q. Yes. Is that possible?

7 A. I don't know whether that's possible.

8 Q. And I asked this question to Mr. Mackey  
9 earlier today with regard to himself, and now I will  
10 ask it to you as the other DCR witness. Has Staff  
11 provided any testimony addressing the impact of  
12 Staff's proposed revenue reduction during the bridge  
13 period on the Companies' financial viability?

14 A. I do mention in my testimony what the  
15 potential revenue impact is from the Staff's  
16 recommended caps as compared to the Companies'. So  
17 that would be one indicator of the financial impact  
18 on the Companies, but I don't think there is anything  
19 else in my testimony on that issue.

20 Q. Changing topics --

21 EXAMINER PRICE: Before you change  
22 topics, Mr. Alexander, I do have one follow-up. I  
23 just want to make sure the record is clear,  
24 understanding that you cannot predict the future, you  
25 are proposing new caps be established in the rate

1 case.

2 THE WITNESS: Correct.

3 EXAMINER PRICE: In the rate case those  
4 caps will be whatever the evidence demonstrates; is  
5 that correct?

6 THE WITNESS: Correct.

7 EXAMINER PRICE: So those caps could, in  
8 fact, hypothetically exceed the 17 to 21 million  
9 dollars that the Companies have proposed.

10 THE WITNESS: Correct, 15 to 21, correct.  
11 They could be higher than that, correct.

12 EXAMINER PRICE: Thank you.

13 Q. (By Mr. Alexander) All right. I would  
14 like to talk about the UFE proposal.

15 A. Okay.

16 Q. The Companies propose to stop allocating  
17 UFE to suppliers and instead retain UFE as a direct  
18 assigned cost valued at locational marginal pricing  
19 that will be charged to all customers on a  
20 nonbypassable basis through Rider NMB, correct?

21 A. That's my understanding.

22 Q. And Staff Opposes the Companies' proposal  
23 preferring instead to maintain the status quo.

24 A. Correct.

25 Q. Staff recommends the Commission

1 reconsider the proposed change to UFE in a future  
2 case where FirstEnergy has completed or is closer to  
3 completing its smart meter rollout.

4 A. That's right.

5 Q. And one reason Staff makes this  
6 recommendation is because of volatility concerns  
7 during this smart meter rollout?

8 A. Are you citing in my testimony  
9 specifically?

10 Q. I am, yeah. Page 5, line 19.

11 A. Yes, that's correct.

12 Q. And does Staff dispute the Companies'  
13 contention that as the Companies continue to install  
14 AMI meters the volatile nature of UFE will decrease?

15 A. The Staff hasn't taken a position on  
16 that.

17 Q. If the Companies' UFE proposal is  
18 adopted, suppliers would no longer need to account  
19 for UFE in their pricing, correct?

20 A. You say no longer. I don't know that  
21 they do currently, so I don't think I can answer that  
22 question.

23 Q. Because you don't know if suppliers  
24 include UFE costs in their pricing; is that why you  
25 can't answer?

1           A.     Correct. It may be so insignificant it  
2 doesn't affect their pricing, so I can't say whether  
3 they would no longer do it because I don't know  
4 whether they are doing it currently.

5           Q.     Would you agree that the proposed UFE  
6 change by the Companies would align with the  
7 treatment of PJM meter error corrections which is the  
8 PJM line item where UFE is reconciled in the PJM  
9 billing process?

10          A.     I don't know.

11          Q.     The Staff agrees that the Companies' UFE  
12 proposal would bring more transparency and simplicity  
13 to the way UFE is currently charged to customers?

14          A.     Not necessarily. I think there could be  
15 equivalent transparency if the customers' CRES gives  
16 them the same information about UFE as the Companies  
17 would provide through their -- when they charge  
18 customers through a rider.

19          Q.     Let's explore that a bit. Have you ever  
20 seen a CRES supplier provide UFE information to  
21 residential customers?

22          A.     I haven't seen it either way. I don't  
23 know.

24          Q.     And same question for nonshopping  
25 customers who take service via the competitive

1 auctions, is UFE information ever provided to those  
2 customers?

3 A. I don't know.

4 Q. Does Staff agree with the Companies'  
5 contention that retail billing errors are much easier  
6 to handle in the Companies' UFE proposal because the  
7 associated error in the marketplace is not spread to  
8 all suppliers operating in the Companies' PJM zone?

