

1 BEFORE THE FEDERAL ENERGY REGULATORY COMMISSION

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3 -----X

4 IN RE: X IN 10-5-000

5 PJM UP TO CONGESTION TRANSACTIONS X

6 -----X

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8 DEPOSITION OF SERGE PICARD

9 September 10, 2010

10

11 Held at

12 Federal Energy Regulatory Commission

13 888 First Street, N.E.

14 Room 3M-1

15 Washington, D.C.

16 20425

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24 Reported by

25 Charles D. Hoffman

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1 Deposition of SERGE PICARD, was called for
2 examination pursuant to Notice of Deposition, on
3 Friday September 10, 2010, Washington, D.C. at the
4 offices of the Federal Energy Regulatory
5 Commission, 888 First Street, Room 3M1.
6 Before CHARLES D. HOFFMAN, a court
7 reporter and notary public in and for the District
8 of Columbia, when were present on behalf of the
9 respective parties:

10
11 BLAIR HOPKIN, Attorney
12 STEVEN TABACKMAN, Attorney
13 LAUREN ROSENBLATT, Attorney
14 Federal Energy Regulatory Commission
15 Office of Enforcement
16 888 First Street, N.E.
17 Washington, D.C.
18 20426
19 Representing FERC

20
21 Also Attending

22 Sean Collins, FERC
23 Bikash Thapliya, FERC
24
25

1 Appearances continued

2

3 CAROL A. SMOOTS, Attorney

4 JOHN M. DEVANEY, Attorney

5 Perkins Coie, LLP

6 607 Fourteenth Street, N.W.

7 Washington, D.C.

8 20005-20003

9 Representing Serge Picard, Black Oak

10 Energy LLC, Redacted

11 Redacted

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1 PROCEEDINGS

2 (10:10 a.m.)

3 SERGE PICARD, having been duly sworn by the court
4 reporter and notary public, was examined and
5 testified as follows:

6 MR. HOPKIN: We're on the record. By the clock
7 in the room, it's just before 10:00 in the morning,
8 excuse me, 10 after 10:00 in the morning.

9 DIRECT EXAMINATION BY

10 MR. HOPKIN

11 Q. Sir, can you please state and spell your
12 name for the record.

13 A. My name is Serge Picard, S-E-R-G-E,
14 P-I-C-A-R-D.

15 Q. Have you ever gone by any other names or
16 nicknames?

17 A. No.

18 MR. HOPKIN: My name is Blair Hopkin,
19 with me today are Steve Tabackman, Lauren
20 Rosenblatt, Sean Collins, and Bikash Thapliya. And
21 if I mispronounced your last name I apologize, okay.

22 I would ask that counsel for the witness please
23 identify themselves.

24 MS. SMOOTS: Carol Smoots, with Perkins
25 Coie.

26

1 MR. DEVANEY: And John Devaney, with
2 Perkins Coie.

3 MR. HOPKIN: Okay, are you representing
4 Mr. Picard in his individual capacity today?

5 MS. SMOOTS: We are.

6 MR. HOPKIN: Do you represent any other
7 person or entity, other than Mr. Picard in this
8 investigation?

9 MS. SMOOTS: Yes.

10 MR. HOPKIN: Who are those people or
11 entities?

12 MS. SMOOTS: We represent Black Oak
13 Energy.

14 MR. HOPKIN: Do you represent anyone else
15 in connection with this investigation?

16 MS. SMOOTS: Yes, we do.

17 MR. HOPKIN: And who is that?

18 MS. SMOOTS: That would be confidential
19 information.

20 MR. HOPKIN: At this time I'm going to
21 pass out Exhibit 1.

22 MR. DEVANEY: Blair, can I ask for a
23 clarification on the record, when the court reporter
24 returns?

25 (WHEREUPON, Exhibit 1 was marked for
26

1 identification.)

2 MR. HOPKIN: Sure. You can keep that
3 one for yourself actually.

4 MR. DEVANEY: My clarification is, it's my
5 understanding that the investigation is non-public,
6 and therefore I would assume that this transcript
7 also is non-public. Is that a correct
8 understanding?

9 MR. HOPKIN: The public or non-public
10 nature of the transcript is handled, I believe, by
11 Section 1B 12, and you're correct, this is a
12 confidential, non-public investigation, the
13 deposition at this time is confidential, non-public.

14 MR. DEVANEY: Thanks.

15 MR. HOPKIN: Counsel, in accordance with
16 1B 16, which I've just passed out as Exhibit 1, can
17 you please state on the record whether you've
18 explained your potential conflict of interest to
19 both Black Oak and Mr. Picard?

20 MS. SMOOTS: I have.

21 MR. HOPKIN: Mr. Picard, would you like to
22 take a break to consider your representation or
23 confer with counsel about that?

24 THE WITNESS: No, I'm okay, thank you.

25 MR. HOPKIN: Can we go off the record for
26

1 a moment?

2 COURT REPORTER: Sure.

3 (WHEREUPON, a break was taken.)

4 MR. HOPKIN: Counsel, can I please direct
5 your attention to 1B 16, Subsection B, it's on the
6 second page of the exhibit, which has the number 12
7 at the bottom.

8 MS. SMOOTS: Yes.

9 MR. HOPKIN: Okay, if you would just take
10 a moment and review that. Let me know when you've
11 had a chance to read it.

12 MS. SMOOTS: I've read it.

13 MR. HOPKIN: I'd like to call your
14 attention to the sentence beginning with, "When
15 counsel does represent more than one person." It's
16 about half way down in that section, do you see that
17 section?

18 MS. SMOOTS: Mm-hmm. (Indicating
19 affirmatively.)

20 MR. HOPKIN: Staff interpret this
21 subsection to mean that counsel must disclose on the
22 record whenever they represent more than one person
23 or entity in the investigation. And so I'd like to
24 repeat my prior question, which is do you represent
25 any other person or entity in connection with this
26

1 investigation?

2 MS. SMOOTS: Yes, as you know, I do.

3 MR. HOPKIN: And who are those people or
4 entities?

5 MS. SMOOTS: I can't disclose that
6 information in front of this client, because it
7 would be the disclosure of client confidential
8 information. This is a non-public investigation, so
9 the identity of people that are undergoing
10 investigation could not be disclosed by me.

11 I can do it in a confidential situation, where
12 my client wasn't present, but I could not do it in
13 front of this client. As you know, and we have
14 talked about this, I represent three companies, and
15 we have had numerous conversations about this. So I
16 am quite surprised that this inquiry has come up at
17 this point.

18 MR. HOPKIN: Well that's precisely why the
19 inquiry is occurring. Staff has concerns about
20 conflicts in this matter, and at this point I don't
21 want it to derail today's deposition, and so staff
22 is going to reserve judgement on how it's going to
23 proceed, as far as those conflicts are concerned.
24 But-

25 THE WITNESS: Do you want me to step out

26

1 while this is being put on the record?

2 MR. HOPKIN: Not at this point, maybe
3 we'll do it that way later in the day. But I think
4 at this point we're just going to move on.

5 DIRECT EXAMINATION BY

6 MR. HOPKIN

7 Q. Mr. Picard, I'm taking your testimony
8 today in a proceeding being conducted pursuant to
9 the Federal Energy Regulatory Commission's
10 regulations. I do not have the authority to grant
11 you immunity, nor do I intend to grant you immunity.
12 Do you understand that?

13 A. Yes, sir.

14 Q. You should know that whoever knowingly or
15 willfully states or subscribes under oath to any
16 material matter that he or she does not believe to
17 be true to an officer of the United States, is
18 guilty of perjury, and may be fined or imprisoned,
19 or both. For purposes of this deposition, I am an
20 officer of the United States, and so are Mr.
21 Tabackman, Rosenblatt, Collins and Thapliya. Do you
22 understand that we are here in our official capacity
23 for the United States government?

24 A. Absolutely.

25 Q. Have you ever been deposed before?

26

1 A. No. Deposed by FERC or in any matter?

2 Q. In any matter whatsoever.

3 A. I've been put under oath to testify, but I
4 don't know if that qualifies for deposition.

5 Q. Okay, I'll run through the instructions,
6 and then I'll come back and ask you a little bit
7 about that.

8 A. Okay.

9 Q. The following are some general
10 instructions that will be applicable throughout the
11 deposition. If at some point you do not hear a
12 question, just let me know. If you do not
13 understand a question, let me know, and I'll try to
14 make it comprehensible among all of us. But if you
15 answer a question, we're going to assume and the
16 record will reflect that you understood the
17 question. So if you do not understand the question,
18 please say so. Do you understand that?

19 A. Yes, sir.

20 Q. I'm conducting this deposition, and will
21 be the primary person asking you questions.
22 However, Mr. Tabackman and Ms. Rosenblatt may also
23 ask you questions at some point. You are directed
24 to answer each question fully and truthfully. If
25 your counsel objects to a question, the objection
26

1 will noted for the record, but you'll still be
2 expected to answer the question. If you refuse to
3 answer a question, you must explain why you refused.

4 You may refuse to answer any question or to
5 give evidence that may incriminate you or subject
6 you to a fine, penalty or forfeiture. This is a
7 right you have under the Fifth Amendment of the
8 United States Constitution. If you assert a
9 privilege not to answer, such as on the grounds of
10 self incrimination, you must assert the privilege
11 personally. Do you understand these rights?

12 A. Yes, sir.

13 Q. If at anytime during the course of the
14 questioning today you wish to consult counsel, you
15 are free to do so. If you wish to consult counsel
16 outside this room, please indicate this to me, and
17 I'll make the appropriate arrangements for you to do
18 so. If at any time during the questioning you wish
19 to go off the record, please ask me, and I'll make
20 the appropriate arrangement.

21 The court reporter will not go off the record
22 at your request, or at the request of your counsel.
23 Do you understand that?

24 A. Yes.

25 Q. After you've finished answering a question
26

1 or before I ask my next question, if you need to
2 take a break or you need a pause, let us know, and
3 we can do that. However, you must complete the
4 answer to the question before any break.

5 You must answer audibly, instead of with a head
6 nod, as the court reporter can not record nods or
7 gestures. Some times in conversation we may point
8 or not, and that doesn't get reflected in the
9 written transcript. Do you understand that?

10 A. Yes, sir.

11 Q. Are you taking any medication or suffering
12 from any physical or mental illness or condition to
13 prevent you from testifying today?

14 A. No.

15 Q. Are you aware of any reason today that you
16 can not give full and complete answers to my
17 questions?

18 A. No.

19 Q. At the conclusion of your testimony,
20 you'll be given an opportunity to make any further
21 statement that you wish to give concerning the
22 subject matter of this deposition. Do you have any
23 questions about any of the procedures I've just
24 outlined?

25 A. No.

26

1 Q. Are you appearing voluntarily for this
2 deposition today?

3 A. Completely.

4 Q. Are you now prepared to give your
5 testimony?

6 A. Yes.

7 Q. Before we continue, I do want to note that
8 we're going to be talking about a lot of technical
9 matters today, so I'm going to be asking what to you
10 may seem to be very simplistic questions, but it's
11 important that when we're using acronyms or
12 complicated terminology, that we understand each
13 other, and that subsequent readers of the transcript
14 will understand what we're talking about. So just
15 bear with me.

16 A. Absolutely.

17 Q. Also a note on exhibits. If you would
18 like to write notes in the exhibits, you are free to
19 do so. However, just know that at the end of the
20 deposition we are going to collect the exhibits and
21 take them back. So I would suggest that if you want
22 to write notes, you do so on a separate piece of
23 paper. And I see that you have a pad and a pen, so
24 you're well prepared.

25 **Redacted**

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1 Redacted

2 Redacted

3 Redacted

4 Re [Redacted] [Redacted]

5 Redacted

6 Redacted

7 Redacted

8 Redacted [Redacted]

9 Redacted [Redacted]

10 Redacted

11 Re [Redacted]

12 Redacted [Redacted]

13 Redacted

14 Redact

15 Re [Redacted]

16 Q. Who did you talk to in preparation for
17 this deposition?

18 A. My attorneys, and some staff at Black Oak,
19 to basically gather the information.

20 Q. I'm going to ask you a series of questions
21 about how you prepared for today's deposition, not
22 intending to elicit any privileged information, or
23 any confidential information, facts or discussions
24 you may have had with your attorneys, so if you
25 think that the answer to one of my questions would
26

1 elicit a privileged answer, please consult your
2 counsel before answering. I'm sure your counsel
3 will vigilantly listen to my questions.

4 MR. DEVANEY: And if I could, just to
5 clarify, that means that you do not disclose
6 conversations with counsel.

7 THE WITNESS: Okay.

8 MS. SMOOTS: Written or oral.

9 Q. You just mentioned that you'd spoke with
10 some employees from Black Oak, right?

11 A. Yes.

12 Q. Okay, who did you speak with?

13 A. The three employees that I work with on
14 the trading side, Rene Francoeur-

15 Q. I'm sorry, could you say that again?

16 A. Rene Francoeur, Francoeur,
17 F-R-A-N-C-O-E-U-R, and Michael Williams.

18 Q. And did you talk to them at the same
19 time?

20 A. Yes, on one occasion, and on different
21 occasions individually with Rene Francoeur.

22 Q. Who did you speak with first?

23 A. Rene Francoeur.

24 Q. And when was this?

25 A. When we opened up your letter.

26

1 Q. And what did you talk about?

2 A. Questioning what the letter was, and
3 basically surprised at receiving the letter, and
4 trying to . . . well first we saw the date, we
5 received the letter after the submittal, which we
6 proceeded to answer ASAP. Send you a written, in
7 that letter you were requesting a written notice to
8 reply technology receipt, which we did immediately,
9 so that was I guess the gist of the conversation.

10 Q. Did you talk about anything else, other
11 than how to respond to the correspondence you
12 received from my office?

13 A. Not at that instance, no.

14 Q. Who was the next person you spoke with?

15 A. Wes Williams, Wes, I forgot his last name,
16 from Red Wolf Energy.

17 Q. And when was that, approximately?

18 A. Probably 30 minutes, the same day, the
19 same period. I spoke through IM, instant messenger,
20 and I asked them if they had received an inquiry
21 letter also.

22 Q. And had they?

23 A. No.

24 Q. How long did that conversation last,
25 roughly?

26

1 A. A minute.

2 Q. And you said you conducted it over IM?

3 A. Yes.

4 Q. Did you have any follow up conversations
5 with that person-

6 A. No.

7 Q. Just for the record, it's very hard for
8 the court reporter, I know you might be anticipating
9 where my question is going, and you can jump in with
10 the answer, but he can only record effectively when
11 one of us is speaking at a time.

12 MS. SMOOTS: Just slow it down a little
13 bit.

14 THE WITNESS: Okay.

15 MR. HOPKIN: And I'm just as guilty as
16 anybody, so it just takes a little getting used to.

17 Q. And I'm sorry, who what the person from
18 Red Wolf again? It was?

19 A. Wesley Allen, I think Allen is the last
20 name.

21 Q. And why did you contact Mr. Allen?

22 A. As stated previously, to inquire if they
23 had received the big brown letter also from FERC.

24 Q. Let me ask it differently. Why him in
25 particular, why Mr. Allen, as opposed to any other
26

1 trader at any other firm?

2 A. Because that's one that I know, and we've
3 been filing jointly in different cases, so I know
4 this individual more, I guess. That's a trader I
5 speak with occasionally.

6 Q. After you IM'd with Mr. Allen, did you
7 communicate or speak with anyone else?

8 A. Rene Francoeur again, to fill out the
9 answers to the questionnaire.

10 Q. And after you spoke with Mr. Francoeur the
11 second time, is there anyone else you contacted or
12 communicated with about-

13 A. Counsel.

14 Q. Any one else, aside from counsel?

15 A. No.

16 Q. Did you review any documents in
17 preparation for today's deposition?

18 A. Documents meaning?

19 Q. Records, e-mails, PJM documents, tariff,
20 anything?

21 A. Yes.

22 Q. And what did you review?

23 A. I reviewed the filing of the PJM in this
24 matter, and the filing of IMM at the MMU.

25 Q. Okay, when you say this matter, are you
26

1 referring to a proceeding with the docket number ER
2 10-2280? And I'll give you a moment to-

3 MR. DEVANEY: We'll figure that out for
4 you.

5 MR. HOPKIN: figure that out.

6 COURT REPORTER: I'm sorry, that's ER 10-?

7 MR. HOPKIN: Two, two eight zero.

8 A. ER 10, unfortunately-

9 MS. SMOOTS: I have a copy of the filing,
10 and it doesn't have the full docket in it.

11 MR. HOPKIN: What's the date on the
12 filing? Is it August 18th?

13 MS. SMOOTS: It is.

14 THE WITNESS: Yes.

15 MR. HOPKIN: Okay.

16 MS. SMOOTS: And I don't remember the full
17 docket name, number.

18 Q. Aside from that document, what other
19 documents did you review?

20 A. The MMU filing.

21 Q. Is that?

22 A. In the same docket.

23 Q. And anything else?

24 A. Our filing, our joint and common filing in
25 the docket, which I read?

26

1 Q. Okay, and any other documents?

2 A. E-mail correspondence with, one e-mail
3 correspondence that I was looking for, with the
4 President of PJM, Mr. Andrew Ott.

5 Q. And we'll come back to that. Anything
6 else that you can think of?

7 A. The period in question, the data
8 information request from May 1st to today, and your
9 letter requesting. I reviewed the transactions or
10 the activity for that period, and that's it.

11 Q. Okay, we'll talk more about that later.
12 But exactly what document, when you say you reviewed
13 the documents covering the trading, exactly what
14 documents did you look at?

15 A. Excel spreadsheets of our internal
16 activity on a daily basis.

17 Q. Did those spreadsheets reveal things such
18 as positions you had in a particular day, or trades
19 you'd made, things like that?

20 A. Yes.

21 Q. Did you review any press articles related
22 to this matter?

23 A. Not that I recall, no.

24 Q. Is there any other documents you've looked
25 at, that we haven't already talked about?

26

1 A. Not that I recall, not to my knowledge.

2 Q. If you think of any before the end of the
3 day, please let me know, okay?

4 A. Yes, sir.

5 Q. I believe I heard you say, and I may be
6 mistaken, but when we were talking about who you had
7 spoken to in connection with this matter, in
8 preparation for the deposition today, you mentioned
9 a Mike Williams, am I right?

10 A. Yes.

11 Q. Who is that person?

12 A. He is an employee at Black Oak.

13 Q. Okay, what did you talk to Mr. Williams
14 about?

15 A. About the fact that we were being
16 investigated in a broad investigation, that Black
17 Oak was, Black Oak Energy, for this issue.

