

PUBLIC SERVICE COMMISSION

OF WEST VIRGINIA

CHARLESTON

* * * * *

AMERICAN BITUMINOUS POWER *
PARTNERS, L.P. AND * 17-0631-E-P
MONOGAHELA POWER COMPANY *

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HEARING TRANSCRIPT

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BEFORE: BROOKS F. MCCABE, JR., Commissioner
RENEE A. LARRICK, Commissioner

HEARING: Thursday, September 7, 2017
9:28 a.m.

LOCATION: PSC - Howard M. Cunningham Hearing Room
201 Brooks Street
Charleston WV

Reporter: Caroline Swanson

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A P P E A R A N C E S

1

2

3 JOHN AUVILLE, ESQUIRE

4 Public Service Commission of West Virginia

5 201 Brooks Street

6 P.O. Box 812

7 Charleston, WV 25323

8 Counsel for the Public Service Commission

9

10 ROBERT R. RODECKER, ESQUIRE

11 JOHN R. MCGHEE, ESQUIRE

12 Kay, Casto & Chaney, PLLC

13 1500 Chase Tower

14 707 Virginia Street East

15 P.O. Box 2031

16 Charleston, WV 25327

17 Counsel for American Bituminous Power Partners, Inc.

18

19 HEATHER B. OSBORN, ESQUIRE

20 JACQUELINE LAKE ROBERTS, ESQUIRE

21 Consumer Advocate Division

22 700 Union Building

23 723 Kanawha Boulevard, East

24 Charleston, WV 25301

25 Counsel for the Consumer Advocate Division

1 A P P E A R A N C E S (cont.)

2

3 GARY A. JACK, ESQUIRE

4 First Energy

5 5001 NASA Boulevard

6 Fairmont, WV 26554

7 Counsel for Monongahela Power Company

8

9 BARRY A. NAUM, ESQUIRE

10 LARA R. BRANDFASS, ESQUIRE

11 Spilman, Thomas & Battle

12 1101 Bent Creek Boulevard

13 Suite 101

14 Harrisburg, PA 17050

15 Counsel for the West Virginia Energy Users Group

16

17 MIKE BECHER, ESQUIRE

18 EVAN JOHNS, ESQUIRE

19 Appalachian Mountain Advocates

20 415 Seventh Street Northeast

21 Charlottesville, VA 22902

22 Counsel for the Sierra Club

23

24

25

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COMMISSIONER MCCABE:

Good morning. I'm Brooks McCabe, Public Service Commissioner. With me is my fellow Commissioner, Renee Larrick. This is the evidentiary hearing for PSC Case Number 17-0631-E-P. Joint petition for approval of amendment to electric energy purchase agreement and associated with ratemaking treatment.

This case involves an electric energy purchase agreement, EEPA, EEPA as we will refer to it, between American Bituminous Power Partners, LP, AmBit, and the Monongahela Power Company and Public Utility, which we will refer to as MonPower. AmBit owns and operates the qualifying co-generation facility, QF, as defined by the Public Utility Regulatory Policy Act of 1978, PURPA. AmBit's QF is known as the Grant Town project. The original EEPA was developed in 1987. In 1989, it was the product of several disputes, negotiations, and settlements, and Commission orders. The terms of the EEPA, including the establishment of an applicable avoided capacity rate, MonPower was able to pay AmBit, were approved by a Commission order issued on October 31st, 1989.

The EEPA took effect when grant town

1 project operations began in 1993. The parties have
2 amended the original EEPA since 1989. And these
3 agreements are summarized in the October 17th, 2016
4 Commission order issued in Case Number 87-06-69-E-P,
5 which was the docket number for all the prior AmBit
6 proceedings at the Commission.

7 In 2015, the joint petitioners again
8 sought to amend the EEPA and the Commission order,
9 October 17th, 2016. The order was denied --- the order
10 denied that petition without prejudice. On May 18th,
11 2017, AmBit and MonPower filed the current petition to
12 reopen case number 870669-E-P, and modify the EEPA. The
13 Commission re-docketed the petition in this case as case
14 number 17-0631-E-P. The joint petitioners request the
15 following amendments.

16 The current EEPA provides the capacity
17 charge equal to \$34.25 per megawatt hourly until
18 September 30th, 2017. To be followed by \$27 per megawatt
19 hour from October 1, 2017 through December 31st, 2035.
20 The change of the proposed EEPA would provide a capacity
21 charge of \$40 per megawatt hour through December 31st,
22 2045.

23 The second part of the petition deals
24 with the current EEPA's tracking account provision, which
25 provided that, effective January 1, 2020, the energy

1 component rates paid to AmBit is reduced to \$19 per
2 megawatt hour, until the balance of the tracking account,
3 plus the interest is returned to the customers. The
4 proposed EEPA would provide the effective January 1st,
5 2030 --- excuse me. The proposed EEPA would provide
6 that, effective January 1st, 2030, the energy component
7 of the rates paid to AmBit will be reduced by \$4 per
8 megawatt hour until the balance of the tracking account
9 plus interest is returned to the customers.

10 The current EEPA maintenance reserve
11 requirement as an initial reserve \$8.9 million, with the
12 amount escalating every time. The proposed EEPA would
13 reduce the reserve requirement to a fixed \$8 million.
14 The Commission has received Direct testimony from
15 MonPower and AmBit witnesses with the May 18th, 2017
16 joint petition. The Commission has also received Direct
17 testimony from intervenors at West Virginia Energy User's
18 Group, the Sierra Club, Consumer Advocate Division of the
19 Commission, and the Commission Staff. MonPower and AmBit
20 also filed Rebuttal testimonies.

21 Please note that the microphones at the
22 counsel desk and the witness stand are motion sensitive.
23 Please press the button to be sure the blue light is on
24 before you speak. Pull the receiver near your mouth so
25 that your statements will be heard over the webcast of

1 this hearing by those who are present.

2 We will begin by taking appearances of
3 the parties and their attorneys. AmBit, Mr. Rodecker?

4 ATTORNEY RODECKER:

5 Your Honor, thank you. Robert Rodecker
6 with the firm of Kay, Casto & Chaney, PLLC. I have
7 seated at my right my partner, John McGhee of Kay, Casto
8 & Chaney, PLLC. On my left is Ken Niemann on behalf of
9 the American Bituminous Power Partners, Inc. And thank
10 you for permitting us to appear before you today.

11 I do have one question. I have a
12 little hearing deficiency. And you have observed me
13 speak into the microphone to make sure the blue light is
14 on. I had difficulty hearing you as you were reading the
15 preamble this morning. So could I ask the same of you?

16 COMMISSIONER MCCABE:

17 Yes. Yes, you may.

18 ATTORNEY RODECKER:

19 Thank you.

20 COMMISSIONER MCCABE:

21 And appreciate it. Thank you.

22 MonPower?

23 ATTORNEY JACK:

24 Good morning, Commissioners. Gary Jack
25 representing Monongahela Power Company. Also

1 representing MonPower, Chris Callas of the law firm,
2 Jackson Kelly.

3 COMMISSIONER MCCABE:

4 WVEUG?

5 ATTORNEY NAUM:

6 Yes. Good morning, Commissioners.
7 Barry Naum from the firm Spilman, Thomas and Battle.
8 Appearing with me is Lara Brandfass, a colleague and
9 associate at our firm. We represent the West Virginia
10 Energy User's Group. For the purposes of this
11 proceeding, WVEUG's membership consists of ArcelorMittal
12 USA, LLC; Argo US; the Chemours Company; GrafTech
13 Advanced Graphite Materials; Windy, LLC; Novelis
14 Corporation; Quad/Graphics, Inc.; Resolute Forest
15 Products; Fibric; U.S. Silica Company; Weyerhaeuser
16 Company; and Zoetis, LLC.

17 COMMISSIONER MCCABE:

18 Thank you. Sierra Club?

19 ATTORNEY BECHER:

20 Yes. Thank you, Commissioners. My
21 name is Mike Becher from Appalachia Mountain Advocates
22 representing Sierra Club. To my right is also Evan
23 Johns, also from Appalachia Mountain.

24 COMMISSIONER MCCABE:

25 Thank you. CAD?

1 ATTORNEY OSBORN:

2 Good morning, Commissioner. Heather
3 Osborn on behalf of the Consumer Advocacy Division. With
4 me, Jacqueline Roberts, director of CAD; as well as Emily
5 Medine, who is the witness for CAD in this proceeding.

6 COMMISSIONER MCCABE:

7 Thank you. Staff?

8 ATTORNEY AUVILLE:

9 Good morning. John Auville on behalf
10 of Commission Staff. With me today is Terry Eads, the
11 director of the utilities division.

12 COMMISSIONER MCCABE:

13 Thank you. The Commission understands
14 that all parties have stipulated to the admission of the
15 pre-filed testimony of the two AmBit witnesses, Mr. Davis
16 and Mr. Hershfield. These witnesses are excused from the
17 hearing. Thank you for filing an agreement, for an
18 agreed order of witnesses.

19 Are there any other preliminary matters
20 before us? Are there any members of the public here who
21 wish to make public comment on the record? Let the
22 record show that none are here.

23 MR. RICE:

24 Can I just ---?

25 COMMISSIONER MCCABE:

1 Oh, I'm sorry. Yes. Come on. Come on
2 up to the ---. And would you please say your name and
3 spell it for the reporter?

4 MR. RICE:

5 Rob Rice, R-O-B, R-I-C-E. Again, my
6 name is Rob Rice. I'm the chief of the West Virginia
7 Office of Abandoned Mine Lands, and acting director for
8 the Division of Land Restoration. And I would like to
9 read a letter on behalf of the West Virginia DEP.

10 COMMISSIONER MCCABE:

11 Yes, go ahead. Certainly.

12 MR. RICE:

13 Please allow this letter to serve as
14 the Department of Environmental Protection's comments in
15 support of the above-referenced petition.

16 American Bituminous has reclaimed
17 approximately 1,327 acres of coal waste sites across West
18 Virginia. The estimated cost of this reclamation has
19 been nearly \$55 million. In addition to land
20 reclamation, AB's activities have also improved water
21 quality, and reduced the need for high-cost water
22 treatment facilities throughout the State. Two specific
23 examples of such projects are set forth below.

24 AB performed the first project with
25 DEP's Office of Abandoned Mine Lands, Reclamation, and

1 Enforcement, which oversees and facilitates the abatement
2 of public safety hazards, such as mine fires, subsidence,
3 hazardous highwalls, mining-impacted water supplies, mine
4 shafts, and other dangers resulting from mining
5 operations that occurred prior to August 3rd, 1977. Such
6 practices were established by the Surface Mining Control
7 and Reclamation Act and the creation of AML in 1981. The
8 AML program is funded by a fee placed on coal, current
9 set at 28-cents per ton for surface-mined coal, and 12-
10 cents per ton for coal mined underground.

11 In addition to reclamation funded
12 exclusively by AML, the agency can enter into what are
13 known as no-cost reclamation contracts. These contracts
14 between the agency and third-parties allow the third-
15 party contractors to sell coal encountered during
16 reclamation without having to obtain a surface mining
17 permit from the Division of Mining and Reclamation. The
18 intent is to incentivize reclamation of AML sites that
19 otherwise may not be reclaimed.

20 AML has utilized no-cost reclamation
21 contracts throughout the state since 1981. These
22 projects allow for the reclamation of coal waste sites at
23 no cost to the State of West Virginia. Often, these
24 sites pose minimum risk to health and safety, but do
25 negatively impact the environment. AML prioritizes

1 health and safety concerns over environmental
2 degradation. Because the AML inventory in West Virginia
3 far exceeds the amount available --- through grant
4 funding, the agency is often forced to put off reclaiming
5 coal waste sites in order to reclaim sites posing a more
6 significant health and safety threat to the public.

7 No-cost reclamation allows for the
8 abatement of sites that are degrading the environment,
9 but that lack a significant health and safety component.
10 Additionally, it's not uncommon for exposed coal refuse
11 sites to ignite and result in the AML program utilizing
12 the emergency funds to extinguish and reclaim those
13 sites. No-cost reclamation is a mechanism that allows
14 for reclamation of today's low priority sites and the
15 elimination of potential future emergencies.

16 American Bituminous is near completion
17 of one such project in partnership with AML, referred to
18 as the Farmington Coal Refuse Removal and Reclamation
19 Project, which resulted in \$2.2 million worth of
20 reclamation that otherwise would not have occurred.
21 Reclamation of this 48-acre site resulted in the
22 elimination of a significant acid mine discharge, upwards
23 of 200 gallons per minute of low pH, high metal AMD, as
24 well as the removal of several hundreds of thousands of
25 tons of coal fines that potentially could erode into the

1 receiving stream. AB delivered the fine coal recovered
2 from this project to the Grant Town Co-Generation Power
3 Plant. The trucks that delivered the fine coal to the
4 power plant brought fly-ash generated by the power plant
5 back to the project for volume replacement aiding in the
6 reclamation.

7 AB's second project with the agency's
8 Office of Special Reclamation, which is part of the
9 Division of Land Restoration. Reclamation is mandated by
10 the State of West Virginia to protect public health,
11 safety, and property by reclaiming land and treating
12 water in an expeditious and cost-effective manners on all
13 former coal mining operations on which DMR revoked
14 permits and forfeited bonds since August 3rd, 1977.
15 Funding for this special reclamation program is from
16 forfeited bond collections, civil penalties, and the
17 special reclamation tax on coal mined.

18 Cheyenne Sales, located in Upshur
19 County, is a mining operation in the agency's special
20 reclamation program. The site included a coal processing
21 plant, coal load out facility with an adjacent refuse
22 disposal area. Following permit revocation, there was
23 approximately 11,259 tons of useable refuse material
24 remaining onsite. This material was generating acid mine
25 drainage that had negatively impacted the receiving

1 stream. Preliminary design included trucking the
2 material across the county road and placing it on a
3 refuse pile. However, OSR determined that the removal of
4 this material was in the best interest of the
5 environment. Therefore, OSR contacted American
6 Bituminous to arrange for the use of this valuable
7 resource.

8 Mountaineer Infrastructure, OSR's
9 contractor, trucked the refuse to the Grant Town Power
10 Plant at a cost of \$18 per ton, which exceeded the net
11 value of the refuse material itself at \$16 per ton.
12 However, an added benefit of trucking the refuse to the
13 power plant was the return haul of alkaline fly ash,
14 which is a byproduct produced from the power generation.
15 This fly ash product has been approved as a beneficial
16 use in the amendment for sealing off refuse piles and
17 providing needed alkalinity to offset the acidic refuse.
18 Taking into consideration limited amount of onsite soil
19 material needed to cap the 30-acre refuse pile, OSR took
20 advantage of these beneficial characteristics.

21 Considering additional blending and
22 loading of the coal refuse to suit the needs of the power
23 plant, and cost savings with alkaline fly ash placed
24 onsite, the total cost of removal was \$98,220. The cost
25 to dispose of the refuse material onsite and amend with

1 agricultural lime would have been \$80,530, with a net
2 difference of \$17,690.

3 Two main goals of the project were to
4 alleviate ongoing water treatment at the site and to
5 minimize water infiltration on the reclaimed coal refuse
6 pile. By reducing the amount of acidic coal refuse being
7 deposited on the existing pile, and adding the alkaline
8 fly ash, the preliminary results are indicating that the
9 project was very successful in drastically reducing the
10 AMD from the site. This could lead to a substantial
11 savings, considering the average cost of operating and
12 maintaining a more complex active water treatment site is
13 approximately \$57,000 per year, compared to an average
14 cost of \$5,000 per year for a passive treatment approach.

15 So in summary, DEP supports the efforts
16 of American Bituminous to reclaim coal waste sites across
17 West Virginia. Although programs are in place to perform
18 reclamation of similar coal waste sites, sufficient state
19 and federal funds are insufficient to perform all
20 necessary reclamation facing the state. Additional
21 reclamation performed by American Bituminous, or others,
22 are endorsed and appreciated by the West Virginia DEP.

23 COMMISSIONER MCCABE:

24 Thank you, Mr. Rice. Any other public
25 comments? Mr. Rodecker --- oh, I'm sorry, excuse me.

1 Come forward. Provide your name and spell it for the
2 reporter, please.

3 MR. ELLIOTT:

4 Yes, Your Honors. My name is Randy
5 Elliott, R-A-N-D-Y, E-L-L-I-O-T-T. Your Honors, I'm a
6 three-term elected Marion County Commissioner. I'm here
7 in support of the Grant Town Power Plant. And I have a
8 prepared statement I'd like to read for you.

9 COMMISSIONER MCCABE:

10 Yes, sir.

11 MR. ELLIOTT:

12 And good morning. My name is Randy
13 Elliott. I'm a member of the Marion County Commission.
14 I'm here today to speak on behalf of Marion County in
15 support of the Grant Town Power Plant. We ask the
16 Commission to approve the petition to provide relief to
17 the Grant Town Power Plant, as we have been advised that
18 the plant will likely be forced to shut down within a
19 year if this petition is not approved. The Grant Town
20 facility provides substantial and lasting economic
21 environmental value to Marion County and the State of
22 West Virginia.

23 Since the power plant began commercial
24 operation in 1993, it has pumped millions of dollars into
25 the local and state economies in the form of payroll,

1 property and sales taxes. This facility provides nearly
2 100 direct jobs to our area. These are good paying,
3 family sustaining jobs with good benefits, which as you
4 may be aware, jobs like this are becoming in short supply
5 in our area these days, due to the impacts of reduced use
6 of coal. I think we'd all agree that this makes our
7 communities better, our schools better, our civil
8 services better. I could go on, but I trust you get the
9 point.

10 This facility pays millions of dollars
11 each year in goods, services and taxes. And according to
12 a recent study, pumps \$57 million into the state economy
13 annually. According to the mayor of the Town of Grant
14 Town, taxes received from this facility represent 90
15 percent of the working capital for that community.

16 This facility is more than just an
17 electric generating station. This plant was designed and
18 constructed for the purpose of cleaning up gob piles in
19 Northcentral West Virginia and, since it began operation
20 in 1993, has consumed more than 12 million tons, which
21 has resulted in reclamation of hundreds of acres of
22 abandoned mine lands. Further, the ash created by the
23 facility, which is highly alkaline, has been determined
24 to be a beneficial use by-product by the WVDEP and is
25 used in the mine site reclamation process to mitigate

1 acid mine drainage. As a direct result of the Grant Town
2 facility efforts, stream quality directly affected by
3 abandoned mine sites utilized by the Grant Town facility
4 has been dramatically improved.

5 I live in Mannington and have spent my
6 whole life seeing the gob piles that go to the local
7 landscape. I've witnessed over the last 25 years, a
8 transformation of the Rachel, Barrackville, Idamay and
9 Grant Town abandoned mine sites back to their pre-mining
10 conditions. I see with my own eyes, the benefit this
11 facility has had on the local landscape and our local
12 streams. And all of this has been accomplished with
13 private funds, rather than placing the burden at the feet
14 of the state to fix.

15 We need this facility to continue
16 operating. The benefits to Marion County and the State
17 of West Virginia far outweigh a minimal increase in
18 electric rates. We hope you would take this under
19 consideration as you deliberate this case. And find in
20 favor of the above referenced petition. Thank you.

21 COMMISSIONER MCCABE:

22 Thank you, Commissioner.

23 MR. ELLIOTT:

24 Would you like this as an exhibit?

25 COMMISSIONER MCCABE:

1 Give it to the reporter. That would
2 help her.

3 MR. ELLIOTT:

4 Okay.

5 COMMISSIONER MCCABE:

6 Any other individuals wishing to make
7 public comment? Mr. Rodecker?

8 ATTORNEY RODECKER:

9 Thank you, Your Honor. AmBit would
10 call to the stand, William DeGrandis.

11 -----
12 WILLIAM DEGRANDIS, HAVING FIRST BEEN DULY SWORN,
13 TESTIFIED AS FOLLOWS:

14 -----
15 DIRECT EXAMINATION

16 BY ATTORNEY RODECKER:

17 Q. Mr. DeGrandis, do you have in front of you
18 documents that should have been submitted as pre-filed
19 testimony in this case?

20 A. Yes, I do.

21 Q. Do you have a document that's been styled
22 Exhibit WDD-D as Direct Testimony of William DeGrandis on
23 behalf of American Bituminous Power Partners?

24 A. Yes, I do.

25 Q. And was that information contained therein

1 prepared by you under your direct supervision?

2 A. Yes, it was.

3 Q. And is the information that is contained therein
4 true and accurate to the best of your knowledge and
5 belief?

6 A. Yes.

7 Q. Do you have any changes to make in that
8 document?

9 A. I do not.

10 Q. If I were to ask you those questions today,
11 would the answers contained therein be the same?

12 A. Yes.

13 Q. And do you adopt that as your sworn testimony in
14 this proceeding?

15 A. I do.

16 ATTORNEY RODECKER:

17 Your Honor, I would ask this be marked
18 for identification as Exhibit WDD-D.

19 (AmBit Exhibit WDD-D was marked for
20 identification.)

21 COMMISSIONER MCCABE:

22 So marked. And we will go ahead and
23 admit it.

24 BY ATTORNEY RODECKER:

25 Q. And the second document that I ask you about is

1 styled the Rebuttal Testimony of William DeGrandis on
2 behalf of American Bituminous Power Partners. Do you
3 have that in front of you?

4 A. Yes, I do.

5 Q. And my copy of that is marked, I believe,
6 incorrectly as WDG-R. Would you agree that that should
7 be WDD-R?

8 A. That's correct.

9 Q. And with that change, do you have any other
10 changes to that document?

11 A. I do not.

12 Q. And is that information contained therein
13 prepared by you or under your direct supervision?

14 A. Yes, it was.

15 Q. And is it true and accurate to the best of your
16 knowledge and believe?

17 A. Yes, it is.

18 Q. Are there any changes in there that you would
19 suggest be made?

20 A. No, I do not have any.

21 Q. Do you accept that as your prepared sworn
22 testimony in this proceeding?

23 A. Yes, I do.

24 ATTORNEY RODECKER:

25 Your Honor, I would ask that this be

1 marked for identification as Exhibit WDD-R.

2 (Ambit Exhibit WDD-R was marked for
3 identification.)

4 COMMISSIONER MCCABE:

5 So marked and will be admitted without
6 objection.

7 ATTORNEY RODECKER:

8 Your Honor, the witness is tendered for
9 Cross Examination.

10 COMMISSIONER MCCABE:

11 Let's see. CAD?

12 ATTORNEY OSBORN:

13 Thank you, Mr. McCabe.

14 CROSS EXAMINATION

15 BY ATTORNEY OSBORN:

16 Q. Good morning, Mr. DeGrandis.

17 A. Good morning.

18 Q. Did I say your name correctly?

19 A. Yes, you have.

20 Q. Okay. I'm Heather Osborn. I'm an attorney with
21 Consumer Advocate Division out of the Public Service
22 Commission. I have a few questions for you. I don't
23 think this will take terribly long.

24 First, I want to ask you, Mr. DeGrandis, you are
25 outside counsel to AmBit; is that correct?

1 A. I am outside counsel retained for purposes of
2 appearing as a witness in this proceeding, and providing
3 legal advice on appropriate issues.

4 Q. Sure. And I noticed in your testimony, you
5 stated that the purpose of your testimony is to explain
6 the legal and policy basis under PURPA supporting the
7 revised cost rates agreed to by AmBit and MonPower;
8 correct?

9 A. Yes.

10 Q. Okay.

11 So I'm going to ask you some questions, just to
12 find out if in your role as outside counsel retained by
13 AmBit for purposes of this proceeding, whether your role
14 went, you know, beyond what you've stated and what I've
15 describe from your testimony.

16 Specifically, I'm wondering whether, Mr.
17 DeGrandis, you have reviewed the Commission's order, the
18 order that was issued October 17th of 2016 in Case Number
19 87-0669.

20 A. Yes, I did.

21 Q. On page 33 of that order --- and I'm not going
22 to go into great detail. But I believe beginning at the
23 bottom of page 33 and continuing on to page 34 ---. And
24 I'll let you take a moment to get there.

25 A. Okay. Give me one second.

1 Q. Sure.

2 A. Okay. I'm there.

3 Q. Again, at the bottom of page 33, continuing on
4 page 34, you'll see that the Commission discusses the
5 concept of performing an analysis as to whether cost
6 associated with an amended EEPA will result in rates or
7 charges for utility purposes that are just and
8 reasonable. Do you see language to that effect? I'm not
9 quoting it directly, but ---?

10 A. Yeah, generally. Yeah, I see language to that
11 effect. Uh-huh (yes).

12 Q. And do you recall, in the course of your work
13 for AmBit as part of this proceeding, reading that
14 language and analyzing that language?

15 A. Reading this language in the context of the rest
16 of the order, and in the context of PURPA, Commission
17 rules implementing PURPA, and the state rules
18 implementing PURPA, yes.

19 Q. Okay. And you would agree that in considering
20 the amendment that's been proposed, that we're here to
21 discuss today, that it would be incumbent upon this
22 Commission to make a determination as to whether those
23 rate and charges --- the amended rates and charges that
24 have been reflected, it would be incumbent upon the
25 Commission to determine that those are just and

1 reasonable?

2 A. Yes, just and reasonable, in the public
3 interest. That's the standard under PURPA. That's the
4 standard under the FERC rules implementing PURPA. And
5 that's the standard under the state rules implementing
6 PURPA. I believe it's 150-3 Section 12. And those rules
7 almost mirror the FERC rules implemented.

8 Q. Okay. Thank you. Are you aware of any rules
9 under PURPA or FERC rules that would make it incumbent
10 upon this Commission or any commission to analyze the
11 proposed amendment or proposed change in rates and
12 changes based on the financial condition of payment?

13 A. I think the financial condition is related to
14 why they've come forward at this time for this rate
15 change. But from a PURPA perspective, it's whether the
16 rates that are being proposed, how they're compared to
17 the original rates, which were based on the avoided cost
18 determinations, estimated MonPower avoided cost
19 determinations at the time the EEPA was executed.

20 Q. And just so I'm clear and make sure I understand
21 what you're saying, you're saying the reason that AmBit
22 has come forward, and the reason we're here today for
23 this hearing is based on the financial condition of
24 AmBit. But as I understood what you said, there's
25 nothing within the PURPA rules or FERC rules, regulations

1 that make it a requirement or duty of this Commission or
2 any commission to look at the financial condition of
3 AmBit and make the decision based solely on the financial
4 condition of AmBit or any facility of its type, any
5 qualified facility.

6 A. I want to carefully respond to your question.
7 To the extent we're getting into state-wide issues beyond
8 PURPA, I haven't --- I'm not addressing those. But under
9 PURPA, there's a variety of factors that need to be taken
10 into account. But ultimately, we're comparing our cases
11 based on comparing these rates to the original rates,
12 which were based on MonPower's avoided cost determination
13 at the time the EEPA was executed.

14 Q. And not to belabor the point, ---

15 A. Yes.

16 Q. --- but I'm not sure that --- I guess I'm
17 looking for a yes or no. Anything under PURPA rules and
18 regulations, FERC rules and regulations that you're aware
19 of, that says that commissions such as the Public Service
20 Commission of West Virginia is required to base its
21 decision ---?

22 A. There's nothing I'm aware of in PURPA that would
23 mandate the Commission to consider a financial condition.

24 Q. Okay. Thank you.

25 COMMISSIONER MCCABE:

1 Does that conclude ---?

2 ATTORNEY OSBORN:

3 No, sir.

4 COMMISSIONER MCCABE:

5 Okay.

6 ATTORNEY OSBORN:

7 I just have a couple more questions.

8 COMMISSIONER MCCABE:

9 No problem.

10 ATTORNEY OSBORN:

11 That concludes that issue, though.

12 Thank you.

13 BY ATTORNEY OSBORN:

14 Q. And I guess sort of similarly, Mr. DeGrandis, do
15 you believe that --- or are you aware of any legal
16 authority that would state that MonPower as the purchaser
17 in the EEPA between it and AmBit has any duty or
18 responsibility to insure AmBit's financial viability?

19 A. I'm not saying that that's required under PURPA.
20 But it's factors that MonPower takes into account, in
21 deciding as a business decision, whether it wants to
22 agree to mutually agreeable rates changed to the EEPA.

23 Q. Have you, in the course of your work for AmBit
24 in this proceeding, performed any analysis as to whether
25 there has been any breach or potential breach of the EEPA

1 by either MonPower or AmBit?

2 A. I'm not aware of any. I haven't been asked to
3 review that. But I'm not aware of any.

4 Q. Are you aware that one of the issues in this
5 case and one of the areas in which AmBit and MonPower
6 jointly requested approval of the amendment by this
7 Commission concerns the maintenance reserve?

8 A. I haven't really focused on that.

9 Q. Okay. So you wouldn't be able to tell me then
10 whether a lack of funding of that maintenance reserve
11 would be considered a breach?

12 A. I could not. No, I could not testify to that.

13 Q. Would you agree with me, Mr. DeGrandis, that as
14 QF AmBit is required to maintain that status --- obtain
15 that status in the first instance, it's required to burn
16 waste coal. Is that correct? Is that a true statement?

17 A. Based on its QF status, that's correct.

18 Q. Are you aware, Mr. DeGrandis, whether AmBit has
19 obtained any ruling, whether in West Virginia or any
20 other jurisdiction, to the effect that non-commercial
21 mineral or NCM is legally considered the same as waste
22 coal?

23 A. I'm not aware of any. I have not focused on
24 that issue.

25 Q. Did you look into it? Have you looked into that

1 at all?

2 A. I have not. I have not.

3 Q. In your representation of other QFs, have you
4 ever had to examine that issue?

5 A. Some years ago, I believe for the coal refuse
6 plant, but it's --- I can't recall the specifics.

7 Q. Do you recall specifically, be it AmBit or any
8 other facility, any rulings by any jurisdictions, which
9 would state that NCM is the equivalent of waste coal?

10 A. I haven't. I'm not aware of any because I have
11 not looked into that, no.

12 ATTORNEY OSBORN:

13 I think that's all the questions I have
14 for you. Thank you.

15 A. Okay. Thank you.

16 COMMISSIONER MCCABE:

17 Thank you. Sierra Club?

18 ATTORNEY BECHER:

19 No questions.

20 COMMISSIONER MCCABE:

21 WVEUG?

22 ATTORNEY NAUM:

23 Yeah. Thank you, Your Honor.

24 CROSS EXAMINATION

25 BY ATTORNEY NAUM:

1 Q. Good morning, Mr. DeGrandis.

2 A. Good morning.

3 Q. We met earlier today. My name's Barry Naum.
4 I'm Counsel for WVEUG. I have a quick follow-up question
5 from something that Ms. Osborn was asking you. Maybe a
6 couple questions. You're an attorney; correct?

7 A. That's correct.

8 Q. I know that you answered from discovery, from
9 stuff you received, with respect to whether your
10 testimony is being offered as legal or expert testimony.
11 Do you recall answering that discovery?

12 A. Yes, I do.

13 Q. And do you recall what your response was to that
14 discovery?

15 A. Yeah, I believe that it's I'm providing a legal
16 regulatory basis, policy basis for the application under
17 PURPA, under the federal rules and the state rules
18 implementing PURPA applied to this specific case. So
19 when I think of legal opinions, I think of just the law,
20 but it's applied to the facts. So that's why it's kind
21 of a mix of both, if you will.

22 Q. And do you recall that in response to that
23 question, that was question number 36 to set two from
24 WVEUG, that you said that you are also providing an
25 expert opinion from a legal regulatory perspective

1 regarding the avoided cost rates? Do you recall making
2 that response?

3 A. Yes, I'm doing it from a legal regulatory
4 perspective regarding the avoided cost rate proposed. I
5 didn't do the actual calculations. Mr. Niemann did that.
6 I'm relying on Mr. Niemann's calculations in comparing
7 the proposed rates to the original avoided cost rates,
8 which were based on the avoided cost determinations made
9 at the outset of the EEPA.

10 Q. Okay. So just to get some clarification on the
11 question that WVEUG asked, is your testimony in this case
12 --- do you consider it to be legal opinion or expert
13 opinion?

14 A. Again, I think it's a mixture of both. But it's
15 not down to the level, if you consider an expert doing
16 the actual calculations, no, that's not me. That's Mr.
17 Niemann. But as far as reviewing their avoided cost rate
18 methodology, and seeing whether it's consistent with
19 PURPA, that's kind of legal opinion and expert on the
20 legal policy aspect.

21 Q. Would you be able to segregate portions of your
22 Direct and Rebuttal testimony that's legal opinion versus
23 expert opinion?

24 A. I think it's pretty difficult. But, you know,
25 if you want to go through any part of it, we can do that.

1 Q. No. No, I don't want to. I don't think the
2 Commission wants us to either.

3 A. Okay.

4 Q. Do you hold yourself out as an expert on PURPA?

5 A. I hold myself as an expert on PURPA with regard
6 to PURPA contracts, and FERC and state regulatory issues
7 implemented in PURPA.

8 Q. Okay. And in response to questions from Ms.
9 Osborn, you indicated that the original rate --- the
10 original EEPA between MonPower and AmBit is based on
11 avoided cost; is that correct?

12 A. That's correct.

13 Q. Is the current EEPA in place between AmBit and
14 MonPower based on avoided cost?

15 A. It's based on --- be careful there. It's based
16 on the avoided cost at the outset of the EEPA because
17 AmBit as a QF, elected to have the avoided cost rates
18 based upon MonPower's avoided costs determined at the
19 time the obligation was incurred. QFs have the option of
20 doing at the time the obligation's incurred or at the
21 time of the delivery of power. They opted for the
22 obligation when the obligation was incurred.

23 Q. Understood. If you go to your Rebuttal
24 testimony on page 11 --- and I apologize if we skip
25 around between your Rebuttal ---.

1 A. That's okay.

2 Q. If you go to page 11 in your Rebuttal.

3 A. Give me a second.

4 Q. Sure.

5 A. I'm there.

6 Q. Beginning at line 16, could you read for the
7 record that full sentence that ends on line 19?

8 A. The sentence that begins in that situation,
9 Counsel?

10 Q. Yes, sir.

11 A. Okay. Well, in that situation, which was
12 referring to where rates and terms that are not required
13 under PURPA, which isn't our case. But just saying if,
14 if that were the case. In that situation, even if the
15 rates agreed to by the utility are in excess of avoided
16 cost rates, that parties can still agree to such rates.
17 And the cost should be flowed through retail rates
18 consistent with state law.

19 Q. Okay. Thank you. If I understand your legal or
20 expert opinion in this case, correct me --- please
21 correct me if I'm wrong. You believe that AmBit and
22 MonPower can negotiate a new payment structure or even a
23 new avoided cost rate. Is that fair?

24 A. It's avoided cost rates based on the original
25 avoided costs estimated at the time the EEPA was entered

1 into.

2 Q. But again, based on page 11 of your Rebuttal,
3 the reason that we're here today is the question of
4 whether MonPower can pass those costs through to
5 ratepayers. Is that fair?

6 A. Yeah, that's fair.

7 Q. Okay. This question of whether a commission can
8 approve rates that are in excess of avoided costs --- and
9 I'm paraphrasing. I'm sure you'll fill that in, if you
10 need to. As it pertained to the question, do you recall
11 answering from discovery from WVEUG as to whether this
12 Commission has actually approved such rates? And I can
13 point ---. It's set two, question 34.

14 A. Yeah, I have that in front of me. Which section
15 are you referring to?

16 Q. Just generally, the crux of your response to
17 WVEUG's discovery was that the Commission could approve
18 that as a concept. Is that fair?

19 A. I don't believe I said that.

20 Q. If you look at --- do you have that discovery in
21 front of you?

22 A. Yeah. Are you referring to answer B or A?

23 Q. B, sir.

24 A. I'm looking at B.

25 ATTORNEY RODECKER:

1 I'm sorry. Could you repeat, which
2 question this is, Mr. Naum?

3 ATTORNEY NAUM:

4 Yes, this is WVEUG set two, question 34
5 and Mr. DeGrandis's response to that question.

6 ATTORNEY RODECKER:

7 Can you wait a minute until I get
8 there?

9 ATTORNEY NAUM:

10 Absolutely.

11 BY ATTORNEY NAUM:

12 Q. And this is referring to the levelized rate
13 methodology that you've been referring to?

14 A. Right.

15 Q. Regarding when avoided costs was first
16 established?

17 A. Uh-huh (yes). Yes.

18 Q. Can you review the last sentence in that
19 response?

20 A. Mr. DeGrandis's statement does not suggest a
21 specific rate had been approved in 2016 order, but
22 emphasized the Commission's reliance on his previous
23 findings regarding levelized rates in the EEPA.

