

# Federal Energy Regulatory Commission

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**Date:** July 20, 2011

**Volume:** 1

**Case:** In The Matter of: PJM Up-To Congestion Transactions



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BEFORE THE UNITED STATES  
FEDERAL ENERGY REGULATORY COMMISSION

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In the Matter of: \*

PJM UP-TO CONGESTION \*

TRANSACTIONS. \* Docket No. IN10-5-000

- - - - - \*

CONFIDENTIAL DEPOSITION OF HOULIAN A. CHEN, PH.D.  
Washington, D.C.  
Wednesday, July 20, 2011

Page 2

1 Deposition of HOULIAN A. CHEN, PH.D.,  
2 called for examination pursuant to agreement of  
3 counsel, on Wednesday, July 20, 2011 in Washington,  
4 D.C., at the offices of the Federal Energy  
5 Regulatory Commission, 888 First Street, Northeast,  
6 Washington, D.C., at 9:43 a.m., before Karen Young,  
7 a Notary Public within and for the District of  
8 Columbia, when were present on behalf of the  
9 respective parties:  
10  
11 W. BLAIR HOPKIN, ESQUIRE  
12 STEVEN TABACKMAN, ESQ.  
13 THOMAS OLSON, ESQ.  
14 Federal Energy Regulatory Commission  
15 Division of Investigations  
16 Office of Enforcement  
17 888 First Street, Northeast  
18 Washington, D.C. 20426  
19 (202) 502-6603  
20 Blair.Hopkin@ferc.gov  
21 steven.tabackman@ferc.gov  
22 On Behalf of the Federal Energy  
23 Regulatory Commission  
24  
25 JOHN N. ESTES III, ESQUIRE  
SALLY RICHARDSON, ESQUIRE  
Skadden, Arps, Slate, Meagher & Flom LLP  
440 New York Avenue, Northwest  
Washington, D.C. 20005  
john.estes@skadden.com  
(202) 371-7950  
On Behalf of the Witness

ALSO PRESENT:

Cathleen Colbert, FERC  
Bikash Thapliya, FERC

Page 3

1  
2 PROCEEDINGS  
3 - - -  
4 HOULIAN A. CHEN, PH.D.,  
5 having been duly sworn, was examined as follows:  
6 - - -  
7 EXAMINATION BY COUNSEL FOR THE  
8 FEDERAL ENERGY REGULATORY COMMISSION  
9 BY MR. TABACKMAN:  
10 Q. Mr. Chen, would you please state your name  
11 for the record?  
12 A. Houlian Chen.  
13 Q. And can you -- the court reporter may have  
14 it. Could you just spell it just to make sure she  
15 has the spelling, particularly of your first name?  
16 A. H-O-U-L-I-A-N.  
17 Q. And do you have a -- what I'll call --  
18 refer to as a nickname or name that at least most  
19 people in this country call you?  
20 A. Yeah, people know me, call me Alan Chen.  
21 Q. Which you spell A-L-A-N?  
22 A. Yes.  
23 Q. Mr. Chen, you're accompanied by counsel  
24 today?  
25 A. Yes.

Page 4

1 Q. And could you identify your counsel  
2 please?  
3 A. Mr. John Estes.  
4 Q. Okay.  
5 A. And Ms. Sally Richardson.  
6 Q. You and I have met before. My name is  
7 Steven Tabackman, and I am an attorney with the  
8 Federal Energy Regulatory Commission in the division  
9 of investigations and we are on the record today for  
10 your deposition, your second deposition as part of a  
11 non-public investigation that is being conducted  
12 pursuant to -- in this instance pursuant to an order  
13 of the commission, and are you aware of that?  
14 A. Yes.  
15 Q. Okay. And you testified -- you have  
16 testified previously in this matter?  
17 A. Yes, sir.  
18 Q. I'm also accompanied today by a number of  
19 other members of the Federal Energy Regulatory  
20 Commission staff. To my immediate right is Blair  
21 Hopkin. I believe you met Mr. Hopkin before. To  
22 his right is Thomas Olson. To Mr. Olson's right is  
23 Bikash Thapliya. Do you need a spelling? Okay.  
24 And sitting in the chair over there is Cathleen  
25 Colbert. She -- both Mr. Thapliya and Ms. Colbert

Page 5

1 are with the division of energy market oversight,  
2 which is part of the office of enforcement, and I  
3 want -- Mr. Thapliya may be asking questions just to  
4 clarify some things if I manage to mess up something  
5 over here. You understand that you are under oath.  
6 A. Yes, sir.  
7 Q. And that you are required to tell the  
8 truth and that if you should not in any way, that  
9 that could lead to charges of -- criminal charges  
10 against you, a false statement or perjury and would  
11 be considered a negative factor should we ever try  
12 to enter into a settlement with the commission. Do  
13 you understand that?  
14 A. Yes, sir.  
15 Q. And this is being conducted pursuant to  
16 rule -- the commission's Rule 1B.9, which is --  
17 means that it is a confidential investigation. We  
18 will be showing you documents, some of which were  
19 not necessarily produced by you to us, although I  
20 believe you are the author of most of them, and we  
21 would ask, while you are not bound by that, but we  
22 would ask that you keep that confidential in all  
23 respects. Do you understand that also?  
24 A. Yes, sir.  
25 Q. Okay. Just a prefatory comment, we -- and

Page 6

1 I spoke at some length regarding -- I'm sorry, let  
2 me just -- some length about your trading on up-to  
3 congestion transactions in PJM Interconnection. I'm  
4 sure you recall that.  
5 A. Yes.  
6 Q. And have you had a chance to review your  
7 transcript of the testimony of that prior occasion,  
8 which was on the -- October 7th, 2010? Have you had  
9 a chance to review it, look it over?  
10 A. Yes, I did.  
11 Q. I'm not asking -- I won't ask you to  
12 recite specific provisions of it without showing you  
13 something, but there may be parts of your testimony  
14 that I will ask to draw attention to, and one of the  
15 things that I want to go over today is your  
16 testimony in light of some of the documents that  
17 we've seen that you've produced and that others have  
18 produced and that we've received from PJM in the  
19 course of our investigation to see if I can clarify  
20 some of the testimony that you gave in light of  
21 those documents and make sure that we're all on the  
22 same page. You also are aware that when you produce  
23 documents, your counsel produced along with that a  
24 -- what we refer to as a submission from a professor  
25 putting forth a theory of explanation of these

Page 7

1 transactions. I assume you're aware of that?  
2 A. Yes, sir.  
3 Q. And in a conversation that Mr. Estes and I  
4 had previously, and I should -- and I want to make  
5 sure, we are staff. We don't make decisions as to  
6 what will and will not be accepted ultimately by the  
7 commission. We are only able to make  
8 recommendations to the commission, but I indicated  
9 to Mr. Estes that we had serious concerns and  
10 questions about the theory that is advanced in that.  
11 Are you aware of that?  
12 A. Yes, sir.  
13 Q. I'm asking you that because one of the  
14 things that I want to try and understand today is --  
15 I won't be asking about the submission, but you  
16 know, to understand the scope of your conduct in  
17 light of our view regarding the submission, and also  
18 a secondary that I want to get into, and it will  
19 probably be this afternoon, is your relationship  
20 with Kevin Gates and TFS, the Huntrise. It's one  
21 word, H-U-N-T-R-I-S-E, fund, and then the Powhatan  
22 fund, and explore some of the documents that you  
23 created on their behalf and bills and things of that  
24 so that we can understand that relationship better  
25 and ask you a large number of questions frankly

Page 8

1 about that. But one of the things we're going to  
2 start off with trying to go over the material that I  
3 had sent to Mr. Estes last week. Have you had a  
4 chance to review the PJM data that -- with respect  
5 to transactions that you were engaged in in -- at  
6 least in 2010?  
7 MR. ESTES: Steve, are you talking about  
8 the large data set that you sent or the compilation  
9 you sent earlier this week?  
10 BY MR. TABACKMAN:  
11 Q. I'm speaking about -- let's divide it up.  
12 I had originally sent Mr. Estes a CD that contained  
13 transactions that you had engaged in on behalf of CU  
14 Fund, HEEP Fund and Powhatan. Have you had a chance  
15 to look at the data that was on that CD?  
16 A. Yes, I did.  
17 Q. And to -- were you able to study it in any  
18 -- could you characterize how closely you were able  
19 to look at it?  
20 A. I didn't spend time looking at every hour  
21 or every -- every day or -- but look at the ball  
22 park, the trades I have, so it's kind of a -- at  
23 least a very good representation.  
24 Q. Okay, and then you're aware that earlier  
25 this week, I had sent Mr. Estes some summary charts

Page 9

1 of particular trades, and have you had a chance to  
2 review those?  
3 A. Yes, sir.  
4 Q. And in speaking with Mr. Estes yesterday,  
5 my understanding is that you are for the most part  
6 at least prepared to accept at least the data -- I'm  
7 not talking about the accuracy of the data that is  
8 reflected in both the CD and the summary charts, the  
9 main portions of your transactions; is that correct?  
10 A. Correct.  
11 Q. I want to start I guess to set a context  
12 by focusing on some of your -- your testimony  
13 previously, and maybe it would be -- I guess if we  
14 gave you a copy of your -- I brought one for you and  
15 one for Mr. Estes, copies of your transcript.  
16 A. Thank you.  
17 Q. And I think we should mark that as  
18 probably -- let's just, since I have other exhibits  
19 that are already numbered, prenumbered, let's mark  
20 this as Exhibit A if we could. If you could look at  
21 that, do you recognize that as the document that was  
22 -- I had also sent to Mr. Estes electronically as a  
23 copy of your transcript?  
24 A. Yes, sir.  
25 Q. In the course of your prior testimony, and

Page 10

1 if you would look at -- I'm referring particularly  
2 to page 50 of the transcript, and there's a  
3 reference, and you can read it to yourself if you  
4 wish, but the question I have is you had talked  
5 about these trades that you had engaged in for CU  
6 Fund involving, quote, real risks. Do you see that  
7 testimony there?  
8 MR. ESTES: Are you refer to a particular  
9 line, Steve?  
10 MR. TABACKMAN: I'm referring to -- it  
11 begins on line 3.  
12 MR. ESTES: Okay, take your time, Alan,  
13 make sure you have the context for the question.  
14 BY MR. TABACKMAN:  
15 Q. And the question I believe maybe goes on  
16 -- starts on the page prior to that, but I just --  
17 I'm just trying to make sure that -- to draw your  
18 attention to that piece of testimony because I want  
19 to explore that for a moment.  
20 A. So it's on the top of 3?  
21 Q. Yes, and the testimony goes on. You then  
22 went on to explain what some of the risks were, and  
23 you can review that. I just want to make sure that  
24 we have a context here and I don't ask you questions  
25 that -- about something that happened in the past

Page 11

1 and you haven't had a chance to look at it.  
2 A. Yeah, I'm okay with that.  
3 MR. ESTES: Wait. Hold on a second.  
4 THE WITNESS: Particularly for --  
5 MR. ESTES: I think that there's a  
6 pagination question here. There are two sets of  
7 page numbers.  
8 MR. TABACKMAN: I'm sorry.  
9 MR. ESTES: Because of the way this  
10 printed out, mine did the same thing. At the bottom  
11 it says page 43, and then there's intervening pages  
12 50 in our copy, and so if I may, just to clarify the  
13 record, are you talking --  
14 MR. TABACKMAN: If I can just look at your  
15 copy --  
16 MR. ESTES: I think you're on the wrong  
17 page.  
18 THE WITNESS: Page 50? Is it this page?  
19 MR. ESTES: You want the 50 -- you want  
20 the delineated 50, not the bottom page 50.  
21 MR. TABACKMAN: Right, I didn't realize --  
22 MR. ESTES: So you've been reading the  
23 wrong stuff, so take your time. You're going to  
24 want to go to the page before, Alan, and he's going  
25 to --

Page 12

1 MR. TABACKMAN: Because it's marked as  
2 page 50, it actually begins -- the relevant portion  
3 begins with my question here, but yes, I'm sorry, I  
4 should have probably copied --  
5 MR. ESTES: So go to the page before and  
6 then read to the page after, so start here if you  
7 will.  
8 BY MR. TABACKMAN:  
9 Q. And take your time.  
10 MR. ESTES: And you'll see he starts  
11 questioning, and then -- and then read the next  
12 three pages and you'll see what he's going to ask  
13 you about.  
14 MR. TABACKMAN: Mr. Hopkin is going to  
15 make a better copy that has -- so that we're all, as  
16 they say, on the same page.  
17 MR. ESTES: Literally.  
18 THE WITNESS: Yeah.  
19 MR. ESTES: Where did you stop? Read  
20 here. Let us know when you're ready, Alan. Take  
21 your time.  
22 THE WITNESS: Yeah, I think I'm ready.  
23 MR. ESTES: Okay.  
24 BY MR. TABACKMAN:  
25 Q. One of the real risks that you spoke of or

Page 13

1 potential risks that you ran in engaging in the  
2 up-to congestion action transactions was a risk that  
3 a leg -- one leg of a pair could have been rejected;  
4 is that correct?  
5 A. That is correct.  
6 Q. Okay, and I believe you also testified  
7 previously that with respect to the CU Fund, that  
8 never occurred. There was never a situation where a  
9 leg of a paired trade was in fact rejected.  
10 A. That's correct.  
11 Q. And in fact, you -- is it also the case  
12 that you had bid with respect to the transactions  
13 for the CU Fund the maximum that PJM allowed you to  
14 bid for congestion, \$50 in each of your  
15 transactions?  
16 A. I don't recall every trades, but most of  
17 the trades, yes, \$50.  
18 Q. And why did you -- why did you choose \$50?  
19 A. \$50, that's the max PJM kind of limit on  
20 the up-to congestion, and if you have lower, say,  
21 25, more likely the import leg could be rejected,  
22 and it could potentially cause more trouble for me,  
23 either lost a lot of money or either make a lot of  
24 money, and the volatility is much higher. If you go  
25 to 50, the potential is still there, you could make

Page 14

1 a lot of money, you could lose a lot of money, but  
2 the possibility is lower, so the risk of profile or  
3 the volatility is lower, and why I put 50, it's  
4 because that volatility. I want to reduce the risk  
5 profile.  
6 Q. You wanted both legs of your paired trades  
7 to be accepted. That was your goal, wasn't it?  
8 A. That's one of my goal, yes.  
9 Q. What other goal did you have in placing --  
10 let's step back for a second. We've talked about  
11 paired trades, and you defined those in your  
12 previous testimony as essentially trades where you  
13 have equal and opposite transactions, same volume,  
14 same time of day between two nodes, one going from  
15 one -- node A to node B, and then the exact same or  
16 same volume at the same time transaction going from  
17 B to A. Can we just -- can we assume that we're  
18 talking about those kinds of transactions for the  
19 time being?  
20 A. Yes, sir, yes, sir.  
21 Q. Okay, and in those transactions, it was  
22 your goal to have both legs accepted; is that  
23 correct?  
24 MR. ESTES: Asked and answered.  
25 A. That's not my only goal.

Page 15

1 Q. What was --  
2 A. It is one of them, yes.  
3 Q. What other goal did you have?  
4 A. The other goal is if one of the leg -- in  
5 case one of the leg is rejected, the returning leg  
6 will make a lot of money for me. The potential  
7 making money versus lose money is much higher.  
8 Q. I understand, and is that why you chose  
9 \$50?  
10 A. That's correct.  
11 Q. \$50 -- did \$50 minimize the chance that  
12 one leg or the other would be rejected?  
13 A. Definitely, yes.  
14 Q. Could you have done anything more to have  
15 minimized the likelihood that one leg would be  
16 rejected?  
17 MR. ESTES: Object to form.  
18 A. That's a good question. You can choose  
19 different nodes. If you choose the nodes close by,  
20 then fluctuate with MISO, you could reduce the risk.  
21 You could reduce the potential one leg be rejected.  
22 On the other hand, if you choose way over, closer to  
23 New York border, those node, then it's very, very  
24 likely one of the leg will be rejected.  
25 Q. Let's focus on the money -- on the bid

Page 16

1 aspect, the amount of the bid. With respect --  
2 solely focusing on the amount of the bid, is there  
3 any way that you could have reduced the risk of  
4 rejection more than you did -- in a way -- strike --  
5 MR. ESTES: Thank you.  
6 BY MR. TABACKMAN:  
7 Q. \$50 was as high as you could bid for  
8 rejection, correct?  
9 A. Correct.  
10 Q. I mean congestion. And that meant that  
11 anything below \$50 for congestion, your leg would be  
12 accepted.  
13 A. Correct.  
14 Q. And so if you had bid anything less than  
15 \$50, that would have been somewhat higher risk than  
16 bidding the \$50.  
17 MR. ESTES: Of rejection?  
18 BY MR. TABACKMAN:  
19 Q. Of rejection. Is that right?  
20 A. Correct.  
21 Q. So is it fair to say then that by bidding  
22 \$50, at least with respect to that aspect, just the  
23 bid price, you were doing everything you could to  
24 minimize rejection.  
25 MR. ESTES: Object to form.

Page 17

1 A. I agree, yes.  
2 Q. Okay. And the other way that I think you  
3 said that you could lower the risk of rejection was  
4 by picking nodes that were close together. Is that  
5 true?  
6 A. Yes.  
7 Q. Did I understand what you had just said?  
8 A. Yes.  
9 Q. And did you do that for the most part?  
10 A. Yes, sir.  
11 Q. And again, the goal was to minimize the  
12 risk of rejection.  
13 MR. ESTES: Asked and answered.  
14 BY MR. TABACKMAN:  
15 Q. Correct?  
16 MR. ESTES: He keeps saying the goal, and  
17 the testimony has been one of the goals.  
18 A. Yes, one of the goals, yes.  
19 Q. It also -- yes, I understand that your  
20 other goal was that if you did get rejection, you  
21 would have -- you would make a lot of money, but you  
22 weren't trying in setting up your transactions to  
23 create that situation, the situation of making a lot  
24 of money, were you?  
25 MR. ESTES: Do you understand?

Page 18

1 A. Yeah, if I understand it correctly, the  
2 trades -- it is set up -- if one of the leg is  
3 rejected, that export leg has much more potential to  
4 make money than the potential of losing money.  
5 Q. Had you -- strike that. You could also  
6 lose a lot of money if one of your legs was  
7 rejected; isn't that correct?  
8 A. Correct.  
9 Q. And isn't it true that in setting up your  
10 transactions, your selection of nodes for the most  
11 part and your selection of the bid price, you were  
12 trying to minimize the likelihood that there would  
13 be a rejection; is that correct?  
14 A. If I understand your testimony correctly,  
15 I did trying to improve the possibility of one of  
16 the leg being rejected if I understand that  
17 correctly, yeah, it is -- it is one of the goal,  
18 yeah.  
19 Q. If you wanted -- and I'm talking about  
20 just after you adopted the paired strategy. Had you  
21 wanted to bid on the spread between nodes, there are  
22 a variety of ways that you could do that, correct?  
23 A. Yes, sir.  
24 Q. And bidding the maximum amount for  
25 congestion and bidding on nodes that were close

Page 19

1 together was not a way that was most likely to take  
2 advantage of spread; is that correct?  
3 A. I don't really understand. Can you  
4 clarify?  
5 Q. Perhaps the easiest thing may be to go to  
6 the exhibits, start with Exhibit 4.  
7 MR. ESTES: I was about to observe,  
8 Counsel, that your questioning unmoored from the  
9 exhibits is replowing ground from the prior  
10 deposition, so I'm happy to see you turn to  
11 materials.  
12 MR. TABACKMAN: And these are copies of  
13 the transcripts that will make it easier to follow  
14 along. Can we have this just numbered as Exhibit 4?  
15 - - -  
16 (Deposition Exhibits A and Number 1 were  
17 marked for identification.)  
18 - - -  
19 MR. TABACKMAN: Giving a copy to Mr. Estes  
20 and copies -- I've already given one -- and  
21 Ms. Richards?  
22 MR. ESTES: Richardson.  
23 MR. TABACKMAN: Richardson. Excuse me.  
24 BY MR. TABACKMAN:  
25 Q. Have you seen Exhibit 4 previously?

Page 20

1 A. Yes.  
2 Q. Okay, and this is one of the summary  
3 exhibits that I had provided to Mr. Estes several  
4 days ago; is that correct?  
5 A. Yes, sir.  
6 Q. Now, in these transactions, you see that  
7 in column A, there are three categories. I'm going  
8 to focus first on category A and specifically lines  
9 3 and 4 that discuss -- show A-1, which are  
10 transactions, you see in column 2, between COMED and  
11 MISO -- that's C-O-M-E-D and M-I-S-O, and MISO to  
12 COMED, and do you also see that we're talking about  
13 the activity period during -- from July 17th of 2010  
14 through August 3rd of 2010? That's in column C. Do  
15 you see that?  
16 A. Yes, sir.  
17 Q. And that would be the entire period that  
18 you traded for the CU Fund; is that right?  
19 A. Yes, sir.  
20 Q. And do you have any dispute that you  
21 traded during that period of time 571,000 megawatt  
22 hours of UTC trades from COMED to MISO and the same  
23 number from MISO to COMED?  
24 MR. ESTES: If you know. If you don't  
25 know specifically, you have to answer subject to

Page 21

1 check.  
2 A. I'm pretty sure the number, they are equal  
3 numbers, but the exact -- if it's 571,000, I'm not  
4 quite sure, but for the purpose, they are equal --  
5 equal volume.  
6 Q. And have you --  
7 MR. ESTES: Can I ask a question about  
8 this?  
9 MR. TABACKMAN: Sure.  
10 MR. ESTES: Column F --  
11 MR. TABACKMAN: Doesn't have a title.  
12 MR. ESTES: Doesn't have a title.  
13 MR. TABACKMAN: It's paired, as  
14 Mr. Thapliya just pointed out. I don't know why it  
15 didn't come through when printed out, but it is  
16 basically showing the result of the UTC revenues  
17 that resulted from that pair of transactions.  
18 MR. ESTES: So it nets the UTC revenues.  
19 THE WITNESS: No, I think it's OASIS  
20 charges.  
21 MR. TABACKMAN: I'm sorry.  
22 MR. THAPLIYA: No, that should be the sum  
23 of -- oh, I'm sorry.  
24 MR. ESTES: You're right.  
25 MR. TABACKMAN: You're right, you're

Page 22

1 right, it is the OASIS charge. Yeah, I'm sorry,  
2 yes, that's what they are.  
3 MR. ESTES: Thank you, Mr. Chen.  
4 BY MR. TABACKMAN:  
5 Q. No, I had -- after I had said it, I'm  
6 looking, going that doesn't make any sense. It is  
7 the OASIS charges. Now, for every time you place a  
8 UTC transaction, you had to pay for the OASIS  
9 reservation; is that right?  
10 A. It depends. If it's importing from MISO,  
11 you do, but exporting, because agreement between PJM  
12 and MISO, you don't have to pay anything.  
13 Q. So that -- and that's why there would be a  
14 -- OASIS charges in line -- in row 4, it shows  
15 charges from MISO to COMED, but then not -- there  
16 are no charges from COMED to MISO.  
17 A. Yes, sir.  
18 Q. Is the COMED node and the MISO node, are  
19 they close together?  
20 A. COMED is a zone. It encompass I think the  
21 Chicago metro area, and the MISO, I'm not quite  
22 sure. It's kind of interface between PJM and the  
23 Midwest ISO. They are -- I think they are  
24 different.  
25 Q. But they are -- it's in Indiana, isn't

Page 23

1 that correct, somewhere? And I had a map here and I  
2 can -- we'll get it and we'll confirm that.  
3 MR. ESTES: If you know.  
4 BY MR. TABACKMAN:  
5 Q. But do you know that --  
6 MR. ESTES: Geographically proximate?  
7 MR. TABACKMAN: What?  
8 MR. ESTES: Geographically proximate.  
9 BY MR. TABACKMAN:  
10 Q. Geographically proximate. That's all I'm  
11 asking about.  
12 A. I think it -- yeah.  
13 Q. I'm not talking about prices.  
14 MR. ESTES: -- can be different too.  
15 BY MR. TABACKMAN:  
16 Q. I understand.  
17 A. They're quite different, yeah.  
18 Q. But you were -- and your transactions, you  
19 don't dispute that you set up your transactions for  
20 the CU Fund during the period of time we're talking  
21 about here to send the exact same -- to bid the  
22 exact same number of megawatt hours from COMED to  
23 MISO and MISO to COMED?  
24 MR. ESTES: For these particular  
25 transactions.

Page 24

1 BY MR. TABACKMAN:  
2 Q. Right, for the CU transactions we're  
3 talking about. Is that right?  
4 A. You're saying the volume?  
5 Q. Yes.  
6 A. Yes, yes.  
7 Q. And that was -- I mean, you did that  
8 intentionally, isn't it? Didn't you? You chose to  
9 make them equal and opposite.  
10 A. When I put on the trades, yeah, I did to  
11 put the same volumes, yes.  
12 Q. Let me -- give me a second here. Let me  
13 show you what -- if I can get Exhibit 13, if I could  
14 have this document please numbered as Exhibit 13,  
15 marked as Exhibit 13?  
16 - - -  
17 (Deposition Exhibit Number 13 was marked  
18 for identification.)  
19 - - -  
20 THE WITNESS: Thank you.  
21 MR. TABACKMAN: I'll give a copy to  
22 Mr. Estes.  
23 MR. ESTES: Thank you.  
24 MR. TABACKMAN: Ms. Richardson.  
25 BY MR. TABACKMAN:

Page 25

1 Q. I'd like you to take a look at this,  
2 Mr. Chen, and see if you recognize it as a  
3 spreadsheet that you created that has, I will tell  
4 you I believe all but the last column, because that  
5 was just your name as the person who was doing the  
6 trade. See if you recognize this as a spreadsheet  
7 reflecting one day's, specifically July 17, trades  
8 that were engaged in by you for CU Fund. Take your  
9 time.  
10 A. Yes, sir.  
11 MR. ESTES: Make sure you understand the  
12 concept of this.  
13 THE WITNESS: Yes, sir.  
14 MR. ESTES: You see, the first two pages,  
15 for example, are part of one spreadsheet. You  
16 probably know that better than I do.  
17 THE WITNESS: Yes, I --  
18 BY MR. TABACKMAN:  
19 Q. You recognize it as a spreadsheet that you  
20 created.  
21 A. Yes.  
22 Q. What was your purpose in creating this  
23 spreadsheet?  
24 A. It's because the data request from FERC.  
25 Q. So this was -- this was created in

Page 26

1 response to the data request? This was not  
2 something that you created in realtime.  
3 A. No.  
4 Q. Okay. The first column, column A, EPT  
5 hour ending, what is that -- what does the data in  
6 that column reflect?  
7 A. The date and hour ending number.  
8 Q. Okay, and the hour ending -- the EPT hour  
9 ending refers to what? Is that an hour in which you  
10 placed a bid?  
11 A. Yes, hour ending one was 01, yes.  
12 MR. ESTES: Just to clarify, you mean the  
13 hour that the transaction occurred as to when the  
14 bid was placed I think.  
15 THE WITNESS: Yeah, it's called flow --  
16 flow hour, so it's like -- it's actually -- for this  
17 transaction, it's actually occurred, flowed,  
18 supposed to flow, financial flow. It's not -- it's  
19 financial flow on that hour, yes.  
20 BY MR. TABACKMAN:  
21 Q. Correct, and that is -- and when did you  
22 place the bid for that?  
23 A. It's always one day before.  
24 Q. So you were placing a bid for a financial  
25 transaction for the hour ending 1 on July 17, 2010;

Page 27

1 is that correct?  
2 A. It's actually, if I put on trades on July  
3 16th from 7:00 a.m. -- I'm sorry, for 7:00 a.m. to  
4 11:00 a.m. central time, so it's like 8:00 a.m. to  
5 12:00 p.m. east time, so it's four-hour window.  
6 Q. Okay. You placed the day -- this  
7 information in these columns. What did you intend  
8 to be conveying as to when the flow time would be  
9 for the transaction that's on that -- appear on rows  
10 4 and 5?  
11 A. Those are two trades, so it's like for  
12 hour ending 1, I have two trades.  
13 Q. Actually, I'm looking -- I'm actually --  
14 well, let me ask you first, on line -- in row 4, you  
15 have a trade that is bid for one megawatt. Is that  
16 something that you did on a regular basis?  
17 A. Not -- not really, but this, the purpose  
18 is the OASIS, sometimes the PJM, sometimes up,  
19 sometimes down, and sometimes very, very busy, so I  
20 normally in this case like that day, in the morning,  
21 I come up, I put a small amount of trade so it comes  
22 all through, so it means the system is normal and I  
23 don't kind of trying to make a lot of money on that  
24 one transaction. It's just kind of to check the  
25 system function correctly.

