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PUBLIC UTILITIES COMMISSION
STATE OF OHIO

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JUN 19 2000

In the Matter of the)
Application of The Cincinnati)
Gas & Electric Company for) Case No. 99-1658-EL-ETP
Approval of its Electric) Case No. 99-1659-EL-ATA
Transition Plan, Approval of) Case No. 99-1660-EL-ATA
Tariff Changes and New Tariffs,) Case No. 99-1661-EL-AAM
Authority to Modify Current) Case No. 99-1662-EL-AAM
Accounting Procedures, and) Case No. 99-1663-EL-UNC
Approval to Transfer its)
Generating Assets to an Exempt)
Wholesale Generator.)

DOCKETING DIVISION
PUCO

Hearing Room 11-D
Borden Building
180 East Broad Street
Columbus, Ohio 43215
Monday, June 5, 2000

Met, pursuant to assignment, at 9:11 o'clock a.m.

BEFORE:

R. Russell Gooden and Scott E. Farkas, Attorney-Examiners.

VOLUME IV

* DEPONENT AFFILIATE * CERTIFIED MIN-U-SCRIPT PUBLISHER *

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P R O C E E D I N G S

- - -

Monday, June 5, 2000

Morning Session

- - -

EXAMINER FARKAS: This is day four of the hearing of
CG&E case No. 99-1658-EL-EPT, et al. Are there any other
matters that the parties want to bring to the attention of the
Bench?

MR. BOEHM: Yes, your Honor, if you please, AK Steel
introduced several exhibits on cross-examination last week that
relied upon -- all of them relied upon Page C-20 of the Wall
Street Journal, Wednesday, May the 31st, year 2000.

Your Honors asked that that original copy of that
document be provided to check for accuracy and we have today
provided that document. I don't know whether your Honors want
to have this as a separate exhibit number or merely to have it
available for perusal, to check the exhibits that have already
been, I believe, entered into evidence.

EXAMINER FARKAS: Why don't you just say we'll make it
available.

MR. BOEHM: Thank you, your Honor. Second issue I
have is that last week during the cross-examination of, I
believe it was, Miss Pefley, the question came up as to whether
or not certain tariffs had been withdrawn, and I believe

1 Miss Pefley referred to either Jett or Morris' testimony as
2 having withdrawn tariffs ALAS and tariff XX, related to default
3 providers and what would happen in the event that a certified
4 supplier folded.

5 My recollection was that witness Pefley testified that
6 the company had withdrawn ALAS and XX pursuant to the testimony
7 of either Mr. Morris or Mr. Jett, I don't recall. We have
8 looked at the testimony and seen only where ALAS has been
9 withdrawn and we think it would clarify the record if the
10 company would let us know whether they are now withdrawing
11 Section XX as well as ALAS. I think there will be some
12 confusion on the record if we don't know that.

13 EXAMINER FARKAS: Okay. Do you want to address that?

14 MR. COLBERT: Well, I -- you know, this goes to the
15 unfortunate circumstance where Mr. Boehm chose not to call the
16 witnesses responsible for this area. I don't, of course, know
17 the answer to that off the top of my head. I do believe that XX
18 has been withdrawn, but certainly if it were superseded by the
19 operational stipulation, operational support stipulation, we
20 will check and --

21 MR. FINNIGAN: I might be able to help out here.

22 EXAMINER GOODEN: Why don't you talk to your attorney.

23 MR. BOEHM: Your Honor, meanwhile, I don't know how we
24 possibly could have cross-examined somebody on a subject that
25 they didn't mention in their testimony.

1 MR. COLBERT: Yeah, I am told that while it was not
2 formally withdrawn, it has been superseded by the operational
3 support stipulation, which contains the controlling language in
4 that area. So to the extent that the Commission approves that
5 stipulation, we would file tariffs in conformance with them.

6 MR. BOEHM: Is that the language that says "No
7 consensus arrived at"?

8 MR. COLBERT: Why don't you answer.

9 MR. FINNIGAN: We addressed certain operational issues
10 in our global stipulation settlement, and I believe that's one
11 that you're referring to, Dave. So we have to look at that as
12 well as the stipulation that was entered in the operational
13 support plan area, to get all of the operational rules that
14 we're going to follow.

15 And as Paul said, there's nothing that expressly says
16 that this Section 20 was withdrawn, but you'll see when reading
17 both of those documents together, that those operational rules
18 are the ones we'll follow and that replaces the earlier.

19 MR. BOEHM: Thank you.

20 EXAMINER FARKAS: Thank you.

21 EXAMINER GOODEN: Just so I'm clear, that tariff is
22 called double X, XX?

23 MR. BOEHM: I believe it was called double X, section.

24 MR. COLBERT: It's a provision in the tariff,
25 apparently.

1 MR. FINNIGAN: It was tariff No. 20, our certified
2 supplier tariff.

3 MR. BOEHM: Is that what the double X was, the 20?

4 MR. FINNIGAN: It's Section double X within that
5 tariff.

6 EXAMINER FARKAS: Thank you.

7 MR. BOEHM: Thank you, your Honor.

8 EXAMINER FARKAS: Is there anything else at this
9 point?

10 MR. BOEHM: I have nothing. My understanding is that
11 the company wants to discuss the issue of bifurcating the
12 witnesses or the issues of the witnesses, and I'll let counsel
13 address that, and then I would like to speak to that matter.

14 MR. COLBERT: Your Honor, that's correct. Frankly, I
15 was going to wait until after the motions to strike when the
16 witness had been presented. That may have, you know, some
17 bearing on it, but if you prefer me to discuss bifurcation now,
18 I will.

19 EXAMINER FARKAS: Sure, why don't we do that now.

20 MR. COLBERT: Your Honor, we would propose for
21 Mr. Baron to bifurcate his examination between Mr. Johnson and
22 myself. And we would propose that Mr. Johnson cross Mr. Baron
23 specifically on the subjects of his reliance on the analysis of
24 Mr. Kollen and Falkenberg, his concerns to the extent they
25 aren't stricken as our motions in a minute will propose,

1 regarding the GTC transition cost adjustment mechanism, the
2 nature and the character of the signatories to the stipulation,
3 a hypothetical concerning Mr. Baron's conclusions and
4 quantification of CG&E's recovery as Mr. Baron has calculated it
5 based on certain unknown factors.

6 The rest of Mr. Baron's cross-examination I would
7 conduct and that would deal with a variety of things, including
8 his -- his property tax issues and certain stranded cost issues
9 and any issues that Mr. Baron goes to. At any rate, we would
10 propose to do it based on issues. That would be only one
11 attorney cross-examining him at a time, and there would be only
12 one attorney cross-examining him in each of those areas. You
13 know, this is a fairly complicated case, and we thought it
14 easier to divide up in that manner, and we would propose to
15 proceed on that basis.

16 EXAMINER FARKAS: Okay.

17 MR. BOEHM: Your Honor, I'm interested that counsel
18 has limited his, quote, bifurcation on that only one attorney
19 would cross at the same time. I'm not even sure how two
20 attorneys would cross at the same time, but I don't feel that
21 we've gotten much out of that concession.

22 It's my recollection, your Honor, both here and in
23 most other commissions, that the Commissions do not allow this
24 sort of ganging up. There's something indecent about dissecting
25 a live witness. It seems to me we've got one man on the stand

1 and there should be one man cross-examining. When you try to do
2 it other ways, there's all sorts of overlapping and duplicative
3 questions and, et cetera.

4 It is also my understanding from talking to
5 Mr. Colbert, while we're on this subject, that they propose to
6 do the same thing to the next witness, which is Mr. Kollen.
7 With a big staff of attorneys, they had a lot of time to
8 coordinate this, they have their experts here, it seems fair
9 that there's only one man up at bat at the same time.

10 MR. COLBERT: Your Honor, if I could just briefly
11 respond. It has been the practice before this Commission to
12 allow bifurcation by issue. It's been done in a number of other
13 cases. The concern expressed before this Commission previously
14 has been to avoid surprise by not defining those areas in which
15 each attorney will question.

16 We think that we have avoided that in this case. That
17 certainly is our intent; so that there is no advantage taken of
18 a witness. There is, you know -- Frankly, we do intend to
19 propose a similar thing with Mr. Kollen, as Mr. Boehm has
20 brought up. The bifurcation for Mr. Kollen would be more
21 limited. Mr. Pahutski would cross Mr. Kollen only on his --
22 Mr. Kollen's testimony in prior cases and that would be the
23 limit of it. And we propose no bifurcation for Mr. Falkenberg.

24 We have tried to limit this as best we can, but we do
25 believe that this is in keeping with prior Commission practice,

1 and we don't believe it affords any prejudice to the witness.

2 EXAMINER FARKAS: Mr. Boehm?

3 MR. BOEHM: Your Honor, it's clearly ganging up, okay?

4 As far as these issues and clearly defining the issues, I just
5 took notes when Mr. Colbert was talking about what he'd cross on
6 and it was, quote, "a variety of things, including stranded
7 costs." Okay? Now, a "variety of things" in my mind, it's a
8 clear definition of issues that he's going to cross-examine
9 Mr. Baron on. We have one guy up and he doesn't cover
10 something, so he tag teams another guy, he covers it. It's just
11 not fair.

12 EXAMINER FARKAS: I'm going to allow it. So let's
13 proceed.

14 MR. COLBERT: Thank you.

15 EXAMINER FARKAS: Anything else?

16 MR. COLBERT: Only the motions to strike, which I
17 presume you would like after the witness has been presented ?

18 EXAMINER FARKAS: Yes.

19 MR. COLBERT: Thank you.

20 (Witness placed under oath.)

21 - - -

22 Thereupon, AK Exhibit No. 13 was marked
23 for purposes of identification.

24 - - -

25 EXAMINER FARKAS: Proceed.

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1 MR. BOEHM: Your Honor, I wonder if we could have one
2 clarification. I understand your ruling, and I will abide by
3 it. One clarification and that is if attorney A gets up and he
4 crosses and he hands off to attorney B, you don't go back to
5 attorney A because he misses something.

6 MR. COLBERT: The company agrees, your Honor.

7 EXAMINER FARKAS: All right. Proceed.

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1 STEPHEN J. BARON

2 of lawful age, being first duly placed under oath, as prescribed
3 by law, was examined and testified as follows:

4 DIRECT EXAMINATION

5 BY MR. BOEHM:

6 Q. Mr. Baron, you have in front of you a -- a document
7 entitled "Direct testimony and exhibits of Stephen J. Baron on
8 behalf of AK Steel"?

9 A. Yes.

10 Q. And was this document prepared by you or under your
11 direction and control?

12 A. Yes, it was.

13 Q. And, Mr. Baron, do you have any changes or corrections
14 or additions to that document?

15 A. Yes, I have some changes all related to one value.
16 Mr. Falkenberg, I think subsequently when he gets on the stand,
17 will be adjusting one of his numbers, and I've referenced it; so
18 I'm going to make the change in my testimony.

19 MR. BOEHM: If you will, your Honor, this has to do
20 with the errata sheet of Mr. Falkenberg that we submitted the
21 other day.

22 EXAMINER FARKAS: Thank you.

23 THE WITNESS: The -- Shall I proceed?

24 BY MR. BOEHM:

25 Q. Go ahead.

1 A. The changes are as follows: On Page 8, at Line 5 of
2 my testimony, the line begins with "Generation costs are
3 negative by more than 1 billion," it should be changed to
4 "generation costs are negative by dollar sign, nine, five, seven
5 million."

6 And then on Page 63 of my testimony, in a number of
7 locations, I've referenced a value, for example, beginning on
8 Line 7, it reads "in excess of \$982 million." That should be
9 changed to "\$957 million." So the value "982" should be changed
10 to "957." Likewise, on Line 9 of that page, the "982" should be
11 changed to "957." On Line 13 it should be changed -- the "982"
12 value should be changed to "957."

13 Again, on Page 66 of my testimony, at Line 2, at the
14 very end of the line, the number "982" should be changed to
15 "957" and on Line 3, the -- towards the middle of that line, the
16 "982" should be changed to "957." And those are the only
17 corrections, to my knowledge.

18 EXAMINER FARKAS: Let me ask you a question.

19 THE WITNESS: Yes.

20 EXAMINER FARKAS: On Page 47, on Line 20, you've got
21 "297,800,00"; did you mean to have another zero there?

22 THE WITNESS: Yes, your Honor. Thank you.

23 EXAMINER FARKAS: That's what I thought.

24 THE WITNESS: That's on Page 47, at Line 20.

25 EXAMINER FARKAS: Okay.

1 MR. BOEHM: Thank you, your Honor.

2 BY MR. BOEHM:

3 Q. Subject to those corrections, Mr. Baron, if I ask you
4 the questions contained in your testimony today, would your
5 answers be the same as contained therein?

6 A. Yes, they would.

7 MR. BOEHM: Your Honor, we would move the -- subject
8 to cross-examination, move the introduction of the testimony of
9 Mr. Baron, I think it's AK Steel 13, is it?

10 EXAMINER FARKAS: 13. You may proceed.

11 MR. BOEHM: Yes, it's 13, your Honor.

12 EXAMINER FARKAS: Okay.

13 MR. COLBERT: Your Honor, just for ease of following,
14 we're passing out an outline of the motions to strike that I am
15 about to make regarding Mr. Baron's testimony. They are all
16 based, at this point, given the Attorney-Examiner's rulings, on
17 legal conclusions on Rule of Evidence 402, that the sections
18 marked are irrelevant to the case at hand.

19 Primarily, these areas deal with two different -- two
20 different topics; the adjustment mechanism for the GTC, which is
21 no longer before the Commission in any way. And, well, the
22 adjustment mechanism to the GTC almost in its entirety in
23 Mr. Baron's case.

24 At any rate, the stipulation proposes a specific
25 shopping incentive during the market development period,

1 proposes a specific RTC. There is no adjustment mechanism
2 proposed. There is no mechanism dealing with the netting from
3 the sale of the assets. The entire stipulation proposes a
4 netting of values up front based on no GTC collection, and while
5 we understand that the company's case depends on its
6 quantification of stranded benefits and the comparison to the
7 stipulation, none of these areas go to that.

8 For example, the -- let's see, the last area that goes
9 from Page 25 to 38, is entirely a discussion of the adjustment
10 mechanism based on market prices from brokers and has nothing to
11 do with anything before the Commission in this case. That is,
12 likewise, true of all of the other areas referenced on Page 7,
13 Page 8, Page 18, Page 22 and Page 23. Because these areas are
14 no longer before the Commission and because we think, frankly,
15 it would help clean up the record, and focus -- allow the
16 Commission to focus on the issues that are before it, we would
17 move that each of these areas be stricken.

18 MR. BOEHM: Your Honor, two things that I think were
19 addressed here. One is, as the company knows and I hope and
20 trust your Honors know, part of our case is that the word
21 "netting" within -- the word "net" as contained in the code
22 means, among other things, that you can take positive GTC
23 values, in other words, positive stranded generation costs and
24 that you can net them against negative RTC costs. It's a very
25 big part of our case. And I assume it's a legal issue that your

1 Honors and the Commission will have to resolve when this case is
2 over, but I'm -- but I'd be willing to bet my life that you're
3 not going to make the ruling now there can't be any netting of
4 one against the other and, certainly, we think we're entitled to
5 put on a case.

6 In order to arrive at that conclusion, you have to go
7 through what the GTCs are, you have to go through the witness'
8 testimony and see when our side calculates a GTC, they come up
9 with a net positive benefit.

10 The second issue, your Honor, is -- and, therefore, we
11 think that the materials with respect to the GTC have to be kept
12 in the record, it's vital to our case.

13 The second is this question of that these matters were
14 formally withdrawn and this will help -- or these matters are
15 withdrawn are not in this case, and it would clean up the
16 record, in fact, if we struck all this testimony.

17 Now, what's ironic to me is that the company has not
18 endeavored to clean up their record before this witness got on
19 the stand. Nowhere did the company put out a sheet and say
20 here's the stipulation, here's our original filing, here's
21 what's covered by the stipulation and here's what's no longer
22 covered by the original filing. It took the lazy way out and
23 said "We've got the case as originally filed, and we've got the
24 stipulation, and to the extent that the stipulation differs from
25 the case as originally filed, that is the stipulation, and, if

1 not, that's the case as originally filed."

2 Well, that's a nice lazy way to do it, but I don't
3 think you can do it that way and say to the witnesses in this
4 case, "Oh, no, you're talking about something we don't have in
5 here anymore." Now, if the company wants to go and -- or wanted
6 to go and clean the record up, they could have done it when they
7 filed the stipulation and given a list of the things that
8 they're withdrawing.

9 This morning we had an example, prime example of what
10 this sort of laziness does to the record because now we had to
11 ask on the record whether or not Section XX was in or out. And
12 there's multiple examples where that sort of confusion reigns
13 because the company did not formally withdraw portions of their
14 original filing.

15 MR. COLBERT: Your Honor, if I might respond just for
16 a moment. First, with most of what Mr. Boehm said in the
17 beginning, I agree. We understand his case is based on the
18 quantification of the GTC and none of the areas that we have
19 moved to strike deal with that.

20 For example, on Page 7, Lines 8 to 13, what is
21 discussed is the GTC transition cost adjustment mechanism.
22 "CG&E is proposing periodic adjustments in both its other
23 transition costs as well as the GTC itself to reflect actual
24 market prices. I will discuss both reasonableness of the
25 conceptual basis for the company's adjustment mechanism and

1 whether the specific mechanisms proposed by the company are
2 reasonable." There's nothing that goes to the quantification of
3 the GTC in that or any of the other sections. In that regard,
4 the motion to strike does not effect AK Steel's case at all.

5 In regard to the rest of what Mr. Boehm said, we did
6 not, of course, move to strike any portions of our own
7 testimony. We did put the stipulation in the record, which
8 clearly states that "the application, as modified by the terms
9 and conditions contained therein." We believe that that is
10 clear. It is clear that there is no adjustment mechanism in
11 place at this time and, you know, if -- if the
12 Attorney-Examiners would like the company to look at and clean
13 up, so to speak, its own testimony in that regard for this
14 issue, we would be happy to endeavor to do this. This issue is
15 truly irrelevant to the case and there is no reason why we
16 should spend significant time on it.

17 MR. BOEHM: Excuse me, your Honor.

18 EXAMINER GOODEN: Wait a minute.

19 (Hearing Examiners conferring.)

20 EXAMINER FARKAS: I'm going to deny the motion to
21 strike.

22 MR. BOEHM: Thank you, your Honor.

23 MR. COLBERT: Thank you, your Honor.

24 EXAMINER FARKAS: Okay. You may proceed.

25 MR. BOEHM: I submit the witness for

1 cross-examination, your Honor.

2 EXAMINER FARKAS: Okay.

3 - - -

4 CROSS-EXAMINATION

5 BY MR. JOHNSON:

6 Q. Morning, Mr. Baron.

7 A. Morning.

8 Q. You stated already that you have a copy of your direct
9 testimony in front of you; is that correct?

10 A. Yes.

11 Q. Do you have a copy of what's been marked Company
12 Exhibit 60, specifically the stipulation and recommendation,
13 which is at issue in this case?

14 A. Yes, I have the main stipulation.

15 Q. Okay. More importantly, Mr. Baron, do you have a copy
16 of your deposition transcript in front of you?

17 A. I -- I believe I do.

18 Q. Let me save you the rummaging.

19 MR. JOHNSON: Your Honor, may I approach the witness?

20 EXAMINER FARKAS: Yes.

21 BY MR. JOHNSON:

22 Q. Here's a copy for your records.

23 A. All right. I think I do have it. Okay. I've got the
24 original.

25 Q. Mr. Baron, I'd like to start this morning by talking

1 for just a few minutes about a couple of the stated purposes of
2 your testimony. Now, as I understand it, you've testified in
3 your direct testimony that one of the purposes of your testimony
4 is to present the overall recommendation of AK Steel for CG&E's
5 recovery of transition costs in this matter; is that correct?

6 A. Yes.

7 Q. Your direct testimony also provides that in developing
8 your testimony in this regard, regarding CG&E's transition cost
9 recovery, you relied on the calculations and conclusions and
10 analysis of others, other than yourself; is that correct?

11 A. Yes.

12 Q. You relied on the analysis of both Mr. Kollen and
13 Mr. Falkenberg?

14 A. For the quantification of transition costs, yes.

15 Q. Thank you. Specifically your recommendation for the
16 appropriate amount of regulatory asset recovery is based on
17 Mr. Kollen's analysis, correct?

18 A. Yes.

19 Q. In light of the fact, Mr. Baron, that your
20 recommendations and conclusions regarding appropriate regulatory
21 asset recovery are based on Mr. Kollen's calculations, would you
22 agree that the accuracy of your own conclusions depend on the
23 accuracy of Mr. Kollen's analysis?

24 A. From a -- From a quantitative standpoint, clearly to
25 the extent that I basically used Mr. Kollen's results and

1 reported them, along with Mr. Falkenberg's results, obviously,
2 Mr. Kollen's -- the accuracy and so forth of Mr. Kollen's
3 results would have an impact.

4 Now, whether it would have a material impact, given
5 the \$957 million of stranded benefits and the recommendation
6 that I'm making that those stranded benefits be netted against
7 any regulatory assets found by the Commission to be recoverable,
8 there's obviously quite a bit of leeway in Mr. Kollen's
9 analysis.

10 In fact, even if the Commission were to adopt the
11 company's \$401 million claim, it would be more than offset by
12 the 957 million in stranded benefits that Mr. Falkenberg has
13 identified. But with that said --

14 Q. Thank you.

15 A. -- I think it's self-evident that accuracy is
16 important.

17 Q. Assuming all of what you just said, there is an impact
18 of Mr. Kollen's analysis upon the accuracy of your conclusions
19 and recommendations?

20 A. Well, again, yes, except that there is a significant
21 question in materiality.

22 Q. Which I don't think is the question I asked.

23 A. Well, I didn't quanti- -- Yes.

24 Q. Okay.

25 A. I think I agreed with you. I'm just saying since I

1 didn't do a quantification based on Mr. Kollen's number, it's
2 really the material aspect of it, but I think it's self-evident
3 that I relied on his number.

4 Q. Okay. And with regard to the GTC calculations, you
5 relied on the analysis developed by Mr. Falkenberg?

6 A. For the quantification of other transition costs or
7 transition costs, in this case transition benefits, yes, I
8 relied on Mr. Falkenberg.

9 Q. Specifically you relied on Mr. Falkenberg's
10 calculation of market values?

11 A. Yes.

12 Q. And, again, the accuracy of your own conclusions,
13 regarding other transition costs depend on the accuracy of
14 Mr. Falkenberg's calculations?

15 A. To the extent that it would materially affect the
16 conclusions that I draw, yes. To the extent that it doesn't
17 materially affect the conclusions, in other words, if there were
18 hypothetically a change in either Mr. Falkenberg's numbers or
19 Mr. Kollen's, to the extent that it was immaterial in effecting
20 the principal basis for my recommendation, it wouldn't effect
21 any of the conclusions or recommendations that I made in my
22 testimony. For example, if Mr. Falkenberg's number were a
23 billion instead of 957 million, it wouldn't affect the
24 materiality of my conclusions.

25 Q. So with your materiality caveat in mind, the answer is

1 yes?

2 A. Yes, obviously, if there was a change that had a
3 material impact on my conclusions, it's self-evident, it would
4 be a material impact.

5 Q. Thank you. Now, moving on to the subject of your
6 testimony regarding the GTC adjustment mechanism and CG&E's
7 recovery of GTC, you've testified that it's a further purpose of
8 your testimony in this case to address AK Steel's concerns with
9 both the GTC transition cost adjustment mechanism and CG&E's
10 recovery of generation-related costs, correct?

11 MR. BOEHM: Excuse me, Counsel, can we have a page
12 reference?

13 MR. JOHNSON: If he'd like a page reference, I'm happy
14 to provide it. Is the --

15 THE WITNESS: Well, I guess it would be helpful.

16 BY MR. JOHNSON:

17 Q. I'm referencing Page 50 of Mr. Baron's deposition
18 transcript.

19 MR. BOEHM: Your Honor, I don't want to -- to confuse
20 -- The depositions, in my understanding, are to be used to
21 impeach the witness. The witness' testimony in this case is
22 what it is. I don't know if -- I don't know what he's being
23 impeached on.

24 MR. JOHNSON: Well, Mr. Boehm let's try Page 7 of the
25 direct testimony.

1 MR. BOEHM: Okay. Thank you.

2 BY MR. JOHNSON:

3 Q. Mr. Baron, if you would look at Line 8 of Page 7 of
4 your direct testimony, does that sentence read, "The next issue
5 that I will address in my testimony concerns the company's
6 proposed GTC transition cost adjustment mechanism"?

7 A. Yes.

8 Q. And then looking, Mr. Baron, at Lines 15 to 17, does
9 that -- do those lines read "The next area of my testimony
10 concerns the company's unbundling analysis and the development
11 of specific GTC and RTC rates (sic) that may be recovered in the
12 company's unbundled rates"?

13 A. Yes, except it says "RTC charges," but yes, that's
14 what it says.

15 Q. All right. Thank you.

16 Would you take a moment and look at Company
17 Exhibit 60, which we've identified as the general stipulation
18 and recommendation in this case.

19 A. Any particular page that you want me to look at?

20 Q. Are you generally familiar with the stipulation?

21 A. I have read it and particularly my primary focus has
22 been on probably the first -- the first 14 pages of it.

23 Q. Mr. Baron, my question's concerning your general
24 familiarity with that stipulation; so you don't need to look at
25 the whole thing now. You've considered it, though, in preparing

1 your testimony?

2 A. Yes, I have certainly.

3 Q. You've read that stipulation before?

4 A. Yes.

5 Q. Do you agree with me, Mr. Baron, that the stipulation
6 does not include a charge that is labeled GTC?

7 A. Yes, I would agree that there's no labeling of any
8 charge as a GTC.

9 Q. And, in fact, Mr. Baron, do you agree that all of
10 CG&E's transition costs are identified by the provisions of the
11 stipulation as included in an RTC charge?

12 A. Yes, my -- my reading of the stipulation is that all
13 of the transition costs that the company intends to recover in
14 this case will now be labeled as RTC and the unbundled tariff.

15 Q. Thank you. Do you agree with me that pursuant to the
16 provisions of this stipulation, there is no longer an adjustment
17 mechanism to GTC?

18 A. The stipulation certainly doesn't discuss a GTC
19 adjustment mechanism.

20 Q. The stipulation does not have a GTC adjustment
21 mechanism in it?

22 A. No, the original filing, of course, does but the
23 stipulation does not. In fact, the provisions of the
24 stipulation not only include no GTC adjustment mechanism, but
25 the provisions of the stipulation provide for no GTC at all,

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1 again, all of the transition costs that the company is
2 requesting now will be recovered in an unbundled rate element
3 labeled RTC.