24 Q. And if you look at the block quotation above
25 that paragraph, it refers to the concept of a levelized

1 rate methodology?

2 A. Yes.

3 Q. So my question, again, is that this Commission,
4 in your opinion, has approved the concept, but not
5 actually has approved such rated?

6 A. Well, I ought to be real careful to respond to
7 your question. On page 35, which I'm referring to here
8 and your response to your discovery, in the 2016 order,
9 the Commission makes, I think, two relevant
10 determinations or statements. One is that the rates
11 under the EEPA ---.

12 COMMISSIONER MCCABE:

13 Sir, would you speak directly into the
14 mic?

15 A. I'm sorry. Sorry about that.

16 That the rates relevant --- the rates under the
17 EEPA are based on the determination of MonPower's avoided
18 cost, which the Commission established nearly 30 years
19 ago at the outset of the EEPA. Further down, they
20 reference that. They reference what was approved back
21 then. And they said it was cooperation of that data into
22 a levelized, avoided capacity cost rate. So they
23 approved in the EEPA with a levelized rate.

24 And you're asking about how it compares to
25 avoided cost and what my conclusions are here. Two

1 points to make quickly. Under a long-term agreement, the
2 fixed rates that are based on avoided costs at the time
3 the contract was entered into, at different times during
4 the course of that contract, the rates may be higher or
5 lower than the actual avoided cost at the time of the
6 delivery. But we didn't opt for the option of having
7 avoided cost rates based on the time of delivery.

8 Instead, we're saying that the rates that we're
9 proposing here --- let's be clear on this. We're not
10 saying that they're above avoided cost. We're saying the
11 rates here are less than the original cost --- original
12 rates approved by this Commission based on the
13 determination of MonPower's avoided cost at that time.

14 Under PURPA, FERC rules implementing PURPA, if
15 they're equal avoided cost rates, in this case they're
16 less, that makes them just and reasonable, and in the
17 public interest. That's under the FERC standard under
18 304 A and B and under this Commission's rules
19 implementing PURPA under 12.6.A and B. The state rules
20 implementing PURPA and the federal rules, totally
21 consistent. That's what we're addressing here. And
22 that's what I'm addressing as part of the page in this
23 2016, what I'm referring to.

24 BY ATTORNEY NAUM:

25 Q. Has this Commission approved QF rates in excess

1 of avoided costs?

2 A. I'm not aware of it and we're not seeking that
3 here.

4 Q. Thank you. If you go to your Direct testimony
5 now.

6 A. Okay.

7 Q. And this is sort of following up on that point.

8 A. Give me one second.

9 Q. Specifically page eight.

10 A. Okay. Give me a second, please. Page eight of
11 my initial testimony?

12 Q. That's correct.

13 A. I'm there.

14 Q. Line --- they're not numbered, but it's line
15 three. You state that PURPA does not preclude state
16 commissions in certain circumstances from allowing
17 recovery of purchase power charges in excess of a
18 utility's avoided cost through retail rates. Do you see
19 that?

20 A. Yes.

21 Q. Mr. DeGrandis, does PURPA require the state
22 commission to pass through costs?

23 A. If --- well, not those above avoided costs. But
24 if the rates are reflect avoided costs, under FERC rules
25 and this states rules implementing PURPA, they're

1 considered just and reasonable and the public interest.
2 And therefore, they should be approved. But I'm not
3 talking about rates in excess of an avoided cost.

4 Q. But PURPA doesn't mandate pass through of rates,
5 does it, to rate payers?

6 A. FERC --- PURPA deems it just and reasonable and
7 in the public interest. And when the states adopted ---
8 this state adopted PURPA, if they're just and reasonable,
9 and in the public interest, I don't see a reason why they
10 wouldn't be passed through in retail rates. Unless
11 there's some other state factors that I'm not aware of.

12 Q. In your Rebuttal testimony, page 12.

13 A. Okay. Give me a second, please. Page 12,
14 Counsel?

15 Q. Yes.

16 A. Okay. I'm there.

17 Q. Line six.

18 A. Yes.

19 Q. And this goes to this concept, again, that
20 you've been discussing. You say it's fully appropriate
21 for the Commission to consider and approve proposed
22 changing EEPA rates. And then you go on.

23 My question is it would also be appropriate for
24 this Commission to not approve rates if it determined
25 that those rates were not just or reasonable. Do you

1 agree with that?

2 A. I would say that they're just and reasonable and
3 in the public interest, if they're equal to the avoided
4 cost rates. So therefore, I believe it should be
5 approved. I think it's a strong support in this record
6 for such approval because these rates are less than the
7 original avoided cost rates. Therefore, under the FERC
8 rules and this state's rules implementing PURPA, they
9 would be considered just and reasonable and in the public
10 interest.

11 Q. Are you saying then --- is it your testimony
12 that this Commission does not have the authority to make
13 an independent judgement as to the justice and
14 reasonableness of the rates that would result to
15 ratepayers?

16 A. I'm not getting into other factors of the West
17 Virginia law outside of PURPA that may affect the
18 resolution of this case. I'm focusing on PURPA, and
19 FERC's implementation of PURPA, and this state's
20 implementation of PURPA. That's the focus.

21 Q. Under PURPA, does this Commission have an
22 obligation to ensure the economic survival of the Grant
23 Town project?

24 A. That's not part of PURPA, no. However, FERC
25 PURPA strongly encourages these projects. And that was

1 the whole purpose of PURPA, to have qualifying facilities
2 that are not dependent on imported oil. And policies
3 that would promote the development of QFs and PURPA
4 further the purposes of PURPA.

5 Q. When this EEPA expires, under PURPA, this
6 Commission doesn't have an obligation to renew that
7 agreement, does it?

8 A. There would be a determination of whether ---
9 the utilities' avoided cost at that time. And there's
10 all different things that go into that. Utilities can
11 get waivers under PURPA if they're members of RTO.
12 There's a lot of different factors that go into it.

13 Q. But again ---.

14 A. They would not be obligated to renew the
15 contract as is.

16 Q. Okay. Thank you. But again, and this might be
17 getting into legal argument. But also, if
18 hypothetically, this Grant Town project was a new
19 project, this Commission also wouldn't have an obligation
20 to mandate the purchase of that energy now, would it,
21 under PURPA?

22 A. Well, the PURPA ---.

23 ATTORNEY RODECKER:

24 Objection. Objection. It calls for
25 speculation. And we're not in the situation where we

1 have a new plant. This is an existing plant. And it's
2 irrelevant. I object.

3 ATTORNEY NAUM:

4 The witness has testified that he is
5 offering legal as well as expert opinion. My question
6 pertains to, all things being equal, if this project did
7 not exist, would this Commission have to approve the
8 contract under PURPA.

9 COMMISSIONER MCCABE:

10 Okay. We'll just take a moment here.
11 We've considered the question. And we will deny the
12 objection. And we'll consider the testimony later, but
13 proceed.

14 BY ATTORNEY NAUM:

15 Q. So to restate my question, ---

16 A. Yeah, please restate it.

17 Q. --- hypothetically, if the Grant Town project
18 was a new project being offered as a QF today, PURPA
19 would not require this Commission to approve the EEPA,
20 would it?

21 A. Well, PURPA would require the utility to acquire
22 the capacity and energy from the project, and its avoided
23 cost rates at this time if it were a new project.
24 Assuming that MonPower has not obtained a waiver of that
25 obligation from FERC. And there's a procedure for that.

1 But I'm not aware if they have.

2 But if they don't have a waiver, if this were a
3 brand new project coming in now ---. And again, this is
4 hypothetical. It isn't this case. I'll caveat it every
5 which way. But if this was a brand new project, absent a
6 waiver of the PURPA purchase obligation, MonPower would
7 have an obligation to purchase the output in that
8 facility at its avoided cost rates at this time.

9 Q. Can such a waiver be obtained on the basis that
10 Grant Town exists in the PHA territory?

11 A. Now we're really getting into a hypothetical
12 situation.

13 Q. Hypothetically.

14 A. I'm not sure what, you know ---. A PURPA
15 waiver, that's a case-by-case. It's not a safe harbor
16 rule. It's a case-by-case filing with the Commission.

17 Q. This is your first time testifying before the
18 Commission; correct?

19 A. First time testifying before this Commission,
20 yes.

21 Q. Have you testified before in any other
22 commission?

23 A. I have not testified, but I have worked on PURPA
24 contracts, and been in FERC, and state proceedings
25 involving PURPA for over 30 years.

1 ATTORNEY NAUM:

2 Thank you. That's all I have.

3 COMMISSIONER MCCABE:

4 Thank you. Staff?

5 ATTORNEY AUVILLE:

6 No questions, Your Honor. Thank you.

7 COMMISSIONER MCCABE:

8 Mr. Rodecker, do you have any Redirect?

9 ATTORNEY RODECKER:

10 Just two quick questions.

11 REDIRECT EXAMINATION

12 BY ATTORNEY RODECKER:

13 Q. Sorry. I forgot my own admonition here. Two
14 quick questions. Mr. DeGrandis, you were asked by
15 Counsel for the CAD whether PURPA mandates approval of
16 rates based upon financial condition. Again, I
17 understood you to respond that there are conditions upon
18 which they do have a requirement to pass through a --- or
19 approve a rate. And that --- if I understood you
20 correctly, that is if the rate, in fact, is equal to
21 avoided costs; is that correct?

22 A. Yes, that's the PURPA standard.

23 Q. And is that under both PURPA and the state
24 regulations?

25 A. That's under both PURPA, under FERC's rules

1 implemented PURPA, 292.304 A and B, and under this
2 Commission's rules implementing PURPA under Section 150.3
3 Section 12.6A and B.

4 Q. Now, and then you also responded to WVEUG's
5 inquiry with regard to page 11 of your Rebuttal testimony
6 of whether the Commission can pass through to the
7 ratepayers certain costs associated with just and
8 reasonable rates. And you believe that that's a decision
9 that's based upon this Commission's authority to
10 determine under state law?

11 A. Yes, under state law. Including, especially
12 including its rules implementing PURPA which uses the
13 same standard of just and reasonable and in the public
14 interest. And if they're equal to, or in this case less
15 than avoided cost, then they're deemed to be just, and
16 reasonable, and in the public interest.

17 ATTORNEY RODECKER:

18 I have no further questions. Thank
19 you.

20 COMMISSIONER MCCABE:

21 Commissioner Larrick, do you have any
22 questions?

23 COMMISSIONER LARRICK:

24 No questions.

25 COMMISSIONER MCCABE:

1 I also have no questions. You're
2 excused, sir.

3 ATTORNEY OSBORN:

4 Commissioner McCabe, actually I have
5 one follow-up question, if I could.

6 COMMISSIONER MCCABE:

7 Okay.

8 ATTORNEY RODECKER:

9 Your Honor, are we going to go around?

10 COMMISSIONER MCCABE:

11 You're correct on that. We'll
12 pass ---.

13 ATTORNEY RODECKER:

14 I only object to that because we're
15 trying to get witnesses on and out. And one of those
16 witnesses is their own witness. That if we're going to
17 have Recross, that seems to be inconsistent with prior
18 practice.

19 COMMISSIONER MCCABE:

20 I agree.

21 ATTORNEY AUVILLE:

22 Your Honor, if I could weigh in?

23 COMMISSIONER MCCABE:

24 Yes, sir.

25 ATTORNEY AUVILLE:

1 In my experience, the practice has
2 usually been there can be some Recross, as long as it's
3 pertaining specifically to the questions that Counsel
4 asked in Redirect. So as long as --- that's the practice
5 that I've seen. As long as the questions sticks to
6 simply the questions that Mr. Rodecker just asked.

7 COMMISSIONER MCCABE:

8 Point well taken. Is that the
9 situation here?

10 ATTORNEY OSBORN:

11 It's a yes or no question, I think. So
12 I believe we could have already gotten through it. So if
13 I could --- I'm not certain that it stems directly from
14 what Mr. Rodecker asked. But it stems from something
15 that I'm not sure was clear or even put forth in Mr.
16 DeGrantis's pre-filed testimony.

17 ATTORNEY RODECKER:

18 Your Honor, that sounds to me as if
19 it's not consistent with anything other than additional
20 Cross, which is not pertaining to his testimony today on
21 the stand. And believe me, I think we've got --- with as
22 many parties as we do in this case, and each attorney had
23 the same basis for asking the question ---.

24 COMMISSIONER MCCABE:

25 I'll sustain your objection.

1 ATTORNEY RODECKER:

2 Thank you.

3 COMMISSIONER MCCABE:

4 I also have no questions. Thank you,
5 sir.

6 ATTORNEY RODECKER:

7 Thank you, Your Honor. AmBit would
8 call as its next witness Ethan Conner-Ross.

9 -----

10 ETHAN CONNER-ROSS, HAVING FIRST BEEN DULY SWORN,
11 TESTIFIED AS FOLLOWS:

12 -----

13 DIRECT EXAMINATION

14 BY ATTORNEY RODECKER:

15 Q. Mr. Conner-Ross, do you have in front of you two
16 documents, one of which is exhibit marked ECR-D, Direct
17 Testimony of Ethan Conner-Ross on behalf of American
18 Bituminous Power Partners, and the other is marked as
19 Exhibit ECR-R, and styled Rebuttal Testimony of Ethan
20 Conner-Ross on behalf of American Bituminous Power
21 Partners?

22 A. I do.

23 Q. And turning to the first exhibit, which is the
24 Direct testimony, the information contained therein,
25 based upon your questions and answers, were they prepared

1 by you or under your direct supervision?

2 A. Yes.

3 Q. And if I were to ask you those questions today,
4 would your responses be the same as contained therein?

5 A. They would.

6 Q. And likewise, it has attached to the exhibit,
7 Exhibit ECR-1. And is that document --- was that
8 prepared by you and your firm?

9 A. It was.

10 Q. And is the information there true and accurate
11 to the best of your knowledge and belief?

12 A. Yes.

13 Q. With regard to your testimony, if I were to ask
14 you those questions that are contained in your Direct
15 testimony, would the responses be the same today?

16 A. Yes.

17 Q. And you accept that as your sworn Direct
18 testimony in this proceeding?

19 A. I do.

20 ATTORNEY RODECKER:

21 Your Honor, I would ask for this record
22 this document be marked for an exhibit --- for
23 identification as Exhibit ECR-D.

24 (AmBit Exhibit ECR-D was marked for
25 identification.)

1 COMMISSIONER MCCABE:

2 So marked and be admitted without ---
3 unless there's exceptions.

4 BY ATTORNEY RODECKER:

5 Q. And likewise, Mr. Conner-Ross, on the document
6 which is styled Rebuttal Testimony, was that document
7 prepared by you or under your direct supervision?

8 A. Yes, it was.

9 Q. And is the information contained in there true
10 and accurate to the best of your knowledge and belief?

11 A. Yes.

12 Q. And if I were to ask you those questions
13 contained therein, would your responses be the same
14 today?

15 A. Yes, they would.

16 Q. Do you accept that as your further and Rebuttal
17 testimony in this proceeding?

18 A. I do.

19 ATTORNEY RODECKER:

20 Your Honor, I'm going to ask that that
21 document be marked for identification as Exhibit ECR-R.

22 (AmBit Exhibit ECR-R was marked for
23 identification.)

24 COMMISSIONER MCCABE:

25 So marked and admitted, unless there's

1 exceptions.

2 ATTORNEY RODECKER:

3 And with that, Your Honor, I would
4 tender the witness for Cross Examination.

5 COMMISSIONER MCCABE:

6 CAD?

7 ATTORNEY OSBORN:

8 Thank you.

9 CROSS EXAMINATION

10 BY ATTORNEY OSBORN:

11 Q. Good morning. Can you tell me, Mr. Conner-Ross,
12 what your experience is with the coal industry? Is it
13 like ---?

14 A. Sure. The first time that I encountered issues
15 with the waste coal industry was in a report that I
16 prepared, along with my firm, for the industry trade
17 association, ARIPPA, on economic and environmental
18 benefits of the 14 waste coal plants in Pennsylvania,
19 which was released in September 2016. So the analysis
20 was done in the spring and summer of 2016.

21 Q. Any experience within the coal industry other
22 than that work in Pennsylvania and your work in this
23 case?

24 A. No.

25 Q. Can you define for me, as it relates to PURPA,

1 the term waste coal?

2 A. Well, I'm not an expert on PURPA or the legal
3 standards. My understanding of the term waste coal is
4 the process of extracting coal historically has led to a
5 separation between that which was originally burned, and
6 that which was not considered a useable fuel source based
7 on the technology at the time, and was set in waste piles
8 throughout Pennsylvania, West Virginia, Kentucky and
9 other states, and has been in piles for a long time
10 creating a number of environmental issues.

11 And then in the 1980s, technology was developed
12 to use that sort of previously unusable coal that was
13 originally termed waste as an energy source. And AmBit
14 and the plants in Pennsylvania are taking advantage of
15 that new technology to utilize that fuel.

16 Q. A little while ago when I was asking some
17 questions of Mr. DeGrandis, you may have heard me ask him
18 about NCM or non-commercial mineral. Are you familiar
19 with that term?

20 A. I am not.

21 Q. So I guess it's fair to say that you would not
22 be able to tell us whether you have any knowledge of
23 whether NCM could be considered the equivalent of waste
24 coal under PURPA?

25 A. I do not have any knowledge of that.

1 Q. Is it your understanding that all waste coal
2 originates from standing piles if you have an
3 understanding of that?

4 A. I don't have a comprehensive understanding that
5 I would make any assertion about all coal.

6 Q. What about whether all waste coal piles qualify
7 as abandoned mine sites? Do you know whether that would
8 be an accurate statement or not?

9 A. I do not know.

10 Q. Do you know what reclamation responsibilities
11 coal companies have with respect to their preparation
12 plant waste?

13 A. Are you referring to waste coal facilities or
14 all coal facilities?

15 Q. All coal facilities.

16 A. I am not an expert on that.

17 Q. Do you know what a reclamation bond is?

18 A. I have some familiarity with the term. But it's
19 not something that I've studied in-depth.

20 Q. Are you able --- based on that familiarity, are
21 you able to tell us whether it's your understanding that
22 mining companies post reclamation bonds to insure that
23 waste coal is properly replaced?

24 A. I honestly don't know the ins and outs of it.
25 So I wouldn't make any statement about that.

1 Q. Okay. That's fine. Do you know whether mining
2 companies are required to manage long-term water
3 treatment if there is run-off from their waste coal pile?

4 A. My understanding is that the remining permits
5 that waste coal facilities obtain in order to obtain a
6 fuel source come with a number of environmental
7 responsibilities where they test the water and have
8 various requirements of that sort. But I don't know the
9 specifics of that.

10 Q. On page five of your testimony --- give me just
11 a moment and I'll figure out exactly which lines I'll
12 refer you to here. Beginning with the question on line
13 16, you were asked what are the environmental benefits of
14 the Grant Town project. And then on line 17, you stated
15 that the core activity of the Grant Town plant involved
16 removing hazardous coal refuse from standing piles, using
17 that coal to generate energy intermediating the site for
18 which refutes with the mine. Did I read that correctly?

19 A. Yes.

20 Q. Okay.

21 Are you familiar with or were you aware that
22 there is a specific definition of hazardous waste in the
23 RCRA, which is the Resource Confirmation and Recovery
24 Act?

25 ATTORNEY RODECKER:

1 Excuse me, did you say hazardous waste?

2 ATTORNEY OSBORN:

3 Yes.

4 ATTORNEY RODECKER:

5 Thank you.

6 A. I was not aware of that. The use of the term
7 hazardous, in this instance, I think would be a layman's
8 use of hazardous as sort of commonly understood, not a
9 legal definition.

10 BY ATTORNEY OSBORN:

11 Q. With that being said, that you use it in
12 layman's terms, do you know whether waste coal has been
13 labeled hazardous under the RCRA? Would you have any
14 knowledge of that?

15 A. I know that it has certain environmental
16 challenges with it. I don't know its specific
17 designation under the act that you refer to, no.

18 Q. In your testimony, you talk about the total ---
19 I believe you talk about the total tons of waste coal
20 burned by the Grant Town facility. And I'm wondering
21 whether in discussing that, you made a distinction as to
22 the source of the coal and the waste coal.

23 A. We didn't --- I'm not sure I understand the
24 distinction that you're referring to.

25 Q. Well, I guess what I'm asking is whether in

1 discussing and looking at the total ton of waste coal
2 burned by the Grant Town facility, I'm wondering whether
3 you took into consideration that some share of that waste
4 coal is not refused from standing piles and that, in
5 fact, it may be from a source that requires no
6 remediation. Did that factor into your consideration?

7 A. I don't believe there's any adjustment in the
8 calculation relating to the source of the pile, no.

9 Q. Do you have any familiarity with the Surface
10 Mining Control and Reclamation Act?

11 A. I know of it certainly. But I'm not an expert
12 on it.

13 Q. How did you gain your understanding of that?
14 Was that from your working the Pennsylvania case?

15 A. That's correct, yeah.

16 Q. And are you familiar with the AML Fund?

17 A. Yes.

18 Q. What's your understanding of the purpose of that
19 fund?

20 A. My understanding of the AML Fund is that, and
21 Mr. Rice referenced this earlier today, a certain fee is
22 applied to the extraction of current mining operations.
23 And then funds are passed back to states to clean up
24 abandoned mine lands and a range of issues that relate to
25 those, of which coal refuse is one.

1 Q. Are you aware of how much money is currently in
2 the AML Fund?

3 A. I'm not aware of the total amount. I am aware
4 that it's declined significantly, the grants in recent
5 years and dropped by at least half in the last five years
6 in terms of the amount available to individual states.

7 Q. With that being said, would you be willing to
8 agree, subject to check, that as of June 2017, there was
9 more than \$2 billion of AML funds remaining that has not
10 been appropriated?

11 A. Is that nationally?

12 Q. Yes.

13 A. I don't know that number offhand. That's
14 possible.

15 Q. Do you believe that funds are available only to
16 abandoned mine sites? Do you have an understanding of
17 that?

18 A. My understanding is the funds are granted to the
19 states. And then entities like the West Virginia DEP
20 make a determination of the best use of those. I don't
21 know the specific standards that guide that grant
22 process.

23 Q. And do these AML funds factor into your analysis
24 at all as far as the purported benefits of the Grant Town
25 facility?

1 A. I'm not sure I understand the question.

2 Q. Well, in your testimony, you agree that in large
3 part you discuss various benefits that you believe are
4 provided by the Grant Town facility in terms of, you
5 know, utilizing waste coal.

6 A. Okay.

7 Q. Correct?

8 A. Yes.

9 Q. And I'm wondering whether, in doing so, in
10 talking about the benefits of the Grant Town facility,
11 you considered whether AML funds would be available for
12 use in achieving the same goals that you believe have
13 been achieved by AmBit.

14 A. Sure. They are potentially available. But as
15 Mr. Rice noted this morning, the DEP has a number of
16 priorities and has a prioritization scheme that doesn't
17 necessarily place coal refuse piles at the top of that
18 list.

19 So, you know, we described the state as
20 resource-constrained in this area. And, you know, I
21 think Mr. Rice stated this morning that the state does
22 not have available all of the funds it would need to fix
23 this range of problems. So we consider it a private-
24 sector activity, as he referenced, additive to what the
25 state can do, not simply replacing it.

1 Q. On page seven of your testimony at line ---
2 beginning at line 11, you state --- I'll give you a
3 moment to get there. Sorry.

4 A. Yeah, I see it.

5 Q. Okay. You indicate that state official's
6 estimate that it would cost \$4.5 billion to clean up the
7 state's 3,300 abandoned mine land sites, as reported in
8 the Altoona Mirror in January of 2017. Do you see that?

9 A. I do.

10 Q. And I believe there's also a reference to this
11 same statistic in your report that is attached to your
12 exhibit?

13 A. Yes.

14 Q. Beyond stating that, you know, your source for
15 this was the Altoona Mirror from January 2017, do you
16 know beyond that, the source of that information?

17 A. Sure. The Altoona Mirror reported it. But
18 state officials are the source. And my understanding is
19 that Mr. Rice testified to that same number in front of
20 the U.S. Congress a couple of months ago at a hearing
21 related to abandoned mine lands. So that --- my
22 understanding is that it's the state's official estimate.

23 Q. And with respect to state officials, do you know
24 specifically who the state officials are?

25 A. I do not know the state official reported in the

1 Altoona Mirror. I do know that Mr. Rice testified to
2 that number before the U.S. Congress, as I just
3 referenced.

4 Q. And would you agree with me that that \$4.5
5 billion estimate to clean up what I stated was the
6 state's --- based on your testimony, was the state's
7 3,300 abandoned mine land sites, is that money, that that
8 figure would also apply to clean up of refuse, as opposed
9 to simply abandoned mine land sites?

10 A. Correct. Refuse is one of the --- a subset of
11 the larger set of issues that collectively the state
12 estimates is a \$4.5 billion.

13 Q. Did you prepare the report that's entitled
14 Economic Environmental Impact of AmBit that was included
15 within your testimony as Exhibit ECR-1?

16 A. I did. We had a team that prepared it. But I
17 was the primary author.

18 Q. Let me pull that. I'm going to turn to that
19 report for just a moment. On page six of your report, I
20 believe you state there are only two waste coal-fired
21 plants in West Virginia; is that correct?

22 A. That's my understanding, yes.

23 Q. Okay. What are those two waste coal-fired
24 plants?

25 A. Well, one of them being the Grant Town facility.

1 And the other one, I am not familiar with the name. But
2 I do know that that's located in a different part of the
3 state, not in the same Northwest Region.

4 Q. Is it possible the other plant is Morgantown
5 Energy Associates, if you know?

6 A. I don't, but that's possible.

7 Q. Have you ever heard of or are you familiar with
8 the North Branch plant?

9 A. I am not.

10 Q. So you wouldn't have any idea of what the status
11 of North Branch plant is or whatever, or what became of
12 it. Is that fair?

13 A. Well, my understanding is that there's only two
14 plants currently operating, so ---.

15 Q. The other plant that you reference as being one
16 of only two waste coal power plants in West Virginia,
17 which you agree may be Morgantown Energy Associates, do
18 you know if that other plant is a QF based upon its use
19 of waste coal?

20 A. I do not.

21 Q. With respect to your economic analysis performed
22 in this proceeding, would you agree that the
23 environmental implications that you've referenced would
24 be less or lessened, if you were to assume that much of
25 the waste coal did not originate from unreclaimed

1 standing piles?

2 A. I couldn't answer that question without
3 necessarily knowing where it did originate from.

4 Q. Well, in performing an analysis such as the one
5 that you've done in this case, if you were advised by the
6 client, AmBit in this case, that much of the waste coal
7 that's burned by the facility did not originate from
8 unreclaimed standing piles, would that factor into your
9 analysis?

10 A. Potentially. Some of the environmental benefits
11 do derive from the remediation of piles, yes.

12 Q. And did you read the voluminous Lummus report in
13 the course of your work in this proceeding?

14 A. I did not.

15 Q. Most of the --- would you agree with me that
16 most of your economic analysis in this case is related to
17 direct, indirect and induced benefits from the AmBit
18 plant?

19 A. That's correct.

20 Q. Okay.

21 With respect to the employees of the AmBit plant
22 currently, did you make any assumptions that some or all
23 of the direct employees would find other jobs in the
24 event that the facility is shut down?

25 A. We did not make any assumptions about an

1 economic counter-factional scenario in which the plant
2 would shut down. The analysis is based on the impact of
3 the continued operations under current conditions. So it
4 does not develop an alternative scenario of what might
5 happen absent the plant.

6 Q. Do you have any knowledge of why there has been
7 an increase in the number of contract employees paid by
8 AmBit between the time of this proceeding and the
9 previous AmBit proceeding that was before this Commission
10 in 2015 and 2016?

11 A. No, I don't have a detailed understanding of
12 their operation decisions.

13 Q. Were you aware that there has been an increase
14 in the number of contract employees?

15 A. Relative to some prior point, no. The forecast
16 that I analyzed were primarily forward-looking.

17 Q. In your testimony, is it correct that you
18 conclude that with the amendment the EEPA would cost \$10
19 million more on a NPV basis to customers?

20 A. Yes.

21 Q. And did you calculate that using what you, sir,
22 call the Appalachian Power Energy Curve assuming that no
23 --- assuming no carbon that were prepared in April 2016?

24 A. Not entirely. I believe the assumption, and
25 it's referenced in my Direct testimony, followed the no-

1 carbon assumption for a certain number of years and then
2 reconciled that to the mid-case assumption for the years
3 beyond that.

4 Q. And I believe you also indicated in your
5 testimony that you relied on AmBit's numbers for capacity
6 rates and the fees were adjusted through the most recent
7 auction, which occurred in May of 2017.

8 Is that correct?

9 A. No. I don't believe there --- I know that there
10 was not any adjustment for anything that took place in
11 May 2017. The report was released in February 2017.

12 Q. Your economic analysis, is it correct that it
13 concluded that the EEPA would increase customer costs by
14 \$10 million throughout the remaining life of the
15 contract?

16 A. On a net-present value basis, yes.

17 Q. So an increase, sir, of \$10 million throughout
18 the remaining life of the contract on an NPV basis, would
19 you agree that perhaps that conclusion is somewhat
20 misleading given the annual results as shown in Table 1.1
21 of your Exhibit Number 1?

22 A. I would not agree with the term misleading. The
23 Table 1.1 that you referenced shows a nominal result and
24 also shows an NPV result. The nominal result of the
25 analysis is actually a positive number, which suggests a

1 savings to ratepayers, resulting from a savings in, it
2 looks like, the last ten years. The cost to ratepayers
3 are in the up-front years.

4 And what the net present value analysis does is
5 discount those future numbers somewhat relative to the
6 present numbers. So even though the gains in the out-
7 years are somewhat higher than the losses in the early
8 years, that does, on a discounted basis, calculate to a
9 slight loss to ratepayers, a cost of \$10 million.

10 But I would not term that misleading. That is a
11 standard economic technique to show a nominal value and
12 show an NPV. And the reason we've shown it year-by-year
13 is to be transparent about that.

14 Q. Your analysis, in fact, shows a \$55.7 million
15 loss to customers during the period of 2018 through 2025.
16 Is that correct?

17 A. That's possible. I haven't done the math
18 specifically. But if you're representing that, yes. And
19 a gain of --- if it's a \$65 million loss, it would be a
20 gain of \$125 million in the ten years to follow that.

21 Q. In the ten years to follow 2025?

22 A. Correct. 2026 through 2035 are all shown as
23 positive values. In other words, a savings to
24 ratepayers.

25 Q. Now, would you agree with me, sir, that there is

1 a greater uncertainty in your energy past due prices,
2 your estimate or suggestion of those, beyond the year
3 2025? In other words, the further we get from the
4 present, it's more difficult to accurately predict or
5 accurately forecast those prices. Is that fair?

6 A. Well, I think there's uncertainty in any
7 forecast, certainly. Even though we're relatively short-
8 term in energy prices. I would agree with the statement
9 that the uncertainty does grow out in later years.

10 But the thing that's really driving the negative
11 values turning to positive values is that the capacity
12 rate is fixed within the EEPA. And prices, even absent
13 the normal ups and downs, rise due to inflation. So you
14 would certainly anticipate the market prices being higher
15 absent the fluctuations of the business cycles in 2035,
16 than they are in future years that are closer. So a
17 fixed EEPA will tend to be more profitable to ratepayers
18 over time, just due to that dynamic.

19 Q. Are you familiar with the regulatory content
20 referred to as the matching principles?

21 A. I am not.

22 Q. Now, with respect to the Pennsylvania study that
23 you referenced at the beginning of your questioning here
24 today, did you rely in part on that Pennsylvania study to
25 determine property values in this case?

1 A. We did rely on some of the analysis that we had
2 done in Pennsylvania for some of the environmental
3 analysis here based on the fact that we had been able to
4 gather a significant amount of data and understand some
5 of the relationships that we did not have a publicly
6 available data source for here in West Virginia. So we
7 used that as a proxy in some cases.

8 Q. Now, the situation in Pennsylvania that you ---
9 which you've referenced, that did not involve a situation
10 where ratepayers were being charged; is that correct?

11 A. That's correct. It was an economic and
12 environmental benefit analysis. It did not get into any
13 specific ratepayer impacts or any type of request or
14 petition like the one here today.

15 Q. Well, specifically, I mean, isn't it accurate
16 that in Pennsylvania that potentially involves a tax
17 credit? Is that fair?

18 A. The study does not specifically address a tax
19 credit. The economics are a little bit different for the
20 plants in Pennsylvania, because many of them have ---
21 their original EEPAs have expired. So they are now
22 dealing with market rates, which fluctuate and have
23 created some economic pressures there. But our study
24 primarily just addresses the benefits.

25 Q. Well, aside from the fact that your report did

1 not specifically address tax credits, is it your
2 understanding that the ultimate outcome of what occurred
3 in Pennsylvania was, in fact, a tax credit, as opposed to
4 cost being passed on to ratepayers?

5 A. I understand that ARIPPA has been pursuing, and
6 I believe successfully, a tax credit, yes, on behalf of
7 those plants in Pennsylvania.

8 Q. Do you know if the per ton tax credits that
9 resulted in Pennsylvania was \$4 per ton?

10 A. That sounds correct. I don't know that for
11 sure.

12 Q. Do you have an understanding of whether that
13 resulted in \$15 million --- I'll withdraw that question.

14 ATTORNEY OSBORN:

15 And I think that's all I have for you.

16 Thank you.

17 A. Thank you.

18 COMMISSIONER MCCABE:

19 Sierra Club?

20 ATTORNEY JOHNS:

21 Thank you.

22 CROSS EXAMINATION

23 BY ATTORNEY JOHNS:

24 Q. Good morning, Mr. Conner-Ross. My name is Evan
25 Johns. I'm Counsel for the Sierra Club. I have a few

1 additional questions on your report here ---

2 A. Okay.

3 Q. --- labeled Exhibit ECR-1. You said that you
4 were the lead author of that report; is that correct?

5 A. Yes.

6 Q. And from what I understand, that report has two
7 primary sections. There's an analysis of the economic
8 benefits or net-present value of amendments. And the
9 second part of the report deals with the purported
10 environmental benefits; is that correct?

11 A. Well, there are economic impacts as well. But
12 yes, the section three of the report deals with
13 environmental and public benefits.

14 Q. How much of the report did you prepare
15 personally?

16 A. I would say I was the original author of all the
17 content. And others, you know, reviewed it and
18 contributed.

19 Q. That includes all the sections on purported
20 environmental benefits here in section three of the
21 report?

22 A. It does.

23 Q. You mentioned that the report is relied heavily
24 on and that your previous experience was preparing a
25 similar report for ARIPPA in Pennsylvania; is that

1 correct?

2 A. Yes.

3 Q. Was that report prepared in anticipation of
4 litigation or was it connected to any sort of litigation
5 whatsoever?

6 A. No.

7 Q. Is it fair to say that the environmental
8 benefits you discuss in section three of your report
9 assume that there will be no clean-up of the waste coal
10 sites that are currently being used by the Grant Town
11 project?

12 A. That's correct. As I referenced earlier, we
13 consider the work of the plant additive to any clean-up
14 efforts that the state might be undertaken.

15 Q. And when you were looking at whether that was
16 actually going to be the case, whether or not these
17 facilities would be cleaned up, did you look at any
18 pending or proposed legislation, any state or federal
19 programs that might also be available to help remediate
20 those sites?

21 A. We did not examine them in detail. We are aware
22 in both Pennsylvania and West Virginia, as Mr. Rice
23 mentioned this morning, that waste coal sites, standing
24 sites are not typically the highest priority for DEP.
25 And that given they're limited funds, we think it is a

1 reasonable assumption that the work of the plants is, in
2 fact, additive.