18 Q. And when did that conversation occur?

19 A. I'd have to confirm the date, would be
20 last Tuesday.

21 Q. Okay.

22 A. I was away for the week in Canada, so I
23 couldn't have any conversations or anything, apart
24 from my attorney on the phone, and on the day I came
25 back, and I'll confirm that date.

26

1 Q. What's Mr. Williams position with Black
2 Oak?

3 A. He's an analyst/trader for Black Oak
4 Energy, has been for four years now, I think.

5 Q. Is he a power trader?

6 A. Yes.

7 Q. Does he trade power in PJM?

8 A. Yes.

9 Q. Other than yourself or Black Oak Energy,
10 are you aware of any individuals or companies who
11 have received data requests or requests to appear at
12 a deposition in this investigation?

13 A. No.

14 Q. All right, I'm going to ask you some basic
15 questions about just your personal background.

16 Redacted

17 Re [Redacted]

18 Redacted

19 Re [Redacted]

20 Re [Redacted]

21 Redacted

22 Re [Redacted]

23 Redacted

24 Re [Redacted]

25 Re [Redacted]

26

1 Re [REDACTED]

2 Re [REDACTED]

3 Re [REDACTED]

4 Redacted [REDACTED]

5 Re [REDACTED]

6 Re [REDACTED]

7 Q. What's your business address?

8 A. 103 Carnegie Center, Suite 115, Princeton,
9 New Jersey.

10 Q. And how long has Black Oak been at that
11 address?

12 A. Three and a half years.

13 Q. Where was Black Oak before that time?

14 A. In Hoboken, New Jersey.

15 Q. And how long were you at the Hoboken
16 address?

17 A. A year, a little over a year.

18 Q. Where was Black Oak before that?

19 A. It didn't exist.

20 Q. What's your business number?

21 A. Phone number?

22 Q. Yes, sir.

23 A. Six Oh nine, two seven five, seven two six
24 zero.

25 Q. And who is the provider or carrier for
26

1 that number?

2 A. I believe it's Verizon also.

3 Q. Do you have a separate business cell
4 phone?

5 A. No.

6 Q. So the only cell phone you have is your
7 personal cell phone?

8 A. Yes, sir.

9 Q. Do you have any other phone numbers we
10 haven't talked about?

11 A. No.

12 Re [REDACTED]

13 Re [REDACTED]

14 Redacted

15 Re [REDACTED]

16 Re [REDACTED]

17 Re [REDACTED]

18 Redacted

19 Re [REDACTED]

20 Redacted

21 Re [REDACTED]

22 Redacted

23 Re [REDACTED]

24 Re [REDACTED]

25 Re [REDACTED]

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Re [REDACTED]

Re [REDACTED]

Q. Where did you go to high school?

A. Two places, it's in French, to the College Laval, and the Seminare De Quebec.

Q. When did you graduate?

A. Eighty eight.

Q. And what did you do after you graduated college, or excuse me, high school?

A. We go to Sejair, (phonetic) which is intermediary step before going to college. I went there for three years.

Q. And did you go to college after you went through that intermediate step?

A. Yes.

Q. And what college or university did you attend?

A. University Labour.

Q. And what was your major there?

A. Finance.

Q. Did you graduate?

A. Yes.

Q. What year?

A. '07, officially.

Q. Did you ever attend any other universities

1 or colleges, aside from that one?

2 A. No.

3 Q. Are you currently pursuing any formal
4 education?

5 A. No.

6 Q. Have you ever been charged with committing
7 a crime?

8 A. No.

9 Q. We may have covered this just a little
10 bit, but I'm just going to ask you again, so we have
11 a clear record. Have you ever been a defendant in a
12 law suit?

13 A. No.

14 Q. And have you ever been a plaintiff in a
15 law suit?

16 A. Neither.

17 Re [REDACTED]

18 Redacted [REDACTED]

19 Re [REDACTED]

20 Redacte [REDACTED]

21 Re [REDACTED]

22 Re [REDACTED]

23 Re [REDACTED]

24 Re [REDACTED]

25 Re [REDACTED]

26

- 1 Re [Redacted]
- 2 Re [Redacted]
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7 Re [REDACTED]

8 Redacted [REDACTED]

9 Re [REDACTED]

10 Re [REDACTED]

11 Re [REDACTED]

12 Re [REDACTED]

13 Redacted [REDACTED]

14 Re [REDACTED]

15 Q. At some point did you take on another job,
16 or pursue other investment opportunities, aside from
17 with that company?

18 A. At some point, during which period?

19 Q. What I'm trying to get at, is what did you
20 do next? So you became involved with that company-

21 A. Yes.

22 Q. At some point you became involved with
23 Black Oak, correct?

24 A. I went to work before that, yes, I became
25 involved with Black Oak. I went to work for Semper
26

1 Energy Trading.

2 Q. Okay, and when did you begin working with
3 Semper Energy Trading?

4 A. December, '99.

5 Q. I'm a little bit confused, because we're
6 jumping around temporally, so I may have to revisit
7 this, I hope you're patient with me.

8 A. Absolutely.

9 Q. So you began with Semper Energy Trading in
10 1999. Was that a full time job?

11 A. Yes.

12 Q. Part of the confusion may be that you said
13 1998, and I heard 2008 or something like that. So
14 I'm going to have to.

15 A. Everything we're talking about was before
16 the year 2000, so 1998. I graduated in '97
17 officially, but I got out of college in '95. I had
18 one class left, one credit, that thing, I kept
19 putting it off till eventually in '07, but I started
20 working in '05 in the cheese factory, in '07-

21 MS. SMOOTS: Do you mean '95?

22 A. '95, sorry.

23 MR. TABACKMAN: I do the same thing.

24 Q. So obviously you can tell what this line
25 of questioning is directed at, which is trying to

26

1 understand where you went in your career, and what
2 you did at your various positions, up until the time
3 you got to Black Oak.

4 MR. DEVANEY: Just subtract 10 years from
5 the prior.

6 Q. Okay, so getting back into it again. So
7 you started with Semper Energy Trading in roughly
8 1999?

9 A. Well for clarification, I started at
10 Semper Energy Trading, but I wasn't trading.

11 Q. Okay, and we'll get in, but you started
12 with the firm in '99?

13 A. Exactly.

14 Q. And what was your title when you started?

15 A. I was a scheduling coordinator, analyst.

16 Q. And can you describe for me what your job
17 duties and responsibilities were?

18 A. Yes, I was in charge of scheduling power
19 plants, and scheduling within the ISOs. That was
20 starting, that period, and analyze transmission
21 patterns, and market information for their trading
22 desk.

23 Q. Which ISOs, do you remember?

24 A. New York ISO, PJM, and ISO New England.

25 Q. And did you do anything else, other than
26

1 scheduling or analyzing schedules?

2 A. That was the glut of my functions.

3 Q. At some point did your title change, or
4 did your job responsibilities change while you were
5 at Semper?

6 A. No, not before I left.

7 Q. And so the whole time you were at Semper,
8 you were just analyzing power schedules, correct?

9 A. Yes, and scheduling.

10 Q. And scheduling, okay, and when did you
11 leave Semper?

12 A. In September of 2000.

13 Q. And why did you leave?

14 A. To pursue a similar job, but with better
15 responsibilities or functions at Meryl Lynch.

16 Q. Do you remember who your supervisor was at
17 Semper?

18 A. Absolutely, Shoemaker, not Mike, the first
19 name will come back, but Shoemaker was the last
20 name.

21 Q. And what was your next job, after you left
22 Semper, Meryl Lynch?

23 A. Yes.

24 Q. And what was your title at Meryl Lynch?

25 A. I was, the official title I think was
26

1 assistant trader/trader.

2 Q. And again, this was in 1999, 2000?

3 A. 2000.

4 Q. 2000?

5 A. September of 2000.

6 Q. And what were your job responsibilities?

7 A. Trading and scheduling on their real time
8 desk.

9 Q. Are you talking about electric power
10 scheduling and trading?

11 A. Only electric power. I never traded
12 anything else.

13 Q. Ever, in your whole career?

14 A. I've never traded other commodities within
15 my functions than power interests.

16 Q. Was part of your job responsibility in
17 that position include power trading PJM?

18 A. Yes.

19 Q. And what platforms or markets did you
20 trade in? For example, did you trade power on the
21 NYMEX, just in PJM, in what platforms did you trade
22 on?

23 A. Enron on line, Intercontinental Exchange
24 was starting during those years, on the ICE, and
25 that's it.

26

1 COURT REPORTER: I'm sorry, did you say
2 JMAX, NYMEX?

3 MR. HOPKIN: NYMEX, it's N-Y-M-E-X, it's
4 an acronym, all caps.

5 COURT REPORTER: Thank you.

6 Q. And how long did you stay with Meryl
7 Lynch?

8 A. Approximately three years.

9 Q. And did your title or job responsibilities
10 change during that time?

11 A. Yes.

12 Q. And describe that for me.

13 A. I became Vice President in that structure.
14 Then there was a merger, acquisition with Allegheny
15 Energy Power, between Meryl Lynch and Allegheny
16 Energy, so we were transferred under the Meryl
17 Allegheny corporate entity, still in New York City.
18 And I was trading the same markets, but now as a
19 Vice President.

20 Q. So did your job responsibilities change,
21 or just your title?

22 A. They only changed within the last six
23 months, where I started trading cash or short term,
24 but before that, they were pretty much identical to
25 real time market trading activity.

26

1 Q. And just so I'm clear, can you describe
2 for me the difference between cash and short term
3 trading, versus real time trading or the other
4 trading you engaged in?

5 A. Yes. Real time will usually be trading
6 done within the 24 hour period, and cash trading,
7 what's known as cash trading, will be from the next
8 day trading on to trimesters, pretty much at the
9 max, the norm in firms.

10 Q. Trimester, is that short for-

11 A. Three months.

12 Q. Okay.

13 A. Above cash trading, there is a term
14 trader, who usually trades years or seasons forward.

15 Q. Okay.

16 A. So I was at the bottom of that hierarchy.

17 Q. And you say you left Meryl Lynch after
18 three years?

19 A. Yes.

20 Q. So that would be roughly 2003?

21 A. Yes.

22 Q. And where did you go after Meryl Lynch?

23 A. It was a little under three years. I went
24 to work for HETCO, Hess Energy Trading.

25 Q. Okay.

26

1 A. Petroleum company.

2 Q. And what was your title there?

3 A. I was VP of Trading for electricity short
4 term markets.

5 Q. And what were your job duties and
6 responsibilities?

7 A. Trading within PJM, New York, reporting on
8 the trading, daily reporting, and the P & L and bill
9 recing (sic), et. cetera.

10 Q. Okay, you just used two terms of art
11 there, that I'd like to ask you about. What does
12 PNL stand for?

13 A. Profits and losses.

14 Q. Okay, and is that a reference to how
15 traders and schedulers keep track of whether or not
16 the trading they are engaging in is profitable, or
17 losing money?

18 A. Yes, on a daily basis, and it's a daily
19 requirement to provide your own P & L, profits and
20 losses, which gets corroborated by the back office,
21 who themselves calculate their own P & L.

22 Q. And I'm going to mangle this second term
23 you used. You said something about recing (sic),
24 which is short for reconciliation? What does that
25 mean?

26

1 A. Reconciliation, sorry. It's reconciling,
2 because it's a specific commodity, you receive a
3 invoice or a monthly bill from the ISOs that you
4 deal with, or the counterparties, and you have to
5 reconcile your profits with the fees and schedules
6 and everything on the invoice.

7 Q. How long were you with Hess?

8 A. Approximately six months.

9 Q. And who was your supervisor while you were
10 there?

11 A. Kenny King.

12 Q. And why did you leave?

13 A. They were shutting down the division.

14 Q. Why were they shutting down the division?

15 A. Because they were told to do so by the
16 Board.

17 Q. Do you have any idea why that decision was
18 reached?

19 A. Their explanation to us, I don't know how
20 the decision was taken, our supervisor's explanation
21 to us was having an electricity trading desk was a
22 liability in the financial markets, because Dynergy
23 was having difficulties, and other public companies
24 that had exposure to electricity were being, their
25 stock prices were going down, and they didn't want
26

1 the Hess stock price to go down, hence they closed
2 the division.

3 Q. And just so I'm clear, while you were
4 there, you only engaged in power trading and you
5 primarily focused on PJM. Is that correct?

6 A. PJM and New York ISO and I provided some
7 analysis to a term trader for NEPOOL

8 COURT REPORTER: What was that last
9 company name? Also provided some?

10 MS. SMOOTS: ISO New England.

11 Q. And NEPOOL, is that another way of saying
12 ISO New England?

13 A. Yes.

14 Q. Where did you go next, after leaving Hess?

15 A. We started Black Oak Energy on March 2003.

16 Q. Who is, "We"?

17 A. Myself and initially I recruited a
18 gentleman I had worked with in the past at Bank of
19 America, which is Rene Francoeur, and another
20 trader, who I had also worked with in the past, at

21 Redacted

22 Re [Redacted]

23 Reda

24 Re [Redacted]

25 Re [Redacted] [Redacted]

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1 Redacted [REDACTED]

2 Redacted [REDACTED]

3 Redacted [REDACTED]

4 Redacted [REDACTED]

5 Q. Is your title there at Black Oak, Managing
6 Director?

7 A. Yes.

8 Q. Do you also use the title, Principal?

9 A. Yes, Redacted [REDACTED]

10 Redacted [REDACTED]

11 Q. I'm going to hand out at this time,
12 Exhibit 2.

13 (WHEREUPON, Exhibit 2 was marked for
14 identification.)

15 And I can see you're doing it on your own, but
16 please take a moment and look at the document and
17 let me know when you're done.

18 (WHEREUPON, The witness examined the document.)

19 A. I'm done.

20 Q. If you can direct your attention to, there
21 don't appear to be any page numbers, but if you can
22 go to near the back, question and answer to data
23 request number four. Are you there?

24 A. Yes.

25 Q. Am I correct that based on your answer to
26

1 number four, that the only three people who
2 submitted up to congestion transactions for the
3 period May 1, 2010, through August 24, 2010 were Mr.
4 Francoeur, yourself, and Mr. Williams?

5 A. With a correction.

6 Q. Okay.

7 A. Mr. Francoeur started July 12th, so he
8 could not send transactions from May 1st, obviously,
9 and probably for a couple of weeks after his
10 employment also. Just to get reaccustomed to the
11 systems and trading.

12 Q. With regard to the data requests, are
13 there any other errors or anything else you would
14 like to amend or direct our attention to, or are you
15 comfortable that this document is correct and
16 complete?

17 A. I have just one correction. I stated that
18 Michael Williams as an analyst/trader, and here we
19 have him listed as senior trader. His title is
20 senior trader, but one of his functions is to
21 provide analysis also, as we all do.

22 Q. You can go ahead and put that document
23 aside. Do you belong to any professional or trade
24 associations?

25 A. No.

26

1 Q. I'm going to ask you some questions about
2 past trading violations, if you've had any. Have
3 you ever been disciplined, sanctioned, or had an
4 adverse ruling issued by the NYMEX, the Commodities
5 Futures Trading Commission, the Intercontinental
6 Exchange, the Securities Exchange Commission,
7 National Futures Association, or any other
8 organization, for any rules or infractions?

9 A. No.

10 Q. Have you ever been accused by any of those
11 bodies or charged by any of those bodies, for any
12 rules infractions?

13 A. No.

14 Q. Have any of the firms or business entities
15 you've been affiliated with or involved in, have
16 they ever been disciplined by those entities?

17 MR. DEVANEY: I guess I'll object to lack
18 of foundation, calls for speculation.

19 Q. You can answer.

20 A. I'm not a lawyer, so not to my knowledge.
21 I wasn't privy to those, if there were
22 investigations or adjudications, I wasn't privy to
23 them, to my knowledge.

24 Q. To your knowledge, have any Black Oak
25 employees been sanctioned or charged with any
26

1 infraction from, or any rules infraction from NYMEX,
2 CFDC, ICE, SEC, those organizations?

3 A. No.

4 Q. How knowledgeable would you describe
5 yourself as to how power markets trade and work?

6 MR. DEVANEY: Objection, ambiguous. You
7 can answer.

8 A. Knowledgeable, based on, or compared to
9 what? On a scale?

10 Q. On a scale of one to ten.

11 A. Who's ten and who's nine?

12 Q. Ten being extremely knowledgeable, one
13 being you've never heard of power trading before.

14 MR. DEVANEY: Same objection.

15 A. If ten is extremely knowledgeable, as the
16 guy that runs the PJM markets, and one is my aunt,
17 who still can't figure out what I do, I'd probably
18 be a six or a seven.

19 Q. And the same question with specific
20 reference to PJM. How would you describe your
21 knowledge of how PJM power trading works, and PJM?

22 A. Same answer, a six or a seven.

23 Q. And with specific reference up to
24 congestion transactions, how knowledgeable would you
25 describe yourself, as to how those transactions work

26

1 and can be used in your trade?

2 MR. DEVANEY: I'll just note a continuing
3 objection to this line of questions on ambiguous
4 grounds.

5 A. Same answer.

6 Q. And with regards to PJM's tariff and
7 market rules, how familiar are you with those?

8 A. I'm familiar with them.

9 Q. How did you become familiar with PJM's
10 tariff and market rules? Did you, for example,
11 study the tariff rules, did you attend seminars,
12 things like that?

13 A. No, I've never studied the tariff. I
14 became familiar through reading different
15 proceedings or issues, or within the meetings. And
16 when a specific section of the tariff was quoted or
17 brought up, or modified, or requested for
18 modification, that's how I became aware of parts of
19 it.

20 Q. And when you say, "Meetings", what
21 meetings are you referring to?

22 A. ISO stakeholder meetings.

23 Q. Do you regularly attend those?

24 A. No.

25 Q. Do you listen to them on the phone, or
26

1 anything like that?

2 A. Sometimes, my normal policy or procedure
3 is to check the agenda of meetings, to see if
4 something pertains to us, and if so, I will usually,
5 probably listen on the phone.

6 Q. Have you been following the PJM
7 proceedings with regard to the up to congestion
8 transactions that have been the subject of press
9 articles and recent meetings at PJM?

10 MS. SMOOTS: Could you be more specific,
11 as to what proceedings?

12 MR. HOPKIN: Sure.

13 Q. PJM, as you may or may not know, has been
14 conducting a stakeholder meetings. They recently
15 voted on a tariff change to address perceived
16 problems with the tariff, and how up to congestion
17 transactions operate at PJM. Have you been
18 following that issue?

19 A. Through the stakeholder process, yes.

20 Q. Have you been following that issue in any
21 other way, aside from the stakeholder process?

22 A. Could you describe other ways that I could
23 follow?

24 Q. Sure, have you had conversations about it
25 with colleagues, have you read press or trade
26

1 articles, things like that?