Page 28

1 Q. Okay. Let's look at the trades that are  
2 at lines -- rows 5 and 6. Do you see those?  
3 A. Yes, sir.  
4 Q. If you would look at both pages 1 and 2  
5 and tell me whether or not those trades constituted  
6 -- the trades at rows 5 and 6 were a paired set of  
7 trades.  
8 A. So the first page, 5 and 6 --  
9 Q. No, row 5 and 6, on the first page in the  
10 first -- you have -- the columns are numbered down  
11 the left side, and I want you to focus on the ones  
12 that are -- that appear at rows 5 and 6.  
13 MR. ESTES: So look at both pages, and he  
14 wants to know whether they're what we refer to in  
15 this case in your prior deposition as paired trades.  
16 Understand?  
17 THE WITNESS: Five and 6 --  
18 MR. ESTES: Lines 5 and 6, going across  
19 both pages --  
20 THE WITNESS: Yeah, those actually just  
21 two different hours. Same trade.  
22 MR. ESTES: Right.  
23 BY MR. TABACKMAN:  
24 Q. Okay. So this is a different -- I'm  
25 sorry, you're right. The way these were formed, I

Page 29

1 didn't change the formatting that you had given us.  
2 Is there a trade that is a pair to the trade that  
3 appears on line 5 that is in your spreadsheet? Can  
4 you identify a trade?  
5 MR. ESTES: Take your time. Counsel, do  
6 you mind if I perhaps suggest a place for him to  
7 look on your spreadsheet to save us time?  
8 MR. TABACKMAN: Sure.  
9 MR. ESTES: Alan, look at -- see if line  
10 53 is right.  
11 THE WITNESS: Yeah, I think that that's --  
12 MR. ESTES: Now, check it carefully here,  
13 okay? So we're looking at line 5 and 53, and we're  
14 checking whether the points of receipt and delivery  
15 of amounts and time all match or near each other.  
16 THE WITNESS: Yeah, 53 --  
17 MR. ESTES: How come it says ALT E and ALT  
18 W?  
19 THE WITNESS: Yeah, that's -- when you  
20 says MISO, you have -- basically you have a lot of  
21 interface. You could import from LTE, LTW, and  
22 there's some other regions you can import.  
23 BY MR. TABACKMAN:  
24 Q. But what -- what I want to ask you, the  
25 transaction on line 5 of the spreadsheet has a sink

Page 30

1 node name in ESS -- EES of MISO; is that right?  
2 A. That's correct.  
3 Q. And it is a trade for 1,000 megawatts?  
4 A. Correct.  
5 Q. Okay, and that's how much cleared; is that  
6 right?  
7 A. That's correct.  
8 Q. Okay.  
9 A. The next one, yes.  
10 Q. And there's no indication of the bid  
11 price, and the trade on line 53, is that for the  
12 same hour?  
13 A. Correct.  
14 Q. Okay, and in that one, the source is MISO;  
15 is that correct?  
16 A. Correct.  
17 Q. And --  
18 MR. ESTES: There's no sink.  
19 BY MR. TABACKMAN:  
20 Q. Do you know why there is no sink name in  
21 your spreadsheet here?  
22 A. Because in PJM, on the PJM, when you put  
23 in EES, there's no place to put that.  
24 Q. Okay. And -- but on this transaction,  
25 that -- that was a transaction for the same amount

Page 31

1 of megawatts going one sources at MISO, one sinks at  
2 MISO in the same hour; is that right?  
3 A. Correct.  
4 Q. And is that what -- is that a paired  
5 transaction?  
6 A. I look at it as paired, yes.  
7 Q. Okay, and if you go to, just for example,  
8 the next line, line 6, and then look at line 54,  
9 would that also be a paired transaction for another  
10 hour, those two entries?  
11 A. Yeah, that's correct.  
12 Q. Okay, and if you would look at the --  
13 through the spreadsheet, are all of the transactions  
14 that are reflected on that day, can they be paired  
15 up -- I mean, we can go through it line by line, but  
16 are they all paired transactions at least in terms  
17 of the megawatt?  
18 MR. ESTES: If you're asking him about the  
19 entire spreadsheet, I'd like to caution the witness  
20 to look through it carefully.  
21 BY MR. TABACKMAN:  
22 Q. Except for -- except for the one that is  
23 the single hour.  
24 A. I think yes.  
25 Q. Okay. And all of the transactions clear;

Page 32

1 is that right?  
2 A. Yes, sir.  
3 Q. And do you have any reason to believe that  
4 you bid less than \$50 on any of these transactions  
5 for the congestion element?  
6 MR. ESTES: If you know.  
7 BY MR. TABACKMAN:  
8 Q. I can show you the -- we've got PJM data  
9 that reflects that.  
10 A. My recollection is most of the days are  
11 50, but there are some days maybe there's some  
12 trades I put maybe like 35 or maybe 45, but most of  
13 -- I mean most likely it's \$50, yeah.  
14 Q. And for each of those trades, it costs you  
15 money in terms of the OASIS reservation that you had  
16 to make on the -- on the -- the import side; is that  
17 correct?  
18 A. Yes, sir.  
19 Q. Okay, but not on the export side.  
20 A. Correct.  
21 Q. So let us assume for our purposes here  
22 that when you pair up a trade, the same amount of  
23 hour -- on the same hour and the same volume, is  
24 there any chance, if they both clear, will you make  
25 any money on the spread?

Page 33

1 A. No, no, sir.  
2 Q. And do you have any reason to doubt that  
3 -- putting aside whether 993,000 is the precise  
4 number that -- where the revenue's going in both  
5 directions, positive and negative, that you made any  
6 money on the spread on those trades?  
7 MR. ESTES: Object to form. Do you  
8 understand?  
9 A. If you look at the Exhibit 4, those -- if  
10 just a spread alone, not making money.  
11 Q. And were you trying to make money on the  
12 spread by bidding -- by bidding the same -- in the  
13 paired way, the same number of -- the same volume  
14 between two -- a sink and source at the same time?  
15 MR. ESTES: Same objection. This is the  
16 "the goal" versus "a goal" discussion we keep  
17 having.  
18 A. Yeah, that's kind of the goal, I'm trying  
19 to reduce that spread between those nodes.  
20 Q. And by going from COMED to MISO in hour  
21 one and going back from MISO to COMED, have you  
22 reduced the spread risk?  
23 A. It did, yes.  
24 Q. Can you reduce the spread risk, the nodal  
25 risk between -- the difference in the price at two

Page 34

1 different nodes any more than you did by the way you  
2 structured that transaction?  
3 MR. ESTES: If you can answer that  
4 question, go ahead. It's asking for --  
5 BY MR. TABACKMAN:  
6 Q. I'll -- let me see if I can clarify it.  
7 When you send a thousand megawatts from COMED to  
8 MISO in hour ending one or hour ending two, and at  
9 that same hour, send a transaction in the same  
10 volume from MISO to COMED, is there any way that you  
11 could -- that you could reduce nodal risk any more  
12 than by those two choices, than by having that kind  
13 of transaction that you structured.  
14 A. I mean, when you're talking about the  
15 nodal risk, you have -- my thinking is that you have  
16 several type of nodal risk. One is from MISO to  
17 COMED, that's one nodal risk in the spread. The  
18 other's from COMED to COMED, and that spread, yeah,  
19 that's all you can do to reduce this side of risk,  
20 yes.  
21 Q. Right. The prices at the sink and source,  
22 the price at the sink will be the same -- strike  
23 that. Will the price at COMED as a source be the  
24 same as the price at COMED as the sink in any given  
25 hour?

Page 35

1 MR. ESTES: Do you understand? It's  
2 ambiguous. If you understand it, you can answer it.  
3 A. Source and the sink in a given hour, they  
4 are the same.  
5 Q. And will that also be true just looking at  
6 the MISO side?  
7 A. Yes, they are the same.  
8 Q. And so when you send from one to the other  
9 and you send an identical transaction in the same  
10 volume back to the other, did you expect there to be  
11 any price spread?  
12 MR. ESTES: Are you talking about nodal  
13 price spread as opposed to other --  
14 BY MR. TABACKMAN:  
15 Q. Between those two -- between those two  
16 nodes.  
17 A. Between those two nodes, the spread could  
18 be anywhere from MISO to COMED. Those two nodes,  
19 yeah, could be anywhere.  
20 Q. But whatever it is, it will be the same in  
21 both directions; isn't that right?  
22 MR. ESTES: If both legs clear.  
23 MR. TABACKMAN: Please don't testify,  
24 Mr. Estes. We understand.  
25 THE WITNESS: If I just look at MISO alone

Page 36

1 and they're always the same and the spread is zero.  
2 If you look at COMED alone, it's always zero, but if  
3 you look at from MISO to COMED, that spread, yeah.  
4 BY MR. TABACKMAN:  
5 Q. There will -- there will be a spread, but  
6 it will be -- in any given hour, you are -- it would  
7 be the same going in one direction as going in the  
8 other direction; isn't that right?  
9 A. Correct.  
10 Q. Whatever it is, it will be the same in  
11 both directions.  
12 A. Yes, sir.  
13 Q. So you weren't bidding -- by bidding the  
14 transaction that you did, you weren't trying to take  
15 advantage of a difference in -- between the two legs  
16 of your transaction, were you?  
17 MR. ESTES: Asked and answered, same  
18 question we keep having.  
19 A. I think so, yes.  
20 Q. Was there any question about that? You  
21 were not trying -- you might wind up with getting a  
22 lot of money as a result of a leg not clearing, but  
23 your goal was to set up transactions that would both  
24 clear and that there would ultimately be no  
25 difference -- no spread -- no money coming to you as

Page 37

1 a result of the spread.  
2 MR. ESTES: Same objection, Counsel. You  
3 keep asking the same question. He's --  
4 MR. TABACKMAN: And I'm trying to get an  
5 answer. I'm trying to get a clear answer.  
6 MR. ESTES: He's answered --  
7 MR. TABACKMAN: He's try -- excuse me,  
8 Mr. Estes. What he was trying -- what his goal was  
9 in setting up the transaction.  
10 MR. ESTES: It's the same goal, objection,  
11 we keep having. He's given you an answer. You're  
12 just trying to get him to give a different one.  
13 MR. TABACKMAN: No, I'm not.  
14 THE WITNESS: Let me say this. Before I  
15 put on these type of trades, there's two purpose, so  
16 I just say from my point of view, there's two  
17 purpose. One is if they are cleared, the  
18 transmission loss credit will cover part or maybe  
19 whole or maybe even more of the costs, charges, so  
20 I'm okay, right? In case one of the leg is  
21 rejected, that's another purpose. The returning leg  
22 will make a lot of money for me, so these two  
23 purpose, it's always there. Not just one trying to  
24 just collect the transmission loss credit.  
25 Transmission loss credit makes me like cover part of

Page 38

1 the cost or reduce my front cost.  
2 BY MR. TABACKMAN:  
3 Q. Well, let me ask you this. In these  
4 transactions that are in Exhibit 4, how much money  
5 did you make from anything other than the  
6 transmission loss credit?  
7 MR. ESTES: Now, Counsel, you're asking  
8 this on an aggregated basis because the individual  
9 transactions could yield different answers.  
10 BY MR. TABACKMAN:  
11 Q. I'm asking on an aggregated basis, on the  
12 transactions that -- between July 17, 2010 and  
13 August 3rd, 2010, how much money did you make off of  
14 the transactions other than through the transmission  
15 loss credit.  
16 A. If we just look at this paired alone on  
17 this Exhibit 4 without transmission loss credit, I  
18 think this number -- I believe in PJM's numbers  
19 since those are settlement numbers, so it's losing  
20 \$730,985.  
21 Q. And after the transmission loss credit,  
22 how much money are you making?  
23 A. Close to \$1.1 million.  
24 Q. And do you have any document that you can  
25 point to that would show that on an aggregate basis,

Page 39

1 you had any other source of profit from the  
2 transactions that you did on behalf of CU Fund  
3 during that period other than the transmission loss  
4 credit?  
5 MR. ESTES: You're talking about category  
6 A, Counsel, here?  
7 BY MR. TABACKMAN:  
8 Q. Category A.  
9 A. I don't think so.  
10 Q. Why did you choose to send -- in making  
11 these transactions, why did you choose to send the  
12 exact same number or volume of megawatts in one  
13 direction as in another direction between the same  
14 two nodes in the hours that you chose? Why did you  
15 choose to do that?  
16 A. It's all go back to that May 30th, that  
17 event, one day I have picked the two nodes within  
18 PJM, MISO to Mount Storm, and the other one is from  
19 Greenland Gap to MISO.  
20 Q. Uh-huh.  
21 A. And I lost around \$400,000 for Powhatan,  
22 and when I look back, I never done this paired trade  
23 like this before, exact same amount. Only on that  
24 day I start looking at, and the one I'm looking at  
25 is the spread between Mount Storm and the Greenland

Page 40

1 Gap in a day-ahead, the price spread is close to  
2 \$50. That means to hold that position, you  
3 basically up front, you pay \$50 per megawatt, and  
4 that's very, very significant. So it doesn't matter  
5 tomorrow, you just hold the position and lose \$50  
6 per megawatt, and if you look at all my trades, if  
7 you making 50 cents per megawatt on average, you are  
8 very, very lucky, and if you're losing \$50, you are  
9 losing -- I mean, basically you're lose your shirt.  
10 I mean, you don't have any capital left it could be.  
11 So I'm looking hard on that, and so I  
12 picked what can I do to reduce that. The only way  
13 -- there's two purposes, right? One, you can reduce  
14 it from MISO to Mount Storm, that leg, the spread,  
15 you can pick different nodes. The other way is you  
16 look at from -- from Greenland Gap to Mount Storm,  
17 these two spreads, so I'm thinking like if I can  
18 reduce that spread, shrink that two nodes into one,  
19 I'll come up with like half of the risk is gone, and  
20 that -- what I'm kind of treat me to put on trades,  
21 the first time I put on trades is June 1st, and  
22 that's the first time I put on the trades. I never  
23 before done this type of trades.  
24 Q. I understand, but the goal was to reduce  
25 the risk. What risk are you talking about that you

Page 41

1 were trying to reduce?  
2 A. The spread risk.  
3 Q. Okay, and were you successful in reducing  
4 the spread risk in the transactions at A-1 that are  
5 reflected in Exhibit 4?  
6 A. Just for this leg alone, for the row 3  
7 node?  
8 Q. Row 3 and 4.  
9 A. If it's 3 and 4, yes, sir.  
10 Q. Yes, you were successful in reducing the  
11 spread risk.  
12 A. Yes, sir.  
13 Q. And how were you successful in reducing  
14 the spread risk?  
15 A. Because --  
16 Q. What made it successful?  
17 A. Because now I collapse those two into  
18 COMED, so basically when you look at Mount Storm,  
19 when you look at Greenland Gap, you have two nodes  
20 now collapsed to COMED, so basically half of the  
21 risk I'm talking about is gone.  
22 MR. ESTES: Counsel, we've been going for  
23 an hour. When you have a break --  
24 MR. TABACKMAN: Sure.  
25 MR. ESTES: You're in the middle of

Page 42

1 something now, but --  
2 BY MR. TABACKMAN:  
3 Q. With respect to spread risk, the risk that  
4 we were just talking about, is there anything that  
5 you could have done, any choice of nodes that you  
6 could have done -- that you have could have chosen  
7 to reduce the risk more than you did?  
8 MR. ESTES: If you know how to answer that  
9 question, you can.  
10 BY MR. TABACKMAN:  
11 Q. In other words --  
12 A. Yeah, I think there are always ways to  
13 reduce the risk. That's kind of -- for me, I pick  
14 those nodes, but I think there are maybe better  
15 nodes.  
16 Q. What was the purpose in pairing up the  
17 nodes the way you did?  
18 A. Those trades, I have done this type of  
19 trade, say, from MISO to COMED, from MISO to Cook,  
20 from MISO to Dayton. Those nodes I'm very familiar  
21 with, or nodes or zones or -- I'm familiar with, and  
22 there's some other nodes I'm not very familiar, and  
23 I don't want to go that, but they're -- they're  
24 possibly better choices.  
25 Q. Okay. I'm just trying to make what I

Page 43

1 thought was a point that I think we ultimately agree  
2 on. On May 30th, your choice of nodes resulted in a  
3 substantial loss, if I understand you; is that  
4 right?  
5 MR. ESTES: Based on --  
6 BY MR. TABACKMAN:  
7 Q. I'm just trying -- based on the spread  
8 that resulted; is that correct?  
9 A. Yes, sir.  
10 Q. Okay, and I'm just trying -- make sure I  
11 understand your testimony. You then set out to  
12 avoid that outcome. You didn't want to have to keep  
13 losing money as you just described; is that right?  
14 A. That is correct.  
15 Q. And the strategy you came up with was  
16 eliminating one of the legs of the trade, only  
17 having two -- two nodes rather than three involved  
18 in the trade; is that right?  
19 A. That is correct.  
20 Q. And the other strategy that you came up  
21 with is that you would send the same volume between  
22 those two nodes at the same time, one in one  
23 direction, the other trade in the other direction;  
24 is that right?  
25 A. That's nothing new. I have done these

Page 44

1 type of trades way before 2008 or when before -- I  
2 mean when I started.  
3 Q. You're saying that you had done paired  
4 trades like this before -- make sure I understand.  
5 What is it you're saying?  
6 A. Two different nodes. So basically before  
7 May 30th, I put on trades, say, from MISO to node A  
8 and from importing, and from node B, exporting to  
9 MISO, same volume.  
10 Q. Right.  
11 A. Yeah.  
12 Q. That's like your Greenland Gap trade that  
13 you were describing; is that right?  
14 A. Correct.  
15 Q. Had you ever done a trade where you were  
16 going MISO to A, whatever it is, okay, in PJM, and  
17 A, whatever it is, to MISO in the same volume at the  
18 same -- at the same hour, but prior to June 1st?  
19 MR. ESTES: With the trades put on at the  
20 same time?  
21 BY MR. TABACKMAN:  
22 Q. Yes.  
23 A. My recollection is no.  
24 Q. Your answer is no, you had never done that  
25 before?

Page 45

1 A. Yeah, as far as I know, no.  
2 MR. TABACKMAN: Okay. Why don't we take a  
3 break.  
4 (Recessed at 10:41 a.m.)  
5 (Reconvened at 10:50 a.m.)  
6 BY MR. TABACKMAN:  
7 Q. Mr. Chen, I would remind you that you're  
8 still under oath. I have a different document I  
9 want to show you that I believe you created. Let's  
10 have this marked as Exhibit 37.  
11 - - -  
12 (Deposition Exhibit Number 37 was marked  
13 for identification.)  
14 - - -  
15 MR. ESTES: That's a daunting exhibit  
16 number.  
17 MR. TABACKMAN: They may not all get used.  
18 MR. ESTES: Take your time and look at it,  
19 Alan.  
20 BY MR. TABACKMAN:  
21 Q. Look it over, and I'd like you to tell me  
22 whether or not you recognize it as a document that  
23 you created in realtime.  
24 MR. ESTES: Object to the phrase  
25 "realtime."

Page 46

1 MR. TABACKMAN: In July of 2010 as opposed  
2 -- sometime in July of 2010 as opposed to in  
3 response to a request for data.  
4 MR. ESTES: Excellent.  
5 MR. TABACKMAN: How's that?  
6 MR. ESTES: That's great.  
7 MR. TABACKMAN: I agree with you.  
8 THE WITNESS: Yes, I did compose that,  
9 yes.  
10 BY MR. TABACKMAN:  
11 Q. Okay, and what is this document? Why did  
12 you create it and what does it show? What was it  
13 intended to depict?  
14 A. It basically give me the idea for the full  
15 -- for the whole month, every single day, the trades  
16 just by day, the total volume, the costs and the  
17 final P and L, profit and loss.  
18 Q. Okay. Let's look at the lines 3 -- the  
19 first two lines in the first -- after that single  
20 line, the ones on Saturday July 17th. Now, your  
21 first line indicates -- is the one megawatt trade  
22 that you made on that day; is that correct?  
23 A. Yes, sir.  
24 Q. All right, and that was again -- I believe  
25 my shorthand is testing the system to see if it was

Page 47

1 up and working and available to you; is that right?  
2 A. Yes, sir.  
3 Q. Okay. Now, the next two lines reflect  
4 trades between which two locations or two nodes, if  
5 you will?  
6 A. MISO to COMED and COMED to MISO.  
7 Q. Okay, and was this the -- the volume --  
8 the number in the column marked -- headed volume,  
9 what does that show?  
10 A. That's the total volume for that day.  
11 Q. Okay, and do you know how many trades you  
12 made that day?  
13 MR. ESTES: If you know.  
14 A. I don't know exact number. Since -- even  
15 though from MISO to COMED, it's one row, but it  
16 could possibly two or three or maybe even four  
17 individual trades.  
18 Q. Would each of the trades be paired --  
19 would each of the nodes in COMED, the separate ones,  
20 be paired with a particular node in MISO?  
21 MR. ESTES: If you know.  
22 A. Not necessarily. For MISO to COMED, say I  
23 have a hundred, a hundred, a hundred, maybe three  
24 trades, and from COMED to MISO, I could have 150,  
25 150, so it's not exactly matched, but the total does

Page 48

1 match.  
2 Q. Okay, and how many megawatts did you bid  
3 that day?  
4 MR. ESTES: For these particular --  
5 BY MR. TABACKMAN:  
6 Q. Between those two particular nodes, MISO  
7 and COMED, the source was MISO and the sink was  
8 COMED or the source was COMED and the sink was MISO.  
9 A. 30,000 megawatt for the first, 30,000  
10 megawatt for the second.  
11 Q. Okay, and the next column is OASIS cost;  
12 is that correct?  
13 A. Yes, sir.  
14 Q. And where does that number -- how did you  
15 derive that number?  
16 A. That's based on my estimate.  
17 Q. Okay. And how did you go about making  
18 that estimate?  
19 A. Yeah, this is kind of based on my past  
20 experience. I think it's like importing, you get 67  
21 cents. Exporting, you get zero, but when I do this,  
22 I just kind of spread into two and so it's like  
23 importing, you have OASIS cost, exporting, you also  
24 have OASIS cost.  
25 Q. Why do you show that there -- that there's

Page 49

1 an OASIS cost on both legs if exporting to MISO  
2 doesn't have OASIS cost?  
3 A. It's just kind of for my own purposes.  
4 Actually, I just spread it out, so when I -- when I  
5 look at OASIS cost, it's every trades a single cost,  
6 so not depends on importing or exporting. It's  
7 actually just on average.  
8 Q. If I understand what you're saying, even  
9 though the cost is incurred only one leg of the  
10 pair, you attributed it for your purposes half to  
11 one leg and half to the other? Is that what you're  
12 saying?  
13 A. Not necessarily half to half. I actually  
14 have one called ratio of importing like say from  
15 MISO to PJM and PJM to MISO, sometimes I have like  
16 55 percent, so importing more, and I maybe put a few  
17 more cents here. If I have -- the percentage is  
18 less, say, 45 percent, then I maybe reduce a few  
19 cents on the OASIS cost, but for the whole month,  
20 every single day, every single hour I put on like,  
21 say, in this case I think it's 36 cents, maybe -- so  
22 it's like a number for all the -- for all the  
23 transactions, for every single hour for every day,  
24 same number.  
25 Q. In this instance, you say that you -- even

Page 50

1 though sometimes you say you divided them up and it  
2 wasn't exactly 50/50, in this instance on Exhibit  
3 37, the transactions from MISO to COMED and COMED to  
4 MISO, you divided it half and half; is that right?  
5 MR. ESTES: Do you understand?  
6 BY MR. TABACKMAN:  
7 Q. It reflects the same number -- in the  
8 OASIS column, you have \$10,740 on the MISO to COMED  
9 transactions, and on \$10,740 on the COMED to MISO.  
10 MR. ESTES: This question's still  
11 predicated on your characterization of his prior  
12 answer, because I'm not sure it was correct, so I  
13 object on that basis if you keep it --  
14 MR. TABACKMAN: I'm just simply asking him  
15 what's there on the page.  
16 MR. ESTES: Okay.  
17 BY MR. TABACKMAN:  
18 Q. There is -- both in the column for -- both  
19 of those two rows have the number 10,740.  
20 A. Yes, sir.  
21 Q. Okay, and I always get confused. The  
22 export to MISO doesn't incur an OASIS cost; is that  
23 right?  
24 A. Correct.  
25 Q. Okay. This, your chart here though, your

Page 51

1 spreadsheet shows that there is an OASIS cost,  
2 correct, of \$10,740 --  
3 A. Correct.  
4 Q. -- on the COMED to MISO.  
5 A. Yes.  
6 Q. And how -- and -- okay, even though in  
7 fact there is no OASIS charge for that transaction.  
8 A. Yeah.  
9 Q. Excuse me. Let me ask you -- you know,  
10 there is an OASIS charge on the MISO to COMED side;  
11 is that right?  
12 A. Correct.  
13 Q. And for your purposes, you just chose to,  
14 whatever that OASIS cost is, divide it up between  
15 both legs, in this instance 50/50.  
16 A. Correct.  
17 Q. Now, on the to settlement, that column  
18 shows what? With respect again to the MISO-COMED  
19 transactions, what are you showing there?  
20 A. The to settlement is just the pure  
21 day-ahead charge and the realtime -- day-ahead  
22 charge or credit plus realtime charge or credit, so  
23 it's not related to any kind of transaction cost or  
24 OASIS cost or any other charges. It's just pure  
25 day-ahead and realtime.

Page 52

1 Q. In other words, does it reflect the value  
2 of the transaction in terms of what the spread was  
3 without taking into account charges and credits, if  
4 we just talk about the difference in between the two  
5 nodes?  
6 A. Yes, correct.  
7 Q. Okay, so -- and in one of these two  
8 transactions, the MISO to COMED transaction, you  
9 showed \$92,273.60 positive, correct?  
10 A. Correct.  
11 Q. On the other one, it shows \$92,273.60  
12 negative, correct?  
13 A. Correct.  
14 Q. They zero out; is that right?  
15 A. Correct.  
16 Q. Now, under the ISO column, you show --  
17 what does that show? What were you showing there?  
18 A. These two column, it's like when you final  
19 -- in PJM, you have data coming every five minutes  
20 and you aggregate into hourly number, so two  
21 settlements, it's the final settlement number, PJM  
22 publish a day-ahead and realtime number. The ISO is  
23 -- I kind of running like accumulate every day every  
24 single hour, and it's based on preliminary data.  
25 Q. So this is before you have seen what PJM

Page 53

1 publishes; is that right? This is an estimate for  
2 you?  
3 A. Yes.  
4 Q. Is that the right word?  
5 A. It's like before PJM publish the final  
6 settlement number, this is -- these two column are  
7 different, but once they publish the number, these  
8 two column becomes the same.  
9 Q. Okay, and -- and here, again, you show for  
10 the MISO to COMED a positive of \$92,273.60, right?  
11 A. Yes.  
12 Q. And then in the COMED to MISO, a negative  
13 amount, and the exact same comment only negative.  
14 A. Yes.  
15 Q. Again, zeroing out.  
16 A. Yes, sir.  
17 Q. Does this reflect that with respect to --  
18 putting aside charges and credits, just if I can say  
19 the pure transaction, that there was not -- you  
20 neither made nor lost any money?  
21 MR. ESTES: Based on --  
22 BY MR. TABACKMAN:  
23 Q. What's shown here.  
24 A. Yeah, based on after the fact, yes.  
25 Q. I'm not sure what you mean by based on

Page 54

1 after the fact.  
2 A. I mean based on the 7/17, on that day,  
3 after all the market close and the settlement come  
4 in, yeah, they are actually zero.  
5 Q. Now, your final P and L, when did -- where  
6 do those numbers come from, again, with respect to  
7 this set of transactions, MISO-COMED, COMED-MISO?  
8 A. This one, it's the difference between the  
9 to settlement minus the cost, so it's final P and L  
10 equals to settlement minus OASIS cost.  
11 Q. Okay, and does this show, under this final  
12 P and L, you have a negative -- you have a loss of  
13 \$103,013.60 and a profit of 81,533.60, without doing  
14 the math, shows that you lost money on those two  
15 transactions; is that right?  
16 A. That is correct, yes, sir.  
17 Q. This number here, these two numbers do not  
18 include any transmission loss credit.  
19 A. No, sir.  
20 Q. Okay. Now, going up to -- right at the  
21 top, the second row of the chart where you have this  
22 -- you see the words "Total monthly P and L"?  
23 A. Yes.  
24 Q. And you have the number \$777,932.60. What  
25 does that number reflect?

Page 55

1 A. That's the P and L before the transmission  
2 loss credit.  
3 Q. Before the transmission loss credit.  
4 A. Correct.  
5 Q. That's how much money you made on  
6 transactions before you -- before you received the  
7 transmission loss credit?  
8 A. Correct.  
9 Q. Well, let's go through that. It shows --  
10 let's look at the next two, MISO-Day and Day-MISO.  
11 In final P and L there again, you're showing a loss  
12 because you have \$71,000 negative, \$54,654 and  
13 change positive, so that's also a negative  
14 transaction, is that right, prior to the  
15 transmission loss credit.  
16 A. Yes, sir.  
17 Q. That's also true with respect to the Cook-  
18 MISO and MISO-Cook transactions that are on the next  
19 two lines.  
20 A. Yes, sir.  
21 Q. Is that right?  
22 A. Yes, sir.  
23 Q. Going to July 18, you show -- or the --  
24 you show a pair of transactions, MISO-COMED,  
25 COMED-MISO, the same volume, those are paired

Page 56

1 transactions, is that right, paired trades?  
2 A. Yes, sir.  
3 Q. Okay, and if we look over on those, again,  
4 under the to settlement and ISO columns, the numbers  
5 essentially net out to zero; is that right?  
6 A. Yes, sir.  
7 Q. And then you have again showing in your  
8 final P and L a higher negative number than you do a  
9 positive number, so again, a loss prior to  
10 transmission loss credit.  
11 A. Yes, sir.  
12 Q. Okay. And that's also true, is it not,  
13 for the next pair, MISO-Day, Day-MISO.  
14 A. Yes, sir.  
15 Q. And again, the same thing, that the to  
16 settlement and ISO -- ISO columns show a netting out  
17 to zero, and your final P and L is a negative of  
18 somewhere approximately of around \$23,000.  
19 A. Yes.  
20 Q. 263 -- I mean, it is what it is precisely,  
21 but for our purposes, you know -- okay, that's also  
22 then true, you have a negative number in the next  
23 two transactions, MISO-Miami Fort, East Bend 2 to  
24 MISO.  
25 A. Yes, sir.

Page 57

1 Q. And if you would look down, and again,  
2 through the entirety of the three pages, and take  
3 your time, and let me know, you know, where you  
4 find, if you find any circumstances where a pair  
5 results in the final P and L column where the  
6 positive on one side of the transaction is higher  
7 than the negative on the other.  
8 A. No.  
9 Q. There are no -- none of them.  
10 A. Correct.  
11 Q. But if I understood you correctly, you  
12 said your total monthly P and L was a positive  
13 number.  
14 A. Yes, sir.  
15 Q. And you said that that was before you  
16 received the transmission loss credit?  
17 A. Correct.  
18 Q. Or after you received the transmission  
19 loss credit?  
20 A. It is before.  
21 Q. Well, if -- were these all the  
22 transactions that you engaged in in July 2010, PJM  
23 up to transactions?  
24 A. Yes, sir.  
25 Q. If there were no transactions that

Page 58

1 resulted in -- no pairs that resulted in a positive  
2 profit, how is it that you were able to get total  
3 monthly P and L turn out positive?  
4 A. Maybe I point to the Exhibit 4. This  
5 number, it's close to paired profit without TLC.  
6 PJM's settlement number is \$730,000, and my estimate  
7 is \$778,000, kind of I have some margin, \$40,000  
8 margin, so it's kind of estimate is a little bit  
9 lower, but this supposed to be like similar to that  
10 number.  
11 Q. I guess I'm -- but that is -- that number  
12 is -- you're saying that -- okay. The column on  
13 Exhibit 4 that says paired profit without TLC shows  
14 a loss; is that right?  
15 A. Correct.  
16 Q. And you don't disagree with that.  
17 A. No.  
18 Q. Okay. And then the TLC column on Exhibit  
19 4, 782,978, that's the positive amount that you  
20 received transmission loss credit, correct?  
21 A. Yes, sir.  
22 Q. And you're saying that that number  
23 corresponds to the \$777,932.60 on your --  
24 MR. ESTES: I'm lost.  
25 MR. TABACKMAN: -- chart?