3 Q. So you didn't look at any proposals to increased
4 funding for remediation of these sites in the near
5 future?

6 A. We did not evaluate any potential legislation,
7 no.

8 Q. Are you familiar with the Reclaim Act, as it's
9 called?

10 A. I'm not.

11 ATTORNEY JOHNS:

12 Approach the witness.

13 BY ATTORNEY JOHNS:

14 Q. Mr. Conner-Ross, I just handed you an article
15 from the Charleston Gazette. Are you familiar with that
16 publication?

17 A. Somewhat.

18 Q. Have you read this article or are you familiar
19 --- you said you were not familiar with the Reclaim Act;
20 is that correct?

21 A. That's correct. And I have not read this
22 article.

23 Q. I apologize. I gave all my copies here. If you
24 turn to the third page of that article as printed out
25 here, it states that under the bill, the federal

1 government would advance the release of \$1 billion, \$200
2 million annually for five years in money from the
3 Abandoned Mine Land Fund, which I believe you and counsel
4 for CAD discussed earlier, to help communities that have
5 relied on coal production for jobs, but have been hurt by
6 the downturn in the coal industry.

7 So it's safe to say that that sort of release of
8 money through the Abandoned Mine Lands Fund was not at
9 all considered in your analysis. Is that correct?

10 A. Well, this article post-dates our analysis. I
11 don't think it changes the crux of it in the sense that,
12 you know, large numbers of dollars being released
13 certainly would enhance what DEP would have access to.
14 But I don't think it's commensurate with certainly the
15 total clean-up costs that they're estimating. Because
16 the billion dollars would be shared out among states.

17 And then secondarily, that again, wouldn't
18 presume that they would spend that money on coal refuse
19 piles specifically, as opposed to the broad array of AML
20 issues that they are tasked to address.

21 Q. Certainly. And I do understand that this does
22 post-date your report. I would point out, at the bottom
23 of the page, it does say that this is similar to
24 proposals that were put forth by previous
25 administrations. So none of those prior proposals went

1 into your analysis either; is that correct?

2 A. That is correct. Although, I will say that our
3 analysis was formed in part in Pennsylvania, by our
4 conversation with Pennsylvania DEP, which echoed the
5 perspective you heard from Mr. Rice this morning, that,
6 you know, they consider these facilities to be addressing
7 a problem that the state is sort of unable to address
8 itself, as much as it would like to.

9 And I would point out as well something that's
10 discussed in the report is that the economics are
11 fundamentally different for a private facility to
12 undertake this type of remediation relative to the state
13 because of their ability to convert it into energy and
14 actually recover. You know, in essence if you look at
15 the waste coal plant as an environmental project, they're
16 able to in a sense fund the clean-up of the site through
17 the sale of energy that they're able to generate from it.

18 And then secondly, when the state cleans up a
19 site, they need to find a place to store that coal
20 safely, which can be very cost-prohibitive on its own.
21 Where the coal plant, you know, by contrast can actually
22 burn it. So the economics are different for the state to
23 do it relative to a plant.

24 Q. So I take it that you're saying that this
25 project should be considered purely as just an

1 environmental clean-up project essentially? That's
2 really the only justification for it.

3 A. I did not say that.

4 Q. Okay. But you did say that outside of the
5 public health or environmental benefits in section three
6 of your report that this would be a net loss in terms of
7 net present value to ratepayers; correct?

8 A. Specific to ratepayers, that is what our
9 calculation shows. But there are a number of economic
10 and environmental benefits that would weigh against that.

11 Q. But Mr. Conner-Ross, you didn't look at how the
12 ratepayer investments that are being asked to be approved
13 in this amendment, how a similar level of funding could
14 be used to produce similar or greater environmental
15 benefits; is that correct?

16 A. I'm not sure I understand the question. If the
17 state were to make that sort of investment itself?

18 Q. The state or anyone.

19 A. Well, as I just discussed, the economics are not
20 as favorable for the state because they're not able to
21 recoup revenue by generating energy. And they're forced
22 to have costs to store the waste coal safely and over the
23 long-term. So I don't take it as a given that the state
24 could achieve the same impacts given the same funding.

25 Q. Looking more generally at section three, there

1 are costs associated with operating the Grant Town
2 facility; is that correct?

3 A. Certainly.

4 Q. Environmental costs.

5 A. Certainly any facility that generates energy has
6 ramifications for pollution and things of that nature.

7 Q. And those costs aren't addressed anywhere in
8 your report; is that correct?

9 A. That's correct.

10 Q. However, you do address the net present value in
11 your economic analysis; correct?

12 A. Our ratepayer analysis is a net present value.
13 Our economic analysis, the economic impact numbers as I
14 discussed before, do not have a counter-factual. They
15 are a gross analysis of the direct, indirect and induced
16 impacts of the plant and its operations.

17 Q. So it's safe to say that nowhere in your
18 analysis you consider costs associated with runoff from
19 the deposition of coal ash?

20 A. So we consider the implications of coal ash on
21 acidic runoff. And we consider that to be a benefit
22 based on the work of Dr. Zenkevich in his analysis.

23 Q. But you don't analyze any cost that might be
24 associated with that; is that correct? Do you --- by I
25 take it, your report doesn't look at whether there's

1 costs. It doesn't consider questions; is that correct?

2 A. So we use his calculations of a reduction in
3 acidity. So if there are negative implications that
4 should be captured in the total net reduction that he
5 calculates ---.

6 Q. But you said his report was just looking at the
7 lower levels of the acidity?

8 A. That's correct. There may be other
9 environmental compounds.

10 Q. And you testified that that's the only potential
11 environmental consequence of deposing coal waste?

12 A. No, I did not testify to that.

13 Q. Okay. Thank you. And there's not consideration
14 of costs of air pollution that's generated at the
15 facility, acid rain impacts, respiratory impacts to
16 nearby residents, nothing like that; is that correct?

17 A. That's correct. My understanding of the issue
18 is there are certainly pollution impacts from the plant.
19 There are also pollution impacts from the piles
20 themselves. And neither of those is considered.

21 Q. You do, however, consider an increase in land
22 value associated with remediating these waste coal sites;
23 is that correct?

24 A. That is.

25 Q. And you calculate that at \$10,000 per acre?

1 A. Yes, that's based on information provided by the
2 Pennsylvania DEP of land value of reclaimed piles in
3 Pennsylvania over a number of years. And as I referenced
4 before, we thought that was an appropriate data source,
5 given that we didn't have more specific information here
6 to use as a proxy.

7 Q. That's not a data source you cite in your
8 report; is that correct?

9 A. I believe it is. For the \$10,000 per acre?

10 Q. Yes.

11 A. So footnote 28 of the report on page 23 says see
12 Pennsylvania Department of Environmental Protection,
13 Bureau of Abandoned Mine Reclamation Program
14 Accomplishments.

15 Q. And it's your testimony that that is where you
16 derived the \$10,000 per acre figure?

17 A. It is.

18 ATTORNEY JOHNS:

19 Approach the witness once more, Your
20 Honor.

21 OFF RECORD DISCUSSION

22 BY ATTORNEY JOHNS:

23 Q. Does this printout look familiar to you, Mr.
24 Conner-Ross?

25 A. Not necessarily in this format. But I'm

1 familiar with the source.

2 Q. I'm sorry. I missed the second part. Could you
3 repeat your answer?

4 A. I'm familiar with the source, the Pennsylvania
5 DEP information.

6 Q. And can you point to me anywhere in this
7 printout of the program accomplishments page where this
8 total land value for fiscal years 2012 through 2015,
9 undertaken --- excuse me, where the total land value
10 increase of \$10,000 per acre for remediated land is here?

11 A. I do not see it on this printout. And I know
12 this was an issue that came up in your request for
13 information. And in response to that --- and I don't
14 know if this is part of the record or what the legal
15 status is. But response number 2-6, we produced a table
16 that we were provided by the Pennsylvania DEP of these
17 land values that I reference.

18 So in collecting data in the ARIPPA matter, we
19 did have a direct data request to the DEP. And it is
20 possible that we were sent this data directly, rather
21 than attaining it from this particular program
22 accomplishments. But nonetheless, the DEP is the source
23 of the data.

24 Q. Pennsylvania DEP, that is?

25 A. That's correct.

1 Q. Okay. But it is not the source reflected in
2 your report?

3 A. I can't confirm that. I don't see it certainly
4 on this page. So that is possible that the footnote
5 mischaracterized what DEP info provision that was
6 involved in.

7 Q. Thank you. Mr. Conner-Ross, are you familiar
8 with land values in West Virginia?

9 A. Not specifically.

10 Q. You didn't look at any specific land value
11 increases in West Virginia, or even just look at what
12 general land values might be in West Virginia for non-
13 waste coal?

14 A. We did not do a distinct analysis in West
15 Virginia. We certainly considered the similarities
16 between the coal areas of Pennsylvania and West Virginia
17 in considering whether that was an appropriate proxy.

18 ATTORNEY JOHNS:

19 May I approach one final time, Your
20 Honor?

21 BY ATTORNEY JOHNS:

22 Q. Mr. Conner-Ross, could you read the title of
23 this report?

24 A. Land Values 2017 Summary.

25 Q. And can you tell who the author of this report

1 is?

2 A. It appears to be the U.S. Department of
3 Agriculture.

4 Q. Do you have any reason to suspect that this is
5 not what it purports to be, which is a 2017 land value
6 report or summary by the USDA?

7 A. I do not.

8 ATTORNEY RODECKER:

9 Objection. Your Honor, I believe the
10 third page in indicates that this is a document
11 reflecting the agricultural land value. Is that correct?

12 ATTORNEY JOHNS:

13 That is correct, yes.

14 BY ATTORNEY JOHNS:

15 Q. Mr. Conner-Ross, do you have any reason to think
16 that agricultural land, land suitable for agricultural
17 uses, would be less valuable than land which was former
18 coal refuse disposal site?

19 A. It would depend on where it was located, the
20 uses of the property, what's around it.

21 Q. Did your analysis make any similar
22 considerations for surroundings, properties on West
23 Virginia sites where coal refuse piles are located used
24 by the Grant Town project?

25 A. Well, by proxy. That's why we thought that

1 using actual data from sites that had been reclaimed in
2 Pennsylvania was more appropriate than making generalized
3 assumptions about land value, because they reflected
4 similar projects in a similar part of the country that
5 had been undertaken.

6 Q. Are you familiar with where the coal refuse
7 piles are located in West Virginia?

8 A. I'm familiar broadly with their geographic
9 location. I don't know as it relates to population
10 centers or specifics like that. The other thing to keep
11 in mind is that our analysis is prospective. So it's not
12 an analysis of previous remediation. It is a projection
13 of future remediation. So it may not be the case that
14 specific piles have even been identified. So, you know,
15 we're dealing with averages and proxies, rather than an
16 analysis of any given site.

17 Q. But Mr. Conner, I read your report to say that
18 this \$10,000 per acre improvement is over the years 2012
19 and 2015. Is that not the case?

20 A. That's correct. The data from Pennsylvania was
21 retrospective. And we believed that rather an analysis
22 of specific sites in West Virginia, that average made for
23 an appropriate assumption moving forward.

24 Q. Okay. So the data you provided to make your
25 assumption is actually older than the land values

1 reflected in the 2017 report; is that correct?

2 A. Well, this appears to have values from 2013 to
3 2017. So I would say it's a similar time period, but
4 older than the 2017 value specifically.

5 Q. And on page eight of that report, can you look
6 at the very last line in the table located there, and in
7 the 2017 column, and tell me what the average value per
8 acre of farm real estate is in West Virginia.

9 A. It appears to be 2,570.

10 Q. That's \$2,570 per acre; correct?

11 A. Correct.

12 Q. And if you turn to page ten for crop land, the
13 average cost per acre in that same column we were looking
14 at on the previous page is \$3,160 per acre; correct?

15 A. That's correct.

16 Q. In West Virginia?

17 A. Yes.

18 Q. But it's your testimony that these refuse piles,
19 once they're reclaimed, can be on average \$10,000 more
20 than they're currently worth? That was the assumption
21 that was made in your report.

22 A. What they are currently worth. Our assumption
23 is that the value would be \$10,000, yes, from the
24 observed data from the Pennsylvania DEP.

25 Q. \$10,000 if the property was worth literally

1 nothing before it was remediated; correct?

2 A. I believe that's correct. I believe it did not
3 assume a current value.

4 Q. Mr. Conner, ---.

5 A. No, I apologize. Correct. It did not assume a
6 current value for the piles themselves. It did assume a
7 current value for nearby, with an incremental increase
8 that observed only that increment.

9 Q. I'm sorry, can you clarify that?

10 A. Yes, and I'm referring to page 24 of the report.
11 It assumes --- on page 23, the value of \$10,000 per acre
12 that we've discussed. And then on page 24, it implies an
13 incremental value to nearby properties as well.

14 Q. That's in addition to the \$10,000 you assume for
15 all the remediated land?

16 A. That's correct.

17 Q. Mr. Conner-Ross, are you offering your testimony
18 as an expert in environmental benefits or environmental
19 economics?

20 A. So my profession is the quantification of
21 economic benefits, which can include environmental
22 benefits that are monetized in this case. I'm certainly
23 not an environmental scientist.

24 ATTORNEY JOHNS:

25 No further questions. Thank you.

1 COMMISSIONER MCCABE:

2 Do you ---?

3 ATTORNEY JOHNS:

4 Oh, I apologize, Your Honor. Just one
5 moment. Could we, Your Honor, mark and move for entry as
6 an exhibit the final report --- the land value report
7 from the USDA?

8 COMMISSIONER MCCABE:

9 You want to mark as an exhibit the
10 Sierra Club Cross which is USDA land values 2017 August
11 17th summary?

12 ATTORNEY JOHNS:

13 That's correct, Your Honor.

14 COMMISSIONER MCCABE:

15 So it would be Sierra Club Cross Number
16 1.

17 (Sierra Club Cross Exhibit 1 was
18 marked for identification.)

19 ATTORNEY JOHNS:

20 We move for its admission, Your Honor.

21 COMMISSIONER MCCABE:

22 Okay.

23 ATTORNEY RODECKER:

24 Your Honor, I'm going to object to
25 that, to the admission of it into evidence. I don't

1 believe it's --- first of all, the witness has no
2 knowledge of this document prior to it being presented to
3 him today. It doesn't appear to be probative in that
4 it's pertaining to different property values than the
5 witness is testifying to. And there has been no showing
6 made that this document reflects any comparable analysis
7 of the land values that were included in Mr. Conner-
8 Ross's report.

9 ATTORNEY ROBERTS:

10 Mr. Commissioner, I understand Mr.
11 Rodecker's objection. His objection goes to the weight
12 of this report that the Commission will give it in
13 evaluating the case to whether it should be an admitted
14 document as evidence.

15 COMMISSIONER MCCABE:

16 Just one moment. Mr. Rodecker, I'm
17 going to deny your objection and allow this to be
18 admitted. And we will give it the weight that it is
19 worth considering at the time we review everything. But
20 we will allow it to be admitted.

21 ATTORNEY RODECKER:

22 Your Honor, may I make another request?
23 It has nothing to do with an objection. Could I request
24 a brief recess?

25 COMMISSIONER MCCABE:

1 Yes, I was --- yes. Five or ten
2 minutes, what would you ---?

3 ATTORNEY RODECKER:

4 Five minutes is fine.

5 COMMISSIONER MCCABE:

6 Let's have a five-minute recess. Thank
7 you.

8 SHORT BREAK TAKEN

9 COMMISSIONER MCCABE:

10 Mr. Johns, you're finished?

11 ATTORNEY JOHNS:

12 That's correct, Your Honor. Thank you.

13 COMMISSIONER MCCABE:

14 WVEUG?

15 ATTORNEY NAUM:

16 Thank you, Your Honor.

17 CROSS EXAMINATION

18 BY ATTORNEY NAUM:

19 Q. Mr. Conner-Ross, I'll try to be as brief as I
20 can and as efficient as I can. As an economist, I'm sure
21 you appreciate that.

22 A. Thank you.

23 Q. I do have quite a few questions. You were asked
24 a number of questions regarding your analysis of the
25 impact to MonPower and Potomac Edison rate. Do you

1 recall those questions?

2 A. I do.

3 Q. And the specific issue was the negative \$10
4 million net present value cost that you've analyzed will
5 result from the amended EEPA; is that correct?

6 A. Yes.

7 Q. That analysis that you did to derive that
8 negative \$10 million net present value, that was based on
9 a comparison of the proposed EEPA amendments with the PJM
10 market; is that right?

11 A. Correct.

12 Q. Okay. I assume by doing that analysis, you
13 think that it's appropriate to compare potential market
14 costs with the EEPA when determining impact on rate
15 payers?

16 A. Well, my understanding was that the Commission
17 Staff undertook such an analysis in 2015. So the
18 framework that we used was based on that.

19 Q. Do you think that's a fair analysis to use?

20 A. It is one relevant certainly comparison. It
21 might not be the only one.

22 Q. Is it appropriate?

23 A. Is that an appropriate comparison? From an
24 economic standpoint, yes.

25 Q. Thank you. Now, your --- now, when you look at

1 the amended EEPA, you're looking at the proposal in this
2 case, specifically a \$40 per megawatt hour capacity
3 charge; correct?

4 A. Yes. I'm not sure, though. Different rates
5 vary by different years. But yes, the proposal that was
6 recorded in this case.

7 Q. Are you familiar with EEPA amendments?

8 A. I am, to some extent.

9 Q. So on October 1st of this year, you're aware
10 that that capacity charge reduces to, I believe, \$27 per
11 megawatt hour?

12 A. That's correct.

13 Q. But your analysis of the net present value
14 impact on ratepayers did not include a comparison of that
15 lower capacity charge, did it?

16 A. Correct. It's not relative to the current EEPA.
17 It is relative to PJM market rates.

18 Q. We're in this case today because those proposed
19 amendments are at issue. Is that fair?

20 A. Sure.

21 Q. So if the Commission doesn't approve the EEPA
22 amendment, that capacity charge will be reduced?

23 A. Well, that assumes that the plan is able to
24 continue to operate. There is no capacity charge if
25 there's no capacity.

1 Q. Well, it actually doesn't assume anything of the
2 sort. If the Commission doesn't approve the EEPA,
3 AmBit's only option is to operate under the EEPA that
4 exists right now; is that correct?

5 A. Or to cease to operate.

6 Q. Okay. That's fair. That \$40 megawatt hour
7 difference from the otherwise applicable \$27 megawatt
8 hour rate results in an \$8.2 million annual increase in
9 charges to ratepayers, doesn't it?

10 A. I have seen that in other documents. I haven't
11 done that calculation myself.

12 Q. You're familiar with Mr. Baron's testimony?

13 A. Yes.

14 Q. And that's what he has testified to?

15 A. I don't know that specifically.

16 Q. Okay. You accept subject to check that that's
17 his testimony?

18 A. I do. Yeah.

19 Q. Your analysis, again, of the \$10 million --- the
20 negative \$10 million net present value impact on
21 ratepayers is based on 2016 data used from the APCO
22 Virginia IRP; is that right?

23 A. That's correct.

24 Q. And you're aware that both Mr. Baron and Staff
25 witness, Mr. Eads, used a different IRP to derive at

1 their numbers?

2 A. Yeah. I reviewed that testimony.

3 Q. And they used the subsequent 2017 data?

4 A. That's my understanding.

5 Q. Is that a fair analysis for them to do?

6 A. Is that a fair analysis? Yes.

7 Q. Okay. Do you agree that both Staff and WVEUG
8 have estimated that the net present value harm to
9 ratepayers is well in excess of the negative \$10 million
10 that you've calculated?

11 A. I have seen that testimony, yes.

12 Q. And specifically, that could exceed well over
13 \$100 million?

14 A. Yes, I believe one of them calculated \$136. And
15 I believe Mr. Eads combined a different set of forecasts
16 and estimated \$113 million or something in that range.

17 Q. Now, in this case, AmBit witness, Mr. Niemann
18 --- and you had been asked questions in this regard. But
19 Mr. Niemann has testified that projected market prices
20 are volatile. Do you agree with that?

21 A. I do.

22 Q. Given the inherent volatility of the future
23 market, is it your testimony or do you agree --- better
24 question. Do you agree that the net present value impact
25 on ratepayers could be better than the negative \$10

1 million that you've projected?

2 A. Certainly. It could be positive or negative,
3 larger or smaller.

4 Q. Do you believe that it could be worse than the
5 \$136 million harm that Mr. Baron has predicted?

6 A. That's possible.

7 Q. Your testimony, if taken as a whole as far as I
8 can tell, centers primarily on the proposed economic and
9 environmental benefits of the EEPA amendment. Is that a
10 fair assessment?

11 A. Well, the projected benefits of continuing to
12 operate the plant. So to the extent that the EEPA
13 amendments are necessary for the continued operations of
14 the plant, then the two issues are tied.

15 Q. And the only analysis that you did specific to
16 MonPower and Potomac Edison ratepayers was the analysis
17 that gave you the negative \$10 million net present value?

18 A. That's accurate.

19 Q. Now, you've testified that you're familiar with
20 Mr. Baron's testimony. Are you aware that industrial
21 manufacturer ratepayers on the Potomac Edison and
22 MonPower system have faced increases approximately of 100
23 percent over the last decade?

24 A. I am not familiar with their energy costs
25 history.

1 Q. In your assessment of the proposed benefits of
2 the EEPa amendment, did you make any analysis whatsoever
3 as to potential impacts, specifically on industrial
4 manufacturer rate payments?

5 A. So we did analyze the impact of those changing
6 rates. We did not do a secondary analysis of how that
7 much effect their business activities.

8 Q. In your opinion, Mr. Conner-Ross, do you think,
9 given the inherent volatility of the PJM market, that it
10 is fair to make MonPower and Potomac Edison's ratepayers
11 incur 100 percent of the risk of that market
12 differentiation?

13 A. Well, I think the question that we looked at was
14 balancing the public interests. And to the extent that
15 the public benefits outweigh the costs, it's certainly
16 the Commission's decision what is fair. But our analysis
17 suggests a net public benefit.

18 Q. Now, when you say net public benefit, you're
19 referring to the West Virginia public; is that correct?

20 A. That's correct. Not all of the benefits
21 certainly approve evenly throughout the state. And
22 generally speaking, the majority of the benefits do take
23 place in proximity to the plant, where it operates and
24 where it derives its fuel source. Which I understand has
25 some overlap, significant overlap with the location of

1 the ratepayer customers. But it is not the case that the
2 beneficiaries and the costs and the various categories
3 fall on an identical set of people. These are aggregate
4 West Virginia analyses.

5 Q. Good. You answered my next question. Do you
6 acknowledge that some of MonPower's and Potomac Edison's
7 ratepayers do not live in close proximity to the Grant
8 Town plant?

9 A. Certainly, that's possible, yes.

10 Q. Did you undertake any analysis whatsoever as to
11 the overall environmental and economic benefit, how much
12 of those benefits enter directly to MonPower and Potomac
13 Edison customers as opposed to the general public?

14 A. No.

15 Q. So I would just like to restate my question
16 because I don't believe you've answered it. In your
17 opinion, you think that it's fair for MonPower and
18 Potomac Edison's ratepayers to incur 100 percent of the
19 risks and costs of the EEPA limit?

20 ATTORNEY RODECKER:

21 Objection. Your Honor, I believe it's
22 been asked and answered. And the witness did answer the
23 question. He may not have liked the question (sic), but
24 it's been answered.

25 ATTORNEY NAUM:

1 I believe the witness actually answered
2 what his analysis was and not what his opinion is.

3 COMMISSIONER MCCABE:

4 I'll let you proceed with the question.

5 A. Can you repeat the question?

6 BY ATTORNEY NAUM:

7 Q. Sure. In your opinion, given the inherent
8 market volatility, do you think that it's fair for
9 MonPower and Potomac Edison's customers to incur 100
10 percent of the risk and costs of the EEPA amendment?

11 A. So when we look at public benefits and public
12 costs through a cost benefit framework, there really is
13 no assumption in that framework that the beneficiaries
14 are the same as the cost payers. And there's no
15 assumption in that framework that every single individual
16 is better off. So when I look at the concepts of public
17 benefit, it does not seem to me that each individual
18 needs to be better off necessarily, in order for the
19 overall benefit to be positive. So that's how I look at
20 it, in terms of a fairness issue.

21 Q. In fact, your testimony is that those ratepayers
22 would be economically worse off?

23 A. Well, based on current market forecasts. And as
24 we discussed, there's a possibility they'd be better off.
25 The existing forecast suggests worse off.

1 Q. You criticized Mr. Baron in his testimony for
2 stating that the primary consideration in this case
3 should be the impact on the ratepayer. Again, based on
4 your testimony, I assume that you think the primary basis
5 for the Commission's consideration should be the overall
6 net public benefit. Is that fair?

7 A. My understanding is that the Commission has the
8 ability to weigh the public interest, yes. And so,
9 therefore, the range of benefits and costs that are
10 calculated should all be considered.

11 Q. In your analysis, do you think that the net
12 public benefit should outweigh the ratepayer harm?

13 A. Well, I think that it does. I don't know what
14 the word should implies.

15 Q. Are you aware, Mr. Conner-Ross, that the
16 Commission has a statutory obligation to insure rates and
17 charges that are just, reasonable, are implied without an
18 unjust, discrimination or preference?

19 A. So I'm not familiar with the technical mandates
20 of the Commission as it relates to rates.

21 Q. Are you aware that the Commission has --- strike
22 that. You just answered. I appreciate it.

23 ATTORNEY NAUM:

24 Just one minute, Your Honor, please.

25 COMMISSIONER MCCABE:

1 Yes, sir.

2 BY ATTORNEY NAUM:

3 Q. Your testimony, Mr. Conner-Ross, pertaining to
4 the net public benefit, would you agree that those net
5 public benefits would survive if the Grant Town project
6 were able to continue operating under a different owner?

7 A. So our calculation is based on the activity
8 level of the plant, not specifically the ownership
9 structure. So the answer is if the activity level
10 remained the same, the calculations would remain the
11 same.

12 Q. Thank you. And I think I just have one
13 question. It's more just for my curiosity than anything
14 else. On page six of your Direct, and I'm looking at
15 lines 8 through 12. Let me know when you're there.

16 A. Okay.

17 Q. You reference frequent dangerous recreational
18 activities.

19 A. Yes.

20 Q. What activities?

21 A. So it has been a trend of ATV riding on coal
22 piles that are unstable and unsafe. There have actually
23 been reported fatalities and a number of injuries
24 associated with that. And we are going to get some data
25 in Pennsylvania on that.

1 Q. To your knowledge, are any of these done at the
2 sites owned and operated by AmBit?

3 A. I do not know specific to those sites.

4 Q. Do you think that it's ratepayers'
5 responsibility to make sure that those dangerous
6 activities don't take place?

7 A. So if the dangerous activities are creating a
8 public harm, then I think that is relevant in the public
9 interest.

10 Q. And rate payers should pay for that?

11 A. Well, as I discussed before, the Commission
12 needs to weigh whether the benefits outweigh the costs.

13 ATTORNEY NAUM:

14 That's all I have. Thank you very
15 much.

16 COMMISSIONER MCCABE:

17 Staff?

18 ATTORNEY AUVILLE:

19 Thank you, Your Honor. Most of my
20 questions have already been covered. So I'll just wait
21 on this one.

22 CROSS EXAMINATION

23 BY ATTORNEY AUVILLE:

24 Q. Would you consider a waste coal pile an asset or
25 a liability for the owner of that pile?

1 A. I think the answer would depend on whether
2 there's a market for it. So I do know that certainly
3 waste coal is purchased at a price. So to the extent
4 they had the ability to sell it, that's a positive. If
5 waste coal plants are unable to operate in that area,
6 then it could potentially turn into a liability because
7 at that point, if there's no profitable use for it and
8 there are potentially liabilities associated with it, it
9 could be a negative.

10 ATTORNEY AUVILLE:

11 That's all I have. Thank you.

12 COMMISSIONER MCCABE:

13 Any Redirect?

14 ATTORNEY RODECKER:

15 Your Honor, I have no further
16 questions.

17 COMMISSIONER MCCABE:

18 Commissioner, do you have any
19 questions?

20 COMMISSIONER LARRICK:

21 I don't.

22 COMMISSIONER MCCABE:

23 I also do not have any questions. It
24 is 11:44. We have a two o'clock issue with the CAD
25 witness. My question is would the preference be to take

1 a lunch break now and come back, or proceed with that
2 witness, or what is the preference?

3 ATTORNEY OSBORN:

4 We're fine with proceeding if it's okay
5 with everyone else.

6 ATTORNEY RODECKER:

7 Your Honor, we're more than fine with
8 taking Ms. Medine out of turn with the understanding that
9 she does have an airplane to catch. So if the CAD wants
10 to put her on at this point, then we'll break after we've
11 concluded.

12 COMMISSIONER MCCABE:

13 Okay. Then with that, we'll move with
14 the CAD witness.

15 -----
16 EMILY MEDINE, HAVING FIRST BEEN DULY SWORN, TESTIFIED AS
17 FOLLOWS:

18 -----
19 DIRECT EXAMINATION

20 BY ATTORNEY ROBERTS:

21 Q. Would you please state your name and business
22 address for the record?

23 A. Sure. Emily Medine. 1901 North Moore Street,
24 Arlington, Virginia, 22209.

25 Q. Do you have in front of you a document entitled

1 ESM-D?

2 A. No. Yes.

3 Q. Can you identify this document?

4 A. Yes, this is the testimony I filed in this
5 proceeding.

6 ATTORNEY ROBERTS:

7 We would ask the Commission to mark Ms.
8 Medine's Direct testimony as ESM-D for identification.

9 (CAD Exhibit ESM-D marked for
10 identification.)

11 BY ATTORNEY ROBERTS:

12 Q. Ms. Medine, was this testimony prepared by
13 you ---

14 A. Yes.

15 Q. --- or under your direct supervision and
16 control?

17 A. Yes.

18 Q. Is it true and accurate to the best of your
19 knowledge?

20 A. Yes.

21 Q. Do you have any additions or corrections to your
22 testimony?

23 A. No.

24 Q. If you were asked these questions today, would
25 your answers be the same?

1 A. Yes.

2 ATTORNEY ROBERTS:

3 With that, I would tender Ms. Medine
4 available for Cross Examination.

5 COMMISSIONER MCCABE:

6 And I will mark it as such and admit
7 it. I also don't believe I marked and admitted the
8 Sierra Club Cross 1. And I will admit it, unless there
9 are exceptions. Proceed, please.

10 ATTORNEY ROBERTS:

11 Ms. Medine is available for Cross
12 Examination.

13 COMMISSIONER MCCABE:

14 Sierra Club?

15 ATTORNEY JOHNS:

16 No, Mr. Commissioner.

17 COMMISSIONER MCCABE:

18 WVEUG?

19 ATTORNEY NAUM:

20 No questions.

21 COMMISSIONER MCCABE:

22 Staff?

23 ATTORNEY AUVILLE:

24 No questions.

25 COMMISSIONER MCCABE:

1 Okay. Commissioner?

2 COMMISSIONER LARRICK:

3 No questions.

4 COMMISSIONER MCCABE:

5 I have no questions.

6 ATTORNEY ROBERTS:

7 AmBit might.

8 COMMISSIONER MCCABE:

9 Oh, I'm sorry. I'm sorry. Obviously.
10 Obviously.

11 ATTORNEY RODECKER:

12 It's okay. I don't mind being ignored
13 now and then.

14 COMMISSIONER MCCABE:

15 Yeah, I know. I do.

16 ATTORNEY RODECKER:

17 Thank you.

18 CROSS EXAMINATION

19 BY ATTORNEY RODECKER:

20 Q. Ms. Medine. Am I pronouncing your name
21 correctly?

22 A. Yes.

23 Q. Thank you. I apologize for the earlier
24 mispronunciation. I'm trying to locate my questions for
25 you.

1 ATTORNEY RODECKER:

2 Excuse me, Your Honor. I was all
3 prepared and all of a sudden, I mislocated the testimony.
4 Could we have just a minute?

5 COMMISSIONER MCCABE:

6 Certainly.

7 SHORT BREAK TAKEN

8 BY ATTORNEY RODECKER:

9 Q. Ms. Medine, on page six, lines 23 through 26 of
10 your testimony.

11 A. Yes.

12 Q. You state that there is value to the West
13 Virginia economy through the closure of the Grant Town
14 plant through lower rates to customers and increased
15 generation from West Virginia Utility Power Plants. Have
16 you done any studies to establish the closure of Grant
17 Town would lead to increased generation of West Virginia
18 power plants?

19 A. Yes and no. We routinely do dispatch analysis.

20 Q. Could you please speak into the phone?

21 A. Can you hear? Is that better? Thank you.

22 So as I think I mentioned in response to your
23 data request, we've done a lot of work for West Virginia.
24 Both for the West Virginia CET and analyses of the clean
25 power plant, and the impact of the clean power plant,

1 particularly on West Virginia coal production. And we've
2 also done work on an annual basis through Marshall
3 University to help come up with the numbers that are used
4 to determine the special reclamation fund. Through all
5 those analyses, we are aware of the impact on whether
6 certain plants operate or not operate on overall dispatch
7 levels in West Virginia. And so I would say we did not
8 do any analysis specifically for this case. But we are
9 well aware of the relationship to available capacity of
10 dispatch.

11 Q. Well, I'm not specifically referring to this
12 case. I'm specifically referring to any study that you
13 may have prepared which indicated closure of this plant
14 or any other plant would lead to more generation by West
15 Virginia power plants.

16 A. Would any plants lead to? Yes, it would. But
17 that's what I'm saying. If a higher cost plant is
18 closed, it will lead to increased generation from lower
19 cost plants.

20 Q. That's just a general statement, is it not?
21 That does not necessarily apply to West Virginia or the
22 specific closing of any one coal plant or another?

23 A. No, but as I mentioned, we did fairly detail. I
24 think that information has been published by the State of
25 West Virginia related to the impacts of the clean power

1 plant on demands for West Virginia coal. And through
2 that work, there was significant analysis of alternative
3 impacts on West Virginia coal for the clean power plant.

4 Q. Is it your position that any generating facility
5 from which MonPower pays the price for energy breeders
6 and market should be closed?

7 A. As axiomatic, no.

8 Q. I'm sorry?

9 A. That's not my general conclusion. This case I
10 think is fairly specific that there's an issue.

11 Q. Have you prepared any study to establish an
12 energy price level relative to market at which plant
13 should close?

14 A. These are very generic questions so I'm not
15 quite sure how to answer them. Our business is doing
16 analysis. We routinely do analysis. As part of our
17 forecasting, we actually go through what I call a
18 retirement or retrofit analysis for every power plant.
19 So is there a number? No. No specific number. It's not
20 \$50 a megawatt hour, or \$20 a megawatt hour. It's an
21 active analysis step performed on at least a quarterly
22 basis where every power plant is scrutinized in that
23 regard.

24 Q. Well, in regard to the Grant Town project, I
25 understand your testimony to speculatively be that the

1 Grant Town project should close because it's energy being
2 sold above market. Is that not correct?

3 A. That would not be the way I would characterize
4 my testimony.

5 Q. That's not the way you characterize it. But
6 isn't that what you suggest in your testimony, it should
7 close?

8 A. No, not at all. I agree with the prior witness.
9 If you can continue to operate under the terms of the
10 agreement I'm not recommending closure. I'm just
11 positing that there's no basis to amend --- to agree to
12 an amendment to the EEPA. And that customers should not
13 have to pay for above market costs.

14 Q. Do you believe if --- strike that.

15 On page five of your testimony, again, on line
16 17, I believe that the word as should be at. Is that
17 correct, on that line?

18 A. Yes.

19 Q. Okay. So it states PURPA requires that EEPA
20 rates be based at the avoided cost of the utility, not
21 based upon its financial condition of the QG. Will you
22 agree with me that if the rates of the QF are lower than
23 avoided costs, that that would be consistent with PURPA
24 as well?

25 A. Yes.

1 Q. On page five, down on lines 26 and 27, you state
2 the EEPA was based upon AmBit's ability to perform
3 without additional compensation beyond MonPower's avoided
4 costs.

5 A. That's what it does, yes.

6 Q. Is it your position that any change in rates
7 since 1987 and 1988 above the costs approved at that time
8 are above avoided cost?