4 Q. Okay. Now, would you turn to Page, I believe it's, 22
5 of that exhibit, and I have just a couple of questions regarding
6 Pages 22 through 27 of that stipulation and recommendation. Are
7 you there?

8 A. Yes, except my Page 22 is the signature page.

9 Q. Then you're at the right place.

10 A. Okay.

11 Q. Do you agree, Mr. Baron, that the Ohio Consumers'
12 Counsel represents Ohio residential electric companies and that
13 OCC supports this Stipulation?

14 MS. ROBINSON-MC GRIFF: May I have that question
15 read, please.

16 EXAMINER GOODEN: Yes.

17 MR. JOHNSON: I'm happy to repeat it, Evelyn, if you'd
18 like.

19 MS. ROBINSON-MC GRIFF: That would be welcome.

20 BY MR. JOHNSON:

21 Q. Do you agree that the Ohio Consumers' Counsel
22 represents Ohio electric residential customers and that OCC
23 supports the stipulation?

24 MR. BOEHM: Your Honor, I object. If we're going to
25 go through the signature line and identify the people on the

1 signature line, I think we're wasting our time.

2 EXAMINER FARKAS: Yeah, I'll sustain the objection.

3 MR. JOHNSON: May I ask the witness one more question?

4 EXAMINER FARKAS: Yes.

5 BY MR. JOHNSON:

6 Q. Mr. Baron, do you recognize that the stipulation -- By
7 perusing Pages 22 to 27, do you recognize the stipulation is
8 supported by members of the residential class, the commercial
9 class, the industrial class, marketers, community-based
10 organizations and even the staff of the PUCO?

11 MR. BOEHM: Objection, your Honor, the stipulation
12 speaks for itself.

13 EXAMINER FARKAS: It does speak for itself, but to the
14 extent he has some opinion, I'll let him answer.

15 THE WITNESS: That's my understanding. Just to point
16 out for the record, my copy does not have signatures on it. I
17 think it was -- I'm not sure whether I got it e-mailed, but it
18 doesn't have signatures, but I understand that that's the case.

19 BY MR. JOHNSON:

20 Q. Mr. Baron, I'd like to ask you to use your imagination
21 with me for a minute and, preliminarily, I understand that you
22 will not agree with the assumptions I'm asking you to make, but
23 use your imagination.

24 Imagine, if you will, assume that CG&E and its experts
25 are right and that CG&E has roughly a billion dollars in

1 stranded costs comprised of both regulatory assets and other
2 transition costs. Okay?

3 A. All right.

4 Q. Will you assume that?

5 A. I can assume that, certainly.

6 Q. And further assume that CG&E has no stranded benefits
7 implicit and these assumptions are that you have to assume that
8 Mr. Kollen and Mr. Falkenberg are incorrect. Can you make those
9 assumptions for me?

10 A. If I understand what you mean is the billion dollars,
11 is the -- are the net stranded costs of the company; is that
12 what you're saying?

13 Q. CG&E is entitled in this proceeding to recover a
14 billion dollars in stranded costs?

15 A. I can agree to that hypothetically.

16 Q. Now, in your direct testimony, you've calculated that
17 the provisions of the stipulation provides CG&E with a recovery
18 of roughly 650 to \$750 million, correct?

19 A. Yes. The RT --

20 Q. Mr. Baron --

21 A. Excuse me, just to clarify --

22 Q. Sure.

23 A. -- the stranded costs, the transition cost recovery
24 through the unbundled RTC element that we talked about earlier,
25 that would produce, based on my calculation, between 650 and 750

1 million.

2 Q. Mr. Baron, if CG&E is actually entitled to recover a
3 billion dollars in stranded costs, yet, the provision of the
4 stipulation provides recovery of 650 to \$750 million, that
5 means -- there's a difference there of between 250 and \$350
6 million in recovery, correct?

7 A. Under your hypothetical, yes.

8 Q. Now, wouldn't you agree that if CG&E's correct under
9 these assumptions, and it's entitled to recovery of 250 to \$350
10 million more than provided by the provisions of the stipulation,
11 that 250 to \$350 million represents a significant benefit to
12 Ohio ratepayers?

13 A. If your hypothetical is that there is no dispute that
14 the Commission effectively -- Let's say the Commission had
15 issued an order --

16 Q. That's fine.

17 A. -- that says CG&E's entitled to a billion dollars, and
18 that's an order of the Commission, and then the company and
19 other parties come forth and say we'll take 650 or 750 million.
20 Under that scenario, I would say that is a -- it is a benefit,
21 if that hypothetical were true. I think, by definition, if
22 ratepayers were going to be charged a billion dollars and now
23 they're going to be charged something less, I would characterize
24 that as a benefit --

25 Q. Okay. Thank you.

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1 A. -- on the strict sense.

2 Q. Thank you.

3 A. Of course, I should add that we're just talking about
4 this aspect of this stipulation, not all of the other aspects
5 I've addressed in my testimony that I find --

6 Q. Sure.

7 A. -- concerns with.

8 Q. I understand that we're basing your testimony --
9 You're basing your testimony on the assumptions that I've put in
10 front of you.

11 A. Okay.

12 Q. Am I correct in my understanding, Mr. Baron, that one
13 reason you object to the stipulation is that CG&E fails to
14 specifically quantify the amount of its recovery under the
15 provisions of the stipulation?

16 A. Yes. One of the concerns that I raise was that the --
17 the Revised Code basically says, as I interpret it, that the
18 company's allowed to receive transition revenues related to its
19 transition costs, and in the stipulation there is no
20 quantification of the transition costs underlying the RTC that
21 the parties have agreed to.

22 Q. Mr. Baron, do you agree that using reasonable
23 assumptions, however, it is possible to roughly quantify the
24 amount of CG&E's recovery under the terms of this stipulation?

25 A. The -- What I have been able to do is quantify the

1 transition revenues that I believe CG&E would recover, at least
2 a range between --

3 Q. And you use reasonable assumptions in various
4 categories to do that, correct?

5 A. I used CG&E's assumptions on sales forecasts.

6 Q. Will you agree with me, Mr. Baron, that the specific
7 amount of CG&E's recovery under the provisions of the
8 stipulation is dependent upon some factors that are simply
9 unknown today?

10 A. The absolute dollar amount, based on the analysis that
11 I did, would be dependent to some extent on the ultimate sales
12 -- level of sales of the company over the next ten years, the
13 amount of customers that actually switched during the first five
14 years, those two factors would influence the value.

15 However, I think that within a range of
16 reasonableness, the 650 million to 750 million calculation that
17 I did, I think would be very close to what the company would get
18 unless its sales just dropped off dramatically.

19 Q. Thank you. I may be done, Mr. Baron, with my portion.
20 Well, one more thing. Sorry to get your hopes up.

21 Just to satisfy my own curiosity, do you agree,
22 Mr. Baron, that in its original filing and taking the
23 supplements into account, CG&E asked to recover \$401 million in
24 regulatory assets?

25 A. Yes, that's my understanding.

1 Q. And you've calculated, though, that the stipulation
2 and provision provides CG&E with recovery of \$650 million in
3 regulatory assets, correct?

4 A. The -- My calculation was that the -- the company
5 would -- should expect, or most likely will receive between 650
6 million and 750 million on a present-value basis in transition
7 revenues as a result of the stipulation.

8 Q. Do you recognize, Mr. Baron, that the company has
9 asked the Commission to approve new regulatory assets in this
10 case?

11 A. Yes, I -- I'm aware of that.

12 Q. Do you agree with me that the new regulatory assets
13 could explain the difference between the initial identification
14 of \$401 million in regulatory assets and your calculation of
15 \$650 million in regulatory assets?

16 A. Well, first of all, I think I would -- in answering
17 that question -- the answer is, obviously, anything is possible.

18 In answering specifically the question, I would break
19 the new regulatory assets that the company has asked for into
20 two categories, one would be the implementation costs that the
21 company requested in its original filing and the second category
22 would be the new deferrals that the company's requesting in the
23 stipulation, the purchase power, the reimbursement of litigation
24 expenses and, obviously, I think as I said in my testimony and
25 my deposition, it's impossible to quantify the purchase power

1 deferral because the company is free to -- as I read it, to
2 defer any amounts it chooses under -- under the language it's
3 requesting Commission approval for.

4 Q. But you recognize that the combination of those two
5 categories of new regulatory assets could bridge the gap between
6 401 million and 650 million?

7 A. Again, since neither the company nor -- nor myself
8 have any quantification of the purchase power deferral, I would
9 imagine that it could be sufficient to bridge any gap.

10 MR. JOHNSON: Thank you. Your Honor, may I have a
11 moment?

12 EXAMINER FARKAS: Yes.

13 (Pause.)

14 MR. JOHNSON: Your Honor, portion A of Mr. Baron's
15 cross-examination is over. I will turn things over to
16 Mr. Colbert.

17 EXAMINER FARKAS: Okay. Thank you.

18 MR. BOEHM: Your Honor --

19 EXAMINER FARKAS: I take it that it's A and B, we
20 don't go any further than A and B?

21 MR. COLBERT: That's correct, your Honor, there's no
22 C.

23 MR. BOEHM: I take it that I'm to save my redirect
24 until A and B are over; is that right?

25 EXAMINER FARKAS: Yes.

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1 MR. BOEHM: Okay. Thank you.

2

- - -

3

CROSS-EXAMINATION

4 BY MR. COLBERT:

5 Q. Good morning, Mr. Baron.

6 A. Morning.

7 Q. Mr. Baron, do you agree with the following statement:

8 That "during the market development period, as a matter of sound
9 regulatory principles and the law, the company's regulatory
10 recovery of costs in the aggregate would not or should not
11 change from current levels of cost recovery"?

12 A. Could you repeat that again?

13 Q. Sure. "During the market development period, as a
14 matter of sound regulatory principles and the law, the company's
15 regulatory recovery of costs in the aggregate would not or
16 should not change from current levels of cost recovery"?

17 A. As a general principle, to the extent that we're
18 talking about a jurisdiction where statutory requirements do not
19 require otherwise, I think that's not an unreasonable position.

20 Q. Mr. Baron, if you would refer to Page 12, Lines 4
21 through 9 of your testimony. The basis for that statement is
22 that ratepayers should receive the benefit of generating assets
23 that they have paid for in rates; is that correct?

24 A. That is -- that is one of the bases. The -- I think
25 probably the stronger basis or an additional basis is that

1 absent the consideration of netting, absent the application of
2 netting across all generating units, it -- the company,
3 effectively, is offering the ratepayers a "heads, I win; tails,
4 you lose."

5 Wherever -- It's like going to a broker and buying a
6 whole bunch of stocks and then saying "I'll take my -- I'll sell
7 the ones that I have gains in, but I don't want to be charged
8 for the losses." It's just not fair, and it's patently
9 unreasonable in a regulatory context when the utility that has
10 been regulated for -- since its inception reaps the benefits.
11 That, I think, is the primary reason for my position.

12 Q. But you would agree with the statement that ratepayers
13 should receive the benefit of generating assets that they've
14 paid for in rates?

15 A. Yes, and I think that goes along with it. I'm just
16 simply broadening that --

17 Q. That's fine.

18 A. -- in this context to reflect this concern about a
19 real harm to ratepayers absent netting.

20 Q. Mr. Baron, are you aware of Cinergy's investment with
21 Duke in new generation in ECAR?

22 A. I'm sorry?

23 Q. Are you aware of Cinergy's investments with Duke in
24 new generation in ECAR to build and run new generation?

25 A. I am not familiar with that, no.

1 Q. Okay. Let me ask you to assume that Cinergy is
2 building new generation. To the extent that they invest in that
3 generation shareholder dollars, as opposed to ratepayer dollars,
4 then the disposition of that generation asset, or the revenue
5 stream associated with that generation asset, should go to
6 shareholders; would that be correct?

7 A. If I understand -- and, again, I'm not familiar with
8 it, but I'm assuming that that would be -- that that investment
9 would be in an unregulated subsidiary. If that's the case, then
10 that would be the business of stockholders and not ratepayers,
11 if I understand correctly.

12 MR. BOEHM: Your Honor, I would object to this unless
13 there's some foundation. I, for one, don't know who owns the
14 thing with Duke. I don't know whether it's in rate --

15 EXAMINER FARKAS: I believe he posed a hypothetical
16 because the witness was not familiar with it.

17 MR. BOEHM: Okay. Thank you, your Honor.

18 MR. COLBERT: Thank you, your Honor.

19 BY MR. COLBERT:

20 Q. Let's extend the hypothetical for a second,
21 Mr. Kollen -- or Mr. Baron, I'm sorry, I apologize. I spent
22 time with Mr. Kollen --

23 MR. BOEHM: You're not going to start this, too, are
24 you?

25 MR. COLBERT: I hope not.

1 BY MR. COLBERT:

2 Q. Mr. Baron, let's extend the hypothetical for a moment
3 and let's assume that shareholders made an investment in
4 regulated generating assets as opposed to nonregulated assets,
5 and that ratepayers were not required to reimburse the company
6 for the shareholder's investment as part of their rates. Under
7 those circumstances, would the utility be entitled to some part
8 or all of the benefits or detriments associated with their
9 investment?

10 A. This, obviously, is a hypothetical and, in general, I
11 would just take a hypothetical as stated and answer it, but
12 this -- if I understand your hypothetical, this is so unlikely,
13 and it just doesn't make any sense, that I don't know if I could
14 really answer it.

15 If what you're asking me is that out of the goodness
16 of its heart CG&E would just build generating units for the
17 ratepayers and not ask them to ever pay for it, I -- it doesn't
18 make any sense to me. Maybe I'm missing your question. If
19 that's what it was, I don't know how I could answer it.

20 Q. Well, I'm not asking you to assume that CG&E is doing
21 this out of the goodness of its heart. Feel free to ascribe a
22 profit motive to it, if you wish. But I am asking the
23 hypothetical, nonetheless, that if -- for example, but let's put
24 some dollar numbers on it.

25 Let's assume that there is a plant that costs \$1.2

1 billion. Let's assume that ratepayers pay in rates \$600 million
2 for the plant, and that shareholders pay in rates -- or that
3 shareholders put a capital contribution, equity contribution of
4 \$600 million towards the plant.

5 Would you -- Would you agree that in those
6 circumstances that the benefits and/or the detriments of the
7 value of the plant or the revenue stream associated with the
8 plant should be split equally among the shareholders and the
9 ratepayers?

10 A. It depends on the reason. You indicated to me that
11 the company didn't do it out of the goodness of their heart; so
12 if, for example, let's say the utility had spent a billion
13 dollars or 1.2 billion on an investment and a Public Utilities
14 Commission had disallowed \$600 million because of improvements.
15 In that case, I don't think those benefits -- I think that would
16 have a material impact on any recommendation that I would make
17 in terms of -- of deciding it.

18 So I think I -- really, in order to answer your
19 question, I need to understand the basis for why the company
20 made this capital contribution, whether it was voluntary, just
21 because they -- they like spending shareholder money to help
22 ratepayers, or if it was a disallowance or some other reason,
23 for example, the unit was going to go back to the shareholders
24 at some point in time. There could be a whole host of reasons
25 and I -- I find it difficult to answer the question without

1 really understanding the ba- -- more fundamentals in your
2 hypothetical.

3 Q. Mr. Baron, at the bottom of Page 15 and the top of
4 Page 16 of your testimony, you recite a hypothetical of your
5 own. Does your example assume that CG&E is able to charge a
6 market-based price for its output?

7 A. Yes. This assumes that competition -- that
8 effectively a flash cut to competition.

9 Q. Do you know whether CG&E is permitted to charge a
10 market-based price to retail customers, nonswitching customers
11 during the market development period?

12 A. The -- The Revised Code requires a cap on the rates
13 during the market development period. That doesn't change this
14 hypothetical, and it doesn't change, in my opinion, the facts
15 supporting the -- the imperative that netting be employed in
16 determining the amount of allowable transition costs, but I -- I
17 agree with you that during the market development period, there
18 is a -- a cap on -- on overall rates.

19 Q. Do you know the date when CG&E will first be allowed
20 to charge a market-based rate to residential customers?

21 A. I believe it would be the end of 2005.

22 Q. Mr. Baron, I'm looking at Page 17 of your testimony
23 now. As I understand the answer to your question there, you
24 would recommend elimination of regulatory asset recovery from
25 both switching and nonswitching customers to the extent of

1 stranded generation benefits; is that a correct understanding of
2 your recommendation?

3 A. Yes. My recommendation is that -- that the proper
4 application of the term -- of the regulatory principle of
5 netting is to fully net all transition costs and benefits, and
6 to the extent that the Commission finds as we recommend, being
7 that there are substantial transition benefits for generation,
8 those should be netted against transition costs associated with
9 regulatory assets.

10 Q. Do you know if the statute -- Given that you can't
11 lower rates during the market development period, does the
12 statute permit you to recover those stranded benefits from
13 nonswitching customers during the market development period?

14 A. Effectively, the company will be recovering -- let's
15 take this original filing or even in the stipulation. The
16 company will be recovering a RTC -- a GTC in the original filing
17 and a RTC, and in the stipulation a RTC from all customers. The
18 way the stipulation was written, there was no stated RTC during
19 the market development -- during the first five years, but there
20 is an implicit RTC for all customers shopping or not during the
21 first five years and that is defined in the stipulation and
22 Miss Pefley's testimony.

23 Specifically, she has an exhibit that shows this, that
24 the implicit RTC is the difference between the unbundled
25 generation charge and the shopping credit. And so there really

1 is a RTC being recovered from all customers for the entire
2 transition period.

3 Q. Mr. Baron, have you examined Ohio Administrative Code
4 Section 4901:1-20-03 titled "Unbundling plant"?

5 A. Did you say 39?

6 Q. 4901:1-20-03.

7 A. I believe at some point I did. I don't -- I don't
8 believe I have that code section with me, but I believe I had
9 reviewed it at one point during this case or during the
10 FirstEnergy case.

11 Q. Do you remember what it pertains to?

12 A. I don't recall at this point. Perhaps if you have a
13 copy, I could look at it and refresh my memory.

14 Q. That won't be necessary. Mr. Baron, given your last
15 answer, then, I take it your answer would be the same regarding
16 your familiarity with Ohio Administrative Code Section
17 4901:1-20-03(F)(2)(d) and Section I, which are part -- which are
18 specific parts of the unbundling plan requirements in the rules?

19 A. As you're talking -- Are you referring to the Revised
20 Code or the Commission's rules?

21 Q. I'm referring to the Ohio Administrative Code enacted
22 by the Commission as part of their rules at the beginning of all
23 of the transition plan cases.

24 A. I have reviewed all of those. I don't have those with
25 me and I certainly -- I may have remembered it Friday, but I

1 don't remember today that particular section that you cited.

2 Q. I'll accept that your memory may have been better on
3 Friday.

4 A. If there is a particular section you would like me to
5 look at, I would be happy to refresh my memory.

6 Q. Mr. Baron, I would like to talk now about your
7 recommended allocation of property tax reduction and your
8 criticism of CG&E's methodology in that regard.

9 MR. BOEHM: Your Honor, I would like to pose an
10 objection here. When we started off, I took notes about what
11 Mr. Colbert said he was going to cross on, and he said he was
12 going to cross on stranded costs and a variety of things. I
13 don't remember anything about taxes.

14 EXAMINER FARKAS: I do recall that. I had written a
15 note here about property taxes and stranded costs.

16 MR. BOEHM: Trust your notes.

17 MR. COLBERT: Thank you, your Honor. I tried to make
18 sure this was one of the areas I listed specifically.

19 MR. BOEHM: Okay. Trying to keep you honest.

20 MR. COLBERT: That's okay, Dave. That's what you're
21 there for.

22 BY MR. COLBERT:

23 Q. Just to make what we're about to go through a little
24 bit easier, you generally accept CG&E's calculation of
25 approximately \$30 million property tax deduction; is that

1 correct?

2 A. Yes. I've relied on I think Mr. Coyne's analysis in
3 that regard.

4 Q. Now, do you agree that this is not a new property tax,
5 but the residual of the tax assigned by rate schedule from
6 CG&E's last rate case as assigned by its approved
7 cost-of-service study after deduction of the tax change?

8 A. Could you repeat that question again?

9 Q. Yes. Do you agree that this is not a new property tax
10 as posed by the legislature, but is the residual of the existing
11 property tax as the legislature has restructured the tax and as
12 it was assigned by rate schedule from CG&E's last rate case
13 through it's cost-of-service study approved in that case?

14 A. Well, the 30 million represents the -- The original
15 property tax in the last rate case was about 72 million. The 30
16 million represents an adjustment to the 72 million as a result
17 of the changes in the Revised Code.

18 Q. So --

19 A. And if that --

20 Q. I'm sorry, but just to shortcut that a little bit; so
21 that leaves about 42 million left in rates?

22 A. Yes. After the adjustment for property taxes, there
23 will be about 42 million left.

24 Q. Mr. Baron, do you have in front of you CG&E Exhibit 23
25 and your Attachment No. 5? I have the particular pages in mind.

1 If it's easier, I can give you a copy.

2 A. Yes, I'm sure I have it. I don't have those
3 designations on my copies.

4 MR. BOEHM: Your Honor, if I may, my copies aren't
5 marked. I wonder if I could inquire of counsel which one of the
6 two sheets is 23.

7 MR. COLBERT: Yes. The full sheet is from CG&E
8 Exhibit 23. It's included, Dave, in UNB 4.2.

9 MR. BOEHM: Thank you.

10 MR. COLBERT: And the half sheet is from Mr. Baron's
11 Exhibit 5.

12 MR. BOEHM: Thank you.

13 BY MR. COLBERT:

14 Q. Do you have those, Mr. Baron?

15 A. Well, I have my Exhibit 5, and I certainly believe
16 I've got -- I've got the ones you just handed me; is that what
17 you're asking me?

18 Q. Do you have some question whether they don't match?
19 If you do --

20 A. Oh, no. No.

21 Q. Okay. If you would look at CG&E Exhibit 23 for a
22 moment. Can you tell me what percentage of the total at
23 issue -- total production plant the residential portion is, that
24 would be the approximately 793,000 or -- or 793 million figure
25 divided by the \$1,872,000 figure?

1 MR. BOEHM: I'm sorry, I'm not finding the 1,872,000.

2 MR. COLBERT: It is in Column 9, total at issue.

3 MR. BOEHM: Okay.

4 MR. COLBERT: On the line marked "Total production,
5 total production".

6 MR. BOEHM: Thank you.

7 THE WITNESS: It appears it's about 42.38 percent.

8 BY MR. COLBERT:

9 Q. Good. And can you perform that calculation for
10 secondary distribution large, and what percentage do you get
11 there?

12 A. 32.89 percent.

13 Q. Okay. And the same -- Well, let me try and shortcut
14 this a little bit since I've gotten the same percentages that
15 you've gotten. For secondary distribution small, I have 2.84
16 percent; for primary distribution, I have 10.6 percent;
17 transmission, 11.099 percent.

18 A. 11.09 or --

19 Q. 11.09 percent, yes. And for lighting, .2 percent.
20 Are those percentages that you can agree with?

21 A. Yes. Subject to check, that looks fine.

22 Q. That would be fine. Okay. Mr. Baron, would you now
23 multiply 30 million by the 42.38 percent share that
24 residential -- we've determined residential customers have?

25 A. I get 12.714 million.

1 Q. Okay. And just to refresh, the \$30 million represents
2 the reduction in property tax from the \$72 million existing
3 property tax amount, correct, that's what we agreed on earlier?

4 A. Yes, that's the total jurisdictional amount of the
5 reduction.

6 Q. Okay. And --

7 A. Approximately.

8 Q. And can you multiply the 32.89 percent for secondary
9 distribution large by the \$30 million?

10 A. 9.867 percent.

11 Q. And for the remainder, would you accept that for
12 secondary distribution small the number is approximately
13 852,000; for primary distribution it is 3,180,000; for
14 transmission is 3,327,000; and for lighting, 60,000?

15 A. I can accept that subject to check.

16 Q. Now, Mr. Kollen -- or, I apologize. Mr. Baron, can
17 you turn to your Exhibit SJB-5. Would you -- Do you see on that
18 schedule Lines LF-10 through LF-14 that represent property tax
19 credit?

20 MR. BOEHM: Excuse me, your Honor, my copy says L-510.

21 EXAMINER FARKAS: Mine does, too.

22 MR. COLBERT: I Apologize. That's what I want, L-510,
23 L-511, L-512 and L-514.

24 THE WITNESS: I see that on that exhibit.

25 BY MR. COLBERT:

1 Q. Can you please sum those lines for the residential
2 class?

3 A. I get a negative 9,880,133. And I -- I just want to
4 make sure that -- that we're speaking about the same thing.
5 That this is the adjustment necessary in my cost-of-service
6 analysis to make -- to bring the embedded property taxes that
7 were in the '93 study to the level that the company believes are
8 appropriate for the -- the adjusted property taxes from the
9 Revised Code.

10 Q. That's right. This is your adjustment?

11 A. Right.

12 Q. That's right. And your adjustment of the 9 -- roughly
13 9.8 million is different than the \$12.7 million number we
14 calculated earlier; is it not?

15 A. Right. Because the 12.7 million has absolutely
16 nothing to do with the -- with the proper calculation. But it's
17 different, yes. I think -- I think we could all agree on that.

18 Q. That's fine. Thank you very much, Mr. Baron.

19 EXAMINER FARKAS: Does that complete your cross of
20 Mr. Baron?

21 MR. COLBERT: That completes my cross on this subject,
22 your Honor.

23 EXAMINER FARKAS: Oh, I'm sorry. You said "thank
24 you." Okay.

25 MR. COLBERT: Just thanking him for his cooperation.

1 EXAMINER FARKAS: Can we go off the record for a
2 second.

3 (Discussion held off the record.)

4 BY MR. COLBERT:

5 Q. Mr. Kollen -- Mr. Baron. I don't know why I do that.
6 I'm sorry.

7 Mr. Baron, what is a stipulation -- your understanding
8 of a stipulation?

9 A. Now, you're --

10 MR. BOEHM: Objection, your Honor. They're the ones
11 that filed the stipulation. I don't know why my witness has to
12 define it. It's in the code.

13 EXAMINER FARKAS: Are you saying a stipulation in the
14 general sense, what a stipulation is?

15 MR. COLBERT: Yes.

16 EXAMINER FARKAS: Go ahead.

17 THE WITNESS: My understanding is a stipulation would
18 be an agreement among -- in a context of a litigated proceeding,
19 an agreement among multiple parties over a set of facts.

20 BY MR. COLBERT:

21 Q. To the best of your knowledge, does it usually
22 represent a compromise of interests?

23 MR. BOEHM: Objection, your Honor. I don't know where
24 we're going with this, with what a stipulation is. I mean, it's
25 in the code, it says what a stipulation is. You know, to the

1 extent that there's any cross on this at all, it's -- this is a
2 legal issue.