9 A. Can you repeat that or have it reread?

10 Q. I can repeat it. Does Staff agree with  
11 the Companies' contention that retail billing errors  
12 are much easier to handle under the Companies' UFE  
13 proposal because the associated error in the  
14 marketplace is not spread to all suppliers operating  
15 in the Companies' PJM zone?

16 A. I don't know whether they are easier or  
17 not.

18 Q. Page 16, lines 5 and 6, of your  
19 testimony, one of the reasons you identify for  
20 rejecting the Companies' UFE proposal is that no  
21 other Ohio utility addresses UFE in the way that  
22 FirstEnergy proposes in its application. Do you see  
23 that?

24 A. Yes.

25 Q. Assume hypothetically that the Companies'

1 smart meter rollout is completed or almost completed  
2 such that the Commission is better positioned to  
3 consider this proposed change to UFE. Do you  
4 understand that assumption?

5 A. Yes.

6 Q. Assume further that at that time no other  
7 Ohio utility has addressed UFE as the Companies are  
8 proposing here? Do you understand that assumption as  
9 well?

10 A. I understand it.

11 Q. In that instance would Staff still be  
12 opposed to considering the Companies' UFE proposal  
13 because no other utility has done it?

14 A. I don't know. We would have to look at  
15 it in that context.

16 Q. So Staff has proposed a series of  
17 modifications, and I am thinking here specifically of  
18 DCR, VMC, ELR, EEC, and SCR, okay? So those are the  
19 modifications that I have in mind. That would be  
20 effective at the start of the ESP, correct?

21 A. We haven't made modification to the  
22 Companies' proposal on all those items. I don't know  
23 if that's an exclusively but, yes, those -- those  
24 five we are making recommendations on.

25 Q. And those recommended changes from Staff

1 reduces charges to customers at the start of ESP V as  
2 compared to what they were at the end of ESP IV,  
3 correct?

4 A. In the aggregate, yes.

5 Q. And then Staff's recommended changes are  
6 also below the amounts proposed for these charges by  
7 the Companies, correct?

8 A. In the aggregate, yes.

9 Q. If Staff's proposal is adopted, customers  
10 would see \$52 million in annual rate decreases  
11 compared to ESP IV rates while the Companies'  
12 proposed rate increases -- well, let me split those  
13 up. Would you agree that if Staff's proposal is  
14 adopted, customers would see \$52 million in annual  
15 rate decreases as compared to the current ESP IV  
16 rates?

17 A. As of June 1, 2024, yes. Annual for the  
18 remainder of the ESP term, no. That number is for  
19 year one only.

20 Q. And the Companies have proposed a rate  
21 increase of approximately \$145 million in the first  
22 year of ESP V.?

23 A. It's 110. That was one of my corrections  
24 at the beginning of the day.

25 Q. I should have caught that in my outline.

1 Thank you. I will rephrase the question. The  
2 Companies have proposed a rate increase of more than  
3 \$110 million in the first year of the ESP V?

4 A. That's correct.

5 Q. Was Staff targeting a specific amount of  
6 cost reductions when making its proposals?

7 A. No.

8 Q. Is Staff aware of the impact that recent  
9 generation auctions have had on the Companies' rates?

10 A. Staff is aware. I am somewhat aware;  
11 there are certain people on Staff that are more aware  
12 than I am. But, yes, Staff is aware of the trends in  
13 generation rates in the FirstEnergy territory.

14 Q. And I am referring specifically to the  
15 price to compare --

16 A. Yes.

17 Q. -- with these questions.

18 A. Sure.

19 Q. Does Staff agree that generation is the  
20 largest component of SSO customers' bills?

21 A. I don't personally know whether that's  
22 true. Mr. Benedict might have been able to answer  
23 that better than I can.

24 Q. And if generation prices decrease, it  
25 would -- strike that.



1           If generation prices are below what was  
2       used in the Companies' typical bill analysis, then  
3       that would reduce customer rates beyond that shown by  
4       the typical bill analysis?

5           A.     Sure, just based on the math.

6           Q.     Talking briefly about Rider SCR and VMC  
7       at page 12, you state that those two riders should be  
8       reconsidered in the base rate case, correct?