Page 59

1 MR. ESTES: If you follow.  
2 BY MR. TABACKMAN:  
3 Q. Column 37?  
4 A. Column I?  
5 Q. Column I.  
6 A. The grand total, it include most of the  
7 trades I have, so it's corresponding to this total  
8 monthly P and L, yes, sir.  
9 Q. Column I on Exhibit 4 --  
10 A. Yes, sir.  
11 Q. -- for the MISO-COMED -- oh, you're saying  
12 that --  
13 A. Grand total.  
14 Q. -- is the grand total of transmission loss  
15 credit you received, that's what column I shows.  
16 A. Column I shows the paired profit without  
17 --  
18 Q. I'm sorry, looking at column J. Column I  
19 shows the loss without the TLC.  
20 A. Correct.  
21 Q. And that corresponds to whatever -- the  
22 total of your final P and L column; is that right?  
23 A. Yes, sir.  
24 Q. Okay. I'm asking about on your Exhibit  
25 37, up at the top, you have the number total monthly

Page 60

1 P and L, a positive 777,932.60. Where does that  
2 come from?  
3 MR. ESTES: Lack of foundation. It's a  
4 negative.  
5 MR. TABACKMAN: I'm sorry, that is a  
6 negative. Because it was black, it didn't come out.  
7 MR. ESTES: Passing in the night for a  
8 little while.  
9 BY MR. TABACKMAN:  
10 Q. I'm sorry, that's what was throwing me  
11 off. I thought it -- so that number is before you  
12 get to TLC.  
13 A. Yeah.  
14 Q. I get it, that's right. They correspond  
15 with each other.  
16 A. Yes, sir.  
17 Q. Then at the end of -- after the TLC, you  
18 wind up with a profit of over a million dollars,  
19 according to Exhibit 4.  
20 A. Yes, sir.  
21 Q. And again, while we can argue about the  
22 precise number, you don't dispute that that is  
23 approximately the profit that you made.  
24 A. That is correct.  
25 Q. And that profit came solely from the TLC;

Page 61

1 is that right?  
2 A. In this case, yes, I think yes.  
3 Q. When you said in this case, are there --  
4 A. Yeah, excuse me. Before I put on trades,  
5 I have two purpose. One is TLC, it is. The other  
6 is could one of the leg reject, and that's another  
7 purpose. So I do have multiple purpose, not just  
8 say -- I also imagine I could lose a lot of money,  
9 but that's also one of the purpose, is get the  
10 transmission loss credit.  
11 Q. Let me ask you this. Was it your purpose  
12 -- you said you had multiple purposes. Was it your  
13 purpose to have one of your legs rejected when you  
14 put your bids in?  
15 MR. ESTES: Same objection. We've been  
16 over this.  
17 BY MR. TABACKMAN:  
18 Q. Did you -- were you trying -- when you --  
19 when you put in your bids, did you want one of your  
20 legs rejected? Is that something that you were  
21 seeking to have happen?  
22 MR. ESTES: Object to form.  
23 A. My -- my goal is not to asking for that  
24 would be rejected. It is I imagine could possibly  
25 rejected, but I'm not really trying to asking for

Page 62

1 it.  
2 Q. Right, so when you say it was your  
3 purpose, you had two purposes. It was not your  
4 purpose, you didn't set out to have one of the legs  
5 rejected when you made your bid; isn't that correct?  
6 MR. ESTES: Same objection, asked and  
7 answered. It's the purpose, a purpose. We keep  
8 going back over the same thing.  
9 BY MR. TABACKMAN:  
10 Q. Mr. Estes, please, please, I'm -- I want  
11 an answer. I mean, to say something was a purpose  
12 means that that's what you set out to do. Did you  
13 set out to have one of the legs rejected? When you  
14 sat down and decided that you were going to make a  
15 trade that day, did you have the purpose of -- I  
16 understand it might have happened and what could  
17 result, but was it your purpose, your intention,  
18 your goal to have a leg rejected?  
19 MR. ESTES: Same objection. He's told you  
20 what his intention was. He told you what his plan  
21 was. He's talking contingencies that could occur.  
22 BY MR. TABACKMAN:  
23 Q. And I'm talking about what his goal was.  
24 You know, if you can't answer that, Mr. Chen, that's  
25 fine, but I will ask counsel not to coach you on

Page 63

1 this. You know, I'm talking about what was your  
2 purpose. Was it your purpose, yes or no, to have  
3 one of your legs rejected when you set up your trade  
4 to have that happen?  
5 MR. ESTES: Same objection. There's lack  
6 of foundation.  
7 A. I don't purposely to asking for -- to be  
8 rejected on one of the legs, but before I put on a  
9 trade, I do have those possibility lay out, and one  
10 is both are cleared, and the other is it could  
11 reject, then I make money and --  
12 Q. You're going to -- at some point we're  
13 going to take a break; isn't that right? You know  
14 that we'll take a break for lunch. Can we agree on  
15 that assumption? Yes? And you're going to, you  
16 know, perhaps go to a place and attempt -- walk  
17 there and try to buy something to eat if you're  
18 hungry; is that right?  
19 A. Yes, sir.  
20 Q. If you trip down -- you may trip down the  
21 stairs on your way there and break your leg. It's  
22 possible, right?  
23 A. Yeah.  
24 Q. Is that your purpose? Would you say that  
25 was your purpose, was to do that?

Page 64

1 MR. ESTES: I'm sure I can come up with  
2 various objections, but I object to the form and --  
3 BY MR. TABACKMAN:  
4 Q. I mean, I'm trying to understand -- no,  
5 sir, I mean, you're coaching. I'd like an answer to  
6 the difference between what -- what you set out to  
7 have -- to achieve and what you might have -- what  
8 might have happened.  
9 A. Before I -- it's like before I go, I do  
10 think if I could trip, so you do have some maybe  
11 plan for it or in this case, I do have the plan for  
12 it. So when you put -- before you put on the  
13 trades, you cannot guarantee a hundred percent, you  
14 know, they will reject or there will be no reject.  
15 It's kind of based on PJM model.  
16 Q. Okay, I understand that, and --  
17 BY MR. HOPKIN:  
18 Q. How close to 100 percent can you get?  
19 A. I mean, everything is like Lehman Brothers  
20 bankruptcy. You could never imagine in your life  
21 this big could happen, but it does. I mean -- and  
22 like -- same as like that May 30th, 2010, MISO to  
23 Mount Storm, I never could imagine one of the leg,  
24 it could be like \$50, and that trigger me, anything  
25 is possible. That's why I plan for it. I mean,

Page 65

1 it's because losing money, then you -- oh, suddenly,  
2 you think it's possible, but I do have that --  
3 always have the feeling in my -- the worry in my --  
4 I actually exchange with Kevin Gates, exchanging  
5 e-mail, we even talked about it on the next day, I  
6 -- I mean, strongly emphasize, it's one of the, I  
7 mean, possibilities of losing a lot of money, and I  
8 cannot emphasize enough for that.  
9 BY MR. TABACKMAN:  
10 Q. Let me -- yes, and I understand, and  
11 perhaps we'll never be able to distinguish between,  
12 you know, the purpose of doing something and the  
13 possibility of something other than your purpose  
14 occurring, but apparently you won't acknowledge that  
15 there's a difference between what one intends to  
16 have happen, what one is trying to have happen and  
17 what might happen if something doesn't work out.  
18 That distinction -- you can't appreciate that  
19 distinction, Mr. Chen?  
20 MR. ESTES: Object to the question.  
21 You're arguing with the witness.  
22 A. Yeah, I'm sorry, I'm kind of -- English is  
23 the second language so maybe some kind of  
24 distinguishing I'm not capture there, but what I'm  
25 trying to say is before I put on the trades, I do

Page 66

1 have those thought out.  
2 Q. Okay, and what did you do to avoid -- did  
3 you do -- well, let me ask you this. Did you do --  
4 when you structured your trade, did you take any  
5 steps or go through any thoughts and did you do  
6 anything to try to avoid the possibility that a leg  
7 would be rejected?  
8 A. Not avoid. I only say it's trying to  
9 reduce, not avoid, yeah.  
10 Q. Okay. Well, you tried to reduce the risk  
11 of a leg being rejected. Is that fair to say?  
12 A. Yes, sir.  
13 Q. Why did you want to reduce the risk of the  
14 leg being rejected? Is it because -- let me ask you  
15 -- suggest -- is it because you would lose money or  
16 potentially make money?  
17 A. Yes, sir.  
18 Q. Okay.  
19 A. Yeah.  
20 Q. You were trying to -- did you try to  
21 increase the likelihood that both legs would clear?  
22 A. Yes, sir.  
23 Q. Is it fair to say then that you wanted  
24 both legs to clear, which is why you tried to  
25 increase that likelihood, and you didn't want one of

Page 67

1 the legs to be rejected?  
2 MR. ESTES: Compound question.  
3 A. I mean, I -- it's kind of a tricky  
4 question. I mean, I -- I'm sorry, I do -- I do --  
5 do kind of want to reduce the possibility and I'm  
6 not just canceling all -- avoid totally, yeah,  
7 that's the --  
8 Q. Right, you're --  
9 A. That's what I'm trying to say.  
10 Q. And I accept -- I don't mean to speak over  
11 you. I accept the fact that you can't -- you can't  
12 ensure that it's not going to happen. There's no  
13 way you can be certain that a leg won't be rejected.  
14 Is that your point?  
15 A. Yes, sir.  
16 Q. Okay, but you wanted to try to as much as  
17 you could to keep that from happening, to lower the  
18 risk that that would happen.  
19 A. Yeah.  
20 Q. Okay.  
21 A. If you're saying -- yeah, yeah, lower the  
22 possibility, yes.  
23 Q. Right, and you took -- you structured your  
24 trades on the other hand to increase the possibility  
25 that both legs would clear.

Page 68

1 A. That is correct.  
2 Q. Okay, as long as we can agree on that.  
3 And when -- does your spreadsheet show that when  
4 both legs did clear, what was the -- what was the  
5 source of your profit when both legs did clear on  
6 your transactions that we've looked at in Exhibit 4  
7 and -- and Exhibit 37?  
8 A. Yeah, if you aggregate and look at all  
9 this total period, it's coming from transmission  
10 loss credit, but if you look at individual day, some  
11 of the days, the transmission loss is actually --  
12 make you lose more money. It doesn't cover all of  
13 your cost. Even in the summer, on the hot days and  
14 -- you still losing money basically, but if you  
15 aggregate, looks like you're always making money.  
16 MR. ESTES: Counsel, at one point I assume  
17 you're going to walk through category A and category  
18 B and your different categories to explore the  
19 similarities and differences, because this bears on  
20 some of this discussion.  
21 BY MR. TABACKMAN:  
22 Q. With category A, the category A  
23 transactions, you did equal and opposite. You did  
24 the same volumes in one direction, same volume in  
25 the other direction between the same two nodes; is

Page 69

1 that right?  
2 A. Yes, sir.  
3 Q. Okay. Then in category B on Exhibit 4,  
4 you went -- they reflect East Bend 2 to MISO and  
5 MISO to Miami Fort 7, those were a series of  
6 transactions over a period of time between July 18,  
7 2010 and August 3rd, 2010. Why did you choose those  
8 nodes?  
9 A. I kind of --  
10 MR. ESTES: Do you remember?  
11 THE WITNESS: Yeah, based on my  
12 experience, I observed these two nodes, there's one  
13 type of contingency. This is one transmission line.  
14 If I remember correctly, it's like Foster to Pierce  
15 to Foster, this one 345 KV transmission line. If  
16 there's a contingency on that line, East Bend 2, the  
17 price will go down dramatically like negative  
18 several hundred dollars.  
19 BY MR. TABACKMAN:  
20 Q. Uh-huh.  
21 A. Miami Fort will go up positive several  
22 hundred dollars, so if there's contingency on that  
23 line, the spread between these two could go like  
24 400, 500, 700 dollars instantaneously, just like  
25 that.

Page 70

1 Q. Okay. Let's look at Exhibit 37 again, if  
2 you put that in front of you. On July 18th -- now,  
3 this is not the day that you -- that is the day that  
4 you flowed, right, so you would have made -- you  
5 would have put the trade in on July 17th. The date  
6 that appears in the left-hand column --  
7 A. Yes.  
8 Q. That's the date of the -- the financial  
9 flow date, or is that the date on which the trade is  
10 placed?  
11 A. Flow date.  
12 Q. Okay, so then on Sunday July 18th, there's  
13 a trade from MISO to Miami Fort in the amount of  
14 4,800 megawatts; is that right?  
15 A. Yes, sir.  
16 Q. And there is -- on that same day, you did  
17 either one or some number of trades between East  
18 Bend and MISO, resulting in 48 -- 4,800 megawatts.  
19 A. Yes, sir.  
20 Q. Is that right? And the net difference  
21 between -- on the to settlement and the ISO, again,  
22 they are -- looks like approximately a couple  
23 hundred dollars difference in the loss -- in the  
24 negative; is that right?  
25 A. Yes, sir.

Page 71

1 Q. Okay. And so the possibility that you had  
2 described happening didn't occur on the trades on  
3 July 18th; is that correct?  
4 A. Correct.  
5 Q. Okay. Again, looking at July 19th, did  
6 that possibility -- did that contingency that you  
7 talked about occur with respect to the MISO-Miami  
8 Fort, East Bend-MISO trades that you placed on that  
9 date?  
10 A. No, sir.  
11 Q. How about -- could you look at each of the  
12 dates and tell me whether it occurred on any of  
13 them?  
14 A. No, sir.  
15 Q. Had you studied those -- the behavior of  
16 those nodes prior to deciding that you were going to  
17 make those trades?  
18 A. Yes, I did.  
19 Q. And when had you done that study?  
20 A. I think if this is for July, I probably  
21 done March, April, May.  
22 Q. And over what period of time, if you can  
23 recall, did you look at trades between those two  
24 nodes?  
25 A. I normally look at past four or five

Page 72

1 years, so probably 2005 or '6 up to 2009 or '10.  
2 Q. And you -- what were you looking for when  
3 you did that? Let me ask you this. Were you  
4 looking forward to see how often this contingency  
5 that you described a few minutes ago occurred during  
6 that time frame?  
7 A. When I look at -- when I pick trades, I  
8 look at historically what is -- what pocket of nodes  
9 in PJM is good for import, so that means the price  
10 is going way up, a big jump. Also there's some  
11 other nodes go way down, you can export. So in this  
12 case, it shows up as Miami Fort as good for  
13 importing. The other node, East Bend, is good for  
14 exporting, so these two nodes normally close  
15 together, but if ever there's a chance, it always,  
16 this one go up, this one go down, not the other way  
17 around.  
18 Q. Okay.  
19 A. So even if you're losing money, you're  
20 losing a little bit of cost. You're not really  
21 losing your shirt, but if you're making money, you  
22 could making like \$500 per megawatt, so I'm looking  
23 for that.  
24 Q. When you did this study, going back to  
25 2005 for the previous five years, did you create a

Page 73

1 document for yourself that captured the results that  
2 you were -- that you were seeing?  
3 A. Yes, sir.  
4 Q. And is that something that's been produced  
5 here?  
6 A. Yes, sir, it's in the response.  
7 Q. Okay, and to the best of your  
8 recollection, what percentage of time did this --  
9 the contingency that you had described, if you  
10 recall, how often did that happen within that five  
11 years if you recall roughly?  
12 A. I think there are quite a few month, and I  
13 also remember like this year in May, it happened  
14 like a few days this year, 2011, when I look at.  
15 Q. But that wasn't something that you had  
16 studied.  
17 A. Yeah, before it's the same, there's  
18 several months like only like a couple days for that  
19 month, and the average you get one dollars or 40  
20 cents per megawatt.  
21 Q. In other words, if I -- let me see if I  
22 understand what you're saying. Over that period  
23 that you studied, most of the time it was a one  
24 dollar 40 cents, a very small difference.  
25 Occasionally -- again, I don't mean -- I'm just

Page 74

1 trying to make sure I understand. Occasionally you  
2 had this contingency where you could make  
3 potentially a lot of money.  
4 A. That is correct.  
5 Q. Okay. Were you able to -- in your study,  
6 were you able to identify which months -- was there  
7 a repetition in the months that that contingency  
8 would likely happen? Were you able to identify it  
9 happens more in April versus November or -- you  
10 know, as an example.  
11 A. I did have some thoughts on that. It's  
12 actually when I look at, this is -- these two nodes,  
13 Miami Fort and East Bend, it's within Dayton zone.  
14 It's in the Ohio Valley and like Cleveland,  
15 Cincinnati, in that area, and if the temperature in  
16 that Ohio Valley is like triple digits or maybe 95,  
17 96, 98, and in the mid-Atlantic area it's also  
18 pretty high but not overwhelming, and Chicago is  
19 also temperature high but not overwhelming, then  
20 this type of -- it could happen and the possibility  
21 is very, very high, but if mid-Atlantic area is like  
22 triple digits, it overwhelms --  
23 Q. Temperature. When you say triple digits,  
24 triple digits in temperature.  
25 A. Temperature.

Page 75

1 Q. Which might be the case in July.  
2 A. Yes, sir.  
3 Q. Okay, then would that make it more or less  
4 likely that you would see this contingency?  
5 A. It's more likely to see, yes.  
6 Q. Okay, and what if the temperature was also  
7 high in the Ohio Valley during that same time?  
8 A. I could imagine that is yes, so before I  
9 put on trades, I'm anticipating this type of could  
10 happen, but after fact, when you look back, it  
11 didn't happen any of the days, but that doesn't mean  
12 the purpose before I put on trades, it's trying to  
13 get a spread, big spread. Like this year, I mean,  
14 it's not related to the before history I look, but  
15 up to now, I'm still tracking those trades, and  
16 there's some days like in May, it's like 400, 500,  
17 300 for quite a few hours, so if you put on those  
18 trades, you could -- in this volume, you could put  
19 single day, you make one million dollars.  
20 Q. Was that your goal?  
21 A. Yeah, I mean, you're trying to make money,  
22 and if you capture that day, you make one million.  
23 If you lose, you're losing maybe 10,000 a day,  
24 10,000 a day, all the month you're losing maybe like  
25 300 grand, but if you're making money, one single

Page 76

1 day could cover several months.  
2 Q. But wasn't your strategy in your  
3 transactions a general proposition to do low-risk,  
4 low-return transactions?  
5 A. Yes, sir.  
6 Q. You weren't involved in these kinds of  
7 transactions generally to achieve -- that's not the  
8 way you went about conducting your business as a  
9 general proposition; is that right?  
10 A. Yes, sir.  
11 Q. But is it -- are you saying here that in  
12 these instances, you were setting up these trades in  
13 order to accomplish that?  
14 A. Yeah.  
15 MR. ESTES: Object to form.  
16 A. Yeah, my understanding is this type of  
17 trades, when you lose, you lose a little bit. They  
18 are never going to reverse, but when you're making,  
19 you make a lot, so the -- the potential of losing  
20 money is very low. That's why what I call low risk,  
21 low reward but have high potential of high reward.  
22 Q. If a certain contingency happens.  
23 A. Yes, sir.  
24 Q. And again, I asked you and I'm not sure  
25 that you answered me. Again, based on your

Page 77

1 recollection, if you could put a percentage, over  
2 that five years, how -- what percentage of time did  
3 you see that contingency occurring, the one that you  
4 described that resulted in making a lot of money, if  
5 you -- if you have a recollection.  
6 A. I don't recall, but I see multiple days.  
7 Q. Multiple days meaning over -- over a  
8 five-year period.  
9 A. Yes, sir.  
10 Q. Multiple meaning how many? I mean,  
11 there's -- you know, five years is roughly 2,000  
12 days. How many -- and a lot of -- and 24 hours in  
13 each of them. What's your best recollection?  
14 MR. ESTES: Counsel, he's already told you  
15 he doesn't recall specifically.  
16 A. I don't recall, yeah.  
17 Q. Okay. Was another purpose of yours -- if  
18 that contingency didn't happen, these were trades  
19 that where you would -- any profit you would make  
20 would result from the transmission loss credit?  
21 A. That's one of the goals, yes, if  
22 contingency doesn't happen and I still have the  
23 transmission loss credit cover the cost.  
24 Q. Right, and the -- and in all of the  
25 transactions in July involving East Bend 2 and MISO

Page 78

1 and Miami Fort and MISO, in none of those did you  
2 result in -- resulted in that contingency that you  
3 described making a lot of money; is that right?  
4 A. That is correct.  
5 Q. And the profit that you made in that month  
6 as a result of those transactions was solely from  
7 the transmission loss credit. Is that correct?  
8 A. After the fact, yes.  
9 Q. I understand after the fact, but that --  
10 that is a fact. That's where your money came from.  
11 A. Yes, sir.  
12 Q. Are there other months in which you engage  
13 in those Miami East Bend to MISO, MISO to Miami Fort  
14 transactions in which you -- you recall having made  
15 money other than as a result of the transmission  
16 loss credit?  
17 MR. ESTES: If you recall, Alan.  
18 A. I don't recall, but I do -- I think if I  
19 remember correctly, they are -- there are cases all  
20 hours, I made a lot of money for that.  
21 Q. Would you -- would you agree that those --  
22 the -- those nodes are highly correlated in their  
23 prices, they move in the same direction typically?  
24 A. Yes, sir, yeah.  
25 Q. And would that be the predominant thing

Page 79

1 that you discovered as a result of your study of  
2 them, that they were largely correlated with each  
3 other?  
4 A. Yes, sir.  
5 Q. And so that -- would it be accurate to say  
6 that in most -- in the -- in the largest percentage  
7 of instances, the -- strike that.  
8 MR. ESTES: Thank you.  
9 BY MR. TABACKMAN:  
10 Q. And in -- going back to Exhibit 4, and I  
11 understand on an aggregate basis, but on an  
12 aggregate basis, in the CU Fund trades for the East  
13 Bend -- in category B, East Bend to MISO, then  
14 MISO-Miami Fort, you, prior to the transmission loss  
15 credit, you lost \$27,420 is what it shows here.  
16 A. Yes, sir.  
17 Q. And you agree that that is approximately  
18 correct? You don't dispute that number, correct?  
19 A. Correct.  
20 Q. All right. And on the other hand, the  
21 transmission loss credit was \$54,669.  
22 A. Correct.  
23 Q. And so that transformed what would have  
24 been a loss into a profit.  
25 A. Correct.

Page 80

1 Q. And in total for the CU Fund in July of  
2 2010, during the entire -- there was no profit --  
3 again, on the aggregate basis, no profit other than  
4 the transmission loss credit.  
5 A. Correct.  
6 Q. And without the transmission loss credit,  
7 you would have been in the hole, you know, \$730,985  
8 or something close to that, correct?  
9 A. Correct.  
10 MR. ESTES: Counsel, when it's appropriate  
11 given your questions, can we take a brief break?  
12 MR. TABACKMAN: Sure, if you'd like a  
13 break, I can do that if that's what you're  
14 suggesting.  
15 MR. ESTES: Sure, let's do that.  
16 (Recessed at 11:39 a.m.)  
17 (Reconvened at 11:46 a.m.)  
18 MR. TABACKMAN: Let's have this marked as  
19 Exhibit 35 please.  
20 - - -  
21 (Deposition Exhibit Number 35 was marked  
22 for identification.)  
23 - - -  
24 BY MR. TABACKMAN:  
25 Q. Let the record reflect I'm giving a copy

Page 81

1 to counsel and to co-counsel, and if you take a look  
2 at that, take as much time as you need and tell me  
3 if you recognize what this document is.  
4 A. Yes, sir, I recognize.  
5 Q. What is it, Exhibit 35?  
6 A. It's different cost components.  
7 Q. Cost components of what?  
8 A. For up-to congestion trades.  
9 Q. Okay, and did you create the document, the  
10 spreadsheet or chart -- I don't know how to describe  
11 it -- what is Exhibit 35, is that something that --  
12 that was your creation?  
13 A. Yes, sir.  
14 Q. And did you create this in response to the  
15 request for production of documents -- you created  
16 it to produce for FERC or is this something that you  
17 created during the period reflected on the dates  
18 here, July 1st, 2010 to July 31st, 2010?  
19 A. It's for my own reporting purposes.  
20 Q. Okay. And why -- and let's go through  
21 what the -- the numbers and the words. Up at the  
22 top, there are the letters and in all caps RSVC.  
23 What does that stand for?  
24 A. Reactive supply and voltage control.  
25 Q. And is that a cost that you incur in an

Page 82

1 up-to congestion transaction?  
2 A. Yes, sir.  
3 Q. And the SCDS, what does that stand for?  
4 A. System control and dispatch -- dispatching  
5 services.  
6 Q. Okay, and again, that's another cost that  
7 you would incur.  
8 A. Correct.  
9 Q. All right. And BS?  
10 A. Black start services.  
11 Q. And then where did the numbers -- the RSVC  
12 shows 20 cents. Where does that come from?  
13 A. This number coming from PJM monthly  
14 settlement reports. I average them. It's -- I  
15 think this number -- I'm not sure it's different or  
16 not by day, by hour, but I average them, it's close  
17 to 20 cents.  
18 Q. In other words, so you look -- this was  
19 after you got your statements from PJM?  
20 A. Yes, sir.  
21 Q. And how often did you get statements from  
22 PJM?  
23 A. The statement, it coming for this number  
24 once a month get the number, and based on history, I  
25 look at the average and say 20 cents, so going

Page 83

1 forward, I using 20 cents as -- as a number, kind of  
2 forecast my profit and loss.  
3 Q. Okay, and the SCDS number of four cents,  
4 was that also from the PJM statement that you got on  
5 a monthly basis?  
6 A. Yes, sir.  
7 Q. And I take it the black start as well?  
8 A. Yes, sir.  
9 Q. Okay. Then we have a larger four-column  
10 chart, and then it has -- its headings are date and  
11 then TLC. That's the transmission loss credit?  
12 A. Yes, sir.  
13 Q. And then the NFFTP, what is that?  
14 A. It's non-firm point to point.  
15 Q. Point to point?  
16 A. Transmission services.  
17 Q. And so this 20 cents reflects -- is a  
18 charge for what?  
19 A. For -- it's kind of my estimate. It could  
20 -- if you look at, it's varied by day, maybe even by  
21 hour, but on average, I think this 20 cents I could  
22 estimate per megawatt.  
23 Q. And -- but I'm sorry, this is -- is this  
24 your OASIS charge or this is a different charge?  
25 A. It's coming from OASIS, yes.

Page 84

1 Q. Okay. And then the net is reflecting  
2 what?  
3 A. Net is TLC, since this is a credit, minus  
4 NFFTP, non-firm point to point, minus RSVC minus  
5 SCDS minus BS.  
6 Q. Okay, so the -- I understand, the net is  
7 the TLC minus the three elements that you have at  
8 the top and the NFFTP that you have in the middle  
9 column --  
10 A. Correct.  
11 Q. -- in the larger chart. How did you go --  
12 why do you use 20 cents rather than 67 cents, which  
13 is, as I understand it, the published charge that  
14 PJM has for per megawatt for OASIS reservations?  
15 A. Yeah, it's just kind of for my own  
16 purposes. I don't want to detail to every cent to  
17 PJM settlement. I have the ball park number, and  
18 when looking back, 20 cents seems like a good  
19 estimate going forward, so I just kind of using 20  
20 cents as -- as a good estimate.  
21 Q. I mean, I'm just trying to understand. Do  
22 we agree that -- and I'm not arguing with you, but  
23 PJM publishes a cost of 67 cents per megawatt, is  
24 that true, in their material?  
25 A. Yes.