3 EXAMINER FARKAS: I'll let him answer it.

4 THE WITNESS: I guess it depends. If it's a simple
5 agreement among parties of a set of facts, it -- I mean, it may
6 be a compromise, but it may not be -- there may not be facts in
7 dispute. I suppose there could be facts in dispute and then
8 maybe it's a compromise.

9 BY MR. COLBERT:

10 Q. Mr. Baron, have you reviewed prior Commission orders
11 authorizing the existing regulatory assets as shown on
12 JPS-SUP-5?

13 A. I think have not. I think Mr. Kollen has done that
14 review.

15 Q. Okay.

16 A. But I should let him speak for himself on that.

17 Q. Do you know if -- Regarding the new regulatory assets
18 requested by the company as part of the stipulation, if the
19 Commission will have an opportunity to review and comment on or
20 adjust accounting entries related to those regulatory assets?

21 MR. BOEHM: I'm sorry, could I have that question read
22 again, please.

23 (Record read back as requested.)

24 MR. BOEHM: Thank you.

25 THE WITNESS: I don't know the -- the legal

1 requirements or the -- with respect to that. I -- I imagine
2 that the Commission would always be able to assert its
3 jurisdiction over accounting of a utility. Though, I don't
4 know, for example, if the Commission were to approve the
5 stipulation provision with respect to purchase power that gives
6 the company carte blanche to defer purchase power expenses, I
7 don't know how that prior Commission approval would be
8 subsequently addressed by the Commission in a future review. I
9 simply don't know.

10 BY MR. COLBERT:

11 Q. Okay. Mr. Baron, please look at Page 66, Line 9
12 through 13 in your testimony.

13 A. Yes, I've read that.

14 Q. Okay. It's my understanding that basically you're
15 saying you don't believe the competition will lower prices for
16 customers; is that a correct understanding?

17 A. For the -- The end result of the analysis that we have
18 conducted, principally Mr. Falkenberg, is that the market value
19 of the generating assets of CG&E is greater than the book value.

20 Now, for those generating assets, what that means is
21 that the revenues -- the income that CG&E will receive from
22 sales of output of those generating units is greater under
23 market-based pricing than under regulation. That's what it
24 means when -- in a discounted cash flow analysis when the market
25 value exceeds book value.

1 It doesn't speak -- That result doesn't speak to what
2 the results of competition would be in perpetuity. What it
3 speaks to is for the existing base of generating assets, the
4 answer is that market revenues will exceed what the company
5 would otherwise receive under regulation.

6 Q. Mr. Baron, if you would now go to Page 67, Lines 8 to
7 14. You've referenced that you used a discount rate of 8.58
8 percent in the calculation of your \$651 million present value
9 RTC amount?

10 A. Yes.

11 Q. How did you arrive at 8.58 percent?

12 A. That was our calculation. I'm not sure if I have the
13 workpaper with me. I believe I do, but I'm not sure if -- I may
14 have to take some time to find it. That was our calculation of
15 the company's after-tax cost of capital.

16 Mr. Kollen may have that. I believe he may have
17 relied on that as well, but if you just give me a moment, I may
18 be able to locate the workpaper.

19 Q. Please, take your time.

20 A. All right.

21 (Pause.)

22 I haven't found it yet. I'm sorry.

23 Okay. I found it. I'm sorry, your question was?

24 Q. How did you derive it?

25 A. That's a calculation based on the -- the weighted

1 after-tax cost of capital that was used -- the capitalization
2 and issue -- and the capital costs were taken from the values in
3 the company's cost-of-service study, the compliance study that
4 underlies the unbundled rates, and I've got the workpapers that
5 shows it.

6 It's basically a weighted cost of long-term debt,
7 preferred stock and common stock, and we used an income tax rate
8 of 40.6963 percent and computed a weighted after-tax cost of
9 capital. So it corresponds to the cost of capital
10 capitalization that underlies the cost-of-service study, the
11 compliance study.

12 Q. Mr. Baron, are you aware that CG&E is required to
13 provide a standard offer default service for all customers,
14 whether nonswitching or switching, during the market development
15 period?

16 A. Yes.

17 Q. Are you aware that that standard offer service must be
18 at the tariffed rate, the unbundled tariffed rate?

19 A. During the market development period, it would be --
20 the standard offer would be at the -- the rate available to
21 other customers who return to the company. Let's say they had
22 switched and subsequently come back, my understanding is during
23 the market development period, they would be entitled to that
24 tariff provision.

25 Q. That's right. To the same frozen rate everybody else

1 is getting, we're agreed on that?

2 A. That's my understanding.

3 Q. Okay. But is it possible --

4 A. And I just should -- You're speaking of just the --
5 what the customers would face. We're not getting into the
6 discussion of what defaulted suppliers would pay.

7 Q. That's right. That's right.

8 A. Okay.

9 Q. Is it -- Could the market price of electricity change
10 such that there would be an incremental fuel cost to supply the
11 standard offer service rate during the market development
12 period?

13 A. Incremental relative to the rolled-in EFC factor --

14 Q. Yes.

15 A. -- in unbundled rates?

16 Q. Yes.

17 A. I would imagine that it could go up or down, and it
18 has nothing to do with whether customers switch or not. It's
19 simply fuel costs vary and the company's EFC is as was rolled in
20 in October '99; so it could be either up or down.

21 MR. COLBERT: Your Honor, that's all I have.

22 EXAMINER FARKAS: Okay. Thank you. Staff?

23 MR. NOURSE: Thank you, your Honor. Just one quick
24 area.

25 - - -

CROSS-EXAMINATION

1
2 BY MR. NOURSE:

3 Q. Mr. Baron, good morning.

4 A. Good morning.

5 Q. You were speaking earlier in your cross-examination to
6 a reference between, I think it's Mr. Steffen's 401 million as
7 filed for regulatory assets, and your projection of 650 to 750
8 million approximately for what you believe will be recovered or
9 collected under the stipulation. Do you recall that?

10 A. Yes.

11 Q. Okay. And I think you mentioned two things that were
12 essentially not included in Mr. Steffen's 401 million, purchase
13 power costs deferral and litigation expense deferral, you
14 mentioned those in particular. Do you recall that?

15 A. Yes. As being added, I think, in the stipulation.

16 Q. I think the phrase used earlier is to "bridge the gap"
17 or account for the differences between 401 and 650?

18 A. The company had asserted that that could be an
19 explanation and they asked me is that possible, and I -- I
20 answered, yes, I -- especially on purchase power since it's sort
21 of open ended.

22 Q. And I don't recall, did you -- I want to ask you about
23 a couple additional things that could bridge the gap. I don't
24 recall, did you mention the implementation costs, as well, to
25 the extent that the Commission were to basically accept, as the

1 stipulation provides, that implementation costs will be
2 deferred; that's not included in the 401 million, is it?

3 A. That's right. I think the -- of course, I did address
4 the -- Mr. Kollen addressed those issues in his testimony. The
5 401 does not include the 100 million or so, I don't recall
6 exactly the number, of company's -- the company's claimed
7 implementation costs, including the 28 million to start up an
8 EWG.

9 Q. Okay. And one final item. Does it also -- It also
10 does not include the shopping incentives that are provided under
11 the stipulation which are greater than the ones that were filed;
12 is that correct?

13 A. It implicitly does include that because when I
14 quantified the 650 million, I assumed that there would be no RTC
15 paid for the first 20 percent of each customer class; in other
16 words, zero except for residential customers, where I included a
17 negative RTC.

18 Now, in the -- in the upper end of the range, the 750
19 million, I assume that no one shopped and those how -- so those
20 customers effectively would pay the -- would pay a RTC. So
21 effectively, I included the impact of the -- of the so-called
22 shopping incentive because I did not include any RTC revenues
23 for that -- for the first 20 percent of each rate class in my
24 calculation, at least in the bottom range.

25 So it's not really an extra cost to the company. It's

1 simply a reduction in the amount of RTC -- of transition
2 revenues that they will get as a result of not charging RTCs.

3 Q. And you say you did actually net out, if I could use
4 that term, the increment that the residential shopping credit
5 goes unbundled above the unbundled --

6 A. Yes. Effectively, I reduced my present value of
7 transition revenues that the company would receive by that, and
8 that's really the difference between the 750 million and the 650
9 million.

10 Q. Okay. Now, your range of 650 to 750, 650 is really
11 not the bottom end of what the company could collect, correct?

12 A. Well, it assumes that 20 percent -- I believe it is
13 the bottom range if the sales forecast is correct, if I
14 understand your question. Maybe I'm not -- Maybe you could ask
15 me specifically if it includes something, but my -- based on my
16 analysis, I assumed that 20 percent of the customers in each
17 class would, in fact, shop; therefore, residential customers
18 would actually get a negative RTC and everyone else would pay
19 zero in the other rate classes. So that was the basis -- the
20 only other variable is the sales forecasts of the company.

21 Q. Right. Sales, and what about the carrying charge if
22 that -- could that effect it if cost of money changed?

23 A. Well, I assumed the 8.8 -- 8.58 percent discount rate,
24 which effectively provides a carrying charge to the company. I
25 mean, that's -- I calculated a present value on that.

1 Obviously, if that changed, it would change the number, but I
2 wouldn't consider that a risk.

3 Q. It is possible that the company could collect less
4 than 650?

5 A. I think in all likelihood it's more likely -- I think
6 the answer is I suppose if the discount rate changed, it went
7 up, it could be different -- it could be less. In all
8 likelihood, it's probably greater than 650 under the assumption
9 that not all customers who are entitled to may shop.

10 Q. And the other factor you mentioned was sales. If the
11 sales were not as projected or lower than projected, that would
12 reduce the collection, correct?

13 A. Yes. That's correct.

14 MR. NOURSE: Thank you. That's all I have.

15 EXAMINER FARKAS: Do you have any questions?

16 MS. MC GRIFF: I have no cross-examination.

17 EXAMINER FARKAS: Why don't we take a break until

18 11:00.

19 MR. BOEHM: Thank you.

20 (Recess taken.)

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

22 MR. BOEHM: Yes, your Honor. I have short redirect,
23 please.

24 EXAMINER FARKAS: Okay.

25 - - -

REDIRECT EXAMINATION

1
2 BY MR. BOEHM:

3 Q. Mr. Baron, counsel for the company asked you on
4 cross-examination about your calculation of the RTC amount being
5 essentially, I think it's, \$650-some million. Do you remember
6 that?

7 A. Yes. I remember the questions on that, yes.

8 Q. Okay. And there were some questions that it -- Let me
9 ask you this: To make the record clear now, Mr. Baron, have you
10 calculated the amount of regulatory transition assets being
11 asked for the by the company in this case?

12 A. No. I have -- It's impossible to calculate the
13 regulatory transition charges or assets that the company is
14 really requesting in the stipulation. I haven't done that.

15 Q. What does the \$650 million that you're being crossed
16 about represent?

17 A. The \$650 million is a calculation of the revenues that
18 the company will receive over the transition period, the 10
19 years that the stipulation covers. It's the revenues associated
20 with the RTC. It does not in any way attempt to compute
21 transition costs, regulatory asset or otherwise, and that's
22 because there is no -- there's no inclusion or identification of
23 those costs or quantification of those costs in the stipulation.

24 Q. Is a -- From the company's filing, are you able to
25 calculate as to whether or not the revenues from the RTC cost

1 equals the revenues or equal the revenue -- Strike that.

2 Are you able to calculate from the company's
3 testimony, and do you calculate in your testimony that the
4 revenues that the company will receive through the revenue
5 transition charge equals the amount of money that the company is
6 entitled to as revenue -- or, I'm sorry, regulatory assets?

7 A. No. I have not done that, and it's not possible to do
8 that because the company hasn't quantified the specific
9 regulatory assets and other deferral amounts that it's actually
10 requesting the Commission to approve for recovery. It's
11 simply -- the stipulation simply has a charge, and I've
12 calculated revenues under the charge, but there's no way to
13 reconcile that to any costs based on the stipulation.

14 Q. Now, I believe, Mr. Baron, you were also asked whether
15 or not making reasonable assumptions, I think that was the words
16 that counsel used, a person would be able to calculate, as you
17 did, the amount of the regulatory transition charges. Do you
18 remember those questions?

19 A. Yes.

20 Q. Okay. Do you count yourself as being the average
21 person or even the average ratepayer in your ability to make
22 these calculations?

23 A. No. I have 25 years of experience in regulatory
24 economics and I'm -- I would say I'm pretty familiar, quite
25 familiar with the company's filing, its unbundled rate analysis,

1 the unbundled generation charges by rate class that are all
2 required in order to make the calculation of the expected
3 revenue stream that the company will receive under the
4 stipulation.

5 Q. And also, Mr. Baron, with respect to the company --
6 or, the counsel's cross-examination concerning whether or not
7 the allowance of new regulatory assets and, I guess, principally
8 here they mean implementation costs, could account for the
9 difference between the \$401 million that the company has
10 calculated, as I understand it, to be in their original filing
11 anyway to be regulatory transition amounts and the \$650 million
12 that you have calculated to be regulatory transition revenues.

13 The company asked you whether the difference between
14 those two numbers could be accounted for -- accounted for by the
15 new allowance of the new regulatory assets. And, again, you
16 didn't calculate regulatory assets, as I understand it; is that
17 right?

18 A. That's correct. I think the question that I was
19 answering from the company was premised on let's assume the
20 company had established that it had 401 million in regulatory
21 assets per its original filing, not the stipulation, could the
22 difference between that number and the 650 million revenue
23 stream that I calculated be explained by it. And I answered,
24 obviously, anything is possible, but there is no quantification
25 in the -- my analysis that is based on any regulatory asset

1 quantification because there isn't any in the stipulation.

2 Q. And, Mr. Baron, I -- I also recollect a line of
3 cross-examination by counsel that went to the fact that the
4 exact amount of regulatory transmission costs that would be
5 recovered by the company could vary according to the amount of
6 switching or the -- the amount of sales that the company would
7 have during the market development period. Do you remember
8 that?

9 A. Yes. The -- and, again, with respect to revenues that
10 the company would receive.

11 Q. Okay. Now, in calculating the total revenues that the
12 company would receive through a RTC, you would have to know how
13 long, among other things, that they would recover their RTC;
14 isn't that right?

15 A. Yes.

16 Q. And to ensure that the RTC, regulatory transition
17 charge revenues equal the regulatory assets, one would have to
18 keep track of those revenues over periodic periods of time,
19 wouldn't they?

20 A. Yes.

21 Q. And in the company's original filing, did the company
22 propose to -- to have a true-up over a period of time in between
23 the amount of regulatory asset recovery and the regulatory
24 transition revenues?

25 A. My understanding was that there would be a true-up

1 and -- and every -- every proceeding that I'm familiar with
2 would have such a true-up basically to ensure that there is a
3 tracking of transition revenues which is produced by the RTC or
4 the GTC is tracking the approved level of transition costs by
5 the Commission and that -- that would have been, in my
6 understanding, was that that was part of the original filing.

7 Q. And if, in fact, the amount of regulatory transition
8 revenues was exceeding or looked like it was going to exceed the
9 amount of allowed regulatory asset costs, then the RTC would be
10 terminated at some earlier date; isn't that right, the way the
11 company proposed?

12 A. Yes, that's how it would work. Once they recovered
13 the costs, it would terminate.

14 Q. And that was provided for in the stipulation?

15 A. No. Well, first of all, there's no -- there is no
16 identification or quantification of transition costs, and
17 secondly, the RTC is fixed by the stipulation to continue for a
18 specific date irrespective of any reconciliation with costs.

19 Q. And, Mr. Baron, you were asked at one time about the
20 amounts of -- of fuel recovery that the company -- the recovery
21 of fuel costs related to purchase power. And I believe that you
22 indicated that -- and the company's witness indicated that these
23 fuel costs were embedded in the EFC; isn't that right?

24 A. Yes.

25 Q. And then you were asked, I believe, by the company

1 that isn't it true that the amount of the EFC could go up; is
2 that right?

3 A. Yes.

4 MR. COLBERT: Objection, your Honor. That's a
5 mischaracterization of the question that was asked. We never
6 asked whether the EFC could be adjusted at all. In fact,
7 Mr. Baron agreed that the EFC was frozen during the market
8 development period.

9 MR. BOEHM: I don't recall that, your Honor. And --
10 we can go through the transcript, but I've just got a few
11 questions on this area based on my memory of what was said.

12 EXAMINER FARKAS: I'll allow the questions.

13 BY MR. BOEHM:

14 Q. Mr. Baron, I think counsel just reminded us, and if we
15 needed to be reminded, that the EFC is frozen for the market
16 development period; is that right?

17 A. Yes.

18 Q. Now, if the company's fuel costs go down during the
19 market development period, as you understand it, will the EFC be
20 reduced to some lower amount to reflect that reduction?

21 A. No. The company would just keep the difference,
22 effectively.

23 Q. And if the company's fuel costs go up, will the
24 company be able to recover that through the purchase power
25 provision they've included in this proceeding?

1 A. Based on the stipulation, and the way it's worded, I
2 would think that the company could defer purchase power costs at
3 its discretion.

4 MR. BOEHM: No further redirect, your Honor.

5 EXAMINER FARKAS: Okay. Do you have anything in
6 response to that?

7 MR. COLBERT: Just a moment, if I could have it, your
8 Honor.

9 EXAMINER FARKAS: Okay. Does staff or OCC have
10 anything?

11 MR. NOURSE: No.

12 MS. MC GRIFF: No.

13 (Pause.)

14 MR. COLBERT: Your Honor, we don't have anything.

15 EXAMINER FARKAS: Okay. You're excused. Thank you
16 very much for your testimony.

17 THE WITNESS: Thank you, your Honor.

18 (Witness excused.)

19 MR. BOEHM: Your Honor, I move for the introduction of
20 AK Steel Exhibit No. 13.

21 EXAMINER FARKAS: Is there any objection to the
22 admission?

23 MR. COLBERT: No, your Honor.

24 EXAMINER FARKAS: Hearing none, it will be admitted.

25

- - -

1 Thereupon, AK Steel Exhibit No. 13 was
2 received into evidence.

3 - - -

4 MR. BOEHM: Your Honor, I call as my next witness Lane
5 Kollen.

6 EXAMINER FARKAS: Okay. Would you raise your right
7 hand.

8 (Witness called and placed under oath.)

9 EXAMINER FARKAS: Please proceed.

10 MR. BOEHM: Thank you, your Honor.

11 - - -

12 Thereupon, AK Steel Exhibit No. 14 was
13 marked for purposes of identification.

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1 LANE KOLLEN

2 of lawful age, being first duly placed under oath, as prescribed
3 by law, was examined and testified as follows:

4 DIRECT EXAMINATION

5 BY MR. BOEHM:

6 Q. Mr. Kollen, will you state your full name and spell it
7 for the record?

8 A. Yes. My name is Lane Kollen, K-o-l-l-e-n.

9 Q. By whom are you employed, Mr. Kollen?

10 A. I'm a Vice President and principal with the firm of
11 J. Kennedy and Associates, Incorporated.

12 Q. Mr. Kollen, do you have in front of you a document
13 entitled "Direct Testimony and exhibits of Lane Kollen"?

14 A. Yes, I do.

15 Q. And was that document prepared by you or under your
16 direction?

17 A. Yes.

18 Q. Do you have any changes, additions or omissions to
19 that document as it exists today?

20 A. No.

21 Q. If I asked you the questions contained in the direct
22 testimony and exhibits of Lane Kollen today, would your answers
23 be the same as contained therein?

24 A. Yes.

25 MR. BOEHM: Your Honor, subject to cross-examination,

1 I move the admission of AK Steel Exhibit No. 14.

2 EXAMINER FARKAS: Okay.

3 MR. COLBERT: Your Honor, there are two matters.
4 First, as we discussed previously, CG&E would propose to
5 bifurcate Mr. Kollen's testimony -- Mr. Kollen's
6 cross-examination. Mr. Pahutski would examine Mr. Kollen on his
7 testimony in prior cases only, and I would examine Mr. Kollen on
8 the remainder of his testimony, that is to say, all of his
9 substantive testimony.

10 EXAMINER FARKAS: Okay.

11 MR. COLBERT: In addition, your Honor --

12 EXAMINER FARKAS: That will be permitted.

13 MR. COLBERT: Thank you. We would also, as we did
14 before, ask for motions to strike and it is based on the same
15 rule of evidence 402 and, in fact, the same two -- well, the
16 same issue plus the issue of the gross-up, which is not being
17 offered by the company in this case and is wholly irrelevant to
18 the case in this case.

19 MR. BOEHM: Your Honor, my arguments would be the
20 same.

21 EXAMINER FARKAS: I'm going to deny the motion to
22 strike.

23 MR. COLBERT: Thank you, your Honor.

24 MR. BOEHM: Your Honor, I wonder if I could have a
25 clarification before we go into this area of cross-examining the

1 witness on his prior testimony in other cases. My understanding
2 of the rules of evidence, your Honor, that that is relevant if
3 at all in this case only to the extent that it has been used as
4 impeachment to show inconsistencies in that prior testimony
5 and -- and approaches and in the existing case, and I trust that
6 the cross-examination by counsel will be of that nature.

7 MR. COLBERT: Your Honor, it is also relevant to
8 establish pattern, but within those confines, that is the
9 purpose for the cross-examination.

10 MR. BOEHM: I would like to understand what pattern
11 is. Is this a modus operandi? This isn't a criminal case. I
12 wonder why that's relevant here.

13 MR. COLBERT: Well, the relevancy, your Honor, goes to
14 the witness' testimony in prior cases, and its striking
15 similarity throughout, and we simply have a few questions to --
16 to ask the witness in that regard.

17 MR. BOEHM: Your Honor, to the extent that counsel
18 wants us to agree that Mr. Kollen has been unwaiveringly
19 consistent through the past years, we will do that. I'm not
20 sure we need to take up time on the record.

21 EXAMINER FARKAS: I'll allow the cross-examination.
22 We'll see where it goes and --

23 MR. COLBERT: Just so your Honor understands our
24 basis, it would be rule of evidence 616 and goes to bias.

25 EXAMINER FARKAS: We'll proceed.

1 MR. COLBERT: If that helps. Thank you, your Honor.

2 - - -

3 CROSS-EXAMINATION

4 BY MR PAHUTSKI:

5 Q. Good morning, Mr. Kollen.

6 A. Good morning.

7 Q. On pages -- or, Page 2, Lines 5 through of 11 of your
8 testimony, you reference testimony in other restructuring cases.
9 I would like to discuss this prior testimony with you.

10 Let's start with FirstEnergy in Case 99-1212-EL-ETP,
11 did you submit testimony on behalf of the Greater Cleveland
12 Growth Association in the case entitled "In The Matter of the
13 Application of FirstEnergy Corp. on Behalf of Ohio Edison
14 Company, Cleveland Electric Illuminating Company and the Toledo
15 Edison Company for Approval of Their Transition Plans and for
16 Authorization to Collect Transition Revenues"?

17 A. There's a two-part answer to that question. There was
18 testimony filed on -- of mine on behalf of the Greater Cleveland
19 Growth Association, but that was subsequently withdrawn by the
20 client.

21 Q. Was withdrawn by the client?

22 A. Correct.

23 Q. Did you testify on behalf of The Maine Office of the
24 Public Advocate in the case Maine Public Service Company
25 Investigation of Stranded Costs, Transmission and Distribution

1 Utility Revenue Requirements and Rate Design, Docket No. 98-577?

2 A. Yes.

3 Q. Did you recommend a reduction in the stranded cost
4 revenue requirement in that case?

5 A. Yes.

6 Q. Did you testify on behalf of the Maine Office of the
7 Public Advocate in the case Bangor Hydro-Electric Company
8 Investigation of Stranded Costs, Transmission and Distribution
9 Revenue Requirements and Rate Design Proposed Tariff, Docket
10 No. 97-596?

11 A. Yes.

12 Q. Did you recommend a rate reduction or, excuse me, a
13 reduction in the stranded cost recovery requirement in that
14 case?

15 A. A reduction in the company's quantification of
16 stranded cost recovery, yes.

17 Q. Did you testify on behalf of The West Penn Power
18 Industrial Intervenors in the case Pennsylvania Public Utility
19 Commission, et al. versus West Penn Power Company, Application
20 for Approval of Restructuring Plan Under Section 2806 of the
21 Public Utility Code?

22 A. I'm not sure about the docket number, but it sounds
23 right. I'll answer yes subject to check.

24 Q. Thank you. Did you recommend a reduction in the total
25 regulatory assets requested by the company in this case?

1 A. Yes.

2 Q. Did you recommend a reduction in the SFAS 109
3 regulatory asset requested by the company in that case?

4 A. I'll need to clarify my prior answer. Actually, the
5 company did not make a filing and there were four or five
6 companies actually in the West Virginia proceeding. They did
7 not make a filing with stranded cost claims.

8 So with that clarification, I'll now answer this
9 question. There was a quantification that I made of the
10 statement 109 regulatory asset. And that did not involve, to
11 the best of my recollection, a reduction from the company's
12 filed claim because the company did not file a claim.

13 Q. Are you referring to a West Virginia case?

14 A. Yes.

15 Q. Excuse me. I'm referring to the West Penn Power
16 Industrial Intervenors where you represented them in the
17 Pennsylvania Public Utility Commission.

18 A. I'm sorry, I was confused. I thought you were
19 referring to the West Virginia proceeding.

20 Q. May I repeat the question?

21 A. Yes, that would be fine.

22 Q. Did you testify on behalf of West Penn Power
23 Industrial Intervenors in the case Pennsylvania Public Utility
24 Commission, et al. versus West Penn Power Company, Application
25 for Approval of Restructuring Plan Under Section 2806 of the

1 Public Utility Code?

2 A. Yes, I did.

3 Q. Did you recommend a reduction in the total regulatory
4 assets requested by the company in that case?

5 A. Yes.

6 Q. Did you recommend a reduction in the FAS 109
7 regulatory asset requested by the company in that case?

8 A. Yes.

9 Q. Did you recommend that the investment tax credit
10 regulatory liability be increased, thereby reducing the total
11 regulatory assets requested by the company?

12 A. Yes, and my recollection is that the company agreed
13 with that.

14 Q. Did you recommend a reduction in the total transition
15 costs recommended by the company in that case?

16 A. Well, first of all, in Pennsylvania, the term was
17 stranded costs; and, second of all, I was not the witness that
18 quantified the total stranded cost. I believe that was
19 Mr. Baron, but I did recommend in that case, to the best of my
20 recollection, various adjustments to the generation or the
21 physical asset stranded costs, as well as the regulatory asset
22 stranded costs.

23 Q. Thank you. Did you testify on behalf of the
24 Philadelphia Area Industrial Energy Users Group in the case
25 "Application of PECO" -- Did you testify on behalf of the

1 Philadelphia Area Industrial Energy Users Group in the case
2 "Application of PECO Energy Company for Issuance of a Qualified
3 Rate Order Under Sections 2802 and 2812 of the Public Utility
4 Code," Docket No. R-00973877?