9           A.     That's correct.

10          Q.     Now, when you say reconsider, do you mean  
11       new baselines should be established, or are you  
12       anticipating a significant revision to the programs  
13       themselves?

14          A.     I'm actually just referencing other Staff  
15       testimony here to signal some -- the focus of my  
16       testimony with regard to the rate case was on the  
17       DCR, and then here I was just signaling -- I didn't  
18       mean that could be exclusive so I -- I don't know all  
19       the details of what -- off the top of my head Staff  
20       Witnesses Messenger and Borer proposed for those two  
21       riders.

22               MR. ALEXANDER:  No further questions.  
23       Thank you, Mr. Healey.

24               THE WITNESS:  Thank you.

25               EXAMINER PRICE:  Redirect?

1 MS. BOTSCHNER-O'BRIEN: Can we have 5  
2 minutes, your Honor?

3 EXAMINER PRICE: You may.

4 (Recess taken.)

5 EXAMINER PRICE: Back on the record.

6 MS. BOTSCHNER-O'BRIEN: Staff has no  
7 redirect.

8 - - -

9 EXAMINATION

10 By Examiner Price:

11 Q. I have one question for you, hopefully  
12 one question for you, Mr. Healey. I guess it's two.  
13 Staff has recommended, I don't want to say numerous,  
14 but some number of modifications to the Companies'  
15 proposed ESP; is that correct?

16 A. Yes.

17 Q. My question for you is if the Commission  
18 were to make all the modifications proposed by Staff,  
19 Staff recommended approval of the Application?

20 A. As modified by Staff, yes.

21 Q. As modified by Staff.

22 A. Yes.

23 Q. Anything not addressed by Staff testimony  
24 that's in the Application, Staff recommends approval  
25 in the aggregate of that provision of the

1 Application?

2 A. I guess I would say yes, subject to I had  
3 some cross about we have no position on X or Y, so I  
4 suppose -- I guess the answer is if we haven't taken  
5 a position on it, then we take no position on it and  
6 not that we are signaling explicit approval of what  
7 the -- what the Company has proposed.

8 MR. ALEXANDER: Your Honor, may I have  
9 that question? May I just have that question read,  
10 please?

11 EXAMINER PRICE: Yes. Can we have the  
12 question back?

13 (Record read.)

14 EXAMINER PRICE: I didn't say that very  
15 well. Would you like me potentially to rephrase?

16 MR. ALEXANDER: I just didn't hear  
17 completely.

18 Q. (By Examiner Price) Let me try again so  
19 the record is clear. If Staff has not taken a  
20 position in the testimony or on its brief in a  
21 provision, does the Staff recommend the Commission  
22 approve the Application as a whole, subject to  
23 Staff's modifications?

24 A. I think my answer is that we are not  
25 taking a position on anything that we have not taken

1 a position on in testimony, so I don't want to say we  
2 didn't address that; therefore, we explicitly endorse  
3 it.

4 Q. I am not saying you endorse it. I just  
5 want to make sure you don't explicitly -- or  
6 implicitly oppose it.

7 A. Correct. Our failure to address  
8 something in the Application shouldn't be interpreted  
9 to mean we oppose it currently.

10 EXAMINER PRICE: Thank you. You are  
11 excused.

12 THE WITNESS: Thank you.

13 EXAMINER PRICE: At this time we'll take  
14 up the --

15 MS. BOTSCHNER-O'BRIEN: Your Honor.

16 EXAMINER PRICE: Yes.

17 MS. BOTSCHNER-O'BRIEN: I just want to  
18 renew my motion --

19 EXAMINER PRICE: That's what we are  
20 taking up.

21 MS. BOTSCHNER-O'BRIEN: Okay.

22 EXAMINER PRICE: At this time we would  
23 take up Staff's motion to admit Staff's Exhibit 10.  
24 Any objections?

25 Seeing none.

1 (EXHIBIT ADMITTED INTO EVIDENCE.)