Page 85

1 Q. Okay. You use 20 cents. Does that  
2 reflect some experience that you had that 67 cents  
3 is not really what it winds up costing you per  
4 megawatt for OASIS?  
5 A. Because when you're importing, you pay 67,  
6 but when you're exporting, then you pay zero, so on  
7 average, on total, when I look at every day, I have  
8 ten trades and kind of group together for the whole  
9 day on average, that's kind of I come up with a  
10 number like it's easy for me to -- to keep the  
11 reports.  
12 Q. I can see -- I understand since it's 67  
13 cents in one direction and trades were paired, it's  
14 automatically going to be half, effective -- an  
15 effective half. Are there other factors that you  
16 have experienced that results in OASIS being reduced  
17 to some degree that causes you to use this lower  
18 number?  
19 MR. ESTES: Do you understand?  
20 A. I don't know. I don't -- I don't know  
21 exactly what that -- when I look at it, I always  
22 look at past say -- past few month, based on the  
23 trades I put on, I get a total number for the month,  
24 I get a total volume for the month, and I divided  
25 those two numbers and that's close to this number,

Page 86

1 so I just put that number in here.  
2 Q. So in other words, your experience show  
3 that OASIS wound up not costing you as much as the  
4 PJM published?  
5 MR. ESTES: I can explain it I think, but  
6 -- do you want me to do it at the break?  
7 BY MR. TABACKMAN:  
8 Q. I mean, essentially that it turned out  
9 that for reasons, OASIS didn't -- you saw OASIS not  
10 costing as much as that 67 cents. It was reduced in  
11 some way?  
12 MR. ESTES: Objection to foundation.  
13 BY MR. TABACKMAN:  
14 Q. Is that correct?  
15 A. I mean, 67 cents divide by two, so the  
16 max, 35 cents maybe like 37, 38 cents, 30 some  
17 cents, and if you export more, then you could get 20  
18 cents or ten cents even.  
19 Q. Your effective cost is reduced further.  
20 A. Yeah.  
21 Q. I understand, okay. How did you -- where  
22 did the TL -- the transmission loss credit, how did  
23 you calculate that on a daily basis, if you  
24 calculated it on a daily basis?  
25 A. That number, it's also looking back. I

Page 87

1 only look at like month total, so I come up say 45  
2 cents is general estimate from maybe past three  
3 month, I just -- total transmission loss credit for  
4 the whole month, total volume for the whole month,  
5 and average 45 cents per megawatt, and then every  
6 day PJM publish the daily number, transmission loss  
7 credit after the fact, maybe three days later, five  
8 days later or maybe sometimes ten days later, they  
9 publish the number. Then I just put that number  
10 here.  
11 MR. TABACKMAN: Go off the record for a  
12 minute.  
13 - - -  
14 (Discussion off the record)  
15 - - -  
16 BY MR. TABACKMAN:  
17 Q. Trades -- equal and opposite transactions,  
18 MISO-COMED, COMED to MISO, MISO-Cook, Cook to MISO,  
19 when you do those and only pay OASIS in one  
20 direction, you are lowering your cost of  
21 reservation; is that correct?  
22 A. Yes, sir.  
23 Q. So that was the equal and opposite --  
24 strike that. Was one of your goals in choosing  
25 equal and opposite transactions to lower your OASIS

Page 88

1 cost in that way? Was that a consideration that you  
2 had in choosing equal and opposite transactions --  
3 A. Not really.  
4 Q. -- with MISO?  
5 A. No, I don't have that in my mind before I  
6 put on trades.  
7 Q. Okay. Can you walk me through the process  
8 by which you calculated and wound up with the  
9 transmission loss credit numbers that appear here?  
10 I mean, was this a calculation that you made or is  
11 this simply you're copying something off of the  
12 statement that you received from PJM after the fact?  
13 A. Let me look at here, like from July 1st to  
14 July 16th, 45 cents is just my -- based on my past  
15 experience estimate.  
16 Q. Okay.  
17 A. Forty-five cents, and 17th, I have trades  
18 on, so originally it's also 45 cents, but after  
19 fact, it's 62 cents.  
20 Q. Okay.  
21 A. It's based on PJM published data, yes,  
22 sir.  
23 Q. So this is PJM published data. When you  
24 say originally it was 45 cents, originally where?  
25 In your report that you were -- that you make to

Page 89

1 Powhatan? When you say originally, what are you  
2 referring to?  
3 A. It's, say, July, for July, I'll look at  
4 June, May, maybe April, for those months, the  
5 transmission loss credit on average, how much, seems  
6 like 45 cents a good estimate, so I just put like  
7 for July, used 45 cents per megawatt.  
8 Q. You would make reports to Powhatan on a  
9 daily basis; is that right?  
10 A. That is correct.  
11 Q. And was that -- in making those reports,  
12 did you have to make estimates of -- or did you give  
13 them estimates of the transmission loss credit that  
14 you thought would be available on any given day?  
15 A. Yes, sir.  
16 Q. And so when you say originally, was that  
17 45 cents, when you'd use that estimate, was that  
18 factor -- was that a factor that you -- I mean a  
19 number that you used in making your reports to the  
20 Powhatan folks prior to your learning what the  
21 actual number was?  
22 A. Correct.  
23 Q. And at what -- when would you make the  
24 adjustment to Powhatan with respect to the actual  
25 number?

Page 90

1 A. It's only after the real number PJM  
2 publish that I update the reports.  
3 Q. And would you do that -- if PJM, it came  
4 out, say, three days later, would you make -- would  
5 you update your report at that point or would you  
6 wait for some future point to do that?  
7 A. It's -- every time they're coming out and  
8 I download the file and I report update and include  
9 that report in the daily reports, so it's every day,  
10 I only send them one report.  
11 Q. Okay. Let's -- before -- see if we can  
12 get through one -- another of the summary exhibits.  
13 BY MR. HOPKIN:  
14 Q. Is it possible to estimate the  
15 transmission loss credit before -- before PJM issues  
16 a final calculation?  
17 A. I mean, it's difficult. I don't have -- I  
18 don't have a way to forecast. The only way I can do  
19 is look at a history like for June, what is the  
20 total transmission loss credit I got and the total  
21 volume I put on. I just divide the number and come  
22 up like maybe 45. Then I look at May 2010, the  
23 total transmission loss credit divided by that, and  
24 that's kind of the -- so every single day, every  
25 single hour I use a single number, 45 cents.

Page 91

1 Q. Okay. Are you aware of whether it's  
2 possible to estimate the transmission loss credit  
3 based on system-wide marginal prices?  
4 A. No, I didn't try. I just kind of -- seems  
5 to me this is a good -- good number for me, enough  
6 for me. I don't dig into any further.  
7 Q. Okay, so in your experience, you simply go  
8 back and look what's happened in the past and use  
9 that to try and predict the future for further  
10 transmission loss credit; is that correct?  
11 A. Yes, sir.  
12 MR. HOPKIN: Okay, thank you.  
13 MR. TABACKMAN: Let me show you -- I'd  
14 like to have this marked as Exhibit 5.  
15 - - -  
16 (Deposition Exhibit Number 5 was marked  
17 for identification.)  
18 - - -  
19 MR. TABACKMAN: Giving copies to counsel.  
20 MR. ESTES: What number was this again?  
21 BY MR. TABACKMAN:  
22 Q. Five, Exhibit 5. Have you -- this is one  
23 of the -- I'll represent, one of the summary charts  
24 that we -- that I sent over to Mr. Estes, asked you  
25 to review. Did you have a chance to review it

Page 92

1 previously?  
2 A. Yes.  
3 Q. Okay. And I want to see if we can move  
4 through these more quickly. Again, category A-1,  
5 the first lines 3 -- rows 3 and 4, MISO-Cook,  
6 Cook-MISO. Again, the trading activity between June  
7 19th, 2010 and July 17th, I take it -- do you agree  
8 that the data would show, if we looked at the  
9 specific data, that approximately 549,400 megawatts  
10 were transacted in each direction between those two  
11 nodes during that period of time?  
12 A. Yes, sir.  
13 Q. You agree with that?  
14 A. I didn't check individual node, but it's  
15 kind of -- I think it's overall, yeah.  
16 Q. It's pretty close if it's not exactly  
17 correct; is that right?  
18 A. Yes, sir.  
19 Q. And again, it will -- if it reached a  
20 point, we can look at, you know, the precise data.  
21 I would represent to you that we looked at the PJM  
22 data and it's our best calculation of that. Looking  
23 at column E, again, it shows here that the -- this  
24 should be --  
25 MR. ESTES: UTC revenues.

Page 93

1 MR. TABACKMAN: UTC revenues. What  
2 happened here, my columns --  
3 MR. ESTES: It's dropping the --  
4 MR. TABACKMAN: No, well, what I -- we can  
5 go off the record.  
6 - - -  
7 (Discussion off the record)  
8 - - -  
9 BY MR. TABACKMAN:  
10 Q. Again, the UTC revenues, again, without  
11 credits and without charges --  
12 MR. HOPKIN: We're back on the record?  
13 BY MR. TABACKMAN:  
14 Q. I'm sorry, we're back on the record --  
15 negate each other, is that correct, zero out for  
16 those -- for the transactions again we're talking  
17 about, rows 3 and 4.  
18 A. Yes, sir.  
19 Q. You have OASIS charges in excess of  
20 \$110,000.  
21 A. Yes, sir.  
22 Q. Okay, so again, without -- and you have  
23 ancillary charges of another \$116,000 in each  
24 direction.  
25 A. Yes, sir.

Page 94

1 Q. Leaving you with a negative number of  
2 \$389,610, again, according to our calculations in  
3 the summary chart.  
4 A. Yes, sir.  
5 Q. And again, just so we're clear, you don't  
6 dispute that that's approximately -- at least  
7 approximately the number that we're talking about,  
8 correct?  
9 A. No dispute.  
10 Q. All right, and so as a result, prior to  
11 the transmission loss credit, you're nearly \$343,000  
12 negative, aren't you, on those transactions?  
13 A. Yes, sir.  
14 Q. And -- but as a result of the transmission  
15 loss credit, you wind up with a positive number; is  
16 that right?  
17 A. Correct.  
18 Q. And what was that positive number, does it  
19 show, as column L reflects that, does it not?  
20 A. A little bit more than \$313,000.  
21 Q. Looking at rows 5 and 6, the A-2 pair of  
22 MISO-Rockport, Rockport-MISO, is it again true that  
23 but for the transmission loss credit, you are -- you  
24 are in the negative category of over -- of  
25 approximately \$227,000; is that right?

Page 95

1 A. Yes, sir.  
2 Q. And as a result of the transmission loss  
3 credit, you're at the good \$201,000.  
4 A. Yes, sir.  
5 Q. Do you have a recollection, again, that  
6 any of the -- strike that. That you ever lost the  
7 clearance on a leg, a leg of your pairs didn't clear  
8 during these periods of time?  
9 A. I don't recall, no, sir.  
10 Q. You have no recollection of that ever  
11 happening.  
12 A. Correct.  
13 Q. And again, did you have a -- to the best  
14 of your recollection, again, we can look at the  
15 data, a dollar amount that you typically bid for  
16 congestion on these transactions?  
17 A. I put down -- for Powhatan, same as HEEP  
18 Fund, I put down 25, 35, maybe 48. I rarely used  
19 50. I think more like 35 and 45, around in that  
20 area.  
21 Q. And why -- why did you use those numbers  
22 -- use that amount as opposed to the 50 that you  
23 used uniformly or almost uniformly for CU Fund?  
24 A. Fifty is the -- the potential is reduced,  
25 the risk, the volatility is reduced more. In this

Page 96

1 case, if you put 25, 35, you increase the potential  
2 a little bit.  
3 Q. Increase the potential --  
4 A. Of being rejected.  
5 Q. And that's something that you wanted to  
6 increase in this instance?  
7 A. Yes.  
8 Q. But again, to the best of your  
9 recollection, that never happened.  
10 A. Correct.  
11 Q. Why did you want to increase the  
12 possibility in this instance as opposed to in the CU  
13 Fund?  
14 A. In this case I want to take a little more  
15 risk. I want to see the possibility of being  
16 rejected, and if that case happens, I making a lot  
17 of money, and I do want to see that case here, so  
18 instead of 50, I want to put 35. Even 35 I want to  
19 take the risk. Forty-five, I will take a little bit  
20 more risk and add a little volume, and at 50, I take  
21 another step, so it's like --  
22 Q. The higher you bid on the congestion, the  
23 lower your risk becomes, correct?  
24 A. Yes, sir.  
25 Q. And you can't go any higher than 50.

Page 97

1 A. Right.  
2 Q. So you can't use your bid price -- you've  
3 gotten the maximum possibility by bidding 50 of risk  
4 lowering through bid price; is that right? \$50 is  
5 going to give you as much as you can possibly get.  
6 It may not be enough, but you can't -- you can't do  
7 anything better than that --  
8 A. Correct.  
9 Q. -- in terms of lowering risk by bidding.  
10 A. That's correct, it's like you cannot avoid  
11 -- if I can go maximum, unlimited, then you  
12 basically avoid the risk.  
13 Q. Right.  
14 A. Fifty, you reduce, 25, you reduce more, so  
15 kind of -- in this case I do want to see a little  
16 bit risk in there, but lower than 50. I mean higher  
17 than 50. Fifty is the lowest you can go.  
18 Q. Again, did you study these nodes for any  
19 period of time to make an assessment as to the  
20 likelihood that you would not have a leg cleared if  
21 you bid 25 or 35? In other words, did you look back  
22 at the history of those nodes and say oh, you know,  
23 this happens once in a blue moon, fairly frequently?  
24 Did you make that kind of study?  
25 A. I --

Page 98

1 MR. ESTES: Object. It's ambiguous as to  
2 that kind of study.  
3 A. I did go back and look at history, but I'm  
4 looking at -- I'm not looking at 25, 35 or 45.  
5 Actually, I'm looking at -- always looking at 50  
6 since my models are built that way, the limit is 50.  
7 So some days I put on 35, some days I maybe add a  
8 few dollars, 38 or 45. Depends on the weather, I'll  
9 change the bidding price a little bit, and history  
10 wise, I'm not looking at 25. I'm only looking at  
11 50.  
12 Q. When you say your model is built that way,  
13 you mean with respect to the 50, what do you mean by  
14 that?  
15 A. I have Excel spreadsheet including the  
16 data response. It's kind of in the Excel macros  
17 looking at the day-ahead price. If it's 50, then  
18 the profit loss is zero, so I only looking at those.  
19 I'm not -- I didn't go back changing the number to  
20 25 or 35. That's -- that's what I'm trying to say.  
21 Q. Okay. Did you -- did you look back at the  
22 history, you know, things that -- the results that  
23 had already occurred historically and make -- and  
24 try to see how often different legs would be had in  
25 the past, not your changing your model, but just

Page 99

1 looking at past facts and making an assessment as to  
2 how often that occurred, that a leg would be  
3 rejected at 35 and when that was most likely to  
4 happen?  
5 MR. ESTES: Do you understand?  
6 A. I didn't look at 35. I did look at 50.  
7 Look at 50, I -- if I remember correctly, I don't  
8 think I find any for Cook. Maybe Rockport, Dayton  
9 I'm not sure, and COMED, I think not AEP, I think  
10 there some hours exceed \$50.  
11 Q. Historically.  
12 A. Yes.  
13 Q. But on the other ones, you had found  
14 historically that \$50 made it highly likely for legs  
15 to clear. Congestion rarely exceeded \$50.  
16 A. Yeah, correct, in that day-ahead. In the  
17 realtime, happens very, very often.  
18 Q. Okay. Were you bidding realtime?  
19 A. No, I'm bidding prices based on the -- my  
20 thinking is like PJM used the same model in the  
21 day-ahead and realtime. My thinking is that they  
22 use the same software. They just run different  
23 inputs. So basically if you're thinking day-ahead  
24 could happen, it could happen in realtime. If it  
25 did happen in realtime, it could possibly happen in

Page 100

1 day-ahead. So if I see a lot in realtime, in back  
2 of my mind, it's like you could see it in the  
3 day-ahead too. Why not, I mean, since the same  
4 model, just different inputs.  
5 Q. Okay. Looking at the MISO-Yukon pair,  
6 looking at each of the pages, A-3, 4, 5 and 6, with  
7 respect to each of those, your clear volumes in each  
8 direction was exactly the same; is that correct?  
9 A. Correct.  
10 Q. And your -- the UTC revenues again negated  
11 each other; is that right?  
12 A. Correct.  
13 Q. And again, due to the OASIS and ancillary  
14 charges, you were -- well, with respect, say, to  
15 MISO-COMED during this period of time because of the  
16 volume that you were trading for Powhatan, over \$1.7  
17 million prior to -- in the hole prior to the  
18 transmission loss credit; is that right, A-5?  
19 A. A-5.  
20 MR. ESTES: Column I?  
21 MR. TABACKMAN: I'm talking about column  
22 I, 1 point --  
23 MR. ESTES: Rows A-5?  
24 THE WITNESS: 1.761, yes.  
25 BY MR. TABACKMAN:

Page 101

1 Q. Transmission loss credit was over \$2.9  
2 million.  
3 A. That is correct.  
4 Q. And was that something that you  
5 anticipated would be the case?  
6 A. Not really. It's actually when I look at  
7 this similar to the exhibit at 35, when I look at my  
8 estimate is 45 cents. This number, TLC, is not  
9 supposed to be that big based on my estimate, but  
10 it's actually coming out higher than my estimation.  
11 So if you look at some days 80 cents, some days 81  
12 cents, so there are 20, 35 cents more than -- more  
13 than my estimation.  
14 Q. And again, in looking back at the  
15 transmission loss credit historically, was 45 cents  
16 a low estimate? Did you know at the time you were  
17 estimating 45 cents that you were probably being on  
18 the low side?  
19 A. No, actually, I think it's a pretty good  
20 estimate based on the history, based on past few  
21 years.  
22 Q. Had it been 45 cents rather than what it  
23 was, would you have made or lost money? Do you  
24 know?  
25 A. If it's 45 cents, then it's almost break

Page 102

1 even.  
2 Q. And was that your anticipation at the time  
3 that you were making these trades, that all that  
4 would happened would be that you would break even?  
5 A. Yes, in that month for July, I anticipate,  
6 say, the transmission loss credit, it is like  
7 ancillary service charges. So can you say take a  
8 transmission -- I mean ancillary service charge out  
9 or take a transmission loss credit out? No. I  
10 mean, when I look at the component, every single  
11 component, right? So if I anticipate 45 cents, it  
12 cover all the charges. So if you put a trade down,  
13 you actually -- some days you're making money, some  
14 day you're losing money, but overall, you actually  
15 break even.  
16 Q. Well, in this instance overall, at least  
17 on these trades, you gained -- you went from a  
18 negative 1.7 million to a positive 1.2 million.  
19 A. Yes, sir.  
20 Q. So you're describing that as a breaking  
21 even? I just want to make sure I understand.  
22 A. Estimate is 45 cents. It came out maybe a  
23 long -- so it's like, I mean, 40 percent more, so  
24 it's coming out like maybe 65 or 70 some cents on  
25 that -- on that -- I mean that period basically.

Page 103

1 Q. And that was a surprise to you? Is that  
2 your testimony?  
3 A. I'm -- yeah.  
4 Q. Okay. Looking at subcategory B again,  
5 we're looking at, in one of the first instance, B-1,  
6 Miami-MISO, East Bend-MISO, again, you've got --  
7 your -- your bid volumes are identical in both  
8 directions; is that right?  
9 A. Yes, sir.  
10 MR. ESTES: Objection to the form of that  
11 question and the foundation.  
12 BY MR. TABACKMAN:  
13 Q. Sorry, the cleared UTC volume in the chart  
14 it shows as being the same going from MISO to Miami  
15 Fort 7 and from East Bend to MISO.  
16 A. Yes, sir.  
17 Q. And that the profit that -- the positive  
18 financial return, the profit of \$341,000 on the  
19 MISO-Miami Fort leg was negated except for I think  
20 there's a differential it appears to be of \$70 on  
21 the East Bend 2 to MISO leg. Do you see that? I'm  
22 sorry, it's a little -- it's even a large -- it was  
23 a negative -- the negative was -- in terms of UTC  
24 revenues on the East Bend-MISO leg was approximately  
25 \$6,000 --

Page 104

1 A. Correct.  
2 Q. -- loss, okay. And your OASIS charges  
3 again were approximately \$90,000, and you had  
4 ancillary charges of over 75,000 more, so that your  
5 negative -- again, your paired profit without --  
6 prior to the TLC is over \$248,000.  
7 A. Correct.  
8 Q. And again, with the TLC, it becomes a 79  
9 -- almost \$80,000 profit?  
10 A. Correct.  
11 Q. Is that right?  
12 A. Yes, sir.  
13 Q. I'm sorry, Mr. Olson just pointed out I  
14 said that before TLC, I said you had a profit. You  
15 had a loss prior to the TLC of -- we have it in  
16 column I of over \$248,000; is that correct?  
17 A. Yes, sir.  
18 Q. And that's also the case with the B-2  
19 transactions, MISO-Greenland Gap and Mount Storm to  
20 MISO.  
21 A. Correct.  
22 Q. And that is the set of nodes -- the  
23 infamous May 30th transaction that caused you to  
24 have to sit back and reassess your strategy; is that  
25 right?

Page 105

1 A. Yes, sir.  
2 Q. Okay, and this period of time, May 29th  
3 through June 8th includes that period; is that  
4 right?  
5 A. Yes, sir.  
6 Q. Looking at -- again, at category C, how  
7 did you -- why did you choose these -- I'm sorry,  
8 the pairs that appear in C-1 lines 20 -- rows 21 and  
9 22, the MISO-Cook, Cook-MISO, how did you go about  
10 choosing those as a pair?  
11 MR. ESTES: Object to foundation.  
12 A. Yeah, some of the days I want -- I do want  
13 to keep some importing more, keep importing from  
14 MISO to PJM, so instead of all the -- all the way  
15 back to MISO, I have directional bet.  
16 Q. And what is a directional bet?  
17 A. So I'm thinking in realtime Cook price  
18 going to spike a little bit, go up, so I can make  
19 money based on MISO to Cook import.  
20 Q. Okay. And did that turn out to be  
21 correct?  
22 A. I'm not quite sure. I just look at  
23 number. I'm not sure if it's making money or losing  
24 money.  
25 Q. Well, as a result, on the aggregate, what

Page 106

1 was the result?  
2 A. These two legs, different volume  
3 aggregate, it's losing money.  
4 Q. How much money?  
5 A. Negative 829,000, a little bit over.  
6 Q. And how -- what was -- how much -- what  
7 was the result after the TLC on these -- on these  
8 transactions?  
9 A. It made \$265,400.  
10 Q. Was this a surprise to you that it turned  
11 out that way? Your recollection again based at the  
12 time, were you surprised that you were able to --  
13 that the transmission loss credit resulted in a  
14 profit when you otherwise would have had a loss on  
15 those two legs?  
16 MR. ESTES: You've got a temporal problem,  
17 Counsel, because you've got a swath of time here.  
18 BY MR. TABACKMAN:  
19 Q. I've got over the course of a month.  
20 A. Yeah, for that period, yeah, I'm a little  
21 bit surprised to see that big -- I maybe anticipate  
22 like a little bit profit, but that big, it's  
23 actually -- it's a little bit surprise, yes.  
24 Q. Are MISO-Cook and Cook-MISO nodes that --  
25 where the prices are closely correlated to each

Page 107

1 other in your --  
2 A. Yeah.  
3 Q. -- based on your experience?  
4 A. Yes, sir.  
5 Q. How about in C-2, the MISO-Rockport,  
6 Rockport-MISO, are those nodes that are closely  
7 correlated to each other?  
8 A. Yes, sir.  
9 Q. And as a result -- am I correct that where  
10 nodes are closely correlated to each other and your  
11 both legs clear, if you matched, there is not a lot  
12 -- a likelihood that you will make money in column  
13 E, the UTC revenue column; is that correct? Or at  
14 least a substantial amount of money.  
15 MR. ESTES: Well, do you understand?  
16 A. Yeah, it's kind of -- before you put the  
17 trades on, you -- I mean, you hope this column E  
18 could be positive, that you always hope, but turns  
19 out it's like negative, and it just -- just  
20 happened. I mean, after the fact, after all clear  
21 out and you look at this, oh, it's negative, it  
22 didn't happen really, but before I put those trades  
23 on, say I want to look at tomorrow, from MISO to  
24 Cook, I do want to make a lot of money for that,  
25 then why I put that on. I do want to make a lot of

Page 108

1 money, but next day maybe not 20 hours that way, so  
2 it's actually not making money, so it's -- column E  
3 is negative.  
4 Q. Do you recall what you did that was  
5 designed to, as you put it, make a lot of money  
6 based on, you know, simply the spread between those  
7 nodes? What is your recollection of the steps you  
8 took and how you structured those trades?  
9 A. I build a model, I think we talk about  
10 last time, I have a model called similar day model,  
11 so basically look at the temperature scenario, and I  
12 basically look at Chicago and similar cities like  
13 Washington, D.C., Cleveland, Pittsburgh, New York,  
14 Philadelphia, Baltimore, those kind of area, the  
15 temperature, and you look at either summer's time or  
16 wintertime or fall, spring, different season and  
17 different weekday, is it a weekday or is it weekends  
18 or holidays, and my model says if tomorrow it's a  
19 weekday, it's a summer day and I'll looking all the  
20 back several years, similar summer days, similar  
21 weather pattern, similar season, and then if those  
22 days are making money, then I'm thinking tomorrow  
23 I'm also going to make some money on that trade, and  
24 that's I put on this -- this is one way I'm looking  
25 at.

Page 109

1 The other way I'm looking at is like I  
2 just looking at the exhaustive search, go back five  
3 years, look at MISO, look at Cook, is it always  
4 Cook, the realtime price is higher than day-ahead?  
5 It's always better importing, and for MISO, then I'm  
6 just importing it, importing into the Cook. So if  
7 you keep doing it, importing from MISO to Cook every  
8 single day, every single hour, historically you're  
9 making money, then I put that trade down too, so I  
10 have like several models to look at.  
11 Q. Right, and I guess my question was and  
12 then -- so that what would you do -- if your model  
13 tells you I can make money here, what would you do  
14 in terms of the amount that you would bid on  
15 congestion and the volumes that you would use to --  
16 to try to do that? How would you change from what  
17 you did, say, on the paired trades? What would be  
18 your modifications in terms of your bids?  
19 A. The bids, you're saying bid price?  
20 Q. Your bid price, yeah.  
21 A. Bid price, I'm trying to get that  
22 transaction approved. Since if you just rejected --  
23 basically you're just giving money away, OASIS and  
24 all the charges related, you just -- if the trade's  
25 rejected, no gain, only loss. So you want to keep

Page 110

1 that trades. The only way to make money is that  
2 trade approved, and that's why if I say today is not  
3 very hot, I may to pick at 35. Tomorrow it's a hot  
4 day, maybe I pick 50, and that's kind of just based  
5 on my kind of feelings.  
6 Q. So when you would lower from the \$50 bid  
7 to 25 -- bid 25 or 35, you -- it was still your  
8 assessment that that had a high likelihood of  
9 clearing.  
10 MR. ESTES: Vague. Vague as to what high  
11 means.  
12 A. Yes, sir, and also there's another point I  
13 like to make. If I put down 50 and it does clear,  
14 PJM settlement says the spread is 49, you end up, up  
15 front, you pay \$49, and some days I don't want to  
16 pay that much. I want to pay -- the maximum I want  
17 to pay is 25, so on those days I want to pick at 25.  
18 Q. And that's on the transactions that are  
19 not equal and opposite, the transactions that we're  
20 looking at in category C.  
21 A. Yeah, same as category -- all the category  
22 actually, I'm thinking like say if today it's very  
23 mild, I don't want to pay 45 or 49 in order to hold  
24 that position. The maximum I want to go is \$15  
25 maybe, so I put 15, and some of the days I do want

Page 111

1 to max out, I put in 50.  
2 Q. On the equal and opposite, does it matter  
3 -- when you say -- you talk about, you know, paying  
4 up front. Does -- you know, given that the  
5 transactions are the same going in both directions,  
6 does it matter what you wind up bidding as long as  
7 you clear?  
8 MR. ESTES: I think you just asked a  
9 tautology.  
10 BY MR. TABACKMAN:  
11 Q. Well, isn't your goal to simply -- on the  
12 equal and opposite, you're not paying any money up  
13 front; isn't that right?  
14 A. That is correct, that's a different kind  
15 of consideration.  
16 Q. Right.  
17 A. Yes.  
18 Q. So focusing -- you're saying that on C, on  
19 the transactions in category C, what you described  
20 applies.  
21 A. Correct.  
22 MR. ESTES: Mischaracterizes his  
23 testimony.  
24 MR. TABACKMAN: Why don't we break for  
25 lunch.

Page 112

1 (Recessed at 12:33 p.m.)  
2 (Reconvened at 1:33 p.m.)  
3 (Ms. Richardson was not present for the  
4 remainder of the deposition.)  
5 BY MR. TABACKMAN:  
6 Q. Mr. Chen, I need to remind you that you're  
7 still under oath.  
8 A. Yes.  
9 Q. If you could pick up Exhibit 5 again just  
10 for a moment, the Powhatan trades, there was -- with  
11 respect to the trades in B-1 and B-2, the Miami --  
12 the MISO-Miami Fort 7 and the East Bend-MISO,  
13 Exhibit 5 --  
14 A. Yes, sir.  
15 Q. Do you see those? Those were not -- there  
16 was no directional bet with respect to those, was  
17 there, at least --  
18 MR. ESTES: Do you understand the  
19 question?  
20 BY MR. TABACKMAN:  
21 Q. -- from what you can see from the  
22 aggregate level?  
23 A. To me, each -- each one is directional  
24 bet.  
25 Q. And that's because?

Page 113

1 A. It's because I do hope both of them making  
2 money, each one of them all making money, so I mean,  
3 it's like from MISO to Miami Fort, making money, to  
4 East Bend 2 to MISO, also making money.  
5 Q. The East Bend to MISO trade -- the pair  
6 B-1 that you see on lines -- rows 16 and 17, those  
7 are trades that for the most part -- well, it  
8 involved the exact same volumes at least on an  
9 aggregate level going in each direction; is that  
10 right?  
11 A. Yes.  
12 Q. Okay. And where -- and you regarded those  
13 -- do you know whether or not you were betting in  
14 different volumes on a daily basis in each  
15 direction?  
16 MR. ESTES: If you know.  
17 A. My recollection is they are the same.  
18 Q. That you bet the same -- that the trades  
19 -- the volumes were the same in each direction.  
20 A. Yes.  
21 Q. And it would be your expectation then when  
22 -- if both of the legs cleared, that you wouldn't  
23 make any money off of the UTC spread; isn't that  
24 right?  
25 MR. ESTES: Do you understand?

Page 114

1 A. That's -- that's one of the goal. I mean,  
2 the other goal is in my mind, if I put on trades,  
3 always one directional. For this type trades, it's  
4 always one directional.  
5 Q. I'm sorry, the B-1 trades are one  
6 directional?  
7 A. Yeah.  
8 Q. Even though they are at the same time,  
9 you're bidding the same volume in each direction.  
10 A. Yes.  
11 Q. I'm sorry, yeah. When you combine rows 16  
12 and row 17 together as a pair, they are -- negate  
13 each other out. They are not -- they are not  
14 together directional bids; is that correct?  
15 MR. ESTES: Object to form and foundation.  
16 A. Together, even together, they are also  
17 directional. I mean, you cannot say it's not  
18 directional since this side you're making money, the  
19 other side also making money, that's my -- it's  
20 basis scenario. It happened before. One congestion  
21 happens, the East Bend go way down, negative several  
22 hundred, and Miami Fort go several hundred positive,  
23 so that's kind of what I'm hoping for actually.  
24 Q. Both legs cannot make money at the same  
25 time? I'm sorry.

Page 115

1 A. Oh, it happened many times, both legs have  
2 been making money, but it didn't happen enough for  
3 -- for this period.  
4 Q. Did you ever engage in any trades where  
5 you deemed them to be -- or likely to be  
6 unprofitable except for the transmission loss  
7 credit?  
8 A. I don't think so.  
9 MR. TABACKMAN: Let's mark this as Exhibit  
10 17.  
11 - - -  
12 (Deposition Exhibit Number 17 was marked  
13 for identification.)  
14 - - -  
15 BY MR. TABACKMAN:  
16 Q. I want you to take a look at the e-mail  
17 there, or take a look at the document, and when  
18 you're finished looking at it, let me know.  
19 MR. ESTES: Are you asking him to look at  
20 a particular e-mail in this chain?  
21 BY MR. TABACKMAN:  
22 Q. Yes, I will, but I wanted to ask him --  
23 give him a chance to look at the document. When  
24 you're done, when you're finished, Mr. Chen, just  
25 let me know.