5 A. Yes, I did.

6 Q. Did you recommend a net reduction in the regulatory
7 assets requested by the company in that case?

8 A. Yes, I did.

9 Q. Did you recommend a net reduction in the
10 quantification of the SFAS 106 regulatory asset requested by the
11 company in that case?

12 A. I don't recall. There was a Statement 106 issue in
13 several of the Pennsylvania proceedings. I was in seven of the
14 proceedings in Pennsylvania, and I don't recall whether
15 Statement 106 was in issue in the particular proceeding you
16 mentioned.

17 MR. PAHUTSKI: May I approach the witness, your Honor?

18 EXAMINER FARKAS: Yes.

19 MR. BOEHM: Your Honor, I wonder if I can ask at this
20 point in time whether the purpose of this cross-examination is
21 impeachment because, if so, I haven't -- I'm assuming that
22 they're going to show some inconsistent statement in this case.

23 MR. PAHUTSKI: To the contrary, your Honor. We intend
24 to show that the witness has consistently sought a reduction in
25 transition cost recovery in previous cases in which he's

1 testified. Therefore, we're trying to show under Rule of
2 Evidence 616, bias on behalf of the witness.

3 MR. BOEHM: I'm not sure that consistency equals bias.
4 My understanding of the rule is that you have to go beyond
5 showing that the fellow does the same thing each time.

6 EXAMINER FARKAS: I'll let him proceed and we'll see.

7 MR. PAHUTSKI: Thank you, your Honor.

8 BY MR. PAHUTSKI:

9 Q. If you can review that, Mr. Kollen, I'll ask you again
10 whether you sought reduction in the SFAS 106 regulatory asset?

11 A. Yes, this refreshes my memory. The Statement 106
12 regulatory asset was included by the company in two places.
13 Similar to the situation in Ohio, in Pennsylvania you have a
14 generation stranded cost, which represents the physical assets,
15 if you will, and then you have a regulatory asset stranded cost
16 and the company, in this case, PECO, included the same dollars
17 in both places. So there was a double counting.

18 Q. I'll ask you to refer to that -- that page of your
19 prior testimony as well. Do you recommend a net reduction in
20 the SFAS 109 regulatory asset requested by the company in that
21 case?

22 A. Yes, and, again, the situation is virtually identical
23 to what we have here. The company made a claim for the
24 Statement 109 regulatory asset on a nominal dollar basis, and I
25 think as all the parties recognize in this proceeding and as

1 they did in the PECO, there is no carrying charge associated
2 with the Statement 109 regulatory asset. So on an economic
3 basis it needs to be based on a net value basis and that's
4 exactly what I did in the PECO proceeding. That's exactly what
5 I've done in this proceeding.

6 Q. Did you testify in the Penelec Customer Alliance in
7 the case "Pennsylvania Public Utility Commission, et al., versus
8 the Pennsylvania Electric Company for Approval of its
9 Restructuring Plan Under Section 2806 of the Public Utility
10 Code," Docket No. R-00974009?

11 A. Yes, I believe that docket is correct, and that was
12 one of the seven Pennsylvania proceedings that I've testified in
13 with respect to regulatory asset stranded costs.

14 Q. Did you recommend a net reduction in the regulatory
15 assets requested by the company in that case?

16 A. Yes.

17 Q. Did you testify on behalf of the Dallas-Fort Worth
18 Hospital Council -- Did you testify on behalf of the Dallas-Fort
19 Worth Hospital Council and the Coalition of Independent Colleges
20 and Universities in the case "Application of TXU Electric
21 Company for Financing Order to Securitize Regulatory Assets and
22 Other Qualified Costs," Docket No. 21527?

23 A. Yes.

24 Q. Did you recommend a net reduction in the
25 quantification of regulatory assets requested by the company in

1 that case?

2 A. Yes, that was a little bit different situation than
3 the other cases that you've identified, and that situation in
4 the TXU Electric proceeding was the level of transition costs
5 that could be securitized pursuant to a Commission order. It
6 was not the final determination of the transition costs.

7 MR. PAHUTSKI: Could I have a moment, your Honor?

8 EXAMINER FARKAS: Yes.

9 MR. PAHUTSKI: Your Honor, I'd like to turn it over to
10 Paul Colbert now.

11 EXAMINER FARKAS: All right. Thank you.

12 MR. COLBERT: Thank you, your Honor.

13 Your Honor, I have a substantial amount of cross; it
14 might be a good time to break. We can keep going, if you wish.

15 EXAMINER FARKAS: Okay. Why don't we do that. Why
16 don't we take a break until 12:30.

17 MR. COLBERT: Thank you, your Honor.

18 - - -

19 (Luncheon recess taken.)

20 - - -

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25

1 P R O C E E D I N G S

2 - - -

3 Monday, June 5, 2000

4 Afternoon Session

5 - - -

6 EXAMINER FARKAS: Okay. Let's go back on the record
7 and continue with your cross.

8 MR. COLBERT: Thank you, your Honor. Your Honor, if I
9 may, I would like to give the witness and counsel several
10 different exhibits, two of which are already in the record,
11 those being JPS-SUP-5 and JPS-5, which are contained in CG&E
12 Exhibits 50 and 12, respectively. And then I would like to
13 also, at the same time, for this set of questions, give the
14 witness CG&E Exhibit 69, which would be the Staff Report and
15 CG&E Exhibit 70, which is a compilation of two columns from
16 JPS-5 and JPS-SUP-5, showing the adjustments. These are all
17 related to cross-exam of the witness' schedule, I believe, on
18 Page 5 of his testimony.

19 EXAMINER FARKAS: All right. Proceed.

20 MR. COLBERT: Thank you.

21 - - -

22 Thereupon, Company Exhibit Nos. 69 and 70 were
23 marked for purposes of identification.

24 - - -

25 EXAMINER FARKAS: Would you go over again what CG&E 69

1 and 70 were?

2 MR. COLBERT: Well, CG&E Exhibit 69 is the Staff
3 Report, your Honor, and CG&E Exhibit 70 is an exhibit that we
4 have prepared based on JPS-5 and JPS-SUP-5 showing the
5 adjustments, and it's the adjustments to the reg assets that are
6 the subject of the cross-examination.

7 EXAMINER FARKAS: Okay.

8 MR. BOEHM: Your Honor --

9 MR. COLBERT: Hoping to make this easier.

10 MR. BOEHM: Your Honor, my recollection is that the
11 staff attempted to introduce the Staff Report last week. We
12 objected to it and your Honors sustained their objection.

13 MR. COLBERT: If I may be heard?

14 EXAMINER FARKAS: Yes.

15 EXAMINER GOODEN: Yes.

16 MR. COLBERT: While that is true, you sustained that
17 objection as to the sponsoring of the -- well, I -- as to the
18 staff sponsoring the Staff Report without a witness. In this
19 case, Mr. Kollen is questioning adjustments that we have made to
20 the reg assets that came directly from the Staff Report.

21 If you look at the table on Mr. Kollen's Exhibit
22 No. 5 -- or, I'm sorry, Page 5, I believe, yeah, the table, you
23 will find that he is discussing the revised amount of regulatory
24 assets, \$401,415,000 that even he -- that Mr. Kollen footnotes
25 as the revised number. Well, some of those revisions came

1 directly from the Staff Report, as we'll show, and in order to
2 discuss them, use of the Staff Report is necessary.

3 MR. BOEHM: Your Honor, if I may, I don't think
4 Mr. Kollen makes any reference at all to the Staff Report. And
5 to the extent that your Honors, I think, properly ruled, the
6 staff may not put forward the testimony in their Staff Report
7 without a witness, I don't think the company can put forward the
8 Staff Report without a witness either.

9 The reference to the Staff Report, I think, is
10 completely unnecessary, first of all, to cross-examine this
11 witness from. If he's got data from the Staff Report, so be it.
12 But if the company's got data from the Staff Report, it seems to
13 me they have to have some witness to support that data. That
14 was the basis, as I understood, for your Honors sustaining my
15 objection that it's not fair to have evidence presented in this
16 case without a supporting witness.

17 MR. COLBERT: Your Honor, two points in response. One
18 is that Mr. Boehm has, through cross-examination, entered a
19 number of exhibits from a variety of sources without foundation
20 or authentication into this record. This Staff Report is a part
21 of the record by statute, and, therefore, it is
22 self-authenticating as a product of the Commission itself.

23 In addition, even if those were not grounds enough to
24 allow it in, the Commission is permitted to take administrative
25 notice of the Staff Report as a public document under the rules

1 of evidence; so --

2 EXAMINER FARKAS: I'm going to allow you to go ahead
3 and proceed.

4 MR. COLBERT: Thank you very much, your Honor.

5 EXAMINER GOODEN: It's being put in for a different
6 purpose. We're not going back to letting it in for the staff's
7 opinion, but only as reference to whatever numbers that are in
8 there why the witness has something in his exhibit.

9 MR. COLBERT: That is all I ask, your Honor.

10 EXAMINER GOODEN: So it's a different matter, in my
11 mind.

12 MR. COLBERT: Thank you very much. I apologize for
13 asking, but does everybody have a copy of all this?

14 Mr. Kollen, do you have a copy?

15 THE WITNESS: Yes, I do.

16 MR. COLBERT: Thank you. You're the most important
17 fellow.

18 THE WITNESS: Oh, thank you.

19 - - -

20 CROSS-EXAMINATION

21 BY MR. COLBERT:

22 Q. Mr. Kollen, can you turn to Page 30 of what is now
23 marked CG&E Exhibit 69, the "Staff Report of Exceptions and
24 Recommendations" in the case?

25 A. I don't think I have that.

1 Q. Oh.

2 A. Was that something that was passed out?

3 Q. Yes, I'm sorry.

4 A. I don't have a copy of it, I'm sorry.

5 Q. It's coming to you.

6 (Handed.)

7 Can you please turn to Page 30 of the Staff Report?

8 A. I have it.

9 Q. Thank you. Okay. Now, you also have a copy of JPS-5
10 and JPS-SUP-5; is that correct?

11 A. I have Page 1 of 3 from each one of those exhibits
12 that you referred to.

13 Q. That's correct. That's the only page that we'll be
14 talking about. And do you have a page now marked as CG&E
15 Exhibit 70 that is titled "The Cincinnati Gas and Electric
16 Company, Jurisdictional Electric Regulatory Asset Balances,
17 Comparison of Original and Supplemental JPS-5"?

18 A. Yes, I do.

19 Q. In the Staff Report, will you -- on Page 30, would you
20 please look at what is marked F-7 and F-8?

21 A. Yes, I've read those.

22 Q. Do you recognize those as recommended adjustments to
23 Line 4 of JPS-5 in the original filing, titled "Deferred
24 operating expenses"?

25 A. Yes.

1 Q. And on JPS-5, do you note on Line 4 the jurisdictional
2 electric production amount of 9,633,586?

3 A. Yes, I do.

4 Q. And on JPS-SUP-5, on the same line, do you have a
5 change in that amount to \$9,607,015?

6 A. This is a change that the company made and it's
7 reflected in the JPS-SUP-5.

8 Q. That's correct. And by examining the Staff Report and
9 referring to what is now marked Company Exhibit 70, would you
10 agree that that change of a negative \$26,571 is the change
11 recommended in F-7 and F-8 of the Staff Report?

12 MR. BOEHM: Your Honor, objection. They're putting
13 this in for the very reason that you kept it out. It's, in my
14 mind, relevant costs if the company wants to say "Do you agree
15 with that," et cetera, but what they're putting in is "Here's
16 what the staff said; isn't that right?"

17 Well, I -- We wouldn't let the staff say it. I don't
18 know why they should be able to say it. We don't know where
19 those numbers come from. If he wants to ask the witness does he
20 agree with that, that's one thing, but to introduce it as,
21 "Well, this is what the staff said; isn't that right?" We're
22 doing exactly what your Honor, I think, properly kept the staff
23 from doing.

24 MR. COLBERT: Your Honor, Mr. Boehm is
25 mischaracterizing the question. I'm not asking him to

1 authenticate the \$401 million number or the \$26,000 change
2 itself as being a proper change. Merely the relationship -- I'm
3 here merely trying to establish the relationship between the
4 change that was made by the company and the source of that
5 change, which is the Staff Report.

6 MR. BOEHM: First of all, your Honor, you will not
7 find that number in the Staff Report. Under the places that
8 we've been cited, there isn't any number like that in the Staff
9 Report. The second thing is his main point is "Here's what the
10 staff said." It hasn't got anything to do with any
11 relationships of numbers. He wants to get it in the record this
12 is what the staff said.

13 MR. COLBERT: Your Honor, Mr. Kollen has already
14 testified that he understands that F-7 and F-8 are a source of
15 recommended adjustment to the numbers on Line 4 of JPS-5.

16 MR. BOEHM: I'm sorry, I don't think he's testified to
17 any such thing. There aren't any numbers in the Staff Report.

18 MR. COLBERT: We can read back the record, but in the
19 first -- as we started questioning, Mr. Kollen agreed that the
20 recommendation that was made on F-7 and F-8 was a recommendation
21 by the staff to alter Line 4 of JPS-5.

22 EXAMINER FARKAS: Okay.

23 MR. BOEHM: And that's because he can read the
24 footnote, your Honor, that says that's what it is.

25 EXAMINER FARKAS: All right.

1 MR. COLBERT: I can't speak to why he agreed to it.

2 MR. BOEHM: It's because he can read the footnote on
3 your exhibit.

4 EXAMINER FARKAS: Where are you going with this line
5 of questioning? I mean, are you -- Tell me where you're going
6 with that.

7 MR. COLBERT: Where we're going, your Honor, is to the
8 accuracy -- Well, it's to the amount of the changes from the
9 original filing to the supplemental filing, which is the basis,
10 of course, for the reg asset recovery in the case.

11 And we are also going to the accuracy of CG&E's
12 adjustment itself, not -- not the accuracy of the underlying
13 figure, that is the 401, but of the incremental change. I think
14 that we are entitled to pursue that issue.

15 Mr. Kollen is making a number of adjustments to the
16 \$401 million figure itself, and I think that some of which we
17 are going to be discussing further, and I think it is perfectly
18 reasonable to lay the basis for the \$401 million figure before
19 we start discussing the specifics of Mr. Kollen's recommended
20 changes.

21 EXAMINER GOODEN: Well, you're -- What are you arguing
22 your basis is? You think it's reasonable because the staff said
23 it was reasonable?

24 MR. BOEHM: Exactly, your Honor.

25 MR. COLBERT: No, your Honor, what we are arguing

1 is -- or what we are trying to establish is merely that the
2 company made adjustments based on the Staff Report
3 recommendations from the original filing to the supplemental
4 filing, and that the adjustments that the staff made were the
5 adjustments -- or, I'm sorry, the adjustments that the company
6 made were, in fact, the adjustments that the staff asked the
7 company to make, and if we can establish it through this
8 witness, we'll establish that the math behind those adjustments
9 itself was accurate, but it doesn't go at all to the underlying
10 credibility of the numbers.

11 MR. BOEHM: Your Honor, clearly what counsel is saying
12 is, "Here is what the staff said and because the staff said it,
13 we made that adjustment and, therefore, it must be reasonable."
14 And which, of course, is the company's way of trying to get into
15 the record the Staff Report, without any supporting witness.

16 If they want to show why they made their adjustment
17 and where the numbers come from, it seems to me they were free
18 to do that on their direct case. They certainly know they have
19 the burden of proof.

20 MR. COLBERT: Well, in --

21 MR. BOEHM: "Because the staff told me to do it" isn't
22 a good reason.

23 EXAMINER GOODEN: Shhh. All right, all right.

24 (Hearing Examiners conferring.)

25 MR. COLBERT: Your Honor, if I could --

1 EXAMINER GOODEN: Why are you asking this witness?
2 Isn't that something more for rebuttal? I agree you have a
3 point if you want to show that you've made corrections because
4 of a staff report that was docketed in this case, and I have no
5 problem with that.

6 MR. COLBERT: That's all that we are showing. The
7 reason that we're asking this witness, your Honor, is that this
8 is the witness that is sponsoring testimony to change those
9 adjustments and the figures that make up the \$401 million.

10 So this is the witness that is supporting AK's
11 recommended changes on all of these figures. And to the extent
12 that we can show the basis for our changes and question the
13 basis for Mr. Kollen's changes, we think it is fair that we have
14 an opportunity to do so.

15 MR. BOEHM: Your Honor, that's the most attenuated
16 logic I've ever heard. There isn't anything in Mr. Kollen's
17 testimony about the Staff Report. I don't know why it should be
18 cross-examined on.

19 EXAMINER FARKAS: If you want to show that the
20 company's adjustments were reasonable, then you should do that
21 through your own witness and on redirect, if so, but I'm not
22 going to allow you to ask this witness about the Staff Report.

23 MR. BOEHM: Thank you, your Honor.

24 EXAMINER FARKAS: You can ask this witness about how
25 he came up with his numbers.

1 MR. COLBERT: And let me be clear, then, the Attorney
2 Examiners are also not willing to take administrative notice of
3 the Staff Report, a report that was specified by statute and
4 entered into the record of this case by the Commission?

5 EXAMINER GOODEN: Well, what record are you talking
6 about? It's not in this hearing record, we've already
7 established that.

8 MR. COLBERT: I'm sorry, your Honor?

9 EXAMINER GOODEN: It's in the docket, but it's not in
10 the hearing record of this case.

11 MR. COLBERT: And that's what I'm asking your Honor,
12 is to take administrative notice for the hearing record.

13 MR. BOEHM: Your Honor, I think you ruled on that
14 yesterday.

15 EXAMINER GOODEN: Yeah, I think we already ruled on
16 that.

17 MR. BOEHM: Thank you.

18 EXAMINER GOODEN: Like I said, if you had a witness on
19 the stand that said we made these corrections or we made these
20 changes because of the Staff Report -- the Staff Report, that's
21 fine, then it's the company's -- we're going into what the
22 company's actions were and why they made the adjustments they
23 did, then that would be proper. I think you're going beyond
24 that and you may want to have a witness to that. Okay.

25 (Pause.)

1 BY MR. COLBERT:

2 Q. Mr. Kollen, on the table on Page 5 of your testimony,
3 you recommend a number of adjustments in the AK Steel adjustment
4 column to CG&E's regulatory asset amounts; is that correct?

5 A. What this table presents is in the first column with
6 numbers, is the CG&E revised regulatory asset transition cost
7 claim and the second column are the adjustments that I recommend
8 to the company's amounts, and then the final column is what AK
9 Steel would recommend, where we've taken an affirmative position
10 on specific regulatory asset transition cost items and, as I
11 footnoted it or described it prior to the table itself, on
12 Page 4, Lines 11 through 12, I stated "For those regulatory
13 transition costs that I have not addressed," which is the bulk
14 of those claimed by the company, I state, "I do not
15 affirmatively support the company's claim." Just so that it's
16 clear what that table represents.

17 Q. In the column marked "AK Steel adjustments," can you
18 cite any existing Commission order that would authorize those
19 adjustments to existing regulatory assets?

20 A. The purpose of this proceeding, as far as I understand
21 it, is to assess the company's transition cost claims, and
22 that's what I've directed my testimony toward. The company has
23 made a claim for regulatory assets that is incomplete and
24 incorrect. The incompleteness comes in for four of the items
25 with respect to EDIT, ITC, the two related Statement 109 effects

1 of those two adjustments, and the incorrectness comes in through
2 the Statement 109 issue and the treatment of the ADIT.

3 MR. COLBERT: Your Honor, I would move to strike the
4 witness' answer as nonresponsive to the question.

5 EXAMINER FARKAS: I'll let it stand.

6 BY MR. COLBERT:

7 Q. Well, let's ask it another way, Mr. Kollen. Are you
8 aware that regulatory assets the company's seeking recovery for
9 are the result of prior Commission orders in this case, at least
10 to a certain extent?

11 A. Yes, that's correct, and with the adjustments that I
12 have recommended on behalf of AK Steel, I believe that those
13 regulatory assets are stated consistently with the Commission's
14 prior treatment of these items under existing cost-based
15 regulation.

16 Q. But you are unaware of any existing Commission order
17 that alters those regulatory assets to this day; is that
18 correct?

19 A. That's what I can't really directly respond to with
20 respect to your question because there's a presumption in your
21 question that the amounts reflected by the company are correct.
22 And as I described to you before, they are incomplete and they
23 are incorrect with respect to five of the regulatory asset
24 transition cost claims, and they are incorrect because they are
25 inconsistent --

1 EXAMINER FARKAS: Mr. Kollen, you answered his
2 question.

3 THE WITNESS: Okay.

4 (Pause.)

5 BY MR. COLBERT:

6 Q. Mr. Kollen, do you -- Well, on Line 1 of your table on
7 Page 5, you make an adjustment of 122 million -- 122,256 -- I'm
8 sorry, \$122,256,000. That is based on a quantification at net
9 present value; is that correct?

10 A. This line item is the company's claim for Statement
11 109 regulatory asset amounts and the company's claim is stated
12 on a nominal dollar basis. The adjustment is for the purpose of
13 stating it on a net present value basis, consistent with
14 existing cost-based regulation.

15 Q. Do you know if the company has claimed any carrying
16 charges associated with the SFAS 109?

17 A. The company has and it has not, both. And I know
18 that's a strange answer, but the company has considered this
19 inconsistently between its application and the direct testimony
20 of Ms. Pefley and also Mr. Steffen and then in supplemental
21 testimony. So the company actually has taken two positions and
22 has not cleared that discrepancy up.

23 Q. Have you -- you reviewed JPS-WP-UNB-7.1(B) that shows
24 which regulatory assets are accrued in the carrying charge and
25 which are not? Are you familiar with that schedule?

1 A. I believe I'm familiar with the UNB schedule that you
2 referred to. I'm not sure I agree with your characterization of
3 it, but I believe that that particular workpaper shows a
4 derivation of an RTC rate.

5 MR. COLBERT: Your Honor, may I approach and --

6 EXAMINER FARKAS: Yes.

7 MR. COLBERT: Thank you. I'm sorry, your Honor, we
8 don't need to mark it as Exhibit 71. It's already in the record
9 as part of CG&E Exhibit 27. We're short of copies. We'll
10 produce copies for the court reporter, your Honor.

11 MR. BOEHM: 7.1(B)?

12 MR. COLBERT: Yes.

13 MR. BOEHM: Is that in this thing here?

14 MR. COLBERT: This is in the workpapers binder, Dave.

15 MR. BOEHM: Oh, I don't think I have that. Is this
16 the only one you've got?

17 MR. COLBERT: We have --

18 MR. BOEHM: I mean, I need the witness to have one and
19 me to have one, obviously.

20 (Handed.)

21 BY MR. COLBERT:

22 Q. You've reviewed this exhibit previously?

23 A. Yes.

24 Q. And this exhibit shows the amortization regulatory
25 assets, is that correct, as proposed by the company?

1 A. Correct. And this would be the company's original
2 filing, yes.

3 Q. That's right. And does it show the amortization of
4 two sets of regulatory assets, those that are accruing carrying
5 charges and those that are not?

6 A. Yes, it does.

7 Q. Have you reviewed, Mr. Kollen, the company's corporate
8 separation plan?

9 A. I believe that I have. I don't have a detailed
10 recollection of that corporate separation plan, as
11 differentiated from the corporation separation financing plan.

12 Q. Are you testifying at all on making any
13 recommendations regarding how the company might satisfy the
14 corporate separation requirements of the statute or the
15 Commission's rules?

16 A. I am testifying on the costs of establishing an EWG
17 that the company has requested be deferred for future recovery
18 in the distribution component of the rates in the future.

19 Q. Does that mean you're not making any recommendations
20 as to how we would satisfy the corporate separation
21 requirements?

22 A. I'm not making a recommendation with respect to how
23 the company would separate its generation assets from the rest
24 of the company. My recommendations go to certain aspects of the
25 corporate separation financing, which are contained in the

1 financing plan and also go to the issue of the costs associated
2 with the EWG establishment, but not the specifics of the
3 corporate separation itself.

4 Q. Mr. Kollen, you've made a number of recommendations
5 regarding normalization ADIT, EDIT and ITC in your testimony.
6 What research have you performed to substantiate those
7 recommendations?

8 A. I've been involved in, I think, about 20 restructuring
9 proceedings and in those proceedings, perhaps maybe 12 or 13 of
10 the issues of ITC and EDIT were litigated or were at least
11 something that I reviewed. In some of those proceedings, the
12 normalization issue has arisen.

13 In those proceedings, I have done fairly extensive
14 research on the normalization issue including the IRS code, the
15 IRS regulations, the private letter rulings issued by the IRS,
16 including those that were cited by Mr. -- I think -- I'm not
17 sure how his name was pronounced by Mr. Herzco.

18 Q. Hriszko?

19 A. Hriszko? Okay.

20 Q. Have you reviewed specifically for this case any
21 Internal Revenue Service private letter rulings other than those
22 offered by Mr. Hriszko or otherwise contained in your testimony?

23 A. No, I've reviewed private letter rulings, as I said
24 before, in other proceedings, but I limited my additional review
25 to only those private letter rulings that were included in

1 Mr. Hriszko's testimony.

2 Q. Have you spoken to the Internal Revenue Service about
3 the issues of normalization or ADIT, EDIT, ITC in preparation
4 for this proceeding?

5 A. Not in preparation for this proceeding, but in my
6 involvement in another proceeding in Connecticut. I had
7 extensive conversations with the Internal Revenue Service in
8 conjunction with a draft letter -- a draft request for private
9 letter ruling.

10 Q. What is the penalty for a violation of the
11 normalization rules, do you know?

12 A. I do know. And that's why it's important to consider
13 them, and if the Commission believes that, in fact, there might
14 be a risk of normalization violation, then I've recommended that
15 the company be directed to place the ITC and EDIT amounts into a
16 suspense account, and to seek a private letter ruling from the
17 IRS.

18 But to get back to your question more directly, with
19 respect to the penalty, there are two different types of
20 penalties, depending upon where the normalization violation
21 occurs. If it is an ITC normalization violation, the remaining
22 unamortized ITC no longer can be utilized by the company. In
23 other words, it's lost.

24 And similarly, but, yet, distinctly separated from the
25 ITC issue is the EDIT issue, and that pursuant to Section 203(E)

1 of the code, you could lose potentially the ability to use
2 accelerated tax depreciation. So there's two different
3 penalties, based upon two different provisions of the code, tied
4 to whether or not it is ITC or accelerated tax depreciation.

5 Q. Mr. Kollen, would you agree that CG&E can't use tax
6 benefits associated with nonregulated property to offset
7 expenses associated with regulatory property without a
8 normalization violation?

9 A. That's generally true, as evidenced by not only the
10 Internal Revenue Code for ITC and accelerated tax depreciation,
11 but it's also carried through, then, through the Internal
12 Revenue Service regulations and the IRS private letter rulings.