9 A. That's not something I analyzed in any depth.

10 And probably a better way to have constructed that
11 sentence would have been to qualify it to say beyond the
12 negotiated avoided cost rates assumed in the original
13 EEPA.

14 Q. All right. Are you familiar with PURPA to the
15 extent that the parties to the contract are free to amend
16 contracts?

17 A. I'm not testifying at all as a legal scholar on
18 PURPA or as an expert on PURPA. My involvement with
19 PURPA has, you know, primarily been related to fields of
20 chairman activities, waste coal. I think I mentioned
21 that I was involved with doing the original contract for
22 Morgantown, for another waste coal plant in Pennsylvania.
23 I am not testifying as a legal expert on PURPA.

24 Q. On page six, lines 12 through 13, you testified
25 that the settlement agreement in MonPower's most recent

1 ENEC case provided for MonPower to review the PURPA
2 complications with an eye to reducing these costs. And
3 you asked the Commission to wait until that portion ---
4 is that correct?

5 A. Again, I think you're mischaracterizing what I
6 asked. First of all, to be clear, I was the auditor that
7 concluded, that provided that recommendation as part of
8 the ENEC audit. I had considerable discussions with the
9 company about Grant Town and the other two PURPA plants.
10 And they, too, were indicated, at least to my
11 recollection, concerns about the fact that they were not
12 recovering their costs. That it was, in fact, causing
13 customers to pay more for power because the additional
14 costs were flowing through the ENEC.

15 So in my normal course of business, what I would
16 do in that situation is I would say okay, there's a
17 solution here. I went through the examples of a number
18 of QF projects that had been bought out or closed for
19 economic reasons. And suggested that perhaps there was a
20 financial solution to this. They indicated agreements.
21 I included that as a recommendation in the audit report.
22 And then subsequent to the preparation of the audit
23 report, the parties entered in a negotiation on a
24 stipulation. I was not a party to that negotiation. Nor
25 had I actually read the stipulation until I began this

1 engagement to see, in fact, whether that agreement had
2 been concluded.

3 Q. And I don't mean to mischaracterize your
4 testimony. I think you indicated in your response you
5 thought I mischaracterized your testimony. Let me finish
6 the question if I may.

7 On lines 15 through 16 on page six, it states
8 the Commission should not provide any relief to AmBit
9 until MonPower completes the agreed to review of all of
10 its PURPA contracts. Is that still your statement?

11 A. That would be my recommendation, yes.

12 Q. Okay. So you don't suggest that there be any
13 relief granted until that is accomplished?

14 A. No.

15 Q. And am I correct that that report is not
16 required to be filed until the next ENEC proceeding for
17 MonPower?

18 A. Again, I don't believe it specifically states
19 that in the stipulation. But I'll defer to you if it
20 does. The intent of that obviously was not for the
21 company then to commit to even a higher payment to AmBit.
22 In fact, at the discussions, one of the points raised by
23 the company personnel was the AmBit contract may not be
24 relevant going forward because it wasn't clear they could
25 survive financially.

1 Q. Well, and it kind of goes to my next question,
2 which is will you accept subject to check if MonPower
3 does not have to file its next ENEC proceeding for
4 another year?

5 A. I believe that's the case. I don't think that
6 is the answer to the question of what the intent of that
7 agreement was. And clearly the intent of that agreement
8 was to be forward looking, and not to raise the cost of a
9 buy-out, but actually to deal with the issue and come
10 forward with a recommendation. So I guess I would
11 disagree as the auditor saying that I think the intent
12 was we wouldn't make a subsequent commitment that raised
13 the cost of that QF. In fact, you would try to package
14 your recommendation and your analysis with this
15 amendment.

16 Q. I'm going to ask my partner to distribute a
17 document to you, which after you get it, I'll have a
18 question or two.

19 A. Thanks.

20 Q. Do you have that in front of you?

21 A. Yes, I do.

22 Q. And I'm going to represent this is an excerpt of
23 the transcript of the hearing held on November 9th, 2016
24 in Case Number 16-1121-E-ENEC, which was referenced in
25 your testimony. In fact, there are two pages copied

1 there from page 49 and 50. And it appears from my review
2 of the transcript that that page 49 reflects questioning
3 by Commissioner Williams of Mr. Valdes for MonPower with
4 regard to the provision in the stipulation that you refer
5 to pertaining to the review.

6 And I'm going to ask you, are you aware that, in
7 fact, the stipulation states at paragraph I7 of the
8 stipulation, which is attached to the Commission's order,
9 that the company as being MonPower and Potomac Edison
10 agree to continue to review PURPA obligations. And to
11 evaluate if there is any ability to reduce associated
12 expenses. Would you agree that that's what he's
13 referring to when it says paragraph number 7 on line 12
14 of his testimony, Mr. Valdes.

15 A. I'm sorry, but I don't have the stipulation in
16 front of me.

17 Q. No, I just read you the language.

18 A. Okay. Subject to I haven't read --- yeah, that
19 I've just not personally reviewed it. So subject to
20 check, I would agree with you.

21 Q. All right.

22 And you did refer to the stipulation?

23 A. I did. I just checked to see if that sentence
24 was there. I just don't have them in front of me. So if
25 you're referring specifically to it.

1 Q. Now, would you agree with me that his response
2 in addressing item number seven, that Mr. Valdes says,
3 beginning on lines 18 and continuing on, it is in our
4 best interest and in the customer's best interest to try
5 and reduce expenses where possible from PURPA because of
6 the exception of Hannibal. Because Hannibal is in the
7 mindset that the amount that pays for energy, we can get
8 a lot more on the market from that. The other ones on
9 that, on that actually cost the customers. And so we
10 always look for ways to, for those contracts to help, you
11 know, reduce those costs.

12 A. I totally agree. That's what it says.

13 Q. You agree that's what it says?

14 A. Absolutely.

15 Q. So with regard to your suggestion that the
16 Commission wait until the study is performed, do you have
17 any expectation that the company is going to be doing
18 anything differently than is done already and done all
19 the time?

20 A. Yes.

21 Q. You do?

22 A. Oh, absolutely.

23 Q. I thought that's what Mr. Valdes just said, I
24 just read.

25 A. Well, but they had. As I said, we had talked a

1 bit about buy-outs. Buy-outs make a lot of sense in this
2 case. You have a cost that --- first of all, you have a
3 contract in the EEPA that's worthless at this point.
4 Especially beginning in October 1.

5 Q. I see.

6 A. And second of all, so typically when you do a
7 buy-out, you would do a buy-out of what the future income
8 stream is for the party providing the power. Since there
9 is no future income stream for the party providing the
10 power, the buy-out cost is probably zero. Not to say, I
11 think I said in my testimony that I would understand that
12 some nominal payment may be appropriate because of the
13 transition cost, et cetera. But here's a case that
14 absent the renegotiation of this power --- the absence of
15 amendment, you have a contract that's effectively
16 worthless.

17 Q. Now, with regard to --- I'm not going into the
18 buy-out issues yet. But if it's --- I understood that
19 stipulation to say to evaluate ability to reduce
20 associated expenses. Would you agree with me that the
21 only way that MonPower could, within the context of its
22 contract, reduce those expenses with AmBit, would be to
23 negotiate a lower rate; is that correct?

24 A. Actually, the way I understand it, the contract,
25 they had done that. They had pushed forward some costs.

1 And in fact, beginning October 1, they were going to a
2 lower rate.

3 Q. Right.

4 A. So I think, I respectfully disagree with your
5 description.

6 Q. You're saying if the contract was permitted to
7 continue in its current form, that that would be the
8 reduction?

9 A. That would be the reduction. That would be a
10 reduction. I have not done the analysis to see whether
11 they could survive. I think the testimony provided by a
12 number of your witnesses suggest that they couldn't.

13 Q. Okay.

14 A. But I'm not suggesting that they need to lower
15 the rate and continue because the rate is lower if they
16 continue.

17 Q. Turning to page 12 of your testimony, first of
18 all, you're referring on lines 10 through 20 of a
19 situation referred to as a true-up. Is it your testimony
20 that AmBit is seeking a true-up in this case?

21 A. There are probably different ways to
22 characterize it. I characterize it as a true-up. You're
23 saying sort of resetting into what you thought the costs
24 were. I think they're sort of --- basically, the concept
25 is a rate was agreed to by both parties when the contract

1 was signed. And it's to my understanding that, with the
2 exception as you said, there could be some adjustments
3 between the parties. But with respect to avoided costs,
4 that was not on the table. But I will defer to Counsel
5 on that. That's my experience with QF. That's my
6 understanding of this case.

7 Q. On line 25 and 26, the question --- and I'll
8 tell you, did you write these questions or did your
9 counsel write these questions?

10 A. I generally wrote them.

11 Q. You wrote them?

12 A. Assisted by Counsel. But I generally wrote
13 them.

14 Q. Line 24, did PURPA obligate a utility to take
15 above avoided costs to cover environmental problems
16 associated with waste coal impoundments or local economic
17 activity, do you see that?

18 A. Yes.

19 Q. All right. Is it your testimony that AmBit is
20 seeking above avoided cost?

21 A. I guess depending upon how you interpret avoided
22 cost, they're clearly seeking a rate above the EEPA.

23 Q. Well, the question was whether they're obligated
24 to pay above avoided cost.

25 A. Again ---.

1 Q. Is it your testimony that they are seeking above
2 avoided cost?

3 A. I think we just went through this with the
4 question on how you characterize it. In my opinion, they
5 are seeking above what they negotiated to be the avoided
6 cost when they signed the EEPA.

7 Q. And you referenced in there also, environmental
8 problems associated with waste coal impoundments. Do you
9 have in mind a specific instance where there's an actual
10 waste coal impoundment that you were being asked about?

11 A. No, I was mostly referring to Mr. Conner-Ross's
12 testimony saying that there was a lot of generic
13 discussion about impoundments that actually, I don't
14 think are apt for this project. But that was what was
15 being used to justify the higher rate.

16 Q. Turning to your testimony on page 21, you say
17 future --- on lines 18 through 22, you say future PJM
18 capacity payments are highly uncertain. One possible,
19 someone argued likely scenario, is that capacity payments
20 remain at the level of 2017 auction, which would result
21 in continued expenses of this magnitude throughout the
22 balance of the EEPA, which are not reflected in the pro-
23 forma economics. Are you familiar with PJM's based
24 residual auction resource clearing prices?

25 A. Yes.

1 Q. And you review those over time?

2 A. I review them regularly, yes.

3 Q. I'm going to ask my partner to share with you a
4 document. And ask if you've seen this before.

5 ATTORNEY RODECKER:

6 Your Honor, I'm going to ask that this
7 document be marked for identification as AmBit Cross
8 Examination Exhibit 1. The prior document that we
9 utilized, I think the Commission can take official notice
10 of. So in the matter of their record with the
11 Commission.

12 (AmBit Cross Exhibit 1 marked for
13 identification.)

14 COMMISSIONER MCCABE:

15 So marked. And we'll admit it to the
16 record without exceptions.

17 BY ATTORNEY RODECKER:

18 Q. Ms. Medine. I'm sorry.

19 A. Medine (corrects pronunciation).

20 Q. This page, are you familiar with this document?

21 A. I'm familiar with this document. And I probably
22 have seen this page, but I can't specifically recall.

23 Q. Some of us are colorblind. Can you distinguish
24 the colors on this document?

25 A. Generally, yes.

1 Q. All right. In the blue line, it starts down at
2 the bottom on the left at \$40.80. That is shown to be
3 the RTO line. What does RTO mean?

4 A. I'm trying to think what it stands for. I don't
5 remember what the R is. Transition Organization.

6 Q. Regional?

7 A. Regional, yes. Thank you. We refer to it as
8 RTO. And this unit would be included in the RTO pricing.

9 Q. Okay. And would you agree with me that those
10 numbers under the blue line are the capacity costs from
11 the period of 2007 through 2020, '21?

12 A. So just for those who may not be as familiar as
13 you and I are, capacity payments are determined by an
14 auction in May three years before. So the 2020, '21
15 would be the PJM year that was conducted and determined
16 by the May 2017 auction.

17 Q. Right.

18 A. And so, subject to check, I had said they
19 generally look like what I remember. But I can't ---.

20 Q. You'll see in the far right of the graph, the
21 number \$76.53.

22 A. Correct.

23 Q. So would I be correct that what you're saying
24 here that on page 21 of your testimony, line 19, that
25 some would argue that capacity payments will remain at

1 the level of \$76.23?

2 A. Some will argue that. Some will argue below.

3 And some will argue above, yes.

4 Q. Would I be correct in my review of this document
5 that between 2007 and 2017, that in fact, the capacity
6 prices were as high as \$1.7429 in 2010, '11. And as low
7 as \$16.46 in 2012, '13?

8 A. So I think you misstated. It's \$174.

9 Q. It is \$174. Did I say something else?

10 A. \$1.74.

11 Q. Oh.

12 A. I'm not sure if you were testing me or not. But
13 basically subject to check, that's my recollection.
14 There is volatility.

15 Q. Yeah. There is some volatility. We can agree.
16 In fact, the difference has gone almost \$160 in capacity
17 pricing in that period of time?

18 A. There has been a range, yes.

19 Q. Actually within a three-year period. And so
20 while you indicate that one possible scenario is that
21 capacity payments will remain at the level of 2017
22 auction prices. Is that your position?

23 A. We do have our forecast. I don't have the
24 actual number with me. I think that what you're missing
25 a little bit in the discussion of this is I totally agree

1 with the volatility. But there have been structural
2 changes to the market during this period that speak to
3 the lower numbers and speak to why they may continue. So
4 I think a historical analysis showing that volatility, in
5 part, captures some of the uncertainty of the market as
6 this structural change has been going on. But it cannot
7 be --- I would not forecast a number based upon this
8 history. And I don't believe the numbers that were used
9 in analysis by Mr. Conner-Ross used, anywhere close to,
10 you know, these numbers.

11 Q. You haven't presented any calculations of your
12 own, have you?

13 A. I have not been asked to. And it's not
14 something that we wouldn't do. But it's not something
15 that's part of my scope or I've been asked to do. And
16 more importantly, I'm not suggesting that this analysis
17 should solely be based upon my numbers. All I'm
18 suggesting is that that there's a lot of uncertainty
19 about capacity payments. And given the structure of the
20 proposed amendment, the fact of the matter is that it
21 would not capture any significant, sustained downward
22 movement. And all it would do was be replaced or
23 increase the cost charge to customers over that period of
24 time. So there's no --- as somebody referred to it
25 earlier, no risk sharing on that forecast. It would all

1 go to customers.

2 ATTORNEY RODECKER:

3 Thank you. I have no further questions
4 for this witness.

5 COMMISSIONER MCCABE:

6 Mon General? MonPower?

7 ATTORNEY JACK:

8 No questions.

9 COMMISSIONER MCCABE:

10 Okay. Any rebuttal?

11 ATTORNEY ROBERTS:

12 Yes, Your Honor.

13 REDIRECT EXAMINATION

14 BY ATTORNEY ROBERTS:

15 Q. Let's talk about the ENEC and the stipulation
16 and the requirements for MonPower to evaluate a financial
17 resolution for the PURPA project that would be beneficial
18 to customers. Do you recall Mr. Rodecker requesting
19 that?

20 A. Yes, I do.

21 Q. So in the normal course, MonPower would enter
22 into an agreement for production of the plant. It would
23 come to the ENEC. And then the ENEC, we would argue
24 about whether that was an appropriate plan for the power
25 plant; is that correct?

1 A. Correct.

2 Q. And in the timing of this, as Mr. Rodecker
3 suggested, isn't there something different in this case
4 that precludes us from doing that in the normal course?

5 A. It's my understanding the way I've read the
6 proposed --- the petition in this case, is that it's
7 contingent upon the Commission accepting the terms of
8 this amendment and allowing it, all the additional costs
9 to be kept through the ENEC without any prudence review.

10 Q. And that would make the provision and
11 stipulation moot, would it not?

12 A. In my mind, it would. In my mind. And just to
13 mention, normally in doing a field audit, given the
14 admissions of the company, that basically AmBit was
15 insolvent and probably in default of their agreement, one
16 could have argued, if we had wanted to be aggressive, we
17 could have said that MonPower had been in error not
18 terminating the agreement when it was clear the
19 counterparty could not have performed.

20 But I think, again, you know, my general
21 attitude in doing audits is looking forward saying let's
22 figure out how to do this in a non-controversial way.
23 Because it's not to the customer's benefit, as Mr. Valdes
24 testified at the settlement hearing, which I was not at
25 for the record.

1 Q. So if this Commission were to say to AmBit,
2 we'll approve your rate, but we will not buy his pass-
3 through in the ENEC recovery until the ENEC is set for a
4 hearing and action to be taken on that, then there would
5 be no problem with the language in the stipulation?

6 A. I think that --- I have no problem. I think
7 that obviously the company has indicated it will not
8 agree to that. And I would agree with them. I would be
9 concerned because they're assuming a lot of risk that
10 they do not need to assume. The same reason why a
11 customer may not be appreciative of the fact that they're
12 being asked to pay for costs that they should not be
13 asked to being paid for.

14 Q. And therein lies the problem, this company's
15 commitment in this case.

16 A. That would be my opinion. That would be my
17 opinion.

18 ATTORNEY ROBERTS:

19 I have no further questions.

20 COMMISSIONER MCCABE:

21 Commissioner, do you?

22 COMMISSIONER LARRICK:

23 No questions.

24 COMMISSIONER MCCABE:

25 I also do not have any questions. I

1 understand the witness has a plane to catch. Unless
2 there's an exception, the witness is excused.

3 A. I appreciate it. Thank you very much.

4 ATTORNEY ROBERTS:

5 I'll ask that the Exhibit ESM-D be
6 admitted into the record.

7 COMMISSIONER MCCABE:

8 Yes.

9 ATTORNEY JACK:

10 Your Honor, just a point of order,
11 also. I don't know if Mr. Rodecker moved his cross-
12 exhibit. I know he's had it marked.

13 ATTORNEY RODECKER:

14 Thank you, again. I move the admission
15 of Cross --- of AmBit Cross 1 into the record.

16 COMMISSIONER MCCABE:

17 It's admitted. Any other? We're all
18 set on everything else? Okay. I'm trying to get this
19 right for the ladies and gentlemen. With that, thank
20 you.

21 A. Thank you very much. I appreciate it.

22 COMMISSIONER MCCABE:

23 It's 12:24. We want to break for lunch
24 until 1:30. And we'll reconvene. Is that acceptable
25 with everybody?

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ATTORNEY RODECKER:

Thank you, Your Honor.

COMMISSIONER MCCABE:

We will do so. Thank you.

LUNCH BREAK TAKEN

COMMISSIONER MCCABE:

We have reconvened the hearing. And Mr. Rodecker, your next witness is up.

ATTORNEY RODECKER:

Yes, thank you, Your Honor. Mr. Mustonen we would call to the stand.

JOHN MUSTONEN, HAVING FIRST BEEN DULY SWORN, TESTIFIED AS FOLLOWS:

DIRECT EXAMINATION

BY ATTORNEY RODECKER:

Q. Mr. Mustonen, you have before you a copy of the document styled Exhibit JPM-D, Direct Testimony of John P. Mustonen, P.E., on behalf of American Bituminous Power Partners.

A. I do.

Q. This document consists of seven pages of questions and answers with attached Exhibits JPM-2, 25 pages. Is that information that's contained in that

1 document, well, both the Direct testimony and the exhibit
2 true and accurate to the best of your knowledge and
3 belief?

4 A. Yes, it is.

5 Q. And was the testimony and report prepared by you
6 or under your supervision and direction?

7 A. Yes, it was.

8 Q. And if I were to ask you those questions
9 contained therein, your answers would be the same today?

10 A. Yes.

11 Q. And do you have any changes or corrections to
12 make?

13 A. No, I do not.

14 ATTORNEY RODECKER:

15 Your Honor, I would ask that this
16 document be marked for identification as JPM-D.

17 (AmBit Exhibit JPM-D was marked for
18 identification.)

19 COMMISSIONER MCCABE:

20 Okay. It will be so marked and
21 admitted subject to Cross.

22 ATTORNEY RODECKER:

23 Thank you, Your Honor. And the witness
24 is tendered for Cross Examination.

25 COMMISSIONER MCCABE:

1 CAD?

2 CROSS EXAMINATION

3 BY ATTORNEY OSBORN:

4 Q. Good afternoon. My name is Heather Osborn. I
5 represent the Consumer Advocate Division. I have a few
6 questions for you. I want to start with the role that
7 you play with respect to this proceeding. I understand
8 from your testimony on page three that you're consulting
9 or the consultant was retained by AmBit to perform an
10 operational assessment of the Grant Town project; is that
11 correct?

12 A. That is correct.

13 Q. And it states in your testimony, the purpose of
14 the assessment was to determine the reasonableness of the
15 project performance and operating expenditures compared
16 to six similar facilities; correct?

17 A. That's correct.

18 Q. Did you make the decision to compare AmBit with
19 six similar facilities as opposed to some other number of
20 facilities? Or was that decision made by AmBit or
21 someone else?

22 A. No, that was our decision. We tried to pick, in
23 essence a PA group, similar plants in the mid-Atlantic
24 region, waste fuel power.

25 Q. And in the course of the operational assessment,

1 is it fair to say that you did not see that there were
2 significant opportunities to improve the operations of
3 the plant?

4 A. Could you repeat that, please?

5 Q. Yeah. And I'll just sort of rephrase it.

6 During the course of your assessment, did you determine
7 whether there were any areas of improvement or any ways
8 that the operation of the plant could be approved?

9 A. Yes. We identified some areas where improvement
10 could be made.

11 Q. And what were those areas?

12 A. By way of example, the heat rate could be
13 improved somewhat. The heat rate for the plant is
14 already below the design heat rate, which is good. There
15 are some improvements that could be made to the inter-
16 stage packing and the steam turbines, and reducing
17 leakage on the air heaters, for example, that could
18 improve efficiency even further.

19 Q. In your opinion, based upon your assessment of
20 the Grant Town project, is there actually a logistical
21 way in which the heat rate could be approved?

22 A. Yes.

23 Q. In your experience, what is the best heat rate
24 that a fluidized bed can achieve?

25 A. Well, it's not a question of a fluidized bed per

1 se. But the heat rate for a plant of this size burning a
2 fuel of this quality is within the range of the heat rate
3 you're seeing at Grant Town, which is roughly 13,000
4 BTUs.

5 Q. And what is the heat rate at the Grant Town
6 facility?

7 A. I'd say it's about the same.

8 Q. Oh, okay.

9 A. So if you look at this cross-section of plants
10 there are CFB boilers in the size range of, you know,
11 plus or minus 80-megawatts, that burn fuel of this, you
12 know, low-quality waste fuel, you're going to see heat
13 rates comparable to what you see at Grant Town.

14 Q. Is the reason that Grant Town and other
15 fluidized bed combustors have a high capacity factor
16 because of the high minimum list? Is that a fair
17 statement?

18 A. The high capacity factor is a function of two
19 things basically. It's a function of being --- the
20 ability of being dispatched at a high rate. And it's the
21 function of the reliability of the plant. In other
22 words, the plant has to be able to operate and then it
23 has to be dispatched. And I think the capacity factor
24 for Grant Town is on the order of 90 percent or better.
25 It's varied a bit over the years. But it's a very good

1 capacity factor. And again, comparable with several of
2 the other waste fuel fired CFP plants.

3 Q. Now, these six similar facilities as you've
4 described them, would you compare the Grant Town facility
5 --- correct me if I'm wrong, but I don't believe those
6 plants are specifically identified in your testimony or
7 in your report; is that correct?

8 A. That is correct.

9 Q. Instead, they're identified as plant one, plant
10 two, et cetera?

11 A. That is correct, yes.

12 Q. Is there any reason you did not identify those
13 plants specifically by name?

14 A. Yes, because some of the data is proprietary in
15 nature.

16 Q. Now, sitting here today, you're not able to tell
17 us what those six plants are to which you've compared the
18 Grant Town facility?

19 A. No. No. But I think it's --- if you survey the
20 waste coal plants in the Mid-Atlantic region, it's
21 obvious.

22 Q. How did you come to obtain the information that
23 you described as proprietary? Is that based on your past
24 work with those facilities?

25 A. Yes, it is.

1 Q. Some of those facilities are listed in
2 Pennsylvania and some in West Virginia; correct?

3 A. That is correct.

4 Q. In performing your assessment, I want to talk
5 about what you did in reviewing fuel sources for Grant
6 Town. Did you actually visit the sites, the fuel source
7 sites?

8 A. Only the Grant Town site itself.

9 Q. Did you review the permit status for each of the
10 waste coal sources?

11 A. No.

12 Q. What about the reclamation cap?

13 A. No.

14 Q. Do you know whether AmBit has assumed
15 reclamation obligations for any of the fuel sites?

16 A. That is my ---.

17 Q. Bring in the waste coal person. I'm sorry?

18 A. Could you rephrase the question?

19 Q. Yes. I was wondering if you know whether AmBit
20 has assumed any reclamation obligations.

21 A. That is my understanding for the sites directly
22 under their control.

23 Q. It's your understanding that they have?

24 A. For the sites that are directly under their
25 control, yes. But this was not part of my review. But

1 this is just an observation I have made in reviewing the
2 data.

3 Q. But that didn't factor into your assessment that
4 you submitted in your testimony?

5 A. No.

6 Q. Okay.

7 A. That wasn't part of our scope of review.

8 Q. Whether it was part of your assessment or just
9 based on general knowledge that you derived from your
10 work of the Grant Town project, do you know if any waste
11 coal is being reclaimed from AML sites?

12 A. Yes.

13 Q. Yes?

14 A. Well, AML, would you be more definitive? I'm
15 not sure.

16 Q. What does the acronym stand for? Abandoned mine
17 lands. I had it written down somewhere, but I'm not
18 sure.

19 A. I don't know if that characterization applies to
20 all the sites here. As I say, I didn't specifically
21 review the reclamation sites. I know where the fuel is
22 coming from and where the, you know, where the ash is
23 being back-hauled to. But did not particularly review
24 the reclamation issues.

25 Q. Going along the same lines, do you know as part

1 of your testimony, whether any of the waste coal from
2 active mines is coming from the Humphrey Limestone
3 Quarry. Are you familiar with that?

4 A. Humphrey?

5 Q. Humphrey Limestone Quarry.

6 A. That does not ring a bell, no.

7 Q. In your testimony at page five and also
8 similarly your report at page 18, your report being
9 JPM-2.

10 A. Page 18?

11 Q. Yes, page 18 of your report and page five of
12 your testimony. They're sort of the same thing.

13 A. Okay. So I'm looking at page five of my
14 testimony.

15 Q. Okay. Page five, the third bullet point from
16 the bottom, you indicate that fuel pricing appears
17 reasonable, with an effective, well-managed procurement
18 process. And then turning to your report, which again is
19 Exhibit JPM-2, at page 18, I believe. You have the
20 direct that I'm going to refer to.

21 ATTORNEY RODECKER:

22 Ms. Osborn, are you referring to page
23 18 of 25?

24 ATTORNEY OSBORN:

25 Yes, 18 of 25.

1 ATTORNEY RODECKER:

2 Which would be page 14 in your report.

3 ATTORNEY OSBORN:

4 Yes, page 18 of 25 and 14, yes. I'm
5 glad you corrected me on that because I misspoke, as
6 well.

7 ATTORNEY RODECKER:

8 All right.

9 BY ATTORNEY OSBORN:

10 Q. So it will say 14 at the bottom, but it's 18 of
11 25 at the top.

12 A. Oh, okay.

13 Q. All right.

14 A. I was looking at the bottom.

15 Q. Yeah. I was, too.

16 A. Yes.

17 Q. And on page 18 of 25 of your report, the second
18 sentence states this is a reasonably low fuel price.

19 A. Right.

20 Q. And reflects the adequacy of the fuel
21 procurement process. And you're referring back to the
22 first sentence of that statement with respect to that
23 fuel price.

24 A. Right.

25 Q. And I want to know what is the basis for your

1 conclusions that the 2017 delivered fuel price is
2 reasonably low, as you characterize it.

3 A. Yeah. Well, this is based on my long experience
4 with over a dozen waste fuel powered plants, including
5 the six plants we addressed in this study.

6 Q. So you're experienced with the six comparable
7 plants that are addressed in the study, as well as some
8 other plants ---

9 A. Yes.

10 Q. --- that are not addressed in your report?

11 A. Yes, yes. Because the issues are similar
12 dealing with a waste fuel like this.

13 Q. The other plants that are not referenced as part
14 of the six in your study, are those plants also located
15 in either West Virginia or Pennsylvania?

16 A. No, let me separate this out. For the purposes
17 of the study we did here, it's just based on the six
18 plants. But my general knowledge extends to other plants
19 in other locations that are not in the Mid-Atlantic
20 region. And that maybe burn other types of waste fuels.
21 So the price --- the \$2.23 price would be based on these
22 six plants.

23 Q. The other plants that are beyond these six that
24 you reference in your report, you know, without me
25 knowing more or any of us knowing more, let me ask you,

1 would you consider those plants to be comparable to the
2 Grant Town facility or similar as you've characterized
3 the six that you mentioned earlier?

4 A. No, they're not comparable. They're similar
5 from a standpoint that they burn other waste fuel
6 sources. It could be waste wood. It could be, you know,
7 municipal refuse, et cetera. But they're not part of the
8 equation here.

9 Q. Okay. In reaching the conclusion that the 2017
10 delivered fuel price of \$2.32 is, quote, reasonably low.
11 Did you make that determination also based on the current
12 coal market? Did you consider that?

13 A. No. No. When you're talking about a waste
14 coal, comparing it to a market coal is not a valid
15 comparison.

16 Q. Would you expect the waste coal to be lower than
17 the market coal price?

18 A. It depends on what you include in the price.

19 Q. Well, tell me why you don't believe that would
20 be a valid comparison to compare the waste to market
21 coal.

22 A. Because the waste coal is, first of all, it's
23 very low in BQ content. There's less carbon in it. Less
24 fuel in it, per se. There's waste material in it. It's
25 much more costly to excavate, handle, and ship. It has a

1 very high ash content, which you then have to remove and
2 handle again, and ship back for disposal or beneficial
3 use, this ash material. It can be higher in sulfur
4 content, which requires more limestone consumption to
5 ameliorate the sulfur emissions. And it's not purchased
6 on a market basis. There's no waste coal market per se
7 that I'm aware of.

8 It's a fuel that has to be bought typically in a
9 very close proximity to the power plant or where it's
10 consumed. Because the cost for hauling the fuel over
11 long-distance, it quickly becomes prohibitive after you
12 go say beyond a 25 or certainly a 50-mile radius. The
13 trucking cost is very high because the fuel is, you're
14 hauling a lot of waste material with the fuel. It's low
15 in BQ value.

16 So there's a big shipping burden with that. And
17 it runs those cost up in a hurry. So you're constrained
18 to dealing with local suppliers. And you may be the only
19 --- you may or you may not be the only market for that
20 fuel. And it has to be negotiated on an individual basis
21 with the local suppliers.

22 Q. Do you know what share of the total cost of
23 Grant Town is fuel?

24 A. What share of the overall?

25 Q. Yes, of the total cost incurred by Grant Town,

1 what percentage or what share is fuel, if you know?

2 A. I think that's indicated. I mean, that can be
3 determined from our report. But I don't think we
4 specifically said what the percentage was. I'd have to
5 work those numbers out, but we do give the total all in
6 O&M costs including the fuel and I --- in excluding the
7 fuel. I'm sorry.

8 Q. Okay. And that's fine. Do you know how much
9 natural gas is burned at Grant Town?

10 A. I do not. I --- I know it's --- it is --- my
11 understanding is it's permitted up to burn --- burning 25
12 percent of total fuels along with the waste coal it
13 requires and that's permissible under the PURPA
14 regulations.

15 Q. But you don't know if Grant Town goes all the
16 way up to that 25 percent?

17 A. I think that would be a rarity. The auxiliary
18 fuel with Grant Town is used mainly for start-up
19 purposes. I think there's been some historical events a
20 few years back where --- a very severe winter where the
21 coal piles were frozen, where they --- they burned a
22 higher percentage, but ---

23 Q. But ---?

24 A. --- that's a --- that's definitely an anomaly.

25 Q. Okay. So primarily used for start-up?

1 A. Primarily.

2 Q. I believe in your --- in your report you
3 indicate that there --- that there's an assumption of a
4 1.74 percent annual escalation rate per fuel cost? And I
5 apologize. I don't have in front of me the reference to
6 specifically where in your report, but did that sound
7 correct to you ---

8 A. I don't recall ---

9 Q. --- as you recall ---?

10 A. --- I don't recall talking about escalation
11 rates for the fuel.

12 Q. Did you escalate the fuel costs at all in your
13 assessment?

14 A. No, these are present day costs.

15 Q. With the six plans that you used for comparison,
16 how many of those plants are wasteful QF as opposed to
17 coal generators, if you know?

18 A. Most of them are waste fuel plants.

19 Q. Do you know the specific number?

20 A. I think they're all waste fuel plants actually,
21 if I think about it.

22 Q. And in your opinion and your experience, would
23 there be any reasons why comparison of a waste coal plant
24 and co-generator would be --- would not be appropriate
25 rather in terms of the kind of assessment you made here?

1 A. Why it would not be appropriate?

2 Q. Well, let me ask you first. Did you believe it
3 would be appropriate in making an assessment such as
4 you've done in this case? Do you believe it would be
5 appropriate to compare waste --- a waste coal plant with
6 co-generator? Would that be appropriate or
7 inappropriate?

8 A. It depends on the preface of the comparison. If
9 it were a co-generator also burning waste fuel I think it
10 would be appropriate depending on what aspects of it
11 you're comparing. Operating and maintenance costs, for
12 example, would be generally comparable. And I would say
13 fuel costs would be comparable depending on how you
14 offset them with --- with --- with a saleable product
15 being it steam to an off take.

16 Q. So just to make sure I'm clear then. For the
17 assessment such as you've performed in this case and that
18 is set forth in your report, you believe it would be fine
19 or appropriate to compare a waste coal plant and a
20 co-generator for the types of --- for the type of
21 assessments that you performed here?

22 A. Only if the coal --- only if the co-generator
23 was burning a waste fuel.

24 Q. Just a moment. All right. Just a couple more
25 questions. Are you able to explain to us the

1 stoichiometry for Grant Town and why you would expect it
2 to worsen over time?

3 A. Yes. The stoichiometry refers to the calcium to
4 sulfur ratio and sulfur is in the coal. It's a product
5 that you want to remove, so it doesn't become an
6 atmospheric emission. And by --- to do that you add
7 limestone to the bed, which has calcium in it.

8 Calcium reacts with the --- with the sulfur and
9 becomes a solid product calcium sulfate rather than
10 sulfur dioxide, which would go up in the stack and become
11 an atmospheric pollutant. The amount of sulfur dioxide
12 that you're required by statute to remove dictates your
13 calcium to sulfur ratio.

14 So one thing here that's been looked at is
15 increasing a stringent SO2 emissions regulation
16 anticipated in the future of a Matt's Rule and so on.
17 And to deal with that you'd have to feed more limestone
18 in with the coal and that would increase the calcium to
19 sulfur ratio which we call a stoichiometry ratio.

20 Q. Okay. So as far as the second part of my
21 question there, why you would expect it to worsen over
22 time for Grant Town, am I correct in understanding, you
23 say that that's based on projected SO2 emissions per
24 unit?

25 A. Yes, it is.

1 Q. Okay.

2 ATTORNEY RODECKER:

3 Mr. Mustonen, when you respond could
4 you speak more directly into the ---

5 A. Oh, sorry.

6 ATTORNEY RODECKER:

7 --- into the microphone? Again, I'm
8 having trouble hearing you.

9 A. Okay. Will do. Apologies.

10 BY ATTORNEY OSBORN:

11 Q. I think I may have been doing it, too. In your
12 experience how does the --- and, again, I may pronounce
13 it differently. Is it stoichiometry or stoichiometry
14 (changes pronunciation)? Either? Do you know what I'm
15 talking about?