2 A. No, as answered previously, no.

3 MR. HOPKIN: At this point I'd like to go
4 off the record, we'll take a five minute break and
5 we'll come back on at - the clock in the room says
6 five minutes after eleven, we'll come back at eleven
7 fifteen. Thanks

8 (WHEREUPON, a break was taken.)

9 MR. HOPKIN: We're back on the record,
10 it's about 11:23 by the clock in the room. I'm
11 going to ask you some general questions about your
12 trading, how you think about trading, what kind of
13 strategies you employ, and things like that.

14 Just for starters, can you describe for me in a
15 general way what kind of strategies you do employ in
16 power trading?

17 A. General strategies would be long or short
18 spread trades, basically matching a long and a
19 short. And movement of physical power through
20 transactions, within the power pool. Physical
21 electricity, it could be long or short, within a
22 power pool, and then you move the power to cover the
23 short from the long.

24 Q. I'm sorry, can you-

25 A. Cover the short from the long. So

26

1 physical power transactions and financial
2 transactions are the two big categories that we
3 trade in, the only ones.

4 Q. Let me frame the question in a little bit
5 different way. Have you heard the term technical
6 analysis before?

7 A. Yes.

8 Q. Versus fundamental analysis. Have you
9 hear that term before?

10 A. Absolutely.

11 Q. Can you describe those two terms for me?

12 A. Technical analysis will usually be based
13 on what happened in the past, what you can graph,
14 what you can visualize, or with breaking points and
15 a myriad of technical terms or strategies that I'm
16 not familiar with, a couple of them, but not that
17 much.

18 And fundamental analysis would be analysis
19 based on the fundamentals or the structure of, in
20 our case, the market, with the power grid, et
21 cetera, weather, all the end traits.

22 Q. We'll talk more about that, but which one
23 of those two ways of thinking about trading do you
24 use, when you develop a view towards the market?

25 A. Both.

26

1 Q. Does it depend on which strategy you're
2 employing, or do you just kind of view everything at
3 once?

4 A. Everything at once would be more
5 appropriate.

6 Q. Why is that more appropriate?

7 A. More appropriate answer to your question.

8 Q. Is it a good idea to use both at the same
9 time, in your opinion?

10 MR. DEVANEY: Objection, ambiguous. You
11 can answer it.

12 A. Yes, if your track record is positive,
13 then it's a good idea. It might stop being a good
14 idea if you're losing money, but yes.

15 Q. You started to tell me about a little bit,
16 in your prior answer, but how do you go about
17 gathering information on market fundamentals?
18 Things like weather and so forth?

19 Re [REDACTED]

20 Redacted [REDACTED]

21 Redacted [REDACTED] [REDACTED]

22 Redacted [REDACTED]

23 Redacted [REDACTED] [REDACTED]

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5 Q. Are there any other services, other than
6 the ones you just outlined that you're, that you use
7 in your trading?

8 A. The ISOs provide, the independent system
9 operators, provide a lot of information on, public
10 information on their web sites also, to maintenance
11 schedules. Maintenance usually, more in the line of
12 non proprietary line maintenance so public
13 information. We'll use that and live information
14 from the ISOs also.

15 Q. Okay.

16 A. So they pretty much all have an interface
17 that gives you the live conditions of load,
18 consumption life going on and then the outages or if
19 something happens on a transmission grid life, it
20 should be posted pretty shortly within the ISOs
21 information portal. We use that also. And that
22 pretty much summarizes what comes to mind right now.
23 I don't think there's any other sources that we use.

24 Q. If you think of any others, just let us
25 know.

26

1 A. I will.

2 Q. Do you subscribe to any publications, like
3 Megawatt Daily, or Platt's Inside FERC?

4 A. We subscribe to Megawatt Daily.

5 Q. Any others?

6 A. Not to my knowledge. That's the only one
7 I get, which I don't read often.

8 COURT REPORTER: What was that second
9 publication, sir?

10 MR. HOPKIN: Platt's Inside FERC.

11 COURT REPORTER: Thank you.

12 Q. During the course of the day, do you have
13 these various programs up in front of you?

14 A. Yes.

15 Q. Can you describe your physical trading
16 desk for me? For example the desk, how many
17 monitors you have up, that kind of thing?

18 A. It's not a very clean desk. There's a lot
19 of papers and I've got one keyboard. The table, our
20 trading desk is, looks exactly like this, with
21 three, call them chairs, or trading chairs, there's
22 only three filled total.

23 Q. If I can interrupt you, when you say
24 exactly like this-

25 A. Ten foot, or how long is this desk?

26

1 MR. DEVANEY: You're referring to the
2 conference room table at which we're sitting?

3 THE WITNESS: Yes.

4 A. Twenty feet long, maybe, by three feet
5 deep, and I have four screens. Three at eye sight,
6 and another one a little higher, where I keep the
7 Genscape, the program with the live monitoring other
8 plants, up and I'll alternate with other programs
9 also. Spreadsheet in the middle usually, and PJM E
10 data, which is the PJM portal that provides all the
11 live information, on the screen on the right, and
12 other stuff on the screen on the left, from weather,
13 e-mail, pretty much everything else.

14 Q. You just mentioned e-mail, and I wanted to
15 ask, do you talk to other traders or people in the
16 industry on a daily, weekly, monthly basis, in order
17 to develop a view of the market?

18 A. No.

19 Q. Do you ever chat with other traders?

20 A. Specify, traders outside of Black Oak
21 Energy?

22 Q. Yes, sir.

23 A. No.

24 Q. How about inside Black Oak Energy?

25 A. Of course.

26

1 Q. What kind of things do you talk about?

2 A. The weather, plant outages, line outages,
3 what we've been seeing recently going on within the
4 power systems. Everything that pertains to the
5 systems that we were discussing initially.

6 Q. In the nature of trying to find out what
7 kind of information you monitor and gather to
8 develop a view of the market, what markets do you
9 actually watch or pay attention to? For example, if
10 you are trading power in PJM, do you also pay
11 attention to how power might be trading in the New
12 York ISO, or in the mid west ISO?

13 A. What do you mean, "How power could be
14 trading elsewhere"?

15 Q. For example, do you monitor what system
16 prices are doing in other ISOs, while you are-

17 A. Yes.

18 Q. Can you tell me about that, or explain
19 that for me?

20 A. Well we monitor how other systems that are
21 either interconnected to the ones we are trading
22 with, or public power pools, how they're operating,
23 or what's going on in their systems also.

24 Q. And when you say, "What's going on", we're
25 talking about line outages, generator outages, those

26

1 kinds of things?

2 A. Weather in those ISOs, line outages,
3 generation outages, transmission constraints, TLRs,
4 Transmission load reliefs. Everything that could be
5 affecting the markets that we operate in.

6 Q. In that universe of everything that could
7 be affecting the markets, do you also watch other
8 commodities, such as the price of natural gas, for
9 example?

10 A. A little bit. We do have a screen that
11 provides, but it's not real time information. We
12 kind of know where natural gas is trading. We've
13 got a flat screen in our office, a small one, that
14 is on CNBC, so we'll be aware if there is a big
15 market change, and hopefully they'll report it.

16 Q. And aside from natural gas, do you pay
17 attention to the price of oil?

18 A. Yes, but not for power monitoring
19 purposes. Mostly for what it's going to do to the
20 Canadian dollar, and the U.S... It's got nothing to
21 do with.

22 Q. Okay.

23 A. We don't feel it affects our daily
24 business, or our short term business, as much as
25 nat. gas would.

26

1 Q. Do you watch any financial markets, or
2 financial instruments, such as how power might be
3 trading on the Intercontinental Exchange?

4 A. Just the short term contract that would be
5 open, the short term contract of PJN and Synergy.
6 So what we call the Bal-Day product, and if there is
7 a big fluctuation on a daily basis of the price of
8 the trading of that on peak product, we will look at
9 what the next day is trading for and that's about
10 it.

11 Q. Okay.

12 A. More for informational purposes, and we
13 very, very rarely trade on that.

14 Q. Do you pay attention to anything else,
15 aside from that product, the Bal-Day product?

16 A. Like what, on ICE?

17 Q. On ICE, or any other platform, where
18 financial instruments trade.

19 A. No.

20 Q. Do you have a Bloomberg terminal?

21 A. We had one.

22 Q. What are the dates that you had a
23 Bloomberg terminal?

24 A. It was over the course of last year,
25 through an employee that we had, who is no longer
26

1 with us, since January of this year.

2 Q. Did you have one in May, June, July or
3 August of this year?

4 A. No.

5 Q. Do you have employees at Black Oak or any
6 other persons report information to you on a daily
7 or weekly basis? For example, do you walk in, in
8 the morning and have a coworker explain to you what
9 they saw at the market at the end of the day,
10 yesterday?

11 A. No, apart from the conversations, the
12 daily conversations that we have, no. Nobody
13 reports work information to anybody else.

14 Q. We talked about it a little bit before,
15 but can you describe those daily conversations for
16 me a little bit? When they occur, who is
17 attending, what you talk about?

18 A. Whoever is in the office, either myself or
19 Mike or Rene now.

20 Q. Okay.

21 A. We will discuss anything that we have
22 monitored or seen over the weekend or the day before
23 or the night when we come in the next morning, we'll
24 talk about weather, if there is any modifications or
25 variations, or something that changed from the last
26

1 time we would have spoke about it. We'll discuss
2 redispatches that might have occurred in the power
3 pools' prices, basically or constraints that the
4 ISOs might have redispatched for. But if we were
5 both monitoring, we're not going to talk about it
6 because we're both aware of it. That's about it,
7 and then some friendly chit chat.

8 Q. After you've had these conversations and
9 you have all this information in front of you and
10 your various computer monitors, how do you
11 synthesize that information and use it to inform
12 your trading?

13 A. That's a very special question, how you
14 synthesize information to come up with a trading
15 strategy, or?

16 Q. Yes, let's start there.

17 A. It's . . . how do you explain a gut
18 feeling? It's very subjective. I guess the brain
19 will give a percentage of importance to the
20 different inputs and based on that, of all the
21 inputs, from fundamental to the technicals and how
22 you've been performing and how it's been occurring
23 in the last days and what's a likelihood of
24 something to happen again. And that's going to be
25 very different from every person in here and every
26

1 trader. So I'm not sure how exactly to answer that
2 question.

3 Q. I think you're doing a good job.

4 A. Okay.

5 Q. What kinds of time horizons are normally
6 associated with your trading strategies? For
7 example are you normally trading 24 hours ahead, a
8 week ahead, a month ahead, real time?

9 A. Normally 24 hours ahead and live. So we
10 do next day and real time trading at Black Oak
11 Energy.

12 Q. What strategies were you employing in
13 June, July and August of 2010?

14 A. The three strategies that we discussed
15 earlier, spread, financial trades and physical
16 trades. And in the financial trades, long and
17 shorts and spread trades.

18 Q. At this point I want to try to get a
19 little more specific, do you have for example, names
20 for these different strategies? Do you have, well
21 let's start there. Do you have names for the
22 different strategies you employ? I mean you are
23 referring to them as long, short, for example, but
24 do you call it, does it have a name on a spread
25 sheet?

26

1 A. No.

2 Q. Okay.

3 A. One would have a name for spread trading,
4 will specify, are we spread trading with incremental
5 offers and dec. bids, or virtual offers and bids in
6 New York ISO and ISO New England. So we'll specify
7 if we're doing that or we're doing an up to type
8 transaction in PJM. In New York ISO it's called
9 wheel.

10 Q. Okay.

11 A. So if it needs to be specified, we'll say
12 we're going to spread that, or we're going to go
13 long it, or short it. The normal trader lingo.

14 Q. And in June, July and August of 2010, what
15 was your view of the market? And if it was
16 different from month to month or week to week, let
17 me know that as well. Just broadly speaking, what
18 did you see in the market in June, July, August
19 2010?

20 MR. DEVANEY: Objection, ambiguous. You
21 can answer.

22 A. The view changes on a daily basis. What I
23 did see was, on a very general basis, was heat, a
24 lot of heat, especially here. But the view is
25 completely different on a day to day basis of what's
26

1 occurring, where the heat is. We trade MISO PJM,
2 ISO New England and New York. So the weather
3 pattern is going to usually follow the U.S., all the
4 way out to Boston. So it's a daily occurrence of
5 new situations and new input. I can't give you,
6 apart from the heat waves that came through, I don't
7 really have a general description of that period,
8 specifically.

9 Q. Well for example with reference to your
10 spread trades, did you have a view in June 2010 that
11 spreads would widen during the month, or that they
12 would tighten?

13 MS. SMOOTS: Would you clarify what you
14 meant by, "Spread trades"?

15 Q. Do you understand my question?

16 A. Yes, but you're going to need to clarify
17 widen, or spread where?

18 Q. Where do you put your spread trades on
19 typically?

20 A. All ISOs.

21 Q. All ISOs. With reference-

22 A. All MISO, PJM, New York ISO and ISO New
23 England. Those are the four ISOs we operate in.
24 We're not in California or the other wacky places.

25 Q. So with specific reference to PJM, did
26

1 you have a view in June 2010, as to whether spreads
2 would widen or tighten?

3 A. Widen or tighten, the day market, the
4 spread market? There's 9,200 points in PJM
5 specifically, so I obviously don't have a view on
6 all of them.

7 Q. Okay.

8 A. But you need to tell me what you're
9 looking for me to answer to.

10 Q. Sure, do you have particular points in PJM
11 where you typically place spread trades?

12 A. There's no typical point, we'll go
13 wherever we feel that there is a likelihood that
14 there is going to be a redispatch or if a spread is,
15 to use your terminology, too wide, that we should
16 sell that spread and buy it back in the spot market.
17 So we'll go where we feel that there is value. But
18 there is no set of typical plays or strategies or
19 spreads that are too wide or too.

20 Q. And these are decisions that you're making
21 on a daily basis, correct?

22 A. Every day.

23 Q. Okay.

24 A. Every day, seven days a week, 365 days a
25 year.

26

1 MR. DEVANEY: Except today.

2 A. Yes, except today.

3 Q. As I mentioned at the outset, I'm going to
4 be asking you some fairly general questions, which
5 may be frustratingly simplistic to you, but I never
6 the less need to ask.

7 A. They are not simplistic, but in order -
8 and you'll have to bear with me also - if it's a
9 general question, in order to give the appropriate
10 answer, what you're looking for me to answer, I will
11 need to ask for explanations.

12 Q. Absolutely, and please feel free to do so.

13 A. Okay.

14 Q. Can you just as a general proposition,
15 describe for me how power trading works in PJM,
16 briefly?

17 A. How power trading works for Black Oak, or
18 the whole power pool?

19 Q. I'm looking for a very global answer. So
20 you know, is there a one step market, a two step
21 market? That kind of thing.

22 A. Okay.

23 MR. DEVANEY: And just for the record, I
24 want to say the question is ambiguous, but you can
25 answer it.

26

1 A. Well I'll give an ambiguous answer. Not
2 ambiguous, but. It's a two settlement market and
3 I'll give you the same explanation I gave to my
4 aunt, on the scale of one to ten.

5 Everybody that is connected to the power grid,
6 everybody needs to participate in the market. If
7 you don't somebody on your behalf will do it. If
8 you sell power, if you own generation, you sell
9 power, it needs to be offered in the grid. And if
10 you are going to buy it on the PJM power pool, if
11 you are going to buy it, you need to put a bid to
12 consume.

13 We join the power market as a virtual generator
14 or virtual supplier, where the market views us as
15 the same thing as a physical participant. But
16 because we don't have any big batteries in the
17 office, or no generator or no load, we have to be
18 flat at the end of the day, where we don't consume
19 the electricity. And that's the part that's very
20 confusing for my aunt is, as opposed to other
21 commodities, you can't store electricity, it's in
22 the wall right now, and it's tension, and it has to
23 go somewhere. So if there's too much tension, then
24 your fridge is going to blow out at home, and if
25 there's not enough it's probably going to burn out.

26

1 So the power system regulates the physical market,
2 they take care of that part and everybody else
3 participates on a financial basis.

4 Q. And with specific reference to Black Oak,
5 how does Black Oak participate in the PJM power
6 markets?

7 A. Black Oak participates as a virtual
8 participant, with financial transactions, or a
9 physical participant, if we purchase power and take
10 it somewhere else.

11 Q. Can you tell me what an "Up to
12 transaction" is in PJM?

13 A. Yes.

14 Q. What is-

15 A. A spread between two points, two of the
16 allowable points, I think there's three or four
17 hundred points that you can do an up to transaction
18 from. And it's a spread, the difference between
19 those two points, which you can bid for or offer,
20 and you can bid for positive spread or a negative
21 spread or you can sell that spread. And you are
22 just bidding for the difference between those two
23 points.

24 Q. And we've been talking about your trading
25 strategies. How do up to congestion transactions

26

1 play into your trading strategies at Black Oak? How
2 do you use them?

3 MR. DEVANEY: Objection, ambiguous. You
4 can do you best to answer.

5 A. What do you mean, "How do they play into
6 our strategy?"

7 Q. Sure, do you use up to congestion
8 transactions to hedge other positions? Do you use
9 them to speculate outright? If you do use them to
10 speculate outright, how do you go about, how do you
11 do that?

12 A. Well, as stated initially, we are not a
13 generator or load, so we don't have inherent
14 positions that are given to us or handed to us, that
15 we have to hedge. But we can create positions that
16 will need hedging, if it goes against us. So the
17 primary tool as is for proprietary trading to
18 speculate or to generate profit.

19 Q. And in a very simplistic way, can you
20 describe for me how you use an up to congestion
21 transaction to speculate?

22 MS. SMOOTS: Excuse me, speculate was the
23 word you used, and it's generally a perjorative
24 term. I assume that was not what you were
25 intending?

26

1 MR. HOPKIN: It's not my understanding,
2 not is it my intention, to indicate that speculating
3 is perjorative. I can restate the question.

4 MS. SMOOTS: That would be good.

5 MR. HOPKIN: Let me do that.

6 MS. SMOOTS: Thank you.

7 Q. In a simplistic way, can you describe for
8 me how you use up to congestion transactions, in
9 order to make a profit?

10 A. In a simplistic way, you'll bid for,
11 you'll try to purchase or sell a spread to buy it
12 back or sell it back for a profit. A differential
13 between two points, very simplistic.

14 Q. Can you try to give me a more complicated
15 or fuller answer than that? Because I sense that
16 you think there's a lot of simplification in there.