13 However, that's not the situation we have here because
14 we still have a regulated charge under which the company is
15 recovering transition costs. So the principle that the IRS has
16 utilized in these private letter rulings for individual
17 taxpayers has been that if it continues to be the benefit
18 provided to the ratepayers through a regulated charge even on an
19 accelerated basis, then it is not a normalization violation.

20 MR. COLBERT: Your Honor, may I please give the
21 witness two additional exhibits?

22 EXAMINER FARKAS: Yes.

23 MR. COLBERT: Thank you.

24 - - -

25 Thereupon, Company Exhibit Nos. 71 and 72 were

1 marked for purposes of identification.

2 - - -

3 MR. COLBERT: Your Honor, CG&E Exhibit 71 is an
4 authenticated original of a document produced jointly by NARUC,
5 NCCEI, regarding tax implications of utilities in an electric
6 restructuring environment.

7 And CG&E Exhibit 72 is a PLR, public letter ruling,
8 from the Internal Revenue Service on the same subject.

9 EXAMINER FARKAS: Are these broken -- You gave us a
10 rubber banded group of documents --

11 MR. DORTCH: May I, your Honor?

12 EXAMINER FARKAS: Yes.

13 (Handed.)

14 MR. BOEHM: Your Honor, I've got multiple letter
15 rulings here, unless this is -- there's like one, two -- each of
16 these numbers is a new letter ruling, isn't it?

17 MR. COLBERT: Sorry, you were given some documents
18 that we weren't ready to use yet.

19 MR. BOEHM: Which ones aren't you ready to use?

20 MR. COLBERT: Can we go off the record?

21 EXAMINER FARKAS: Yeah, let's go off the record.

22 (Discussion held off the record.)

23 EXAMINER FARKAS: Okay. Let's go back on the record.

24 MR. BOEHM: Your Honor --

25 EXAMINER FARKAS: Just so we're clear here, just for

1 the record, we've marked CG&E Exhibit 71 that includes an
2 affidavit of James Bradford Ramsay, and attached to it is a
3 document, "Federal, State and Local Tax Implications of Electric
4 Utility Industry Restructuring," and CG&E Exhibit 72, which is a
5 Letter 20004038. Okay.

6 MR. BOEHM: Yes, your Honor, I would object to these
7 unless the company's going to put on a witness to sponsor these
8 or unless they can establish that the witness saw and relied
9 upon these in some fashion. I don't know how they're going to
10 come up in cross if they -- if at least one of those things
11 isn't true.

12 EXAMINER FARKAS: Why don't we wait and see where
13 they're going with this.

14 MR. BOEHM: Okay, your Honor.

15 MR. COLBERT: Thank you, your Honor.

16 BY MR. COLBERT:

17 Q. Mr. Kollen, will you please turn to Page 31 of what is
18 marked CG&E Exhibit 71. Do you see the section titled "Impact
19 of Deregulation on Normalization Rules"?

20 A. Do I see that section? Yes. Are you asking me to
21 read it? I haven't done so, yet.

22 Q. We'll get to that. Well, why don't you take a minute
23 and read those two paragraphs.

24 (Witness reviewing documents.)

25 A. Yes, I've read that.

1 Q. Why is the term "public utility property" important to
2 normalization rules?

3 A. Public utility property is a term that is used in the
4 Internal Revenue Code and it's used in Section -- the former
5 Section 46 and in the current Sections 167 and 168.

6 Q. Mr. Kollen, if you would focus on the last two
7 sentences of the second paragraph of this section, do you agree
8 with those sentences?

9 A. No, and I'll tell you why. First of all, the document
10 is authored -- If you would care to turn to Page -- the third
11 page in the document that was handed out, the second page after
12 the affidavit. It was authored by Deloitte and Touche, and I
13 don't know if you're aware of this, but Deloitte and Touche
14 testifies on behalf of utility companies arguing that there is a
15 normalization violation or a potential normalization violation
16 just around the corner in almost every circumstance.

17 And so, essentially, what you have here is you have an
18 opinion of Deloitte and Touche offered in a report here that does
19 not comport with the correct interpretation of these IRS private
20 letter rulings for the reasons that I stated in my testimony.

21 Q. Who did Deloitte and Touche perform -- put together
22 this document for, do you know?

23 A. It's a NARUC document.

24 Q. Uh-huh. And --

25 MR. BOEHM: Your Honor, may I ask, is the company

1 recommending that NARUC has adopted this document as their
2 position?

3 MR. COLBERT: This is an official NARUC document.

4 MR. BOEHM: Is that yes or no?

5 MR. COLBERT: The affidavit attached by NARUC's
6 general counsel will speak for itself.

7 MR. BOEHM: Your Honor, I read an affidavit that says
8 somebody gave a report. It doesn't say what NARUC did with that
9 report.

10 MR. COLBERT: That's fine.

11 MR. BOEHM: Anybody, I suppose, can send in reports to
12 NARUC, if they like. I don't think it makes it official just
13 because it landed in their laps through the U.S. mail.

14 MR. COLBERT: Your Honor, I, frankly, don't want to
15 get into an argument over whether or not it is an official NARUC
16 document. Just as Mr. Boehm took some of his documents off the
17 Web, we found this on the Web. We talked to NARUC's general
18 counsel. It is an official NARUC document. The Commission can
19 judge that for itself. The Commission is a member of NARUC.

20 MR. BOEHM: Your Honor, we just heard --

21 MR. COLBERT: We'll let the document speak for itself.

22 MR. BOEHM: We just heard counsel testify that this
23 was an official NARUC document. No. 1, I don't know what
24 "official NARUC document" means. I think it might be something
25 like the "Official sponsor of the Olympics," you know.

1 The second thing is it's counsel testifying. If
2 counsel wants to put -- Anybody can send a document to NARUC and
3 your Honors know that you get reports from people all the time
4 and sometimes the Commission agrees with them and sometimes the
5 Commission doesn't agree with them.

6 EXAMINER FARKAS: I'll let the Commission make that
7 determination.

8 MR. BOEHM: Okay.

9 MR. COLBERT: Thank you, your Honor.

10 BY MR. COLBERT:

11 Q. Mr. Kollen, will you please turn to Page 34 of this
12 document. Do you see the section marked "Accumulated Deferred
13 Federal Income Taxes"?

14 A. Yes, I do.

15 Q. Can you take a minute and read those four paragraphs,
16 please.

17 (Witness reviewing documents.)

18 A. All right. I've read it.

19 Q. Before we go to several questions, I'm going to ask
20 you to read two more paragraphs and that's all I'm going to ask
21 you to read. If you go to Page 39, there is a section titled
22 "Accumulated Deferred Federal Income Taxes in Restructuring
23 Transactions," it's two paragraphs.

24 (Witness reviewing documents.)

25 A. Yes, I've read the two paragraphs --

1 Q. Okay.

2 A. -- on Page 39, yes.

3 Q. Thank you. Can you explain what ADIT is?

4 A. Yes, ADIT is the booked tax effect, and this "booked"
5 means that it's on the balance sheet, representing amounts that
6 have been prepaid as a general matter by ratepayers in advance
7 of the utility being required to pay those taxes on to the
8 federal or the state government. Hence, the term accumulated
9 deferred income taxes. It's deferred on the utility's books
10 because the utility has recovered from the ratepayers and will
11 only pay to the federal government in the future.

12 Similarly, with investment tax credit, it's a recovery
13 from the ratepayers initially without passing through the ITC
14 benefit to the ratepayers, but in that case it's a tax that
15 never will be paid to the federal government. It's a grant from
16 the federal government, and it will, in turn, go back to the
17 ratepayers.

18 Q. Do you know, is ADIT associated with a specific asset
19 that gives rise to it?

20 A. Generally, it is. For example, in the company's
21 filing, the company, consistent with its separation of the
22 generating assets into two groups, the one group being Zimmer
23 and Woodsdale 2 through 6, and the other group being all the
24 other generating assets, only included the ADIT associated with
25 Zimmer and Woodsdale 2 through 6 as reductions to the net book

1 value in the derivation of the other transition costs, which, of
2 course, is an incomplete representation, but the company did
3 identify the ADIT associated only with Zimmer and Woodsdale
4 Units 2 through 6.

5 Q. Would you agree that ADIT in nonregulated generating
6 assets would not be available to offset existing regulatory
7 assets of the regulated utility?

8 A. That's true, as long as there's not a tie into a
9 regulated charge, and so that's what differentiates it from the
10 situation that we have at hand here because we have a continuing
11 regulated charge that's collected from the ratepayers;
12 therefore, even though the assets ultimately will be
13 deregulated, you know, providing competitive electric service
14 for the duration of the regulated charge, the ratepayers then
15 are entitled to the ADIT benefit.

16 Q. So where on Page 34 this report says "A concept has
17 been proposed that the currently outstanding ADFIT balances of
18 the electric utilities unrelated to the stranded costs in
19 question are available to offset and absorb losses that may
20 result from such stranded costs. This conclusion is incorrect";
21 you would disagree with that?

22 A. I don't know what they're referring to there. I don't
23 know if they're referring to ADIT associated with T&D assets or
24 on regulated assets, but the situation -- I don't think the
25 first sentence there in the para- -- the two sentences that you

1 just read is applicable in this proceeding because the ADIT
2 balances that the company has identified as a reduction to its
3 other transition costs are, in fact, related to Zimmer and
4 Woodsdale 2 through 6.

5 And, of course, it is my recommendation that we take
6 into consideration all of the company's generating units for
7 purposes of the other transition costs and then subtract all of
8 the ADIT from the regulatory assets that the company has
9 claimed, and that's consistent. They're all related, and that's
10 why this paragraph doesn't even relate to this proceeding.

11 Q. What about the last paragraph on Page 39, describing a
12 nontaxable transaction, such as a tax-free spin-off, would you
13 agree that that applies to this situation?

14 A. No, the company has not proposed that in this
15 proceeding -- I'm sorry. Let me take that back. Let me read
16 this again.

17 (Witness reviewing documents.)

18 I would agree with that paragraph.

19 Q. You would agree with that paragraph?

20 A. Yes.

21 Q. Okay. On the private letter ruling that you were
22 given that is part of Company Exhibit 72, on Page 2, were you --
23 will you read Paragraphs [1] and [2], please, top bracketed [1],
24 but right below that, the short paragraph?

25 A. I would note for the record that this was issued in

1 May, it became publicly available in May. I have not seen this
2 previously, and to adequately review a private letter ruling
3 requires some time, and I'm a little hesitant to respond to
4 questions relating to a document of this complexity on such
5 short notice.

6 MR. BOEHM: Your Honor --

7 THE WITNESS: I'll do my best.

8 BY MR. COLBERT:

9 Q. If you don't know, you can say you don't know, that
10 would be fine.

11 A. Well, I can read the Paragraphs 1 and 2, as you
12 requested, but in terms of making an overall assessment of this
13 private letter ruling, I'm afraid I would be very limited in my
14 ability to do that.

15 Q. I understand. We can take that into consideration.

16 (Witness reviewing documents.)

17 A. Okay. I've read --

18 MR. BOEHM: Your Honor, at this point in time, I've
19 tried to read through this thing, too. I suggest that, your
20 Honors, to try to read through this six-page ruling while on the
21 stand, we're not going to get anywhere. This is clearly a
22 complicated document and we need time. I don't think it's fair
23 to the witness to have him read paragraphs and agree or disagree
24 on the record with this letter ruling. It seems counsel is free
25 to argue this on brief, if they like.

1 EXAMINER FARKAS: If he doesn't feel comfortable
2 answering that, I would ask him to state that on the record in
3 his answer. So you can ask your question.

4 MR. COLBERT: Thank you.

5 (Pause.)

6 MR. COLBERT: Your Honor, in light of the
7 representation of the witness, I won't ask any questions on this
8 document.

9 EXAMINER FARKAS: Okay.

10 MR. BOEHM: Your Honor, may I take it that counsel is
11 withdrawing this as an exhibit or potential exhibit? It's
12 marked 72 in the record.

13 EXAMINER FARKAS: It's marked 72, that's correct.

14 MR. COLBERT: We'll withdraw it as an exhibit.

15 MR. BOEHM: Thank you.

16 EXAMINER FARKAS: Okay.

17 BY MR. COLBERT:

18 Q. Mr. Kollen, you suggest that if the Commission thinks
19 there is a risk of normalization violation, that it seek a
20 private letter ruling from the Internal Revenue Service. Do you
21 know if the Internal Revenue Service is obligated to give such a
22 ruling?

23 A. I don't know if they're actually -- the IRS is
24 actually obligated to issue in a ruling. Nevertheless, the
25 company will have to pay a fee to file the request, and I would

1 think that the taxpayer, in this case the utility, would be
2 entitled to a ruling, some decision on the part of the IRS.

3 Q. Do you know how long it might take to get such a
4 ruling?

5 A. In my experience, it probably takes six months or
6 more.

7 MR. BOEHM: Your Honor, I want to go off the record.

8 EXAMINER FARKAS: Okay. Let's go off the record.

9 (Recess taken.)

10 EXAMINER FARKAS: Let's go back on the record. You
11 can proceed.

12 MR. COLBERT: Thank you, your Honor.

13 BY MR. COLBERT:

14 Q. Mr. Kollen, do you know is the MISO operational at
15 this point?

16 A. My understanding is that it is not.

17 Q. Do you know if CG&E has incurred the cost adder that
18 it seeks to defer through recovery in the RTC in this case?

19 A. I don't know if it has incurred -- I don't believe it
20 has incurred the cost adder. I don't know if it has incurred
21 other costs at this point.

22 Q. Mr. Kollen, in regard to system development costs, do
23 you know if in order to provide services such as competitive
24 metering, billing and collection, whether or not CG&E is
25 required to be a certified supplier?

1 A. My understanding is that the incumbent utility is not
2 required to be the T&D utility.

3 Q. If you --

4 A. On a competitive basis, it would be required to be a
5 supplier or a supplier to a supplier. In other words, a third
6 party. And CG&E could do that through an affiliate
7 relationship.

8 Q. We could become a certified supplier through an
9 affiliate?

10 A. Yes, that's true. Yes.

11 Q. Do you know if CG&E is proposing to do that in this
12 case?

13 A. I don't believe that CG&E has proposed to do that with
14 respect to its service territory.

15 Q. Do you believe that CG&E will incur any costs
16 necessary to interface with certified suppliers to help develop
17 the competitive market?

18 A. Yes. And, in fact, the company has developed tariffs
19 to recover those costs and has included those in its application
20 and filing in this proceeding.

21 Q. Do you know if those tariffs that were part of the
22 company's original application are still part of the application
23 given the operational support stipulation?

24 A. I would have to go back and check. I don't know.
25 With respect to the operational support stipulation, I'm not --

1 I don't recall what's in there with respect to the tariffs or
2 the level of the tariffs.

3 Q. Do you know if -- Do you know if system costs are
4 included in the tariff costs, the costs to be recovered by the
5 tariffs that you referred to?

6 A. My understanding is that there are incremental costs
7 that the company has identified and has used those to develop
8 the tariffs in order to generate revenues sufficient to recover
9 those incremental costs, and according to Mr. Morris' testimony,
10 those incremental costs include system development costs.

11 Q. On Page 12, Line 18 to 22 of your testimony, you talk
12 about the company's conversation with securities analysts.
13 Would it be more accurate to say that the determination of a
14 write-off rests on both business strategies and the Commission's
15 approval of the stipulation instead of just on business
16 strategies?

17 A. Well, I think I -- Rephrase the question just a little
18 bit. I don't think it hinges just on the company's business
19 strategies and/or its approval of the stipulation. I think what
20 I would state is that whether or not there is an impairment
21 write-off is contingent upon the Commission's order in this
22 proceeding and its business strategies regardless of the
23 stipulation aspect of the Commission's order.

24 (Pause.)

25 Q. Mr. Kollen, during discovery, AK Steel asked for and

1 received a letter from the SEC that stated "that when performing
2 an impairment calculation in accordance with SFAS-121, we would
3 expect plant assets to be grouped at the lowest level of
4 identifiable cash flows that are largely independent of the cash
5 flows of other plant assets. We presume that generally it would
6 be on an individual plant basis; however, we understand that
7 there may be circumstances where aggregation on some other level
8 would be appropriate. We do not believe that an entity may
9 solely rely on the manner in which those assets are intended to
10 be managed in order to make the aggregation decision." Do you
11 recall that letter?

12 MR. BOEHM: Objection, your Honor. I ask that it be
13 stricken. I don't know why counsel believes that if we asked
14 for something and got it in discovery, that it needs to be a
15 matter of this record. If the company wants to sponsor
16 something, that's fine.

17 EXAMINER FARKAS: I'll let him answer if he recalls
18 getting the letter.

19 THE WITNESS: AK Steel did ask for discovery for
20 documents in the company's possession related to impairment
21 issues, and we were provided a copy of correspondence from
22 various accounting firms that described the impairment tests
23 under Statement 121 and various write-off criteria related to
24 Statement 101, which is discontinuing the application of
25 Statement 71. And then the Securities Exchange Commission

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COLUMBUS, OHIO (614) 431-1344

1 responded back to the accounting firms, I think, on two
2 occasions with one letter containing the words that Mr. Colbert
3 just read in the record.

4 EXAMINER FARKAS: Okay.

5 BY MR. COLBERT:

6 Q. Do you agree with that letter?

7 A. I don't agree or disagree with the letter. It is what
8 it is, and I think that my assessment of that letter from the
9 Securities Exchange Commission is that it was, A, directed to
10 Deloitte and Touche, who wrote the letter on behalf of the
11 accounting firms. And my assessment of the letter is it simply
12 affirms Paragraph 8 and then Paragraphs 95 through 97 of
13 Statement 121.

14 And, in fact, the accountants several times in the
15 letters to the Securities Exchange Commission repeatedly stated
16 that -- in fact, referenced these very same paragraphs in
17 Statement 121 and said, you know, whatever our comments, the
18 statements are what they are, and we would, of course, recommend
19 that our clients remain or -- or account for costs in accordance
20 with the statements of financial accounting standards
21 themselves. So and I think the Securities Exchange Commission
22 just simply affirmed that representation. That's my
23 interpretation of that letter.

24 Q. Are you aware that the books and records of CG&E are
25 subject to periodic audit by external auditors and the FERC?

1 A. Yes.

2 MR. COLBERT: I don't have anything else, your Honor.

3 EXAMINER FARKAS: Okay. Staff have any questions?

4 MR. HOERSTING: No, no questions, your Honor.

5 EXAMINER FARKAS: Any questions?

6 MS. ROBINSON-MC GRIFF: No questions, your Honor.

7 EXAMINER FARKAS: Any redirect?

8 MR. BOEHM: Just a moment, your Honor. If I could
9 consult, take just a break for a couple minutes.

10 EXAMINER FARKAS: Yes. We'll go off the record.

11 (Discussion held off the record.)

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

13 MR. BOEHM: Your Honor, I have no redirect for this
14 witness.

15 EXAMINER FARKAS: Thank you. You're excused. Thank
16 you for your testimony.

17 (Witness excused.)

18 MR. COLBERT: Your Honors, at this time, I would move
19 CG&E Exhibits 70 and 71 into evidence.

20 MR. BOEHM: Your Honor, I would object to the
21 introduction of CG&E Exhibit No. 71, all that has been
22 established by counsel --

23 EXAMINER FARKAS: Wait a minute. 70, you don't have
24 any objection to; is that right?

25 MR. BOEHM: If I could remember what 70 is, your

1 Honor.

2 EXAMINER FARKAS: That was the comparison between JPS
3 and JPS-SUP-5.

4 MR. BOEHM: No, your Honor. No objection to that.

5 EXAMINER FARKAS: Okay. Then we'll admit that. Any
6 objection?

7 MS. ROBINSON-MC GRIFF: No.

8 MR. HOERSTING: No.

9 EXAMINER FARKAS: We'll admit 70.

10 - - -

11 Thereupon, Company Exhibit No. 70
12 was received into evidence.

13 - - -

14 MR. BOEHM: Your Honor, with respect to CG&E Exhibit
15 No. 71, all that's been established here is this was a document
16 filed by Deloitte and Touche with the -- the National
17 Association of Regulatory Utility Commissioners, that's NARUC,
18 and it's -- and in that respect, probably no different than a
19 lot of other things they get in the mail, and there is nothing
20 in this document or in the letter which will establish this has
21 any official sanction of NARUC. All this establishes is they
22 got it.

23 MR. COLBERT: Your Honor, I -- on the last page of the
24 document itself of which we have provided or we'll provide to
25 the court reporter the original, it says that "The National

1 Council on Competition in the Electric Industry has sponsored
2 this series of papers to provide high-quality information
3 relevant to specific topics related to the restructuring of the
4 electric industry. The intent is not to promote one model for
5 restructuring but to stimulate thinking and encourage solutions
6 to many complex challenges regardless of the model that is
7 adopted.

8 "The National Council on Competition in the Electric
9 Industry is a joint project of the National Association of
10 Regulatory Utility Commissioners...."

11 This is an official sponsored document, it says so of
12 its own accord. The Commission can take into account its weight
13 and credibility, and it certainly goes to the topic the witness
14 was testifying to.

15 EXAMINER FARKAS: We'll admit it not for the truth of
16 the matters asserted, but to clarify the answers that the
17 witness made.

18 MR. BOEHM: For that limited purpose, your Honor,
19 thank you.

20 EXAMINER FARKAS: Yes.

21 - - -

22 Thereupon, Company Exhibit No. 71
23 was received into evidence.

24 - - -

25 EXAMINER FARKAS: Then you had -- You've moved the

1 admission of AK Steel Exhibit 14?

2 MR. BOEHM: 14.

3 EXAMINER FARKAS: Do you have any objection to --

4 MR. BOEHM: Which is the statement of the witness.

5 EXAMINER FARKAS: No objection. Then that will be
6 admitted.

7 - - -

8 Thereupon, AK Steel Exhibit No. 14

9 was received into evidence.

10 - - -

11 EXAMINER FARKAS: You can call your next witness.

12 MR. BOEHM: Yes, your Honor, I call Randall
13 Falkenberg.

14 EXAMINER FARKAS: Raise your right hand.

15 (Witness placed under oath.)

16 EXAMINER FARKAS: Okay. You may proceed.

17 MR. DORTCH: Your Honor, I'm sorry, Dave, there's
18 going to be a little bit of shifting over here. Could we
19 wait -- could we have five minutes?

20 EXAMINER FARKAS: Let's go off the record. Let's take
21 ten minutes.

22 (Recess taken.)

23 EXAMINER FARKAS: Let's go back on the record. You
24 may proceed.

25 - - -

1 Thereupon, AK Steel Exhibit No. 15 was
2 marked for purposes of identification.

3 - - -

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1 RANDALL J. FALKENBERG
2 of lawful age, being first duly placed under oath, as prescribed
3 by law, was examined and testified as follows:

4 DIRECT EXAMINATION

5 BY MR. BOEHM:

6 Q. Mr. Falkenberg, will you state your name and spell
7 your first and last name for the court reporter, please?

8 A. Randall J. Falkenberg, R-a-n-d-a-l-l. Falkenberg is
9 F-a-l-k-e-n-b-e-r-g.

10 Q. Mr. Falkenberg, by whom are you employed?

11 A. RFI Consulting, Inc.

12 Q. And, Mr. Falkenberg, have you in front of you a
13 document entitled "Direct testimony and exhibits of Randall J.
14 Falkenberg"?

15 A. Yes.

16 Q. And is that document -- was that document prepared by
17 you or under your supervision?

18 A. Yes, it was.

19 Q. And do you have any additions or corrections to that
20 document?

21 A. Yes. I have the errata that I handed out previously
22 last week, which has been presented to the parties, I guess, to
23 the case.

24 Q. Yes.

25 A. The substance of the errata is to correct my Exhibit

1 8-A and 8-B and to make a slight change on the figure in -- on
2 the number reported on Page 64, Line 11. It changes from 985
3 million to 957 million for the CG&E stranded benefit.

4 MR. BOEHM: And, your Honor, I would ask that the
5 witness' direct testimony also -- that this errata sheet be
6 incorporated into the exhibit number for his testimony, and I
7 believe that was --

8 EXAMINER GOODEN: We had it as 8 before.

9 MR. BOEHM: Maybe we better leave it as 8. And we'll
10 have the AK Steel exhibit marked as AK Steel No. 15, I believe
11 it is. And I would ask everybody to cross out that Number 3
12 that we had previously -- that's contained on the document; so
13 that there is no confusion.

14 BY MR. BOEHM:

15 Q. With that, Mr. Falkenberg, if I were to ask you the
16 questions that are contained in AK Steel Exhibit No. 15, would
17 your answers be the same as are contained therein?

18 A. Yes.

19 MR. BOEHM: With that, I submit the witness for
20 cross-examination and move the introduction of AK Steel Exhibit
21 No. 15 subject to cross.

22 EXAMINER FARKAS: Okay. Thank you. You may proceed.

23 MR. DORTCH: Thank you, your Honor. And at this time,
24 your Honor, the company has several motions to strike that it
25 would like to have considered.

1 EXAMINER FARKAS: All right.

2 MR. BOEHM: Your Honor, to the extent that this motion
3 deals with the order of the Pennsylvania Public Utilities
4 Commission, I have copies of the full document for everyone,
5 quite extensive. I have limited copies of the full document,
6 and I have about 15 copies of those experts that are referred to
7 by Mr. Falkenberg in his testimony.

8 MR. DORTCH: May I be heard on objections, your Honor?

9 EXAMINER FARKAS: Yes.

10 MR. DORTCH: Your Honor, although there are quite a
11 number of objections, and the way I've got it outlined here, I
12 have ten in total, they can really be grouped into three
13 categories. And category one, which is the first motion to
14 strike on the sheet that I've handed out, refers to Page 49,
15 Footnote 22. In this footnote, Mr. Falkenberg attempts to
16 utilize a settlement agreement to draw the inference that the
17 company had -- or that the company believed it had negative
18 stranded costs despite PHB testimony that would support positive
19 stranded costs. Pursuant to Evidence Rule 408, a settlement
20 cannot be used as evidence of a fact in question, and we would
21 ask that that footnote be stricken.

22 MR. BOEHM: May I have a moment to read it, your
23 Honor?

24 EXAMINER FARKAS: Yes.

25 MR. BOEHM: This is Page 49?

1 MR. DORTCH: It's Page 49, it's the footnote,
2 Mr. Boehm.

3 MR. BOEHM: Okay. Your Honor, in the interest of
4 fairness, and I've always been on the side of fairness, I'll
5 agree with counsel on that. We'll withdraw the footnote.
6 Strike the footnote.

7 MR. DORTCH: Thank you, Mr. Boehm. And despite all of
8 this, I never had any doubt that you are a very fair man.

9 Moving on, then, your Honors, to the second category
10 of items that the company requests stricken, and these are set
11 forth in the specific items numbered 2 through 7 in this sheet.
12 Your Honor, all of these objections, and they may change
13 slightly depending upon the specific line -- page and line of
14 the testimony, but every one of these objections is, in essence,
15 based upon the same difficulty with what's going on here.

