IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Federal Trade Commission, et al.,	)	Civil Action No. CA 15-2115
Plaintiffs,	)	PRELIMINARY INJUNCTION
vs.	)	Washington, DC
	)	21 March, 2016
Staples, Inc., et al.,	)	Time: 2:20 p.m.
Defendants.	)	

TRANSCRIPT OF PRELIMINARY INJUNCTION
AFTERNOON SESSION
HELD BEFORE
THE HONORABLE JUDGE EMMET G. SULLIVAN
UNITED STATES DISTRICT JUDGE

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Proceedings reported by machine shorthand, transcript produced by computer-aided transcription.

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THE COURTROOM DEPUTY: Resume civil action 15-2115, Federal Trade Commission et al versus Staples Inc. et al.

THE COURT: Counsel, there are a couple matters, there's an attorney who submitted hard copies of a motion to proceed Pro Hac Vice to chambers on behalf of Guy Brown. There's nothing on the docket. And if the attorney is present, I would just request the attorney to file the appropriate pleadings on the docket, on the ECF docket. Is that attorney present?

(No response.)

The expert reports, I'm asking that two copies of the expert reports be delivered to chambers by 5 p.m. on Thursday. My recollection is that one of the pretrial orders require redacted versions of the expert reports to be filed on the docket. If I've spoken incorrectly, let me know. But I would like to read the reports over the weekend.

All right. Are we ready to proceed?

MR. REILLY: Yes, Your Honor.

My copies of the slides.

Good afternoon, Your Honor.

THE COURT: Afternoon, Counsel.

MR. REILLY: I'm Matt Reilly, I represent Office Depot. And before I begin my comments, I would like to introduce a few people from Office Depot. Over there Roland

Smith, the CEO, Michael Allison, Executive Vice President and Chief People Officer, and Elisa Garcia, Executive Vice President and Chief Legal Officer.

THE COURT: Good afternoon. Thank you.

MR. REILLY: Your Honor, I've been doing competitive analysis of merges for over 22 years and while -- 13 of those years with the Federal Trade Commission where I litigated merger cases for a long period of time. And it's not uncommon for us to believe how complicated we can make things and we have to use complicated analysis and fancy tests. We have upward pricing pressure indexes. We have critical loss. We have critical diversion. We have all these tests that we sometimes use to predict the impact of a potential proposed merger. And really, at the heart of all that, Your Honor, merger analysis is really about common sense and logic. I probably shouldn't be representing, with my clients in the room, that what we do really isn't that difficult, but it really is about common sense and logic.

In order for you to find for the FTC here, you must believe that the most powerful companies in the world are going to pay more for binders, paperclips, binder clips and number 2 pencils. You have to believe that companies like Apple, *Chevron*, GE, Google, Walmart and GM can't protect themselves in the purchases of office supplies.

Apple has enough cash on hand to buy Staples and

Office Depot 22 times over. They can protect themselves and so can the other very powerful companies here.

Since 1997 Office Depot and Office Max have lost over $10 billion in revenues. $10 billion. All Office Depot's North American sales are just a little bit over that. They have lost a lot of revenue because they're selling commodity products where everyone else is selling it as well. There's lots of options for all customers, there's even better offers for large customers who are better able to protect themselves. As Miss Sullivan said, Office Depot struggles, just as Staples, to sell office supplies in a declining space.

Office Depot is doing this deal, and the sole purpose for doing this deal is to continue to serve their customers in a better and cost effective way. The only motivation here, Your Honor, is that. So as I think you probably recall from the Electrolux, GE deal, and you said a couple of statements relating to this, the merger analysis is truly forward looking. It is forward looking. Unlike probably any other area of the law, we're not going to be talking about who breached a contract, who ran a red light; it's about predicting the future. And neither the FTC or us have a perfect crystal ball, we don't, so we're relying on looking at past events to try to help aid us and aid this Court in determining what would be the likely competitive

impact from this transaction.

And I know in the Electrolux case, Your Honor, there was some statements or conversation about the statement put out by the DOJ, and for the earlier merger on Whirlpool/Maytag. And this Court pointed out correctly that deal was nine years ago, it was a different administration in the White House, and so that wasn't very informative, and might not have been. Here, this is just two years ago, voted out by the exact same.

Commissioners, three of the four who voted to sues us here.

In the statements that the commission put out --

THE COURT: I'm sorry, I thought it was unanimous, four-zero.

MR. REILLY: It was to sue here. Three out of the four Commissioners who sued us in this matter signed off on those statements that you saw earlier about how highly competitive the market is and how non-office superstore competitors are growing in strength and number.

I'm not going to go through the statements again, Your Honor, because Miss Sullivan already did. But you also pointed out that the statements and conclusions -- these aren't predictions, these are conclusions about how highly competitive this space is -- is in opposite of what their complaint says now. They determined, after a lengthy

seven-month investigation two years ago, that the market that we're talking about today and we'll talk about over the next several weeks, hopefully not too much longer than several weeks, is highly competitive.

THE COURT: Wait a minute. Government said one week. You're saying several weeks?

MR. REILLY: Couple weeks, how is that, Your Honor?

And everyone agrees there's not much, there's not much that we agree on with the FTC or the experts, but everyone agrees that there is no price increases or competitive harm from the Office Depot/Office Max merger, that's not in dispute. And yet they're telling you over and over to use HHIs and use this market definition for this matter. If you use that test and that market definition for Office Depot/Office Max, you come to the conclusion that those markets are highly concentrated and there was a presumption of harm, but we know that's wrong.

So rather than using the test again, we should see if you define the product market correctly and I'm talking about, as Miss Sullivan did, how they narrowed it inappropriately in this matter.