17 A. No, it all, buy low, sell high is what
18 you're trying to do for pretty much anything that,
19 anybody who is in commerce. It's the same thing, it
20 just has physical PTA nodes or PJM nodes that are
21 assigned to it and have a truckload of underlying
22 fundamentals behind them. So that's the part that
23 complicates it, but it's the exact same thing as
24 buying a pound of bananas and waiting for the price
25 to go up and sell it.

26

1 Q. So in the context of power trading,
2 perhaps it would be useful to use a concrete
3 example. So what kind of market fundamentals do you
4 look for, or can you give me a hypothetical that
5 would lead you to believe it would be a good idea or
6 there is a profit opportunity here and a way for me
7 to capitalize that is to use an up to congestion
8 transaction?

9 For example, if you saw an outage or you
10 suspected there might be an outage and you thought
11 that would affect the value of the spreads in an up
12 to congestion transaction, how would you use an up
13 to congestion transaction based on what you thought
14 was going to happen in the market?

15 MR. DEVANEY: And just for the record, I'm
16 going to object. The question is ambiguous,
17 compound and includes hypothetical.

18 Q. Do you understand my question?

19 A. Yes. It's a long question but can you
20 clarify exactly, you want a physical example of what
21 would make us, Black Oak, submit an up to
22 transaction?

23 Q. Yes, that's a much shorter way of putting
24 it.

25 A. Okay, One example would be a potential
26

1 weather pattern, where central PJM, it's raining,
2 and that rain is moving east, as it always does,
3 towards the Eastern coast. So we know it's raining
4 in the morning in the central PJM and in the
5 afternoon it is probably going to rain over on the
6 East coast.

7 So we could buy the general energy price is
8 going to be affected by the fact that one part of
9 PJM is under the clouds and there is less load, and
10 the other part is sunny so we could buy or
11 potentially try to buy an up to contract spread
12 between two points, from the western part of PJM to
13 the eastern part of PJM. An example would be south
14 import to P SEG zone, which is in New Jersey, to
15 cover that for the morning. So we think it's
16 potentially got a value of ten dollars, with south
17 import being thirty dollars, and PSEG being forty
18 dollars.

19 So the differential is, we think is, worth ten
20 dollars because we think in the spot market, or our
21 assumption in the real time market, it's going to
22 spread by more than that. So a bunch of factors
23 could cause it to spread more than that but our main
24 entrant in the decision is the weather pattern in
25 this example here, and come spot market, we see the

26

1 result of it. So if it's spreading by more than ten
2 dollars, you're making money and if not, you're
3 losing money. And you'll choose specific hours for
4 that specific strategy.

5 Q. As a market participant in PJM, what kind
6 of visibility do you have, in terms of being able to
7 see how other market participants are bidding or
8 using up to congestion transactions?

9 A. You have the visibility of, there's an
10 operation that needs to be done to put in an up to
11 transaction, you need to purchase an Oasis
12 transmission reservation that's going to define your
13 point of entry and your point of delivery. So an up
14 to transaction always has to have an interface,
15 which is on the fringe of PJM, what connects to PJM,
16 so something that interfaces with PJM.

17 There is, I think, 15 of those so you need to
18 define, to choose 1 of those interfaces as your
19 point A.

20 Q. Are those sometimes referred to as points
21 of receipt and points of delivery, or is that-

22 A. Yes.

23 Q. For pods?

24 A. Exactly. So your point of receipt is
25 going to be your interface, if you are going to PJM

26

1 and the opposite if you are coming out of PJM, and
2 you have to select your point of delivery. Now that
3 part is public information. The minute you submit
4 an Oasis transmission request, it becomes public
5 information through the PJM portal that everybody
6 has to use, to submit these type of up to
7 transactions or physical flows or you don't know
8 that specifically they are being used for up to
9 transactions. You can't tell that.

10 Q. Okay.

11 A. And they could be not used, even. But we
12 see what everybody from firms, transmission owners
13 to yearly transmission requests, everything is on
14 that portal, the PJM Oasis portal report. So you
15 can infer from that what other companies seem to be
16 doing on a daily basis but you can never confirm
17 that.

18 Q. Just to follow up on that. What kinds of
19 inferences can you make, or put it another way, what
20 would you look for in order to make the inference
21 that the transmission might be associated with up to
22 congestion transactions?

23 A. You would look for hourly non firm
24 reservations, which are the only type of
25 transmission that can be used for up to transaction
26

1 contracts, but can be used for other things also.
2 So you'll get your partial inference from there.

3 Q. Would the volume of transmission play a
4 role in being able to make that inference?

5 A. No, no.

6 Q. Are there any other factors that would
7 help you make that inference?

8 A. The market participant itself, if it's a
9 big utility or some company we've never heard of,
10 might help also in that inference. Because if it's
11 a, let's say you're a Duke Energy or even to some
12 extent, Black Oak Energy and we are flowing physical
13 power, we still need to buy non firm power.
14 Somebody you've never heard of. But you basically
15 have to be inquiring or doing research on that to
16 figure it out.

17 MR. TABACKMAN: Excuse me, I'm still
18 learning a lot of this stuff.

19 DIRECT EXAMINATION BY

20 MR. TABACKMAN

21 Q. Non firm power, when you refer to that,
22 what is it that you mean?

23 A. Non firm transmission.

24 Q. What is non firm transmission?

25 A. You're basically the first sucker on the
26

1 list that gets curtailed if there is an event. And
2 it goes up through firmness, the firmness
3 transmission that we need to request transmission to
4 move physical power and the firmness is a yearly
5 firm transmission. So you by allotments of
6 megawatts for the year on that transmission grid.
7 It's extremely expensive, so pretty much only the
8 utilities do it. And then you have different levels
9 that come down non firm, and then six, non firm
10 monthly, non firm yearly, non firm monthly, weekly
11 and all the way to hourly non firm, which is what we
12 purchase.

13 Now NERC, they use that to keep the lights on.

14 Q. Meaning what?

15 A. NERC's mandate is to keep, do you want to
16 answer?

17 MR. DEVANEY: No, I don't want to answer,
18 go ahead.

19 Q. They're mandated to keep the lights on.
20 Basically if there is an event where they need to
21 curtail the physical movement of power because as
22 stated initially, power doesn't go where you want it
23 to go, I stated that yesterday. It goes where it
24 needs to go. So power will flow on the grid,
25 usually to big city centers where there are

26

1 consumers. So you put a high tension here and then
2 a low tension, and the power is going to go there.
3 So NERC comes in and if there's a problem, there's a
4 danger that a line might, for lack of a better word,
5 fry because there's too much power coming over it or
6 there's too much power going on one line, let's say
7 to New York City and if that line were to trip or
8 something physical were to happen to it, you don't
9 have enough replacement power from other power lines
10 to come in. So they will start curtailing through
11 TLRs, transmission load reliefs, power flowing or
12 the real percentage of power flowing on that line,
13 and they will go through that schedule of
14 transmission firmness, as we called it, yearly firm,
15 all the way down to hourly non firm.
16 So the last ones to get cut is the most expensive
17 one, and the first one is hourly non firm.

18 Q. And you trade in, when you are making your
19 trades that you are trading on a daily basis, what
20 are you trading? Are you trading in non firm
21 transmissions?

22 A. Yes, yes, yes. But that's not a trade,
23 that's the tool to put in the trade.

24 Q. Right.

25 A. So basically you need to reserve
26

1 transmission where buyers of hourly and non firm
2 transmission. And for your specific question
3 earlier, up to congestion contracts need to buy
4 hourly non firm transmission, to be submitted, to
5 specify a POR and POD. Point of receipt, point of
6 delivery.

7 MS. SMOOTS: Would this be a good place to
8 take a break?

9 MR. TABACKMAN: We'll probably break for
10 lunch. Why don't we do that.

11 MR. HOPKIN: Yeah, that's just fine. Why
12 don't we say about an hour. We'll meet back here at
13 about five minutes after 1:00?

14 MS. SMOOTS: That would be great.

15 MR. HOPKIN: We're off the record.

16 (WHEREUPON, a break was taken.)

17

18 MR. HOPKIN: Lets go back on the record.

19 It's about ten minutes after 1:00 o'clock, okay.

20 DIRECT EXAMINATION BY

21 MR. HOPKIN

22 Q. Sir, are you familiar with a company
23 called Black Oak Capital?

24 A. Yes.

25 Q. Is that a company you are affiliated with?

26

1 A. Absolutely not.

2 Q. It has no connection with Black Oak Energy
3 LLC?

4 A. Absolutely no connection.

5 Q. When we left off we were starting to talk
6 about up to congestion transactions and we did cover
7 this a little bit. But I'm wondering if you can
8 take me through step by step, once you've decided
9 that you want to enter into an up to congestion
10 transaction, how you actually go about making that
11 happen?

12 A. Yes. Before we get into the answer, I had
13 a, you told me if I keep thinking of stuff during
14 the day, you want to bring it on the record. So my
15 direct supervisor at Semper Energy Trading's name
16 was Keith Shoemaker. I couldn't remember the first
17 name, he used to go by shoe, so Keith Shoemaker.

18 You have to have access to the PJM E Suite
19 interface, which we log on and we basically stay
20 logged on to that interface pretty much around the
21 clock, unless you get kicked out or their computer
22 boots down. So that's always up, you access it.

23 The first thing you have to do is access the
24 Oasis part of the E Suite interface and you go to
25 reserve a transmission Oasis for the corresponding
26

1 transaction or strategy that you are trying to bid
2 for or obtain. So you'll go on the website, the
3 Oasis, request. You'll select a path with an
4 interface. So coming in from somewhere or going out
5 to somewhere, which will be your POR, and you'll
6 choose your POD. You select the number of megawatts
7 that you're going to purchase, correspond with the
8 volume of the trade you want to put in, and you'll
9 select the number of hours for the period. Usually
10 it's for the next day, so any hour during the next
11 day or all the hours or any combination of. And you
12 hit submit and you get an answer immediately, within
13 a second or two if there was enough capacity for you
14 to obtain your request or not. So you're either
15 confirmed, could go in pending, but usually you get
16 a confirmed status on your Oasis request.

17 Now that gives you I think a seven or eight
18 digit number, which is the tracking number of that
19 Oasis request. You will go back into the E Suite
20 interface, select to settlement. In the pull down
21 menu you can do a physical spot, real time, or a to
22 settlement, so we select for an up to, to
23 settlement.

24 Q. I'm sorry could you say that again? To
25 settlement?

26

1 A. To settlement, so the next day ahead
2 transactions. So next day transactions, which are
3 what the up to transaction gets moved over into PJM
4 system. You will input the Oasis number, you will
5 put in the corresponding hours of your Oasis with
6 the volume, and there you decide what price you are
7 willing to bid or sell the spread that you are
8 trying to obtain.

9 Now you've got two pull down menus to select
10 your point of receipt or point of delivery. One is
11 fixed by the Oasis, so if you did a point of entry
12 to PJM with a specific point of delivery in the
13 example that we were talking about before, was PSEG,
14 the zone. You can not change PSEG anymore.

15 Q. Can you spell that for me?

16 A. P-S-E-G. Public service electric and gas.

17 Q. Okay.

18 MS. SMOOTS: It was just an example.

19 MR. TABACKMAN: And where is that?

20 A. New Jersey. We could use BG & E or
21 whatever utility you guys are familiar with, or get
22 a bill from here.

23 So you'll use an interface to put in the
24 transaction in E Suite. That interface doesn't have
25 to match the one that's on the Oasis. When you're
26

1 putting in the E Suite to settlement up to contract,
2 that's where you decide what's going to be your
3 interface that's going to be linked with the
4 specific delivery point that you have on your Oasis.
5 You hit submit, and everything has got to be done
6 before 12:00 a.m., and then it turns black and you
7 wait till 4:00 p.m. to see how much you are going to
8 get, if you obtained it for the price you were
9 bidding, then you get a result at 4:00 p.m..

10 MS. SMOOTS: Did you mean to say 12:00
11 p.m. or 12:00 a.m.?

12 A. Twelve noon, sorry.

13 MS. SMOOTS: P.M.?

14 A. P.M..

15 Q. I believe you mentioned this morning that
16 because Black Oak doesn't own generators or
17 transmission lines, things like that, that you don't
18 use up to transactions, up to congestion
19 transactions, to hedge risks the way other firms
20 might. Do you remember that?

21 A. Yes, I said, specifically I said that
22 we're not transferred or given a sitting position,
23 as a PSEG Energy or BG & E here, has to serve X
24 number of customers on a daily basis. We don't have
25 that, so that company might hedge or use other power
26

1 pools, NYMEX, et cetera, to trade but we don't have
2 that. That's what I said.

3 Q. And I believe you also indicated that you
4 may use it to hedge positions that you yourself
5 create. Do you remember that?

6 A. Yes.

7 Q. Can you give me an example of a position
8 for which you would use up to congestion
9 transactions to hedge?

10 A. Yes, you have a short position at PJM
11 western hub, which is a trading point in PJM, and a
12 long position in New York ISO.

13 Q. Okay.

14 A. And suddenly you need to cover, or you
15 want to move the length from New York ISO, the
16 megawatts that you're long there, and you want to
17 move them to PJM. We're talking financially.
18 Because one side is losing money and not the other,
19 and you might schedule on that up to, if you had a
20 separate up to congestion contract that was from
21 NYS, you'd have two positions coming in the end of
22 the day. You'd have NYS to BG & E, or western hub
23 in PJM, and you will physically flow the power. We
24 already bought the spread the day ahead, so all
25 you're doing is using that spread from, financially,
26

1 New York State to western hub in PJM, and you're
2 using it as basically a hedge.

3 Q. When you enter into an up to congestion
4 transaction, what kinds of market risk does the
5 transaction expose you to?

6 MR. DEVANEY: Objection, ambiguous. You
7 can answer.

8 A. What do you define as market risks?

9 Q. For example, is there, do you face a price
10 risk?

11 A. Yes.

12 Q. And can you describe the price risk for
13 me?

14 A. Well there are several price risks, where
15 the price you pay for it could be too much for that
16 spread. That's one price risk of it. The second,
17 very real risk also is regardless of the price you
18 paid, your spread reverses, so now the resulting
19 transaction is a loss in the spot market. So they
20 are all pricing risks, but you've got two components
21 to stand up to, day ahead and real time, so they
22 both pose different risks.

23 Q. Is it possible to arrange up to
24 transactions, such that they become offsetting, or
25 those risks disappear?
26

1 A. The pricing risks in the day ahead or the
2 spot?

3 Q. Let's take them in pieces. Is it possible
4 to alleviate or eliminate all together those risks,
5 by pairing or offsetting up to congestion
6 transactions, with reference to spot prices?

7 A. Yes, it would be possible, to my
8 knowledge, to do that.

9 Q. And how do you do that? Can you give me
10 an example of two transactions where that risk could
11 be eliminated?

12 A. A good example would probably be to
13 putting an off, a pure offsetting trade, to the
14 first ones. So you go one direction with one, from
15 South Import to BG & E and you do BG & E to South
16 Import on the second one. Now the result, if you
17 obtained both transactions, possibly, right now you
18 don't have any more price risk. You do have
19 submittal risk doing that though.

20 Q. Can you describe submittal risk for me,
21 what's that?

22 A. You might not obtain one of them.

23 DIRECT EXAMINATION BY

24 MR. TABACKMAN

25 Q. Assume that you do obtain both of them.

26

1 How would you make money off of that transaction?

2 A. You would not.

3 Q. Are there circumstances that are
4 available, in PJM where such a transaction would
5 enable someone to make money, or at least back in
6 June of 2010? Independent of the transaction
7 itself, independent of the two trades, was there
8 anything available in PJM that would allow a person
9 to make money on that transaction?

10 A. To my knowledge and from what I gather
11 from this proceeding, the issues here that I have
12 been made aware and the market stakeholder process,
13 the loss component, the reimbursement for losses for
14 those two transactions, could be potential,
15 something that could still make money. A small
16 amount, but it could. But that's not a guarantee
17 either, because you never know what that number is
18 going to be.

19 Q. You said that you became aware of that as
20 a result of this. When was the first time that you
21 became aware that, that was a possibility in PJM?

22 A. A possibility of?

23 Q. Of doing offsetting transactions and still
24 making a profit because of the loss allocation?

25 A. The end of July.

26

1 Q. End of July. And how did you become aware
2 of it?

3 MR. DEVANEY: End of July, 2010.

4 A. End of this summer. We became aware of
5 it, without any confirmations obviously, by trying
6 to figure out what was occurring in the market that
7 was preventing us from doing our own trading.

8 Q. Could you explain? What does that mean?

9 A. It means that we started seeing in the
10 beginning of the summer, probably before May even,
11 that when you were describing the initial process of
12 purchasing an Oasis. It's very repetitive and it's
13 a simple task. You go in and you select your POR
14 and the POD, and the system gives you the available
15 capacity for transmission between those two points.
16 Usually it's around 1,500 megawatts, it could be
17 2,000 megawatts.

18 And we started seeing, when you're purchasing
19 it, it gives you the available, the ATC, available
20 transmission capacity, and if you request 100, 200
21 megawatts, and you obtain it, well the ATC is going
22 to be reduced by that amount, so that 1,500 is now
23 1,300. And we started seeing that those ATCs were
24 going down pretty dramatically, and that leads you
25 to think or assume that somebody else is flowing a
26

1 hell of a lot of megawatts or using their Oasis for
2 up to's, or a bunch of different activities. And
3 until it affects you, you don't make much of it,
4 because there are some extremely big market players
5 in PJM and NEISO and that's about when we realized
6 that this growth of usage of capacity, which
7 culminated about mid July, started being a problem
8 for us.

9 Q. In what respect?

10 A. In the respect that we were not able to
11 trade anymore.

12 DIRECT BY MR.

13 HOPKIN

14 Q. What specifically was impeding your
15 trading, the lack of ATC?

16 A. Yes, and I'm just talking for up to
17 transactions. We could do all the other types of
18 financial transactions with the other ISOs et
19 cetera. But for up to transactions, or physical
20 flow, which also in our case required non firm
21 hourly transmission, the ATC was just going.

22 Q. Can you observe on Oasis or on any other
23 part of PJM's software, who it is that's taking
24 these large chunks of ATC?

25 A. Yes, after the fact, it's all public, as
26

1 we said. The minute Black Oak buys one megawatt of
2 transmission, we get assigned a transaction number
3 for that Oasis reservation. Everybody sees it.
4 It's a query, we see . . . every company does,
5 everything.

6 Q. Do any names stand out in your mind, as to
7 having used or taken up large amounts of ATC in
8 June, July of 2010?

9 A. Well like I said, you can query I think up
10 to 4,000 lines. I don't know how far that goes
11 back, but when it started becoming a problem for us,
12 that was mid to end of July, and so I don't have any
13 information on May or if presented Oasis's, I could
14 obviously tell after the fact.