16 Mr. Falkenberg is testifying as to the contents of a
17 document that has not been admitted into evidence. It is,
18 therefore, Mr. Falkenberg's hearsay of a document that has
19 not -- that is itself hearsay. Pursuant to Rules 902 and 1005,
20 the document must be certified or attested to to be
21 authenticated, it should be admitted into evidence to be used in
22 this fashion.

23 The -- The additional problems with this use of this
24 document, your Honor, are that it is -- first, it is an attempt
25 to circumvent Rule 106 of the rules of evidence. That

1 document -- or, that rule of evidence compels that if any
2 portion of a document is to be admitted into evidence, that the
3 other side has the ability to compel that the entire document be
4 admitted into evidence.

5 In this case, while it's true the Pennsylvania
6 Commission was critical of certain conclusions reached by Hagler
7 witnesses, it is equally true that the Pennsylvania Commission
8 was very critical of Mr. Falkenberg and his model. And so
9 admission or the use of this document in this form permits -- or
10 is an attempt to permit to selectively choose what's going to
11 come into the evidence here.

12 In addition, your Honor, it's my concern, and I
13 believe this is right, that this is simply improper impeachment.
14 It's obvious that the purpose and the use of the Pennsylvania
15 order in this fashion is to impeach the testimony of
16 Dr. Speyer -- or Dr. Pifer and Mr. Speyer. Those witnesses were
17 available. They've actually testified here. They could have
18 been cross-examined regarding the conclusions of the
19 Pennsylvania Commission. They could have been given the
20 opportunity to defend the positions that they took in
21 Pennsylvania, and perhaps to explain the meaning or their
22 interpretation or what was going on in Pennsylvania that led to
23 the conclusion we have seen.

24 They've not been afforded that through the
25 introduction of this -- or the attempt to introduce this

1 evidence in this fashion and I, therefore, believe that evidence
2 rule 608 through 610, 613, 616 and 706 have been violated. And
3 in your -- all honesty, your Honor, I don't ever remember making
4 a motion based on so many single rules of evidence, but,
5 nonetheless, I think that that's a rather thorough rendition of
6 all the problems with this use of the contents -- well, disuse
7 of Mr. Falkenberg's testimony.

8 MR. BOEHM: May I be permitted to address that?

9 EXAMINER FARKAS: Yes.

10 MR. BOEHM: Your Honor, we have with us today four
11 copies, complete copies of the order from which this came. We
12 also have the pages that are referred to by Mr. Falkenberg in
13 his testimony. The company here cannot claim surprise. I know
14 they've got a copy of this document and they've had it for some
15 time.

16 I don't know why -- I'm not familiar with any rule
17 that says that the testimony of my witness may not impeach their
18 witness, and I would challenge counsel to come up with something
19 like that. If this were a -- If this were a court case, if
20 there were a PUCO versus Falkenberg or something, if it was a
21 filed case, no one would question at all that I could refer to
22 this case and -- and use the findings in the case to make points
23 in my case by analogy. And routinely, of course, Commission
24 opinions, both the Commission in this state and other states,
25 have been used for the same purpose. They're treated like

1 judicial opinions.

2 Now, we could have -- We could have filed this
3 probably with our original testimony. I think it would have
4 been very voluminous. They've had it for some time. I would be
5 happy to give a copy to the Attorney-Examiners and the company
6 will be free certainly, on brief, to argue any part of this
7 decision they like.

8 I mean, these are precedents, and I know the Ohio
9 Commission relies from time to time on opinions of other
10 decisions. I know counsel in briefs and arguments cite opinions
11 of this Commission and other commissions and I -- I see nothing
12 improper in it.

13 MR. DORTCH: Your Honors, may I address Mr. Boehm's
14 comments?

15 EXAMINER FARKAS: Yes.

16 MR. DORTCH: Your Honors, Mr. Boehm is in part
17 correct. There are ways this could have been used. There are
18 correct ways to introduce this into evidence. He could have
19 used his witness to sponsor the document itself, as an example.
20 He could have had somebody authenticate it, but none of those
21 ways resolve where we are now.

22 And where we were now is that we have a witness
23 testifying as to hearsay regarding experts that are not capable
24 of defending themselves now against that hearsay. Those experts
25 were put on the stand. Those experts were not questioned

1 regarding the Pennsylvania order, and those experts have had no
2 opportunity to respond.

3 MR. BOEHM: Your Honor, I don't know any questions I
4 would ask them about the Pennsylvania order. The Pennsylvania
5 orders are the Pennsylvania orders, and we are familiar with the
6 idea that the Commission's decision is the Commission's
7 decision, and it's certainly so in Pennsylvania. I don't see
8 any point in my cross-examining Mr. Pifer, whether he agreed
9 with it or not. I'm sure he didn't agree with it.

10 It's the Commission's decision in Pennsylvania. I
11 think it's relevant to this case and I think the testimony of
12 this witness shows how it's relevant to this case. As I say, if
13 it were a court decision, I don't think we would have the
14 slightest doubt they could use it. If it was a decision of the
15 PUCO, I don't think anybody would have the slightest doubt you
16 could use it. I don't want to cross-examine the witness about
17 this. I don't have to.

18 EXAMINER FARKAS: Okay. We're going to deny the
19 motion to strike. Proceed.

20 MR. DORTCH: Thank you.

21 MR. BOEHM: Your Honor, I would like to give to the
22 court reporter two copies of the opinion so that no one can
23 claim that they don't have it available, and then I have one
24 copy for your Honors.

25 EXAMINER FARKAS: Okay.

1 MR. BOEHM: I have two copies for your Honors. I
2 never short the Court.

3 MR. DORTCH: Mr. Boehm, I'm understanding that you are
4 introducing this order into evidence?

5 MR. BOEHM: I don't think I need to introduce it into
6 evidence.

7 MR. DORTCH: Your Honors --

8 MR. BOEHM: I am -- I'll introduce it into evidence,
9 then, your Honor. I assume counsel has a copy of this.

10 EXAMINER FARKAS: Mark this AK Exhibit 16?

11 MR. BOEHM: Yes, your Honor.

12 EXAMINER FARKAS: Okay.

13 - - -

14 Thereupon, AK Steel Exhibit No. 16 was
15 marked for purposes of identification.

16 - - -

17 MR. DORTCH: May I have a moment, your Honor, before I
18 address the next one?

19 EXAMINER FARKAS: Yes.

20 MR. DORTCH: Your Honor, can I be heard on the third
21 group, if you will --

22 EXAMINER FARKAS: Yes.

23 MR. DORTCH: -- of items in the motion to strike?
24 These -- The items identified in the list that I have handed
25 Your Honors and others, has 8 through 10. These group of items

1 in Mr. Falkenberg's testimony really are based upon
2 Mr. Falkenberg's competency and expertise to testify into the
3 specific areas identified.

4 Mr. Falkenberg testifies as to an investment
5 calculation and it is -- and it is clear, and I'm willing to do
6 voir dire if your Honors so choose, that Mr. Falkenberg does not
7 have expertise. He is not an expert in the areas of investment
8 or finance. Mr. Falkenberg is not an expert in the areas of
9 environmental policy or in the impact of environmental
10 regulation on the electric industry, and Mr. Falkenberg really
11 has no special knowledge regarding the implementation of the
12 Kyoto protocols. And with that lack of expertise, he has no
13 foundation for his opinions and, therefore, I would move to
14 strike the items identified on my list as Items 8, 9, 9b and 10.

15 MR. BOEHM: Your Honor, I would certainly be more than
16 willing to have -- let counsel voir dire the witness on his
17 competency in matters -- financial matters regarding utility
18 cases. I think if you go back and look at the -- the
19 attachments to the -- to the testimony in this case, this
20 witness has extensive, and I would say very, very impressive
21 credentials in that area.

22 EXAMINER FARKAS: You can voir dire the witness as you
23 wish.

24 MR. DORTCH: Thank you, your Honor.

25 - - -

1 VOIR DIRE EXAMINATION

2 BY MR. DORTCH:

3 Q. Mr. Falkenberg, I would like to discuss the basis for
4 your environmental opinions. Would you agree with me that you
5 have not followed EPA's attempts to implement NOx restrictions
6 on the electric industry?

7 A. I believe I testified in my deposition that I hadn't
8 followed those closely.

9 Q. Sir, I'm sorry, could you speak up? There's a noise
10 back here that makes it very difficult to hear.

11 A. I believe that I have testified during my deposition
12 that I hadn't followed those matters closely, and I hadn't been
13 made available any of the documents related to those matters.

14 Q. Are you familiar with the EPA's new source review
15 standards?

16 A. No.

17 Q. Are you familiar with EPA's new source review
18 litigation?

19 A. No.

20 Q. Are you familiar with the demand that EPA is making
21 upon members of the industry or if there are demands that EPA is
22 making on members of the industry concerning its new source
23 review standards?

24 A. No.

25 Q. Do you know what levels of controls EPA is proposing

1 on mercury emissions from coal plants?

2 A. No.

3 Q. Do you know anything of the specifics of EPA's efforts
4 to impose PM 2.5 controls on the coal industry? I'm sorry,
5 Dr. Falkenberg, do you need to have the question reread?

6 A. I think that I agreed that I hadn't -- I wasn't aware
7 of the specifics of those regulations or proposed regulations.

8 Q. Can you tell me what you are aware of concerning those
9 regulations?

10 A. It's my general understanding that EPA has sought to
11 tighten some of the regulations related to air quality and those
12 issues are under litigation in court, and some of them are even
13 before the Supreme Court.

14 Q. Do you know which issues are before the Supreme Court?

15 A. I believe it has to do with whether or not the EPA
16 must consider cost benefiting analysis as part of imposing new
17 regulations.

18 Q. Do you know if the PM 2.5 standards are the subject of
19 litigation anywhere at this time?

20 A. I don't know that.

21 Q. Do you know whether the PM 2.5 standards are the
22 subject of proposed regulation at this time?

23 A. No, I don't.

24 Q. Do you -- Have you followed EPA's efforts to impose
25 SO2 limitations on coal industry?

1 A. Generally.

2 Q. Okay. What can you tell me about EPA attempts to
3 impose SO2 limitations on the coal industry?

4 A. Again, it's my understanding that EPA has attempted to
5 tighten the regulations and that that's been challenged.

6 Q. Do you know how they are tightening them?

7 A. Not specifically, no.

8 Q. Do you know who challenged them?

9 A. Know who challenged?

10 Q. You say that you know that you have -- that the effort
11 to tighten SO2 has been challenged. I'm asking if you know who
12 is challenging that effort?

13 A. The utility industry.

14 Q. I'm sorry, sir, it's --

15 A. The utility industry.

16 Q. The utility industry is your answer?

17 A. Yes.

18 Q. Do you know where that challenging is occurring?

19 A. No.

20 Q. Mr. Falkenberg, I would like to discuss your knowledge
21 that underlay your testimony at Page 34, I believe it's 34
22 through 39, sir. Have you ever worked in the investment
23 industry?

24 A. No.

25 Q. Do -- You quote as part of your testimony, you quote

1 Dr. Colin Blaydon. The effect of your quotation is that project
2 financing typically involves a specific debt schedule whereby
3 the outstanding principal is paid down over time. Do you recall
4 that?

5 A. Yes.

6 Q. Can you explain to me what project financing is?

7 A. It's the financing instrument associated with a
8 specific project.

9 Q. Can you tell me how it defers from portfolio
10 financing?

11 A. No.

12 Q. Do you understand what role bonds might play in the
13 construction of power plants?

14 A. Yes.

15 Q. Okay. What role do bonds play in the construction of
16 power plants?

17 A. Typically power plants are financed, under regulation
18 at least, they were financed through bonds, bond issuing and
19 sometimes equity issuance.

20 MR. DORTCH: I'm sorry, may I have the answer read
21 back? Your Honors, if you don't mind, I'll stand up here for a
22 little bit. I'm almost deaf back there.

23 EXAMINER FARKAS: That's okay.

24 (Record read back as requested.)

25 MR. BOEHM: Your Honor, may I inquire, is counsel

1 still in voir dire? Because in my understanding, voir dire on
2 his credentials would be what he has done before, what cases has
3 he testified in, what's his legal training. It wouldn't be like
4 20 --

5 MR. DORTCH: It's underlying --

6 MR. BOEHM: Excuse me, counsel.

7 MR. DORTCH: I'm sorry, Mr. Boehm.

8 MR. BOEHM: Do you know things like this, this or that
9 are things with which counsel may seem are relevant to his
10 expertise, but it seems to me the issues here on voir dire are
11 what are his credentials in the area of financing for utility
12 projects. That's what I expected this was to be.

13 EXAMINER FARKAS: I believe your motion to strike is
14 also directed at the environmental portion of his testimony?

15 MR. DORTCH: Yes, your Honors. I -- I sought to have
16 two portions of Mr. Falkenberg's testimony stricken based upon
17 the lack of foundation for the opinions that he is offering.
18 They were the environmental opinions that he offers, and they
19 are the cost of capital criticism that he has of Dr. Blaydon's
20 calculation.

21 EXAMINER FARKAS: I'll allow you to proceed.

22 MR. DORTCH: Thank you.

23 BY MR. DORTCH:

24 Q. Do you believe -- Strike that.

25 MR. DORTCH: Can we have the last question and answer

1 read.

2 (Record read back as requested.)

3 BY MR. DORTCH:

4 Q. Mr. Falkenberg, must bonds necessarily be paid down
5 rateably or annually as you testified in your testimony, 34
6 through 39 of your testimony?

7 A. Well, I think traditionally we think of bonds as being
8 paid off at maturity. The type of financing instruments I'm
9 talking about here are more akin to mortgages.

10 Q. So you agree that the kind of financing you are
11 talking about here is essentially a home mortgage?

12 A. It's very similar, yes.

13 Q. All right. Is it -- To your knowledge, are financing
14 techniques similar to a home mortgage, the typical financing
15 techniques used to build assets such as these power plants?

16 A. Well, for merchant power plants, it seems to me that
17 the projects I've been involved in, that has been the -- the
18 normal technique which analysts have used in analyzing those
19 projects.

20 Q. Can you tell me the difference between weighted cost
21 of capital, flow to equity, and adjusted present value as
22 valuation approaches?

23 A. Well, I think that the -- we talked about this during
24 my deposition. Flow to equity I was familiar with. I believe
25 that's a cash flow type analysis. Weighted cost of capital

1 would seem to me that that -- that's just simply equal to the
2 calculation of the cost of debt times the percent of debt and
3 capital structure and the cost of equity times the percent of
4 the equity in the capital structure. It may have a different
5 meaning in a different context, but that's the context with
6 which I'm familiar.

7 Q. Do you know whether balance sheet financing is
8 increasing or decreasing in importance for merchant plants?

9 A. I don't know that.

10 Q. Have you taken courses in finance?

11 A. No.

12 Q. Do you recognize any texts as authoritative in the
13 area of finance?

14 A. No.

15 Q. Have you taken courses in environmental regulation?

16 A. No.

17 Q. I assume you don't teach in any of these areas?

18 A. No.

19 Q. You don't lecture in these areas?

20 A. No. No.

21 MR. DORTCH: Your Honors, with that, I would renew my
22 motion to strike these two areas of Mr. Falkenberg's testimony.

23 MR. BOEHM: Your Honor --

24 EXAMINER FARKAS: We are going to deny the motion to
25 strike and also incorporate his voir dire, and the Commission

1 will base this decision on how much weight to give his
2 testimony.

3 MR. BOEHM: I appreciate that, your Honor. I don't
4 want to prolong this, but I would like to ask some questions on
5 voir dire as well to clarify the record. I don't want to run
6 this on. I appreciate --

7 EXAMINER FARKAS: We're denying the motion to strike.

8 MR. BOEHM: I understand, your Honor, but in
9 incorporating the questions on voir dire, we've got one side of
10 the equation.

11 EXAMINER FARKAS: You can do it on redirect.

12 MR. BOEHM: Okay. We'll do it that way, your Honor.

13 MR. DORTCH: I'm sorry?

14 EXAMINER FARKAS: Do it on redirect.

15 MR. DORTCH: Thank you.

16 - - -

17 CROSS-EXAMINATION

18 BY MR. DORTCH:

19 Q. Mr. Falkenberg, I'm going to try to do my
20 cross-examination from back here, and there is a vent right over
21 my head.

22 EXAMINER FARKAS: Let's go off the record for a
23 second.

24 (Discussion held off the record.)

25 EXAMINER FARKAS: Let's go back on the record.

1 BY MR. DORTCH:

2 Q. Mr. Falkenberg, at Page 10 of your testimony, you
3 point out that differences in models aren't particularly
4 important in the sort of analysis that you typically do; is that
5 correct?

6 A. Yes.

7 Q. In fact, you state that a few key -- I think your
8 words were, a few key variables are often, by far, more critical
9 in the determination of the overall market price than all the
10 other differences due to the models used and basic input data,
11 that may be a quote?

12 A. That's correct.

13 Q. Okay. What variables are the most important in your
14 estimation?

15 A. I think I have it on the same page, but it's fuel
16 price forecasts, assumptions regarding the cost and performance
17 of merchant plants and market structure assumptions,
18 specifically those related to expected level of reserve margins
19 in a competitive market.

20 Q. In fact, generally in your -- in your view, fuel
21 prices are the single most important input to these models; is
22 that correct?

23 A. Yes.

24 Q. Now, in this case, in the matter of considering
25 Cincinnati Gas and Electric Company's request -- In the Matter

1 of the Application of Cincinnati Gas and Electric Company for
2 Approval of its Electric Transition Plan, you identify four
3 variables as important in explaining the difference between your
4 analysis and that of Dr. Pifer's; is that correct?

5 A. I thought it was three, but --

6 MR. BOEHM: Can you give us a page reference, counsel?

7 MR. DORTCH: Actually, I think it's Page 10, Dave, of
8 his testimony.

9 MR. BOEHM: Thank you.

10 BY MR. DORTCH:

11 Q. Well, what three, then, do you consider important?

12 A. The three that are listed here, fuel price cost,
13 forecast cost, and performance of merchant plant market
14 structure assumption.

15 Q. The fourth in this case would be the environmental
16 assumptions; is that correct?

17 A. Well, I think that this has to do with market price
18 forecasts, whereas, the environmental assumptions, such as CO2
19 tax, may not be a part of the market price forecast. It wasn't
20 really a part of the PHB market price forecast, for example.

21 Q. But still explains a considerable difference between
22 your opinion of the company's stranded benefits and the
23 company's opinion of its stranded costs; is that fair?

24 A. Right. If we're talking about stranded costs, yes.

25 Q. What did you rely upon as the basis for the fuel price

1 assumption that you used in your model?

2 A. Energy Information Administration Annual Energy
3 Outlook 2000.

4 Q. The Energy Information Administration is an agency, if
5 you will, of the United States Department of Energy, correct?

6 A. Yes.

7 Q. EIA is a reliable source of data regarding natural
8 gas fuel forecasts, in your opinion?

9 A. Yes.

10 Q. Now, the futures markets play no role as a forecast
11 source for fuel data inputs, do they?

12 A. In my model?

13 Q. That's right.

14 A. That's correct.

15 Q. In fact, you've never used futures prices in your
16 model, have you?

17 A. Well, "never" is a long time, but I can't remember
18 any.

19 Q. Now, you relied upon EIA because it's reliable, it's
20 credible and you define credible as well-recognized,
21 independent, readily available, consistently a good forecast; is
22 that fair?

23 A. Yes.

24 Q. Now, you're aware that Dr. -- Sorry. You're aware
25 that Mr. Speyer averaged four different forecasts in order to

1 create the average or consensus that -- there seems to be some
2 concern about that term -- forecast that he used for purposes of
3 his model or actually that Dr. Pifer used for purposes of his
4 model; is that correct?

5 A. That's partly correct. As I pointed out in my
6 testimony, Mr. Speyer ignored a lot of the information in the
7 forecasts, for example, the escalation rates after the year
8 2010, and I don't believe that Mr. Speyer actually used these
9 other forecast sources for coal prices even though, at least,
10 EIA does have a coal price forecast.

11 Q. I -- You named the natural gas fuel forecasts that
12 Dr. -- or, that Mr. Speyer did use?

13 A. I believe that it --

14 Q. I'm trying to go -- Sorry, I'm trying to go to Dave's
15 Dr. Speyer now.

16 (Laughter.)

17 I can repeat the question if you like.

18 A. No, I think I have it. I believe that it was Standard
19 and Poor's Platts, EIA, Gas Research Institute, and Wharton
20 Economic Forecasting Associates.

21 Q. You don't really have any issue with Mr. Speyer's use
22 of EIA as one of the components, do you?

23 A. No, other than the two items that are pointed out.

24 Q. Now, you also find DRI's forecast to be credible, do
25 you not?

1 A. I have no problem with DRI, did you say?

2 Q. Yes.

3 A. Yes. Formerly, now Standard and Poor's Platts.

4 Q. That's now S&P Platts?

5 A. That's my understanding, yes.

6 Q. Mr. Falkenberg, at Page 25, Line 16 of your testimony,
7 you assert that Mr. Speyer had lost confidence in some of the
8 sources that you identify at Lines 11, 12, 13 and 14 and became
9 confident in a new source, S&P Platts. Do you see where I'm
10 referring to?

11 A. Yes.

12 Q. Okay. Now, the -- let's talk for a moment about the
13 items that you identify at Page 25, Line 11. The first forecast
14 Putnam, Hayes and Bartlett, the Fieldston Company, CoalDat, are
15 those natural gas forecasts?

16 A. I believe.

17 Q. Or are those coal forecasts?

18 A. I believe that those are coal forecasts.

19 Q. Okay. I noticed nowhere in your testimony did you
20 allege that Dr. -- Mr. Speyer had -- had changed the coal
21 forecasts that he has used over the years. Does that mean that
22 he has not done so?

23 A. Well, I don't know whether he changed it or not. I
24 assume that each year a new forecast would be developed.

25 Q. You don't know; is that fair?

1 A. I don't know.

2 Q. Now, let's -- the next four are the EIA Annual Energy
3 Outlook, the Gas Research Institute, Wharton Economic
4 Forecasting Associates, Energy Venture Associates and Resource
5 Data International. Can you tell me when Dr. -- Mr. Speyer
6 relied on Energy Venture Associates and Resource Data
7 International?

8 A. I believe that was in the West Penn case in 1997.

9 Q. 1997?

10 A. Yes.

11 Q. And the S&P Platts isn't a new source at all, is it?

12 A. It was new to Dr. -- to Mr. Speyer, I believe.

13 Q. Well, isn't that actually the old DRI forecast?

14 A. Yes, but I don't believe that he used DRI in the West
15 Penn case.

16 Q. I understand. Now, you've already said that DRI/S&P
17 Platts is a credible forecast. Do you also find the Wharton
18 Economic Forecast Analysis to be credible?

19 A. Yes.

20 Q. What about GRI?

21 A. Well, I believe that I -- We discussed this during my
22 deposition and I pointed out that there was some sentiment that
23 GRI was rather low.

24 Q. Do you agree with that sentiment?

25 A. Based on forecasts I've seen, they generally do seem

1 to be the lowest, to the best of my recollection.

2 Q. Based on the forecasts that you have seen, does EIA
3 generally seem to be the highest?

4 A. I don't know if that's always true. I think they're
5 higher this year.

6 Q. But in any event, S&P Platts, EIA, Wharton Economic
7 Forecast Analysis, those are all credible forecasts in your
8 mind?

9 A. Yes.

10 Q. Fuel forecasts are the most important input into the
11 model you use, correct?

12 A. Yes.

13 Q. Have you ever heard said that by averaging the
14 opinions of many experts, the resulting consensus forecast tends
15 to be more accurate over time than those of any single
16 forecaster?

17 A. I've never heard that said.

18 MR. DORTCH: If I may for a moment, your Honor.

19 (Pause.)

20 MR. DORTCH: Your Honor, may I approach the witness?

21 EXAMINER FARKAS: Yes.

22 MR. DORTCH: Your Honor, what I'm distributing was
23 marked last week during the testimony of Mr. Speyer as Company
24 Exhibit 66. This was not admitted into evidence, but it was
25 marked and identified. If I could ask the witness to turn to

1 the last page of the exhibit.

2 MR. BOEHM: Excuse me, your Honor, may I ask counsel
3 for some -- some representation of what it is we're looking at
4 here and by whom it was done and what it's being admitted for?

5 MR. DORTCH: Mr. Boehm --

6 EXAMINER FARKAS: It's not been admitted yet.

7 MR. DORTCH: It has not been admitted yet.

8 MR. BOEHM: Okay. Thank you.

9 MR. DORTCH: During his direct examination last week,
10 Mr. Speyer stated -- if you'll give me a moment -- Well, I'm not
11 sure on which end of the room I'm at right now.

12 Mr. Speyer stated that he relied upon a statement from
13 this document as one of the reasons that he believed consensus
14 forecasts were appropriate to use and appropriate in this
15 particular case. The document was distributed to Mr. Boehm at
16 the time, and I am simply going to ask the witness on cross to
17 review a -- a paragraph of the last page of the exhibit. It's
18 the second full paragraph --

19 MR. BOEHM: Your Honor, I'm puzzled here. I don't
20 know who Blue Chip Economic Indicators is. I don't know what
21 any of the data in here means. I don't see anything with
22 respect to fuel prices or anything that's germane to this case,
23 and I'm wondering why -- first of all, who did this and why we
24 are to believe that it has validity and what it is intended or
25 hoped to show.

1 MR. DORTCH: Your Honor, the document is not being
2 submitted for the validity of any of the data contained therein.
3 On rebuttal, and assuming that there is likely to be rebuttal,
4 the company will introduce information concerning the validity
5 or the general acceptance of consensus forecasts, but this
6 witness has denied no -- having ever heard that consensus
7 forecasts are more accurate than any single forecaster.

8 This is an exhibit that was relied upon as testified
9 last week by a witness. It is fair to cross-examine him on --
10 to cross-examine this witness, I believe, on statements made in
11 this report, even though I -- pursuant to your Honors' ruling,
12 it has not been admitted into evidence.

13 The significant thing, for purposes of the evidentiary
14 rules, is that an expert has testified he has relied upon it. I
15 just want to know, your Honors, whether this witness is going to
16 agree or disagree with this statement.

17 MR. BOEHM: Your Honor, my --

18 EXAMINER GOODEN: You could ask him if he agrees or
19 disagrees with the statement without putting this into evidence.

20 MR. BOEHM: Right.

21 MR. DORTCH: Your Honor, I have a witness who -- The
22 document is not in evidence, correct.

23 MR. BOEHM: Precisely, your Honor. From my
24 understanding, the counsel has a paragraph, four sentences on
25 the last page of this thing, and that's what he wants the

1 witness to agree or disagree with. I don't see why that
2 requires the admission of this entire document.