16 A. It has an I in it. Stoichiometry, but it's
17 pronounced either way.

18 Q. Okay.

19 A. Yes.

20 Q. So in your experience, how does the
21 stoichiometry of a fluidized bed compare to the
22 stoichiometry of a wet scrubber?

23 A. Generally --- generally speaking, the wet
24 scrubber stoichiometry will be lower. In other words,
25 there's --- there's --- there's somewhat less limestone

1 required to capture the same amount of sulfur with a wet
2 scrubber. Not a dramatic difference, but in --- as a
3 general statement. The wet scrubber is more efficient,
4 also more costly.

5 Q. The wet scrubber is?

6 A. Yes.

7 Q. Are you familiar with the Grant Town facility's
8 disposal of its ash of the ash generator?

9 A. In what respect?

10 Q. Well, I'm wondering if you know where it is
11 disposed.

12 A. I know it's used at several of the reclamation
13 sites where the fuel is sourced from.

14 Q. Is that ---?

15 A. Including some --- some right on the Grant Town
16 site itself.

17 Q. Is it your understanding that's the exclusive
18 means by which the ash is disposed?

19 A. Yes.

20 Q. And are you able to provide an estimate based on
21 your assessment of the facility of the amount of ash to
22 be disposed from Grant Town?

23 A. That was entitled by review. That is an
24 assessment, so it would be done and I'm sure the ---
25 those --- those figures are --- are available.

1 Q. But you don't have those?

2 A. Not --- not ---

3 Q. Okay.

4 A. --- not in front of me, no.

5 Q. Okay. And you've not been asked to do an
6 assessment of that nature?

7 A. No.

8 Q. The assessment that you performed that we're
9 talking about today and the exhibit to your testimony, is
10 it the first of its nature that you've performed for the
11 Grant Town facility or do you --- have you done this type
12 of assessment in the past for Grant Town?

13 A. For Grant Town this is --- this is my first for
14 Grant Town.

15 Q. And when I say you, I could mean you
16 specifically or Lummus.

17 A. Yeah, we --- we have done Grant Town reviews in
18 the past, but not me personally.

19 Q. Okay. Were --- if you know, were they done in
20 connection with other cases of this nature before the
21 PSC?

22 A. No.

23 Q. Okay.

24 A. No.

25 Q. What would have been the purpose of these types

1 of assessments in the past performed by your ---?

2 A. I don't --- I don't --- I --- I --- I can't
3 comment directly for what it was for Grant Town, but in
4 general we were doing --- we do assessments when power
5 plants are bought and sold, and we do condition
6 assessments to see the condition of a plant that needs to
7 be repaired and --- and so on.

8 So we do --- we do periodic assessments of power
9 plants for a wide variety of reasons.

10 Q. And do you know whether assessments of this
11 nature that have been done by your firm in the past with
12 respect to Grant Town made similar findings as the one
13 that you've prepared for us?

14 A. I --- I --- I can't comment. I don't have that
15 material with me.

16 Q. Did you review any of those assessments as part
17 of your process in --- in doing your own assessment?

18 A. No, no.

19 Q. And did you speak with any of the folks at
20 Lummus who may have worked on those assessments?

21 A. I did not.

22 Q. Is there any reason for that, why that wouldn't
23 have been relevant to your assessment?

24 A. Well, this was a --- this was a totally
25 different type of case and --- and basically looking at

1 operating experience. So I didn't --- I didn't have
2 anything available that would be terribly useful in a
3 case like this.

4 Q. Do you know when the last assessment performed
5 by Lummus prior to your assessment would have been ---
6 would have been done?

7 A. I --- I don't know. It's been several years ago
8 would be my guess.

9 ATTORNEY OSBORN:

10 I think that's all the questions I have
11 for you. Thank you.

12 A. Thank you.

13 COMMISSIONER MCCABE:

14 Sierra Club?

15 ATTORNEY BECHER:

16 Just a few, Mr. Chairman.

17 COMMISSIONER MCCABE:

18 Yes, sir.

19 CROSS EXAMINATION

20 BY ATTORNEY BECHER:

21 Q. These first couple are fairly basic and bear
22 with me. I just want to make sure I understand the
23 landscape. So you had described going out and acquiring
24 these waste coal fuel, going to a local or semi-local
25 owner of --- of --- of this waste coal. You then I think

1 you said you negotiated for him. My question is, is it
2 typical then to pay the purchase price for that waste
3 coal coming from one of these facilities?

4 A. Is it typical to pay what? I'm sorry.

5 Q. A purchase price.

6 A. A purchase price. Oh, definitely.

7 Q. Okay. So you're actually paying the --- the
8 person holding this waste coal to be taken away?

9 A. Yes.

10 Q. And in your operating costs you had included the
11 disposal cost of the --- of the coal ash as well is one
12 of the ---.

13 A. That is one of the things we consider.

14 Q. Okay. And my question on the ash is, is there a
15 market for the ash? Are there people looking to purchase
16 this resource for this material from the facility, the
17 Grant Town facility?

18 A. Is it ---?

19 Q. Is anyone looking to pay a purchase price for
20 the coal ash?

21 A. Generally speaking --- you're talking in general
22 of this plant in particular?

23 Q. Let's say for ---.

24 A. In general I would say no.

25 Q. Okay. And this plant in particular.

1 A. Yeah, yeah. Because it --- it has a beneficial
2 use for it.

3 Q. Well, generally you're saying, no, there would
4 be no purchase price?

5 A. No purchase price for the ash that's disposed of
6 in --- in a mining reclamation setting.

7 Q. Okay. But is the mining company paying money to
8 get that ash?

9 A. Typically not.

10 Q. Okay. Are you familiar with the term non-
11 commercial mineral as applies to waste --- waste coal?

12 A. This is my first exposure to this on this
13 project and my view of it is it's --- it's --- it's
14 mainly a term that's used in a context of a tax
15 assessment or tax avoidance one might say, but it's ---
16 it's --- it's not a characterization that relates to, for
17 example, a FERC definition of what waste fuel, which has
18 a different meaning and different application.

19 Q. And I guess --- and I may not have --- well, I
20 guess my basic question is, is this category non-
21 commercial mineral something that is categorized in waste
22 coal in other states?

23 A. I haven't seen the term used before. The
24 material that this is being applied to in this case for
25 tax reasons is --- is --- is clearly a waste fuel and

1 meets the requirements of --- under the definition of
2 waste fuel and that it's --- it's lower than 9500 BTUs
3 and it's greater than 25 percent ash.

4 So it's clearly a waste --- a waste coal and
5 that's the way it's viewed throughout the industry from
6 my knowledge.

7 Q. Do you know if --- if any of that non-commercial
8 mineral is actually mined for the use to burn in a
9 facility such as Grant Town?

10 A. No, it's --- it's --- you know, I mean, it's ---
11 it's --- it's a waste product that --- it typically comes
12 in the strip mining and open pit mining operation.

13 And when you're getting down to the material
14 that's just on top of the coal seam sometimes the --- the
15 non-coal material adjacent to the seam will get mixed in
16 and it --- it compromises the quality of the coal, so you
17 try to carefully strip that off and --- and that becomes
18 a waste product.

19 If it's not recovered and burned in a waste fuel
20 plant as it is here, then it --- it just --- it goes onto
21 the waste seam basically is what happens to it. And you
22 may have some material mixed into the seam.

23 You may have some deleterious material between
24 narrow seams that would also fill that category, but it's
25 --- it's --- it's commonly called in the industry

1 partings.

2 ATTORNEY BECHER:

3 I think that's all, Your Honor. Let me
4 just double check. Nothing further.

5 COMMISSIONER MCCABE:

6 WVEUG?

7 ATTORNEY NAUM:

8 Yes, just a few, Your Honor.

9 CROSS EXAMINATION

10 BY ATTORNEY NAUM:

11 Q. Good afternoon, Mr. Mustonen. Right here.

12 A. I didn't know where the voice was coming from.

13 Q. It's coming from all around. Your testimony has
14 been very instructive and helpful. I just have a handful
15 of questions.

16 You --- in Cross Examination from the Consumer
17 Advocate Division you --- you stated that there's no
18 market per se for waste coal. Do you recall that?

19 A. Yes, no market in the sense of a --- of a coal
20 commodity market.

21 Q. Right. If there was a market what would drive
22 it? Would it be driven by other waste coal ---

23 A. Yes.

24 Q. --- plants?

25 A. There can be a small local market and we've seen

1 that happen in Pennsylvania, for example, where there are
2 several waste coal plants in rather close proximity. So
3 there can be, you know, kind of a --- you may --- you may
4 have two waste coal plants in close proximity trying to
5 buy the same product.

6 Q. Okay. But that's not the case for Grant Town?

7 A. No.

8 Q. Okay. If --- if you look at your exhibit JPM-2,
9 page five, please.

10 ATTORNEY RODECKER:

11 At the bottom of the page or the top of
12 the page?

13 ATTORNEY NAUM:

14 It's the --- I'll --- I'll direct him
15 there.

16 A. Which --- which, top or bottom?

17 BY ATTORNEY NAUM:

18 Q. It's the bottom of page --- oh, I see what
19 you're --- I see your issue. Top --- so it is bottom
20 page five, Exhibit page nine. Thank you. Thank you.

21 A. Bottom of page ---.

22 Q. I see that now.

23 A. Okay.

24 Q. So Exhibit page nine.

25 A. Got it.

1 Q. Okay. In section 2.2.4 under fuel ---

2 A. Yes.

3 Q. --- in the second paragraph --- and this is for
4 clarification. You say that on the order 53 percent of
5 the fuel is currently sourced from active strip mines or
6 abandoned mine refuse sites owned by, permitted by and
7 mined by Grant Town. Do you see that?

8 A. Yes, I see it.

9 Q. Okay. If you then flip to exhibit page 17,
10 which is page 13 of your report ---

11 A. Right.

12 Q. --- it shows --- at the very top you say that
13 AmBit owns two waste coal supplies?

14 A. Right.

15 Q. And if you look at the chart, Exhibit 4.1, it
16 looks like about 14 percent of the coal used by Grant
17 Town is supplied by sites owned by AmBit. Is that an
18 accurate figure? And I'm looking at the column that's
19 identified as percent fuel of supply in 2017.

20 A. Yes.

21 Q. So if we flip back between page 9 and page 17 of
22 the exhibit is it 53 percent that's supplied by sites
23 owned by AmBit or is it 14 percent?

24 A. Well, page five says on the order of 50 percent
25 of the fuel is currently sourced from active strip mines

1 or abandoned mine refuse sites owned by Grant Town.

2 Q. So what's the difference just to clarify because
3 I don't understand?

4 A. It's --- it's or. It's --- so the 53 percent
5 would not be composed of just Grant Town owned sites.
6 It's also active strip mining sites not owned by Grant
7 Town.

8 Q. Are those sites permitted or mined by Grant Town
9 or by AmBit I guess? By Grant Town or AmBit, either one?

10 A. Well, they're active strip mine sites, so yeah,
11 they're permitted. Yeah.

12 Q. Okay. Okay, so --- and this is getting to my
13 question. If --- again, flip back to page 17 of the
14 exhibit, page 13 of your report.

15 A. Yes.

16 Q. In the paragraph immediately below Exhibit
17 4-1 ---

18 A. Right.

19 Q. --- the last sentence, the costs shown for the
20 AmBit sites include site maintenance, permitting costs
21 and all work done under time and material civil rates
22 with Enersystems.

23 A. Uh-huh (yes).

24 Q. Does Enersystems provide all of those functions?

25 A. I don't know --- I don't know that they do. I

1 --- I know that they provide --- I don't know if they
2 provide permitting costs, for example. Site maintenance.
3 They do basically handling functions for the --- for the
4 fuel at the site.

5 Q. Okay.

6 A. Yeah.

7 Q. So if --- if you look back up ---?

8 A. But there may be some overlap there, but I know
9 they do some site maintenance activities and so on, ---

10 Q. Okay.

11 A. --- but I wouldn't want to characterize it as
12 they do all of those things.

13 Q. Understood. So if you look back up at exhibit
14 4-1, the chart, the all in cost dollars per MMBTU ---

15 A. Yes.

16 Q. --- for the sites owned by AmBit, do those costs
17 include the costs of the coal itself or just those
18 ancillary services that are described in the paragraph
19 below?

20 A. No, they include the costs of --- they include
21 everything.

22 Q. So is AmBit paying itself for coal?

23 A. Well, --- and I haven't reviewed these contracts
24 with Enersystems, for example, but that's a contractor.

25 So --- so they --- those contracted costs are attributed

1 as a part of the fuel costs.

2 Q. But the commodity itself is included in that
3 cost as well?

4 A. The commodity itself is included in the all in
5 cost.

6 Q. And the commodity is owned by AmBit?

7 A. The commodity is owned by AmBit?

8 Q. The coal itself.

9 A. After they buy it, yes.

10 Q. But these are sites owned by AmBit, so --- I'm
11 just confused. If they're sites owned by AmBit doesn't
12 AmBit already own the coal that's being produced there?

13 A. Yes, they do. Yeah.

14 Q. So they're paying for a commodity that they
15 already own?

16 A. Bear with me a moment.

17 Q. Sure. And I promise I'm not trying to trip you
18 up.

19 A. No, no.

20 Q. I'm honestly trying to understand.

21 A. No, it's --- it's a valid question. I'm just
22 looking at the --- the --- the breakdown of the data that
23 was rolled into the cost. There's not a commodity cost
24 in --- in those numbers per se.

25 There's typically a cost associated with

1 recovering this coal is almost all handling costs as
2 opposed to a commodity cost per se.

3 Q. Okay. Okay, thank you. Just a couple other
4 questions. If you go to page five of your Direct
5 testimony.

6 A. Uh-huh (yes).

7 Q. On line 16 you have a bullet there discussing
8 staffing levels?

9 A. Yes.

10 Q. And --- and you state that they appear
11 relatively high, but are justified by the high degree of
12 self-sufficiency and limited contracting?

13 A. Correct.

14 Q. Go to the next page, Mr. Mustonen.

15 A. Right.

16 Q. At line six is this bullet referring to the same
17 thing? And --- and the bullet that I'm referring to
18 talks about project labor costs appearing to be \$1
19 million a year higher.

20 A. Yes.

21 Q. That's the same --- same item?

22 A. Yes, yes.

23 Q. Okay. Did you do an analysis of what it would
24 cost AmBit to actually contract it for those services
25 rather than doing them ---?

1 A. No. This was more of a --- I would say a
2 qualitative ---

3 Q. Okay.

4 A. --- analysis. I mean, we looked at the number
5 of employees that they had at the site, what the job
6 functions were and --- and --- and compared them, for
7 example, to what we would typically see for a site that
8 was less self-reliant.

9 They do almost everything themselves with their
10 own plant staff, so it kind of skews the numbers.

11 Q. So would you be able to --- would you be able to
12 say if AmBit could potentially save a million dollars a
13 year if they contracted those services out or do you not
14 know?

15 A. No, because when you look at the all-in O&M
16 costs including labor and --- and the other maintenance
17 costs and operating costs that they're actually --- they
18 actually come out lower than --- than the six plants that
19 we compare them to.

20 Q. Okay.

21 A. So the --- the labor cost is high, but the rest
22 of the O&M costs are lower than the ---.

23 Q. Okay.

24 A. And because, you know, they do it all
25 themselves. And they do it --- they do a good job.

1 Their plant is very well maintained and operated.

2 Q. Okay. Last question. You --- you stated in
3 your testimony that you have experience with a number of
4 these waste coal plants.

5 A. Uh-huh (yes).

6 Q. Based on your experience is it typical of these
7 plants to be suffering from the same revenue stream
8 shortfalls that the Grant Town project is suffering from?

9 A. From my experience the cases are different.
10 Some of them have --- have had financial difficulties,
11 some of their EPAs have been bought out, plants have been
12 shut down. So others have had problems.

13 It's --- it's a difficult row to hoe. Dealing
14 with a waste fuel is a --- is a challenge and --- and
15 it's --- and it's --- it's --- it's costly. There's a
16 lot of work to be done just to handle this fuel and ---
17 and deal with all the issues associated with it.

18 Q. So it's a generally economically difficult
19 industry to run?

20 A. Well, it's becoming more --- it's becoming more
21 difficult now where PPAs are expiring and --- and --- and
22 in some cases the plants are looking at, you know, market
23 prices. And if all of these projects were construed on
24 the basis of recognizing that it was somewhat more costly
25 to operate, but that was offset by the huge environmental

1 advantage of being able to clean up these waste coal.

2 ATTORNEY NAUM:

3 Thank you very much. That's all I
4 have.

5 A. Okay.

6 COMMISSIONER MCCABE:

7 Staff?

8 CROSS EXAMINATION

9 BY ATTORNEY AUVILLE:

10 Q. Good afternoon. Your analysis, you said that
11 you didn't do a market price assessment for the fuel at
12 the plant. Why not?

13 A. Well, there is no market, first of all. There's
14 no other market for this --- for this waste fuel that
15 Grant Town burns other than themselves. And so there's
16 no market to compare it to like there is a market for
17 conventional steam coal.

18 Q. Would you think that analysis of the price of
19 fuel at the other plants that you looked at could have
20 been useful ---?

21 A. Well, this was the benchmark that we used.
22 There's a lot of commonality here because most of the
23 costs of burning or using of waste fuel is not for the
24 carbon content in the fuel. It's really for all the high
25 handling costs, the high processing costs, the ash

1 disposal, the much higher ash content in the fuel and ---
2 and --- and --- and the ash disposal cost associated with
3 that.

4 There's a lot of trucking, a lot of hauling, a
5 lot of processing at --- at the power plant site,
6 blending the --- blending different fuels to get a --- a
7 mix that you'll see a boiler can burn. The boiler cannot
8 burn, for example, just high BQ finds excavated from
9 waste ponds because the material's too fine or just blows
10 right out of the boiler without burning.

11 So now we have to bring in some coal cost
12 material to mix with this and --- and this cost material
13 --- for example, the gentleman's question earlier, that
14 this non-mineral material. I characterize it as seam
15 partings. That's more cost material.

16 So now you have to --- you bring both of these
17 materials to the power plant site and you blend them
18 together to get a --- to get a --- a mix that can be
19 efficiently burned in the CFP boiler. So all this is
20 very --- very expensive. A lot of handling, a lot of
21 waste to deal with, a lot of trucking and that's the
22 lion's share of the cost of this material.

23 So when I look at these six other plants that
24 I've been familiar with over the years, they all have
25 commonality in that, you know, they all have to go

1 through similar processes, lots of trucking, lots of, you
2 know, recovery costs, reclamation costs, blending costs,
3 processing costs.

4 Q. Those are all common across those plants?

5 A. They are common, yes.

6 Q. The commodity price is paid at the start. Is
7 that different from plant to plant? Is that dependent on
8 the --- the location of the plant vis-à-vis waste piles
9 fuel sources?

10 A. Yeah. Well, I mean, that's --- that's --- that
11 commodity cost if you want to call it a commodity cost.
12 I don't like calling it a commodity, but I'll bear with
13 you on that. Yeah, that's a function. Basically the ---
14 the mining company that's recovering this from the waste
15 pile or whatever it might be, and closing cost and re-
16 mining that material, if you will. So that becomes their
17 cost basis for what they have to sell it for. Okay?

18 Q. But in this case we have a lot of material
19 that's no longer being recovered from a pile. It's just
20 coming straight from the strip to this plant, so that
21 doesn't necessarily apply in this case; is that correct?

22 A. Well, the strip mining --- the strip mining
23 stuff is --- is the same. When those seam partings are
24 stripped off, they're segregated. They then have to be
25 handled at the mine --- at the strip mining site because

1 Grant Town doesn't want all the rock that's mixed in with
2 it, for example. So --- so they --- they --- Grant Town
3 contracts to a specific product with a specific, you
4 know, minimum heating value, maximum ash content. And
5 --- and --- and the mining company that's processing
6 those seam partings that's --- that's to comply with that
7 spec. So they --- they can't just give them everything
8 they strip off and so --- so it's a costly operation. Of
9 course nothing has any value until somebody wants to buy
10 it. I mean, this is --- this is the basic rule of
11 economics, so ---.

12 Q. Given all these difficulties and there's no
13 market how can you be sure that their fuel cost is
14 reasonable?

15 A. Because the --- because of the --- the lion
16 share of the cost is, as I said, all this handling and
17 processing cost and --- and the reclamation of the
18 material at the waste sites also has commonality in ---
19 in price for all these six or seven plants.

20 Q. Would it surprise you if some of these contracts
21 that the commodity price, not the shipping and the
22 hauling and all that stuff, is greater than 50 percent of
23 the all-in cost for that --- for that source?

24 A. That wouldn't surprise me, no. You'd negotiate
25 the best price you can negotiate.

1 Q. You just said that the lion share in cost are
2 these ancillary, not the commodity prices. So is it ---

3 A. Well, that would vary from --- yeah.

4 Q. --- the commodity price in the lion share are
5 going to the shipping and the handling and all that?

6 A. Well, I'm saying the commodity price is a
7 function of how much --- largely a function of how much
8 it cost for the --- for the seller to reclaim this
9 material and --- and provide it in a saleable condition
10 and meets the price --- that meets the specifications of
11 the purchaser.

12 Q. Okay.

13 A. Yeah.

14 Q. Would it be possible for AmBit to burn
15 commercial grade coal? Let me --- let me back that up a
16 little bit. I assume that your analysis was sort of a
17 --- a look at ways that AmBit could cut costs. Is that a
18 fair assessment of what your analysis was?

19 A. No.

20 Q. No, it was not. What was your analysis?

21 A. It was an assessment of --- of the condition of
22 the plant and the quality of the operations and
23 maintenance of the plant.

24 Q. And that's why you compared costs to other
25 plants just to see what quality control? It wasn't

1 necessarily ---?

2 A. Compared it to a peer group to see how they
3 compared.

4 Q. So you weren't really looking at it to advise
5 them on how they could cut costs?

6 A. No.

7 Q. Okay. What's the expected life of a plant like
8 the Grant Town project?

9 A. Well, the life of a coal plant I would say is a
10 function of how much capital investment you want to add
11 to it over the years. We are looking at coal plants now
12 that are still operating in excess of 50 years.

13 Q. Are --- are --- is the expectancy of a plant
14 such as this that burns low quality coal, a lot of junk,
15 is that different than, say, a larger plant that burns
16 commercial grade coal?

17 A. I would say in general the maintenance costs are
18 --- are higher for the waste coal plant because it's just
19 a tough material to deal with. It's very erosive, for
20 example. You need a lot more material handling
21 equipment. It's hard on the equipment, but as long as
22 you keep your maintenance up, there's no reason the plant
23 can't last 50 years or more, you know. I'm --- I'm doing
24 a review on another plant now that was built in 1949 and
25 it's still running.

1 Q. Is that a waste facility or ---?

2 A. That was built as a pulverized coal plant. It
3 was decommissioned. The plant was moved to Florida and
4 it's been converted to burn wood waste, but it's still
5 the same. Basically a --- you know, a reconditioned boiler
6 and steam, the same steam turbine, and the same
7 generators and a lot of upgraded equipment. But the ---
8 but the bones of the plant are 1950 vintage, you know.

9 Q. Do you expect the maintenance costs on this
10 plant to --- I mean, I think you said that's the backend
11 of this operation. Are maintenance costs going to be
12 increasing?

13 A. Well, it's not unique to this plant. I mean,
14 any utility plant --- you know, when it gets to be 25, 30
15 years old, you got to start putting some --- some money
16 in it.

17 Q. You wouldn't think it would be larger than a
18 utility plant because of the nature, the material that's
19 burned in this --- I think you said that ---

20 A. Yeah.

21 Q. --- O&M costs can be higher?

22 A. Yeah, that --- that really doesn't affect the
23 big ticket items here though, you know. It affects
24 things like material handling systems. It doesn't affect
25 the steam turbine, the generator.

1 ATTORNEY AUVILLE:

2 Thank you.

3 A. Yeah, so ---.

4 COMMISSIONER MCCABE:

5 Any --- any Redirect?

6 ATTORNEY RODECKER:

7 Yes, Your Honor, I have a couple of
8 questions.

9 REDIRECT EXAMINATION

10 BY ATTORNEY RODECKER:

11 Q. I'd like to follow up, Mr. Mustonen, with
12 questions most recently asked by Staff. I believe the
13 Staff counsel asked you to --- I'm sorry, Mr. Naum's head
14 was in the way here.

15 A. That's all right. I can hear you both.

16 ATTORNEY NAUM:

17 I get that a lot.

18 BY ATTORNEY RODECKER:

19 Q. I believe he asked you how --- how you determine
20 the reasonableness of cost. Would I be correct that ---
21 that the way you did that was to compare the costs of
22 fuel purchasing practices of AmBit at Grant Town with
23 those six other comparable plants?

24 A. That's correct.

25 Q. And in your opinion the fuel purchasing

1 practices of AmBit at Grant Town are reasonable?

2 A. They are reasonable. In fact, there's --- I
3 would say they're better than reasonable there.
4 Generally equal to or better than their peer groups.

5 Q. Now, with regard to the market that is or is
6 non-existent for --- for waste coal some would argue ---
7 and I'm not sure that there was any Staff testimony, but
8 obviously there was a suggestion that the cost of --- of
9 fuel is higher than expected and --- and it was printed
10 in Mr. Eads' testimony which we'll get to tomorrow. But
11 in your experience is there a --- are people trying to
12 give away solid --- this waste coal?

13 A. Absolutely not, no. As I mentioned earlier,
14 it's just like anything else. It may be perceived as
15 having no value until somebody wants it. In basic rule
16 of economics, it instantaneously has a value.

17 Q. And so when you say it has a value and somebody
18 wants it, in the case of Grant Town, is it --- is it your
19 testimony that they have to have a source of fuel ---

20 A. Yes.

21 Q. --- in order to operate?

22 A. Yes.

23 Q. And so they --- they go looking for it; do they
24 not?

25 A. Yes, they do.

1 Q. And --- and your analysis was that they did not
2 --- they're not overpaying for what they're getting?

3 A. That's correct.

4 Q. Now, can they burn the --- can they burn the
5 rock that's the overburden of these coal seams or does
6 there have to be some carbon content, too?

7 A. There has to be carbon content.

8 Q. So --- but as far as being compliant with
9 federal regulation there are limitations on the extent of
10 --- in the --- in the type of coal that they can --- that
11 they can burn; isn't that true?

12 A. Yes, there are regulations that define what a
13 waste fuel constitutes.

14 Q. And you refer to a federal rule in your response
15 to questions by Counsel, ---

16 A. Uh-huh (yes).

17 Q. --- did --- does --- do you know for a fact that
18 Grant Town is in compliance with those requirements?

19 A. Yes, they are.

20 Q. And, again, what are the requirements that have
21 to be met in order for them to satisfy the requirements
22 of the PURPA QF for waste coal generator?

23 ATTORNEY BECHER:

24 I'm going to object, Your Honor. I
25 think it's going beyond the scope of Cross Examination.

1 ATTORNEY RODECKER:

2 I believe that was a direct line of
3 questions that you asked. I think you asked and --- and
4 his response addressed the ---

5 ATTORNEY BECHER:

6 I simply asked ---.

7 ATTORNEY RODECKER:

8 --- the content of the coal.

9 ATTORNEY BECHER:

10 No, I simply asked if he was familiar
11 with the non-commercial mineral, whether that was mined
12 from the site and whether that was something that's
13 commonly used around in other states.

14 ATTORNEY RODECKER:

15 I believe his response he --- he stated
16 25 percent of the total coal was limited and there was a
17 limit in the ash --- in the ash content plant.

18 ATTORNEY BECHER:

19 I think that answered my question.

20 ATTORNEY RODECKER:

21 So you don't mind if I ask him where he
22 got that?

23 COMMISSIONER MCCABE:

24 We'll allow the question to proceed.

25 A. Okay. I'll answer that. The regulation is ---

1 and I'm looking at a FERC form 556 now. This was a sale
2 certification from AmBit that --- that they were in
3 compliance. The definition of the waste fuel is listed
4 in 18 CFR 292.202, paragraph B which specifies among
5 other things that bituminous coal refuse that has an
6 average heat content of 9,500 BTU per pound or less and
7 --- and has an average ash content of 25 percent or more.

8 So all of the fuel that AmBit purchases meet
9 this requirement including the mineral material that was
10 referred to earlier, which I characterized as --- as seam
11 partings.

12 BY ATTORNEY RODECKER:

13 Q. Thank you, Mr. Mustonen. Now, with regard to
14 some questions by Mr. Naum and relating to Enersystems,
15 your ultimate response, I believe, was that --- that
16 there was not a commodity cost in the amounts paid to
17 Enersystems for the mine ---

18 A. Yeah.

19 Q. --- product that was being received. It was for
20 the services of handling and production; is that correct?

21 A. Yes, I --- I saw --- I saw no breakdown that
22 showed a specific commodity cost.

23 Q. So his question as to whether Grant Town was
24 paying itself for --- for its coal, it's my understanding
25 they were not paying for the commodity; is that correct?

1 A. That's correct.

2 ATTORNEY RODECKER:

3 I have no further questions, Your
4 Honor.

5 COMMISSIONER MCCABE:

6 Commissioner, any questions?

7 COMMISSIONER LARRICK:

8 No.

9 COMMISSIONER MCCABE:

10 I also --- okay. I have --- I also
11 have no questions. Just trying to keep order here.
12 Okay. The --- the next witness?

13 ATTORNEY AUVILLE:

14 Your Honor, I'm sorry. I do have just
15 two questions that do flow directly from what Mr.
16 Rodecker asked.

17 COMMISSIONER MCCABE:

18 Make sure they absolutely do. Proceed.

19 RECROSS EXAMINATION

20 BY ATTORNEY AUVILLE:

21 Q. Mr. Rodecker asked you if this commodity has a
22 value. What's the value for the plants --- the
23 operations that are both AmBit --- that are involved with
24 AmBit, what's its value if AmBit closes?

25 A. For the current suppliers of the material?

1 Q. Yes.

2 A. I guess they'd have to look for another buyer.

3 Q. If they can't find a buyer, what happens?

4 A. I can't comment on that, but ---.

5 Q. You also said that AmBit has to have a fuel. Is
6 it also true that owners of this commodity have to do
7 something with this product ---

8 A. Well, ---

9 Q. --- if they ---?

10 A. --- all the mining sites are subject now to a
11 reclamation at the ---

12 Q. If they ---?

13 A. --- that's the end game.

14 Q. Sorry. If they don't sell this to AmBit, what
15 do they do with it?

16 A. I --- I --- I can't comment on that.

17 Q. It has to be reclaimed, but you can't comment on
18 it? What does a coal --- what does a mining facility do
19 with its waste product now?

20 A. It's going to sit in the ground until it's
21 reclaimed at a very high cost, so the cost of reclaiming
22 that material if it's not burned in a waste fuel plant.
23 But as testified to earlier by several witnesses, it's
24 --- it's far in exceedance of --- of --- of what it ---
25 you know, compared to burning it in a waste fuel plant,

1 you know. Ultimately it's going to cost the public more
2 money to reclaim those mining sites if the fuel is not
3 burned in a waste fuel plant and the beneficiated ash
4 return to the --- to the mine site.

5 ATTORNEY AUVILLE:

6 That's all I have.

7 COMMISSIONER MCCABE:

8 Mr. Rodecker, any follow up?

9 ATTORNEY RODECKER:

10 No, no questions, Your Honor.

11 COMMISSIONER MCCABE:

12 According to my witness list, Mr. Naum,
13 your witness is up and you're --- you're excused, sir.
14 Thank you.

15 ATTORNEY NAUM:

16 Thank you, Your Honor. The West
17 Virginia Energy Users Group calls Steve Baron.

18 -----

19 STEPHEN J. BARON, HAVING FIRST BEEN DULY SWORN,
20 TESTIFIED AS FOLLOWS:

21 -----

22 DIRECT EXAMINATION

23 BY ATTORNEY NAUM:

24 Q. Mr. Baron, could you please state your full name
25 and business address for the record?

1 A. Stephen Baron and my business address is J.
2 Kennedy and Associates, Inc., 570 Colonial Park Drive,
3 Suite 305, Roswell, Georgia, 30075.

4 Q. Thank you. Mr. Baron, did you cause on behalf
5 of WVEUG to have a piece of Direct testimony prepared and
6 filed in this case?

7 A. Yes.

8 Q. And is that the document that consists of 22
9 pages of Direct testimony and two internal exhibits
10 preliminarily identified as WVEUG Exhibit SJB-D?

11 (WVEUG Exhibit SJB-D marked for
12 identification.)

13 A. Yes.

14 BY ATTORNEY NAUM:

15 Q. And was this prepared by you or under your
16 direct supervision?

17 A. Yes, it was.

18 Q. Mr. Baron, do you have any corrections to make
19 to the testimony today?

20 A. Yes, I have two corrections. The first one
21 appears on page six at line two. The number \$146 should
22 be \$136 and that's \$136 million, and on page seven at
23 line eight it's the same correction. The \$146 should be
24 \$136.

25 Q. Do you have any other corrections to make?

1 A. Not to my knowledge.

2 Q. Mr. Baron, if you make those two corrections in
3 your testimony, does it change the substance of anything
4 else within your testimony?

5 A. No, no. This is --- that --- that was basically
6 a summation of the company's work paper calculations, not
7 mine.

8 Q. With those corrections if I were to ask you the
9 same questions that are contained in this document, would
10 your answers substantially be the same?

11 A. Yes, they would.

12 Q. And is your testimony true and accurate to the
13 best of your knowledge and belief?

14 A. Yes, it is.

15 Q. You adopt it as your testimony in this case?

16 A. Yes, I do.

17 ATTORNEY NAUM:

18 Thank you. Your Honor, I tender Mr.
19 Baron for Cross Examination.

20 COMMISSIONER MCCABE:

21 Mr. Rodecker?

22 ATTORNEY RODECKER:

23 Thank you, Your Honor. I had the same
24 problem with my witness. I had trouble seeing past Mr.
25 Naum's head.

1 ATTORNEY NAUM:

2 This one's my witness, so you ---.

3 CROSS EXAMINATION

4 BY ATTORNEY RODECKER:

5 Q. Good afternoon.

6 A. Good afternoon.

7 Q. Mr. Baron, would I be correct that --- that your
8 net present value or NPV analysis did not include any
9 inputs related to the benefits to MonPower, Marion County
10 or the State of West Virginia related to the continued
11 operation of the Grant Town project?

12 A. That's correct. My --- my net present value
13 analysis was essentially this --- an updated version of
14 Mr. Connor-Ross' analysis. The difference being that I
15 used a 2017 Appalachian Power Company or really an aid,
16 which I'll call the AEP fundamental forecast at PJM
17 prices. And it --- that analysis was designed to measure
18 the impact on MonPower ratepayers, customers who pay the
19 rates.

20 And it was a comparison of the EEPA rates under
21 --- from Grant Town versus what those same customers
22 would pay if they bought --- if MonPower bought that
23 energy and capacity from the PJM market.

24 Q. Am I further correct that your NPV analysis is
25 based upon certain assumptions? And you've explained

1 some of those, what those assumptions are, that were made
2 at the time of conducting the analysis?

3 A. I missed the first part of your question. The
4 --- they --- you're referring to my assumptions or Mr.
5 Connor-Ross'?

6 Q. Yours. Your NPV analysis. In other words, you
7 updated it for --- to reflect what you stated was the
8 2017 APCo perks; isn't that correct?

9 A. Yes, that's correct. It was --- it was an
10 updated version of the same PJM market capacity and
11 energy forecast that AmBit's witnesses used.

12 Q. All right. And so to the extent that you have
13 the --- the same basis, if you will, it's just different
14 time that the document's prepared, isn't it true that the
15 timing of when they were prepared has an impact on the
16 results?

17 A. Well, I --- I think as --- as a factual matter
18 that's true, that the more --- they are two different
19 forecasts. One was prepared basically a year earlier
20 than the other, but I think more importantly or just
21 probably --- yes, more importantly the 2017 forecast
22 reflects a more realistic assessment of what has been
23 happening in the PJM market.

24 And it --- it --- the AEP fundamental forecast,
25 the 2017 forecast that I used for this --- my analysis

1 actually was prepared in late 2016. And when --- that
2 was before the May base residual auction results
3 occurred. And those auction results bare out the much
4 lower capacity prices that are occurring in PJM.