15 Q. Right.

16 A. So from that period I recall having
17 queried it and looked at the volumes and one company
18 really stood out. Actually two or three companies,
19 but I only recall two names. But I think they have
20 the same operator or the same.

21 DIRECT EXAMINATION BY

22 MR. TABACKMAN

23 Q. And those are?

24 A. CU Fund, and Powhatan, I don't exactly
25 recall the name.

26

1 MR. HOPKIN: Powhatan?

2 A. Yes. I know it was something in Indian,
3 but, American Indian. And the reason we know that
4 is, in the Oasis it gives you the name of the person
5 that's submitting the request. And those names were
6 matching, so we figured it's a bunch of companies in
7 one office or one guy working for a bunch of
8 companies, but they seem to originate from that same
9 place.

10 Q. So you saw this problem, you're getting
11 shut out of the market, basically. What did you do
12 at that point?

13 A. Well we started questioning quite a bit
14 what was going on.

15 Q. And what does that mean, "Questioning",
16 how did you go about that?

17 A. Well the first thing is that segment of
18 the market, basically you almost can't operate in
19 anymore, because it used to be around, until noon,
20 until you were assuming your contracts, you can
21 still purchase Oasis. But now if you're not buying
22 and reserving your Oasis by 9:00 a.m., you're not
23 getting any.

24 Q. When you say now, you're talking about
25 what you were experiencing in July of this year?

26

1 A. Exactly.

2 Q. Okay, I just wanted to make sure that now
3 was a reference to what you were saying.

4 A. Yes, yes, yes, to the past, to the week
5 where we were leading up to, when we realized
6 possible patterns, et cetera, the initial question.

7 DIRECT EXAMINATION BY

8 MR. HOPKIN

9 Q. Would another way to frame that, you
10 described there as one of the risks of entering in
11 up to congestion transactions. I'm not sure if you
12 used the word acceptance risk, but that's what
13 sticks in my head. The risk that you would enter a
14 bid and it wouldn't be, it wouldn't clear or
15 wouldn't take.

16 A. Clear, yes.

17 Q. So what do you call that risk?

18 DIRECT EXAMINATION BY

19 MR. TABACKMAN

20 Q. Is that the submittal risk that you talked
21 about?

22 A. Yes.

23 DIRECT EXAMINATION BY

24 MR. HOPKIN

25 Q. Submittal risk? Okay, so is it fair to
26

1 say that submittal risk was increasing during this
2 time?

3 A. No.

4 Q. No? Okay.

5 A. Submittal risk for me, if that's the
6 proper word, I'll try to find another one, but
7 submittal risk because your question, when I brought
8 that up was for offsetting trades.

9 Q. Okay.

10 Q. And basically you come up with this
11 fantastic plan that you're going to have two
12 offsetting trades and they are going to cancel out,
13 and trying to collect losses, of some other thing
14 somewhere, that we're not aware of. We've got a
15 maximum price that we can bid or offer, which is
16 plus 50 or minus 50 dollars.

17 If we're doing this south import to BG & E,
18 that clears 60 dollars, you won't get the first part
19 of the south import to BG & E, now that happens
20 quite a bit, trust me. And the other side, you'll
21 probably end up with, which is the short, which is
22 BG & E to south import, and usually the part that
23 you get is the one that you didn't want to get, if
24 you didn't clear both. That's from trading
25 experience. So that the submittal clearing risk of
26

1 trying to leg in to a position through different
2 transactions.

3 DIRECT EXAMINATION BY

4 MR. TABACKMAN

5 Q. But that's a different problem then one
6 you were just describing-

7 A. Yes.

8 Q. Where you couldn't, you didn't have
9 capacity. By 9:00 o'clock in the morning you find
10 that you didn't have capacity?

11 A. There's no submittal risk, because there's
12 no submitting going on.

13 Q. Okay, and so what did you do when you
14 discovered that, which is where we were?

15 A. We started researching, trying to figure
16 out, in good french, what the hell we're missing.

17 Q. Okay, and so what did you do?

18 A. Well, the first thing is to try to figure
19 out where are the 40 or 50 thousand megawatts of
20 available capacity going. Who is using that, and
21 for what? Trying to figure out, that's public
22 information, let's look at what is going on in the
23 system.

24 Q. So what did you do?

25 A. We queried the Oasis.

26

1 Q. What was the nature of that query?

2 A. It basically gives you every reservation
3 of transmission request for the last 4,000 lines.

4 DIRECT EXAMINATION BY

5 MR. HOPKIN

6 Q. So, are you just looking for company
7 names, or -

8 A. Volume, where is it going? Remember I
9 stated that there is a POR and a POD? So I don't
10 care who is using it, I want to know why, or how,
11 and why before 9:00 a.m.. Is somebody moving a
12 state somewhere? Because that's the kind of power
13 we're talking about.

14 DIRECT EXAMINATION BY

15 MR. TABACKMAN

16 Q. A huge quantity of power?

17 A. Forty thousand megawatts, and we couldn't
18 figure out what was going on. So call us slow, or
19 slower, but after doing some research, we saw some
20 large chunks by one of these companies, the CU Fund,
21 and other, what seemed to be matching volumes, from
22 other entities.

23 DIRECT EXAMINATION BY

24 MR. TABACKMAN

25 Q. What's large in that context again?

26

1 A. Fifteen hundred megawatts.

2 Q. Okay.

3 A. Which would be the volume from one point
4 to the other. All the available capacity let's say
5 from Northern Interstate Power, NIPSCO Company to
6 PJM is probably 1,700 and they'd buy it all up.
7 It's a pull down menu where you've got all the
8 possibilities of interfaces going to PJM, and
9 there's 15 or 20 of them, and they'd start going
10 very quickly. First one would be 2,000 megawatts,
11 and it's gone. You go down the list and it's gone.
12 So, you'd see it being used and consumed in minutes.

13 Q. You say that you initially couldn't figure
14 it out, but then you did some more research. What
15 was the nature of that research?

16 A. Well we did research and a little bit of
17 testing. Once we found out that some companies
18 were doing quite a bit of volume, now you question
19 what's wrong with your trading, apart from it not
20 being easy. We can get in early, and try to
21 purchase Oasis also, early. You just have to come
22 up with your trading strategies earlier. So getting
23 in at 6:00 instead of 8:00, whatever. We can do
24 that. We tried to deduct from the POR, POD of these
25 companies, what they could have been using the

26

1 transmission for, and that's not an easy feat also.
2 But to answer the first question, the initial
3 question before these sub questions, is when we saw
4 this company, probably two, three days later into
5 what I'll call a test that we initiated, we saw
6 these companies around the 26th, maybe 25th of July,
7 doing exactly offsetting trades. What we think, we
8 don't have any proof, but what we suppose were
9 offsetting trades.

10 Q. What lead you to believe they were
11 offsetting trades?

12 A. Because within the same company or entity,
13 so you query by company or you query everything and
14 then you could go into one company. We could see
15 the CU Fund Company doing 1,500 megawatts or 5,000
16 megawatts from somewhere to a zone, and from that
17 zone back to anywhere. And like I said initially,
18 you can change the POR, POD, one of the two. So we
19 figured that for the longest time, from May on, we'd
20 sometimes see those transactions.

21 They don't make any sense to us. We're looking
22 at it and maybe they're going in and out of, there's
23 a bunch of reasons that people could have offsetting
24 trades, a lot. They could feel for one part of the
25 day it's okay to go one way, physically, and that

26

1 you don't bid a lot for it. You could say, I'm
2 willing to buy, I don't want to buy, bananas, but if
3 they are a nickel, I'll buy a truck load. And if
4 somebody pays me for it, I'll buy a train load. So
5 that could be like bidding strategies. We can't
6 figure it out. But to us there is a cost to submit
7 an up to transaction contract, which I have the
8 detail of that, it's 89 cents per megawatt that you
9 clear, or not, so you still have to buy the Oasis.

10 So regardless if you obtain the position or
11 not, there is a cost for that. So we can't figure
12 out what's going on. We're hypothizing (sic) that
13 maybe, I don't know if that's a word.

14 MS. SMOOTS: Hypothesizing.

15 A. Hypothesizing, I said it in French.

16 MS. SMOOTS: Okay.

17 A. That maybe they are funded by some
18 billionaire, and they've got vast amounts of money
19 to put into this market, we don't know. But I
20 remember having a reflection at the time, and
21 telling Michael Williams that I work with, that
22 eventually they will get a PJM bill and something is
23 going to happen. They'll get the same bill we get
24 and-

25 Q. Eighty nine cents a megawatt bill?

26

1 A. Yeah. Well, it's on your PJM bill and
2 that's one component. If you're putting 1,000
3 megawatts of up to, basically, up to transaction,
4 it's going to cost you 890 dollars.

5 Q. I just want to make sure I understood.

6 A. Yeah, absolutely. So it's going to cost
7 you 890 dollars, and if you're doing 10,000 of that,
8 well do the math till it's a million megawatts. So
9 we know there is a cost for that, there's always
10 been, I've been doing this. So we can't figure it
11 out, and the first month you look at it and you
12 think that when they get a bill, maybe the volume is
13 going to decrease quickly or somebody is going to
14 get fired or something is going to happen somewhere.
15 And we just didn't see that in that period.

16 DIRECT EXAMINATION BY

17 MR. HOPKIN

18 Q. Just to follow up, did you at the end of
19 the day, did you reach any conclusions as to what
20 people were doing? Or all you have are these
21 hypotheses or guesses? Do you have a firm idea now,
22 as you are sitting here today, as to what you think
23 these market participants were doing?

24 A. At first you said, "At the end of the day,
25 did we reach a conclusion?" You mean at the end of

26

1 the period of the 27th, or today? Right now I have
2 a different mindset than I had.

3 Q. Yeah, let me break it down. After you had
4 done your own investigating and testing, did you
5 reach any conclusions or have any firm ideas, as to
6 what the market participants were trying to
7 accomplish?

8 A. After we did our testing, yes.

9 Q. And can you describe those conclusions for
10 us?

11 A. That these companies were probably putting
12 in, don't have physical proof, but were probably
13 putting in those transactions for fee collection.

14 DIRECT EXAMINATION BY

15 MR. TABACKMAN

16 Q. Just one second. What did you do to test
17 it?

18 DIRECT EXAMINATION BY

19 MR. HOPKIN

20 Q. I'm sorry, can you read back the last, his
21 last answer?

22 COURT REPORTER: Probably putting in
23 those. Is this the right spot? Probably putting in
24 those transactions for fee collection.

25 Q. Okay, thank you.

26

1 Now when you say, "Fee collection", what are
2 you referring to?

3 A. Losses, the loss allocation redistribution
4 that occurs on non firm transmission up to
5 congestion contracts.

6 Q. Have you ever heard the phrase, marginal
7 loss surplus allocation?

8 A. Yes.

9 Q. Is that what you're referring to?

10 A. Yes.

11 Q. And we'll come back to that and talk about
12 that. You mentioned in the course of the last few
13 questions, that your firm engaged in some testing,
14 as part of trying to figure out what was going on in
15 the market place, correct?

16 A. Yes.

17 Q. Can you describe for me what that testing
18 was, how it worked, and just flesh that out for us?

19 A. Yes. Over the course of three days, we,
20 trying to figure out what's going on and basically
21 being prevented from putting in those transactions,
22 the up to congestion transactions, we put in
23 transactions with a low risk up to congestion
24 contracts, with low risk volatility, so spread
25 traits, to see exactly what's going on for it to
26

1 transpose to the bill, to see what the hell we're
2 missing. What is making these companies put tens of
3 thousands of megawatts on a daily basis, that
4 motivates them to keep on going and going, like
5 crazy.

6 So we submitted up to congestion contracts,
7 specifically to see what's going to be on our PJM
8 bill, or weekly invoice. So we did that for three
9 days.

10 The billing cycle at PJM is seven days, and we
11 did two tests over the period of, the transactions
12 were four days, but they were initiated in three
13 days. Because you do the transaction one day for
14 the next day. We did a wheel transaction and we
15 did, after two days, still researching and looking
16 at what other companies were doing, we put in a one
17 megawatt for one hour on one day, from when we,
18 that's that third day that we realized that,
19 researching, that companies might be doing
20 offsetting trades.

21 Then we had a thought, I had a thought, that
22 maybe if this is possible, we're not sure, they
23 could be not even putting in trades. So basically
24 putting in the same POR and POD. So we put one
25 megawatt from, and selected the same NYS to NYS

26

1 point in the E Suite.

2 Q. Sorry, what's NYS an acronym for?

3 A. It's the name of an interface, New York
4 Independent System Operator. But it's a point in
5 PJM, it's an interface, and that's what we did for I
6 believe it was hour ending 11, 1 megawatt. The
7 first day we did it, we messed it up and it didn't
8 go in properly, so we did it, to have it isolated on
9 a transmission, so for one hour, and so that was the
10 second part of the test.

11 Because you don't know if it's going to make it
12 through the system or not, and on the Friday the
13 23rd, if that's the 23rd? July, yes, yes. We, in
14 the afternoon, opened up the weekly report from PJM
15 and it was there. So it had transposed from E Suite
16 to our bill, our invoice.

17 Q. You say the weekly report. Are you
18 referring to the invoice?

19 A. Yeah, it's a report. They produce the
20 invoice on a monthly basis, the official invoice of
21 PJM, but you get reports on a monthly, a daily, a
22 weekly basis, sorry, that details your day's
23 activities.

24 Q. And what did you see?

25 A. We saw that one megawatt was in there as a
26

1 volume up to congestion contract, even if it was the
2 same POR and POD, which flabbergasted us.

3 Q. Why did that flabbergast you?

4 A. We don't understand why you could submit a
5 spread bid between nothing.

6 Q. On PJM's part?

7 A. We didn't understand why that was even a
8 possibility. To clarify that, some contracts, the
9 reason why we needed to do those tests, and to be
10 sure. First of all, we were trying to figure out
11 what's happening. We don't know, we can't tell and
12 nothing makes any sense any more.

13 Sometimes you will submit contracts and they
14 seem to have been submitted in the E Suite PJM
15 application, but they don't get accepted officially,
16 they are black, as I was discussing initially once
17 you submit, it comes up as a block, the megawatts
18 per hour. But then when you get either the weekly
19 report or the results at 4:00 p.m., they're not
20 there anymore, they didn't make it in. Which we
21 thought that was a very high likelihood, that if you
22 are spreading nothing, it probably wouldn't show up
23 anywhere. But sure enough, it showed up.

24 Q. Is it fair, and please correct me if I'm
25 mis-stating your testimony, is it fair to say that

26

1 your testing was more or less in the nature of
2 imitating in small volumes, or small transaction
3 sizes, what you were seeing other market
4 participants doing, and then just see what happened?
5 How the system handled it?

6 A. No, because we don't know what other
7 market participants are making. The only
8 information we have is from the Oasis, so we're
9 going on our best guess of, if they are doing an in
10 and out and then an out and in, or there is
11 something else that we're not aware, like energy, or
12 there is a type of transaction that's a really big
13 payoff that we don't understand. We are going with
14 our best guess, but we can't imitate, but the NYS,
15 NYS one Megawatt thing was a best guess of what
16 could be happening with these types of volume. So
17 we tested it, and we thought it was, actually the
18 word we used was, it's stupid, that it can make it
19 through the system.

20 Q. Can you give me a rough approximation, I
21 believe you mentioned Friday the 23rd. Do you
22 remember when exactly these three days were? If you
23 can't remember exactly, can you guess for me?

24 A. It's from the 21st to the 24th. Which if
25 that's a Saturday, somebody's got a Blackberry.

26

1 MR. TABACKMAN: Twenty third is a Friday.
2 Twenty fourth was a Sunday, wasn't it?

3 A. Okay, so the 24th was a Saturday that was
4 after trading, afternoon, so we already had the
5 Saturday part of the transaction in there. But we
6 saw the invoice, where the weekly bill, the Friday.
7 So that's our exact period.

8 Q. As a result of the testing you just
9 described, did your firm make any profits?

10 A. Profits from?

11 Q. The tests. Did the transactions that
12 constituted the test earn money for Black Oak?

13 A. Yes.

14 Q. Do you have a feel for how much money that
15 is?

16 A. Well the first feel we had was based off
17 of Joe Bowring's initial, the MMU's initial
18 presentation, and he was talking about a dollar
19 sixty. It's roughly 15,000 dollars that we thought,
20 and now it seems to be, after we got the monthly
21 bill it seems to be like low 20's. I don't have the
22 exact number, 20 something.

23 Q. Are the numbers you just gave, are those
24 net numbers, or are they-

25 A. Net numbers, yes. I could do that, but
26

1 they are the net numbers of the cost, with what we
2 think is the loss allocation.

3 Q. Did the testing that your firm engaged in,
4 did you take on any market risk as a result of the
5 testing? In other words, did engaging in these up
6 to congestion transactions subject Black Oak to any
7 adverse price movements or things like that?

8 MR. DEVANEY: Let me just jump in and ask
9 for some clarification. We've talked about
10 transactions, so let the record be clear about how
11 many transactions we're talking about and which
12 transactions you are focusing on specifically,
13 rather than lumping them all together.

14 MR. HOPKIN: Okay yeah, I'm trying to
15 focus and hopefully the record is clear, but I'll
16 just kind of re-ask that question.

17 Q. With specific reference to the up to
18 congestion transactions that were associated with
19 the testing your firm conducted in the middle to end
20 of July, did those transactions, were they subjected
21 to adverse price movements, price risk?

22 A. Absolutely, except the one megawatt from
23 NYS to NYS, because there basically wasn't a spread,
24 so. There shouldn't have been a transaction, but
25 yes.

26

1 Q. So where there's no spread, there is no
2 price risk?

3 A. Of course, you're buying and selling the
4 same thing, so you're not doing anything.

5 Q. I'm just trying to-

6 A. Yes, exactly. If you buy a car and sell
7 that car, you're still walking somewhere.

8 DIRECT EXAMINATION BY

9 MS. ROSENBLATT

10 Q. Further to Blair's question, I am also a
11 bit confused. You mentioned earlier the concept of
12 low risk volatility in connection with these trades
13 you did over the three day test period. Could you
14 explain what you meant by, "Low risk volatility"?

15 A. Yes. We, as we were discussing, a little
16 bit different risk parameters that are involved in
17 transactions. The pricing risk with the cap, you
18 don't know how much it's going to spread by on a day
19 ahead basis, and that could be over the bidding cap,
20 which is 50 dollars. So we were trying to find two
21 interfaces that would basically not have a high
22 likelihood for our test period of reversing on us
23 and making us lose. To do a test and figure out
24 what's going on, we don't want to lose a lot of
25 money, so we tried to find the narrowest, the lowest
26

1 volatility interfaces that we could find.