3 EXAMINER GOODEN: I mean, the witness isn't sponsoring
4 it or said he's relied on this, and I would just ask him the
5 question --

6 MR. DORTCH: Very well, your Honor.

7 EXAMINER GOODEN: -- if he agrees with your statement
8 or not agrees with the statement.

9 MR. DORTCH: Very well.

10 BY MR. DORTCH:

11 Q. Mr. Falkenberg, allow me to read a statement to you,
12 please. "The hallmark of Blue Chip Economic Indicators is its
13 consensus forecasts. Numerous studies have shown that by
14 averaging the opinions of many experts, the resulting consensus
15 forecasts tend to be more accurate over time than those of any
16 single forecaster." Let me ask you first, sir, do you know what
17 Blue Chip Economic Indicators is?

18 A. I understand it's a survey of forecasts.

19 Q. Do you subscribe to Blue Chip Economic Indicators?

20 A. No.

21 Q. Okay. You do understand it's a survey of forecasters?

22 MR. BOEHM: Your Honor, it seems to me that we're
23 getting apart. Counsel agreed he was going to ask the witness
24 whether he was going --

25 EXAMINER FARKAS: I'll sustain the objection.

1 MR. BOEHM: Okay.

2 BY MR. DORTCH:

3 Q. Returning to the -- returning to the second sentence,
4 Mr. Falkenberg, of the statement that I read aloud, "Numerous
5 studies have shown that by averaging the opinions of many
6 experts, the resulting consensus forecasts tend to be more
7 accurate over time than those of any single forecaster." Do you
8 agree with that sentiment, sir, that statement?

9 A. I don't know what "numerous studies" are referred to
10 there; so I don't know what they've shown. I guess it would be
11 interesting if regulatory commissions would adopt this attitude
12 and just simply average all of the positions of all of the
13 parties and come up with a final number. I'm not sure it would
14 be particularly useful for regulatory purposes.

15 Q. You've never conducted any studies of your own to
16 determine whether consensus forecasts are more or less accurate
17 than individual forecasts?

18 A. No, I haven't, but as I pointed out in my testimony, I
19 don't believe that if this is the standard for a consensus
20 forecast, that it's fair to characterize Mr. Speyer's forecast
21 as a consensus forecast because he took only part of the data
22 for some of the forecasts for some of the years. He didn't use
23 all of the data for all of the forecasts for all of the years.

24 Q. What data, specifically, didn't Mr. Speyer use from
25 these forecasts?

1 A. Well, certainly in the case of EIA, he didn't use the
2 forecast after the year 2010 and he didn't use any of the
3 forecasts for coal.

4 Q. When you say "any of the forecasts for coal," what are
5 you referring to? Do you mean EIA's forecasts for coal, the
6 WEFA forecast for coal, the -- Let me strike that question. Let
7 me try again.

8 When you say he didn't use any of the forecasts for
9 coal, are you saying that your concern is that he did not use
10 the same forecasts for coal that he used for natural gas?

11 A. It's my understanding that EIA, Wharton and DIA, at
12 least, produce coal forecasts. I believe that GRI also produces
13 a coal forecast. Mr. Speyer didn't use those; he used a
14 forecast that he generated from whatever sources that he felt
15 was appropriate.

16 Q. Well, recognizing the various forecasts exist that you
17 believe are credible, I want to know what you did to consider
18 whether these other credible forecasts should influence your
19 opinion?

20 A. I guess I don't really understand the question.

21 Q. I want you to tell me, sir, did you -- Strike that.

22 You used EIA?

23 A. Yes.

24 Q. You know there are other credible forecasts out there.
25 Did you evaluate any of those other credible forecasts?

1 A. No, I didn't. I like to provide a consistent view,
2 where I use a forecast such as EIA, that I can use it one year
3 to the next. And that in the market price forecasts I've done,
4 I've tried to follow pretty much the same format from year to
5 year.

6 Q. Is there some appropriate way, in your view, to
7 account for a number of different credible forecasts giving you
8 different inputs?

9 MR. BOEHM: Excuse me, your Honor, I'd like to object
10 at this point. Maybe I missed something, but I don't remember
11 the witness characterizing these other forecasts as credible.
12 Did I miss that?

13 MR. DORTCH: Your Honor, he certainly -- I mean, we
14 can go and read the testimony, but he certainly did agree that
15 the EIA was credible, that Wharton Economic Financial Analysis,
16 I think is the name of the study, is credible, and that DRI/S&P
17 Platts was credible. He stated that he did not --

18 MR. BOEHM: Okay. Okay. I missed it.

19 EXAMINER FARKAS: Okay. Proceed.

20 MR. DORTCH: Could you read the question back, please.

21 (Record read back as requested.)

22 THE WITNESS: Generally what I would do is I would try
23 to do a study that was consistent using one forecast, and then I
24 might do another one with another forecast and basically look at
25 the range of the results.

1 BY MR. DORTCH:

2 Q. So you'd run your model several times?

3 A. Yes.

4 Q. Did you do that here?

5 A. No.

6 Q. Mr. Falkenberg, it's my understanding that natural gas
7 prices are the price that really matter in the analysis that you
8 performed; is that accurate?

9 A. Well, I think natural gas prices ultimately become
10 more important in terms of market prices than other variables,
11 other fuel prices, however, for calculating the stranded costs.
12 Now, the price of coal was very important, particularly because
13 CG&E's generators primarily burn coal.

14 Q. But -- Okay. So both the price of coal and the price
15 of natural gas are very important, and is that because of the
16 difference -- Strike that. Let's try this again.

17 The price of coal is important. The price of natural
18 gas is important. What significance can I ascribe to the
19 difference between the two?

20 A. Well, that it's important.

21 Q. That it's important. Can you explain to me why?

22 A. Well, first of all, coal does set the marginal cost in
23 a lot of hours in ECAR for many years; so it's important on the
24 basis of market prices for, I would say, the first five or ten
25 years of the study. But, beyond that, the differential is

1 important because it measures the revenue, less cost, that CG&E
2 is obtaining from its sales of energy.

3 Q. In your use of EIA, did you use EIA's assumptions
4 concerning the cost and heat rates of new generation units that
5 are embedded in EIA's forecasts?

6 A. No.

7 Q. Did you use EIA's forecasts of SO2 allowances for
8 prices as embodied in EIA's overall forecasts?

9 A. To the extent that it's included in their fuel price
10 forecast, I used it, but otherwise, I did not.

11 Q. Just so we're clear, mostly for me, all other things
12 being equal, in this case, low gas forecasts tend to favor the
13 company by increasing stranded costs or decreasing stranded
14 benefits and high -- high gas forecasts tend to disfavor the
15 company, they decrease stranded costs or decrease -- we'll try
16 that again -- decrease stranded costs and increase stranded
17 benefits; is that right?

18 A. Yes.

19 Q. Well, these various credible forecasts, they're
20 different, I assume?

21 A. I assume they are, yes.

22 Q. Do you compare them?

23 A. No.

24 Q. Do you know of anyone who has compared them?

25 A. I don't know of anybody that's compared the various

1 forecasts that are out there, no.

2 MR. DORTCH: Your Honor, may I approach?

3 EXAMINER FARKAS: Yes.

4 MR. DORTCH: Your Honor, this should be -- should be
5 marked as Company Exhibit 73.

6 - - -

7 Thereupon, Company Exhibit No. 73 was
8 marked for purposes of identification.

9 - - -

10 MR. DORTCH: And I'm afraid I might be a little close
11 on copies. Is it all right if I give your Honors one?

12 EXAMINER FARKAS: Yes.

13 MR. DORTCH: Thank you.

14 BY MR. DORTCH:

15 Q. Do you recognize the document that I've just asked be
16 marked as Company Exhibit 73?

17 A. Yes.

18 Q. What is this document?

19 A. It's the Annual Energy Outlook 2000.

20 Q. And this is, in fact, the source of your fuel data
21 input assumptions, correct?

22 A. Well, actually, the source of the data that I used
23 comes from EIA's Web page, which is some of the backup material
24 for this document.

25 Q. So you pulled the data off the Web page?

1 A. Yes.

2 Q. Is it the same information as contained in this
3 report?

4 A. It's the --

5 Q. This is the hard copy of it?

6 A. It's the information used to develop this report.

7 Q. I want to ask you to turn, sir, to Page -- Page 99.

8 Let me ask you this, also, as you do so. Have you seen a hard
9 copy version of this report?

10 A. No, I haven't.

11 Q. Is this version, to the best of your knowledge,
12 available on the Web?

13 A. Yes.

14 Q. It is. Thank you.

15 Would you take a look at Page 99?

16 A. Yes.

17 Q. Can you tell me what that table is?

18 A. It's labeled as "Forecast Comparisons."

19 Q. And do you recognize it, sir, as a comparison for the
20 years 2015 and 2020 --

21 A. Yes.

22 Q. -- of the price of natural gas as forecasted by
23 AEO2000, the Wharton, whatever it is, the WEFA -- I will refer
24 to it that way -- GRI, DRI and AGA, which I understand to be the
25 American Gas Association; is that your understanding as well?

1 A. Yes.

2 Q. Would you tell me, sir, what the electricity prices to
3 elect -- I'm sorry, let's try again.

4 Would you tell me, sir, what the natural gas prices in
5 the year 2015 are projected to be in AEO2000's reference case?

6 A. Now, okay, just so I get it, it's -- Could you repeat
7 that?

8 Q. I'll try. Can you tell me what AEO2000 projects as
9 its reference case, the price of natural gas to be in the year
10 2015?

11 A. Okay. And is this lower 48 wellhead price, is that --

12 Q. Yes.

13 A. \$2.71.

14 Q. End-use prices 1998 dollars per thousand cubic feet?

15 A. How about electricity generators, is that what you
16 want?

17 Q. Electricity generators.

18 A. 3.28.

19 Q. \$3.28?

20 A. Yes.

21 Q. What's AEO's low economic growth price?

22 A. 2.93.

23 Q. Its high economic growth price?

24 A. 3.57.

25 Q. What is Wharton, the WEFA?

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1 A. 2.81.

2 Q. GRI's projection?

3 A. GRI's, 2.64.

4 Q. DRI?

5 A. 2.84.

6 Q. AGA's projection?

7 A. 2.64.

8 Q. Would you move to 2020, sir, the table immediately
9 below?

10 A. Yes.

11 Q. End-use prices, 1998 dollars per thousand cubic feet,
12 electricity generators. Same information. The reference case
13 price as projected by AEO2000 is \$3.41, do you agree?

14 A. Yes.

15 Q. And Wharton projects \$2.94; is that correct?

16 A. 2.95 -- Oh, I'm sorry, yes, 2.94.

17 Q. Okay. And unfortunately, we don't have GRI or AGA
18 here, but Wharton is \$2.94 and DRI is \$3.08, correct?

19 A. Yes.

20 Q. You would agree with me, sir, that the AEO prices are
21 higher --

22 A. Yes, I agree.

23 Q. -- under AE -- I'm sorry. Let me try again and let me
24 complete my question.

25 You would agree with me that the AEO prices are

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1 noticeably higher than the projections offered by these other
2 analysts, would you agree?

3 A. I would agree they're higher, yes.

4 Q. All right.

5 MR. DORTCH: Your Honors, may I approach?

6 EXAMINER FARKAS: Yes.

7 - - -

8 Thereupon, Company Exhibit No. 74 was
9 marked for purposes of identification.

10 - - -

11 MR. DORTCH: Your Honor, I ask -- just a moment.

12 MR. BOEHM: Off the record.

13 (Discussion held off the record.)

14 MR. DORTCH: Your Honor, I ask that the -- the excerpt
15 that I have just distributed from the Energy Outlook 1999 be
16 identified as Company Exhibit 74.

17 BY MR. DORTCH:

18 Q. Mr. Falkenberg, attached to this -- Well, Company
19 Exhibit 74, Mr. Falkenberg, would you agree, is the same
20 forecast comparisons that we just evaluated -- same chart of
21 forecast comparisons that we just discussed out of the AEO2000
22 report --

23 A. Yes.

24 Q. -- correct?

25 Thank you. And, again, would you agree with me that

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1 for both the years, 2015 and the years 2020, the AEO forecast is
2 considerably higher than the Wharton, DRI, AGA or GRI forecasts;
3 is that fair?

4 A. No, I don't think I'd agree, at least for the -- and I
5 think it's a question of your characterization, but for
6 example --

7 Q. You don't agree with me saying "considerable"; is that
8 fair?

9 A. Yes, because in 2020 in the reference case for AEO it
10 was 3.31; whereas, DRI that year was 3.23, which is not terribly
11 different.

12 Q. Okay. But in 2015 you would agree with me that the
13 reference case is more than 10 percent higher than any other --
14 any case -- any price being quoted by another forecaster, would
15 you not?

16 A. Yes.

17 Q. As I understand, you didn't know that these
18 comparisons existed; is that fair?

19 A. Well, I remember seeing these before. I guess, to be
20 honest with you, I had thought your question was a comparison of
21 the accuracy of various forecasts.

22 Q. Okay. No, I'm asking you if you were aware that there
23 were means of -- and that people had compared the forecasts
24 simply against one another?

25 A. I'll accept that this has been done, yes.

1 Q. Okay. Well, were you aware of it?

2 A. I've seen this table before. I think I forgot about
3 it.

4 Q. So you were aware of it; is that correct? You might
5 have forgotten, but you knew about it?

6 A. Fair enough.

7 Q. Now, you mentioned -- you mentioned comparing
8 forecasts for accuracy. Are you aware of anyone who compares
9 any of these forecasts that we've been discussing to historical
10 data to determine which was most accurate?

11 A. I don't remember any at this time.

12 Q. Okay. Did you ever attempt to analyze the various
13 forecasts against historical data to determine which was the
14 most accurate?

15 A. I sure don't remember doing it.

16 MR. DORTCH: Your Honor, may I?

17 EXAMINER FARKAS: Yes.

18 MR. DORTCH: Your Honor, I'm handing the witness what
19 I will ask be marked as Company Exhibit 75.

20 May I have a moment, your Honor?

21 EXAMINER FARKAS: Yes.

22 (Pause.)

23 MR. DORTCH: Your Honor, I'm sorry, I misidentified
24 this exhibit. It should not be Company 75. I did identify this
25 exhibit last week as Company Exhibit 67. Again, it is an

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1 exhibit identified through Mr. Speyer. It was not admitted into
2 the record last week, principally, I believe because Mr. Boehm
3 had had no notice of it prior to that date.

4 It is, as your Honors, I'm sure will note, entitled
5 "Issues in Midterm Analysis and Forecasting 1999." It is an
6 official publication of the Department of Energy issued by the
7 Energy Information Administration, which this witness has
8 testified is a reliable source for data concerning natural fuel
9 forecasts.

10 BY MR. DORTCH:

11 Q. Mr. Falkenberg, would you please identify the document
12 by title, date and publisher?

13 A. "Issues in Midterm Analysis and Forecasting 1999,"
14 August of 1999, by the Energy Information Administration.

15 Q. Would you please turn to Page 84, and let me know when
16 you're there, sir.

17 A. I have it.

18 Q. You have it?

19 A. Yes.

20 Q. Okay. Do you see the caption, "Natural Gas Prices,"
21 in bold, at the top of the second column?

22 A. Yes.

23 Q. Okay. Sir, would you read aloud the two sentences
24 that begin that paragraph?

25 A. "Natural gas prices at the wellhead have had the

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1 highest average absolute percentage forecast errors in the AEOs,
2 with an overall average error of 72.2 (sic) percent (Table 14).
3 Occasionally, near-term gas prices have been underestimated, but
4 most of the projections were overestimates."

5 Q. Would you take a look at Table 14, sir?

6 A. Yes.

7 Q. Do you understand how that table operates?

8 A. When I looked at this the other day, and I have to say
9 I wasn't quite sure.

10 Q. It's not necessarily clear as day, is it? But you do
11 understand that the Energy Information Administration is stating
12 that their forecasts, overall, contain an average error rate of
13 70.2 percent, correct?

14 A. Well, I believe that's what this states. However, I
15 would point out that when you start back in 1982, I don't think
16 that there are many forecasts that did very well in the '80s,
17 but particularly with respect to natural gas.

18 Q. Well, let's look at the margin of error for last year.
19 What that's the most recent report and what was the margin of
20 error for the most recent report, AEO '99, on the bottom table,
21 sir?

22 A. Is it 8.3 percent?

23 Q. It's 8.3 percent. Would you turn to Page 91, sir.
24 Would you -- Again, would you read aloud the last -- I'm sorry,
25 would you read aloud the first two sentences of the last

1 paragraph in the left-hand column?

2 A. "The most striking result of the moving average
3 analysis" --

4 Q. I think we're at the wrong place.

5 A. Oh.

6 Q. Page 91?

7 A. Yes.

8 Q. The first two sentences --

9 A. Okay.

10 Q. -- of the last paragraph, left-hand column.

11 A. "In conclusion, there are several major reasons why
12 forecasts might deviate from their long-term trends. First
13 there -- First are laws and regulatory changes over which there
14 is no control, some of which have been discussed in this paper.
15 Second are --"

16 Q. That's enough, sir. Thank you. Now, isn't it true
17 that -- Isn't it true that a key assumption underlying the EIA
18 forecast is the current laws and regulations will remain in
19 effect throughout the forecast period?

20 A. Yes.

21 Q. And that's because EIA is not a --

22 MR. BOEHM: I'm sorry, could I have that question read
23 again.

24 MR. DORTCH: Certainly. I'm sorry. I don't know that
25 I could, could you.

1 (Record read back as requested.)

2 MR. BOEHM: Okay.

3 BY MR. DORTCH:

4 Q. Okay. So current laws and regulations remain in
5 effect, that means no new laws, no change in the existing laws;
6 is that your understanding?

7 A. Yes.

8 Q. Now, since EIA assumes there are no changes in the
9 laws and regulations and since by the nature of these
10 proceedings there is a change in the law and regulations, have
11 you done anything to adjust the EIA forecast numbers as you
12 input them into your model?

13 A. Well, I don't believe the change in electric utility
14 law in Ohio is going to have much of an impact on EIA's forecast
15 for natural gas, but to answer your question, no, I haven't
16 reflected that.

17 Q. What about industry-wide changes? Ohio's not the only
18 state that's deregulating; is that correct?

19 A. That's correct.

20 Q. Okay. Have you made any changes in your -- in your
21 input assumptions or your -- the data that you pull from EIA in
22 recognition of these changes in laws and regulations?

23 A. If I knew exactly what they were going to be, I guess
24 I probably would, but since I didn't know what they were going
25 to be and they were speculative, I did not.

1 Q. Did you adjust your forecast for any change in any law
2 or any regulation, whether it's deregulation, statutes or
3 anything else?

4 A. Well, clearly the market price forecasting model that
5 I used does assume that there will be a deregulated electricity
6 market in ECAR; so I guess in that respect, I do assume a change
7 in law.

8 Q. But you don't adjust the input assumptions at all; is
9 that right?

10 A. No, I'm trying to see what the outputs would do under
11 the assumption of competition.

12 Q. Mr. Falkenberg, if I could refer you back to 67 for
13 just a moment?

14 A. Page --

15 Q. Company Exhibit 67 for a second. I'd like you to look
16 at Page 90.

17 A. Yes, I have that.

18 MR. BOEHM: Excuse me, counsel, I'm lost. Which one
19 is 67?

20 MR. DORTCH: I'm sorry, it's the Issues in Midterm
21 Analysis --

22 MR. BOEHM: Okay. Thank you.

23 MR. BOEHM: Oh, yeah. Okay. Thanks.

24 MR. DORTCH: Page 90.

25 MR. BOEHM: 90?

1 MR. DORTCH: Yeah.

2 MR. BOEHM: Thank you.

3 BY MR. DORTCH:

4 Q. On Page 90, sir, the last paragraph on the page, would
5 you read aloud the first two sentences here?

6 A. This is the last paragraph on the page? 90?

7 Q. Starting with "Throughout the."

8 A. "Throughout the AEOs, the variables with the highest
9 errors, expressed as average absolute percent errors, have been
10 prices and net imports of natural gas and coal."

11 Q. Next sentence?

12 A. "Natural gas, in general, has been the fuel with the
13 most inaccurate forecasts, showing the highest average error of
14 all the fuels for consumption, production and prices."

15 Q. Thanks, that's enough. Now, we've already discussed
16 the natural gas wellhead price and AEO's statement that they
17 have a 70.2 percent absolute -- well, absolute average error --
18 average absolute error. I'm sorry. Would you turn to Page --
19 Would you turn to Page 86?

20 A. Yes, I have it.

21 Q. Do you recognize what Page 86 provides us? What
22 information Page 86 provides us?

23 A. Coal price forecast comparisons.

24 Q. Okay. And this coal -- what's the average absolute
25 percent error that AEO projects for coal prices in its

1 forecasts?

2 A. I think it's point -- Okay. The absolute average
3 percent?

4 Q. No, sir, the average absolute percent error?

5 A. 35.9.

6 Q. Thank you. Now, coal price is at 35.9 error and
7 natural gas is a 70.2 percent error and that would indicate that
8 the natural gas, at least to me, a layman, natural gas prices
9 are twice as likely to be overstated as the coal prices; is that
10 the way you would interpret those, that data?

11 A. Well, I think I would interpret --

12 MR. BOEHM: Objection, your Honor. I don't think the
13 witness -- I don't think counsel has established that they're
14 twice as likely to be overstated. I don't think that's in the
15 record. It may be twice as likely to be wrong but not
16 overstated.

17 EXAMINER FARKAS: He can agree or disagree with the
18 statement.

19 MR. DORTCH: He can agree or disagree. I said I'm a
20 layman, Dave, and I really am.

21 MR. BOEHM: Okay.

22 THE WITNESS: Well, to answer your question, no, I
23 don't think you could draw that inference, because the average
24 absolute error penalizes you just as much for being over as for
25 being under.

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1 BY MR. DORTCH:

2 Q. Okay.

3 A. So the only inference you could draw is that the coal
4 forecasts have been somewhat closer than the natural gas
5 forecasts, starting from 1982 and going on to the present. And
6 I would suggest that if -- if this weren't typical of many
7 forecasts, we wouldn't have stranded costs, for example, today
8 because to a large extent stranded costs have been blamed on the
9 fact that forecasts done in the '80s and earlier led
10 utilities -- led utilities to make investments in today's
11 economy aren't economic.

12 Q. Would you turn to Page 81, sir?

13 A. Yes.

14 Q. Okay. First full paragraph?

15 A. Yes.

16 Q. Will you read the first sentence?

17 A. "The overestimation of prices is the most striking
18 feature of this evaluation."

19 Q. Okay. Would you turn back to the chart that shows us
20 the coal?

21 A. What page is that again?

22 Q. It's Page 86. And just looking at the forecasts on
23 the table, probably the top table is the most useful. In fact,
24 I don't see a single underestimate of prices in this table, do
25 you, for coal?

1 A. If I interpret the table correctly, that's correct.

2 Q. Okay. Mr. Falkenberg, I want to move to the area of
3 environmental, and I really do want to avoid -- I know the
4 hour's late. I really do want to avoid going over some of the
5 areas you and I went through earlier.

6 But you were critical of Mr. Speyer for espousing an
7 opinion regarding the effect of possible changes in
8 environmental laws and regulations, correct?

9 A. Yes.

10 Q. You were --

11 A. Actually, just to be clear, it's not so much his
12 espousing of an opinion. Even though I might disagree with
13 people's opinions, I rarely criticize them for just espousing an
14 opinion. I think more to the point I was critical of his
15 assumption of a CO2 tax.

16 Q. And you understand -- You read Mr. Speyer's testimony.
17 Mr. Speyer says the CO2 tax is one possibility and all of these
18 other things are possibilities; is that fair?

19 A. Yes, but I don't see --

20 Q. Okay.

21 A. -- how, for example --

22 Q. Now --

23 A. -- Mercury regulation could have the same effect as a
24 CO2 tax.

25 Q. Okay. Mr. Speyer said it did, did he? In fact,

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1 there's a table in his testimony that sort of quantifies what he
2 expects the costs to be or what the costs could be anticipated
3 to be; is that right?

4 A. For Mercury?

5 Q. I believe so.

6 A. I don't recall that, but maybe you're right. I just
7 don't remember.

8 Q. Maybe I'm wrong, and it's there or it's not there, but
9 I think it's there. Now, you would agree with me that the
10 determination whether to impose -- Strike that. Let me try
11 again.

12 You would agree with me that the determination whether
13 to impose a carbon tax, whether to adjust your model, whether to
14 accommodate some increased costs due to the environment is
15 essentially a two-part test, first, you should evaluate the risk
16 or likelihood of future regulation taking place, and second, you
17 try to assess the economic impact; is that right?

18 A. I would agree generally with that.

19 Q. Okay. Well, I'm not trying to trick you here. If you
20 don't agree, let me know.

21 A. Well, for purposes of planning, for example, I think
22 that it would be appropriate to do what you just described. I
23 think for purposes of quantifying stranded costs, I think it's a
24 matter of figuring out what a value of an asset is today under
25 today's law.

1 MR. DORTCH: Could I have the answer read back.

2 (Record read back as requested.)

3 BY MR. DORTCH:

4 Q. Okay. Sir, I think we're misunderstanding each other.
5 So let me go back another -- the question earlier.

6 Would you agree with me that the decision whether to
7 adjust the model, to adjust a stranded cost quantification, to
8 accommodate additional environmental costs is a two-part test,
9 and that two-part test is, first, you evaluate the risk or
10 likelihood of future regulation; second, once you've done so,
11 you evaluate the economic impact?

12 A. I would agree with that.

13 Q. Thank you. Now, we discussed your general background,
14 knowledge of environmental laws and regulations earlier today.
15 And the truth is, you're not an expert in that and released --
16 that's not your area of expertise; is that fair?

17 A. Well, I believe I'm an expert in the subject matter of
18 my testimony.

19 Q. And I'm not questioning that. I'm asking you, sir, do
20 you -- you don't know what's going on of NOx and SO2 and SIP
21 calls and new source review litigation, what is it Section 126,
22 Section 126 enforcement activities, you don't know what those
23 things are, right?

24 A. No, I indicated that I haven't followed those closely.

25 Q. Yes.

1 MR. BOEHM: Excuse me, sir, may the witness finish.

2 THE WITNESS: The testimony I dealt with more of the
3 CO2 tax, which I have made an effort to study.

4 BY MR. DORTCH:

5 Q. So your testimony goes only to an evaluation of the
6 CO2 tax?

7 A. That's correct.

8 Q. And -- Thank you. Well, in the area of other
9 environmental costs, then, you would agree that you haven't
10 satisfied the first part of the test that we've discussed? You
11 haven't evaluated the likelihood of increased regulation; is
12 that fair?