Page 116

1 A. Yes, I'm finished.  
2 Q. Do you see the e-mail on the front of the  
3 first page? It bears the Bates stamp POW00016942  
4 that appears to be from you to Kevin Gates? Do you  
5 see that?  
6 A. The first page?  
7 Q. Yes, the e-mail that's in the middle of  
8 the first page.  
9 A. Yes.  
10 Q. Don't you say there that the --  
11 essentially that the correlated pairs that you were  
12 engaging in would have been deemed unprofitable but  
13 for without the TLC?  
14 A. Yes.  
15 Q. But -- so in fact, you were engaging in  
16 the correlated pairs even though they would have  
17 been unprofitable but for the TLC.  
18 MR. ESTES: Object to form and foundation.  
19 It's got a timing problem forwards versus backwards  
20 looking.  
21 BY MR. TABACKMAN:  
22 Q. Did you not tell -- say -- say the  
23 following or write the following to Kevin Gates on  
24 March the 5th, 2010. "Hi, Kevin. The volumes have  
25 been increased pretty significantly but the risks

Page 117

1 associated with the trades overall are actually  
2 lower than before. Most of the added volumes came  
3 from correlated pairs that produce a few cents or  
4 tens of cents upside with almost no downside risk.  
5 Without TLC, the transaction costs would absorb them  
6 and deem them unprofitable."  
7 A. I think yeah, that's what I e-mailed to  
8 Kevin, yes.  
9 Q. And was that your view of why you were  
10 willing to increase the volume on the correlated  
11 pairs?  
12 A. Yes.  
13 Q. Is it still your testimony that you have  
14 never engaged in a transaction where -- where that  
15 would have been unprofitable but for the  
16 transmission loss credit?  
17 MR. ESTES: Mischaracterizes his  
18 testimony.  
19 A. I actually didn't specify the time period  
20 here. You're looking for a month or are you looking  
21 for a whole year or you looking for March, April or  
22 you looking at summer -- summer month? In this case  
23 I wrote the e-mail March, so in March, the  
24 transmission loss credit covers a small portion of  
25 that transaction cost. It helps a little bit, so

Page 118

1 without the TLC, they are losing money. With TLC,  
2 they are losing less money but they are still losing  
3 money. It's like in March, April or May, those  
4 shoulder month, TLC does help, but it's still not  
5 enough unless -- unless those very, very low  
6 possibility case happens.  
7 Q. Mr. Chen, you're saying that they -- that  
8 the TLC did not make the transactions profitable?  
9 Let me read the words. "Without TLC, the  
10 transaction costs would absorb them," that's the  
11 correlated pairs that you're referring to, "and deem  
12 them unprofitable." Are you saying that the TLC  
13 still made them unprofitable?  
14 A. Correct.  
15 Q. And that's what that sentence means.  
16 A. Yes, that what I say in those period.  
17 It's actually I put on those trades, if you put on  
18 trades, same trade, at that time, I haven't really  
19 think of using the same directional. It's like from  
20 MISO to Cook, from Cook to MISO, I never thought of  
21 that before. The one I thought about is like from  
22 MISO to Mountain Storm, from -- from Greenland Gap  
23 to MISO, those type of pair trades correlated, but  
24 without TLC, you -- unless that specific type of  
25 contingency happen, you're going to lose money, I

Page 119

1 know pretty sure, but without -- with the TLC,  
2 you're losing less money, so it's kind of you're  
3 losing -- still losing money in those months, but  
4 you're losing actually much less. So it kind of  
5 still give you affordable to take the risk, so I'm  
6 kind of -- you pay a little bit money, but actually,  
7 if that conditions happen, you earn enough to cover  
8 all the cost.  
9 Q. Mr. Chen, aren't you discussing with Kevin  
10 Gates here the fact that you increased volumes  
11 pretty significantly -- are you saying that you  
12 increased volumes pretty significantly on  
13 transactions that lost money even despite the TLC?  
14 A. Yes, yes.  
15 Q. And that was the strategy that you were  
16 explaining to Kevin Gates was a viable strategy?  
17 A. This is one side of story, so in the  
18 shoulder month, if that specific type of contingency  
19 doesn't happen, you're losing money, but I'm -- I'm  
20 kind of still would like to hold that position even  
21 though you're losing money but losing a little bit,  
22 maybe 20 days you're losing, but one day you're  
23 making money, you cover all the 20 days loss.  
24 Q. And this possibility of one day covering  
25 20 days loss, is that what you meant when you said

Page 120

1 most of the added volumes came from correlated pairs  
2 that produce a few cents or tens of cents upside?  
3 A. Yes.  
4 Q. A few cents or tens of cents upside is  
5 your description of a transaction that would make a  
6 lot of money to somebody on one occasion. That's  
7 what you're describing to Mr. Gates? Is that your  
8 testimony?  
9 A. On average, yes.  
10 MR. ESTES: Counsel, maybe if we looked at  
11 the underlying transactions, it would help the  
12 discussion. This is data from a long time ago that  
13 Dr. Chen hasn't looked at in a long time.  
14 MR. TABACKMAN: Thank you, Counsel. We  
15 can go off the record for a second.  
16 (Recessed at 1:48 p.m.)  
17 (Reconvened at 1:50 p.m.)  
18 - - -  
19 (Deposition Exhibit Number 6 was marked  
20 for identification.)  
21 - - -  
22 BY MR. TABACKMAN:  
23 Q. At any time did you ever give Kevin Gates  
24 a different explanation as to why engaging --  
25 increasing the volume on correlated pairs was a

Page 121

1 viable strategy?  
2 MR. ESTES: If you recall.  
3 A. I don't recall that actually.  
4 Q. Don't recall whether you did or you don't  
5 recall having done it?  
6 A. I don't recall if I did or not.  
7 Q. Did you have -- just as a general  
8 proposition, do you recall, did you have a lot of  
9 conversations with Kevin Gates on the telephone or  
10 were they mostly by e-mail with just a few telephone  
11 conversations or can you characterize it?  
12 A. We -- unless I'm losing a lot of money or  
13 unless I change strategy, I don't receive any phone  
14 calls from him, so mostly just e-mail.  
15 Q. Okay. I'd like you to take a look at  
16 Exhibit 6, which is a summary -- one of the summary  
17 tables as pertains to the HEEP Fund trades, and  
18 you've seen this before?  
19 A. Yes, sir.  
20 Q. And were you engaged in trading in highly  
21 correlated pairs of the sort that are discussed in  
22 this March 5th e-mail, Exhibit 17, part of Exhibit  
23 17?  
24 MR. ESTES: Mischaracterizing the exhibit.  
25 It doesn't say highly.

Page 122

1 BY MR. TABACKMAN:  
2 Q. It says correlated pairs. I'm sorry.  
3 A. Yeah, correlated pairs, I have done this  
4 like B-4, B-4, row 22, 23, I've done these trades  
5 many, many times in 2008, 2009, so it's kind of a  
6 continuation, not just starting in 2010.  
7 Q. I understand. Did you increase the  
8 volume, focusing on the trades in -- B-4, B-4 trade,  
9 which are MISO-Greenland Gap, Mount Storm-MISO, did  
10 you increase the volume of those trades after  
11 learning of the fact that financial traders would be  
12 getting back transmission lost credit?  
13 A. I did.  
14 Q. You did.  
15 A. Yes.  
16 Q. And can you state how much of an increase  
17 between what you were doing before you learned about  
18 -- before you learned of the availability of the  
19 transmission loss credit and after you learned of  
20 that availability?  
21 A. That I didn't recall the number.  
22 Q. A good-faith estimate of the difference in  
23 magnitude.  
24 A. Before for HEEP Fund, I normally put ten,  
25 20 max, I think 50 megawatt per hour, 50 megawatt.

Page 123

1 Q. Would be your maximum before you learned  
2 about the transmission --  
3 A. Yeah.  
4 Q. -- loss -- before you became -- before the  
5 transmission loss credit became available to you.  
6 Is that --  
7 A. Yes.  
8 MR. ESTES: For which entity?  
9 BY MR. TABACKMAN:  
10 Q. HEEP Fund.  
11 A. HEEP, yes.  
12 Q. And after, how did that change?  
13 A. If it's after, I think probably a hundred,  
14 I think it's like double the volume maybe, since I  
15 go like 25 or 50, so probably a hundred per megawatt  
16 -- per hour.  
17 Q. And the MISO-Greenland Gap, those are  
18 transactions -- those nodes in the Mount Storm-MISO,  
19 you regard those as highly -- or I'm sorry, as  
20 correlated nodes?  
21 A. Yes.  
22 Q. And was the availability of the  
23 transmission loss credit the reason that you  
24 increased the volume in that type of trade?  
25 A. Yes.

Page 124

1 Q. Is that the kind of trade in which you  
2 might expect the reservation cost to, just quote --  
3 that the transaction costs would absorb the profits  
4 of the transaction?  
5 A. For March, it's actually, if you look at  
6 all B-1, B-2, B-3, B-4, all those trades, for those  
7 trades in those month, like February, March, April,  
8 May, even some days of June, those trades, if  
9 there's no contingency, those trades are, I mean,  
10 money-losing deals.  
11 Q. And yet --  
12 A. That --  
13 Q. I'm sorry.  
14 A. That actually tells you something, right,  
15 why I'm putting that kind of trades on if you know  
16 you are losing money. The only purpose is if I know  
17 we'll be losing a little bit of money but there's  
18 always a chance the split, then making a lot of  
19 money. So that's why I put those type of trades on  
20 even before the summer, so -- and also for B-4 2008,  
21 I made a lot of money on that trades -- on that type  
22 of trades. In 2009, I made a lot of trades on that.  
23 So it's actually, it does tell you in those shoulder  
24 months, you put trades on, you know you're going to  
25 lose a little bit of money even with transmission

Page 125

1 loss credit, it tells you it is -- there's some  
2 other purposes. I'm not just coming here to losing  
3 money, right? I'm trying to make money, and if you  
4 lose, lose a little bit, I'm okay with it, but I'm  
5 thinking there's other kind of objective. I'm  
6 trying to -- one of them is split, so that's kind of  
7 why I'm putting those trades on.  
8 Q. When you told Mr. Gates that there was  
9 almost no downside risk to the added volumes in the  
10 correlated pair transactions, what did you mean by  
11 that?  
12 A. Looking back, that's a wrong statement.  
13 Q. That was a wrong statement you said?  
14 A. Yeah, at that time is correct, but if  
15 you're looking at B-1, looking at -- looking at that  
16 May 30th, it's actually, you could losing a lot of  
17 money. I mean, at that time I'm thinking like if  
18 they are correlated, close together, you're never  
19 going to lose a lot of money. That's why I put on  
20 increased volume, but suddenly on that one day,  
21 you're losing a big chunk of money. That's --  
22 that's never happened in my mind. I think it's like  
23 losing a little bit, not that big money, so that --  
24 I think it's not -- looking back, that statement is  
25 not very accurate.

Page 126

1 Q. At the time, did you believe it to be  
2 true?  
3 A. That's -- that's true, yeah, at that time,  
4 I'm thinking it's good.  
5 Q. And was it also -- was it a true statement  
6 that the correlated pairs typically produce or  
7 produce a few cents or tens of cents upside?  
8 MR. ESTES: To the extent you recall the  
9 specific transactions or answer generally, but --  
10 A. On average -- on average, yes. In most of  
11 this, you're actually not making money, so even --  
12 excuse me. Even you have like one or two days you  
13 make a lot of money, but on average, you still --  
14 you still make very small amount of money.  
15 Q. With respect to looking at Exhibit 6, and  
16 with respect to the B-4 transactions, lines 22 and  
17 23, you -- it shows that there is a loss prior to  
18 the transmission loss credit; is that correct?  
19 A. That is correct.  
20 Q. And the -- oh, I'm sorry. And as a result  
21 of the transmission loss credit for just those two  
22 -- that single pair of transactions, MISO-Greenland  
23 Gap, Mount Storm-MISO, is \$128,000 over the period  
24 from February 1 to June 8th, 2010; is that right?  
25 A. Can you repeat the question?

Page 127

1 Q. The summary exhibit shows that the TLC for  
2 the period of time reflected here, which is a  
3 four-month period, was over \$128,000.  
4 A. Yes, yes, correct.  
5 Q. And that prior to the TLC, there was a  
6 loss of over \$110,000 in those transactions for that  
7 period of time, correct?  
8 A. Correct.  
9 Q. And so it was as a result of the TLC that  
10 there was a net profit of \$18,000 on those -- on  
11 those transactions.  
12 MR. ESTES: For this time period?  
13 BY MR. TABACKMAN:  
14 Q. For that time period.  
15 A. Yes, sir.  
16 MR. TABACKMAN: If I could have this  
17 marked as Exhibit 18?  
18 - - -  
19 (Deposition Exhibit Number 18 was marked  
20 for identification.)  
21 - - -  
22 BY MR. TABACKMAN:  
23 Q. Have you read this?  
24 A. Yes.  
25 Q. What did you mean when you said that

Page 128

1 February 2010 is the first month I really started  
2 taking advantage of the TLC?  
3 A. If my recollection is correct, I think PJM  
4 started TLC refund in October 2009, and then  
5 October, November, December, January 2010, I think  
6 February is the last month they send out the  
7 refunds, so in February, I have about two or three  
8 years -- two years I think probably, two or three  
9 years of history, so like '07, '08, '09, the  
10 transmission loss credit numbers every month. So  
11 based on that, I see the transmission loss credit,  
12 it's a pretty significant price signal, so when you  
13 look at, it covers part of your cost, so it makes  
14 the same trades now more profitable, and so in  
15 February, actually, the first month I increased the  
16 volume.  
17 Q. And that -- by increasing the volume, is  
18 that what you meant by the words I really started  
19 taking advantage of the TLC?  
20 A. That is correct.  
21 Q. When you said that, beginning of that  
22 paragraph, you write, "As you can see from the  
23 reports," and these are the reports that you were  
24 sending Mr. Gates on the results of your trading; is  
25 that right?

Page 129

1 A. Yes, sir.  
2 Q. "Without TLC, we would have lost money in  
3 February 2010, and it is not a small amount either."  
4 What did you mean by not a small amount, to the best  
5 of your recollection?  
6 A. Well --  
7 Q. Actually, you give the numbers here. What  
8 caused your, if you can recall, your losing those  
9 amounts of money in February of 2010 prior to the  
10 TLC? Let me see if I can ask you a different  
11 question. Was that an unusually large sum of money  
12 for you to lose in a month in trading in the UTC  
13 area?  
14 A. It is.  
15 Q. It is. Was it significantly large -- I  
16 understand that "significantly" is an unclear word.  
17 To the best of your recollection, with respect to  
18 the HEEP Fund, can you give an estimate as to how  
19 much larger that loss was than other -- than, say,  
20 the next highest loss that you had ever incurred up  
21 to that time?  
22 A. My recollection is for the monthly, like  
23 monthly bill, I think it's only about 20 to 30  
24 thousand dollars.  
25 Q. Higher than the next highest --

Page 130

1 A. No, I mean the total is 20 to 30 thousand  
2 loss, so this is loss 110 -- 113 thousand, so it's  
3 like four, five times than the second loss.  
4 Q. Okay, this was four or five times more  
5 than you had ever lost before in a given month.  
6 A. Correct.  
7 Q. Okay, just trying to make sure I  
8 understand. And do you know what that accounted for  
9 that -- that magnitude of loss?  
10 MR. ESTES: If you can give an answer  
11 without looking at any information.  
12 A. That I'm actually not -- I don't recall  
13 that exact.  
14 Q. With respect to Hunt 2, and that was the  
15 predecessor to the Powhatan fund; is that correct,  
16 Hunt?  
17 A. Yes, sir.  
18 Q. Was that a particularly large loss for  
19 them in terms of your trading for them?  
20 A. That I don't know. I cannot guess, but  
21 from my point of view, a hundred thousand for a  
22 month, it's a big money, but for them, might not be.  
23 Q. No, no, no, I'm talking about had you ever  
24 lost \$382,000 for them previously.  
25 A. No, it's like four times, so if I lost one

Page 131

1 day, they lost 80, so that 80 is the max loss.  
2 Q. Okay.  
3 A. Yeah.  
4 Q. So -- but the TLC enabled you to avoid  
5 that loss; is that correct?  
6 A. Yes, in this case yes.  
7 Q. Going further down, the bit -- you say,  
8 "It is a good thing we are making money, and I'm  
9 pretty sure about it if TLC refund continues as is."  
10 What were you pretty sure about, when you say I'm  
11 pretty sure about it?  
12 A. I think what I trying to -- what I was  
13 trying to say is if you have the TLC in a similar  
14 amount coming in, then we are going to cover a lot  
15 of charges. We are going -- overall, we're going to  
16 make money.  
17 Q. And --  
18 BY MR. HOPKIN:  
19 Q. So if I can just -- so you're not just  
20 covering the charges. You're actually exceeding the  
21 charges, correct?  
22 A. In this kind amount, is actually no.  
23 Q. No, that's incorrect?  
24 A. Incorrect.  
25 Q. Okay.

Page 132

1 A. Yeah, in February, the charges is actually  
2 more. TLC is less, so my trades alone, just based  
3 on the spreads, you are making a lot of money, so  
4 the spread alone, it's making more money, and the  
5 charge plus TLC, you're still making money.  
6 BY MR. TABACKMAN:  
7 Q. But you lost a lot -- but you lost by the  
8 largest amount you ever had in that February.  
9 A. Yeah, those are coming from charges, most  
10 of the charges. So in this case if I'm losing 113,  
11 I think the spread may be making 50,000, but the  
12 charges, it's losing 160, so you end up losing that,  
13 but the spread alone, you're actually still making  
14 money, 50.  
15 Q. And that's a recollection that you have --  
16 you're able to recall that but not why it was that  
17 you lost?  
18 A. I mean, the loss, it's actually also -- I  
19 mean, it could be like mentioned here, February is  
20 the first month I really started taking advantage of  
21 TLC, I think maybe because in February, I have  
22 larger volumes, so that's why it's kind of multiply  
23 of previous loss. That may be one reason.  
24 Q. And the reason that you had larger volumes  
25 was because of the TLC, correct?

Page 133

1 A. I agree, since the e-mail said that, yeah,  
2 I think that's correct.  
3 Q. And so -- you increased your volume  
4 because you saw the TLC -- the TLC had become  
5 available. Was it your thought at the time that the  
6 TLC would ensure that you would not suffer a loss?  
7 MR. ESTES: Object to form.  
8 A. No, it's always possible losing money. In  
9 this case you're still losing money, but it's losing  
10 less money.  
11 Q. Does it -- doesn't it say we would have  
12 lost money in February and it is not a small amount?  
13 You didn't -- did you lose money in February after  
14 the TLC?  
15 A. After TLC, no.  
16 Q. Right, so -- I thought I just heard you  
17 say that even with the TLC, you lost money.  
18 A. No, I mean with TLC, just compare charge  
19 versus credit, yeah, just charge-credit alone,  
20 you're actually still losing money, so it covers a  
21 little bit part of your cost. It just reduce the  
22 cost, but still cost is still --  
23 Q. I'm sorry, I don't mean to argue with you,  
24 Mr. Chen, but it didn't just cover part of your  
25 cost. It turned the largest loss that you ever had

Page 134

1 in a given month to a profitable month, didn't it?  
2 A. That is correct.  
3 Q. Okay.  
4 MR. ESTES: As was his statement.  
5 BY MR. TABACKMAN:  
6 Q. To go on, you say if P -- "The bad thing  
7 is it really concerns me if PJM ever reverts back to  
8 those days without TLC or the TLC calculation is  
9 incorrect and we have to pay back all or some of the  
10 TLC refunds, we are going to be in big trouble."  
11 Why did you think about that -- why did you think it  
12 was possible that that might happen?  
13 A. I mean, this is just kind of my maybe  
14 conservative view. I always think that someone give  
15 you money, give you refund, then because some kind  
16 of -- I'm not clearly knowing what that happens, so  
17 it's still possible to me like TLC could be take  
18 away some way or any day, and if that happens and  
19 they want to ask you to pay back, you could lose a  
20 lot of money, and at that time, I'm not sure if that  
21 time is like in MISO, I heard that it's like called  
22 SGC charge or something like charge -- RSG charge,  
23 and the trades could put on originally was  
24 profitable and later on they revert back, say I want  
25 to ask you pay RSG, and suddenly the trades becomes,

Page 135

1 I mean, losing -- money-losing deals, and this could  
2 happen. You depend on this TLC so you cover some of  
3 the cost, but some month down the road or a year  
4 down the road, they just --  
5 Q. Were you concerned -- I'm sorry, I don't  
6 mean to cut you off. Were you finished?  
7 A. Sorry, yeah.  
8 Q. Were you concerned that this seemed, if I  
9 can use the expression, too good to be true?  
10 A. When I first heard it, it is, yeah, it  
11 covers a lot of ground. I mean, it covers a lot of  
12 costs, yeah.  
13 Q. And it --  
14 A. Yeah, but I'm not in a position kind of to  
15 -- to -- I'm just accept as is. I mean, yeah.  
16 Q. Did you -- but is that why you were  
17 concerned about the fact that it might be taken  
18 back, that it just seemed like they were giving away  
19 money?  
20 A. I mean, not necessarily giving away money.  
21 To me it's like you contribute -- you do contribute.  
22 I mean, you pay 67 cents and you do get a share  
23 back. I mean, just not free money. It's like you  
24 pay some and you got some back, so it's like -- it's  
25 not like -- I mean, it's good to have, but -- but on

Page 136

1 the other hand, you do have some concern, they take  
2 away, then you do have this possibility.  
3 Q. Mr. Chen, you -- I believe you testified  
4 last time and I think you testified before to the  
5 same effect, that after you began seeing the refunds  
6 showing up in your statements going back to December  
7 of 2007, you made a pretty careful study of what the  
8 impact of the TLC was on historical transactions; is  
9 that right?  
10 A. I did go back looking at the study, yes.  
11 Q. And was -- one of your purposes in doing  
12 that was to see which months the TLC would have the  
13 maximum impact on your trades; is that correct?  
14 A. Yes.  
15 Q. And I'm going to paraphrase, but as I  
16 recall your testimony in your transcript, and feel  
17 free to look it up, by February of 2010, you had a  
18 pretty good idea of when the TLC would have its  
19 greatest and its least impact based upon what you --  
20 the -- going back and -- your back-analysis of what  
21 you had received from PJM.  
22 A. Yeah, based on my study, if the history  
23 can tell the future, then that's what I'm shooting  
24 for, yes.  
25 Q. Right. And there was no certainty there,

Page 137

1 but that was -- that history helped you formulate a  
2 strategy?  
3 A. Correct.  
4 Q. Is that fair to say?  
5 A. Yes, sir.  
6 Q. Okay. You said, "I have not heard  
7 anything about this at all, but just the thought  
8 nags me a lot. If I used zero percent of the TLC in  
9 January 2010 and 25 percent in February 2010, I'm  
10 now using about 50 percent of the TLC advantage in  
11 March 2010." What does that mean, using the TLC  
12 advantage?  
13 A. This -- at this stage it's all volume, so  
14 I just increase volume a little more.  
15 Q. And you said, "We are still a long way to  
16 go to fully take advantage of the TLC, although TLC  
17 advantage tends to shrink a lot during shoulder  
18 months." The advantage -- taking full advantage, is  
19 that the equal and opposite trades?  
20 A. No.  
21 Q. What does taking full advantage of the TLC  
22 mean?  
23 A. The TLC -- at this stage, I don't even  
24 thought of -- I mean, never thought of that paired  
25 yet. I'm only trading the spread at this stage, so

Page 138

1 the spread, in this case the TLC covers part of the  
2 cost, so if -- I'm just thinking same strategy as  
3 before. I just increase the volume a little bit,  
4 increase the volume a little bit, I'm thinking like  
5 that's -- that's taking advantage of the  
6 transmission loss credit since they are making  
7 trades more profitable.  
8 Q. Okay, and you say that there were three  
9 strategies here, or three options, rather, trade  
10 very conservatively and treat TLC, it doesn't exist;  
11 two, trade at current levels and take advantage of  
12 TLC but don't be too aggressive since it is March  
13 and weather is mild; trade it aggressively and add  
14 more volume to take full advantage of TLC. Over the  
15 course of the months after you wrote this, which of  
16 those strategies did you adopt?  
17 A. I think it's two.  
18 Q. You adopted two?  
19 A. Yeah.  
20 Q. Now, in the summer of -- after May 30th of  
21 2010, which of the strategies would you say you  
22 adopted?  
23 A. It's actually still the same strategy.  
24 The only change is like one to 20, the ratio.  
25 That's the only change, force you to increase the

Page 139

1 volume. So look at HEEP Fund, it's actually -- it's  
2 about the same level of volume.  
3 Q. And then you started the CU Fund --  
4 A. Yeah.  
5 Q. -- in order to get -- take full advantage  
6 of the TLC; isn't that right?  
7 A. I mean, not full advantage of. I do want  
8 to put on some trades, yeah.  
9 Q. You've put on very -- much larger trades  
10 in CU Fund than you had ever done in the HEEP Fund;  
11 isn't that right?  
12 A. That is correct.  
13 Q. And you -- and the overwhelming number of  
14 those or percentage of those was equal and opposite  
15 pairs; isn't that right?  
16 A. That is correct.  
17 Q. And the purpose of that was to take full  
18 advantage of the TLC.  
19 A. I mean, that's one of the goal, yes.  
20 Q. Did you ever discuss or suggest to Kevin  
21 Gates that you regarded the TLC as a risk-free way  
22 of making money?  
23 A. I don't think so.  
24 Q. Do you have any -- can you think of  
25 anything that would cause Kevin Gates to attribute

Page 140

1 such a -- such a view to you?  
2 A. I don't recall. I don't -- I don't know.  
3 MR. ESTES: If you're going to get into  
4 another exhibit, I wonder if we could take a break.  
5 MR. TABACKMAN: A brief one, because I  
6 don't want to keep everyone too late, but yeah,  
7 that's fine.  
8 (Recessed at 2:21 p.m.)  
9 (Reconvened at 2:27 p.m.)  
10 - - -  
11 (Deposition Exhibit Number 16 was marked  
12 for identification.)  
13 - - -  
14 BY MR. TABACKMAN:  
15 Q. Mr. Chen, would you take a look at Exhibit  
16 16 and let me know when you're -- when you've  
17 finished?  
18 A. Yeah, I read it.  
19 Q. Have you ever seen the document that  
20 begins on -- what I'll referring to as 801, ramping  
21 up with Alan Chen, before today?  
22 A. No.  
23 Q. Just have a few questions for you. Again,  
24 you see here that the -- he says, "Alan is fearful  
25 that PJM could change its mind." Do you know why he

Page 141

1 -- do you recall any conversation that you may have  
2 had or communication to Mr. Gates in which you  
3 expressed your fearfulness in that regard?  
4 A. Yeah, just previous e-mail, March 5th.  
5 Q. Okay.  
6 A. Exhibit 18, yeah.  
7 Q. Right, and do you recall whether you had  
8 any further conversation with Mr. Gates after that  
9 e-mail exchange, perhaps a telephone conversation  
10 about this topic, your concern and the nature of the  
11 TLC credit?  
12 A. I don't recall. It has been long --  
13 Q. Did you ever suggest -- say anything that  
14 would explain -- that you can think of, say anything  
15 to Mr. Gates that would cause him to believe that  
16 you were -- your concern was that it was just too  
17 easy for him to make money now?  
18 A. I don't really understand why he said  
19 that. I don't know what he meant.  
20 Q. But you can't think today of anything that  
21 you said that would cause him to tell his partners  
22 at -- you know, to characterize your view in this  
23 fashion.  
24 MR. ESTES: Asked and answered.  
25 BY MR. TABACKMAN:

Page 142

1 Q. I just want to make sure I understand.  
2 You can't think of anything that you said that would  
3 cause him to characterize your view in this way.  
4 A. No.  
5 Q. Had you talked -- there's reference in the  
6 third paragraph on this page about the possibility  
7 of going up to like a \$4 million investment. Had  
8 you talked with Mr. Gates about those kinds of  
9 amounts of money, the possibility of his investing  
10 that amount of money in UTC trading?  
11 MR. ESTES: You're talking about the last  
12 bullet?  
13 A. Yeah, the last bullet?  
14 Q. Last bullet, correct.  
15 A. I don't remember exactly it's 4 million or  
16 not, but there are some exchange, they want to  
17 increase the volume. As to how much, I'm not sure.  
18 Q. Do you recall expressing a view to him on  
19 the wisdom of his investing that much?  
20 A. No.  
21 Q. If you turn to the next page, it says,  
22 "Recently, Alan's exposure has significantly ramped  
23 up," and that's an accurate statement based on your  
24 testimony earlier today, that you had increased  
25 volumes; is that correct?

Page 143

1 A. Yeah, increased, yeah.  
2 Q. "Alan maintains that his account isn't  
3 taking much more risk." That's an accurate  
4 statement based upon your e-mail, Exhibit 18,  
5 correct?  
6 A. That is correct, yeah, taking -- not  
7 taking much more.  
8 Q. Right.  
9 A. It's not -- it's not multiple kind of --  
10 multiplied the same. Even though the volume is much  
11 higher, the risk is actually higher but it's not  
12 multiplied.  
13 Q. Right, so that when he says Alan maintains  
14 that his account isn't taking much more risk, that's  
15 an accurate description of what you had either  
16 written or communicated to him in some way. It's an  
17 accurate statement.  
18 MR. ESTES: Asked and answered.  
19 A. My understanding I think in the e-mail  
20 exchange, I think for my own account, I would  
21 maintain a similar kind of volume or maybe even a  
22 little bit less, so that is -- I think that's --  
23 implies that statement is correct.  
24 Q. Right, and then in the next statements,  
25 "He's participating more heavily in the TLC trade."