2 Historically, on a technical basis, this had a low
3 volatility risk.

4 Q. So the prices were not moving that much?
5 Is that what I understand?

6 A. Yeah.

7 Q. Low volatility?

8 A. They weren't moving that much, and very
9 much separated physically, which could garner
10 extreme fluctuations.

11 Q. So there was not a lot of spread between
12 those prices?

13 A. Exactly.

14 Q. Or a differential?

15 A. Yep.

16 Q. What prompted you to try and do
17 transactions with that specific attribute of low
18 risk volatility?

19 A. The test?

20 Q. Yes. Why that attribute? How did that
21 inform you of this mystery that you were trying to
22 uncover?

23 A. We need something to transpire to the
24 bill, that just for the . . . we need a transaction
25 that's financially not risky, to do our test, to
26

1 transpire to the bill. We don't want to lose
2 100,000 dollars, because we're trying to figure out
3 something. So you'll do it by small dollar
4 exposure, so you can obtain your answer, but you
5 don't want to be losing hundreds of thousands of
6 dollars while you are testing it. So what prompted
7 us to do it was really the daily inability that we
8 were starting to hit very harshly, where we couldn't
9 put in those types of transactions any more.

10 Q. Were you able to discover something from
11 the tests that involve the low risk volatility, that
12 is different from what you discovered from the one
13 megawatt test, at the plant where there was no
14 spread?

15 A. What we discovered from the one megawatt
16 test was that the input of those transactions needed
17 to be fixed. That shouldn't happen and we need to
18 do something about it, from that part.

19 With the other one, what we did discover was
20 once we saw the bill, the weekly report on that
21 Friday, was that what seemed to be the only intent
22 of these types of transactions or the volumes that
23 these other companies are doing, seems to be the
24 loss over collection. We kind of had, it was a
25 hypothesis among other things, that we could be
26

1 missing, but we didn't have any information of that
2 loss redistribution over collection, never since
3 this happened, that, that could be greater than the
4 cost of submitting the contract. For us it's always
5 a net cost. If you want to put in a transaction,
6 it's like trading stocks, you've got a fee per
7 trade, and that was our fee for trading.

8 DIRECT EXAMINATION BY

9 MR. TABACKMAN

10 Q. As I understand what you're saying, the
11 low risk volatility wasn't inherent in what you were
12 testing, it was just a way for you to keep from
13 losing a lot of money if you were wrong, one way or
14 the other-

15 A. Exactly.

16 Q. in your testing?

17 A. Exactly.

18 Q. What were the factors that were set up in
19 your test, that you were testing for? How did you
20 set up that test, what was that looking for?

21 Because I understand what the one megawatt test
22 was looking for. What were you looking for in the
23 other test?

24 A. We were looking for megawatts to
25 transpire, specific that didn't have congestion, not

26

1 congestion, but a high differential potential for
2 the spot market or the day ahead cost to it, so we
3 could keep the financial cost of that test extremely
4 low. We were looking for that to be transpired to
5 the bill, to see exactly what's going on. That's
6 the only way we'll figure out, unless these other
7 companies are getting paid by outside parties for
8 putting in these transactions. It's got to show up
9 somewhere.

10 Q. Did you think that they were engaged in
11 low risk volatility transactions? Is that what you
12 thought also?

13 A. Yes.

14 DIRECT EXAMINATION BY

15 MS. ROSENBLATT

16 Q. And these low risk volatility
17 transactions, were they-

18 A. What we were, sorry, hypothizing, (sic)
19 because we can't-

20 MR. TABACKMAN: Right.

21 A. There's no way to know, unless you're
22 sitting at their desk and looking at their screens,
23 or submitting, we can't tell exactly. So we're best
24 guess.

25 DIRECT EXAMINATION BY

26

1 MR. TABACKMAN

2 Q. What showed up on your bill, with respect
3 to your transactions, those low risk volatility
4 transactions?

5 A. That the cost of submitting the
6 transactions was 89 cents, and the average
7 reimbursement of fees was a dollar fifty something.

8 DIRECT EXAMINATION BY

9 MS. ROSENBLATT

10 Q. Just a couple points of clarification.
11 The eighty nine cents is associated with the
12 transmission reservation or the up to transaction
13 submission?

14 A. The transmission reservation. And, do we
15 have that schedule?

16 MS. SMOOTS: I do.

17 A. It's part of the information gathered to
18 come here. Sixty seven cents is the transmission.
19 Do you need to put a sticker and exhibit?

20 MR. HOPKIN: Yeah sure, let's put it in
21 the record.

22 (WHEREUPON, Exhibit 3 was marked for
23 identification.)

24 MS. SMOOTS: If you need more copies, I've
25 run a couple of extra. We didn't bring this for

26

1 purposes of creating an exhibit, although you're
2 welcome to do it. We brought it for illustrative
3 purposes, if it came up.

4 MR. HOPKIN: It's number three.

5 A. So 67 cents is the cost per megawatt of an
6 Oasis reservation charge and, unfortunately, I know
7 that this has been very misrepresented in the two
8 filings I read by the MMU mostly. Apparently it
9 does the math with the 67 cents, which is an error,
10 because the real cost of putting in one of those
11 transactions is 89 cents.

12 The reactive control and black start which is a
13 transmission access fee that contributes through the
14 cost of the grid, is 18 cents. And then you have
15 submittal charges, which are the market support,
16 which is four cents per megawatt, and the bid offer
17 segment, actually the six cents isn't in there. And
18 then we pay a fabulous penny per megawatt for the
19 MMU to monitor those transactions, but unfortunately
20 he was not monitoring.

21 Q. Thank you for this. Let me just ask my
22 second clarifying question which is, these low risk
23 volatility up to transactions, were they
24 transactions that reflected two points with low
25 volatility at each point? Or were they two
26

1 different transactions that were offsetting?

2 A. They were not the second one, the first
3 one. Two points, low volatility, between both
4 points, and we don't do offsetting trades.

5 Q. You do not do offsetting trades. Have you
6 ever done an offsetting trade?

7 A. No.

8 MS. ROSENBLATT: That's all I have.

9 DIRECT EXAMINATION BY

10 MR. HOPKIN

11 Q. Is there anything in connection with the
12 testing that you feel, the testing your firm
13 conducted, and what you are observing in the market
14 place at the time, that we haven't just talked
15 about, that you want to tell us?

16 A. How about the consequences of the test?

17 Q. Sure.

18 A. You asked me my state of mind in those
19 days and what we did after concluding our best
20 conclusion of what had transpired. When we realized
21 exactly what we thought was going on in the system,
22 that was, I call it, the capacity hoarding of Oasis,
23 and that it seemed to be just for the purpose in
24 good part, to us, as in not other people at trading
25 desks, but from our perspective, seemed to be for
26

1 collecting losses. We immediately curtailed in
2 those type of low volatility transactions,
3 immediately without any intervention or anything,
4 when we saw the result on our bill that this is just
5 for collecting losses, or from the loss over
6 collection. Before anything is public anywhere,
7 before MMU reports or produces something to go to
8 stakeholder process, or before anything, we, well
9 actually that Friday decided into then next Saturday
10 . . . we already had the final test, the final part
11 of the test, for this Saturday, because that gets
12 inputted before noon. So we trade for the next day.
13 That's just not what we do. We're proprietary
14 directional traders, or spread traders, we
15 participate in the market, we'll participate in
16 certain stakeholder processes and if our input is
17 requested, we'll participate. So we've been there,
18 and we plan to be there in the future. So we're
19 certainly not going to operate a business to collect
20 50 cents per megawatt and do ten million megawatts,
21 or however, twenty one million megawatts? So we
22 immediately ceased this, one. And two, start trying
23 to figure out what to do for not just . . . to get
24 this resolved. This can't be happening, not in our
25 market, it's a small market. It's big dollars, but
26

1 the number of companies operating in it isn't that
2 big. We pretty much know the interveners that
3 control the market, PJM, operate the market, like
4 PJM.

5 So we, after coming back from a week where Rene
6 was absent at first, and I was a couple of days, we
7 started discussing what to do with this. And that's
8 where we talked to counsel a little bit, and with
9 another company, Red Wolf Energy, we're discussing
10 . . . he seems to have, Wesley Allen, from Red Wolf,
11 seems to have the same understanding. Query the
12 Oasis, and seems to see the same stuff that we
13 discovered, and they were part of joint filings with
14 us in the past, to try to correct features of PJM or
15 New York ISO and other filings. So I have a
16 rapport, an outside basis with him, but that's it,
17 no trading rapport, nothing.

18 So we discuss or try to discuss, what could be
19 a potential outcome or solution to getting this
20 fixed. So we decided that we, our individual
21 companies, Red Wolf and Black Oak Energy, should
22 contact PJM, and make them aware that this crazy
23 stuff has been going on, because apparently nobody
24 seems to be aware of anything. And the capacity,
25 some companies are buying up all the capacity, and
26

1 the sole purpose and intent seems to be to collect
2 the loss over collection, the redistribution of the
3 loss over collection.

4 So what we did do was request a phone
5 conference with the President, Andy Ott, Andrew Ott
6 of PJM.

7 DIRECT EXAMINATION BY

8 MR. HOPKIN

9 Q. Can you put a time frame on this?

10 A. The third of August.

11 Q. Okay.

12 A. So we come out of the tests, we get our
13 results, we're out for a couple of days, and at the
14 end of the week we start organizing. This has to
15 stop. We still can't trade, or barely can put in
16 our up to's. You've got to get in pretty early.
17 The up to part of the transaction, we're basically
18 handicapped or hampered, and you've got to go quick.
19 So it's not how it used to be, or to my knowledge,
20 supposed to be.

21 MS. SMOOTS: Did you mean to say the Oasis
22 part of the transaction?

23 THE WITNESS: Yes. And we're only talking
24 about to type transactions, and physical flow.

25 A. So we contacted Andy Ott.

26

1 Q. "We", being you and-

2 A. And Red Wolf. We sent him an e-mail to
3 request a phone conference and he called us back
4 about 30 minutes later. He called Red Wolf and they
5 conferenced me in.

6 COURT REPORTER: How do you spell that
7 last name?

8 THE WITNESS: O-T-T. It's Andrew
9 something Ott, there's a letter in there.

10 A. So basically he's the President of
11 Operations of PJM, Mark probably met him. And we
12 told him that we had some grave concerns, that there
13 was something going on in the market. The
14 conversation lasted about ten minutes, and I'm the
15 one that did most of the talking. And I told him
16 that we were seeing extreme activity on the Oasis
17 purchasing site and our conclusion, and I also
18 mentioned that we had tested it, and our strong
19 conclusion is that these companies or a few
20 companies are potentially putting in these
21 transactions just for recouping losses. We went on
22 to say that, I know I said it quickly on the phone,
23 but I did mention that even some transactions can be
24 done at the same point, NYS and NYS, and that it
25 seems to be the sole intent of these transactions.

26

1 And we don't want to be lumped in, because we do
2 regular, non loss collecting whatever you can call
3 them, or off setting trades or something. We don't
4 want to be lumped in with companies of that sort.

5 Q. Why not?

6 A. Because we don't feel it's a business.
7 It's not supposed to happen. There shouldn't be a
8 negative fee for submitting of transactions, or
9 transaction.

10 Q. Did you have a concern at the time that it
11 may constitute a tariff violation or that it would
12 violate some other rule or regulation?

13 A. No. What I did have a concern at that
14 time was, it's no secret that the Market Monitor has
15 been wishing or trying to do away with financial
16 traders, or financial trades in his monitored
17 market, PJM's. And there is many proofs of that and
18 he put it in writing. So a year before, in his
19 state of the market, in numerous attempts he tried
20 to either eliminate spread bidding or up to
21 congestion contracts. Even went as far as to
22 eliminate financial INX and offers. Stated on the
23 record that it would be probably better for the
24 market if these transactions wouldn't be there.

25 Our response is there probably wouldn't be a
26

1 market if you didn't have a market any more, so you
2 probably don't need a Market Monitor also. So my
3 concern was that the Market Monitor would see these
4 bad apple companies that we don't want to be lumped
5 in, neither was Wes at Red Wolf, and use that to try
6 to gain his aim of getting rid of financial players
7 or strategies or trading strategies, like up to
8 congestion and INX Index. And I told Andy Ott
9 directly on the phone, and he had tried initially a
10 year before in his state of the market report to-

11 MS. SMOOTS: He being who?

12 THE WITNESS: Good point, the Market
13 Monitor.

14 A. He stated that up to congestion
15 transactions had to be imposed additional fees and
16 you had to curtail the nodes. Even if up to
17 congestion transactions had been in full use for 10
18 years now, he was still harping at it.

19 And that's what I told Andy Ott. I wasn't
20 afraid of a tariff violation and I still am having a
21 little difficulty of seeing it as a market
22 manipulation, an energy manipulation, but that
23 wasn't my prime concern.

24 He proceeded to thank us for calling him,
25 notifying him of that and appreciated that companies
26

1 were looking out for the system, not just our
2 pocket. But then informed us that they were aware
3 of it and this wasn't something new to them. They
4 were aware of it, they had been aware of it for some
5 time now. And he told us without getting into
6 privileged info, him and the Market Monitor had been
7 monitoring companies, and himself and the Market
8 Monitor had been calling specific companies to
9 notify them to stop this activity or, I don't know
10 exactly what his words were, but he told us that on
11 the phone and he thanked us again and that was it.

12 Q. During this phone call, did any specific
13 company names come up?

14 A. Not to my recollection.

15 Q. And you mentioned that this phone call was
16 initiated with an e-mail?

17 A. Yes.

18 Q. Do you know if you have retained a copy of
19 that e-mail?

20 A. Yes. I have the e-mail request, the
21 e-mail, I asked Wes to contact Andy Ott, and he sent
22 him an e-mail. It's basically a one liner, "Can we
23 please have a quick conference call to discuss an
24 issue?" We didn't get a response to the e-mail, we
25 just got a phone call, which Andy Ott can attest to.

26

1 MR. HOPKIN: All right, it's now about
2 2:15, let's go ahead and take a 15 minute break and
3 start up again at 2:30, and we'll go off the record.
4 (WHEREUPON, a break was taken.)

5 MR. HOPKIN: All right, we're back on the
6 record, it's about 2:40 or so. I believe Mr.
7 Tabackman had some questions he wanted to ask about
8 the testing we were discussing earlier.

9 DIRECT EXAMINATION BY

10 MR. TABACKMAN

11 Q. And it's just really to make sure that we
12 understand what piqued your curiosity or concern and
13 what you did. So I am trying in some respect to
14 give back to you, what I think we heard. Okay?

15 A. Yes.

16 Q. At some point in July, you began to
17 observe the fact that you couldn't get your up to
18 transactions onto Oasis, the reservation of
19 transmission. Is that correct? Capacity was being
20 eaten up.

21 A. Exactly. We started experiencing it,
22 observing we couldn't submit, for a better word,
23 yes.

24 Q. Well I want to be clear. Let me ask you
25 this. Was it simply the fact that you couldn't get
26

1 a reservation, because of lack of capacity being
2 eaten up? But was there something also about the
3 fact that the size of the transactions that you were
4 seeing, that was part of what piqued your concern?

5 A. Well curiosity and concern.

6 Q. I'm using those words interchangeably.

7 A. Which is very good. I just put more
8 emphasis, we were curious because of the inability
9 of trading in that segment. So it was more than
10 just curious to see what other people are doing or
11 how people are trading.

12 The size, for us, doesn't really come into
13 question. We are completely aware that Black Oak is
14 a small operation, Black Oak Energy, that we operate
15 within our means and that we are fully aware that
16 there are some very big cats out there. There are
17 some utilities that can buy several thousand
18 megawatts of capacity and there are some hedge funds
19 or even banks that can buy quite a bit and for them
20 it's a rounding error. For us, it's a business.

21 Q. I thought I heard you say that the fact
22 that all of this capacity was being - for lack of a
23 better word - eaten up, taken up, struck you as,
24 that it made no economic sense to you or was
25 something that you thought was strange, out of the
26

1 ordinary. I just want to make sure that we
2 understand that.

3 A. To complete my answer, the fact that one
4 company does a lot of volume, is not an issue, it's
5 never been for us. We see companies that have, the
6 constellation, could have 50 percent of the volume
7 for some period for past years, and that's just a
8 fact.

9 The fact that 100 percent of the ATC, the
10 available transmission capacity, disappears within a
11 matter of hours or minutes, because you're only
12 allowed to start purchasing Oasis I think at 8:00
13 a.m., within the Oasis interface on E Suite. Now
14 that is more than a concern, that's being a problem
15 for us and that will lead us to try to figure out
16 what the hell is going on. What's this being used
17 for? What do they know that we don't know?

18 Q. Why is someone or some number of entities
19 eating up all that capacity so quickly?

20 A. Yes.

21 Q. You also mentioned at some point, I want
22 to make sure we have this down, the PORs and the
23 PODs, did the fact that the capacity between
24 particular points, was that an element of it also?
25 In other words, the points where they were being
26

1 received and delivered? Or was it just the volume
2 in and of itself?

3 A. The volume was the primary inquiring
4 factor, if that's a good term. And then the use of
5 the volume, how it was used, POR POD wise, was
6 something else that we're discovering to this day,
7 seeing how Oasis reservations are being used by
8 other entities and how other companies are seeing
9 our Oasis reservations. So the volume of, the size
10 being used for a POR POD, if they match, as I stated
11 earlier, within the same company, for us that would
12 raise a flag.

13 Q. Because?

14 A. Because potentially as I stated earlier,
15 for us, Black Oak Energy knows that it costs 89
16 cents per megawatt to put in a transaction. If you
17 put in an offsetting transaction for something that
18 negates the financial risk, then you're out a dollar
19 seventy eight, per megawatt. If you do that on
20 100,000 megawatts in 1 day, which we saw, it's
21 starting to be a lot of money for different reasons
22 that companies could potentially use that.

23 If something occurs, they could decide to flow
24 on one of the paths, but because of the size now, if
25 something occurs as a potential hedge, seems to be
26

1 very expensive. And second, it's starting to be
2 something pretty damned big. It's like a state just
3 ran out of power, and you've got to take the power
4 from another state to bring it there. We're talking
5 10,000 megawatts.

6 Q. So it was the combination of the overall
7 amount of capacity that was being taken up and the
8 fact that there were offsetting transactions, that
9 cause you to want to - let me finish - caused you to
10 want to test to see what was happening? Those two
11 factors together?