2 EXAMINER PRICE: Mr. Kurtz, are you  
3 moving the admission of OEG 7?

4 MR. KURTZ: I do move the admission.

5 EXAMINER PRICE: Any objection?

6 MS. BOTSCHNER-O'BRIEN: We object.  
7 Objection.

8 EXAMINER PRICE: Grounds?

9 MS. BOTSCHNER-O'BRIEN: The problem with  
10 this exhibit is that it is an OEG-created chart  
11 offered on the last day, and the testimonies and  
12 Application filed should speak for themselves. We --  
13 here we went through Staff's position on column 3.  
14 But the witnesses for FirstEnergy, for OEG were not  
15 here to similar discuss their position.

16 It -- I just think we should be relying  
17 on -- not relying on these kind of created exhibits.  
18 I realize Mr. Healey did go through and to the best  
19 of his ability try to -- try to support or not  
20 support some of these positions, but they really  
21 are -- it's an -- it's a created chart offered for  
22 today. It's not necessarily based on anything. It's  
23 not necessarily based on these parties' positions.  
24 We can find the parties' positions by looking at the  
25 testimonies that have already been admitted into the

1 record and should speak for themselves. So Staff  
2 opposes the admission of this exhibit into the  
3 record.

4 MR. KURTZ: Just briefly, your Honor.  
5 Mr. Healey obviously was familiar with the Companies'  
6 position on the ELR. He was familiar with OEG  
7 Mr. Murray's position on ELR. And he, of course, was  
8 familiar with his position. We never had a chance to  
9 address the Staff's position in our testimony because  
10 Staff's testimony was filed after we filed so this is  
11 just a summary of the three parties. Mr. Healey  
12 confirmed the validity of it, and its -- its  
13 probative value, the Commission can give it its  
14 appropriate weight.

15 MS. BOJKO: Your Honor, may I be heard?

16 MR. LAVANGA: Your Honor.

17 EXAMINER PRICE: Ms. Bojko, I believe, is  
18 next.

19 MS. BOJKO: Your Honor, this document was  
20 not created by the witness. He pointed out several  
21 errors. He did not actually say that it was valid or  
22 accurate. He pointed out several errors to the  
23 Staff's position and the calculations of the  
24 percentages.

25 My guess is that his errors with regard

1 to the percentages would also apply to the Companies'  
2 column which that was never addressed nor were we  
3 able to use this document and cross both the person  
4 that created it as well as the FirstEnergy witness on  
5 the FirstEnergy position and whether the FirstEnergy  
6 position was accurately listed and identified in this  
7 document.

8 But additionally to that, your Honor,  
9 historically this Commission has not allowed  
10 documents created by counsel to be admitted as  
11 evidence. They are allowed sometimes to be used in  
12 aid of cross, but they are not even allowed to be  
13 used as to be admitted.

14 And, in fact, in 21-477, a recent case, I  
15 believe that a utility company -- Mr. Nourse was not  
16 even allowed to use his summation document to cross a  
17 witness because the witness had never seen the  
18 document before. And in this case, we were allowed  
19 to -- the witness was allowed to be crossed on the  
20 document after pointing out errors.

21 But I don't think it's appropriate to  
22 admit the document. He doesn't -- he did not testify  
23 to the accuracy of the FirstEnergy position or the  
24 calculations which I believe would also be an error.  
25 So summaries, if it is truly just a summary of other

1 people's testimonies, then it is cumulative. And  
2 under Rule 611(A), the Bench has stated that repeated  
3 presentation is unfair and that this particular one I  
4 believe is unfair as it was -- is inaccurate and it  
5 will cause confusion to the record because of the  
6 inaccuracies. And it shouldn't be relied upon or  
7 admitted.

8 MR. KURTZ: I just want to address the  
9 percentage issue.

10 EXAMINER PRICE: Let's take everybody  
11 else's position and we will let you have the final  
12 word.

13 MR. KURTZ: Okay.

14 EXAMINER PRICE: Anybody else care to  
15 weigh in? Mr. Lavanga.

16 MR. LAVANGA: Yes, your Honor. Nucor  
17 supports the admission of the exhibit. We -- the  
18 numbers in the chart were confirmed. There was I  
19 think one -- one error identified. The witness  
20 answered questions on -- on the document and we do  
21 think it has probative value and I will just point  
22 out that there are a lot of different proposals on  
23 ELR in this case and I think the -- the document is  
24 helpful in at least summarizing and comparing some of  
25 them. So for those reasons we would support the



1 admission of OEG exhibit.