Page 144

1 That's true. That's an accurate description of what  
2 your trading was like at the time; isn't that  
3 correct?  
4 MR. ESTES: Object to foundation, if you  
5 know what TLC trade means.  
6 A. Yeah, yeah.  
7 Q. TL -- transmission loss -- the  
8 transmission loss credit, you understand that's what  
9 the reference to TLC is? He says that on the -- if  
10 you look on the first page there, it says TLC refers  
11 to transmission loss credit.  
12 A. Yeah, so this actually -- what he meant  
13 was for like UTC trades.  
14 Q. Correct, that you are participating more  
15 heavily, meaning that your volume has increased.  
16 A. Correct.  
17 Q. And as you testified earlier today, the  
18 basic reason that you were comfortable making that  
19 increase was because of the TLC.  
20 A. Correct.  
21 Q. Isn't that correct?  
22 A. Yes, sir.  
23 Q. Okay. And then it goes on to say, "Which  
24 he" -- Mr. Gates writes -- and I'm only asking if  
25 you know of any basis for his saying this, "Which he

Page 145

1 describes as almost a risk-free way to make money,"  
2 and I'm asking you, is that an accurate description  
3 -- is that an accurate attribution to you, that he  
4 describes as almost a risk-free way to make money?  
5 A. In my opinion, that's a little bit too  
6 far. I think the e-mail I send is like March 7th,  
7 Exhibit 17, that's the one we talk about, it's like  
8 the risk is very low, so it's like almost no  
9 downside risk. The risk is very very low. That's  
10 what I meant. It's not risk-free or anything, but  
11 it's like risk, it's really small.  
12 Q. Okay. If you would turn to the page with  
13 Bates stamp -- page 5, and it starts here, "Alan is  
14 now actively altering his trading to profit from the  
15 TLC." Do you know the basis for Mr. Chen's --  
16 Mr. Gates' description of what you were doing?  
17 Well, first, is that an accurate description of what  
18 you were doing?  
19 A. I don't know what he's meant for.  
20 Altering the trading strategy, it's -- actually,  
21 trading strategy's the same. It's just the pure  
22 volume. Those type of trades I put on, I haven't  
23 changed at that time.  
24 Q. And what he says the -- is he accurately  
25 describing what you were doing when he says you were

Page 146

1 actively altering his trading to profit from the  
2 TLC?  
3 MR. ESTES: He just answered that  
4 question.  
5 THE WITNESS: Yeah, I think --  
6 BY MR. TABACKMAN:  
7 Q. I don't think it was responsive.  
8 A. I think altering is meant for volume, that  
9 is correct statement. If he means something else,  
10 new trade, new type of trade, that's incorrect.  
11 Q. All right. Then the description of what  
12 happened last month, he's writing this in March of  
13 2010, that's consistent with his -- with what you  
14 had reported to him in the e-mails that we had  
15 already looked at, that they would have lost almost  
16 \$400,000 if not for the TLC. That's an accurate --  
17 he's telling -- recounting of what you had said --  
18 what you had written to them, right?  
19 A. Correct.  
20 Q. Okay. "But we netted a profit of more  
21 than 200,000." That's also correct.  
22 A. Correct.  
23 Q. And that for the month of March, Alan  
24 estimates we are up 220,000 month to date -- what  
25 would he have based that on?

Page 147

1 A. I actually send him every day the daily  
2 update reports.  
3 Q. And what did they consist of?  
4 A. It just -- I think that the one is similar  
5 to -- to this reports.  
6 Q. Okay.  
7 A. Exhibit --  
8 Q. What exhibit is that?  
9 A. Thirty-seven.  
10 Q. Okay, and let's move on then. Did  
11 Mr. Gates to your recollection ever complain to you  
12 about your -- the transparency to them of what you  
13 were -- of the trading that you were doing on their  
14 behalf?  
15 MR. ESTES: You mean lack of transparency?  
16 BY MR. TABACKMAN:  
17 Q. I'm sorry, yes, the lack of -- that you  
18 were refusing to be as transparent in your trading  
19 and in providing them with information about your  
20 trading as they would have liked. Do you recall him  
21 ever expressing that to you?  
22 A. No.  
23 Q. Again, I phrase it in terms of do you  
24 recall. Do you have a recollection that he did not  
25 -- that he's never said something like that to you?

Page 148

1 A. No, in my -- based on the knowledge, no.  
2 Q. They were satisfied with your -- with the  
3 transparency, the information that you provided to  
4 them?  
5 MR. ESTES: As you sit here today.  
6 THE WITNESS: Yeah, I thought they are  
7 satisfied.  
8 MR. TABACKMAN: Let's have this marked as  
9 Exhibit 43 please.  
10 - - -  
11 (Deposition Exhibit Number 43 was marked  
12 for identification.)  
13 - - -  
14 MR. TABACKMAN: And then in a matter of  
15 expedition, I'm going to show you a number of these.  
16 Just take a look at that.  
17 MR. ESTES: Go ahead.  
18 MR. TABACKMAN: Let's have this one marked  
19 as Exhibit -- what is this number? Forty please.  
20 - - -  
21 (Discussion off the record)  
22 - - -  
23 (Deposition Exhibit Numbers 40 through 42  
24 and 44 through 49 were marked for identification.)  
25 - - -

Page 149

1 BY MR. TABACKMAN:  
2 Q. Exhibit -- can you describe, Mr. Chen,  
3 what exhibits, if you know, what Exhibits 40 through  
4 49 are?  
5 A. I call them daily update reports.  
6 Q. Okay, and did you create these reports?  
7 A. Yes, sir.  
8 Q. By the way, in some location, it may be  
9 looking at properties or something, there's a  
10 reference to a Stacy, created by Stacy. Who is  
11 that? Is that somebody who worked for you or with  
12 you?  
13 A. It's just an account, yeah.  
14 Q. I was just wondering. And you said these  
15 were daily updates of -- and did you provide these  
16 to anyone else or did you just do this for yourself?  
17 A. Me and Powhatan and Huntrise and Kevin  
18 Gates basically.  
19 Q. Okay. Now, if you could turn to the  
20 second page -- I know these are -- unfortunately, I  
21 didn't do these in -- they're not in chronological  
22 order, but -- and I just want to make sure that I  
23 understand. The second page of Exhibit 40, what  
24 does that show in column -- in the column marked PJM  
25 to MISO?

Page 150

1 MR. ESTES: Let me catch up with you here.  
2 THE WITNESS: Forty.  
3 MR. TABACKMAN: It's Bates number --  
4 starts with Bates 722, the second page.  
5 MR. ESTES: Got it.  
6 BY MR. TABACKMAN:  
7 Q. And then the next, 723, Bates number 723,  
8 the column PJM to MISO and MISO to PJM, what is --  
9 what are they showing there? What are you reporting  
10 there?  
11 A. It's for the hour ending one, the first  
12 column's the hour ending, and each hour, the trades  
13 from -- the total volume of PJM to MISO.  
14 Q. Okay, and when you say -- why do you  
15 describe it as the total volume? What do you mean  
16 for that with respect to that hour?  
17 A. I just group all the trades together and  
18 get one number for -- for that hour.  
19 Q. If I understand you, is that -- when you  
20 say group them all together, that's because there  
21 may have been specific nodes in PJM or MISO that --  
22 in other words, it's not one trade of 6,800  
23 megawatts. That may be several separate trades.  
24 A. Correct.  
25 Q. And they would be trades between PJM and

Page 151

1 different nodes in MISO or MISO and different nodes  
2 within PJM?  
3 A. Different nodes within PJM.  
4 Q. Okay, but this reports that in hour one,  
5 6,800 megawatts went from PJM to MISO, correct?  
6 A. Yes.  
7 Q. The P and L that you show there for Monday  
8 July 26, you said this was for yesterday, so I take  
9 it you're sending this to him -- you would send this  
10 to Mr. Gates on what day, if it was for yesterday,  
11 Monday July 26th.  
12 A. It's July 27th, 11:10 a.m., I create that  
13 report.  
14 Q. Ah, very good. Thank you. And then I  
15 take it the column next to the PJM to MISO shows the  
16 MISO to PJM.  
17 A. Correct.  
18 Q. Okay, and again, it shows the volume, the  
19 total volume that was traded at each hour.  
20 A. Correct.  
21 Q. And this -- I believe that it shows at  
22 least at each hour, there's an equal number -- an  
23 equal volume going from PJM to MISO and MISO to PJM,  
24 these numbers here, the volume that's reflected.  
25 A. This is kind of -- that's correct, but

Page 152

1 it's actually misleading. It's not -- it's not  
2 always matching. It's like -- it's not the same as  
3 pairs. They are not pairs.  
4 Q. What are they?  
5 A. They are spreads like from MISO to --  
6 maybe to Cook, and then from Rockport to MISO, so  
7 it's actually, if you look at like hour 20, just  
8 that alone, you're actually making \$6,000. I think  
9 -- I'm not quite sure it's always -- look at volume  
10 exact the same, but when you look at the individual  
11 trades, it's actually quite different story.  
12 Q. Well, some of them are and some of them --  
13 some of them are -- there may be substantial  
14 differences. Are you saying that each one of these  
15 is -- none of these involve pairs?  
16 A. No, I think some of them does involve,  
17 yeah.  
18 Q. And the ones that aren't pairs, do they  
19 involve highly correlated -- or closely correlated  
20 --  
21 MR. ESTES: Object --  
22 BY MR. TABACKMAN:  
23 Q. -- nodes?  
24 A. Not highly. It's correlated some way.  
25 Q. Correlated.

Page 153

1 A. Yeah, there's some other -- there's three  
2 types. One is just kind of -- it's before like  
3 individual bet like in or out. Another type is  
4 correlated nodes. I tell you that before. The  
5 other type is like paired trades. At this time I do  
6 have those pair trades on.  
7 BY MR. HOPKIN:  
8 Q. Did you ever explain any of what you just  
9 testified to to anyone at Powhatan or Mr. Gates?  
10 A. You mean those three type of trades?  
11 MR. ESTES: If you recall.  
12 BY MR. HOPKIN:  
13 Q. Yes.  
14 A. I don't recall. Probably not. More  
15 likely it's not.  
16 Q. Now, it's correct that you just testified  
17 that some of the information on Exhibit 40 may be  
18 misleading; is that correct?  
19 A. Forty, page 2, I -- my thinking is when I  
20 put on trades, they can -- they can log into the  
21 account, they can see the trade, individual trades.  
22 Q. I'm sorry, when you say they, who are you  
23 referring to?  
24 A. The Powhatan guy.  
25 Q. Okay.

Page 154

1 A. So if they want to see the trades  
2 individually every hour, every day, every -- they  
3 can see it, so I'm not worried about misleading  
4 them, yeah.  
5 Q. And that's because your understanding is  
6 that they had total access to your trading records?  
7 A. Since it's their account. It's their  
8 account, Powhatan, their account, they have full  
9 access.  
10 BY MR. TABACKMAN:  
11 Q. To PJM.  
12 A. Correct.  
13 Q. I'm sorry.  
14 A. Yeah.  
15 Q. I just want to make sure I -- do -- do you  
16 recall anybody asking you about the nature of the  
17 trades that you were engaging in for them other than  
18 how much money are we making?  
19 MR. ESTES: What time frame?  
20 BY MR. TABACKMAN:  
21 Q. In the time frame of June -- May, June and  
22 July of 2010.  
23 A. I -- I don't recall.  
24 Q. When you explained -- when you had your --  
25 the conversation with Mr. Gates about the -- the TLC

Page 155

1 in February and March, did you discuss the strategy  
2 then or at any subsequent time of trading equal and  
3 opposite pairs?  
4 MR. ESTES: It's a compound question  
5 because of the any subsequent time.  
6 A. Yes, the subsequent time, I think up until  
7 June 1st, I never talked -- I never thought of that  
8 and I didn't -- so there's no way to talk to them.  
9 Q. Okay.  
10 A. After June 1st, I didn't talk to them. I  
11 didn't e-mail them. I think I didn't. That's my  
12 best recollection. And then I think the meeting is  
13 June 25th or maybe that time frame.  
14 Q. Right.  
15 A. We did talk about that.  
16 Q. You -- and when you say that, could you  
17 make -- I want to make sure the record is clear what  
18 that is.  
19 A. The pair equal volume opposite trades.  
20 Q. And do you recall what you said to  
21 Mr. Gates and whoever -- whomever else was in the  
22 meeting about what -- about those kinds of trades?  
23 A. There's two question. One is kind of they  
24 asked is it cancelling each other out, and --  
25 Q. They asked you that.

Page 156

1 A. Yeah, they did, and --  
2 Q. Do you recall who asked you that?  
3 A. Kevin Gates, and I'll actually kind of go  
4 to the blackboard and wrote the formulas so -- on  
5 the blackboard. In my mind, paired trades, volumes,  
6 it's totally different. They're not cancelling out.  
7 If you look at formula, it's like one direction you  
8 have \$50. The other direction you have \$50. Those  
9 two formulas, if you put those two formulas into an  
10 optimization program, and that's PJM's model, they  
11 had realtime model, those are totally different  
12 mathematical formula, and you cannot say the same.  
13 I mean, it's different, totally different.  
14 BY MR. HOPKIN:  
15 Q. And did you explain to Mr. Gates that they  
16 were totally different and that they in fact do not  
17 cancel each other out?  
18 A. That's correct.  
19 BY MR. TABACKMAN:  
20 Q. I want to make sure I understand you, that  
21 a trade from -- let us -- if I can just -- maybe --  
22 this may be a hypothetical, but we're talking about  
23 a trade, pick a node A in PJM, in MISO, wherever,  
24 let's say A. You have a volume that goes from A to  
25 B at a certain hour that you've bid at \$50. You bid

Page 157

1 at that same hour same volume same two nodes going  
2 from B to A.  
3 MR. ESTES: This is up-to congestion or  
4 just --  
5 BY MR. TABACKMAN:  
6 Q. Up-to congestion, and -- and you're saying  
7 that they do not cancel each other out?  
8 A. Yeah, let me -- let me give you based on  
9 just A and B nodes example, that they had all --  
10 that constraints is they had price of A node, let's  
11 say A node is within PJM. They have price of A node  
12 minus they have price of B node less or equal to 50.  
13 That's from B to A importing. The other one is like  
14 their price of B minus their price A less or equal  
15 50. This too is like mathematically, they can never  
16 cancel.  
17 Q. Can you -- but in fact, as we've seen in  
18 the summary charts, they did in fact cancel, didn't  
19 they?  
20 A. No --  
21 MR. ESTES: Object to the form. It's  
22 ambiguous.  
23 BY MR. TABACKMAN:  
24 Q. Referring to Exhibits -- the summary  
25 charts that we've identified, 4 and 5 and 6, they

Page 158

1 did in fact cancel, didn't they?  
2 MR. ESTES: You're using "cancel" in  
3 different senses.  
4 BY MR. TABACKMAN:  
5 Q. What sense are you using it, Mr. Chen,  
6 Dr. Chen?  
7 A. My understanding is if both conditions are  
8 met, then they are equal. Basically the physical  
9 impact of flow wise is zero. That's -- if you call  
10 that canceling out, that's correct, but  
11 mathematically, or if one of the leg -- if one of  
12 the leg rejected, the other leg, it's always  
13 approved, that's the possibility I'm trying to point  
14 out. So mathematically, you cannot say two -- both  
15 of them rejected. That never happened. This  
16 condition is not symmetrical. It's like  
17 asymmetrical. If one rejected, the other one always  
18 approved. How can you say that's not the same?  
19 That's not cancelling, right?  
20 Q. I understand you just hypothesized one  
21 reject, but when -- in these situations when neither  
22 is rejected, they cancel each other out, don't they?  
23 MR. ESTES: Dollar wise?  
24 BY MR. TABACKMAN:  
25 Q. Yes, and volume wise.

Page 159

1 A. I mean, dollar wise, not. It's actually  
2 -- if you look at charges, I mean, you have all  
3 these charges. The charges -- you cannot say  
4 charges cancel out. You pay double charges, but if  
5 you look at volume wise, they do, they cancel out.  
6 The flow physical impact is zero.  
7 BY MR. HOPKIN:  
8 Q. And that was by design, correct?  
9 A. I mean, not really by design. It's  
10 actually -- I think since you have these two  
11 conditions and PJM will decide which one condition  
12 is met, which one is not, and before -- beforehand,  
13 I don't have kind of -- I don't know if they agreed  
14 to reject either one of them or approve both of  
15 them. If approved, then yes, that's kind of one of  
16 that possibility, yeah.  
17 Q. It wasn't an accident that the volumes  
18 were the same, correct?  
19 A. Volume the same, that's because I do want  
20 to reduce the overall risk, since when you have the  
21 volume the same and the risk between those two nodes  
22 -- or I mean it's not between -- right now it's like  
23 one nodes, so it's actually reduced. You don't have  
24 a directional bet.  
25 BY MR. TABACKMAN:

Page 160

1 Q. And so you're saying that you explained to  
2 Kevin Gates that -- this explanation that you just  
3 gave, these trades didn't cancel each other out.  
4 A. That is correct.  
5 BY MR. HOPKIN:  
6 Q. If PJM approved both sides -- or strike  
7 that. If -- right. If PJM or if the system cleared  
8 both sides of your trade, the revenues would cancel  
9 each other out, correct?  
10 MR. ESTES: Including -- which revenues do  
11 you mean?  
12 BY MR. TABACKMAN:  
13 Q. The revenues from the spreads.  
14 A. Yeah, from the spreads, it, yeah, cancel  
15 out, yes.  
16 Q. Okay, and you explained all of that to  
17 Mr. Gates, correct?  
18 A. That part actually I'm not sure if I said  
19 anything about that.  
20 Q. What did you explain to Mr. Gates?  
21 A. It's like they said this may be like  
22 different. It cancel out because you don't have --  
23 if both of them approved or -- they don't really  
24 think one of them could rejected or this too maybe  
25 just like cancelling trades. The one I'm thinking

Page 161

1 like, I just tell them it's like these two are  
2 totally different trades. I mean, these two, you  
3 cannot say if you put together -- these two trades  
4 mathematically, since you -- in your mind, I'm  
5 thinking maybe the same, but it's a mathematical  
6 model. PJM runs a mathematical model, day-ahead and  
7 realtime both, and if you look at mathematical  
8 formula, one is this direction, the other is another  
9 direction. It's actually, if you look at it, if you  
10 change the direction, then it's less than minus \$50,  
11 so these two conditions is totally different.  
12 Q. Can you draw please -- and if I gave you a  
13 piece of paper and we'll have it marked afterwards  
14 or if you have one there for us, what it is that you  
15 drew for Kevin Gates and the Powhatan people when  
16 you met with them on June 25th of 2010? I'm happy  
17 --  
18 MR. ESTES: To the best of your  
19 recollection.  
20 MR. HOPKIN: Can we go off the record for  
21 a minute?  
22 MR. TABACKMAN: Sure.  
23 (Recessed at 3:07 p.m.)  
24 (Reconvened at 3:15 p.m.)  
25 - - -

Page 162

1 (Deposition Exhibit Number 50 was marked  
2 for identification.)  
3 - - -  
4 BY MR. TABACKMAN:  
5 Q. Dr. Chen, if you would explain starting  
6 with the top of the page what it is that you've  
7 drawn and its significance here so perhaps we can  
8 follow along?  
9 A. Yeah, this is like two nodes, one we can  
10 look at as MISO as A.  
11 Q. Okay.  
12 A. B is inside of PJM.  
13 Q. Okay.  
14 A. From one to A, it's import leg. From B to  
15 A is export leg.  
16 Q. I'm sorry, I just want to make sure, so  
17 the one is your import leg, okay, got it, and then B  
18 to A is your export leg.  
19 A. Yes, sir.  
20 Q. Okay.  
21 A. And the condition I have is condition one,  
22 day-ahead LMP price of B minus day-ahead LMP -- oh,  
23 it's not -- it's LMP price of A less or equal than  
24 \$50.  
25 Q. And the LMP, you're referring to the LMP

Page 163

1 -- why \$50? What is it that you're --  
2 A. That's PJM's up-to congestion limit. If  
3 greater than 50, the trade is rejected.  
4 Q. Okay, so -- so that -- so the formula  
5 day-ahead LMP B, that's the PJM LMP, minus -- okay,  
6 that's condition one. What does that tell you then?  
7 A. That means for one -- for the importing  
8 leg to contribute to the optimization function has  
9 to be less than or equal to 50. That's mathematical  
10 condition.  
11 Q. And when you say to contribute to the  
12 optimization function, what does that mean?  
13 A. In the optimizing your function, they have  
14 like minimize cost or maximized profit for TJM.  
15 They have a kind of overall goal, and this -- this  
16 is one of the constraints.  
17 Q. Okay, and then your second thing, it shows  
18 what then?  
19 A. Second one is day-ahead LMP A minus day-  
20 ahead LMP B less or equal to \$50, and that's for the  
21 export leg.  
22 Q. Okay.  
23 A. And 2 or 3 are mathematically equivalent.  
24 I actually missed the second one, day-ahead LMP is  
25 supposed to be A. So it's basically your times --

Page 164

1 both side times minus one and you change the sign.  
2 So 2 and 3 mathematically are exact the same.  
3 Q. Okay.  
4 A. And now when you look at 1 and 3, anyone  
5 can tell me they are -- they are the same. They are  
6 just -- I mean, they're totally different.  
7 Q. This is -- these two formulas will tell  
8 you -- I take it -- are you saying that these  
9 formulas are the formulas that tell you when a  
10 transaction will clear?  
11 A. That's correct.  
12 Q. Okay. And on the -- what happens if -- if  
13 both of these, okay, if B -- strike that. If  
14 formula 1 is less than \$50, right, it will clear,  
15 correct?  
16 A. Yes.  
17 Q. Formula 2, it will also clear.  
18 A. Correct.  
19 Q. Is that correct? All right. And so if  
20 you bid \$50, that is the highest you can bid in an  
21 effort to get it to clear; is that right?  
22 A. Correct.  
23 Q. Okay, and so when they both clear, will  
24 there -- is there any reason to believe that the --  
25 that there will be a price spread between -- that

Page 165

1 results at these two different locations at the same  
2 time for the same number of -- same volume of  
3 megawatts?  
4 MR. ESTES: Object to form. Do you  
5 understand?  
6 A. I don't really understand the question,  
7 but if I'm -- if I'm understanding correctly, it's  
8 like if both conditions are met and that's one  
9 possibility, it is possible it could be met both, 1  
10 and the 3, they are not exclusive. They could both  
11 be met.  
12 Q. And what happens if both conditions are  
13 met?  
14 A. And it's between negative 50 and positive  
15 50, so if the spread between those two lies at 20,  
16 then both are met, but if you look at this condition  
17 alone, I mean, they are just almost opposite, and  
18 you tell me it's like -- to me it's like almost  
19 opposite.  
20 BY MR. HOPKIN:  
21 Q. But in your trading experience in the  
22 summer of 2010, that never actually happened,  
23 correct, where they -- where they actually were  
24 opposite. They always both cleared, right?  
25 MR. ESTES: Object to form of the

Page 166

1 question.  
2 A. That is -- yeah, in that -- for the trades  
3 I put on, yeah, they are -- they are correct.  
4 Q. And that was the goal, correct?  
5 A. That is one of my goals, yes.  
6 Q. Okay, and did Mr. Gates understand that  
7 that was one of your goals?  
8 A. I show this to him. I talk to this  
9 similar kind of to them, and they understand I think  
10 -- seems to me they understand.  
11 Q. Let me rephrase that question. It was  
12 your impression that Mr. Gates understood what you  
13 were explaining to him?  
14 A. I have a little bit doubt. I think the  
15 two guy, Kevin Gates and another guy, Dr. Chao Chen,  
16 and Chao seems -- I think is probably, my impression  
17 is a hundred percent sure after this, since when you  
18 look at these two, it's just -- it's just not the  
19 same, I mean, but Kevin, a little bit doubt, but it  
20 seems like comfortable with this explanation.  
21 BY MR. TABACKMAN:  
22 Q. Okay, can I ask you this? After you gave  
23 him this explanation, did Kevin Gates -- were you  
24 telling Kevin Gates that this was a high-risk trade  
25 that you were putting on for them?

Page 167

1 A. Excuse me, sorry to interrupt. I actually  
2 emphasized to them the risks inherent in this type  
3 of trades.  
4 Q. And what -- did you characterize it --  
5 please answer the question -- as a high-risk trade,  
6 a low-risk trade, a medium-risk trade? How did you  
7 describe it to Mr. Gates?  
8 MR. ESTES: Answer if you recall and you  
9 can.  
10 THE WITNESS: I described to them as low  
11 risk, high potential, high risk potential, also high  
12 reward potential.  
13 I'm sorry. Could you read that back  
14 please?  
15 - - -  
16 THE REPORTER: Answer: "I described to  
17 them as low risk, high potential, high risk  
18 potential, also high reward potential."  
19 - - -  
20 MR. HOPKIN: I don't know what to do with  
21 that.  
22 THE WITNESS: Can I --  
23 MR. ESTES: Let him ask another question.  
24 THE WITNESS: Sorry.  
25 BY MR. TABACKMAN:

Page 168

1 Q. I believe you just said that you described  
2 it as both a low-risk and a high-risk trade?  
3 MR. ESTES: Maybe you should clarify.  
4 BY MR. TABACKMAN:  
5 Q. Yes.  
6 A. Let me clarify a little bit. So it's like  
7 overall, low -- risk is low, but there's a potential  
8 in there, a high reward. That's not -- I think it's  
9 actually not risk. The risk is like you have high  
10 potential of losing money, high potential of making  
11 money, but that depends on how you choose B. That's  
12 kind of another part of the story. Just -- just  
13 looking at A and B alone, they are -- they are high  
14 reward, high risk, but when I choose the B nodes, I  
15 choose those close-by nodes or correlated nodes,  
16 then the reward will be higher, the risk will be  
17 lower. So the two stages, first stage is like I  
18 choose the type of trades, don't consider low risk.  
19 At another stage, I pick different Bs, and then  
20 those Bs I chose is like reduce the risk of losing  
21 money, improve the possibility of making money.  
22 Q. Do you still have Exhibit 13 in front of  
23 you?  
24 A. Yes.  
25 MR. ESTES: What is it, Counsel?

Page 169

1 MR. TABACKMAN: It's a spreadsheet that  
2 Mr. -- that Dr. Chen put together in connection with  
3 his document production.  
4 THE WITNESS: One of the first.  
5 MR. ESTES: Okay, I'll find it.  
6 MR. TABACKMAN: It was from this morning.  
7 It looks like this.  
8 MR. ESTES: Got it.  
9 BY MR. TABACKMAN:  
10 Q. Let's look at this. These were trades  
11 that you put on for CU Fund, correct?  
12 A. Correct.  
13 Q. And did the -- did the nature of the  
14 trades that you were putting on for CU Fund in terms  
15 of the -- your choice of nodes and volumes, were  
16 they different -- did they reflect a different  
17 strategy than the trades you did for HEEP and  
18 Powhatan?  
19 A. If I understand the question correctly, if  
20 -- if you're just asking for like pair trades, was  
21 it a pair trade, they are the same. If you're  
22 looking at, say, a HEEP Fund and Powhatan, they have  
23 -- do have different -- some other type of trades,  
24 then it's a little bit different.  
25 Q. But talking about the paired trades, the

Page 170

1 trades you've put on for CU Fund in pair trades and  
2 the ones you used for HEEP Fund and Powhatan were --  
3 reflected the same strategy; is that correct?  
4 A. Yes.  
5 MR. ESTES: In price, you mean nodes?  
6 What --  
7 BY MR. TABACKMAN:  
8 Q. If I may?  
9 A. That's another point I forgot to mention.  
10 Q. When you chose the nodes for CU Fund on  
11 any particular day for your paired trading, would it  
12 be -- I mean, if you recall, would you also use the  
13 same nodes for Powhatan and HEEP?  
14 A. Correct, they are the same, yes.  
15 Q. Okay. So let's look at -- I know that we  
16 have to go and find the ones that match up. Well,  
17 let me ask you this. With respect to the trades  
18 that are reflected in Exhibit 13, and it is I  
19 understand only one day of CU Fund, is there ever --  
20 do any of these trades that you engaged in result in  
21 your making a profit from the spread between the  
22 nodes that you choose to trade, in other words, not  
23 without -- putting aside all your -- you have your  
24 reservation costs, putting aside your credits at the  
25 end, did the trades that you paired up ever result

Page 171

1 in being profitable by themselves?  
2 A. My understanding is the question is it  
3 didn't happen, so they are not making money.  
4 Q. I'm sorry, your understanding of the  
5 question is it didn't happen, so they are not making  
6 money? I'm not sure if I understand your answer.  
7 A. So you -- you basically -- if you're not  
8 looking for charges, if you're not looking for  
9 transmission loss credit, just the spread alone --  
10 Q. Yes.  
11 A. It's not making money.  
12 Q. Okay, and was that what you expected to  
13 happen when you placed the trades?  
14 MR. ESTES: Went over this ground in the  
15 morning.  
16 A. That's one of the outcome I expected, one  
17 of the outcomes, yes.  
18 Q. Was it the one that you preferred to have  
19 happen?  
20 A. I would rather see one of the leg  
21 rejected, then we'll make a lot -- a lot more, maybe  
22 ten times more money.  
23 Q. And had you lowered your bid price from  
24 \$50 down to a much lower amount on one of the two  
25 legs, would that have increased the likelihood of it

Page 172

1 being rejected, the possibility?  
2 A. For CU Fund.  
3 Q. Yeah.  
4 A. I don't recall, but most of the trades I  
5 put down is \$50.  
6 Q. I'm asking you, and had you -- you were  
7 saying that you -- your preferred outcome was to  
8 have a leg rejected. If you had on one of the two  
9 legs bid a lot -- something less than \$50 while  
10 keeping one of the legs at \$50, would that have  
11 increased the likelihood or the possibility that one  
12 of those two legs would have been rejected?  
13 A. Let me -- let me say this. It is  
14 possible.  
15 Q. It's a yes or no question, Mr. -- you can  
16 give me a yes or no answer to that.  
17 A. That's not totally yes or no. Let me --  
18 let me say this. One hand, you have 25, say \$25  
19 rejected, returning leg, you make \$25, right? But  
20 the other one, 50, you actually trying to make \$50,  
21 so you -- I mean, the upper floor on the cost, it's  
22 totally different. I would rather see \$50 get  
23 rejected, I paid up front \$50. If up front the 25,  
24 I don't -- 25, I won't do it. That's too risky for  
25 me, so -- so it's not just yes or no. I think in

Page 173

1 this case, if 25, I will think about it. Since 25  
2 seems too low, maybe realtime come up as \$30, you  
3 end up with losing five dollars. But 50, I  
4 definitely would like to do it. Since it's 50, it  
5 covers much more background. I mean, if you come in  
6 like 45, come in 35, you're still making money, so  
7 that's what I'm trying to say, is like --  
8 Q. Okay, and that's -- that's very nice,  
9 Dr. Chen, but please answer my question. In terms  
10 of the likelihood of your -- of a leg not clearing,  
11 would reducing the -- not whether you would make  
12 money, but in terms of -- just in terms of the  
13 likelihood of -- increasing the likelihood of a leg  
14 not clearing, of your bid not clearing, would  
15 reducing the amount of money from \$50 to a lower  
16 amount increase the likelihood that it would not  
17 clear?  
18 A. That is a yes.  
19 Q. And you never did that, did you?  
20 MR. ESTES: For CU Fund?  
21 MR. TABACKMAN: For CU Fund.  
22 MR. ESTES: If you recall.  
23 THE WITNESS: I think I have some trades  
24 less than 50, if I remember correctly, my  
25 recollection is there are some trades less than 50.