12 A. As I stated earlier, the first one was the
13 volume of transactions, the second test of
14 offsetting was just to further research. Like I
15 said, there is 4,000 Oasis that come up when you
16 query it. You've got to go through every one of
17 them. You could narrow it down through company.
18 You have to know what you're looking at and we
19 don't. So my point is - if I just may finish this
20 part - seeing that they had matching, seemed to be a
21 source in sync, and an offsetting source in sync or
22 POR POD, just came later, which prompted us to do
23 the one megawatt, that netted a whopping dollar
24 eighty.

25 Q. Got it. So the low risk volatility test,
26

1 per se, not the one megawatt test, was really driven
2 by the fact that somebody was taking up a huge
3 amount of capacity. That was the principle
4 motivation for your beginning to look in to this and
5 see what was going on?

6 A. The low risk volatility that the three
7 transactions that we put in were for trying to
8 figure out . . . to see what's going to transpire to
9 the PJM invoice, or the weekly bill report. And the
10 one megawatt was after observing specifically that
11 CU Fund Company doing 1,500 megawatts from one point
12 to the other. We did that test, messed it up the
13 first day, it didn't go in. And then we officially
14 we got it to transpire to a bill. But this is
15 through in, through out the research, our testing,
16 to try to figure out what the hell's going on.

17 Q. Did you use the same paths in doing your
18 low risk volatility test? Not the one megawatt test
19 but the low risk volatility test, that you saw being
20 used in Oasis to eat up all this capacity?

21 A. Well.

22 Q. Or did you just choose two, to see what
23 would happen?

24 A. We don't know what other companies are
25 using. We can only know if companies are doing

26

1 offsetting trades. There's going to be one point
2 that's going to be used twice, a negative and a
3 positive, on that zone let's say CU Fund was using.
4 That we can tell. As stated earlier, we've never
5 done offsetting trades, or wash trades or whatever
6 they call them. We're never going to do that, so
7 no, we did not try to copy one of those
8 transactions.

9 What we did do, was come up with our testing
10 strategy, not strategy, find two low risk volatility
11 points, without putting half a million dollars at
12 risk or a lot of money to come up with answers. Try
13 to figure out what all these . . . apparently
14 companies know that must be generating quite a bit
15 of money because they keep doing it on a monthly
16 basis, monthly monthly, and to the clip that we
17 can't do our business, that part of the business,
18 anymore. So it came later.

19 Q. I'm sorry?

20 A. So the one megawatt part of the test came
21 at the end of the test.

22 Q. I guess what I was trying to make sure
23 that we understood is, what your choosing the two
24 low risk volatility points told you, allowed you to
25 see, or confirmed to you, if that's the better word.

26

1 A. Yes.

2 Q. About your suspicions on what other people
3 were doing. How did your choice of two low risk
4 volatility points confirm to you what these other
5 folks were doing in the market?

6 A. Basically open up the weekly bill from
7 PJM, the weekly report, and you see that those low
8 risk volatility trades that shouldn't, unless
9 there's a big problem somewhere, shouldn't reverse
10 on you. So they don't have that high of a risk to
11 flip or to be money losers or money generators,
12 because that's not what we're looking for. When
13 they transpired to the bill we saw that there was
14 positive, and this is like three days later, we see
15 on that weekly report, we see that the net cost of
16 putting that transaction in is a positive. You get
17 paid to put it in.

18 Q. Because of the loss surplus? The surplus
19 loss allocation.

20 A. Exactly. So we pay 89 cents, and they
21 gave us back a buck sixty, or something.

22 Q. Okay.

23 A. Or two dollars, in some hours even three
24 dollars on specific hours, because they break it
25 down per hour.

26

1 DIRECT EXAMINATION BY

2 MR. HOPKIN

3 Q. You just talked about having, that there
4 was a low risk of an adverse price movement or a
5 positive price movement or a profitable price
6 movement. What probability would you assign to that
7 risk?

8 A. Low.

9 Q. Ten percent?

10 A. The probability, you have to give me a
11 range of, 10 percent of what? Ten percent of
12 chances of making or losing or?

13 Q. Sure, let me try and reframe it. What
14 percentage chance would you say exists that you
15 would have an adverse price movement, when you
16 entered into one of these low volatility up to
17 congestion transactions.

18 A. Very low percentage, an adverse price
19 movement in the real time spread. I don't have the
20 specific volatility of those points, PJM has them.
21 What I do have through technical analysis, past
22 tense analysis, was those points that we used, the
23 two interfaces, spread every month for the last year
24 that we looked at. Unfortunately, sometimes they
25 spread very big, but it was on specific occurrences

26

1 that we didn't feel would be reproduced in the
2 market.

3 It could have been a nuke outage or a big
4 transmission flow, or a TLR, transmission load
5 release, that occurred that caused that
6 differential. But we hadn't seen those big
7 differentials within those interfaces for a couple
8 of months, at least.

9 DIRECT EXAMINATION BY

10 MS. ROSENBLATT

11 Q. Mr. Picard, may I ask you, if I understand
12 you correctly that because of the low volatility and
13 the low spread, that when you received back the
14 settlement from PJM you were able to isolate the
15 profitability as other than the transaction itself?

16 A. Completely.

17 Q. And that was the purpose of the low
18 spread, low volatility, was to see is this
19 profitable for a reason, other than the spread of
20 the transaction that you submitted? For
21 profitability other than the transaction itself?

22 A. And is there another component, is there
23 anything else, is there an additional revenue? Is
24 there something that we're clearly missing, that
25 other companies aren't? Yes.

26

1 Q. And so when you received back the
2 settlement document, what did you see on the
3 document that PJM gave you, that allowed you to
4 define or derive that the profit was coming from the
5 transmission reservation and loss allocation?

6 A. We see a column with a low . . . we've
7 broken it down for that specific transaction. You
8 see that you have a cost per hour and there is
9 another column on the PJM bill, there's about 500 of
10 those. And then there's a column that states the
11 revenue, the loss allocation rebate allotted per
12 megawatt that you cleared on that transaction. So
13 we know that it costs 89 cents and if we break it
14 down, the allocation for that transaction, we see
15 that it's more than 89 cents.

16 Q. You've submitted up to transactions in the
17 past at other points, correct?

18 A. Yes.

19 Q. What was it about those other up to
20 transactions that did not allow you to see the
21 credit on the transmission reservation?

22 A. Two or three things. One, you've got to
23 be pretty savvy accounting wise, to go break it down
24 per megawatt, per transaction, per hour and reverse
25 engineer back to the cost. And unfortunately we're

26

1 not that savvy. The PJM bill is extremely
2 complicated and unless you are gunning or really
3 trying to research a specific cost per megawatt or
4 an allocation or surplus allocation, you have to
5 willingly try to figure that out.

6 The other part is, when we submit transactions
7 for up to congestion, you don't know how much you're
8 going to clear. You don't know, you might be
9 bidding for 100 megawatts and you'll obtain 23 price
10 wise. You still have a cost for 100 megawatts. So
11 all I knew, and all we know, accounting wise, on a
12 monthly basis, we pay - and those aren't real
13 numbers, - we'll pay 100,000 dollars of Oasis, or
14 50,000 dollars of Oasis transmission charge per
15 month, and we'll get a rebate loss allocation of
16 15,000 dollars, on average. That's what I know.
17 We're not making money with this, we're buying more
18 transmission, we're buying non firm transmission as
19 a company and we're not getting rebated more than
20 what we're buying.

21 Q. If I understand you correctly, you're
22 telling me typically you can't see that the rebate
23 or the allocation is greater than the cost of the
24 transmission reservation, but you could on this
25 particular transaction. And I'm just trying to
26

1 understand why this particular transaction allowed
2 you to visualize that?

3 A. Because we have to break it down. We
4 could have done the same math if we have I guess
5 information that would tell us to go do that. To
6 see how many megawatts of transmission we bought.
7 We buy a lot for the up to parts of non firm
8 transmission. Okay, that's one part. So let's say
9 that's 50,000 dollars. How many did you clear? How
10 many did you obtain with your bids in the per
11 contract that you submit? Now that's a completely
12 different number.

13 And then how many that you got a rebate for.
14 Now this is all nice and easy, when it's presented
15 like this, but it's really not, when you're in front
16 of the PJM bill.

17 Another part that they don't mention in the MMU
18 tariff filing or objection to the tariff filing.

19 MS. SMOOTS: Protest.

20 A. Protest, sorry. Is off peak, so the other
21 hours . . . on peak is earning 8:00, so from 7:01 to
22 11:00 at night, so 2300, we are talking military
23 time. So an hour 8 to hour 23, that's peak. The
24 other hours, the surplus loss allocation, is almost
25 nothing. It could be like twenty five cents,
26

1 instead of a dollar fifty. So you're not making a
2 profit with that.

3 We do trades off peak and on peak, so what we
4 have is a global number. We know if we made or lost
5 money but to break it down per megawatt, per
6 transaction, per hour, of the day, and to figure out
7 which transactions a profit for a fee is not
8 something that we do for a living.

9 DIRECT EXAMINATION BY

10 MR. TABACKMAN

11 Q. But here you had particular transactions
12 that you were looking for?

13 A. We were trying to figure it out for real,
14 because we couldn't, as I said, we don't do that for
15 a living. But we couldn't do that part for a living
16 either. We can't do up to trades any more. So now
17 we're trying to figure out what the hell is going
18 on. Why is this? We can't put in those
19 transactions. What do these companies know? Is
20 there an additional revenue or something that can
21 occur that they obviously know, they obviously
22 experienced it, because they keep doing it. What
23 are we missing?

24 Q. You said that you picked these low risk
25 volatility transactions, because you wouldn't lose a

26

1 lot of money and it allowed you to do the test.
2 Were these transactions more than one megawatt?
3 These test transactions?

4 A. Yes.

5 Q. Why did you do more than one megawatt on
6 these test transactions, but not the other test
7 transaction?

8 A. We just put in like regular volume that we
9 do on low risk volatility transactions with a
10 specific block of hours. It was 250, 250 megawatts
11 for one specific date, 500 for 2 other days, and
12 that's what we kept at the specific block, so we
13 could isolate that volume on the bill. So it wasn't
14 partially cleared or like other transactions that we
15 have. Like I said, it's a bidding process, so you
16 don't, even if we bid 400 megawatts or 300 megawatts
17 of south import to BG & E on high low days, because
18 it gets very constrained here, you might only clear
19 15 megawatts or 250 megawatts and it's going to vary
20 per hour.

21 Now this being a low volatility, we knew that
22 if we bid a couple dollars or something, we'd clear
23 the volume. We expected it and it did happen, it
24 did occur.

25 Q. Was there any reason that you couldn't use
26

1 one megawatt for the test in this particular case?

2 A. No. The one megawatt was just, we carved
3 it out of, the way we did the test was we purchased
4 Oasis. And by the way, when we were doing the test,
5 we don't know the outcome. We don't know, we're
6 starting to have a few ideas of what it could be or
7 hypotheses, but we don't know till we see the bill.
8 And so for us it's regular transactions in similar
9 volume to what we do. We submit that contract and
10 we carve out one megawatt for one hour, just to
11 submit the NYS, NYS, just to do a submittal test.

12 Q. For reservation?

13 A. No, no, for an up to congestion contract.

14 Q. So the one megawatt was a different test
15 than-

16 A. There was two tests. There was the low
17 volatility test and the one megawatt of NYS, NYS
18 which was the same point. Which, to this day, I
19 believe shouldn't be a transaction. Which is why we
20 reported it to PJM. It should not make the run.

21 Q. If you had in this test on the low risk
22 volatility nodes, if you had used only one megawatt,
23 would you have been able to discern the same
24 information that you did from the amounts that you
25 actually did submit?

26

1 A. Yes.

2 Q. So why did you not just use one megawatt?
3 Why did you use more than 1 megawatt?

4 A. It's our daily volume. We were trying to
5 figure out something and it's similar volumes that
6 we use risk wise. Now, low volatility doesn't mean
7 that you're not going to lose money or not going to
8 make money, and we still have to report profits and
9 losses. So if, to put it in perspective, if your
10 bidding 50 dollars for 100 megawatts of south import
11 to BG and E, because it's going to be extremely hot
12 that day, and you expect to make money on that
13 transaction. You do 10 hours and that's 50,000
14 dollars on that specific play. Now, that's our main
15 metric. It's the only thing we have to consider
16 value at risk or what you are going to be putting
17 out in the market. If nothing comes in, then that
18 spread comes back in at zero. You've lost 50,000
19 dollars. So the value at risk, the summation of
20 what we're willing or have a feel for, varies daily
21 with everything, weather and conditions, what we've
22 been seeing in the past, how successful we've been
23 in the past or not. That will come into account, to
24 how much you are willing to bid. So what we adjust
25 is how much money we think we could be exposed to
26

1 the market for the next day. The summation of the
2 different markets as a company, that's the decision
3 that I make. We want enough exposure, not that
4 much, or we should curtail, because it's not been
5 good so far, for a while.

6 So the reason that was 500 or 250, was we were
7 bidding just dollars for it. So it adds up to 5,000
8 dollars at the end. We're not going to do a play
9 where a spread strategy for a test that's going to
10 be 50,000 dollars, or 100,000 dollars, because we
11 don't have that kind of money.

12 MS. ROSENBLATT: Okay.

13 MR. HOPKIN: I just have one more, well two
14 more follow up questions along those lines.

15 DIRECT EXAMINATION BY

16 MY HOPKIN

17 Q. You indicated that the activity you were
18 observing, that was eating up the available
19 transmission capacity, disrupted your trading,
20 correct?

21 A. The up to congestion part of the trading
22 and the physical flow, yes.

23 Q. Can you describe for me how it was
24 disruptive to your trading? Did it completely
25 impede your ability to trade?

26

1 A. On a couple of specific days, yes. When
2 you realize that there is no more capacity left, I
3 don't care how much planning you've been doing,
4 you're not going to be putting in anything for the
5 next day. So that's when you start adjusting to
6 when you are going to come in or start purchasing
7 capacity. And there is a little bit of normalcy in
8 that, where volume will increase a physical flow in
9 up to type transactions. So the summation, the two
10 that use non firm hourly transmission based on load,
11 you won't have the same volume of physical flow if
12 the total PJM load is 100,000 megawatts, as is a
13 super peak day, and it's 150,000 megawatts.

14 Q. Is it fair to say that the activity you
15 observed cost your firm money?

16 A. Yes.

17 Q. Can you put a dollar amount on that for
18 me?

19 A. I'd love to, but the only thing I can say
20 is the value at risk we were willing to commit would
21 probably have been between 25 to 50 thousand dollars
22 per day. That's the value at risk, that's the only
23 part I can comment on.

24 Now after that, did you bid enough, would you
25 have cleared it and would you have obtained the
26

1 position? Would it have made money? Those are all
2 factors that's Monday morning quarterback. I could
3 say it cost us a million dollars or it saved us
4 money, because we would have lost money. But I can
5 only comment on our internal value at risk.
6 Specific spreads or strategies that we were trying
7 to submit through the up to congestion methodology,
8 which we couldn't do for those couple days.

9 DIRECT EXAMINATION BY

10 MS. ROSENBLATT

11 Q. So the cost was lost profits? Potential
12 lost profits?

13 A. Or it could also be it saved us money,
14 because we didn't lose. Or it could also be it
15 purely saved us money, because we didn't know and we
16 didn't pay the 89 cents. We didn't know that this
17 was supposed to be, with the way it was operating it
18 was going to be a positive. So we could say that we
19 lost on over a collection. But that's not what we
20 do.

21 DIRECT EXAMINATION BY

22 MR. HOPKIN

23 Q. In terms of the impact of this activity on
24 your normal trading operations, that's what I'm
25 trying to get at. Understanding that, that was a
26

1 test and so forth.

2 A. Yes. The other part to that answer is the
3 time, apart from being here today in all this.

4 MS. SMOOTS: Which we all enjoy.

5 MR. HOPKIN: At least it's not your
6 birthday.

7 THE WITNESS: Yeah, I love this city.

8 A. But the time you waste, our business is
9 not to watch what other people's business is. You
10 don't make money like that and you play catch up.
11 It's like people that trade like Warren Buffet did
12 last semester, he's moved on and you haven't yet.
13 So we don't do that. So the time and the energy
14 that you have to put to try to figure this out. So
15 that has a financial cost also. A big waste of time
16 for hopefully a resolution at the end, where this
17 will stop.

18 Q. Is it fair to say that other market
19 participants in your opinion were also impacted,
20 companies such as Red Wolf and so forth?

21 MR. DEVANEY: Objection, calls for
22 speculation, lack of foundation.

23 Q. I'm asking for your opinion. I'm sorry,
24 what was your answer to that?

25 A. I will speculate yes. I don't know
26

1 exactly what their businesses are. What I do know
2 is, or have heard through the market participant
3 that companies like ours were not the only company
4 or the only two companies that were cited as
5 complaining of the lack of available transmission
6 capacity. But I don't know if it affected them or
7 not, or if they got up at 6:00. I don't know.

8 Q. At this point, we did want to ask on the
9 record, we're interested in obtaining records of the
10 transactions that supported the testing we've been
11 talking about. And we'll follow that up with a
12 written request, but to get the ball rolling, we
13 wanted to make that request on the record.

14 MS. SMOOTS: But we'll receive a formal
15 notice of what it is you specifically want?

16 MR. HOPKIN: Yes, we'll follow it up with
17 an e-mail or some other written format, but yeah,
18 the trading records that constitute the testing
19 litigation that we've been talking about today.

20 MS. ROSENBLATT: You'll receive from us on
21 Monday some details about the format that we would
22 like the information in. The idea of telling you
23 now is to give you notice that the response date has
24 already started to tick.

25 MR. DEVANEY: It's Monday.
26

1 MS. ROSENBLATT: The response date is not
2 Monday. I think it's fair to give you, please tell
3 us, is a week enough time? A week from Monday?

4 MS. SMOOTS: I think so.

5 THE WITNESS: Absolutely, and-

6 MS. SMOOTS: Yeah, we can do that.

7 THE WITNESS: Can we tell you the format
8 that it would be easy to be in? It was Excel in a
9 spread, with the details per hour.

10 MS. ROSENBLATT: One of us will call Carol
11 on Monday, and discuss that and then send an e-mail
12 about how we are planning on receiving it. The idea
13 is to get you to start working on it.

14 THE WITNESS: Perfect.

15 MS. SMOOTS: He's just asking if a
16 particular format will work. So that he can start
17 on-

18 THE WITNESS: We report on basically Excel
19 and it's broken down per file, so we can-

20 MR. HOPKIN: Our technical people are
21 nodding yes, that, that's . . . Excel-

22 THE WITNESS: Yes, and we actually can
23 transpose . . . PJM comes into Excel S format, so we
24 can transpose information and not manipulate, but
25 convert it to our format.