5 So, yes, they were two different forecasts
6 prepared in two different times, but it's not --- I
7 wouldn't characterize it if that's --- if you're
8 suggesting this, that it's just every time you do a
9 forecast, you get a different result. Yes, that's true,
10 but it's relying on more recent information and what
11 appears to be a more realistic assessment of the PJM
12 market.

13 Q. Well, you say it appears to be more realistic.
14 You were here when I inquired of Ms. Medine about the
15 extent to which some parties would rely upon recent
16 capacity cost levels associated with the more recent
17 purchases of proof --- not purchases, but BRA
18 calculations in May of 2017 by PJM? Do you recall that?

19 A. Yes.

20 Q. And you also recall that in the prior period of
21 time that was reflected on there, there was some
22 substantial deviation in the --- in the price?

23 A. Yes, I heard that. I'm familiar with that.

24 Q. And do you disagree with that?

25 A. Over time since 2007 or the mid-2000s I would

1 agree that there has been variation. The --- I think the
2 big issue in --- in assessing the economics of the EEPA
3 rates now is to --- to take a look at the capacity rates
4 that were assumed in --- in Mr. Connor-Ross' analysis for
5 the 2020/'21 PJM delivery year. And those capacity rates
6 are in the range of \$295 to \$300 a megawatt day. The ---
7 the --- that was for the 2020/'21 delivery year. The
8 recent PJM BRA auction is much, much lower than that.

9 It's --- I believe it's --- it was --- it was
10 less than \$75 a megawatt day. So, yes, it does vary, but
11 it has been trending down and based on the AEP
12 fundamental forecast it looks like it's going to stay
13 down for quite a while.

14 Q. I'm going to hand you a document. I'm sorry.
15 I'm not going to, my colleague is and I'm going to ask
16 you about it.

17 ATTORNEY MCGHEE:

18 May I approach?

19 COMMISSIONER MCCABE:

20 Yes.

21 BY ATTORNEY RODECKER:

22 Q. Mr. Baron, are you aware that --- that I sent a
23 set of data requests to your counsel and --- and
24 requested that the basis of some of your --- the
25 information that you presented in your testimony. And

1 included in the response were --- was information related
2 to the 2017 APCo IRP submitted to the Virginia
3 Corporation Commission. Do you recall that?

4 A. Yes.

5 Q. And do you recognize the graph you see in front
6 of you as being part of that and taken from page 83 of
7 that IRP?

8 A. Yeah, I don't remember the page number, but I
9 --- I do recognize the graph and it --- it's --- it
10 appears to be the --- the most recent forecast. And ---
11 and I think my work was supplied to you.

12 Q. And my question to you is that you'll --- you'll
13 see on page --- on your figure 23 ---. Not your figure
14 23, my figure 23 is from the IRP. It shows that in year
15 2021 that price of capacity and PJM market goes down to
16 just over \$20, about \$25, from a level in 2018 of \$160.
17 Do you see that?

18 A. Yes.

19 Q. And then it stays for --- it stays --- it stays
20 regular for --- the same for a while and then it seems to
21 go up. Now, can you explain that?

22 A. Can I explain that?

23 Q. Yes.

24 A. I --- the --- I can't explain it because I
25 didn't prepare this forecast. I indicated in my

1 testimony that I --- that AmBit used and relied on for
2 its analysis the AEP 2016 --- the APCo 2016 IRP forecast.
3 And for the purposes of my testimony I accepted that. I
4 accepted the methodology that the --- that AmBit used,
5 that Mr. Connor-Ross used and what I did was really just
6 use the most recent forecast.

7 In terms of providing the underlying analyses
8 that went into the AEP model, it --- it's based on their
9 best assessment I assume. They've used it in other
10 cases. In fact, they're using it in another case before
11 the West Virginia Commission right now.

12 Q. Well, do you --- do you approve of their
13 calculation? Do you think this is an accurate forecast?

14 A. I haven't made an assessment. What I do agree
15 with is this, that the --- especially from the standpoint
16 of the capacity values. The capacity values underlying
17 the 2017 IRP forecast appear to be much more realistic
18 relative to the --- the market results that we actually
19 have, which is the most recent being the 2020/'21
20 delivery year base residual auction.

21 I haven't --- I haven't made my own assessment
22 of this forecast, but I do believe that it is a --- it's
23 a reasonable representation. As far as I know, I guess
24 if Mr. Connor-Ross had done his analysis three months
25 later he most likely would have used this forecast. And

1 if he had he would have gotten a negative \$137 million
2 net present value harm compared to the EEPA rates versus
3 the market.

4 Everything else in my analysis that produced
5 that result, harm of \$137 million every other assumption
6 was exactly the same as Mr. Connor-Ross' analysis.

7 Q. Well, with regard to --- I'm only asking you
8 about your analysis and not Mr. Connor-Ross' because he
9 didn't use these figures. You did.

10 A. He used the AEP fundamental forecast from the
11 prior year, but that's ---

12 Q. Which did not ---?

13 A. --- that's correct. He did not use these.

14 Q. Right. You did?

15 A. I did. Correct.

16 Q. And so to that extent are you accepting AEP's
17 expectations with regard to the capacity cost?

18 A. I think I just answered that question. I'm
19 neither accepting it nor rejecting it. What I do believe
20 is that it is a more reasonable forecast than the prior
21 forecast. The prior forecast had a capacity rate of
22 about \$300 for this same period. That was obviously not
23 realistic. That's the forecast that Mr. Connor-Ross
24 used.

25 Q. Do you know if anybody else in this proceeding

1 used that?

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

3 Q. Did you perform a calculation of the impacts to
4 the Energy Users Group if AmBit were to cease operations?

5 A. No, I --- I did not perform --- when you say
6 impact are you speaking of --- I didn't perform an
7 analysis, but I --- I guess I would like to know are you
8 asking an economic analysis of the regional economics or
9 more ---? I assume what you mean is the rate impacts?

10 Q. Well, has --- yes. Is that going to have an
11 impact on the rates other than --- I'm not saying to get
12 relief. What if they close down and they can't operate?

13 A. Well, all else being equal I assume if the ---
14 if the Grant Town ---. And I'm not advocating just so
15 you --- it's clear. You know, WVEUG members have
16 sympathy for the Grant Town --- we're sympathetic of the
17 problems. We all --- industrial customers in West
18 Virginia and in the region have economic problems that
19 affect employment and --- and other issues.

20 But the --- the issue in this case is a rate
21 impact and what --- what AmBit is requesting is basically
22 an \$8 million rate increase to all of MonPower's
23 customers every year. And WVEUG members would pay a
24 share of that \$8 million, all else being equal. If the
25 project were to shut down, the assumption that I would

1 make is that there would be market purchases in lieu of
2 that capacity and energy.

3 And there actually as possible MonPower could
4 obtain resources that would be less expensive than
5 market, but it's reasonable to assume market.

6 Q. Isn't it also true that your analysis of the
7 impact on the ratepayers and the --- is it entirely
8 dependent upon the results of your market projections?

9 A. Yes. As I said, what I did was I took the
10 company's analysis that it submitted and its testimony
11 and I provided an update using exactly the same source
12 materials. But, yes, that's --- since that was the
13 change that I made, I'm relying on AmBit's methodology
14 and simply an updated AEP forecast.

15 ATTORNEY RODECKER:

16 I have no further questions.

17 COMMISSIONER MCCABE:

18 Mr. Jack, I did not call on you before
19 and that was my mistake. You're a joint petitioner in
20 this. I assumed that you had no questions.

21 ATTORNEY JACK:

22 You are correct.

23 COMMISSIONER MCCABE:

24 Okay.

25 ATTORNEY JACK:

1 No questions.

2 COMMISSIONER MCCABE:

3 I just didn't want that oversight to
4 come around and bite me later. CAD?

5 ATTORNEY OSBORN:

6 We have no questions. Thank you.

7 COMMISSIONER MCCABE:

8 Sierra Club?

9 ATTORNEY BECHER:

10 No questions. Thank you.

11 COMMISSIONER MCCABE:

12 Staff?

13 ATTORNEY AUVILLE:

14 No questions, Your Honor.

15 COMMISSIONER MCCABE:

16 Okay. Any Redirect?

17 ATTORNEY NAUM:

18 Your Honor, I have no Redirect and at
19 this time I would ask that WVEUG Exhibit SJB-D be
20 admitted into the record. I would also like to note
21 WVEUG's appreciation of the joint petitioner and other
22 parties accommodating Mr. Baron's schedule. I understand
23 there's a chance he might be able to catch a flight
24 today, so I would ask that he be excused from the
25 remainder of the hearing.

1 COMMISSIONER MCCABE:

2 Okay. Have you marked the Rebuttal?

3 ATTORNEY NAUM:

4 Mr. Baron did not file Rebuttal
5 testimony, Your Honor.

6 COMMISSIONER MCCABE:

7 Oh, I'm sorry.

8 ATTORNEY RODECKER:

9 Your Honor, I --- I --- I ---

10 COMMISSIONER MCCABE:

11 I'm sorry.

12 ATTORNEY RODECKER:

13 --- forgot to mark the Cross
14 Examination Exhibit Number 2, I believe, ---

15 COMMISSIONER MCCABE:

16 Correct.

17 ATTORNEY RODECKER:

18 --- and that should be admitted into
19 evidence.

20 (AmBit Cross Exhibit 2 marked for
21 identification.)

22 COMMISSIONER MCCABE:

23 So marked and so admitted, and also on
24 the SJB Direct. Do you have any --- I have no questions
25 either, so we will, let's see, move back to AmBit. Your

1 next witness? Oh, I'm sorry. Mr. Baron, you got ---
2 you're excused.

3 A. Thank you, Your Honor.

4 ATTORNEY RODECKER:

5 Your Honor, before we call Mr. Thompson
6 can I ask for a brief recess, please?

7 COMMISSIONER MCCABE:

8 Yes. In fact, I was looking for three
9 o'clock and it's right on the money. So we'll take a ---
10 is five minutes enough or you need ten? Take a quick
11 five minute break.

12 SHORT BREAK TAKEN

13 ATTORNEY RODECKER:

14 Your Honor, before returning to the
15 order of witnesses, during the recess I was asked by Mr.
16 Raney, the President of the Coal Association if he could
17 please make a statement. He was unable to be here
18 earlier this morning and has gotten here and would
19 request leave of the Commission to permit him to make a
20 statement.

21 COMMISSIONER MCCABE:

22 Without objection that's --- that's
23 fine with the Chair.

24 MR. RANEY:

25 Mr. Chairman.

1 COMMISSIONER MCCABE:

2 Sir. If you would, give your name and
3 position, and spell your name so the clerk can --- so
4 that the recorder can get it properly.

5 MR. RANEY:

6 Yes, sir. Mr. Chairman, Commissioner
7 Larrick, I appreciate your patience. All tangled up this
8 morning and didn't know if I was going to get here. As
9 you can tell, I wasn't --- I'm not properly attired to
10 present, but I appreciate ---

11 COMMISSIONER MCCABE:

12 You're just fine.

13 MR. RANEY:

14 --- your indulgence nevertheless. I am
15 Bill Raney, R-A-N-E-Y. I'm President of West Virginia
16 Coal Association and I have the privilege of representing
17 the companies that mine about 95 percent of the coal in
18 West Virginia and supply to about 26 states across the
19 country and about 33 countries across the world.

20 So our members are now recovering from
21 some of the toughest times that we've ever had over the
22 last eight years. It was an absolutely relentless
23 regulatory assault, not only on those members that I have
24 who mine the coal, but those who burn it to make
25 electricity, as you all here at the Commission know from

1 the plant closures that we've experienced over the last
2 few years. Today our members directly employ about
3 14,000 direct coalminers and they are the best coalminers
4 in the world, but the troubling part of that is that's
5 about 9,000 less than we had five years ago. We're
6 struggling today to bring that workforce back and we're
7 having difficulty, as you might suspect, finding them
8 because many have transferred and moved out of state.

9 I appreciate the opportunity to share
10 our concern with the Association in support for the Grant
11 Town plant's request to change their rate contract.
12 Because the reason it needs to be changed is in large
13 part what we've experienced over the last eight years and
14 that's that increase in changing regulation by the
15 federal EPA, the Murphy Mack, McClain Power plant and all
16 of those kind of initiatives.

17 Sure. There's increase competition of
18 natural gas and widely publicized, but typically
19 inaccurately increase dependable generation from
20 renewables. Both of which are benefited from the federal
21 government's ever increasing regulation of coal and its
22 use and their relentless efforts to pick the winners and
23 losers in the energy picture. This is particularly true
24 for the renewables which they would not be competitive at
25 all without the huge subsidies and the mandates they

1 receive, and we certainly can't depend on them for
2 baseload power as indicated by FERC and PJM. They're no
3 longer included in the capacity performance categories
4 and, of course, we can talk about that for quite some
5 time.

6 Today our industry in this state is, as
7 I said, recovering from a very difficult eight years. It
8 was a perfect storm of regulation and we had unrealistic
9 water standards, we had --- actually, we have water
10 standards that are ten times more stringent than drinking
11 water. And impossible air standards. Some relief has
12 been granted since January and we hope that that's not
13 too late, but all of this effects coal fire generation
14 and the coal --- and the Grant Town power plant has
15 provided dependable generation of electricity to the
16 region and West Virginia for more than two decades.

17 That power plant has helped us as an
18 industry comply with many requirements of ever increasing
19 regulations while benefiting the state and many of our
20 members operations. That in addition to the jobs, and
21 the taxes and the --- and the direct economic benefits
22 that it provides to the region, the plant takes the waste
23 goal, as you've heard, from abandoned piles and for which
24 there were no urgent plans, which I'm sure Mr. Rice
25 talked about this morning.

1 There were no urgent plans to reclaim
2 those piles and that --- the coal that's in those piles
3 was mined years ago typically before there were any
4 regulations. And because Grant Town has provided a
5 market for that, these eyesores and these sources of
6 pollution have --- have been and are being removed with
7 no cost to the federal, state or the local governments.

8 They're taking waste coal, even waste
9 coal from active operations that was just mentioned by a
10 witness a couple of moments ago, and continues to do so.
11 Thereby removing the possibility of these active
12 operations having long-term environmental impacts.
13 Because of the outstanding outgoing characteristics, the
14 plant's byproduct, its ash that's accepted by agencies
15 like West Virginia DEP to be used for long-term permanent
16 treatment and remediation of acid mine drainage on
17 multiple operations active as well as abandoned mine land
18 projects throughout the central West Virginia.

19 Mr. Chairman, Commissioners, the bottom
20 line is that we need to preserve every coal plant that we
21 have in this state and we need to build more of them. We
22 would be hopeful that we can or certainly bring some back
23 that have been shut down to show the nation that we do
24 know how to make electricity here as well as anyplace in
25 the world. But specifically today we need to do

1 everything possible to preserve Grant Town's efficient,
2 clean and dependable baseload capacity because it's real
3 capacity that everyone depends on. It doesn't have to
4 wait on a pipeline, or the wind to blow or the sun to
5 shine. It's available now, today and will be there
6 tomorrow 24/7.

7 And most importantly, its continued
8 operation will keep coalminers working in the three
9 counties of Marion, Harrison and Monongalia. And on
10 behalf of our association the coal industry across West
11 Virginia, I hope you will favorably consider Grant Town's
12 request for change to their rate contract. Thank you,
13 Mr. Chairman, Commissioner Larrick. I appreciate it very
14 much.

15 COMMISSIONER MCCABE:

16 If you would give a copy of that to the
17 reporter.

18 MR. RANEY:

19 Yes.

20 COMMISSIONER MCCABE:

21 Mr. Rodecker, are we ---?

22 ATTORNEY RODECKER:

23 Your Honor, our next witness is Mr.
24 Herb Thompson.

25 -----

1 HERBERT THOMPSON, HAVING FIRST BEEN DULY SWORN,
2 TESTIFIED AS FOLLOWS:

3 -----

4 DIRECT EXAMINATION

5 BY ATTORNEY RODECKER:

6 Q. Mr. Thompson, do you have in front of you two
7 documents that first of which is filed Exhibit HT-D,
8 Direct Testimony of Herbert Thompson on behalf of
9 American Bituminous Power Partners consisting of six
10 pages of questions and answers with an attached exhibit
11 HT-1 and a second document, Exhibit HT-R, the Rebuttal
12 Testimony of Herbert Thompson on behalf of American
13 Bituminous Power Partners consisting of six pages of
14 questions and answers and an attached HT-R Exhibit 1?

15 (AmBit Exhibit HT-D marked for
16 identification.)

17 (AmBit Exhibit HT-R marked for
18 identification.)

19 A. Yes, I do.

20 BY ATTORNEY RODECKER:

21 Q. And were those two documents prepared by you or
22 under your supervision and direction?

23 A. Yes, they were.

24 Q. And is the information contained therein true
25 and accurate to the best of your knowledge and belief?

1 A. Yes, it is.

2 Q. And if I were to ask you those questions today
3 would your answers be the same as contained within both
4 of those documents?

5 A. Yes, it would.

6 ATTORNEY RODECKER:

7 Your Honor, at this time I would ask
8 that these two documents be marked for identification as
9 H --- Exhibit HT-D and Exhibit HT-R. And the witness is
10 tendered for Cross Examination.

11 COMMISSIONER MCCABE:

12 So marked and that'll be admitted
13 subject to Cross.

14 A. Your Honor, if I may? I spoke to the individual
15 attorneys. My hearing's really bad, so if you --- if you
16 feel the need to shout that won't offend me in the least.
17 I want to make sure I hear you. Thank you.

18 COMMISSIONER MCCABE:

19 CAD?

20 ATTORNEY OSBORN:

21 Thank you, Commissioner McCabe.

22 CROSS EXAMINATION

23 BY ATTORNEY OSBORN:

24 Q. Mr. Thompson, we met earlier and I think we met
25 a couple years ago when AmBit was here before. Can you

1 hear me okay?

2 A. Yes, I can. Thank you.

3 Q. Okay. And if you need me to speak up I won't be
4 offended either. You just tell me that. I have just a
5 few questions for you. I'm wondering if first, Mr.
6 Thompson, if you can tell us the capacity of Grant Town?

7 A. I'm sorry? The ---?

8 Q. The capacity?

9 A. The generation capacity?

10 Q. Yes.

11 A. The facility generates 80 megawatts net power
12 and baseload facilities we run 365 days a year.

13 Q. And what is the minimum load with respect to
14 Grant Town?

15 A. The minimum load for us to stay on solid fuel is
16 32 megawatts per hour.

17 Q. With respect to RAM time, Mr. Thompson, can you
18 tell us what the RAM time would be from going from a full
19 load to a minimum load at the Grant Town facility?

20 A. I would estimate that would take approximately
21 an hour, maybe two.

22 Q. And what about the --- the groupers, going from
23 minimum load to full load?

24 A. That's usually a little longer and depending on
25 the situation four hours, eight hours.

1 Q. In your testimony, Mr. Thompson, at --- I
2 believe at page two beginning on line 15 and continuing
3 onto page three, you speak of new environmental
4 regulations to which Grant Town is subject. And I just
5 want to ask you generally. I mean, obviously Grant Town
6 while subjected to those regulations is not the only
7 facility that has been subjected to those regulations.
8 In other words, these regulations weren't geared toward
9 Grant Town specifically; correct?

10 A. That's correct.

11 Q. Okay. And in that same vein you --- let's see,
12 on page four of your testimony at lines --- you're asked
13 a question about your testimony from 2015, wherein at the
14 time in 2015 you had stated in your testimony that the
15 amendment that was proposed back then --- in analyzing
16 that amendment and coming to that proposed amendment and
17 that request, AmBit had not included in its analysis
18 future costs for greenhouse gas emission regulations; is
19 that correct?

20 A. That's correct.

21 Q. And likewise based on your testimony here the
22 current amendment that's being proposed did not
23 contemplate or did not take into consideration possible
24 future greenhouse emission costs; is that correct?

25 A. That's correct.

1 Q. With that being said, if the Commission were to
2 grant AmBit's request in this proceeding --- I mean,
3 considering the fact that there was no consideration
4 given to --- given to future possible greenhouse emission
5 regulations or cost of those, are you able to say with
6 any sort of certainty that if AmBit is given the rate
7 that it requests in this proceeding, that that would be
8 sufficient to keep AmBit going forward if these unknown
9 regulations come into play? I mean, is there any
10 guarantee of that?

11 A. If I might?

12 Q. Sure.

13 A. I think the answer is I don't know that there's
14 a guarantee for anything because I don't think we know
15 exactly what that looks like yet, if it's going to happen
16 at all. If we had known what we know today, we would
17 have had a completely different conversation two years
18 ago.

19 I'll also say that since we were here before, a
20 couple years back, with the possibility of greenhouse gas
21 legislation coming off, what we did was we went out and
22 said, okay, what can we do to improve or reduce
23 greenhouse gas? So we did a couple of things.

24 We --- we worked on a plant efficiency spec to
25 find out just how well or how low, if you will, we can

1 reduce our heat rate, make our plant more efficient.
2 What would that look like? And so there are a number of
3 items that were included in that analysis that shows that
4 we can get about five to six percent improvement on our
5 heat rate through plant efficiency projects. And that
6 would include things like cooling towers and condenser
7 improvements, improvements to heat retention in the back
8 end of the plant, exhaust side of the plant.

9 The largest one of the bunch was something one
10 of the witnesses spoke to earlier today and that would be
11 upgrades to our turf. Some of those things we're able to
12 do. They're short-term returns on investment and/or
13 things through the course of O&M practices of the plant
14 we've been slowly doing anyway.

15 The biggest one of that bunch is the turbine
16 upgrade. That's going to require \$6 to \$10 million and a
17 fairly lengthy outage period, which we simply can't
18 afford right now. However, if we were in a situation,
19 say, as you say some sort of legislation were passed that
20 would require us --- incentivize us, if you will, to do
21 that, that's the type of project that stands on its own
22 if it's invested. So there's a return on that investment
23 that would sustain some loan to cover it. In our current
24 financial situation we just can't do that. If we were to
25 get this rate increase we're seeking, it allows us the

1 opportunity to do that.

2 So at the end of the day what we determined is
3 upgrades to the plant efficiency, the use of natural gas.
4 I suspect sooner or later we'll get on that topic as
5 well. We can reduce our CO2 emissions anywhere between
6 25 and 30 percent and it's achievable, well within our
7 reach to do that, but the significant part of that
8 requires some capital upgrades we still can't afford.
9 Does that answer your question?

10 Q. I believe it --- I believe it does and it takes
11 me to my next question. You mentioned the study of
12 efficiency improvement and you discussed those, I
13 believe, on --- beginning on page four of your testimony
14 at line 18 and continuing onto page five of your
15 testimony.

16 And you state in your testimony --- and I
17 believe you just reiterated that under AmBit's current
18 financial situation, there simply is no capital to make
19 those efficiency improvements that have been identified
20 as a result of these studies; correct?

21 A. Not all of them. Some of them actually we have
22 been doing and continue to do. Relatively well capital
23 costs where they're involved with some part of O&M to the
24 plant. For example, the aerator tubes are worn. We got
25 to replace them. We replace them with a variety of tubes

1 that are better to exchange heat and that reduces our
2 heat rate. So we're doing some of them now.

3 Q. And the ones that you're doing now, just so I'm
4 clear, are those practices that have been put in place
5 since 2015 or were they already in place prior to 2015?

6 A. Those have been in there after 2015.

7 Q. Okay. In your testimony the efficiency --- if
8 the --- the project that could be put in place were the
9 capital available to improve efficiency and operation of
10 the plant, in requesting the rate increase that had been
11 requested in this proceeding does that rate increase take
12 into consideration the costs of both particular projects
13 that have been identified?

14 A. It does not, but the caveat, what I said
15 earlier. Again, the largest expenditure of that group of
16 projects is an upgrade to our turf. That costs \$6 to \$10
17 million. It's something that you finance and it would
18 pay for itself in something like six or seven years. And
19 so by the time six or seven years pass you can recover
20 those --- those funds enough to cover a loan without
21 incurring additional costs to the plant.

22 Q. Has AmBit actually been in touch with any
23 lenders, whether it be lenders that AmBit currently has
24 loans through or new lenders, regarding whether those
25 lenders would actually be willing to loan money to AmBit

1 given the defaults that are currently in place?

2 A. Well, okay, we've been in contact with our ---
3 our lenders a lot lately. They're very interested ---
4 they're interested in how the project's doing
5 particularly now. We have not spoken to them about
6 project upgrades or system upgrades. Those would be
7 things that we would do if we could justify the fact we'd
8 be here for longer than a year or so.

9 Q. So no lender has --- and correct me if I'm
10 wrong, but I think based on your testimony, no lender has
11 given any sort of assurance to AmBit at this point in
12 time that it would be willing to make a future loan for
13 the purpose of these efficiency projects. Is that true?

14 A. That's true. And the fact that we haven't ---
15 we haven't asked and so they haven't offered.

16 Q. In addition to the --- to the \$6 billion which I
17 believe you said would be to upgrade the --- the turbine;
18 is that correct?

19 A. Yes.

20 Q. Do you have a --- a figure in --- has your
21 analysis come to a conclusion with respect to a dollar
22 amount that would be required to implement the other
23 efficiency project that's been identified?

24 A. I don't know that we have a total at the end of
25 the page, but I would say that with the lion share that

1 was the turbine. And, again, the rest of those projects
2 are smaller in nature and smaller returns, and we've done
3 a number of them already. And we probably get some more
4 unfortunately here.

5 Q. Are you able to tell us what would be the best
6 heat rate you believe you could --- that the facility
7 could achieve if it were to burn 100 percent waste coal?

8 A. Yeah, actually the --- the efficiency study
9 indicated we get somewhere down around 12,400 BTUs for
10 kw.

11 Q. And what about if --- with the possibility of
12 co-firing natural gas, which I believe you mentioned on
13 page five of your testimony at line three. Are you able
14 to tell us first what percentage of natural gas Grant
15 Town could --- could be accommodated at Grant Town?

16 A. Well, because we're a waste coal facility, we're
17 limited by FERC at 25 percent of non-waste materials and
18 so 25 percent would be the maximum amount we could burn.

19 Q. And do you know or do you have an understanding
20 what would happen to the heat rate with that co-firing,
21 let's say, at a maximum of 25 percent?

22 A. Yeah. Actually, in 2016, last year, gas prices
23 dropped --- dropped significantly enough that it
24 warranted an opportunity for us to test gas in the plant.
25 And so on and off through most of the year we tried gas

1 in different volumes, different applications, different
2 entry points into the boiler to see just how it would
3 perform. Overall, there was a very, very slight increase
4 in heat rate as a result of natural gas.

5 Just think about the type of boilers that we
6 have. It requires a very large mass of material. The
7 ash and the fuel and the limestone that are in there are
8 basically a slow cook and allow the heat to transfer.
9 Natural gas on the other hand burns off just like that,
10 so the heat transfer's a little bit less with natural
11 gas. It wasn't significant degradation. It was noticed.

12 Q. Thank you. On page five of your testimony again
13 at line ten, you were asked the question has the form and
14 source of Grant Town's fuel supply changed since 2015,
15 and you indicated that, no, it has not; is that correct?

16 A. That's correct.

17 Q. Are you able to tell us what --- what was the
18 form and sources of Grant Town's waste coal supply were
19 before 2015?

20 A. Could you say that one more time?

21 Q. Sure. The question that you --- the question
22 that you answer in your testimony is whether the form and
23 source of Grant Town's fuel supply has changed since 2015
24 and you say no, and you go on to explain that. And I'm
25 wondering if there was a different form and source of the

1 fuel supply prior to 2015?

2 A. That's an interesting question. In some ways it
3 has changed since the beginning of the project. We have
4 found ourselves utilizing work, active mine waste now
5 than we did in the very beginning of the project for a
6 number of reasons. One of them is cost.

7 The other is the ability to maintain reasonable
8 quality, but on and off over the last 25 years the types
9 of fuel has been available to the facility, some of which
10 were from abandoned mine land, some of which from similar
11 waste recovery sites like the Kingdom fuel site. So it
12 changes on and off as time goes by, but I think in a very
13 broad sense it really hasn't changed much. I think the
14 sources have changed, the players have changed, if you
15 will, but overall the --- the concept of burning waste
16 coal has not changed.

17 Q. And finally I want to ask you just a few
18 questions about the AmBit fuel supply. And whatever you
19 can tell us the sites from which the fuel supply is
20 derived, if any of those are ANL sites?

21 A. And actually I believe his name is Mr. Rice this
22 morning spoke of the Farmington site, which was an ANL
23 site that we entered into a no cost reclamation agreement
24 with the state, and I believe he indicated he was fairly
25 pleased with the outcome. And so were we.

1 And then type of fuel allegation from a risk
2 standpoint some are minimized because it doesn't require
3 the same Article 3I permit that you would have to have
4 for a conventional waste coal site or any coal mine for
5 that matter. So from that standpoint it makes it a
6 little bit easier to get onsite and get mining.

7 I believe that we'll be finished reclaiming that
8 site before the end of next year and I'm absolutely
9 certain that folks that will see that site will comment
10 on what --- what a great job we've done.

11 Q. Thank you. But other than Farmington, any
12 others that are ANL sites?

13 A. There was actually one --- one small one and,
14 again, Mr. Rice spoke about it this morning. We term
15 that Mud Lick. I think he called it something else, but
16 it was a site that they had moved in to --- to clean up
17 and I think he indicate they were going to take the
18 material from the site that was causing the drainage
19 problem, the acid mine drainage problem and they were
20 going to move it to another waste coal pile.

21 And somewhere along the way we got involved and
22 they decided it was a better option to put in trucks and
23 ship it to us. And so --- and I think we sent some ash
24 back there as well. And as he indicated this morning,
25 the results were very positive.

1 Q. And are you familiar with the Humphrey limestone
2 quarry?

3 A. Somewhat, yes.

4 Q. Any of AmBit's fuel supply coming from or
5 derived from the Humphrey limestone quarry, if you know?

6 A. I don't know if it's directly associated ---
7 sorry. I don't know if it's directly associated with the
8 limestone quarry, but I know that there are waste coal
9 reserves that they encounter in the process of removing
10 the limestone at that site. And I know we get them at
11 our --- at our project.

12 Q. And are you aware of whether any limestone is
13 actually being produced at the Humphrey limestone quarry?

14 A. Yes, yes.

15 Q. The answer is yes?

16 A. Yes, I'm aware. Yes. If I might expand on that
17 a minute?

18 Q. Sure. Go ahead.

19 A. The reason I know is we truck stone from there
20 to use for our haulers.

21 Q. I know you testified a little earlier that there
22 have been no discussions between AmBit and any lender
23 with respect to monies that would be needed to make these
24 additions and improvements.

25 And with that being said, do you have an

1 expectation as to whether --- you know, if and when the
2 time comes to approach a lender or various lenders about
3 obtaining the --- the funds for such an improvement,
4 AmBit would go to the lenders with which it currently
5 does business or are there other lenders that --- that
6 the company has in mind, if you know?

7 A. I would imagine the first place we would go to
8 speak to the people would be our current lenders, but my
9 guess is you --- you could shop that around. Maybe do a
10 better deal if you shopped it around.

11 ATTORNEY OSBORN:

12 I think that's all the questions I have
13 for you. Thank you.

14 A. Thank you.

15 COMMISSIONER MCCABE:

16 Sierra Club?

17 ATTORNEY BECHER:

18 Yes. Thank you, Your Honor.

19 CROSS EXAMINATION

20 BY ATTORNEY BECHER:

21 Q. Good afternoon, Mr. Thompson. I --- I do tend
22 to speak quickly, so I'll try to slow down for your sake
23 and the court reporter's. If you have trouble hearing
24 me, please don't hesitate to interrupt me and stop me. I
25 rather you hear a question ---

1 A. Thank you.

2 Q. --- and get it right the first time. First I
3 want to follow up on a question that --- that CAD had
4 asked you about the placement of --- of waste from the
5 site. Mr. Hanson had done an analysis and shown that for
6 at least the past 15, 16 years 82 percent of the CCR
7 waste was deposited in five different mine sites, Grant
8 Town, Barrackville, Idamay, Wilson and Route 6.

9 First I want to ask if you have any reason to
10 disagree with --- with that figure?

11 A. Are you saying do I agree or disagree with 82
12 percent?

13 Q. Correct.

14 A. I --- I have to --- I have to tell you I --- I
15 didn't do the math.

16 Q. Okay. Does that sound reasonable to you?

17 A. It seems reasonable.

18 Q. Are any of those ANL sites?

19 A. Did you say Idamay?

20 Q. I did.

21 A. That's one.

22 Q. Idamay's one?

23 A. Yes.

24 Q. So of the five Idamay is the only one you're
25 aware of that's an ANL site?

1 A. The other ones I heard. Barrettsville?

2 Q. Barrackville?

3 A. No.

4 Q. Grant Town?

5 A. No.

6 Q. Wilson?

7 A. No.

8 Q. Route 6?

9 A. No.

10 Q. Thank you. I want to go to your Rebuttal
11 testimony. First you take some issue with --- with Mr.
12 Hanson's assignment of environmental harm to --- to the
13 Grant Town facility. Is your contention that there's no
14 pollution associated with the Grant Town project?

15 A. Make sure I heard that right. Did you say my
16 assertion that there's no pollution?

17 Q. Correct.

18 A. No, that is not my assertion.

19 Q. So you would agree there's some pollution comes
20 from the Grant Town project and would you also agree that
21 there's some pollution that comes from the deposit of
22 coal ash of these sites?

23 A. I would not. I would not agree with that.

24 Q. Okay. Have you looked at any of the trace
25 elements that are mobilized by placement of coal ash, the

1 dissolution of coal ash and the weathering process?

2 A. Okay. So, again, I want to make sure I
3 understood the question. You're asking me if I'm aware
4 of any trace elements that were mobilized?

5 Q. Are you aware if any trace elements are
6 mobilized from coal ash when it's weathered by rain,
7 wind, things like that?

8 A. I am not. The other thing I'm going to ask,
9 when we're talking about coal ash we're talking about
10 Grant Town CMP ash?

11 Q. Correct.

12 A. Correct?

13 Q. Or similar types of ash.

14 A. I am not.

15 Q. Are you familiar with the National Academy of
16 Science study that was cited fairly extensively in Mr.
17 Hanson's report on the mobilization of those trace
18 elements?

19 A. I'm only aware that it was mentioned in his
20 report.

21 Q. Okay. So you've not read that study yourself?

22 A. I have not.

23 Q. Have you read any other resources about
24 potential pollution that may be generated by coal ash,
25 disposed of or used for reclamation on mine sites?

1 A. I'm not aware of that.

2 Q. You say in one point in your testimony --- I
3 believe it's on page four.

4 A. Are we speaking of my Rebuttal?

5 Q. Your Rebuttal testimony. Thank you. And I'll
6 be dealing with that I think pretty much exclusively with
7 your Rebuttal testimony. You know the government
8 agencies have developed standards under which CCR can be
9 used and these agencies have determined mechanisms to
10 determine whether the disposal of CCR is created --- has
11 the potential to create environmental pollution. Can you
12 describe those mechanisms?

13 A. Can I describe what?

14 Q. The mechanisms they use to see if CCR --- the
15 disposal of CCR has created a potential environment
16 pollution?

17 A. I think I can.

18 Q. Okay.

19 A. Okay. So before our ashes are permitted to be
20 deposited on a mine site, we have to submit or the mine
21 operator has to submit leachate analysis, which is we
22 take our ash to a lab and they test it under various
23 conditions to find out what trace elements may leach out
24 of that material both by itself and in some condition
25 that resembles how it will be deposited. Say, if it's to

1 be mixed with coal refuse.

2 Based on that analysis, the West Virginia DEP
3 will or will not issue a permit that will specify the
4 types of analysis that's to be studied, the frequency by
5 which those --- those samples are to be taken. And then
6 after --- at least for our permits, after two years they
7 do what's called a reasonable potential analysis. And in
8 that, the state will look at the results of the samples
9 that were collected from that site and determine whether
10 or not additional testing, sampling requirements are
11 necessary.