Page 174

1 MR. ESTES: Counsel, I'd appreciate it if  
2 you'd ratchet down your volatility.  
3 MR. TABACKMAN: And I would -- and I would  
4 appreciate getting an answer rather than a speech.  
5 MR. ESTES: He's giving you answers.  
6 MR. TABACKMAN: No, he's not giving me  
7 responsive answers.  
8 THE WITNESS: I'm sorry.  
9 BY MR. TABACKMAN:  
10 Q. And that was not a responsive answer  
11 because the question was -- was quite simply if you  
12 lower -- now we've got an answer, and the answer was  
13 yes. If you dropped down from 50, that will  
14 increase the possibility of a leg getting rejected.  
15 MR. ESTES: He told you that this morning.  
16 MR. TABACKMAN: No, he did not.  
17 MR. ESTES: Yeah, he did.  
18 BY MR. TABACKMAN:  
19 Q. Now, the -- and on all of the trades that  
20 we see with CU Fund, or at least the vast majority,  
21 you always bid \$50 each way, didn't you? You've  
22 testified -- I think you even testified to that.  
23 A. Yeah, for vast majority, yes.  
24 Q. Okay. Now, this -- the thing that you've  
25 drawn is what you showed to Kevin Gates. Were there

Page 175

1 -- did they ask questions after you did that?  
2 A. I think after I wrote this on the  
3 blackboard, I think it seems like they are pretty  
4 clear on this front, so in my mind, this trades from  
5 the beginning to the end, I don't -- I don't worry  
6 about or concern about legitimacy of this type of  
7 trades. Another question I have is like the volume  
8 wise, that's kind of a little bit concerned. We  
9 also talk about on that front.  
10 Q. And what did you discuss there?  
11 A. We don't have a conclusion about the  
12 volume since like one -- when we look at the volume,  
13 amounts of volume, we kind of account for -- not we.  
14 It's kind of Powhatan account for a big percentage  
15 of the total volume of PJM up-to congestion trades.  
16 Q. Did Kevin Gates in the course of talking  
17 -- or anybody from Powhatan in the course of your  
18 meeting ever express to you the kinds of sentiments  
19 that you read that he expressed in the document we  
20 were reading before, that -- you know, ask you well,  
21 isn't this risk-free or is this risk-free trading,  
22 was that expressed to you during the meeting?  
23 MR. ESTES: You mean the ramping up with  
24 Alan document?  
25 BY MR. TABACKMAN:

Page 176

1 Q. Yes, right. Did he ever express those  
2 kind of thoughts to you or sentiments to you or ask  
3 you about that when you met with them in June?  
4 A. I don't recall that, the risk-free, that  
5 frame, the term.  
6 Q. Did he ever express the -- did you ever  
7 have the impression or the understanding or the  
8 sense based on things that he said to you that he  
9 believed that this was a very low-risk way,  
10 virtually a risk-free way to make money at any point  
11 in time when you talked with him in June of 2010?  
12 A. Low risk, I think of that -- that to me, I  
13 think it's my impression, yes, it is.  
14 Q. They believed that.  
15 A. Yeah.  
16 Q. All right. And is that based on things  
17 that they said to you, the overall conversation, or  
18 --  
19 A. Yeah, I think I told them that in the  
20 e-mail and they kind of -- seems like they agreed to  
21 that -- the conclusion or statement, yeah.  
22 Q. Okay, some other -- let me show you what  
23 I'd like to get marked as Exhibit 1.  
24 - - -  
25 (Deposition Exhibit Number 1 was marked

Page 177

1 for identification.)  
2 - - -  
3 BY MR. TABACKMAN:  
4 Q. Take a look at that, Dr. Chen, and tell me  
5 if you recognize it.  
6 A. Yes, I recognize it.  
7 Q. And what is it?  
8 A. This is agreement, or at least a draft we  
9 kind of signed between TSF Capital and HEEP Fund.  
10 Q. Okay, and what was the nature of your  
11 authority under the agreement?  
12 A. I would trade for them on that account  
13 they created within PJM.  
14 Q. Now, this is the agreement that was  
15 entered into on April -- in April of 2008. At that  
16 time, did they have a PJM account or did they open  
17 one up later?  
18 A. They opened that way before me.  
19 Q. Okay. And how was your compensation to be  
20 -- how are you to be compensated?  
21 A. I think that is stated in advisory fees.  
22 If it's making money, I get 40 percent of the  
23 credit, but they do have some kind of they said  
24 water marks.  
25 Q. I'm sorry. Some kind of what?

Page 178

1 A. They call water marks.  
2 Q. Oh, water marks, oh, okay. And in terms  
3 of your deciding what trades to put on, when to put  
4 them on, the volume of them, what to bid, did you  
5 have to have that -- did you have complete  
6 discretion to do that on your own or did you have to  
7 talk with them first or give -- or something in  
8 between?  
9 A. I think most likely is my own decision,  
10 and unless there's the huge jump or there's a very,  
11 very big different, like the previous e-mail is like  
12 if you have transmission loss credit coming out, in  
13 some cases I did send out e-mails asking for them to  
14 kind of advise or permission to kind of which option  
15 they want to choose.  
16 Q. And why did you do that?  
17 A. I think it's just kind of my  
18 responsibility at least kind of to -- to advise them  
19 what -- what the choices are.  
20 Q. Did you ever decline to explain to them  
21 any actions that you were taking on their behalf  
22 when Kevin Gates would call you or if he did or  
23 attempt to ask you for information, do you recall  
24 any instance where you have said no, I want -- I  
25 just want to do business, or words to that effect?

Page 179

1 A. I don't recall any of those cases.  
2 Q. Did you have any express limitations on  
3 your authority to act on their behalf dollar wise,  
4 volume wise, in terms of the nature of the trades  
5 that you were -- that you were putting on?  
6 A. I don't think I ever complained to them  
7 about the dollar wise.  
8 Q. I guess what I'm asking is did you  
9 understand that, you know, you had authority up to X  
10 amount of dollars in terms of, you know, how much  
11 you were going to trade for them and then beyond  
12 that, you had to go to them, or was this simply that  
13 you had to advise them after the fact?  
14 A. I think it never occurred to me like I  
15 have to get approval, preapproval. I think it's  
16 just based on my -- as long as I stick with that  
17 ratio, that will be fine with me and that will be  
18 fine with them.  
19 Q. And -- okay. And there came a time that  
20 the agreement was changed or modified in some way;  
21 is that right?  
22 A. That's correct.  
23 Q. And let me show you -- well, let me go for  
24 a second back to Exhibit 1. It says that you were  
25 granted here trading authorization and a limited

Page 180

1 power of attorney to act in TFS's place instead in  
2 the exercise of powers. Did you ever have any  
3 discussion with them in terms of responsibility or  
4 liability, should you be sued for any action that  
5 you took on their behalf?  
6 A. No, we didn't.  
7 Q. Do you know whether or not -- I haven't  
8 seen anything as to whether or not this agreement  
9 addresses that issue?  
10 A. I'm not sure.  
11 Q. Why was the agreement modified or a new  
12 agreement entered into?  
13 A. This one is for the -- I think this one is  
14 for the first company, or the fund that's set up,  
15 and that's original TFS Capital, and a couple months  
16 later, they set up an individual account called  
17 Huntarrise, and because of different entity, it will  
18 have different agreement.  
19 Q. I'm sorry, go ahead.  
20 A. And then I think in 2005 -- no, May 2010  
21 --  
22 Q. Uh-huh.  
23 A. -- Powhatan, so another entity was signed,  
24 so it's a different agreement.  
25 MR. TABACKMAN: Okay. And if we could

Page 181

1 have this marked as Exhibit 2?  
2 - - -  
3 (Deposition Exhibit Number 2 was marked  
4 for identification.)  
5 - - -  
6 BY MR. TABACKMAN:  
7 Q. Is this a new agreement that was entered  
8 into?  
9 A. I think this is the first one, it's a  
10 draft, and this one I think may be the final signed  
11 agreement.  
12 Q. Well, Exhibit 1 and Exhibit 2 are very  
13 different -- are two years apart, as I understand  
14 them.  
15 A. Oh, okay. This one is actually with  
16 Powhatan. I'm sorry.  
17 Q. Right, so I'm asking you, the Exhibit 2,  
18 did Exhibit 2, the advisory agreement that was in  
19 April of 210 -- 2010, did that override -- replace  
20 the one from 2008?  
21 A. That's correct.  
22 Q. Okay. Now, this one discusses it being an  
23 advisory agreement between HEEP Fund and Powhatan  
24 fund, whereas the one in April of 2008 talked about  
25 it being between you and whatever entity, the Gates

Page 182

1 entities, you know, TFS Capital. Was there -- was  
2 there a discussion as to whether or not this  
3 agreement should be between HEEP Fund as opposed to  
4 Alan Chen? How was that -- can you -- can you tell  
5 me about that please?  
6 A. That is correct, there's some discussion  
7 -- it's actually I think the Exhibit A is a draft,  
8 is not a final agreement. The final agreement is  
9 between HEEP Fund, Inc. and the TFS Capital, if I  
10 remember correctly. We have back and forth some  
11 minor changes.  
12 Q. Uh-huh. So you're saying both agreements,  
13 it's your recollection, were actually between HEEP  
14 Fund and either TFS on the one hand and Powhatan  
15 later on, as opposed to one being between Alan Chen  
16 and the other one with HEEP; is that right?  
17 A. That is correct.  
18 Q. And why was it -- why was it -- was HEEP  
19 Fund chosen as the party to the agreement rather  
20 than you personally?  
21 A. I mean, the trades is matched, versus HEEP  
22 Fund -- I mean, with HEEP Fund versus Powhatan, you  
23 could have another trader doing this type of trades  
24 but work for HEEP Fund, and just limit -- not limit  
25 my individual kind of trader. So it's actually

Page 183

1 agreement signed between two entities, not  
2 individual versus another entity.  
3 Q. And was there any other trader for HEEP  
4 Fund at any time -- does HEEP Fund still exist?  
5 A. Yes.  
6 Q. Is there any other trader that works for  
7 HEEP Fund?  
8 A. No.  
9 Q. Has there ever been any other trader that  
10 works for HEEP Fund?  
11 A. No.  
12 Q. Has there ever been any other owner of  
13 HEEP Fund other than yourself?  
14 A. No.  
15 Q. Do you maintain -- does HEEP Fund maintain  
16 separate bank accounts from your personal accounts?  
17 A. Yes, sir.  
18 Q. And how are you compensated by HEEP Fund?  
19 A. I pay myself salary.  
20 Q. And is that a fixed amount?  
21 A. No.  
22 Q. What do you base your salary on?  
23 A. Based on the profit and the loss.  
24 Q. And how often do you compensate yourself?  
25 A. It varies.

Page 184

1 Q. Could you give us -- give me an idea of  
2 the range of time, if there is?  
3 A. In a year, sometimes I pay every quarter I  
4 think, and sometimes I only pay maybe like once or  
5 twice a year.  
6 Q. And how do you handle your personal  
7 expenses if you don't get -- if you're not -- do you  
8 have another source of income other than HEEP Fund?  
9 A. My wife working for full-time job.  
10 Q. And so -- and is that how your personal  
11 expenses are handled?  
12 A. Yes, sir.  
13 Q. And how do you report the income -- any  
14 income that HEEP Fund accrues in terms of taxes?  
15 A. I think it's S chapter. There's some kind  
16 of tax filing form. I'm not sure. My CPA did all  
17 that work for me.  
18 Q. Are you familiar with a Schedule C? Is  
19 that --  
20 A. Yeah.  
21 Q. Does that ring a bell?  
22 A. That is --  
23 Q. That's how you -- is that how you report  
24 HEEP Fund's income?  
25 A. Yes, sir.

Page 185

1 Q. Okay. Does HEEP Fund maintain a checking  
2 account?  
3 A. Yes, sir.  
4 Q. And who are the signatories to that  
5 checking account?  
6 A. Signatory, I think me.  
7 Q. You think you? Are you uncertain about  
8 that?  
9 A. At least I'm on that, and I'm not sure if  
10 my wife is on that or not, since in case I  
11 traveling, but she's not an employee.  
12 Q. And in 2010, what was your income from  
13 HEEP Fund?  
14 A. 2010, I don't -- you mean the salary.  
15 Q. How much did you pay yourself?  
16 A. From HEEP Fund -- from HEEP Fund, I don't  
17 know exact the number since I haven't filed 2010 tax  
18 return yet.  
19 Q. Can you -- how about in 2009, can you give  
20 an approximation?  
21 A. 2009, maybe 750,000, all salary.  
22 Q. And is there any other form of  
23 compensation that you receive from HEEP Fund other  
24 than salary?  
25 A. No.

Page 186

1 Q. Do you have a 401(k) through HEEP Fund or  
2 any other sort of profit-sharing or mechanism  
3 whereby you -- for retirement fund?  
4 A. Yeah, I think the question is go back  
5 maybe -- maybe years, I do have -- called SEP IRA I  
6 think.  
7 Q. A SEP IRA.  
8 A. Yeah, I do have a SEP set up. I  
9 contribute based on the annual salary.  
10 Q. Do you expect your salary for 2010 to be  
11 greater or lesser or in the same range as your  
12 compensation for 2009, if you have an idea.  
13 A. I mean, that's the question I'm kind of  
14 struggling with. I don't have a clue at this  
15 moment.  
16 MR. ESTES: What happens in this case.  
17 BY MR. TABACKMAN:  
18 Q. I understand. The agreement that you  
19 signed with Powhatan, between HEEP and Powhatan, did  
20 that change in any way the authority that you had  
21 with respect to the kinds of trades, size of trades,  
22 amounts of trades, nature of trades that you could  
23 engage in -- that you could engage in on behalf of  
24 Powhatan?  
25 MR. ESTES: Are you asking just as he

Page 187

1 recalls or do you want him to look at the  
2 agreements?  
3 BY MR. TABACKMAN:  
4 Q. You can look at the agreement.  
5 A. My recollection is two -- two -- I mean  
6 two places. Change one is the ratio. Now it's one  
7 to 40, big increase. The other one --  
8 Q. I'm sorry, increase from what -- from one  
9 to four to one to 20?  
10 A. Correct.  
11 Q. And why was that?  
12 A. They kind of already have a couple years  
13 of history of look at my trades and they want to  
14 take on more risk.  
15 Q. And did you discuss -- based on any  
16 discussions that you may have had, do you have any  
17 reason to say whether or not the TLC was one of the  
18 factors that contributed to that increase, five-fold  
19 increase in -- from one to four to one to 20? Do  
20 you understand? That wasn't well articulated. Was  
21 the TLC a factor as far as you know or was the TLC  
22 discussed as a factor in -- in the decision to  
23 increase from one to four to one to 20?  
24 MR. ESTES: Discussed without --  
25 BY MR. TABACKMAN:

Page 188

1 Q. With them, with Dr. Chen.  
2 A. I'm actually not sure, but my impression  
3 is I think they do, since they did look at also the  
4 exhibit, that one, the internal document tells that,  
5 but before that, I don't know what they are  
6 thinking. They just tell me this is -- they want to  
7 do. They want to create a new entity to add more  
8 volume, more exposure, but they didn't tell me why  
9 or is it because of TLC or not.  
10 Q. And more exposure to UTC transactions in  
11 particular.  
12 A. Correct.  
13 Q. And by adding more exposure, the increase  
14 to one to 20 increased the size -- the volume that  
15 was involved in the transaction?  
16 A. That is correct.  
17 Q. Number of megawatts --  
18 A. Correct.  
19 Q. -- in any given transaction; is that  
20 right?  
21 A. Yes, sir.  
22 Q. And did you ever suggest to them that  
23 because of the riskiness of the UTC transactions in  
24 April of 2010, that this was -- it was your advice  
25 to them not to do that, or make any suggestion to

Page 189

1 them in that regard?  
2 MR. ESTES: You mean increasing the  
3 multiplier?  
4 BY MR. TABACKMAN:  
5 Q. Right.  
6 A. I didn't suggest to them any increase. I  
7 actually -- they proposed to 20. I'm actually  
8 suggest to them it's -- let's just go slow and get  
9 to like ten, and -- but they decided to go 20.  
10 Q. And why did you suggest ten after they  
11 suggested 20?  
12 A. Since before, I only trade like one to  
13 four, and one to 20 is a big jump in the risk, since  
14 it just multiplication, right. One to four, one to  
15 20, five times more risk, and they are kind of a  
16 little bit worried about that.  
17 Q. Did the fact that there was now going to  
18 be the TLC, which there hadn't been, at least when  
19 you had entered -- or didn't know there would be --  
20 entered into your previous agreement, did that  
21 impact your assessment of the risk in any way for  
22 them?  
23 MR. ESTES: Do you understand?  
24 A. From my point of view, I do include the  
25 transmission loss credit. To them, I'm not sure.

Page 190

1 Q. And when you say you include the -- how  
2 did that impact your assessment of risk?  
3 A. For me, the probability of making money  
4 with similar risk, it's actually -- now it's  
5 actually, you can take on a little bit more risk  
6 with kind of increase the volume, and so to me, it's  
7 actually kind of -- risk is actually lower with the  
8 TLC.  
9 Q. Could you describe the nature of your  
10 concern when you talk -- said too large a ratio or  
11 volume? I believe you said you had some concern.  
12 A. Since at that time up-to congestion  
13 requires OASIS reservation, and for that  
14 transmission, to reverse the transmission, there's a  
15 capacity limit, so from point A to point B, you have  
16 limited capacity, and several thousand megawatt  
17 could -- could -- you could take that capacity. And  
18 if you go to 20, to me, it's kind of a little bit --  
19 a little bit too high to me, a little bit -- I mean  
20 not very comfortable on that capacity front. Also  
21 look at risk is like from just five times more risk,  
22 so I'm actually kind of prefer like ten -- ten's  
23 kind of more manageable.  
24 Q. But -- I'm sorry. But they rejected that  
25 suggestion and wanted 20.

Page 191

1 A. That is correct.  
2 MR. TABACKMAN: Okay.  
3 BY MR. HOPKIN:  
4 Q. What was your concern about capacity on  
5 OASIS? Can you explain that further?  
6 A. There's lot of days, if I wake up a little  
7 bit late or since I -- all my trades are put on  
8 manually, if I five minutes late, all the capacity  
9 are gone, and sometimes I put on trades of HEEP Fund  
10 but I couldn't get capacity for Powhatan, and the  
11 one to 20 ratio is never -- I mean never existed in  
12 that case, so it's pretty difficult to get all the  
13 capacity if you go to one to 20.  
14 Q. Is that a common problem in your  
15 experience?  
16 A. Not very common, but they are -- I think  
17 with the amounts, they are like a few days. They  
18 are mismatches. In the e-mail I sent to them, it  
19 said mismatch because I put on this trades for HEEP  
20 Fund, but I couldn't get anything for Powhatan, that  
21 kind of situation.  
22 MR. HOPKIN: Go ahead.  
23 BY MR. TABACKMAN:  
24 Q. No, go ahead. Did you have a strategy in  
25 terms of which -- on any given trade day, which

Page 192

1 funds' trades you would try to put on first and --  
2 and which ones would come second? Was there -- was  
3 there something that -- was there a strategy to that  
4 or was it just -- how did you go about deciding?  
5 A. I think I have something in mind. Every  
6 day come in morning, I like put on the trades, I  
7 just fill out the forms, fill out the blanks. I  
8 actually have both open on the same screen, so all  
9 ready, and then I click say buy HEEP Fund first, and  
10 then a few seconds later, I click on buy for  
11 Powhatan, so that's kind of the way I do, so one --  
12 two trades on each side, then I put this one and the  
13 next one we put the other one.  
14 Q. And when you say two trades, if they were  
15 equal and opposite trades, those would be the two  
16 you're talking about?  
17 A. No, it's actually one for HEEP Fund, one  
18 for Powhatan.  
19 Q. Did -- is it your recollection that you  
20 always tried -- that you put on one for HEEP at a  
21 given hour, in other words, submitted it, that there  
22 was always a matching one for Powhatan at that same  
23 time? I'm not holding you to -- I'm just asking you  
24 if that was what you were trying to do.  
25 A. That is correct.

Page 193

1 Q. And were you typically successful in doing  
2 that?  
3 A. Most of the time they're successful, yeah,  
4 they get one to 20 ratio.  
5 Q. Now, when you -- on a lot of the days that  
6 you traded for HEEP and Powhatan and then later CU,  
7 you had trades at every hour of the 24-hour day;  
8 isn't that right? Typically.  
9 A. That is correct.  
10 Q. And they would be -- for each hour also,  
11 there would be different nodes involved, perhaps --  
12 within PJM and outside PJM; is that right?  
13 A. That is correct.  
14 Q. The -- would you -- would you place all of  
15 those at the same time?  
16 A. No, actually, I just put one by one, one  
17 HEEP Fund, one Powhatan, and then I will clear out  
18 the form and refill all the blanks for another trade  
19 and for another trade here, and then clear out the  
20 form and just individual one by one, one by one.  
21 Q. And did you ever consciously wait, say,  
22 start making one trade at 8:00 in the morning and  
23 then say no, I'm going to wait 'til 10:00 in the  
24 morning before I put another trade on for, you know,  
25 any -- for one of your entities?

Page 194

1 A. There are many days like that, yeah.  
2 Q. Why would you -- why would you wait?  
3 A. I want to look at what -- what is  
4 happening during those several hours, say -- I'm  
5 actually watching it, the market move during like  
6 6:00, 7:00, 8:00, 9:00 a.m. That's one I'm looking  
7 at. The other one, I'm looking at the way the  
8 forecasts, so they are changing. Sometimes the rain  
9 coming two hours earlier or three hours later, so  
10 it's actually -- that's another piece of information  
11 I'm looking at.  
12 Q. And apart from the weather, what -- you  
13 said you were -- what is it that you're looking for  
14 when you're waiting -- during this period that  
15 you're waiting?  
16 A. PJM has a tool called e-data. It shows  
17 all the charts --  
18 Q. Uh-huh.  
19 A. -- up to current, five-minute interval,  
20 the price movement, the import-export volume, and  
21 also they have the load, instantaneous load coming,  
22 forecast load, and those type of information I'm  
23 looking at. Say if today the temperature is similar  
24 to tomorrow and this contingency happened today like  
25 around 8:00 a.m., then I might think tomorrow it

Page 195

1 could happen again, so I maybe put on that trade  
2 around maybe 9:00 or 10:00.  
3 Q. One of the things that we didn't do, we  
4 went through the first -- or just maybe one or two  
5 of the exhibits between 40 to 49. I just want to  
6 make sure that we're clear. Each of those exhibits  
7 reflects a different day or set of days, but it's  
8 basically -- these are the kinds of reports that you  
9 provided to Powhatan on a daily basis; is that  
10 correct?  
11 A. Yes, correct.  
12 Q. Would that be seven days a week?  
13 A. Yes, sir.  
14 Q. And when -- why is it that you on -- you  
15 would provide -- I see that each report appears to  
16 have a yesterday page, a today page and a tomorrow  
17 page. Why was it set up that way?  
18 A. Since -- it's generally like PJM, the  
19 realtime, it's -- if it's not weekday or -- or if  
20 it's not weekends, holidays, it's coming out one day  
21 late, so if today's trades you put on for tomorrow,  
22 and tomorrow's settlement coming one day later. So  
23 if you look at yesterday, the settlements, all the  
24 realtime settlement data are coming in already, so  
25 those are kind of chewed up for yesterday. And for

Page 196

1 today, it's like halfway, up to that hour. So if  
2 you look at the next page, like for today it's half,  
3 it's not coming in yet, half, it's already there.  
4 And for tomorrow, it's like nothing in there. You  
5 just have those positions. There's no price  
6 settlements.  
7 Q. And why -- and why do you include those?  
8 I mean, what is the purpose of doing that?  
9 A. I just want to show them that the position  
10 you have is like from PJM from MISO, to MISO to PJM,  
11 that total volume, the volume, where it comes from,  
12 where it goes, a kind of very summarized level.  
13 Q. But -- and in terms of the volume, does  
14 this mean that on day one, you've already decided  
15 what the volume will be for day two, tomorrow, the  
16 next day?  
17 A. That is correct.  
18 Q. And what do you base that on?  
19 A. It's like up-to congestion trades, you put  
20 on trades like from 8:00 to 12:00 eastern time, and  
21 for tomorrow's data.  
22 Q. Right, it's a day in advance, so but --  
23 okay. Did -- what was it that you were telling PJM?  
24 For example, if you would look at Exhibit 43, there  
25 appears on -- there are notes at the bottom, the raw

Page 197

1 P and L. It includes day-ahead and realtime  
2 components and transmission loss credits. What were  
3 you basing those numbers on?  
4 MR. ESTES: Do you understand?  
5 BY MR. TABACKMAN:  
6 Q. Where were you getting the data to provide  
7 them in that -- in these reports?  
8 A. Those are from PJM settlement data.  
9 Q. And how would you obtain that?  
10 A. I downloaded one file a day, so for the  
11 day-ahead, I have -- we have -- like PJM have a big  
12 file, and for realtime, the LMP have a big file, so  
13 I just man it down to those two files and load it  
14 into my Excel spreadsheet and create these reports.  
15 Q. Uh-huh. Let me show you one last set of  
16 exhibits here, which are -- if you could identify,  
17 and then we will have these three.  
18 BY MR. HOPKIN:  
19 Q. Dr. Chen, I'd like to direct your  
20 attention back to Exhibit 2. Do you have that in  
21 front of you?  
22 A. Yes.  
23 Q. Okay. Can you look at the second bullet  
24 point subheading or -- or the point number 3? It's  
25 about the middle of that paragraph where it says,

Page 198

1 "Providing total transparency"? Do you see that?  
2 It's on the first page.  
3 MR. ESTES: Three in the hole. Right  
4 here.  
5 A. Oh, third, okay. Third paragraph, yes.  
6 Q. Okay. Did you in fact provide total  
7 transparency to the people at Powhatan about the  
8 trading?  
9 A. Yeah, I think so.  
10 Q. Okay. And the following point there,  
11 point number 4 where it says, "Being available to  
12 answer questions," do you see that?  
13 A. Yes, sir.  
14 Q. Okay. Were you in fact available to  
15 answer questions for Powhatan?  
16 A. Yes.  
17 Q. Okay. How frequently would anyone from  
18 Powhatan contact you to discuss trading?  
19 A. E-mail, how frequent, I'm actually not  
20 sure. It seems like it may be like random.  
21 Q. It was random?  
22 A. Yeah.  
23 Q. How did they usually contact you?  
24 A. Via e-mail.  
25 Q. Did they ever call?