2 EXAMINER PRICE: Mr. Pritchard.

3 MR. PRITCHARD: Yes, your Honor. We  
4 don't have an objection on this so much as a response  
5 to Ms. Bojko's statement on demonstrative exhibits.  
6 I have previously used them, and I think in instances  
7 they can be helpful, so I would oppose a blanket  
8 ruling that counsel-created demonstrative exhibits  
9 should never be permitted.

10 And I think something I'm confused here  
11 on is if the chart is accurate, Mr. Kurtz can put it  
12 in his brief regardless of whether we admit or don't  
13 admit, that if all the other information is in there.  
14 So I think for my perspective I would request a  
15 ruling that does not extend to demonstrative exhibits  
16 blanketly and that if that information is, in fact,  
17 in the record, that any party would be able to cite  
18 information from a demonstrative exhibit on brief if,  
19 in fact, it is in the record.

20 So with those clarifications, I just  
21 respond to Ms. Bojko.

22 MS. BOJKO: To be clear that wasn't my  
23 request. I wasn't asking for some overarching  
24 ruling. I said they can aid in cross, but they have  
25 not historically been admitted as exhibits.

1 EXAMINER PRICE: I think Mr. Pritchard is  
2 disputing that.

3 MR. PRITCHARD: Against Mr. Bletzacker in  
4 the AEP renewable case, I did create a demonstrative  
5 exhibit that was admitted.

6 MS. BOJKO: Well, in some instances they  
7 have not been and there was one that wasn't admitted  
8 in -- two months ago in 21-477.

9 EXAMINER PRICE: I think it was two weeks  
10 ago in 21-477.

11 MS. BOJKO: No, it was October. I think  
12 we are in December now. But then also just to  
13 respond --

14 EXAMINER PRICE: No, no, no.

15 MS. BOJKO: -- to Nucor -- oh. Well,  
16 it's not a complete summary, your Honor. It's two --  
17 it's three parties. There are many other positions.  
18 It's incomplete.

19 EXAMINER PRICE: Somebody else care to  
20 weigh in?

21 MR. PROANO: Sure. Yes, just real  
22 briefly, your Honor. I support the admission of this  
23 exhibit. The Commission can weigh it. There is no  
24 risk of confusion here.

25 Just briefly responding to Staff's

1 counsel, there is direct testimony on the record that  
2 supports the information in this document. So there  
3 is no fear of inaccuracies here. And then Staff's  
4 counsel also said it was -- the chart is not based on  
5 anything or the party's position. It is actually  
6 based on direct testimony. It's evidence in the  
7 record, so we support the admission of this.

8 EXAMINER PRICE: Mr. Kurtz.

9 MR. KURTZ: Just say a small point on the  
10 percentages. What Mr. Healey said was when you go  
11 from \$10 to \$5, that's 50 percent. He agreed. Year  
12 two you go from 5 to 4. That \$1 change I put down  
13 10 percent. He said no. It's really 20 percent  
14 because it's going from 5 to 4. So it's a different  
15 way to do the math. I think both are accurate but  
16 his --

17 EXAMINER PRICE: I would agree with the  
18 characterization. I don't think the characterization  
19 of an error is fair. I think his characterization of  
20 maybe is vague or not clear, but I think we've  
21 explored both sides of that.

22 At this time we are going to allow the  
23 admission of OEG 7. Mr. Pritchard points out there  
24 is no blanket prohibition. The Bench is not a fan of  
25 demonstrative exhibits, particularly ones that are

1 unduly complicated. I have no idea what was offered  
2 in 21-477, so I can't make any comparison to this.

3 Nonetheless, this one was pretty simple,  
4 pretty straightforward, and its probative value  
5 outweighs any prejudice to the parties. So it will  
6 be admitted.

7 (EXHIBIT ADMITTED INTO EVIDENCE.)

8 EXAMINER PRICE: Anything else?

9 Mr. Finnigan.

10 MR. FINNIGAN: Your Honor, I am going to  
11 withdraw the exhibit that we marked. Mr. Healey  
12 testified that the Company did not have any  
13 interruptible tariff and that was the point we were  
14 getting at, so I will withdraw that Exhibit 26.

15 EXAMINER PRICE: Thank you.

16 Mr. Proano, you marked a Commission  
17 Opinion and Order. There is, of course, no need to  
18 move its admission because it's freely citeable in  
19 the brief.