12 And I can speak specifically. We've actually
13 been through this. I know a little bit about it. I
14 wouldn't call myself an expert, but our Rachel site was
15 just through this process and what came back was that, A,
16 our upstream and downstream sampling frequency could be
17 reduced. And, B, the --- let me tell you specifically.

18 Q. Can you --- can you specify which pollutants
19 that ---

20 A. Sorry?

21 Q. --- that sampling reduction was for? Can you
22 specify which pollutants that reduction of sampling
23 frequency was for?

24 A. I'm sorry. One more time.

25 Q. Which pollutants are you able to reduce the

1 sampling frequency?

2 A. I was just going to get into that. They
3 specifically remove from the --- from the sampling
4 selenium, arsenic, barium, cadmium, chromium, copper,
5 lead, nickel, silver, zinc and anemone. And so those
6 were initially part of our permit sampling requirements
7 and after two years, based on the analysis of two years'
8 worth of data, the DEP released those from our analysis
9 requirements.

10 Q. Do you know if there's any continued analysis of
11 total dissolved solids?

12 A. There were no changes.

13 Q. What about specific conductivity? Specific
14 conductivity?

15 A. No.

16 Q. Are you familiar with the term ionic stress?

17 A. Only that I saw in --- in Sierra's report. I
18 don't --- I would profess not to know a whole lot about
19 it.

20 Q. Okay. Do you know how ionic stress is typically
21 measured?

22 A. I do not.

23 Q. So you wouldn't know whether those parameters of
24 TDS and conductivity were related to ionic stress?

25 A. I would not.

1 ATTORNEY BECHER:

2 May I approach, Your Honor?

3 COMMISSIONER MCCABE:

4 Yes.

5 BY ATTORNEY BECHER:

6 Q. Mr. Thompson, I would proffer that this is a
7 document put out by the West Virginia DEP, the
8 justification and background for permitting guidance on
9 certain coalmine operations to protect West Virginia's
10 narrow water quality standards. Have you seen this
11 document before?

12 A. I have not.

13 Q. Okay. Do you know what the term narrow water
14 quality standard refers to?

15 A. No, sir, I do not.

16 Q. Okay. Do you understand --- you understand from
17 Mr. Hanson's testimony that some of the streams around
18 these sites are considered by the West Virginia DEP to be
19 biologically impaired?

20 A. I don't know --- I don't know specifically what
21 that means relative to a sampling, but I don't --- I do
22 --- I do acknowledge that that was in his report.

23 Q. Okay. If you could, --- and this is an excerpt,
24 but if you could turn to the second page, which is marked
25 page seven of this. It says DEP routinely identifies

1 biological stressors --- it's the first full paragraph.
2 DEP routinely identifies biological stressors when
3 developing TMDLs for biologically impaired waters.

4 And then they go on to explain stressor
5 identification and how the table related to --- to ionic
6 stress and that how --- how that may relate to the
7 biologic impairment. I guess you're not --- you're not
8 familiar with this document or this process at all?

9 A. No, sir, I am not.

10 Q. Are you familiar with the TMDL process ---

11 A. I am not.

12 Q. --- by which the DEP ---? Okay. So you're not
13 familiar with that method for the DEP of identifying and
14 then attributing sources and comparing it for strength?

15 A. No, sir, I am not.

16 Q. So in your statement on page four you say in all
17 cases he states issues regarding the impairment is fecal
18 coliform, iron and chloride. I think he testified in
19 Direct that ionic stress was one of the significant
20 stressors leading to biological impairment as identified
21 by the TMDL. You really don't know about that process
22 very well; do you?

23 A. Can you point me specifically to what line?

24 Q. Sure. On page four Mr. Hanson references a
25 number of streams that are impaired and identifies ionic

1 stress, organic enrichment, sedimentation that contribute
2 to biological impairment and that coal combustion
3 residuals increase levels of ionic stress.

4 You say in all cases he states that an issue
5 regarding fecal coliform, iron, chloride, however, AmBit
6 does not contribute here to issues caused by fecal
7 coliform or chloride. I think you're taking part of his
8 testimony that's relying on these TMDLs, the sources of
9 TMDLs. And what I'm trying to ask is you're not really
10 familiar at all with what those TMDLs say because you
11 testified you don't know what the TMDL process is?

12 ATTORNEY RODECKER:

13 Objection, Your Honor. It's correct
14 that he stated he's not familiar with TMDL, but --- but
15 it's the issue of whether his statement was correct with
16 regard to Mr. Hanson's statement. If he wants to ask him
17 about what his interpretation of Mr. Hanson's testimony
18 was I have no objections, but for him to make him a
19 witness with regard to something Mr. Hanson should have
20 provided and did not then --- then that's improper.

21 ATTORNEY BECHER:

22 Let me rephrase the question.

23 BY ATTORNEY BECHER:

24 Q. Do you understand that Mr. Hanson was referring
25 to the TMDLs when you talked about the attributions

1 impairment to which you're referring here?

2 A. No.

3 Q. Okay. And you haven't --- you haven't done any
4 independent examination of these TMDLs to see how they
5 attribute sources of biological impairment?

6 ATTORNEY RODECKER:

7 Objection, Your Honor. He's already
8 stated that he is not familiar with TMDL and the question
9 is in essence repetition by asking him if he's done
10 something to become familiar with it.

11 ATTORNEY BECHER:

12 I'm just asking if he's looked at them.

13 COMMISSIONER MCCABE:

14 Okay. You can ask that.

15 BY ATTORNEY BECHER:

16 Q. Have you looked at the TMDLs for these streams
17 at all?

18 A. You're talking about DMRs?

19 Q. No, the TMDLs.

20 A. I have not.

21 Q. Have you looked at the DMRs for the Grantville
22 Pike?

23 A. Yes, occasionally. Yes.

24 Q. Do you know the levels of specific conductivity
25 that are coming from that Grantville plant?

1 A. Top of my head, no.

2 ATTORNEY BECHER:

3 May I approach, Your Honor?

4 COMMISSIONER MCCABE:

5 Yes, sir. You need to provide the
6 Commissioner's a copy.

7 ATTORNEY BECHER:

8 Oh, I'm sorry. I was wondering why I
9 had extra copies. Thank you for reminding me.

10 BY ATTORNEY BECHER:

11 Q. And I believe the first page is just the DEP's
12 acknowledgement of their response to my --- for your
13 request. Can you turn to the second page, please?

14 A. You're referring to the second page after the
15 cover?

16 Q. Correct. And is this document familiar to you
17 at all?

18 A. It is not.

19 Q. Okay. Have you --- have you --- you said you've
20 looked at the facilities discharge monitor report before?

21 A. Occasionally.

22 Q. Okay. Is this, you know, typically how DEP
23 compiles discharge monitor reports, do you know?

24 A. This is not compiled in a manner that I know.

25 Q. Okay. How would you usually see this compiled?

1 How would you usually see this compiled?

2 A. Typically they would be the lab reports prior to
3 being submitted to state.

4 Q. So you've seen the raw lab reports --- have you
5 ever requested a document from the state to look at DMRs?

6 A. I have not.

7 Q. Okay. So you wouldn't know if this is the
8 format that DEP keeps their DMRs in?

9 A. I couldn't say so, no.

10 Q. Let's look at --- it's on the end. I'll
11 represent this --- this is the form that the DEP provided
12 to me, the DMR scan. There are a couple different permit
13 numbers on here, specific conductivity and sulfates. And
14 first of all, they're identified by permit number. That
15 permit number here is WV0004537. Do you recognize that
16 permit number?

17 A. Yes.

18 Q. Okay. What is it?

19 A. I believe that's the NPDES number for Grant
20 Town.

21 Q. Okay. And then inspectable --- the inspectable
22 unit there's two, three, four, seven, eight. Would those
23 represent outcalls?

24 A. Are you asking me or telling me?

25 Q. I'm asking. Well, my assumption is those

1 represent outfalls from my experience with the DMRs. Do
2 you have any reason to disbelieve that?

3 A. I suppose they could.

4 Q. Okay. The concentrations here represented let's
5 look at specific conductives for outfall 02 they seem to
6 range from, you know, 800 up to about 1,500 from outfall
7 03 in the 3,000s. Do you have any idea whether those
8 numbers are relatively high, relatively low?

9 A. I do not.

10 Q. So the contribution of --- of this site to ionic
11 stress or, you know, the ionic concentrations of
12 receiving streams is not something you pay attention to
13 at all?

14 A. I don't know if I'd characterize it that way.

15 Q. Okay. How have you --- how would you monitor
16 that if you have?

17 A. We submit that information to DEP per our permit
18 requirements. For most of these things they're report
19 only and I would assume that if there was an issue we
20 would know. Some of these parameters have high, low
21 limits, some of them do not. Couldn't tell you off the
22 top of my head which ones do, which ones don't. All this
23 information that's collected go into our permits, submit
24 it to the DEP according to our permit. And if there's a
25 problem, they let us know.

1 Q. So your --- your basis for the fact that this
2 plant is not contributing or not causing environmental
3 problems is that the DEP would let you know if it was?

4 A. Yes.

5 ATTORNEY BECHER:

6 Nothing further, Your Honor. Thank
7 you.

8 A. Thank you.

9 COMMISSIONER MCCABE:

10 WVEUG?

11 CROSS EXAMINATION

12 BY ATTORNEY BRANDFASS:

13 Q. Good afternoon, Mr. Thompson. If you can't hear
14 me let me know.

15 A. I will. Thank you.

16 Q. I just have a couple of questions. I hope we're
17 done with this pretty quickly. I'm going to refer back
18 to your Direct testimony. We're going to go to page two
19 of your Direct testimony.

20 A. Okay.

21 Q. Well, the bottom of page two. It starts on 18
22 and brings us up to the beginning of page three and it's
23 the first two lines on page three.

24 A. Okay.

25 Q. This is where you're talking about the change in

1 regulations that's 2006 to 2015, and then from 2015 that
2 the cost for implementing and complying with those
3 regulations has caused an increase to the facility's
4 cost. Do you have any expectation or knowledge that this
5 is the end of any additional or changing environmental
6 regulations?

7 A. I have no expectations that this is the end of
8 the environmental regulations.

9 Q. As a --- as a second to that, do you have any
10 knowledge or expectation that the environment regulations
11 that will likely still keep happening one way or another
12 will stop increasing the cost to the AmBit facility?

13 A. I would agree with that.

14 Q. So you don't have any --- you do or you do not
15 have knowledge that the cost would stop increasing?

16 A. I don't have direct knowledge because I don't
17 know what the rules are. I think there are cases that
18 come along where rules don't specifically impact plants
19 like us, process waste coal. I'm being honest --- I'd
20 have to say that, yeah, I would expect that sooner or
21 later there would be another regulation, another rule and
22 history would --- would prove that out.

23 Q. So what happens if when --- this sort of brings
24 me I guess to page four of your Direct and it starts
25 around line 14. And I think we touched on this portion a

1 little bit earlier. So what happens or what's AmBit's
2 plan if these greenhouse gas or other carbonate emission
3 regulations or other regulations are put into place and
4 that again puts this facility in a situation where it's
5 not financially viable?

6 A. The only answer I can give you is it depends.
7 You know, greenhouse gases, we don't know what that looks
8 like. So I don't know if you were here for 2015
9 proceeding. One of the things that we did is we went
10 through in very, very great detail our expenses. And as
11 part of our explanation for how much additional revenue
12 we needed to survive, we analyzed what costs were actual
13 and real. We knew it was time.

14 A lot of discussion including Staff was talking
15 we couldn't put money in there if we didn't know what it
16 was for. Couldn't pad the numbers, so to speak, for
17 anticipation of future costs until we --- we didn't do
18 that this time.

19 Q. So while understanding that WVEUG's concern or
20 one primary concern is that if these different
21 regulations are put into place that we'd be right back
22 here having to repeat history and seeking another
23 amendment. Is there any guarantee that we're --- is
24 AmBit willing to agree that it won't return again to seek
25 another amendment to its EEPA?

1 A. No guarantee of that.

2 Q. I think this will be the last bit of questioning
3 that I have for you and this goes to, let me find it,
4 page five. And this is where I think --- this is where
5 we're talking about the natural gas co-firing and the
6 enhanced emission treatment processes that --- that the
7 facility has been undertaking in the last 14 months or so
8 I believe; is that correct?

9 A. You're speaking to line four?

10 Q. Yes, right in there. Correct.

11 A. Correct.

12 Q. Has AmBit pursued any legislative initiatives in
13 regard to this exploration with the natural gas as a
14 co-firing fuel and the enhanced emissions treatment
15 processes?

16 A. I'm not sure I fully understand the question.

17 Q. So they've gone to the legislator and tried to
18 come together with some sort of tax initiative or sought
19 any sort of statewide solution to be able to provide more
20 funding to these particular treatment options?

21 A. I can't say that, no.

22 ATTORNEY BRANDFASS:

23 Okay. Thank you. That's all I have.

24 COMMISSIONER MCCABE:

25 Staff?

1 ATTORNEY AUVILLE:

2 Thank you, Your Honor. All my
3 questions have been already asked, so no questions.

4 COMMISSIONER MCCABE:

5 Commissioner?

6 COMMISSIONER LARRICK:

7 No questions.

8 COMMISSIONER MCCABE:

9 I also have no questions. Any
10 Redirect?

11 ATTORNEY RODECKER:

12 Yes, Your Honor, very briefly.

13 REDIRECT EXAMINATION

14 BY ATTORNEY RODECKER:

15 Q. Mr. Thompson, are --- is AmBit --- is the Grant
16 Town project in compliance with its permits?

17 A. It is.

18 Q. And has AmBit ever self-reported a violation of
19 any permit?

20 A. Actually we have.

21 ATTORNEY RODECKER:

22 No further questions.

23 COMMISSIONER MCCABE:

24 Your next witness?

25 ATTORNEY RODECKER:

1 Your Honor, our next witness is Ken
2 Niemann.

3 COMMISSIONER MCCABE:

4 I'm sorry. You're excused, sir.

5 -----

6 KENNETH NIEMANN, HAVING FIRST BEEN DULY SWORN, TESTIFIED
7 AS FOLLOWS:

8 -----

9 DIRECT EXAMINATION

10 BY ATTORNEY RODECKER:

11 Q. Mr. Niemann, do you have before you two
12 exhibits, one Exhibit KN-D, Direct Testimony of Kenneth
13 Niemann?

(AmBit Exhibit KN-D marked for
identification.)

16 A. Yes.

17 BY ATTORNEY RODECKER:

18 Q. And the other Exhibit KN-R, Rebuttal Testimony
19 of Kenneth Niemann?

(AmBit Exhibit KN-R marked for
identification.)

22 A. Yes.

23 BY ATTORNEY RODECKER:

24 Q. And attached to the KN-D you have four exhibits;
25 is that correct?

1 A. Yes, KN-1 through 4.

2 Q. And, Mr. Niemann, was the testimony that is
3 contained within those two documents was that prepared by
4 you or under your supervision and direction?

5 A. Yes, it was.

6 Q. And is it true and accurate to the best of your
7 knowledge and belief?

8 A. Yes.

9 Q. And do you have any changes to make to either
10 your Direct or your Rebuttal testimony?

11 A. I do have one change in the Rebuttal testimony
12 on page three, lines 10 and 11. Actually --- yeah, lines
13 10, and 11 and 12. After the word plan, integrated
14 resource plan I'd like to add filed with the Virginia
15 Corporation Commission on May 1 of 2017 in Case Number
16 PUR-2017-00051, Docket Number E-100 sub 147.

17 Q. And do you have any other changes to make?

18 A. No, I don't.

19 Q. If those changes --- if I were to ask you those
20 questions would your answers be the same as contained
21 therein?

22 A. Yes.

23 Q. And you accept the testimony contained in those
24 two exhibits as your sworn testimony in this proceeding?

25 A. I do.

1 ATTORNEY RODECKER:

2 Your Honor, I just have a brief request
3 that the --- the parties, of course, submitted their
4 testimony prior to the receipt of discovery requests that
5 came in after the filing of the --- of the Rebuttal
6 testimony. And there was certainly information provided
7 by Staff that we would beg your indulgence to provide a
8 short opportunity for Mr. Niemann to address some of
9 those issues as they relate to what is in the record
10 today.

11 They have --- he hasn't had an
12 opportunity to see that before the submission of the
13 Rebuttal testimony. I know it's unusual, but because of
14 the shortness of time, we would request that if we could
15 do that.

16 COMMISSIONER MCCABE:

17 Are there objections? Okay. Proceed.
18 Yes, sir?

19 ATTORNEY AUVILLE:

20 I won't object at the outset, but I'll
21 reserve the right to object when I've heard the
22 questioning. I don't know what he's going to ask, so I
23 can't really, you know, ---.

24 COMMISSIONER MCCABE:

25 Fair enough.

1 COMMISSIONER MCCABE:

2 It's okay, John. Neither do I.
3 Proceed.

4 BY ATTORNEY RODECKER:

5 Q. Mr. Niemann, following the submission of the
6 Rebuttal testimony proceeding, did you receive additional
7 information from Staff with regards to the Staff's
8 position --- supporting the Staff position?

9 A. I did. I got some --- I received some
10 documentation.

11 Q. And in your review of that, did that change your
12 testimony in any way?

13 A. Well, physically, no, but certainly in terms of
14 some of the analysis we did, yes, it did.

15 Q. And --- and for instance, did he provide you
16 with the source documents for the curves and assumptions
17 that --- that he included in his testimony?

18 A. Yes, he did.

19 Q. Did you have any observations on those documents
20 as they were presented by --- to you?

21 A. Well I mean, the documents validate the numbers
22 that were saw in the Direct testimony of Terry Eads. At
23 least now we know the source of those numbers and where
24 they came from, the basis for the projections on the
25 impacts to ratepayers. Certainly within those data sets

1 there was some numbers that surprised me, but generally
2 speaking, they obviously form the basis for the final net
3 present value calculation that Mr. Eads did.

4 Q. And are you prepared to change your testimony in
5 any way as a result of seeing that?

6 A. No, not materially.

7 ATTORNEY RODECKER:

8 I --- I have no further questions of
9 Mr. Niemann and he's tendered for Cross Examination.

10 COMMISSIONER MCCABE:

11 Ms. Osborn?

12 ATTORNEY OSBORN:

13 Thank you.

14 CROSS EXAMINATION

15 BY ATTORNEY OSBORN:

16 Q. Mr. Niemann, I understand that you are the
17 Executive Director of AmBit; is that correct?

18 A. That's correct. My title is Executive Director.

19 Q. And that's pursuant to a consulting agreement
20 between AmBit and a company to which you are President
21 called North Ridge Resources, LLC; is that correct?

22 A. That's correct.

23 Q. Now, your --- I noticed in your --- in your
24 testimony you provide initially your full name and
25 business address. Do you actually reside in West

1 Virginia or do you reside in Virginia?

2 A. I reside in Virginia.

3 Q. Okay. Is that in Alexandria?

4 A. Yes, it is.

5 Q. Do you maintain any sort of residence in West
6 Virginia?

7 A. No, I do not.

8 Q. Why is it, if you know, that AmBit chose to put
9 in place an Executive Director pursuant to a consulting
10 agreement as opposed to a direct --- to have an Executive
11 Director as a direct employee?

12 A. Well, you'd have to ask the managing partner,
13 but I will say this. I actually have a long history with
14 this project. I used to work for one of the companies
15 that owned --- actually developed and owned this project
16 for many, many years and at one point a long time ago I
17 was the Executive Director back in the late '90s.

18 So I have a long history with this project. I
19 know it well. The partners asked me to come on board
20 three or four years ago anticipating a series of problems
21 with the plant including the very reason we're here
22 today, which was the expectation that the project would
23 eventually need to seek some sort of restructuring,
24 reorganization unless we could do something about the
25 revenue streams that the project was receiving. So based

1 on that, my history with the project, my availability, I
2 was retained as a contract Executive Director by the
3 partnership.

4 Q. Thank you. Are there other employees or persons
5 otherwise associated with North Ridge Resources who are
6 contracted employees of AmBit?

7 A. No, there is no one else.

8 Q. Of those folks who are contract employees for
9 the facility do they all reside in West Virginia or ---
10 or other residences of other states ---

11 A. I would ---

12 Q. --- in addition to you?

13 A. --- I'd venture to say that a hundred percent of
14 them live in West Virginia.

15 Q. And you believe that to be true with respect to
16 the direct employees of AmBit as well?

17 A. I know of one individual who lives in
18 Pennsylvania. Other than --- other than that, all of the
19 employees of AmBit are West Virginia residents.

20 Q. And the person who resides in Tennessee, what is
21 his or her position with AmBit?

22 A. Sorry. It's Pennsylvania. Did I say Tennessee?

23 Q. No, I did and I have no idea why. I have no
24 idea.

25 A. Okay. Whatever. I'm sorry. What's the

1 question?

2 Q. What is his or her position with AmBit?

3 A. Well, it's actually Mr. Thompson who was just
4 here in the witness box. He lives in Pennsylvania and he
5 is an AmBit employee.

6 Q. I want to talk to you about the maintenance
7 reserve that's required under the EPA. I take it that
8 you agree with me that the contract does, in fact,
9 require a maintenance reserve as it's currently --- as
10 it's currently written?

11 A. There's a maintenance reserve clearly in the
12 existing energy agreement with MonPower. We would love
13 to be able to fund that maintenance reserve, but for as
14 long as I can remember there have not been sufficient
15 funds to allow us to do that. So right now that
16 maintenance reserve has a balance of zero.

17 Q. And what is the purpose of the maintenance
18 reserve?

19 A. Well, it's there to cover significant
20 unanticipated events that perhaps a major turbine failure
21 or a boiler failure where we may be down for an extended
22 period of time, we don't have any revenues coming in.
23 Perhaps insurance only covers a portion of the costs, so
24 that reserve is there to allow us to continue to pay our
25 bills and continue to operate as a going concern. The

1 reality is that there is --- there's a well-defined flow,
2 what we call flow of funds that every month we fund
3 certain things based on our available cash flow.

4 One of those things is the maintenance reserve
5 if we've covered all of the required items before that.
6 And this is spelled out in the trust documents. It's
7 also spelled out in great detail in the EEPA. The
8 maintenance reserve is way down in what we call
9 waterfall, so we pay for O&M expenses first, we pay our
10 debt and we pay our lease payments on the site.

11 And the maintenance reserve itself is so far
12 down in waterfall that we never have sufficient cash flow
13 each month to begin to fund that reserve.

14 Q. Under the terms of the EEPA is --- are there any
15 provisions that discuss this waterfall as you call it,
16 and I guess the priority of funding? I believe you just
17 testified that it is spelled out in the EEPA; is that
18 correct?

19 A. Well, there's a --- there is a requirement in
20 the EEPA to fund the reserve if the cash is available to
21 do so, but I will point out that if we do not it is not a
22 default under the contract with MonPower.

23 Q. Okay. And so you're anticipating my question
24 here. I guess just backing up that the EEPA itself, does
25 it --- does it provide in expressed terms this is how

1 AmBit will fund --- you know, it will pay all of its
2 expenses first, then it will do this, then it will do
3 this and if there's money left, it will be put in the
4 maintenance fund --- maintenance reserve?

5 A. Not directly. As part --- as one of the many
6 agreements in this project there's something called a
7 trust indenture, which MonPower among others recognize.
8 And that trust indenture spells out the waterfall and the
9 flow of funds that I just discussed. And in that
10 document is where the maintenance reserve funding falls,
11 and --- and that is --- while it's not specifically in
12 the EEPA it's --- it's an associated document as part of
13 the agreement that was signed back in 1990.

14 Q. And with respect to what you're requesting from
15 the Commission today would that associated document in
16 any way be amended or are we just talking about amending
17 the EEPA itself?

18 A. Just the EEPA.

19 Q. Okay. What amount of money or credit, if any,
20 is currently in the maintenance reserve?

21 A. Zero.

22 Q. And I believe you stated that for as long as you
23 can remember the maintenance reserve essentially had no
24 funding; is that correct?

25 A. As far --- I think there was a period of time

1 many years ago that when there was some money in it, but
2 it's been drawn down and it's --- it's been at zero for
3 many years.

4 Q. You state in your testimony that you've been the
5 AmBit Executive Director since May of 2013; correct?

6 A. Correct.

7 Q. And since that time, are you aware of any
8 circumstances that have arisen that had there been money
9 in the maintenance reserve an incident or an event would
10 have been just the type of thing that that money would
11 have been geared towards?

12 A. Yes.

13 Q. And can you tell us what that ---?

14 A. We had some turbine issues a couple years ago
15 that forced us offline. We had to --- we had a shortfall
16 in cash and ultimately --- it's real a long story, but
17 ultimately our banks ---. We had --- we had to pay our
18 bills, had to pay our vendors, had to repair the turbine
19 and the bills came due and those were paid by available
20 cash which might otherwise have been used to pay down
21 debt. So in the --- the long and short of it is we ended
22 up getting --- effectively getting a loan from our banks
23 to cover that shortfall.

24 Had the maintenance reserve been funded then we
25 could have used the cash in the maintenance reserve to

1 pay those bills, but since there's no money in it there's
2 no way to do that.

3 Q. Now, you stated a few moments ago that the
4 failure to fund the maintenance reserve does not
5 constitute a default under the terms of the EEPA;
6 correct? That was your testimony?

7 A. That's correct.

8 Q. Can you explain that to me why that --- why
9 that's the case, why that's not a default?

10 A. Well, I don't want to sound like a wise guy, but
11 because the contract doesn't say it is. Not funding the
12 maintenance reserve is not a default under the EEPA.
13 There are --- there are plenty of defaults in that
14 agreement. Believe me, there are plenty of them, but
15 that's not one of them.

16 Q. So within the EEPA itself there is a provision
17 or multiple provisions that spell out certain events that
18 will constitute as a default under the agreement;
19 correct?

20 A. Yes.

21 Q. Does that apply equally --- well, strike that.

22 Are there provisions that speak to actions of
23 conduct by MonPower that will constitute a default under
24 the agreement or only actions or conduct by AmBit?

25 A. Well, we tend to focus on our actions, but I ---

1 there may very well be --- I should know this, but I
2 don't. There may very well be defaults on the part of
3 MonPower, but I just don't know what they are if, in
4 fact, there are any. It tends to be the other way
5 around.

6 Q. So --- and I realize you're --- you're not an
7 attorney, Mr. Niemann, but as the Executive Director of
8 AmBit is it your understanding that the only events that
9 would constitute a default under the EEPA are those
10 events that are specifically spelled out as potential
11 default under the EEPA?

12 A. Yes. I mean, I'm not a contract attorney, but I
13 think that's pretty clear contract law. At least I
14 believe it is.

15 Q. Are you aware of any --- are you aware of any
16 sort of action that MonPower is permitted to take, let's
17 say, expressly under the terms of the EEPA in the event
18 that the maintenance reserve is not funded?

19 A. No, I'm not aware of that.

20 Q. Are you aware of any action that MonPower is
21 permitted to take, even if not expressly spelled out
22 under the terms of the contract, in the event the
23 maintenance fund is not reserved --- is not funded,
24 rather?

25 A. I think the answer's no. No, it's not a

1 default. It's not an obligation that's subject to a
2 default, so I think the answer would be no.

3 Q. So I mean, is it your testimony then that the
4 EEPA contains a provision that requires a maintenance
5 reserve to be funded by AmBit, but it's really not a
6 requirement at all, it's just sort of we hope you do
7 this?

8 A. It's a requirement subject to.

9 Q. Subject to?

10 A. To available funds, so if --- if there are funds
11 available as we go down this waterfall and we hit item
12 eight or seven, whatever it is for the maintenance
13 reserve, if there are funds there available, we are
14 obligated to put it into the maintenance reserve. We
15 can't skip it and go to the next one. We're not allowed
16 to do that.

17 Q. Okay. Let me --- let me stop you right there
18 then. Is there anything in the EEPA that spells out the
19 fact that if there is --- if there are funds available to
20 be put into the maintenance reserve and AmBit chooses not
21 to do that, that that would constitute a default under
22 the terms of the contract?

23 A. It could.

24 Q. But does the contract itself spell that out?

25 A. Indirectly, yes. Again, because of the trust

1 indenture which is a part of the overall agreement with
2 MonPower.

3 Q. And does the trust indenture contain language
4 that specifically state if --- if there is money
5 available for AmBit to put into the maintenance reserve
6 and AmBit chooses not to do so or fails to do so, that
7 failure constitutes a default under the terms of the
8 EEPA?

9 A. Well, let me --- let me take a step back because
10 actually the reality is we don't get --- we don't get to
11 determine where those funds go every month. Just bear
12 with me here. We get to determine what our O&M expenses
13 are every month and we do that. We provide a detailed
14 list of our O&M expenses.

15 The funds from MonPower every month are wired
16 into an account. The trustee then takes those funds and
17 allocates them to O&M expenses, principal payments on the
18 debt, interest payments on the debt. And they go down
19 the waterfall. I'm drawing a blank what the next one is,
20 but anyway, they go down the waterfall every month and
21 they put the money into the various accounts.

22 We don't get to control that process, so I
23 probably should have explained that earlier.

24 Q. And I appreciate that. That makes sense and
25 that gives rise to another question. The trustee who's

1 involved in this process is that something that --- is
2 that the process that's always been in place since the
3 inception of this contract, or is that something that has
4 occurred as a result of the financial difficulty of
5 AmBit?

6 A. No, that's --- that's been in place since day
7 one.

8 Q. Okay. And who is the trustee?

9 A. It's Bank of New York.

10 Q. Given your testimony that it's your
11 understanding that the failure to fund or the failure to
12 have money available to fund the maintenance reserve does
13 not constitute a default under the EEPA, are there other
14 --- are there other situations that have arisen with
15 respect to AmBit's --- say AmBit's financial difficulty
16 that have, in fact, constituted a default of the
17 contract?

18 A. Which contract?

19 Q. Of the EEPA.

20 A. No, no.

21 Q. What other contract is there a default under?

22 A. The reimbursement loan agreement with the bank.

23 Q. Okay.

24 A. So we --- we defaulted under that agreement
25 every year since 2013, but the banks have waived that

1 default and those notifications are provided to MonPower.
2 The banks waive those defaults and we put in place what
3 we call a reimbursement agreement.

4 The banks cover the shortfall in the principal
5 payment on the bonds to Marion County and then we in turn
6 have an obligation to pay those --- pay that loan back
7 with available funds every month to the extent those
8 funds are available. So default, yes. Waiver of
9 default, yes, and therefore, no default under the
10 contract with MonPower.

11 Q. Is there a plan in place that --- well, let me
12 ask you. Is there an incentive plan in place in the
13 event that this Commission denies the joint petition and
14 does not permit an amendment of the EEPA as requested?

15 A. Well, we certainly discussed it. Putting a plan
16 in place is going to be a very involved process involving
17 lots of lawyers, banks, MonPower, vendors. So while
18 we've discussed it and we have a general concept of what
19 it might look like in terms of it actually happening,
20 there is no --- I can't give you a plan that spells out
21 in any detail what would happen. Nothing could, but we
22 don't have a plan.

23 Q. So then fair to say that --- that you cannot
24 tell us today that in the event the amendment as
25 requested is not approved, that AmBit will certainly file

1 for bankruptcy? You can't tell us that; correct?

2 A. I could --- I will tell you that it is --- I
3 cannot foresee a situation where we would not file for
4 bankruptcy. I cannot see somebody stepping in and buying
5 the plant because they won't ever get a return on their
6 investment. I can't see MonPower stepping in and
7 operating it for the very reasons we're here today.

8 It's --- it is a difficult economic environment
9 to operate a plant like this and this is not a
10 traditional coal plant either. This is a waste coal
11 disposal facility. These plants are expensive. They
12 take a lot of money to operate and maintain. I cannot
13 see --- I simply cannot envision --- maybe there are
14 others who can, but I cannot envision a situation where
15 this plant will not be in bankruptcy within a year.

16 Q. And, Mr. Niemann, what you just described in
17 telling us and the Commission how the Grant Town facility
18 is not a traditional --- a traditional plant because of
19 the nature of what it does and the expenses that are
20 attendant therewith and the environmental regulations
21 that are applicable, too.

22 I mean, don't you agree with me that that's
23 simply a risk of being in this particular business that
24 AmBit was willing to accept when they got into this
25 business?

1 A. Yeah, I would not deny that. You're right.
2 This is a --- this is a private enterprise that for
3 whatever reason is not making it. Well, I know the
4 reasons, but --- and we're not --- we're not looking for
5 a bailout per se.

6 What we've always said and our only objective is
7 to try to find a way to keep this facility running. We
8 think it has value. Now, obviously you have to make that
9 --- that decision, but we think there's value. We think
10 we've laid out a case to suggest that there's value to
11 the state as a whole. We recognize their implications to
12 ratepayers.

13 We --- we have never hidden from that reality.
14 It's a hard reality and I understand that. The numbers
15 are --- are not favorable right now. They could change.
16 They're very volatile. There's nothing to say they won't
17 flip and suddenly AmBit's in the money in two, or three
18 or five years, but the reality is our only objective has
19 always been to try to find a way to keep the plant
20 running because it does bring, we feel, some significant
21 benefits to the state as a whole.

22 Q. Now, you used the system bailout, that was your
23 word, not mine, but isn't --- and you say it's not a
24 bailout, but in reality isn't that exactly what you're
25 asking the Commission to do? Because you want AmBit, a

1 private enterprise that went into business doing what it
2 does, knowing the risks involved you want ratepayers to
3 step in and bail out your company. Isn't that just a
4 pretty simple way of looking at it, but nonetheless a
5 true and accurate way of looking at it?

6 A. Well, I'm not going to parse the --- I mean, we
7 do need more revenue and the only way for us to get that
8 additional revenue is through a change in our rates.
9 Since you've raised the issue I'll try to elaborate on
10 something that I think is important. Some might view
11 this as a bailout and that we're making the partners
12 whole.

13 Well, the reality is this plant has been
14 operating now for 24 years. In 24 years the partners who
15 put equity over \$35 million into the plant to begin with
16 have received nothing in the way of distribution ever in
17 26 years. These people put money in the projects with
18 the expectation they're going to get a return on their
19 investment.

20 And the numbers bear this out. These numbers
21 have been scrutinized by Staff and others. The partners
22 have never made a nickel off of this project period and,
23 in fact, there are loans outstanding to the partners that
24 have never been repaid. Even with the rate increase
25 there's no expectation that those loans will ever be

1 paid.

2 Even with the rate increase there's no
3 expectation there'll ever be a distribution from this
4 project to the partner. Again, I go back to what I said
5 five minutes ago. Our intent is to try to figure out a
6 way to keep the plant running, keep the jobs, keep the
7 economic benefits, the taxes and what we I think
8 everybody I hope would agree, is 80 megawatts a very
9 dependable capacity in West Virginia.

10 So bailout --- a bailout to the project, yes. A
11 bailout to the owners who put the equity in, no. I don't
12 --- I wouldn't view it that way.

13 Q. Well, --- and, you know, as I'm listening to you
14 testify I think it's only fair that, you know, maybe I
15 back up my question because I think the way I put it was
16 that AmBit who is looking for a bailout in the form of
17 additional monies being paid by ratepayers. But that's
18 not entirely true; correct?

19 AmBit only is concerned with charging increased
20 rates to MonPower; correct? I mean, you --- you want to
21 amend the agreement such that MonPower is paying rates
22 that are different than what the contract currently
23 provides; correct?

24 A. Yes.

25 Q. AmBit doesn't really care, I presume, beyond

1 that who is compensating MonPower with that additional
2 --- those additional costs; correct? I mean, is that ---
3 is that fair?

4 A. Well, I wouldn't say we don't care, but we
5 certainly recognize where the money is flowing from.
6 It's just a reality.

7 Q. In other words, you recognize if MonPower is
8 going to pay more to AmBit, MonPower is then going to
9 necessarily turn around and get that money back through
10 ratepayers; correct?

11 A. Yes.

12 Q. Okay.

13 A. Yes.

14 Q. How are you compensated?

15 A. I'm paid by the partnership.

16 Q. What is your --- are you salary?

17 A. I am --- I am paid a monthly retainer.

18 Q. What is that monthly retainer?

19 A. Am I obligated to answer that?

20 ATTORNEY OSBORN:

21 Well, I think that --- I mean, if we're
22 sitting here talking about the fact that AmBit needs to
23 bring in --- either bring in additional revenues or
24 there's been extensive testimony to cut costs, then I
25 think it's absolutely relevant if costs that are going

1 out being paid in compensation to folks such as Mr.
2 Niemann.