Page 199

1 A. Rare. Very, very rare.  
2 Q. Can you estimate for me how many phone  
3 calls they placed to you in the summer of 2010?  
4 A. Summer 2010.  
5 MR. ESTES: If you recall.  
6 A. Maybe -- I don't recall the exact number,  
7 but estimate, maybe like -- a single or maybe ten or  
8 20 max. Since I have a visit, I think they're back  
9 and forth, maybe there are two or three on that one  
10 alone, and the other, it's actually not summer, not  
11 that many, so maybe like ten or -- probably.  
12 Q. So approximately ten phone calls that --  
13 A. Yeah.  
14 Q. -- they placed to you?  
15 A. Yeah.  
16 Q. Okay, and how many times did you meet with  
17 them in person during the summer 2010? Do you  
18 recall?  
19 A. One.  
20 Q. Once? And that was on June 25th, 2010?  
21 A. Yes.  
22 MR. ESTES: Do you folks have any sense of  
23 how much longer you'll go?  
24 MR. TABACKMAN: I think we're probably  
25 going to go until 5:00, maybe. Hopefully 5:00, not

Page 200

1 much past then.  
2 MR. ESTES: Maybe at the next appropriate  
3 time, take a few minutes?  
4 BY MR. HOPKIN:  
5 Q. Who at Powhatan did you have the most  
6 frequent contact with?  
7 A. Kevin Gates.  
8 Q. And how would you describe Mr. Gates'  
9 understanding of your trading strategies?  
10 MR. ESTES: I think that's been asked, but  
11 he can answer it again.  
12 A. I -- I don't know what he is thinking  
13 actually. Not quite sure.  
14 Q. Did you have an impression that when you  
15 explained the strategies to him, he understood what  
16 they were?  
17 A. My impression, mostly, yes.  
18 Q. Did anyone at Powhatan, including  
19 Mr. Gates, ever give you direction in terms of which  
20 trades to enter into and which strategies to pursue?  
21 A. No, as far as I know, no.  
22 Q. Do you know if they had the legal ability  
23 to do that?  
24 MR. ESTES: You mean under his agreement?  
25 BY MR. HOPKIN:

Page 201

1 Q. Correct.  
2 A. They do their own trades.  
3 Q. I'm sorry?  
4 A. You're saying that they do their own  
5 trades?  
6 Q. Did they -- did they have the authority to  
7 direct your trading?  
8 MR. ESTES: You're asking for his  
9 understanding of the agreement not as a lawyer  
10 obviously.  
11 BY MR. HOPKIN:  
12 Q. Correct, correct.  
13 A. I don't know. I think they could, but  
14 they've never done it.  
15 Q. They never did that?  
16 A. Uh-huh.  
17 Q. Is that -- they never did that, correct?  
18 A. Correct.  
19 Q. Did anyone from Powhatan give you any  
20 trading limits or parameters aside from the ratios  
21 we've been discussing today?  
22 A. We -- I think we do have a couple e-mail  
23 chain with Kevin Gates about say what type of volume  
24 you want to put down, but that's just kind of  
25 talking point. It's not a limit or -- or hard

Page 202

1 limit.  
2 BY MR. TABACKMAN:  
3 Q. Have you ever done trading for any other  
4 entity other than Powhatan, TFS, Huntrise?  
5 MR. ESTES: Putting aside his time at the  
6 investment banks?  
7 BY MR. TABACKMAN:  
8 Q. I'm sorry, yes, as an independent  
9 individual where -- trading for a third party.  
10 A. Except my own funds, those are all I have  
11 done.  
12 Q. So you've never had a situation -- I guess  
13 what I'm asking you is a situation that replicates  
14 the one, the relationship that you had with Powhatan  
15 and the other entities that constitute the TFS,  
16 Powhatan, Huntrise group, you've never had that kind  
17 of relationship with any other entities?  
18 A. No, nothing else.  
19 Q. Okay. So you're not really able to  
20 compare whether or not the -- they were more or less  
21 involved or active in your -- in your relationship  
22 than other entities would be.  
23 A. That is correct.  
24 MR. TABACKMAN: Okay.  
25 BY MR. HOPKIN:

Page 203

1 Q. Who at Powhatan do you think best  
2 understands your trading?  
3 A. That --  
4 MR. ESTES: If you know.  
5 A. Yeah, that I don't know. I think Kevin --  
6 since I only talk to him on the phone, he's the only  
7 one kind of every day e-mail -- I e-mail to him,  
8 only to him every day, and so I think he understands  
9 -- he probably -- if I pick one, he probably is the  
10 person, my understanding is.  
11 Q. That's all I got. Well, actually, you  
12 know what -- we'll go back and explore that point.  
13 Going back to Exhibit Number 2, the third bullet  
14 point where it says "Total Transparency," did  
15 Powhatan ever express any concerns they had about  
16 the level of transparency you were providing to  
17 them?  
18 A. I don't recall. I think -- I think no.  
19 Q. Okay. And how did you go about providing  
20 that transparency? In other words, did you give  
21 them full access to what you were doing or can you  
22 explain for me how that worked?  
23 A. Basically the account is owned by TFS  
24 guys. They have full capacity -- full access to  
25 those accounts. They just create individual --

Page 204

1 individual account for me so I can do some trades,  
2 but they can look at all the trades, every --  
3 everything I put in PJM's system they know.  
4 Q. So Powhatan is the entity that actually  
5 maintained those records; is that correct?  
6 MR. ESTES: Do you understand?  
7 THE WITNESS: I mean, if I understand  
8 correctly, they maintain the credit requirement,  
9 they maintain the accounts, they maintain which --  
10 which person has read, write and read only, yeah,  
11 those are -- they maintain --  
12 MR. ESTES: PJM keeps the information.  
13 BY MR. TABACKMAN:  
14 Q. Powhatan had a relationship -- had a  
15 business relationship with PJM independent of your  
16 relationship with PJM; isn't that correct?  
17 A. That is correct, yeah.  
18 Q. And --  
19 BY MR. HOPKIN:  
20 Q. Yeah, this might have been a better -- did  
21 you keep records independent of what you sent in to  
22 PJM in terms of being able to track your -- what  
23 trades you entered into and your profits and losses?  
24 A. I do have. That's the report I have, like  
25 I have -- so like this report, this is kind of

Page 205

1 summarized every day.  
2 BY MR. TABACKMAN:  
3 Q. When you're saying this, can you just pick  
4 and refer to it?  
5 A. Yeah, 40.  
6 Q. Okay.  
7 A. Exhibit 40. And also I have very, very  
8 big Excel spreadsheet, every single hour, every  
9 single day, I have every single trade, OASIS number,  
10 EES transaction number, I record it -- record it on  
11 my Excel spreadsheet.  
12 BY MR. HOPKIN:  
13 Q. So if someone from Powhatan wanted to  
14 follow your trading on a day-to-day basis, what's  
15 the best way for them to do that?  
16 A. They can just log into their account,  
17 PJM's system.  
18 Q. It would be through the PJM system, not  
19 through having access to your personal records?  
20 A. They never asked for it.  
21 Q. When you say they never asked for it, you  
22 mean they never asked for access to your personal  
23 records?  
24 A. Correct.  
25 Q. Did you ever refuse to answer questions

Page 206

1 about Powhatan's trading to representatives of  
2 Powhatan?  
3 MR. ESTES: If you recall.  
4 THE WITNESS: No, I don't think I ever  
5 refused anything.  
6 MR. HOPKIN: That's all I have.  
7 MR. TABACKMAN: Just a number of -- just  
8 so I can understand what they show more than  
9 anything else. Did you want to take a break before  
10 we do that?  
11 MR. ESTES: Yeah, that would be good.  
12 (Recessed at 4:20 p.m.)  
13 (Reconvened at 4:25 p.m.)  
14 - - -  
15 (Deposition Exhibit Number 22 was marked  
16 for identification.)  
17 - - -  
18 BY MR. TABACKMAN:  
19 Q. Dr. Chen, I want to show you what's --  
20 Exhibit 22 is before you, has Bates number  
21 POW00011709. At the top, it has another e-mail,  
22 March 5th, from you to Kevin Gates. Do you see  
23 that?  
24 A. Yes, that is correct.  
25 Q. And you write here before and in January

Page 207

1 2010, "I didn't specifically target for TLC.  
2 Starting in February 2010, I picked up a notch for  
3 TLC. In March 2010, I added some more. Without  
4 TLC, I would not touch some of the trades and/or  
5 would not put in large volumes for some of the  
6 trades, but with TLC as is, they are suddenly  
7 becoming risk free, almost to the point trades.  
8 I'll take down a little bit starting tomorrow  
9 knowing that we are leaving a lot of money on the  
10 table." Are those the words that you wrote?  
11 A. Yes.  
12 Q. Did you believe that those -- that -- the  
13 things that you said there to be true when you wrote  
14 them?  
15 A. That's my understanding at that time, yes.  
16 Q. And that understanding came after you had  
17 received all of the rebates going back to December  
18 2007, correct?  
19 A. Yes, sir.  
20 Q. And that understanding came after you had  
21 studied the rebates that you had received on a  
22 month-by-month basis and made certain determinations  
23 regarding the impact of the TLC on your trades; is  
24 that right?  
25 A. Yes.

Page 208

1 Q. Historically. And that -- and that  
2 understanding came after you had determined that  
3 certain months, the TLC had more of an impact than  
4 in other months; is that correct?  
5 A. Correct.  
6 Q. And you understood that you had an  
7 obligation to Kevin Gates and to the people in -- I  
8 guess Powhatan didn't exist, but the Huntrise, to be  
9 truthful with them and to give them an accurate  
10 picture of your understanding of the marketplace;  
11 isn't that right?  
12 A. Yes, sir.  
13 Q. You wouldn't have tried to mislead them in  
14 any way.  
15 A. No.  
16 Q. Okay, I'm done with that one. I have --  
17 well, we need to put stickers on them. Exhibits --  
18 oh, I'm sorry, yeah. These are grouped here. She  
19 stapled them. Have this document marked as 3A  
20 through 3M. You don't need to mark each page, but  
21 just indicate on the front it's 3A through M.  
22 - - -  
23 (Deposition Exhibit Number 3 was marked  
24 for identification.)  
25 - - -

Page 209

1 THE WITNESS: Yes.  
2 BY MR. TABACKMAN:  
3 Q. Do you recognize Exhibits 3A to M as  
4 invoices that were submitted by you to either --  
5 well, I guess they were all to Huntrise. There may  
6 be one to Powhatan, but I think they're all  
7 Huntrise. Do you recognize them?  
8 A. Yes.  
9 Q. One of the things that I'm wondering if  
10 you can explain is there are a number of -- and I'll  
11 try to point them out to you, instances where you  
12 have an invoice. For example, the first one covers  
13 the period of May -- 5/1/2008 to 7/31/2008, and then  
14 you have one that covers 6/12/2008 -- I'm sorry,  
15 6/1/2008 to 9/30/2008, which overlaps to some degree  
16 with the July one, and then you have 8/1/2008 to  
17 10/31, again an overlap, and I'm just trying to  
18 understand why that -- why that is, and there are  
19 some that even where you go for much longer periods  
20 and much greater overlaps of more than a month.  
21 MR. ESTES: Do you want to take those one  
22 at a time?  
23 BY MR. TABACKMAN:  
24 Q. I don't know if it's easier for you to  
25 explain them one at a time or the process by which,

Page 210

1 you know, you go -- apparently there were  
2 adjustments made, so however it's easiest for you to  
3 explain why that is, what was going on in terms of  
4 payment.  
5 A. Yeah, I'll go with 3A first.  
6 Q. Okay.  
7 A. The first page, the invoice is -- we pin  
8 it down quarterly. May 1st I think is the first  
9 day, and so it actually goes forward three months,  
10 May, June, July, those three month, and for  
11 quarterly bill, it's 25 percent of the total, and  
12 every year, there's remaining 15 percent.  
13 Q. Because your advisory agreement tells you  
14 the 40 percent of --  
15 A. Profit.  
16 Q. -- profits. That's 40 percent of  
17 Huntrise's profits; is that right?  
18 A. Correct.  
19 Q. So what we see here then, you've got --  
20 well, maybe the entries -- if you can -- like you  
21 have 5/1/08 to 5/31/08 PJM monthly statement total,  
22 and it's a negative number. Does that mean that  
23 there was -- the trading was a loss for that month?  
24 A. Correct.  
25 Q. Okay. And then you have an adjustment.

Page 211

1 Where would that -- do you know, what's this  
2 reflect, this adjustment?  
3 A. My recollection, I think those are  
4 mismatches, so sometimes I have volume, it's not  
5 matching one to four or the ratios specified, so  
6 it's kind of I only get partial megawatt for --  
7 MR. HOPKIN: Megawatt?  
8 MR. ESTES: Megawatt.  
9 A. So if I get one megawatt for HEEP Fund,  
10 supposed to get four megawatt for Huntrise, but I  
11 only give me 3.5 or 3 or maybe even zero, that  
12 mismatch goes to adjustment.  
13 Q. Okay, and that might be in your favor or  
14 their favor.  
15 A. Correct.  
16 Q. Okay. Then there's the 276,568.68. Is  
17 that -- what does that number reflect?  
18 A. That's the monthly total profit.  
19 Q. Total profit. Not the money that you're  
20 entitled to at that point. That's the total profit  
21 that you made for Huntrise.  
22 A. Correct.  
23 Q. Not including HEEP Fund.  
24 A. No.  
25 Q. Okay. And then again, adjustments. And

Page 212

1 then the next one again, that would be -- so the  
2 next one is July 2008's profit of \$379,000; is that  
3 right?  
4 A. Correct.  
5 Q. For them, and then the total, and so you  
6 got for that quarter \$158,000.  
7 A. Correct.  
8 Q. And then at some point, there's another 15  
9 percent that gets -- that comes to you at the end of  
10 the year.  
11 A. Yes.  
12 Q. And did that number, those percentages --  
13 correct me if I'm wrong. They did not change in  
14 your later agreement, did they?  
15 A. Did change.  
16 Q. They did, okay. Did you get a larger or  
17 smaller percentage?  
18 A. I think I get -- instead of more up front,  
19 25 percent up front, I think they change it to like  
20 less up front, more down the road.  
21 Q. Right.  
22 A. Yeah, and for Exhibit 3B, the next page,  
23 these are all transmission loss credit refunds, so  
24 up to this month, I think this one is for December  
25 2009, we have one, two, three, four -- four month of

Page 213

1 refunds.  
2 Q. And how do you know that those are for  
3 refunds?  
4 A. I put all that in the adjustment.  
5 Q. Okay.  
6 A. So if you add those total, line item 9 is  
7 \$327,382, and I get 40 percent immediately, since  
8 that year it's actually also passed and I get 40  
9 percent of the profit.  
10 Q. So all of the adjustment numbers here are  
11 the retroactive TLC credits --  
12 A. Correct.  
13 Q. -- that PJM began paying out in October of  
14 2009, I believe thereabouts, and may have arrived in  
15 November of 2009 and continued until they had caught  
16 up with all the months going back to December 2007;  
17 is that right?  
18 A. Correct.  
19 Q. And you would get a few months at a time  
20 beginning in November of 2009 until that -- that  
21 whole back period had gotten covered.  
22 A. That's correct.  
23 Q. And I believe you testified that it was  
24 approximately February of 2010 that you had then  
25 gotten the entire back retroactive or -- TLC going

Page 214

1 back to December of 2007; is that right?  
2 A. Yes, and 3C is -- it's similar to 3A, so  
3 you have one, two, three month.  
4 Q. And those are -- the adjustments are those  
5 --  
6 A. That's quarterly, and there's some  
7 adjustment for number 6 for October, and there's  
8 also one socialization. Basically it's also another  
9 type of a mismatch. I actually submitted, say, pay  
10 down \$50. PJM award me like one dollar -- one  
11 megawatt, but they award Huntrise 3.5 megawatt, so  
12 it's actually kind of a little bit strange how come  
13 it's like same bidding price but the award is not in  
14 the same ratio one to four, but it happened quite --  
15 quite often. So this is one of those cases we  
16 agreed on social -- if I'm making money, I will  
17 share that money to them. If they're making money,  
18 they share that to me, so it's like socialized  
19 share.  
20 Q. Okay. And then 3D --  
21 A. 3D is the same for quarterly -- for those  
22 three month.  
23 Q. Okay.  
24 A. And 3E, I think those are all transmission  
25 loss credit refunds.

Page 215

1 Q. Okay. Is there something of significance  
2 when it says that -- the note at the bottom about  
3 5/01/08 to 5/31/08 TFS Capital LLC account, does  
4 that -- is there some significance to that?  
5 A. To me, it's the same. There's no  
6 difference. I get the same money, but to them, for  
7 accounting purposes, I think they are different.  
8 Q. Right. But I mean, so you would have --  
9 they'd ask you to put that on there or --  
10 A. Yes. And 3F, I think it's also refunds.  
11 Q. Uh-huh.  
12 A. And also, there's one line item on the  
13 interest for TLC refund.  
14 Q. On the TLC refund for December too -- but  
15 you were saying that you were charging them for  
16 interest.  
17 A. No, this interest actually is coming from  
18 PJM.  
19 Q. I'm sorry, okay, so -- and you were  
20 passing that -- their portion of that on to them, or  
21 they were passing all of it on and then you'd get  
22 your compensation back as a percentage.  
23 A. Yes, sir.  
24 Q. And I take it independently, HEEP Fund got  
25 similar retroactive TLC payments.

Page 216

1 A. Yes.  
2 Q. Adjustments.  
3 A. Yes.  
4 Q. Because you didn't have to share those  
5 with Huntrise, did you?  
6 A. No, but it's because the ratio so they  
7 know the number.  
8 Q. I'm sorry. That --  
9 A. Because of the ratio, they know the  
10 number. If they know --  
11 Q. Oh, they know your number.  
12 A. Yeah.  
13 Q. Okay. And then we have 3G?  
14 A. 3G is like annual report, annual bill.  
15 It's like you have the last three months, so for the  
16 quarter, so 1 -- 1 through 8 is last quarter, and  
17 then you have quarterly. So 9, 10, 11, 12 line  
18 item, those are quarterly. So you have 25 percent  
19 for last quarter -- for the quarter four, 15 percent  
20 for the whole year, and add them together and get --  
21 I get --  
22 Q. And what is the 1,916,000? These are the  
23 various -- well, what are -- what are -- what is  
24 that number made up of? I know I see it's made up  
25 of 9, 10, 11 and 12, but these are your quarterly

Page 217

1 payments that you had received or their quarterly  
2 profits?  
3 A. Nine is the first quarterly profit for  
4 Huntrise.  
5 Q. Okay.  
6 A. Ten is second quarter. Eleven is third  
7 quarter. Twelve is fourth quarter. Thirteen is  
8 annualized, so they made -- I made 1.916 for them in  
9 the whole year.  
10 Q. And the 287 is the remaining 15 percent?  
11 A. Yes, sir.  
12 Q. Plus then you got -- okay, the total year  
13 end. The total year-end number of 297 reflects  
14 what?  
15 A. It's eight, so 25 percent plus this.  
16 Q. Oh, it's the 25 percent for the quarter  
17 plus the catch-up 15 percent for the year?  
18 A. Correct.  
19 Q. Okay.  
20 A. And the 3H is -- it's just one line item,  
21 just a refund of interest, 800 some dollars, and I  
22 get 40 percent of that.  
23 Q. Okay.  
24 A. 3I, just three month quarterly bill.  
25 Q. From 5/1/2009 to 7/31/2009.

Page 218

1 A. Correct.  
2 Q. And so on this, you get 25 percent of the  
3 total. The adjustment numbers that appear, these  
4 are -- those are not TLC numbers.  
5 A. Correct, those are --  
6 Q. Do you know what those adjustments would  
7 -- well, two of them are zero, but what does -- do  
8 you know -- what other kinds of things came under  
9 adjustments?  
10 A. Adjustment, you either mismatch or there's  
11 some -- sometime you -- I -- there's no time left --  
12 it's like PJM system, it's very basic. I can put  
13 this trade on for HEEP Fund, but I couldn't put --  
14 Q. Okay.  
15 A. -- have enough time put trades on for  
16 Powhatan, or vice versa, and in those cases we  
17 agreed on to share the profit and the loss. And  
18 Exhibit J is -- I think it's the same for the -- for  
19 that quarterly.  
20 Q. Right, the next quarter, August of 2009  
21 through end of October.  
22 A. And Exhibit K, it's also quarterly.  
23 Q. And then beginning November again to the  
24 first part of January. I mean through January of  
25 2010.

Page 219

1 A. And the difference here now is the  
2 adjustment now, it's 2010 of February, so you do see  
3 those adjustment, it's actually mostly is from  
4 transmission loss credit.  
5 Q. Got it, got it.  
6 A. And 3L, it's like annual again.  
7 Q. Does -- are you still owed money by  
8 Powhatan or Huntrise or any of the related  
9 companies?  
10 A. Can you --  
11 Q. Do they have any financial obligation to  
12 you at this point? Have you guys settled up and  
13 there's no money owing in one direction or another?  
14 A. No, not yet. I didn't -- or I haven't got  
15 anything from Hunt -- from Powhatan.  
16 Q. And do you know why that is?  
17 A. It's kind of -- I actually volunteered,  
18 I'm going to say this one -- this case is -- it's  
19 FERC investigation and I -- I think you can keep the  
20 money for now until this thing clears up, so I don't  
21 get anything from Powhatan.  
22 Q. Okay, and did you volunteer that? Did  
23 they ask for that? How did that come about?  
24 A. I think -- I think I volunteered that.  
25 Q. When you say you think you volunteered it,

Page 220

1 do you have some doubt in your mind?  
2 A. I think it's in my e-mail -- I'm pretty  
3 sure it's my -- in an e-mail I actually say if it's  
4 -- I actually agreed to say you can keep the money  
5 for now until --  
6 Q. If I understand, your recollection is you  
7 raised it first before they did?  
8 A. Yes.  
9 Q. Okay, and when -- do you have any -- have  
10 you had any ongoing -- have you had any contact with  
11 Kevin Gates since the last time that you testified  
12 here?  
13 A. We do. We have some e-mail change since I  
14 actually started trading for HEEP Fund and Powhatan  
15 in May 16 this year, and I stopped 'til I think 16  
16 or 17 this month, so I traded about two month.  
17 Q. And why did you stop?  
18 A. In July this year, I actually lost money.  
19 I lost maybe 20 or 30 thousand myself. I lost maybe  
20 over a hundred thousand for Powhatan, and so I think  
21 maybe it's time to take a break.  
22 Q. What -- prior to the reinitiation of the  
23 trading on their behalf, had you had -- when was the  
24 last time prior to that that you had had contact  
25 with anybody from Powhatan? And by that I mean

Page 221

1 Huntrise, the Gates family.  
2 A. I think it's only like maybe a week or --  
3 a few days before May 16th, I sent e-mail asking,  
4 say do you want to continue trading in the reduced  
5 volume, go back to one to four, and they agreed, say  
6 one to four, it's okay, since one to four, the  
7 volume is -- it's like only 20 percent of that  
8 before, so they said okay, and then I just started  
9 trades.  
10 Q. And the -- these -- are you trading UTC  
11 transactions?  
12 A. Yes.  
13 Q. And the volumes that you trade at, are  
14 they similar to the ones that you were trading at  
15 between April -- after May 30 of 2010 or are they  
16 reduced?  
17 A. Volume, I think since it's -- now it's one  
18 to four, so volume, it's significantly less. The  
19 other ways, I don't have any of those core paired,  
20 it's like -- or those exact volume in and out trade.  
21 I don't also have those like questionable, those  
22 trades, I don't have any of those.  
23 Q. I notice that among the reports, and  
24 again, going back and trying to clear some of these,  
25 in the exhibit -- in the later exhibits of --

Page 222

1 between 40 and 49, there was something that showed  
2 some trading in late August of 2010 or mid-August of  
3 2010, and my understanding had been that after you  
4 had spoken with Dr. Bowring and you had stopped  
5 trading in early August. Can you -- I mean, we can  
6 identify the specific ones, but if you have a  
7 recollection, I'm just curious as to the nature of  
8 the trading that you did. I guess I'm referring  
9 specifically, if you'd look at -- you can look at  
10 Exhibit 48, which seems to reflect at least on page  
11 3 of 4 some trading that went on through August the  
12 6th.  
13 A. It's actually, I stopped trading right  
14 away for CU Fund.  
15 Q. Okay.  
16 A. And I stopped those questionable trades  
17 for both HEEP Fund and Powhatan, but I still put  
18 some small volume trades, originally put like 2008,  
19 2009, those type of trades I still put on. So if  
20 you look at August 2010, I still have trades on for  
21 -- for HEEP Fund and Powhatan up to 19th, since 18th  
22 we have this FERC investigation, but I already put  
23 that trades on, so I stopped that 19th.  
24 Q. Right, I see that, yes, on Exhibit 47.  
25 A. Forty-seven, yes.

Page 223

1 Q. Yes, it shows the 18th. And the gray date  
2 is -- indicates the current day's trading?  
3 A. It's actually -- the gray date's like the  
4 day I got the transmission loss credit true number.  
5 Q. Uh-huh.  
6 A. So it's like maybe -- a better way to look  
7 at, I think maybe another -- another Exhibit 45 --  
8 Q. Uh-huh.  
9 A. It's better to describe this, so June 13th  
10 there's -- there's kind of shaded.  
11 Q. Yes, I see that.  
12 A. And the 1 through 13 is -- I have -- I  
13 have daily transmission loss credit number from PJM,  
14 but 14, 15, 16, 17, for those four days, I don't  
15 have those, so I'm using like 45 cents or whatever  
16 the number for estimating.  
17 Q. And the -- on Exhibit 45, where is the TLC  
18 shown?  
19 A. I think it's not showing up here. It's  
20 actually, I think it's on -- it's actually a hidden  
21 column probably.  
22 Q. Okay, okay.  
23 A. Yeah, it's not showing up on this report.  
24 Q. Okay.  
25 BY MR. HOPKIN:

Page 224

1 Q. But you have a report that does show that  
2 column?  
3 A. Yeah, on the same file, there's one column  
4 include the transmission loss credit, so every day I  
5 will check PJM's web site. If they publish it, I'll  
6 download it and I'll manually put that in. So for  
7 this day -- like that day's June 16th, and I have up  
8 to 13.  
9 MR. ESTES: Maybe you're done.  
10 MR. TABACKMAN: I might be. Why don't we  
11 just caucus for a minute and then we'll see.  
12 - - -  
13 (Discussion off the record)  
14 - - -  
15 MR. TABACKMAN: One last e-mail, but this  
16 is not your e-mail, but I want to see if it mostly  
17 refreshes -- or not refreshes -- if you have any  
18 recollection of a conversation that it references in  
19 here. I'm trying to see which document it is now.  
20 Let's have this marked as 21 please.  
21 - - -  
22 (Deposition Exhibit Number 21 was marked  
23 for identification.)  
24 - - -  
25 BY MR. TABACKMAN:

Page 225

1 Q. Have you had a chance to look at that?  
2 A. Yes, sir.  
3 Q. We've previously talked about your e-mail  
4 in which he -- that he quotes here. Do you have a  
5 recollection of a telephone conversation in which --  
6 that is described by Mr. Gates in the following way,  
7 "I spoke with him," referencing you, "and he really  
8 doesn't seem as concerned as that e-mail implies,  
9 but we need to stay on top of this." Do you recall  
10 any conversation with Mr. Gates in which you further  
11 discussed any concerns you might have about the TLC?  
12 A. I do remember -- I do remember. I think  
13 because I sent an e-mail, this same e-mail seems too  
14 alarming, so I actually kind of go back and I stay  
15 back to say we do have this possibility, but don't  
16 be too alarmed. So that -- that seems my kind of  
17 trying to -- trying alarm them, but not -- not alarm  
18 that much, so kind of they aware at least you have  
19 this risk, but -- but don't take my word for hundred  
20 percent. PJM could really possibly take the  
21 transmission loss credit away.  
22 Q. Okay. Did you initiate the phone call?  
23 A. I think it's Kevin.  
24 Q. You think he called you.  
25 A. Yes.

Page 226

1 Q. But you're not certain, or do you -- or  
2 are you certain but you're saying --  
3 A. I think like maybe 80 percent --  
4 Q. Okay.  
5 A. -- sure.  
6 Q. And do you recall that -- was he -- did he  
7 immediately ask you about the -- get into the e-mail  
8 and indicate some concern on his part that you were  
9 expressing that concern?  
10 A. I think yeah, he kind of -- probably I  
11 sent him an e-mail and he kind of alarmed by this,  
12 the possibility, and just kind of call me maybe like  
13 a little bit later or sometime, and then I think I  
14 explained to him, it's not as -- I mean, that's the  
15 e-mail. The e-mail is like very alarming, I notice,  
16 but in the phone call, maybe not as this severe.  
17 Q. What is it that -- that alarmed you? What  
18 was -- what was your concern? Why did you think  
19 that PJM might reverse itself on this point?  
20 A. Also go back to MISO, the RSG case. I  
21 mean, it's like right now I'm making like one  
22 million dollars maybe, and it's mostly -- and  
23 because of the transmission loss credit, I actually  
24 increase the volume, hopefully making more money,  
25 right, taking more risk. But if the transmission

Page 227

1 loss credit and they revert back, they want to get  
2 the money back from your pocket, then the trade --  
3 suddenly it becomes less profitable, and if -- if  
4 they tell me beforehand, I wouldn't put that much  
5 volume.  
6 Q. I understand. My question is that -- I  
7 understand -- I can understand the concern, but what  
8 I'm asking you is why did you think that might  
9 happen? What was it about the TLC that made you  
10 think that that was a possibility?  
11 MR. ESTES: I think we've gone into this  
12 before, but --  
13 BY MR. TABACKMAN:  
14 Q. I'm not sure. I couldn't remember if we  
15 did or not, and if we did --  
16 A. Yeah, I mean, the RSG case is MISO, it's  
17 kind of very alarming to me, and this is kind of  
18 that similar time, and it's kind of you have one  
19 component of either charges or credits, maybe they  
20 change the rule or maybe change some kind of  
21 formula, and so -- I mean, in my mind, I have those  
22 concern, but maybe e-mail, it's more alarming, but  
23 conversation may be a little bit less.  
24 MR. TABACKMAN: Okay. Blair?  
25 MR. HOPKIN: I don't have anything.

Page 228

1 MR. TABACKMAN: I think we're done.  
2 MR. HOPKIN: Well, I would just say, we  
3 want to provide you the opportunity --  
4 MR. ESTES: No questions.  
5 MR. TABACKMAN: Mr. Estes has his right,  
6 and I apologize for that. Thank you. We can go off  
7 the record.  
8 (Signature having not been waived, the  
9 deposition of Houlian A. Chen, Ph.D. was concluded  
10 at 5:02 p.m.)  
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Page 229

1 ACKNOWLEDGMENT OF DEPONENT  
2 I, Houlian A. Chen, Ph.D., do hereby  
3 acknowledge that the same is a true, correct and  
4 complete transcription of the testimony given by me,  
5 and any corrections appear on the attached errata  
6 sheet signed by me.  
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1           C O N T E N T S  
2 THE WITNESS:  
3 HOULIAN CHEN  
4     By Mr. Tabackman ..... 3  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

1           CHEN EXHIBITS  
2 EXHIBIT NO.  
3  
4     A Deposition Transcript of Houlian Chen, .... 9  
      10/7/10  
      1 Advisory Agreement, 4/2/08 ..... 177  
5     2 Advisory Agreement, 4/12/10 ..... 181  
      3 Invoices ..... 208  
6     4 CU Fund Trades ..... 19  
      5 Powhatan Trades ..... 91  
7     6 HEEP Fund Trades ..... 120  
      13 CU Fund Trades, Chen Data, 7/17/10 ..... 24  
8     16 Gates e-mail to Gates et al., 3/19/10 ..... 140  
      17 Gates e-mail to Chen, 3/7/10 ..... 115  
9     18 Chen e-mail to Gates, 3/5/10 ..... 127  
      21 Gates e-mail to Gates et al., 3/5/10 ..... 224  
10    22 Chen e-mail to Gates, 3/5/10 ..... 206  
      35 Cost Components ..... 80  
11    37 PJM Up-To Congestion Trades for July ..... 45  
      2010  
12    40 PJM Trading Volume and P&L for July ..... 149  
      2010  
13    41 PJM Trading Volume and P&L for August .... 149  
      2010  
14    42 PJM Trading Volume and P&L for July ..... 149  
      2010  
15    43 PJM Trading Volume and P&L for June ..... 149  
      2010  
16    44 PJM Trading Volume and P&L for May ..... 149  
      2010  
17    45 PJM Trading Volume and P&L for June ..... 149  
      2010  
18    46 PJM Trading Volume and P&L for May ..... 149  
      2010  
19    47 PJM Trading Volume and P&L for August .... 149  
      2010  
20    48 PJM Trading Volume and P&L for August .... 149  
      2010  
21    50 Hand-Drawn Diagram ..... 162  
22  
23  
24  
25