20 MR. PROANO: Thank you, your Honor.

21 EXAMINER PRICE: Anything else before we  
22 adjourn forever, before we get to briefs?

23 MR. FINNIGAN: Your Honor, we had  
24 distributed some documents which we were going to ask  
25 for administrative notice, I think it was not this

1 past Monday but the Monday before, and we never got  
 2 to that. And Judge Addison, I believe, said, you  
 3 know, that you would address it at the conclusion of  
 4 the hearing. And I just want to make clear the  
 5 record on the exhibits that we have tendered. So  
 6 we've already -- OCC has already tendered OCC  
 7 Exhibits 1 through 9 which the Bench has ruled on.  
 8 Then there were additional exhibits which were marked  
 9 and distributed to counsel but not identified for the  
 10 record. Those are OCC Exhibits 10 through --

11 EXAMINER PRICE: Can you give -- we will  
 12 mark them now so just give the -- read into the  
 13 record your pretext identification what they are.

14 MR. FINNIGAN: I was simply going to say  
 15 that those were OCC Exhibits 10 through 24 which we  
 16 will withdraw except for OCC 13. OCC Exhibit 13 is  
 17 the PJM reliability assurance agreement. This was  
 18 something which I questioned Mr. Stein about when he  
 19 was on the stand. I did not have a full copy of that  
 20 agreement. He identified that as a -- one of the  
 21 governing documents of PJM. We would ask for  
 22 administrative notice of that document. The  
 23 FirstEnergy utilities are signatories to that  
 24 document. That document is relevant because it  
 25 spells out what the Companies' obligations are in the

1 event of an electrical emergency, and it's actually  
2 the best evidence of what happens in the event of an  
3 electrical emergency because it defines it in the  
4 agreement, and it states for the -- it sets forth  
5 what the Companies' obligations are when an  
6 electrical emergency occurs.

7 So it's relevant. It's the best evidence  
8 of what happens in the event of an electrical  
9 emergency. There has been a lot of talk of local  
10 emergencies and distribution emergencies and this as  
11 the governing document we -- we believe should come  
12 into evidence because it's the best evidence of what  
13 should happen this those events.

14 EXAMINER PRICE: At this time, if we have  
15 not previously marked it, we will mark as OCC  
16 Exhibit 13 the PJM reliability assurance agreement.

17 (EXHIBIT MARKED FOR IDENTIFICATION.)

18 EXAMINER PRICE: Any objections to the  
19 Bench taking administrative notice of OCC Exhibit 13?

20 MR. ALEXANDER: Your Honor, could I  
21 clarify what's happening here? I want to make sure I  
22 have got it. OCC is not seeking administrative  
23 notice of any documents other than OCC Exhibit 13?

24 EXAMINER PRICE: The only document before  
25 us is OCC Exhibit 13.

1 MR. FINNIGAN: That's correct.

2 MR. ALEXANDER: No objection.

3 EXAMINER PRICE: Anybody else?

4 Seeing no objection, we will take  
5 administrative notice of OCC Exhibit 13.

6 MR. FINNIGAN: Thank you, your Honor.

7 EXAMINER PRICE: Thank you.

8 Let's go off the record.

9 (Discussion off the record.)

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

12 At this time the Bench will rule that the  
13 initial briefs in this matter will be due on  
14 January 19, 2024. Reply briefs will be due  
15 February 9, 2024. And that's the time this case will  
16 be submitted to the Commission on the record.

17 We are adjourned. Thank you all for a  
18 spirited hearing.

19 Let's go off the record.

20 (Thereupon, at 4:53 p.m., the hearing was  
21 adjourned.)

22 - - -

23

24

25

CERTIFICATE

I do hereby certify that the foregoing is  
a true and correct transcript of the proceedings  
taken by me in this matter on Wednesday, December 6,  
2023, and carefully compared with my original  
stenographic notes.

\_\_\_\_\_  
Karen Sue Gibson, Registered  
Merit Reporter.

(KSG-7558)

- - -



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Summary: Transcript of Ohio Edison Company, CEI and The Toledo Edison Company hearing held on 12/06/23 - Volume XIV electronically filed by Mr. Ken Spencer on behalf of Armstrong & Okey, Inc. and Gibson, Karen Sue Mrs..