3 ATTORNEY RODECKER:

4 Your Honor, obviously the witness would
5 prefer not to have to reveal that. We recognize that
6 although AmBit is not the utility, its costs include
7 costs they need to make other entities including Mr.
8 Niemann. They're not typically in the case of private
9 production facility subject to disclosure to the public
10 form. And so there's a sensitivity to that. I think
11 it's up to the Commission, should determine what Mr.
12 Niemann shouldn't be required to say.

13 COMMISSIONER MCCABE:

14 Hold on just a moment. We're going to
15 take a ten minute recess. We'll be back momentarily.

16 SHORT BREAK TAKEN

17 COMMISSIONER MCCABE:

18 Thank you. We will reconvene.

19 ATTORNEY RODECKER:

20 Your Honor, I spoke with counsel to ---
21 the CAD counsel and asked if she would be willing to
22 accept a response to a question as to the salary in a
23 manner --- a confidential manner to share with the
24 Commission and all of the --- all of the parties, but not
25 on the --- on the website. If possible similar to a data

1 request and I understand that they'd be willing to accept
2 the response in that form.

3 COMMISSIONER MCCABE:

4 That, in fact, was going to be our
5 response, so we will accept that. We were thinking about
6 a post-hearing exhibit with motion for protective order
7 or something similar like that.

8 ATTORNEY RODECKER:

9 Thank you. And how many days would you
10 want us to provide that for them?

11 COMMISSIONER MCCABE:

12 Well, it should be pretty quickly.
13 It's a pretty simple thing to respond to.

14 ATTORNEY RODECKER:

15 Oh, sure, sure.

16 COMMISSIONER MCCABE:

17 Yeah, tomorrow or the next day, by the
18 end of the week. Well, by Monday, early next week.

19 A. We can get it to you. We can ---.

20 COMMISSIONER MCCABE:

21 Okay.

22 A. We can do it tonight.

23 COMMISSIONER MCCABE:

24 Fine. As soon as possible. That ---
25 that I think is exactly the way to deal with it.

1 ATTORNEY RODECKER:

2 Thank you.

3 ATTORNEY OSBORN:

4 Thank you. And I don't have any other
5 questions. That was the one I really wanted to know.

6 A. Sorry to disappoint.

7 ATTORNEY OSBORN:

8 Thank you.

9 COMMISSIONER MCCABE:

10 Okay. Then we'll move to Mr. Johns or
11 Becher.

12 ATTORNEY BECHER:

13 Thank you, Your Honor.

14 CROSS EXAMINATION

15 BY ATTORNEY BECHER:

16 Q. I just have a couple quick questions, Mr.
17 Niemann. Were you involved at all in retaining the
18 consult that Mr. Conner-Ross' company to prepare the
19 report that you ---

20 A. Yes.

21 Q. --- filed in this case?

22 A. Yes, I was.

23 Q. In approaching the consult did you instruct him
24 not to consider any environmental costs that might be
25 intended to operating the facility of Grant Town?

1 A. To not include?

2 Q. That's correct. The environmental costs?

3 A. I'm sorry. Quite contrary. We --- we wanted
4 them to include the benefits of the plant's environmental
5 cleanup in their analysis. We viewed it as a key --- one
6 of the key --- maybe the most key aspect of what we
7 wanted them to look at.

8 Q. As I understand your answer you asked him to
9 discuss the environmental benefits, but those weren't ---
10 there was no discussion of whether those should be netted
11 against environmental costs? You specifically instructed
12 them only to identify benefits and not to net those
13 against any environmental costs or liabilities that might
14 be associated with operating the facility; is that
15 correct?

16 A. I don't know that we gave him those specific
17 directions. I don't even know that you can quantify or
18 monetize those costs. Maybe you can. I'm not an expert,
19 but we certainly didn't tell them not to do that.

20 Q. And would you agree that the project in section
21 three of that report was to quantify environmental
22 benefits that weren't necessarily monetary to translate
23 those into monetary form?

24 A. Yeah. I mean, we were trying to paint a --- a
25 more --- a fuller picture of the project.

1 Q. Would you think an even fuller picture would
2 involve the quantifiable environmental costs associated
3 with operating the facility, the costs of air pollution,
4 water pollution, runoff from coal ash exposed from the
5 site?

6 A. Well, I guess the --- where I would draw the
7 line, if you will --- and I'm not suggesting it's a
8 bright line, but air emissions are difficult. We don't
9 really know how to do that, to be honest with you, but
10 what we do know how to do is deal with issues relative to
11 abandoned mines, gob piles, waste coal, beneficial use
12 ash. That's kind of in our wheelhouse, if you will.

13 So it's --- it's not a leap for us to try to
14 work with someone like an E-consult to come up with
15 quantifiable benefits for those things. But air
16 emissions, you know, different animal.

17 Q. Are you aware of any government agencies that
18 have quantified the costs of air emissions on a per pound
19 basis?

20 A. I'm not, but I suspect somebody probably has.

21 Q. Had you ever heard the term social costs of
22 carbon, for example? Is that something that you're
23 familiar with?

24 A. Not specifically the carbon, but social costs in
25 general certainly I've heard that.

1 Q. And would you be surprised to know that --- that
2 most environmental regulations --- amendments or
3 revisions to environmental regulations to air pollution
4 involve quantifying the social costs that are associated
5 with certain types of pollutants?

6 A. Are you asking if I would be surprised if that
7 or ---?

8 Q. That's my question, yes.

9 A. No, I wouldn't be surprised.

10 Q. Speaking of air pollutants I did want to ask
11 just a couple more questions about greenhouse gases.
12 I'll try not to trod on territory that others have
13 covered.

14 As I understand it when you testified in your
15 Direct testimony that the revenues you expect to receive
16 under the amended EEPA would cover operating expenses or
17 operating costs of the plant. That doesn't include the
18 cost of any future greenhouse gas regulation; is that
19 correct?

20 A. That's correct. It does not include any sort of
21 carbon tax of any kind.

22 Q. But you don't dispute that there's a potential
23 for those costs in the future?

24 A. No, I don't dispute it.

25 Q. And you don't dispute the potential that those

1 could be significant?

2 A. That I don't know.

3 Q. Do you recall answering a discovery request that
4 Sierra Club submitted in this case asking if the
5 companies analyzed sensitivity of the EEPA increase
6 greenhouse gas compliance costs?

7 A. I do recall seeing the question. I believe Mr.
8 Thompson --- I shouldn't say that. I don't know. I
9 thought it was addressed in Mr. Thompson's Rebuttal or
10 response to your discovery request.

11 Q. I'm happy to provide you a copy, but would you
12 believe that you had prepared and marked as the
13 testifying witness to a discovery request dated August 7,
14 2017 asking that question of sensitivity of the
15 agreement, the amended --- the treatment of the
16 agreement, I guess if we're going to be precise, to
17 increase greenhouse gas compliance costs?

18 A. Would you mind reading it to me?

19 Q. Sure. And, in fact, I can just provide you with
20 a copy here if that would be helpful.

21 ATTORNEY BECHER:

22 If I may approach the ---?

23 COMMISSIONER MCCABE:

24 That's fine.

25 ATTORNEY BECHER:

1 Unfortunately I don't have ---

2 COMMISSIONER MCCABE:

3 Thank you for ---.

4 ATTORNEY BECHER:

5 --- for the two of you.

6 BY ATTORNEY BECHER:

7 Q. But if you would, Mr. Niemann, could you please
8 just confirm that you were the preparer of that answer in
9 the designated ---?

10 A. Yes. I am.

11 Q. And would you read the highlighted question and
12 then your highlighted answer?

13 A. Sure. Have the companies analyzed sensitivity
14 of the amendment agreement to increase the greenhouse gas
15 compliance costs? If so, please provide the analysis or
16 analyses and explain the company's conclusions. If not,
17 please explain why. Answer, AmBit has no knowledge of
18 whether and to the extent of any greenhouse gas emissions
19 reductions that might be regarded at Grant Town in the
20 future.

21 Q. Is it your ---?

22 A. Without --- without knowing exactly what those
23 compliance requirements might be any such exercise would
24 amount to speculation.

25 Q. Do you believe, Mr. Niemann, that a sensitivity

1 analysis would require that you know precisely what the
2 nature or exact cost of any future carbon regulation
3 would be?

4 A. Well, a precise number or a range of numbers.
5 If you had one you could certainly want a sensitivity,
6 yes.

7 Q. And you could run it for several different
8 possible, or potential or even probable scenarios; is
9 that correct?

10 A. We can --- we have a model that would allow us
11 to run any number sensitivities.

12 Q. But the company didn't do that for this case?

13 A. No, we did not.

14 Q. And it ---?

15 A. I think it's clear as to why.

16 Q. Excuse me. Sorry. There was no calculation of
17 CO2 costs --- there was no calculation of certain CO2
18 costs that would render the agreement, the amended
19 agreement, unsustainable for AmBit's purposes; correct?

20 A. Are you asking is there a number --- obvious
21 number?

22 Q. The company didn't attempt to identify a certain
23 cost of carbon at which their --- the amended agreement
24 would again be unsustainable for AmBit's continued
25 operation?

1 A. We ran no sensitivities at all at any price
2 point for a carbon tax of any kind in our announcement,
3 again, for the reasons that we stated.

4 Q. That reason being you don't exactly what they
5 are?

6 A. We don't know if they will occur, if they do,
7 when and if when, how much it'll cost.

8 Q. And you don't think --- it's the company's
9 position that it wouldn't be helpful in deciding whether
10 or not to approve this agreement with the possibility
11 that we'll just be back here in another few years to go
12 through the process again? It wouldn't be helpful to
13 know what kinds of regulations would require us to return
14 here without knowing exactly at what point carbon costs
15 become so significant that the amended agreement is no
16 longer sustainable. That's not helpful information?

17 A. I don't --- I don't believe it is.

18 ATTORNEY BECHER:

19 No further questions.

20 COMMISSIONER MCCABE:

21 It's ten after 5:00. We can continue
22 as long as you want or we can adjourn whenever you ---
23 whenever you desire and meet again in the morning to
24 continue this. What's the --- what would you preference?
25 Finish up with this witness? Is everyone comfortable

1 with that?

2 ATTORNEY RODECKER:

3 Yes, Your Honor.

4 COMMISSIONER MCCABE:

5 Then we will proceed. Mr. Naum?

6 ATTORNEY NAUM:

7 Thank you, Your Honor.

8 CROSS EXAMINATION

9 BY ATTORNEY NAUM:

10 Q. Mr. Niemann, do you happen to have --- just for
11 the ease of the first two minutes of my questions do you
12 happen to have set two of the joint petitioner's
13 responses to WVEUG's discovery?

14 A. I'm sorry. I don't, no.

15 ATTORNEY NAUM:

16 Your Honor, may counsel approach the
17 bench?

18 COMMISSIONER MCCABE:

19 Yes.

20 BY ATTORNEY NAUM:

21 Q. Mr. Niemann, to start off I just want to clarify
22 a few points for the record and most of these points were
23 asked in set two of WVEUG's discovery but it will ease
24 the whole process if you're able to ---. First of all, I
25 assume that you are the --- the appropriate witness to

1 sponsor the joint petition itself. Am I correct?

2 A. I think so, yes.

3 Q. Do you have the joint petition in front of you?

4 A. Yes, I do.

5 Q. Can you turn to page 15 of that joint petition?

6 A. Fifteen (15)?

7 Q. Yes, sir.

8 A. Okay.

9 Q. And paragraph 33 you reference other key
10 stakeholders and WVEUG asked in question number two of
11 set two to have those key stakeholders identified. Can
12 you identify them for the record?

13 A. Sure. They are Horizon Ventures of West
14 Virginia who is the site landlord. MonPower/First Energy
15 and the bank consortium I believe bank being Doysce Bank.

16 Q. Okay. Thank you. Now, moving to your Direct
17 testimony. We're just going to move through some items
18 in your Direct. If you could turn to page one.

19 A. Of my Direct?

20 Q. Of your Direct.

21 A. Okay.

22 Q. Line 17 you mention AmBit Partners?

23 A. Yeah.

24 Q. Again, WVEUG asks that in question number four
25 of set two. For the record could you please state who

1 those partners are?

2 A. Sure. They're two general partners. One is
3 Pleasant Valley Energy, the other is American Hydro
4 Power. There are three limited partners, Aguila Energy,
5 American Power Investor and East Power.

6 Q. Okay. Thank you.

7 A. You didn't tell me there was a test.

8 Q. I gave you the answers.

9 A. Okay.

10 Q. Now, in your discussion with Ms. Osborn you had
11 --- you had discussed the fact that the partners to Ambit
12 had not received a penny in return of their investment in
13 the project. Are these the partners that you're
14 referring to?

15 A. Yes, these are the partners. There have been
16 different owners that have been in and out of this
17 project, but at the partnership level these are the same
18 partnership partners.

19 Q. Okay. And just to follow up with what Ms.
20 Osborn has asked and what you had responded. You had
21 mentioned, of course, that they had not received a penny
22 in return. Is that not also part of the risk of going
23 into a private venture?

24 A. It is, yes.

25 Q. Okay. Moving on then, Mr. Niemann, to line I

1 guess line 17 of same --- of the same page of your
2 testimony, page 1. You mentioned management committee?

3 A. Yes.

4 Q. Can you identify the managers, please, for the
5 record?

6 A. That's Richard Allen, Chris Colette on behalf of
7 Pleasant Valley and American Hydro Power and Ms. Woomey
8 Tuckahero with East Power.

9 Q. Okay. Moving to page eight of your Direct, sir,
10 line seven you state that AmBit will not be economically
11 viable even if it were to seek bankruptcy. And, again,
12 WVEUG asks in question 2-6 for you to define economic
13 viability. Could you just state your definition of
14 economic viability again for the record?

15 A. Yeah, my --- my definition would be a situation
16 where you've got revenues that are sufficient to cover
17 your operating expenses, operate the plant safely and
18 reliably, meet your financial obligations and comply with
19 all of your known permits, regulatory permits,
20 environmental permits and other project agreements.

21 Q. Would you agree that that definition generally
22 applies to all industry manufacturing business entities?

23 A. Yeah, I think so.

24 Q. And moving on to page nine of your Direct, sir,
25 if you could look at line 11 through 20. You use a few

1 phrases in here that energy cost rate and avoided energy
2 rate and the variable energy rate. And, again, WVEUG
3 asked a question if those terms are interchangeably. Can
4 you confirm for the record that those terms are used
5 interchangeably for your testimony?

6 A. Yeah, I think generally they are. There may be
7 some nuances that came up. Generally they are.

8 Q. A couple more. If you go to page 11 of your
9 Direct, line 14 and following. Line 14 and 15 your
10 testimony contains the question how did AmBit and
11 MonPower determine the appropriate methodology for the
12 amended purchase price. Just want to clarify for the
13 record that the amended purchase price and the amended
14 purchase agreement were all AmBit proposal; is that
15 correct?

16 A. They were based --- yes, it was based on our
17 original proposal with review and input from MonPower.

18 Q. And in response to WVEUG set two question nine
19 you --- you confirm that MonPower did not make any
20 adjustments, revisions or any other changes to AmBit's
21 EEPA. Is that still correct?

22 A. That's generally my recollection, yes.

23 Q. And then last one. Still on page 11, line 22.
24 It's the last line on the page. You refer to several
25 meetings and discussions with MonPower. Are these the

1 negotiations that initially led to the amended EEPA?

2 A. Yes.

3 Q. And in discovery response to WVEUG you indicated
4 that no other parties were included in these meetings or
5 discussions. Is that --- is that correct?

6 A. Well, I know we said that, but we did, in fact,
7 have a meeting before we filed the petition. We did have
8 a meeting with Staff to review our approach, our concept,
9 but that was --- that was before we actually filed the
10 petition.

11 Q. So in determining or at least presenting to
12 MonPower what the amended agreement would be neither
13 Staff, nor CAD nor WVEUG or any other stakeholders were
14 involved in the meeting?

15 A. That's correct.

16 Q. Okay. Thank you. Thank you for your patience
17 for that. We're going to move now through your rebuttal
18 and, again, I'll try to be as proficient as possible.
19 We'll refer to page one and we'll go through numerical
20 order I hope. Are you there?

21 A. Yes.

22 Q. On page one beginning at line seven with the Q
23 and A you criticize WVEUG witness Mr. Baron, Staff
24 witness Mr. Eads and their use of market analysis as not
25 being helpful and not consistent with PURPA. Do you see

1 that?

2 A. Yes.

3 Q. On line nine you, in fact, state --- sorry.

4 Line ten you, in fact, state that market based analyses
5 are inherently unreliable due to the volatility of the
6 PJM energy market. You see that?

7 A. Yes.

8 Q. AmBit witness Mr. Connor-Ross provided testimony
9 that included a market analysis of the net present value
10 of the potential costs to ratepayers as a result of the
11 EEPA. And do you agree that that was paid from the 2016
12 APCo Virginia IRP?

13 A. Yes, I do.

14 Q. And Mr. Conner-Ross' testimony indicates a
15 negative \$10 million cost for loss to ratepayers as a
16 result?

17 A. Yes.

18 Q. Was Mr. Connor-Ross' assessment of a market
19 analysis reliable?

20 A. It was reliable based on the curves that he was
21 using just as anybody who wants to prepare a net present
22 value analysis uses a certain set of curves.

23 Q. To include Mr. Baron?

24 A. I would include Mr. Baron, I'd include Mr. Eads.

25 Q. Was Mr. Connor-Ross' analysis helpful?

1 A. In the --- for what it was intended to do, which
2 is to provide a snapshot in time based on a certain set
3 of assumptions.

4 Q. Was it consistent in the PURPA?

5 A. Apples and oranges.

6 Q. You said that Mr. Eads and Mr. Baron's analyses
7 are not consistent with PURPA. Why are theirs not
8 consistent with PURPA?

9 A. In my view their --- their analysis is trying to
10 suggest that the Commission should view this request in
11 the context of the current market rate for Power when, in
12 fact, I believe --- and I think Mr. DeGrandis support ---
13 would support this, that the Commission approved and
14 avoided costs in 1988, a levelized avoided costs in 1988
15 and the petition that we are asking for results in a
16 levelized cost that is below what the Commission
17 approved. So that's why I say I believe it's an apples
18 and oranges comparison.

19 Q. Is the current EEPA that exists between AmBit
20 and MonPower made by MonPower supporting costs?

21 A. Yes, it is.

22 Q. And not to be repetitive with questions to Mr.
23 DeGrandis, but PURPA doesn't require that this Commission
24 must approve the EEPA amendment; does it?

25 A. I don't know, but what I believe I know is that

1 PURPA talks about just and reasonable, so that's the
2 litanies test of these as I understand it.

3 Q. So, Mr. Niemann, if this Commission determines
4 that the EEPA amendment would result in rates that are
5 not just and reasonable and decides to not approve the
6 EEPA amendment, and it will still have an avoided cost
7 EEPA; correct?

8 A. Yes, I would ---.

9 Q. Mr. Niemann, in the absence of the Grant Town
10 project how would Mon Power fill the 80 megawatts of
11 capacity that's currently supplied by AmBit?

12 A. Well, I mean, that question would be better left
13 to them, but my expectation would be that they would go
14 into the market and buy that replacement power.

15 Q. And is that why analyses of projected rates
16 under the market is an appropriate method to use?

17 A. Yeah, I don't dispute that it's frankly the only
18 method that you can use. My point is that that
19 methodology is highly subjective, it's volatile, it
20 varies from year to year. The data proves that out.
21 Even the AEP curves from one year to the next changed the
22 net present value to ratepayers 13 fold in one year. It
23 went from negative \$10 million to negative \$130 million
24 from Mr. Eads' testimony. You can draw your own
25 conclusions, but that suggests the markets are extremely

1 volatile and they provide a snapshot in time just as
2 easily flip a year, or two years or five years.

3 Q. And in this case because this case centers
4 around whether MonPower can catch a cost of this
5 agreement to ratepayers. So with that being said and
6 given that volatility, would you agree that ratepayers
7 bear 100 percent of the risk of that volatility?

8 A. In --- in this case, yes. Since we have a
9 contract at a --- at a set --- a predetermined price.

10 Q. Because ratepayers will pay for all of those
11 costs?

12 A. Well, MonPower will pay us and then they'll sell
13 our output into the capacity and the energy markets and
14 they'll get whatever revenues those markets will allow
15 them to receive. And the delta would be either an
16 overcost or an undercost.

17 Q. And your --- and I'm looking at page two of your
18 rebuttal, line 12 of 14. And it's your opinion, Mr.
19 Niemann, that the environmental and economic benefit of
20 the continued operation of the plant justify the approval
21 of the amended agreement?

22 A. That's my opinion.

23 Q. That's your opinion?

24 A. Yes.

25 Q. So even if approval of the amendment agreement

1 results in a \$136 million loss for ratepayers, is it your
2 testimony that you believe that economic and
3 environmental benefits justify that loss?

4 A. Clearly --- clearly, the numbers suggest right
5 now that keeping AmBit running will cost ratepayers more
6 money in the future. Again, I repeat we've never hidden
7 from that reality based on the current projections. The
8 flip side of that is there are benefits to the state that
9 we've quantified that far exceed the negative impact to
10 ratepayers. Those benefits almost \$200 million on a net
11 present value basis. You know, you can do the math, you
12 can make your --- you can make your own analysis based on
13 that, but to me that suggests the net benefit to the
14 state is to keep the plant running.

15 Q. Well, rather than me doing an analysis, can I
16 ask did you do an analysis as to how much of a supposed
17 \$200 million environmental and economic statewide benefit
18 innerves directly to MonPower and Potomac Edison
19 customers?

20 A. No.

21 Q. You agree that MonPower and Potomac Edison
22 customers are not the same entity as the West Virginia
23 public in general?

24 A. They are. I think they are part of the ---
25 they're part of the West Virginia public.

1 Q. But in this proposal AmBit and MonPower are
2 suggesting that that segment of the West Virginia public
3 pays for all of those benefits for the entire state?

4 A. Well, in theory, yes, but as --- I think ---
5 well, I mean, let me clarify. Most of the benefits to
6 Marion County and the surrounding counties. I mean, that
7 was raised earlier and that's a fact. So MonPower's
8 territory, as I understand it, tends to be the northern
9 part of the state, so I would argue that more of those
10 benefits flow statewide to MonPower's customers as
11 opposed to customers of APCo or ADP.

12 Q. Did you do an analysis of what that flow would
13 be?

14 A. No.

15 Q. If the Commission determines that the risk of
16 \$136 million increase is not just and reasonable, is it
17 your testimony that the Commission should not rely on
18 that and should instead rely on the net paid benefits?

19 A. That would be my recommendation.

20 Q. What's your basis for this?

21 A. Again, I'll repeat. I believe it's appropriate
22 to look at the overall macroeconomic benefits to the
23 state that are offset clearly by impacts to ratepayers.

24 Q. Is it your understanding of the Commission has
25 an expressed obligation to consider the macroeconomic

1 benefits of the state?

2 A. Yes, that's my understanding.

3 Q. It is?

4 A. Yes.

5 Q. Can you turn to page four of your rebuttal
6 testimony, line 11? Your testimony beginning at line 11
7 discusses the tracking account and at line 11 you
8 disagree with Mr. Baron's testimony that the deferral of
9 the tracking account will result in an increase in rates
10 and specifically you say that the deferral results in a
11 delay of the reception. Don't take this as an insult.
12 Did you ever serve in Congress?

13 A. Not ---.

14 Q. You don't have to answer.

15 A. No, I will. No, I haven't.

16 Q. I understand what you're saying, but I just want
17 to unpack this a little bit. All else being equal under
18 the current EEPA, if the Commission does not approve the
19 amended agreement, what happens to the tracking account?

20 A. Well, to the extent the plant is still operating
21 which in all probability it will not be, then there's a
22 reduction in the energy payment starting in 2020 until
23 the tracking account is repaid.

24 Q. So all else being equal assuming AmBit can stay
25 in operation, the amendment period is not approved,

1 ratepayers will not be responsible for that tracking
2 account deferral that you're proposing in this case?

3 A. Yes. Yes, they --- we --- they will be made
4 whole under our proposed amendment. They will get 100
5 percent of that tracking account returned with interest
6 and by that tracking account is starting to be repaid in
7 2030 the total obligation will be nearly \$13 million.
8 So, yes, ratepayers will be made whole with interest.

9 Q. As it stands today all things equal under the
10 current EEPA ratepayers would not have that burden?

11 A. Yes. And --- well, under the current EEPA and
12 the proposed amendment they will not have that burden.

13 Q. Well, okay, let's go there. On line 13 you said
14 in the end ratepayers are made whole since the account is
15 fully repaid with interest, as you just testified. Mr.
16 Niemann, when is the end?

17 A. When is the end?

18 Q. When is the end of the contract?

19 A. 2030 --- it's actually April of 2036, but for
20 purposes of this analysis the end of 2035.

21 Q. Would you agree that under the current EEPA for
22 ratepayers the end as it pertains to the tracking account
23 is 2020?

24 A. Under the current EEPA 2020 --- by the time it's
25 paid --- it may be 2021, but yeah, under the current

1 EEPA.

2 Q. But now under the proposal the ratepayers are
3 faced with another request to amend the EEPA to delay
4 that tracking account even further?

5 A. That's correct.

6 Q. So that delays the end until potentially 2030?

7 A. Well, it delays the repayment of the tracking
8 account with interest until 2035.

9 Q. Which is the end you're referring to?

10 A. The end of the contract.

11 Q. What assurance can you give the Commission and
12 the parties that AmBit won't seek another delay in 2
13 years, or 5 years or 15 years or 19 years?

14 A. There's no basis to think we would need to.
15 We'd run the numbers based on the amendment for the
16 contract that we proposed, we can cover our costs, we can
17 repay our debt, we can fund the maintenance reserve and
18 we can repay the tracking account in 2030.

19 Q. Will you commit to that, not further delay going
20 forward?

21 A. As part of the amendment?

22 Q. Today.

23 A. I'm telling you there's no basis to think we
24 would not be able to repay it in 2030.

25 Q. Is AmBit willing to commit to the Commission and

1 the parties today that there will be no further delay?

2 A. Well, what --- what commitments am I getting in
3 return? You're asking me to commit to something that I
4 can't commit to without knowing what the end game is.

5 Q. It's not my proposal, Mr. Niemann. We're
6 discussing the EEPA.

7 A. Well, but I didn't offer up a guarantee for
8 repayment of tracking account.

9 Q. Well, there's no guarantee. Page four, lines 15
10 to 20. You, again, criticize Mr. Baron for not
11 considering the impact on West Virginia businesses if the
12 beneficial-use ash byproduct becomes unavailable. You
13 see that?

14 A. Yes.

15 Q. And specifically on lines --- line 20 you say
16 that these businesses are mine operators and oil and gas
17 producers. How many such businesses are you talking
18 about?

19 A. Well, certainly all the mine operators that we
20 deal with who --- who provide us waste coal and then we
21 typically send ash back to them for their reclamation
22 activities. I know that our ash is used by --- I don't
23 know the exact number, but quite a few oil and gas
24 producers.

25 They love this stuff because they mix it with

1 their drilling muds. They come up out of the ground in
2 their fracking operations. They mix our ash with that
3 --- with that drilling sludge because our ash is very
4 high PH. And that allows them to dispose of that
5 material in landfill without it being treated as some
6 kind of hazardous material. So it's a --- a multiuse.
7 It's not only for mine operations, but also for ENP
8 operations in the state.

9 Q. So if I understand your testimony correctly, the
10 benefit of a company is that it keeps their operating
11 costs lower?

12 A. It does, yes.

13 Q. And so elimination of that resource will cause
14 those operating costs to go higher?

15 A. That --- that's certainly our contention.

16 Q. Given the proposal in this case to pass through
17 the costs of the amendment to ratepayers is it your
18 testimony that it's the responsibility of MonPower to PE
19 customers to ensure the low operating costs of the oil
20 and gas companies?

21 A. No, I'm not --- I'm not contending to that at
22 all.

23 Q. Did you read --- I assume you did. You did.
24 You read Mr. Baron's testimony in this case?

25 A. I did, yes.

1 Q. And you saw his testimony pertaining to the
2 increase that MonPower be the industrial manufacturing
3 customer. Do you agree with that opinion?

4 A. Yes, I do.

5 Q. Do you agree that he testified that that has
6 been in the neighborhood of 100 percent over the last
7 decade?

8 A. I would agree he said that. I, obviously, have
9 no way to back check that.

10 Q. Would you agree that in the course of that 100
11 percent increase, assuming it's true, that these
12 industrial manufacturer customers that had their
13 operating costs increased significantly as a result?

14 A. Well, depending on how much power they use
15 probably. One thing that does tend to happen when the
16 cost of a commodity goes up is people tend to find ways
17 to reduce the use of that commodity whether it's
18 electricity, or aluminum or, you know, picket. If the
19 costs goes up, you become incentivized to finding more
20 efficient ways to run your business.

21 So on a unit basis, yes, they're clearly paying
22 more for kilowatt hour of power. From the context of
23 their total electric bill every month, I don't know.

24 Q. In the course of developing the EEPA amendment,
25 did you or AmBit at all consider the impact on industrial

1 and manufacture ratepayers on MonPower and PE system with
2 respect to the --- the variable rate increase that might
3 incur?

4 A. You mean the impact on their business?

5 Q. Yes.

6 A. No, we --- we did not try to model that.

7 Q. Would you agree that as with AmBit, as with
8 AmBit's partners that the increase in operating costs for
9 all businesses threatens their economic viability?

10 A. Yeah, I --- I would not dispute that.

11 Q. Generally speaking, Mr. Niemann, in reference to
12 the --- to the statewide benefits, economic,
13 environmental benefits of the Grant Town project, would
14 you agree that if the project could find an owner those
15 benefits would continue to exist regardless of who that
16 owner might be?

17 A. If the plant's operating certainly. No question
18 about that. I would find it difficult to envision that
19 it would continue to operate with a new owner, but to
20 answer your question directly, yes.

21 Q. Did AmBit ever receive any offers to purchase
22 the --- the plant?

23 A. Not that I'm aware of.

24 ATTORNEY NAUM:

25 Thank you. Thank you, Mr. Niemann.

1 A. You're --- you're welcome.

2 COMMISSIONER MCCABE:

3 Staff?

4 ATTORNEY AUVILLE:

5 Thank you, Your Honor.

6 CROSS EXAMINATION

7 BY ATTORNEY AUVILLE:

8 Q. Most of my ground has been covered, so I just
9 have one question. During your Cross Examination by Ms.
10 Osborn you mentioned that the original partners for \$35
11 million in this project and with no return. Are those
12 --- are those partners still involved in this project or
13 some or all of them?

14 A. Some of them are, some have sold their interest
15 in the project to others. But, yeah, a few --- there are
16 a few of the original investors from 1993.

17 ATTORNEY AUVILLE:

18 Thank you. That's all.

19 COMMISSIONER MCCABE:

20 Do you have any follow-up questions?

21 ATTORNEY RODECKER:

22 I --- I do, Your Honor. I just have a
23 couple.

24 OFF RECORD DISCUSSION

25 REDIRECT EXAMINATION

1 BY ATTORNEY RODECKER:

2 Q. In response to the questions by --- by Ms.
3 Osborn you --- if I recall correctly you stated that if
4 the Commission did not grant the relief it was seeking in
5 this case that it will file bankruptcy.

6 And am I correct that based upon testimony of
7 Mr. Hirschfield that's been submitted in this case, he
8 has indicated that there would be no, in his opinion,
9 opportunity for bankruptcy that consisted of Chapter 11
10 or an alternative to liquidation bankruptcy?

11 A. Absolutely.

12 Q. So that would in your --- in your understanding
13 it's based upon the information you have available to you
14 today, that being the plant would close down?

15 A. Well, yes. He is saying without any
16 equivocation that there is no --- there's no realistic
17 expectation, but even with the debt, the existing debt,
18 being eliminated there's no expectation of a buyer
19 stepping in to acquire and run the plant. That to me
20 equates to a bankruptcy, the beginning of a bankruptcy
21 proceeding.

22 Q. In response to questions by --- by Mr. Naum ---
23 and we're happy you got the --- your response as to the
24 Commission's role in this case and whether it's your
25 position that the Commission's decision if they should

1 approve it, the decision would --- you would ask that
2 they recognize the offset to the economic impacts that
3 have been stated by both Mr. Baron and Mr. Eads.

4 In addition to that, do you agree that with Mr.
5 DeGrandis that PURPA and the PURPA rules that have been
6 adopted by this Commission established that if the rate
7 of the --- the petitioners have put forth today are
8 within or equal to avoided cost that they are, in fact,
9 just and reasonable?

10 A. That is my understanding of PURPA and the PURPA
11 rules that as long as the proposed rates are at or below
12 the levelized costs approved initially at the time of the
13 contract in 1988 that they are, in fact, just and
14 reasonable.

15 Q. Also in response to questions by Mr. Naum ---
16 again, I'm not sure that I fully understood the line of
17 questioning, but my question to you is if the decision is
18 not approved, I understood you to say and his question
19 intimated I think asked, would the ratepayers have to ---
20 get the money back in the tracking account under the
21 current agreement. If they don't --- if the Commission
22 doesn't approve the petition, how are they going to get
23 paid back?

24 A. Well, that --- I thought I made that point.
25 They will not get paid back. There will be no funds

1 available to pay the tracking account back and the plant
2 in all probability will be shut down before that happens.

3 ATTORNEY RODECKER:

4 I have no further questions, Your
5 Honor.

6 COMMISSIONER MCCABE:

7 One question. Who's --- who's going to
8 present --- who's the sponsor of the joint petition and
9 --- and Davis and Hirschfield's testimony?

10 ATTORNEY RODECKER:

11 Your Honor, that was going to be next
12 area after the conclusion of questioning of Mr. ---

13 COMMISSIONER MCCABE:

14 Okay.

15 ATTORNEY RODECKER:

16 --- Niemann and I'm happy to go there
17 now if you want. As Mr. Niemann indicated, he is the
18 sponsor of the joint petition and I would ask that we
19 have copies of that available for the record. We can
20 admit it into the record. It's already in the file case,
21 but secondly, Your Honor, I would ask that his Direct and
22 Rebuttal testimony be marked as we previously indicated
23 and moved into evidence at the same time.

24 COMMISSIONER MCCABE:

25 Agreed. And is --- who's sponsoring

1 Davis and Hirschfield?

2 ATTORNEY RODECKER:

3 I understood that their testimony would
4 go into the record as final ---

5 COMMISSIONER MCCABE:

6 Okay.

7 ATTORNEY RODECKER:

8 --- because they're not here.

9 COMMISSIONER MCCABE:

10 Okay.

11 ATTORNEY RODECKER:

12 They've been excused.

13 COMMISSIONER MCCABE:

14 I just want to make sure we weren't
15 losing anything. Commissioner, do you have any
16 questions?

17 COMMISSIONER LARRICK:

18 No.

19 COMMISSIONER MCCABE:

20 I actually had several, but I think
21 they've been answered, so with that you're excused.

22 A. Thank you.

23 COMMISSIONER MCCABE:

24 It's quarter to 6:00. Unless ---
25 unless there's a burning desire to try to work through

1 the rest of the four I --- I propose that we adjourn this
2 evening and reconvene at 9:30 in the morning. Is that
3 acceptable?

4 ATTORNEY RODECKER:

5 Thank you.

6 COMMISSIONER MCCABE:

7 With that we're adjourned and reconvene
8 tomorrow morning at 9:30. Thank you all.

9 * * * * *

10 HEARING CONCLUDED AT 5:45 P.M.

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CERTIFICATE

I hereby certify, as the stenographic reporter,
that the foregoing proceedings were taken stenographically
by me, and thereafter reduced to typewriting by me or under
my direction; and that this transcript is a true and
accurate record to the best of my ability.

I certify that the attached transcript meets the
requirements set forth within article twenty-seven, chapter
forty-seven of the West Virginia Code.



Caroline Swanson,
Court Reporter