13 A. I believe that I indicated that I based it on current
14 regulation, yes.

15 Q. Okay. You based it -- I'm sorry, you based it on
16 current regulation, you based your model?

17 A. Stranded cost calculation.

18 Q. Stranded cost calculation. And you did not do
19 anything to evaluate whether a future environmental cost should
20 induce you -- Excepting the Kyoto protocol, you did not do
21 anything to determine whether future environmental costs should
22 cause you to make any adjustment to your model or any adjustment
23 to your stranded cost calculation; is that fair?

24 A. That's correct.

25 Q. Let's talk about the Kyoto protocol now, and although

1 I do environmental law, sir, I don't know a whole lot about this
2 myself; so the United States, as I understand it, is a signatory
3 to the treaty that creates Kyoto protocol; is that your
4 understanding as well?

5 A. Yes.

6 Q. And mostly, I think I learned this from your
7 testimony. Although the U.S. is signatory to the treaty, the
8 law is not effective, it's not enforceable in this country until
9 Congress adopts the treaty; is that right?

10 A. I think the Senate has to ratify the treaty.

11 Q. The Senate ratifies the treaty. I understand that you
12 assumed that the Senate will not ratify the treaty and
13 Mr. Speyer assumes that the Senate will do so; is that right?

14 A. Well, that's certainly one way of looking at it, yes.

15 Q. Okay. Now, you state that it's impossible to
16 determine the specific impacts of the Kyoto protocols on CG&E's
17 stranded costs, even assuming that the protocols become law. Do
18 you remember that?

19 A. Yes.

20 Q. Okay. Now, the EIA report to which you cite to in
21 your testimony, as we discussed at your deposition, provides us
22 with a means of estimating the economic impacts on coal plants
23 associated with implementation of the Kyoto protocol generally,
24 though, doesn't it?

25 A. Well, I think it's just very general.

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1 Q. I agree with you. I will agree with you, it's very
2 general.

3 MR. DORTCH: May I approach?

4 EXAMINER FARKAS: Yes.

5 MR. DORTCH: Your Honors, again, what we have done
6 here is taken an excerpt from the entire EIA report, which is
7 entitled "Impacts of the Kyoto Protocol on U.S. Energy Markets
8 and Economic Activity," it's dated October 19, 1998. I really,
9 out of all that bulk, have a need to reference one chart. And
10 if it's acceptable, your Honors, I will just introduce the
11 exhibit which I believe will be 77 -- 76 -- 75, in this fashion.

12 - - -

13 Thereupon, Company Exhibit No. 75 was
14 marked for purposes of identification.

15 - - -

16 MR. BOEHM: Excuse me, is counsel going to have at
17 least one copy of the full document for the record?

18 MR. DORTCH: I will be happy to make two full copies
19 available for the record, if that is suitable.

20 MR. BOEHM: Okay.

21 EXAMINER FARKAS: Okay.

22 MR. BOEHM: Excuse me, off the record for a minute.

23 EXAMINER FARKAS: Off the record.

24 (Discussion held off the record.)

25 EXAMINER FARKAS: Back on the record.

1 BY MR. DORTCH:

2 Q. Before we get to Exhibit 75, would you let me know one
3 thing, Mr. Falkenberg, jog my memory here. When does the Kyoto
4 protocol, if enacted, require curtailments, if you will, or
5 start imposing limitations on the carbon dioxide emissions in
6 the atmosphere from utility plants?

7 A. I think it's 2010.

8 Q. It's 2000 --

9 A. I thought it was 2010.

10 Q. Is it 2008 or 2010?

11 A. I thought it was 2010.

12 Q. It is what it is. Now, I don't really want to require
13 you to do the math again, but if we could turn to Page 67, would
14 you agree with me or tell me where I go wrong here, it might be
15 the easiest --

16 MR. BOEHM: Excuse me, counsel, 67 of what document?
17 Page 67 I thought you said.

18 MR. DORTCH: Did I?

19 MR. BOEHM: You mean Exhibit 67?

20 MR. DORTCH: I mean Exhibit 75, but if I misspoke, I
21 apologize.

22 MR. BOEHM: Okay.

23 MR. DORTCH: It's this, Dave (indicating).

24 BY MR. DORTCH:

25 Q. It's the selected variables in the carbon reduction

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1 cases, Roman Numeral XV, EIA, "Impacts to the Kyoto Protocol on
2 U.S. Energy Markets and Economic Activity," October 1998. Are
3 we there?

4 A. Yes.

5 Q. The lowest carbon price that EIA uses is as a control
6 case is 60 -- \$67 per ton; is that correct?

7 A. Yes, the lowest control case is 67 and, of course, the
8 reference case is zero.

9 Q. And the reference case is zero. And the highest
10 control case used by EIA is \$384 per ton for carbon; is that
11 correct?

12 A. No, it's 348.

13 Q. Did I get it wrong?

14 A. I believe you did.

15 Q. Thank you for correcting me. \$348. Converting these
16 prices from carbon to carbon dioxide involves a mathematical
17 equation I'm not really competent to do, but it's roughly one
18 part carbon, two part oxygen and, therefore, ignoring the atomic
19 weight or whatever of the things, it works out to be one-third
20 is a good rough estimate, workable number; is that right?

21 A. I think I've heard that before.

22 Q. I think I have heard that before, too.

23 So at \$67, \$20 is a good workable approximation for a
24 CO2 price; is that fair?

25 A. Yes.

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1 Q. Okay. And at \$348 per ton of carbon, let's call it
2 \$90 a ton, it could actually be more, but \$90 a ton is a good
3 working rough guesstimate of a price for CO2 per ton; is that
4 fair?

5 A. I'm sorry, for three --

6 Q. 384, roughly one-third, I'll call it \$90 per ton?

7 A. I think if it was 348, a third of it would be about
8 116.

9 Q. \$116 per ton?

10 A. Yeah, that's --

11 Q. Okay.

12 A. -- that's the three to one.

13 Q. Okay. Three to one. I want to talk about market
14 structure, if we can now, sir. And this is one of those
15 significant variables. As I understand market structure, the
16 issue is whether to impose an installed reserve requirement upon
17 the analysis; is that correct?

18 A. It's not so much whether to impose a reserve
19 requirement or as to assume whether load-serving entities will
20 want to maintain a reserve requirement.

21 Q. Okay. Well, impose it some way, either the
22 load-serving entities impose it or an engineering requirement
23 imposes it or economics impose it, but the question is: Do you
24 have to consider an installed reserve requirement; is that fair?

25 A. Fair enough.

1 Q. Okay. And the critical difference, as I understand
2 it, between you and Dr. Pifer, is that you impose a 15 percent
3 installed reserve requirement, and Dr. Pifer assumes there will
4 be no installed reserve requirement?

5 A. Yes. Essentially, I assume that suppliers will want
6 to maintain reserves in excess of the peak demand at whatever
7 load that they're serving; whereas, Dr. Pifer does not believe
8 that that's necessary.

9 MR. DORTCH: I'm sorry, Candy, could you read that
10 back.

11 (Record read back as requested.)

12 MR. DORTCH: I'm sorry, Candy, I'm going to ask you to
13 read it one more time.

14 (Record read back as requested.)

15 BY MR. DORTCH:

16 Q. Could you please identify in your workpapers where you
17 performed the analysis to demonstrate that the 15 percent number
18 you select is the optimal reserve requirement?

19 A. That was basically based on my experience and
20 judgment.

21 Q. So no analysis then?

22 A. Well, I believe I've conducted analysis of this sort
23 of thing for the last 15 or 20 years in various regulatory
24 proceedings, both formally and informally. I believe it's a
25 matter of opinion ultimately as to what's the appropriate

1 reserve margin that is required.

2 Q. Well, what sort of analysis is this, a disciplined
3 scientific sort of analysis, or are you preparing a paper, are
4 you -- I mean, tell me what goes into your analysis.

5 A. Well, many years ago, of course, we did these kinds of
6 analyses routinely, and ordinarily, one would perform a loss of
7 load probability calculation, or in ECAR we would perform a days
8 of dependence on supplemental capacity resources analysis and
9 try to determine what levels of reserve margins were consistent
10 with the levels of reliability desired by customers, utilities
11 and regulators.

12 Q. I'm going to try to repeat something you said to me,
13 days of dependence on supplemental reserve --

14 A. Capacity resources.

15 Q. -- capacity resources. Reserve capacity resources.
16 Now, is that the DCSR, is that the other DCSR, if you were here
17 for Dr. Pifer's testimony?

18 A. DSCR, yes.

19 Q. DSCR. Thank you. Well, independent of any -- Strike
20 that.

21 Are you aware of any other analysis by third-party
22 research institutes, engineering firms, universities, that
23 discuss the need for this installed reserve margin?

24 A. Well, if you go back far enough, of course, Electric
25 Power Research Institute funded studies that looked at the

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1 optimal level of reserve margin and, traditionally, you would
2 attempt to support reserve margins of 20 percent or more.

3 Q. You said you go back -- When do we go back to?

4 A. 1980s.

5 Q. 1980s. Now, I asked the second half of that question,
6 which is: Are you aware of any analyses, economic studies,
7 articles, papers, reports, that disagree with this concept of an
8 installed reserve margin?

9 A. I'm not aware of anybody that has ever put forward a
10 report that said that utility companies don't require reserve
11 capacity. Going back again to the 1980s and early 1990s, I was
12 involved in a lot of cases where reserve margin levels were
13 litigated and frequently the debate centered around whether 15
14 percent, for example, was reasonable or 20 or 25, or what have
15 you.

16 Q. Okay.

17 MR. DORTCH: Candy, could you read the first sentence
18 back. I think it's the first sentence.

19 (Record read back as requested.)

20 THE WITNESS: I guess I would have to add, Dr. Pifer
21 notwithstanding.

22 BY MR. DORTCH:

23 Q. Okay. Now, you're talking in terms of reserve
24 capacity, and I've been trying to be very careful about the term
25 I'm using here. Reserve capacity is your term. I'm using the

1 term installed reserve margin or installed reserve capacity, and
2 I probably botched it more than once, but is there a difference
3 between the two?

4 A. Well, I can't think of anything right offhand. An
5 installed reserve margin would be -- just simply be the
6 installed capacity minus the peak, divided by the peak demand.
7 If you had capacity on cold shutdown or something like that,
8 that might not be part of your reserve capacity; although, it
9 would be part of your installed capacity.

10 MR. DORTCH: May I have a moment, your Honor?

11 EXAMINER FARKAS: Yes. Take a five-minute break then.

12 (Recess taken.)

13 EXAMINER FARKAS: Why don't we go back on the record.

14 MR. DORTCH: Could I have the last question, Candy,
15 and answer.

16 (Record read back as requested.)

17 BY MR. DORTCH:

18 Q. Mr. Falkenberg, I'm going to ask you to assume -- make
19 an assumption for a minute, if you would. I'm going to ask you
20 to assume rather than a 15 percent capacity margin -- is that
21 the right term?

22 A. Reserve margin.

23 Q. Reserve margin. Rather than a 15 percent reserve
24 margin, presume a 25 percent reserve margin.

25 A. Okay.

1 Q. Okay. What does that do to prices of electricity?

2 A. Well, the answer is it depends if you're starting from
3 an assumption of a requirement for 25 percent reserve margin.

4 Q. No, sir. I -- All I want to do here is move the
5 supply and demand curve, okay? You're assuming a 15 percent
6 capacity reserve, and I want to know the difference between the
7 15 percent capacity reserve that you assume and a 25 percent
8 capacity reserve. Price-wise, prices go up or down?

9 A. Okay. Prices go up.

10 Q. Okay. And if you assume a 5 percent capacity margin,
11 capacity requirement rather than a 15 percent capacity
12 requirement, what happens, prices go down?

13 A. Yes.

14 Q. Okay. Now, do I recall that you took some course or
15 courses in engineering economics?

16 A. Yes.

17 Q. Could you describe that to me?

18 A. That's a course where you analyze things like
19 cost/benefit analysis of --

20 Q. Okay. So you had --

21 A. -- of investments and cost savings devices, that sort
22 of thing.

23 Q. Now, so you've had some introduction, at least, I
24 don't mean to characterize this. I'm not saying it was an
25 introductory course. You're going to get the chance to say

1 whatever it was. But you're familiar somewhat with economic
2 theories; is that fair?

3 A. Yes.

4 Q. Okay. Now, would -- Would you agree that economists
5 would say that you are masking price signals through your
6 reserve requirement?

7 A. Would I agree that economists would say that?

8 Q. Yes.

9 A. No, I wouldn't agree with that.

10 Q. You would not agree with that. Okay. Do you believe
11 that your reserve margin masks price signals?

12 A. No.

13 Q. No. You do understand what I mean by "price signals"?

14 A. Yes.

15 Q. All right. AK Steel has a plant in Mansfield, Ohio,
16 and that's within the FirstEnergy service territory, correct?

17 A. I don't really know. I was a consultant for AK Steel
18 on that case, but I don't know where the plant is located.

19 Q. That's fair enough. Did you review the staff report
20 as part of the scope of your work for AK?

21 A. In which case?

22 Q. In the FirstEnergy case.

23 MR. BOEHM: Your Honor, I think I'm going to object
24 until I see where this thing is going.

25 MR. DORTCH: I just asked him if he reviewed the staff

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1 report. I'm not trying to introduce the staff report in the
2 FirstEnergy case, Dave.

3 EXAMINER FARKAS: I'll let him answer that.

4 MR. BOEHM: That's fine.

5 THE WITNESS: I don't recall looking at that. I
6 recall looking at their valuation study, which was done by RDI.
7 BY MR. DORTCH:

8 Q. You looked at the RDI valuation study. Do you
9 remember RDI had a reserve requirement, did it not?

10 A. I believe they did.

11 Q. The RDI reserve requirement was 12 percent, wasn't it?

12 A. That sounds right.

13 Q. And you testified in Pennsylvania, West Penn case, the
14 order that, despite my best efforts, Mr. Boehm was able to get
15 introduced today; is that correct?

16 A. Yes.

17 Q. Do you recall what the reserve margin in that case
18 was; do you recall -- Strike that.

19 Do you recall what the Commission in Pennsylvania
20 determined a reasonable reserve requirement to be in the West
21 Penn case?

22 A. Yes.

23 Q. And what was that number?

24 A. Eight percent.

25 Q. Eight percent. Now, you've reviewed a number of ECAR

1 documents with respect to reserve requirements over your years
2 as an expert; is that right?

3 A. Yes.

4 Q. What is the installed reserve requirement imposed by
5 ECAR today?

6 A. There isn't an explicit installed reserve requirement,
7 which is something, of course, the Pennsylvania Commission took
8 into account in its order, and it stated that even though there
9 aren't -- isn't an explicit one, there is an implicit reserve
10 requirement.

11 Q. And you told me about something earlier that I
12 think -- Is it fair to say that ECAR relies upon this DSCR in
13 part to make up for an installed reserve requirement?

14 A. It's my --

15 Q. I'm sorry, installed -- I just want to get the words
16 right -- installed reserve, is it requirement; is that right?

17 A. Yes. It's my understanding that ECAR has
18 traditionally used a DSCR criteria as opposed to specific
19 reserve margin criteria.

20 Q. And do you know how ECAR defines this DSCR criteria?

21 A. Generally, yes.

22 Q. Can you tell me?

23 A. Generally it's the number of days per year which the
24 system would require outside assistance from tie lines or
25 supplemental capacity resources such as curtailments and that

1 sort of thing.

2 Q. Interruptible load?

3 A. Yes.

4 Q. Curtailments, buying it from outside?

5 A. That's correct.

6 Q. Outside ECAR?

7 A. Yes.

8 Q. Well, ECAR then finds interruptible load to be one
9 means of satisfying a reserve requirement; is that right?

10 A. Interruptible load is one form of DSCR.

11 Q. And DSCR ECAR uses instead of a reserve requirement?

12 A. Yes.

13 Q. And ECAR finds purchasing power from outside of ECAR
14 to be a substitute for reserve requirements, correct?

15 A. Once again, I think you're glossing over a fine point.
16 It is one of the instances that leads to DSCR. In other words,
17 it's a little bit like a golf score. You would like it to be
18 fairly low. You don't want it to get too high. Each one of
19 those instances that you've talked about is sort of an
20 infraction.

21 Q. Well, an infraction of what, if you -- if ECAR allows
22 you to provide your reserve requirement through power purchases,
23 interruptible load, other methodologies, there's no infraction,
24 is there?

25 A. Well, there is.

1 Q. Is there an infraction of ECAR rules?

2 A. They want between one and ten days per year is my
3 recollection.

4 Q. Okay. Well, ECAR wants between -- they want that held
5 to within one to ten days per year; is that what you're saying?

6 A. That's correct.

7 Q. Okay. So long as you stay within that one to ten days
8 per year, then there is no infraction of ECAR's rules, correct?

9 A. That's correct.

10 Q. Okay. Now, ECAR does have something called an
11 operating reserve. What is that?

12 A. The operating reserve is how much capacity you have to
13 have on line at any point in time over and above the loads that
14 you're serving.

15 Q. Okay. And that's basically -- If I understand it
16 correctly, and you correct me I'm if wrong, that's basically an
17 engineering requirement you have to have some generators
18 standing right by just in case something bad happens out there;
19 is that fair?

20 A. Fair enough.

21 Q. To a layman?

22 A. Yes.

23 Q. One more thing about interruptible contracts. Your
24 client has an interruptible contract; is that correct?

25 A. That's my understanding, yes.

1 Q. Are you familiar with that contract?

2 A. No, I haven't read it.

3 Q. Okay. Do you agree with me that AK Steel is making an
4 economic decision to take, let's call it, less reliable power?

5 Do you agree with me that AK Steel is making an
6 economic decision to take less reliable power, that's what an
7 interruptible contract is?

8 A. By having that contract?

9 Q. Yes, by having that contract.

10 A. Yes, I agree.

11 Q. I have a question, sir, that's kind of a technical
12 question. I won't spend any time at all in this area, but about
13 your cost of entry. You state on Page 59 of your testimony --

14 A. Yes.

15 Q. -- that "my modeling suggests that combustion turbines
16 are the more economic capacity addition at this time"?

17 A. Yes.

18 Q. Okay. How big were these combustion turbines you were
19 evaluating?

20 A. I'd have to look and see, but it was on the order of
21 250 to 500 megawatts.

22 Q. 250 to 500 megawatts?

23 A. Yes.

24 Q. You go on to state that -- I think I'm quoting, "I
25 assume if any CCs," that's combined cycles, "are built, they

1 would be smaller units, averaging around 250 megawatts"?

2 A. Yes.

3 Q. Okay. What's the basis for that assumption?

4 A. It has to do with the amount of load growth that is
5 taking place in ECAR. If the load growth isn't very rapid, then
6 it's going to be hard for the market to support the cost of a
7 larger unit. Larger units will tend to depress the price.

8 Q. Are smaller units, all other things being equal, more
9 expensive to build per megawatt than larger units?

10 A. Yes.

11 Q. Did you do any analysis to support the economics or
12 prove or disprove the choice of your more -- of your smaller,
13 more expensive combined cycles rather than larger, less
14 expensive per megawatt-hour combined cycles?

15 A. No. That's also based on current price trends for
16 combined cycle units.

17 Q. I'm not sure I understand what that means.

18 A. Well, the use of the 580 a kilowatt, which is tied to
19 the 250 megawatt, is based on -- in part, on the fact that that
20 would be the price for a 250 megawatt unit today. And it's also
21 based on the fact that there is a shortage of this kind of
22 capacity now relative to the kinds of things we expect in the
23 future.

24 Q. Did you do an analysis?

25 A. Of what?

1 Q. Did you do an analysis to support the economics to
2 prove or disprove the choice between smaller combined cycle
3 plants and larger combined cycles plants?

4 A. No. And the reason is that combined cycle plants were
5 so uneconomic compared to combustion turbines, it didn't seem
6 that it would make any real difference.

7 Q. A couple of questions, sir. You have no concern with
8 Dr. Blaydon's use of a 51/49 debt equity structure, do you?

9 A. No.

10 MR. DORTCH: If I can have just a moment, your Honor.

11 EXAMINER FARKAS: Okay.

12 (Discussion held off the record.)

13 BY MR. DORTCH:

14 Q. A couple more questions, sir. I want to go back to
15 something that we left a long time ago, and ask you flatly, are
16 natural gas futures prices a good basis for a long-range
17 forecast of gas prices?

18 A. Well, I think clearly when you're looking at your
19 forecast, you would like to see how it compares with what
20 futures markets are doing. I haven't used that in the past.
21 I've used --

22 Q. Are they a good basis for a long-range forecast or
23 not?

24 A. I think they're better used for evaluating how a
25 forecast is performing for the short term.

1 MR. DORTCH: Your Honors, may I approach the Bench? I
2 would like merely to borrow your copy of the Penn Power decision
3 that Mr. Boehm has introduced into evidence.

4 (Handed.)

5 MR. DORTCH: Thank you.

6 BY MR. DORTCH:

7 Q. Mr. Falkenberg, you were very critical of Dr. Pifer
8 and quoted extensively from the Pennsylvania West Penn Power
9 decision from our neighbor next door. Do you recall what the
10 Commission over there had to say about you, sir?

11 A. Well, it depends on the case that -- I was a witness
12 in several cases.

13 Q. The West Penn Power case, the same case, the same
14 opinion and order that you quoted from with respect to Howard
15 Pifer.

16 A. Well, I believe that they indicated that they were
17 using another witness' forecast.

18 Q. They did indicate they were going to use another
19 witness' forecast, didn't they?

20 MR. DORTCH: Dave, I -- Your Honors, I apologize.
21 This is an AK Steel exhibit, and I do not know -- I do not know
22 the exhibit number. Sixteen. I'm told it's AK Exhibit 16.

23 BY MR. DORTCH:

24 Q. Would you turn to Page 92 of AK Steel Exhibit 16, sir?

25 A. Yes.

1 Q. Would you read aloud the comments of the Pennsylvania
2 Public Utilities Commission in Section C concerning your market
3 forecast?

4 A. Well, this is really the discussion of Judge Gesoff's
5 recommended decision, but I'll read it.

6 Q. I would appreciate it, sir.

7 A. "ALJ Gesoff recommended the rejection of WPPII witness
8 Mr. Falkenberg's independent market price forecast. The ALJ
9 observed that Mr. Falkenberg's modeling resulted in higher
10 market prices than Dr. Pifer's because Mr. Falkenberg included
11 capacity prices as opposed to Dr. Pifer's energy-only prices.
12 ALJ Gesoff determined that Mr. Falkenberg's method was not
13 benchmarked, was not well known, nor had made -- nor made
14 commercially available, was not chronological, made unwarranted
15 input assumptions, and assumed a 15 percent installed reserve
16 requirement."

17 Q. The Commission did not rely upon your model in that
18 case, did it, sir?

19 A. No, they didn't.

20 MR. DORTCH: If I may have two moments, your Honor,
21 and I may be done here.

22 EXAMINER FARKAS: All right.

23 (Discussion held off the record.)

24 MR. DORTCH: Thank you, your Honors. I have completed
25 my cross-examination of this witness.

1 EXAMINER FARKAS: Okay. Does staff have any?
2 MR. NOURSE: No, sir. No, your Honors.
3 EXAMINER FARKAS: Do you have any cross?
4 MS. ROBINSON-MC GRIFF: No, your Honor.
5 EXAMINER FARKAS: I think, at this point, we're going
6 to -- Let's go off the record for a second.
7 (Discussion held off the record.)
8 EXAMINER FARKAS: Why don't we reconvene tomorrow at
9 9:00.

10 - - -
11 (Thereupon, the hearing was adjourned at 4:46 o'clock
12 p.m. on Monday, June 5, 2000, to be reconvened at
13 9:00 o'clock a.m. on Tuesday, June 6, 2000.)

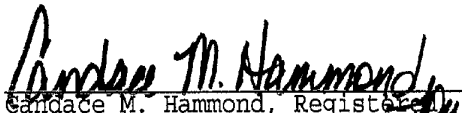
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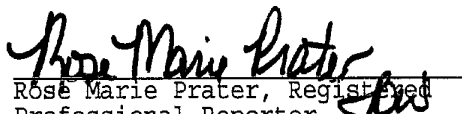
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C E R T I F I C A T E

- - -

We, Candace M. Hammond, Registered Professional
Reporter, and Rose Marie Prater, Registered Professional
Reporter, hereby certify that the foregoing is a true and
correct transcript of the proceedings before the Public
Utilities Commission, State of Ohio, on Monday, June 5, 2000, as
reported in stenotype by us and transcribed by us or under our
supervision.


Candace M. Hammond, Registered
Professional Reporter


Rose Marie Prater, Registered
Professional Reporter

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3	WITNESSES	PAGE
4	Stephen J. Baron	
	Direct Examination by Mr. Boehm	IV-13
5	Cross-Examination by Mr. Johnson	IV-20
	Cross-Examination by Mr. Colbert	IV-35
6	Cross-Examination by Mr. Nourse	IV-55
	Redirect Examination by Mr. Boehm	IV-59
7	Lane Kollen	
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9	Cross-Examination by Mr. Colbert	IV-81
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	Direct Examination by Mr. Boehm	IV-117
11	Voir Dire Examination by Mr. Dortch	IV-127
	Cross-Examination by Mr. Dortch	IV-134
12		
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13	EXHIBITS	MARKED RECEIVED
14	AK Steel Exhibit No. 13 -	IV-11 IV-66
15	Direct prefiled testimony of	
	Stephen J. Baron	
16	AK Steel Exhibit No. 14 -	IV-66 IV-115
17	Direct prefiled testimony of	
	Lane Kollen	
18	AK Steel Exhibit No. 15 -	IV-116 ---
19	Direct prefiled testimony of	
	Randall J. Falkenberg	
20	AK Steel Exhibit No. 16 -	IV-125 ---
21	Pennsylvania PUC Opinion and Order	
22	Company Exhibit No. 69 -	IV-78 ---
	Staff Report	
23		
24		
25		

I N D E X
(continued)

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2			
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4	EXHIBITS	MARKED	RECEIVED
5	Company Exhibit No. 70 -	IV-78	IV-113
6	CG&E Jurisdictional Electric		
7	Regulatory Asset Balances Comparison		
8	of Original and Supplemental JPS-5		
9	Company Exhibit No. 71 -	IV-96	IV-114
10	Federal, State and Local Tax		
11	Implications of Electric Utility		
12	Industry Restructuring		
13	Company Exhibit No. 72 -	IV-96	---
14	IRS LTR200004038, Private Letter Ruling		
15	Company Exhibit No. 73 -	IV-150	---
16	Annual Energy Outlook 2000		
17	Company Exhibit No. 74 -	IV-154	---
18	Annual Energy Outlook 1999 excerpt		
19	Company Exhibit No. 75 -	IV-170	---
20	Impacts of the Kyoto Protocol on		
21	U.S. Energy Markets and Economic		
22	Activity		
23			
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25			