26

1 MR. HOPKIN: You don't want to use that
2 word.

3 THE WITNESS: No.

4 DIRECT EXAMINATION BY

5 MR. HOPKIN

6 Q. I want to talk a little bit about
7 relationships you may have with other people in the
8 industry. Did you ever communicate with other
9 traders aside from Mr. Allen at Red Wolf? Anything
10 about what you were observing about these up to
11 congestion transactions in June and July?

12 A. There's one other, two other companies,
13 short conversations. City Power Marketing and one
14 company contacted me, Twin Cities Power Generation,
15 Rob Scovo, to ask me if we knew what was going on,
16 where all this capacity was going.

17 Q. And what did you tell them?

18 A. At the time I told them I didn't know.

19 COURT REPORTER: That would be Rob
20 something or other?

21 THE WITNESS: Scovo, S-C-O-V-O, I think.

22 Q. Have you heard of a company called SESCO
23 Enterprises LLC?

24 A. Absolutely, yes.

25 Q. And do you know anyone there?

26

1 A. I know a few people there.

2 Q. And have you talked to them about this
3 issue?

4 A. Not directly, no.

5 Q. Okay.

6 A. We spoke on a conference call, but that's
7 it, regarding PJM meeting days.

8 Q. And you mentioned that one of the
9 companies that you associated with the unusual
10 activity you observed was the CU Fund. Is that
11 right?

12 A. You mean I attributed those unusual
13 activities to them?

14 Q. Yes.

15 A. Yes.

16 Q. Did you ever talk to anyone at that firm?

17 A. No.

18 Q. How about a firm that goes by the name Met
19 MA, or M-E-T M-A LLC. Have you ever heard of that
20 firm?

21 A. I think I saw the name in the PJM roster,
22 but I never talked to anybody there.

23 Q. Do you know who Allen K. Wolf is?

24 A. Yes.

25 Q. Who is he?

26

1 A. A former working colleague, that I think
2 we used to work for a short while at Allegheny
3 Energy together. He is at Cam Energy. I don't know
4 if the name of the company changed. I never spoke
5 to him about this. We had a joint, on this, a joint
6 filing with PJM. Some of the companies are listing
7 are in there, so there was a conference call with
8 the attorney to discuss the joint filing, but I
9 didn't have direct conversations with any of these
10 people.

11 Q. Along those same lines, have you heard of
12 a firm called Dyon Energy LLC? It's spelled
13 D-Y-O-N?

14 A. Yes.

15 Q. Am I pronouncing that correctly?

16 A. Yeah. To me it always seemed like a
17 French name, Dyon, like that singer. I couldn't
18 figure out where that name came from. But I'm
19 familiar with that company also, and Carol can
20 probably tell me if they were joint filers in other
21 proceedings with us or not. I don't know.

22 MS. SMOOTS: They have been.

23 A. There's a list of like 15 companies, so.

24 Q. Okay.

25 MS. SMOOTS: I represent a lot of the
26

1 companies in this sector, on any particular filing
2 some of them may be together, and some of them may
3 not be.

4 Q. Okay.

5 THE WITNESS: If we've got joint
6 interests.

7 Q. Just so my line of questioning is clear,
8 what I'm interested in knowing is whether or not
9 you've communicated with anyone at the firms that
10 we're going through about any of these, about the up
11 to congestion transactions.

12 A. The three conversations we did have was
13 the three stated. Red Wolf Energy, Wes. I was
14 contacted by Twin Cities, Rob Scovo.

15 Q. Okay.

16 A. And the other one was City Par Marketing,
17 I think was Sean Sheehan, I think his name. But
18 none of the other companies you've been going
19 through.

20 Q. Do you know who Stephen-

21 MS. SMOOTS: I think that might be a
22 mistake.

23 THE WITNESS Sean Sheehan?

24 MS. SMOOTS: Yeah.

25 THE WITNESS: Okay.

26

1 MS. SMOOTS: Not with that company.

2 THE WITNESS: That's Steve Tsingas?

3 Q. Have you heard of a company called Coal
4 Train?

5 A. Yes.

6 Q. Do you know if Sean Sheehan works for Coal
7 Train?

8 A. Unfortunately, I'd have to look at the
9 Oasis list or the PJM roster to know, because
10 there's so many, and I'm bad for names. There's so
11 many companies, and I don't know who works where or,
12 I don't know if he works there or not.

13 Q. Have you ever heard of a company called
14 Oceanside Power?

15 A. No.

16 Q. Do you know if Rob Scovo is affiliated
17 with that firm at all?

18 A. I thought he worked for Twin Cities Power,
19 but I've never heard of that company.

20 Q. And lastly have you heard of a company
21 called Powhatan? We discussed them a little bit
22 earlier.

23 A. Through the Oasis reservation. Never had
24 contact with them, but that's where I found the
25 name. That's where I saw the name, Powhatan.

26

1 Q. You mentioned the Twin Cities Power
2 through Rob Scovo, you communicated about this issue
3 with him, correct?

4 A. He communicated with me, yes.

5 Q. He called you?

6 A. IM, instant messenger, he sent me an
7 instant messenger.

8 Q. Do you know what his IM handle is?

9 A. No, it's automatic, it's R Scovo
10 something, but I could call home, I mean at the
11 office and get it in 2 seconds, but no.

12 Q. Do you remember when he contacted you?

13 A. Yes, I remember, because we were smack in
14 the middle of not being able to purchase Oasis. So
15 it was that week of the 20th of, between the 21st
16 and 25th. The initial contact that I had with him.

17 MR. TABACKMAN: Of July?

18 A. Yes, sorry. And he asked us if we knew
19 what was going on. My flat answer was no.

20 Q. Was that the full extent of the
21 conversation?

22 A. That was pretty much it, and there was a
23 follow up on that Saturday morning, where he was on
24 line again. Fortunately power works seven days a
25 week, so we were both working.

26

1 Q. Okay.

2 A. And I recall briefly talking to him,
3 saying, "I know you asked a couple of days ago, and
4 what we think - because the capacity was going
5 again, like super quickly on that Saturday morning -
6 so we think these companies are doing these types of
7 things to collect fees." And he said, "What fees?",
8 and I said, "The fees from the filing, they're joint
9 filers with us, or support filers for the loss
10 allocation redistribution to the virtual segment. I
11 said, 'those fees'". And-

12 Q. This is all on IM?

13 A. Yes.

14 Q. Okay.

15 A. With Twin Cities, yes. Then he said,
16 "What are you going to do about it?" And I said,
17 "We're probably going to get it to stop, we're going
18 to contact PJM or the MMU." I remember his response
19 was, "Don't you think you should contact these
20 companies first?" And I said, "It's not my job."
21 And that was it.

22 Q. Do you know if you have a record of that
23 instant message conversation?

24 A. Because this was from my computer at home,
25 I don't know, I can look, but I don't know if I have

26

1 it.

2 Q. Do you recall what program you were using?

3 A. Instant Messenger, AIM. That's the only
4 one I have.

5 Q. For work or business?

6 A. At work, where they get saved at work.
7 But basically because I was working from home, yeah.
8 I think my wife has MSN on it. It's the family
9 computer, so with camera and all that family stuff.

10 Q. Right.

11 DIRECT EXAMINATION BY

12 MR. TABACKMAN

13 Q. Do you recall the approximate time that
14 you had your conversation with whomever it was you
15 spoke with from City Power? You said there was
16 somebody from City Power-

17 A. Oh yeah, okay, I wanted to make sure that
18 we were in the same conversation. I don't recall,
19 it was after work and that was a phone conversation.

20 Q. Was that also in this July time frame, or-

21 A. Yes.

22 Q. During your testing, or after? What was
23 the context with the call, from the person from
24 City, that you called City Power and spoke with that
25 person?

26

1 A. That was.

2 Q. Why did you call that person or contact
3 that person?

4 A. I say City Power, I'd have to verify, I'm
5 pretty sure it's City Power Marketing. I basically
6 called the, it's a person I had met at a PJM meeting
7 or general filing, and when you query the Oasis, it
8 puts the name of the person requesting the Oasis
9 capacity. And-

10 DIRECT EXAMINATION BY

11 MR HOPKIN

12 Q. Is this person Steven Tsingas?

13 A. I think it is.

14 Q. Okay.

15 A. And the number to contact. So usually
16 it's an emergency number, because it's transmission
17 or it's 24 hours a day, so they need to be able to
18 contact them.

19 So I called that number and his cell phone
20 picked up, and I remember a very short conversation
21 again. And I asked about the volume or have you
22 guys, what's going on? Why is the volume, and are
23 you guys seeing the volume disappear like this, on
24 those transactions again, like we were seeing? And
25 his answer was, "Yes, and we think that other

26

1 companies might be doing inappropriate type of
2 trades, and-

3 Q. He said that to you, or you said-

4 A. He said that to me. "But we're not doing
5 any of those." That's what he told me.

6 Q. Do you remember anything else about the
7 conversation?

8 A. No, it was a very short conversation. It
9 didn't last long, the guy was on his cell phone,
10 moving to somewhere.

11 Q. Was that the only time you ever talked to
12 him about it?

13 A. Yes. It was kind of, he could have hung
14 up on me in two seconds, but he took the call, just
15 because we had met before. I presented myself and
16 that was it. That was part of the research inquiry
17 going on. Sometimes if he asks somebody, they might
18 be nice enough to tell you what's going on, what's
19 happening. So that was part of some of the
20 research.

21 DIRECT EXAMINATION BY

22 MS. ROSENBLATT

23 Q. Did you talk to anybody else outside of
24 Black Oak generally, about trading strategy?

25 A. Within our employees? Outside of Black
26

1 Oak, or-

2 Q. Outside of Black Oak.

3 A. Never.

4 Q. Never?

5 A. No, it's your proprietary information, we
6 wouldn't give our probable strategies to trying to
7 make money, give that out to somebody else, because
8 they're probably going to do it also. It would
9 reduce your spread, reduce your profit, so you don't
10 do that, and it's illegal.

11 Q. Did I hear you say that you don't belong
12 to any trade associations or professional societies?

13 A. Yes.

14 Q. Does that mean you don't belong to any
15 groups of traders who get together and talk about
16 the business of trading?

17 A. Yes, it means that, plus we are almost by
18 ourselves in Princeton. There's an RG close, but
19 they don't really trade.

20 DIRECT EXAMINATION BY

21 MR. HOPKIN

22 Q. Going back to the communications that you
23 and Black Oak had with PJM, do you recall having any
24 contact or communications with the Market Monitor,
25 Joe Bowring?

26

1 A. No.

2 Q. How about anyone from Mr. Bowring's
3 office?

4 A. We contacted the operator, PJM market
5 operator directly.

6 Q. Okay.

7 A. And the reason is, it's their market.
8 They operate it and if it's an issue with
9 dispatching or something specific, it gets referred
10 to MMU. But having known Andy Ott for 10 years, and
11 been in a bunch of meetings and discussing various
12 issues, I felt that he would at least give us a call
13 back, if we requested it, and we could go over the
14 issue. We thought it was important enough to go to
15 the big boss.

16 A. Okay. And so, the only communication you
17 had with PJM about this issue is the e-mail asking
18 for a phone call and then the phone call itself. Is
19 that correct?

20 A. Yes. Well, the communication occurred
21 during the conference call. So we sent out the
22 email and he called us back, which lasted about oh,
23 10, 15 minutes.

24 Q. At this point we're going to revisit one
25 of the issues that we started the day with,

26

1 concerning 1B 16, and Counsel's representation, and
2 we've reached an understanding that you would leave
3 the room, and we could have a discussion on the
4 record. So let's go ahead and do that.

5 THE WITNESS: Wait in the hallway?

6 MR. HOPKIN: Yes, please.

7 (WHEREUPON, The witness left the room.)

8 [Redacted]

9 [Redacted]

10 [Redacted]

11 [Redacted]

12 [Redacted]

13 [Redacted]

14 [Redacted]

15 [Redacted]

16 [Redacted]

17 [Redacted]

18 [Redacted]

19 [Redacted]

20 [Redacted]

21 [Redacted]

22 [Redacted]

23 [Redacted]

24 [Redacted]

25 [Redacted]

26

1 Redacte

2 Redacted

3 MR. HOPKIN: I have one more thing I
4 wanted to say, and the witness can come back.

5 MS. ROSENBLATT: Do you want me to get
6 him?

7 MR. HOPKIN: Sure.

8 (WHEREUPON, there was a brief discussion off the
9 record.)

10 MR. HOPKIN: We're done discussing the 1B
11 16 issue. I did want to bring Counsel's and the
12 witness's attention to 18 CFR 1B-18, and that
13 section is very brief, and it simply, it's not in
14 front of you sir.

15 THE WITNESS: Okay.

16 MR. HOPKIN: And that section simply
17 states that you are free at any time to contact us
18 or submit documents or information to us that you
19 think will aid our understanding in the
20 investigation. Or if there is anything you think
21 you would like to bring to our attention and we
22 invite you to do that at any point.

23 Would you like to take a break, to confer with
24 your client, or do you have any questions you would
25 like to ask your client on the record?
26

1 MR. DEVANEY: Why don't we just take one
2 minute? You don't even need to leave the room.

3 MS. ROSENBLATT: We'll just head out for a
4 minute.

5 (WHEREUPON, a break was taken.)

6 MS. SMOOTS: We wanted to provide one
7 clarification for the record.

8 THE WITNESS: A little bit in line with
9 the, probably lack of information or not
10 misinformation, but not complete information that
11 was provided in certain filings, like the 67 cents
12 is really 89 cents-

13 MR. HOPKINS: And sir, are you gesturing
14 to the document that your counsel brought to us, and
15 we entered into an exhibit as Exhibit 3?

16 THE WITNESS: Yes, I was gesturing towards
17 that document. We believe that there's also one
18 part of misinformation that's been published once, I
19 think in a market by the MMU, but I haven't reseen
20 since. He was referring to, I think, two interfaces
21 that for a period have the same definition, and we
22 think that factually that's incorrect, and that they
23 have complete separate prices. And the reason I'm
24 stating this is the information you'll see, based on
25 our test number one, will provide clarification to
26

1 that. The information that we are going to provide
2 you next week will.

3 DIRECT EXAMINATION BY

4 MR. HOPKIN

5 Q. Are the prices nevertheless the same, even
6 though the definition is different?

7 A. To clarify again, I reread that part.
8 It's been taken out. They were stating that
9 basically two interfaces priced the same, therefore
10 were the same. And they took that out, and when it
11 came to the official FERC filing they took out that
12 part. They just vaguely referred to two interfaces,
13 which we used in the test, had the same definition
14 for the period that they surveyed. Which to me
15 doesn't mean anything, to us, if we don't know if
16 there's going to be congestion or not, that equates
17 to saying that if there's no congestion in PJM
18 everything is the same.

19 So we understand what they were talking about
20 when they say the same afterwards, if it was
21 neutralizing a transaction, or putting in NYS NYS
22 type transaction but we think that their first
23 statement, or MMU's first statement was completely
24 misleading and factually incorrect.

25 MR. HOPKIN: All right, thank you for that

26

1 clarification, much appreciate it.

2 MR. DEVANEY: And that clarification goes
3 to the first of the tests that will be reflected in
4 the data we provide in response to your questions.

5 MR. HOPKIN: Okay, excellent. Anything
6 else?

7 MS. ROSENBLATT: Nope, that was it.

8 MR. HOPKIN: Okay, that's it. Thank you.

9 COURT REPORTER: There is no reading and
10 signing, because this is protected, right?

11 MR. HOPKIN: I'll say yes. We can discuss
12 that, it's governed by 1B 12, and I don't know if
13 you're interested in receiving a transcript or not.

14 MS. SMOOTS: I am.

15 MR. HOPKIN: Our normal practice is to
16 allow you to acquire a copy of the transcript.
17 However, since it's formal, we do have the
18 discretion in this context to not do that. We
19 haven't had that discussion yet, so I don't want to
20 jump the gun.

21 MS. SMOOTS: All right, you can get back
22 to me on that.

23 MR. HOPKIN: Okay.

24 THE WITNESS: Do we give you back the
25 exhibits?
26

1 MR. HOPKIN: Yes please, thank you.
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1 I HEREBY CERTIFY that I have read this transcript
2 of my deposition and that this transcript accurately states
3 the testimony given by me, with the changes or corrections,
4 if any, as noted.

5
6
7

8 x _____

9
10

11 Subscribed and sworn to before me this day of
12 20 .

13
14
15

16 _____

17 Notary Public

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19 My commission expires:

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1 I N D E X

2

3 WITNESS

4

5 Witness Page

6

7 Serge Picard for

8 Direct Examination by MR. HOPKIN 4:10

9 Direct Examination by MR. TABACKMAN 73:20

10 Direct Examination by MR. HOPKIN 76:21

11 Direct Examination by MR. TABACKMAN 83:24

12 Direct Examination by MR. HOPKIN 89:8

13 Direct Examination by MR. TABACKMAN 89:20

14 Direct Examination by MR. HOPKIN 89:24

15 Direct Examination by MR. TABACKMAN 91:5

16 Direct Examination by MR. HOPKIN 92:5

17 Direct Examination by MR. TABACKMAN 92:15

18 Direct Examination by MR. HOPKIN 96:17

19 Direct Examination by MR. TABACKMAN 97:15

20 Direct Examination by MR. HOPKIN 97:20

21 Direct Examination by MS. ROSENBLATT 105:9

22 Direct Examination by MR. TABACKMAN 108:9

23 Direct Examination by MS. ROSENBLATT 109:15

24 Direct Examination by MR. TABACKMAN 110:2

25 Direct Examination by MS. ROSENBLATT 110:9

26

1	Direct Examination by MR. HOPKIN	112:11
2	Direct Examination by MR. TABACKMAN	120:10
3	Direct Examination by MR. HOPKIN	128:2
4	Direct Examination by MS. ROSENBLATT	129:10
5	Direct Examination by MR. TABACKMAN	133:10
6	Direct Examination by MR. HOPKIN	137:16
7	Direct Examination by MS. ROSENBLATT	139:10
8	Direct Examination by MR. HOPKIN	139:22
9	Direct Examination by MR. TABACKMAN	150:8
10	Direct Examination by MR. HOPKIN	151:9
11	Direct Examination by MS. ROSENBLATT	152:19
12	Direct Examination by MR. HOPKIN	153:18

13

14

EXHIBITS

15

16

17 1 Exhibit 1

18 For Identification 5:25

19 Identified

20

21 2 Exhibit 2

22 For Identification 42:13

23

24 3 Exhibit 3

25 For Identification 110:22