It reminds me of a joke, I can't help myself from telling from Andy Hall, Your Honor, where two women are in the Catskills at a resort and one says to the other, "The

food at this resort is really terrible," and the second woman says, "I totally agree, and the portions are too small."

Good crowd.

That's what the FTC is doing with that. They have a HHI test that they use that did not make the right prediction in Office Depot/Office Max in their solutions to double down. It creates even a stronger presumption of harm here. That test should have worked if they defined the product market correctly there, and it didn't.

But one thing that Office Depot/Office Max did result in, and not higher prices, no one disputes that, is tremendous efficiencies. Efficiencies and synergies that are repeatable and quite large. And these efficiencies, Your Honor, and these synergies benefited all customers, all customers, moms and dads buying school supplies, mom and pop business, medium-size businesses and, yes, it even benefited the most powerful companies in the world that the FTC is here concerned about today.

Miss Reinhart said that the synergies are speculative or projections. In fact, Office Depot has been tracking the synergies resulting from that transaction on an almost weekly basis. They're doing this in the ordinary course and telling it to their investors. This isn't something that we put together because we knew we were going to be here at some point, Your Honor. This is done by

Office Depot in the ordinary course. And they've already exceeded their synergies estimates from what they made there, and these synergies and these cost savings have been passed on by deeper discounts, reinvestments into the company, and they have been able to get better pricing that they've passed on, as well.

THE COURT: The screen says page 6. Mine says page 5. Do I have the right version?

MR. REILLY: I think you do, Your Honor, that's the only version I have, so I hope that's the right one.

THE COURT: All right.

MR. REILLY: And Office Depot relied on the Commission's conclusions, just a mere two years ago, while deciding whether to enter into this transaction. It's not easy, it's not easy being a target of a merger where it's going to be pending and trying to get approval for a long time. Under the proposal Office Depot would no longer be in existence, Staples would acquire them. In order to put their company through this, to go through that, they relied on that statement and they thought it was fair to do so. And the conclusions made by the Commissioners a mere two years ago in this exact space hold just as true today.

You asked did the Commissioner put out any statements resolving this. Well, they issued a press release, but they put out a detailed statement a mere two

years ago, after a seven-month robust investigation.

You've heard --

THE COURT: Is that typical?

MR. REILLY: It's not uncommon. It's not typical, Your Honor. Other statements have been issued by the FTC before and DOJ. I would say it probably happens, I don't even know, maybe one out of every ten closings. Lot of times if they think they want to provide guidance to the public, and they want to make sure, that's been maybe high profile, long investigation, they may issue one. But it's really at their discretion. They're not required to issue any statements.

As you know from the last merger case you did, Your Honor, and hopefully from some of our briefings today, you must define product market. You must define a product market in the antitrust merger case. And the government has claimed they've done that. But product market definition is a tool, it's an analytical tool used to try to predict the competitive impact from a proposed merger. That's all it is, is a tool. In order for that tool to be effective, you have to define the product market correctly; you have to. It's useless if it's not defined correctly.

And here the product market that they have put forth, as Miss Sullivan has said, is different from the one just a mere two years ago, does not reflect business

realities. It doesn't reflect business realities. It's not how the Office Depot people look at this market. It's not how the Staples business people look at this market. It's not how the customers look at this market. It's not how the competitors look at this market.

THE COURT: That's probably the most critical decision the Court has to make in this case, right?

MR. REILLY: The most critical decision is thumbs up or thumbs down on this merger, Your Honor, but besides --

THE COURT: I don't define the market.

MR. REILLY: That's right, Your Honor. You asked Miss Reinhart whether the FTC has ever lost a case with such high market shares. And I can think of one case, a hospital case from many years ago. But it's rare for the FTC to lose a case if they have such high market shares.

Now, why would I be admitting this up here? Because you can't calculate market share unless you appropriately and adequately and accurately define the prior market. And the FTC has lost cases where the Court has said: Sorry, FTC, your prior market is too narrow. They have a string of losses in hospital cases where the judge and Court thought the market was not appropriately defined, and in this court your colleague Judge Bates, in *Arch Coal*, said that the FTC did not define the market correctly and he refused to issue an injunction on that case.

So product market definition is very important. It has to reflect business realities. It's a very important task that you have, defining relevant product market. But if it's not defined correctly and it doesn't reflect business realities, then the tool is useless. And there's been a reference, when Miss Sullivan was up here, about how the bids and the contracts and the actual purchases that customers do here, the customers that they're concerned about, the most powerful in the world, don't correspond to their product market.

A mere 1.2 percent of bids in this matter support the FTC's product market. Our experts will talk about that. And zero percent of large customers' purchases support the FTC's product market under Mr. Orsack's analysis, our economic expert.

And the reason why the FTC's product market doesn't correspond to business realities is because of what Miss Sullivan called BOSS, Office Depot calls them adjacencies, trying to sell all these other product to the exact same customers in the same RFP and the same contract. They're trying to sell furniture, they're trying to jan san, cleaning supplies, break room, pretzels and water, and things like that, technology, and they're trying to sell all these products, which are in the same RFP and the same contract. The reason why they're selling more and more of

those products is because office supplies are a declining business. They have to sell those other products, that is key to their viability. And both Staples and Office Depot have been successful in increasing the percentages of these BOSS or adjacency products that they're selling. Customers view the product market that way, office supplies and all the other things Staples is selling.

Again, common sense, Your Honor, common sense. If you're buying $1 of office supplies from a vendor and $9 of some other products and you're using pricing from other products to get better pricing across them all, and that's what they're doing here, then the product market cannot be appropriately defined when it's just chopped up and narrow.

Customers, several customers, their own affiants, the ones who sign declarations, have testified that they've gotten significantly better pricing from the last deal, Office Depot/Office Max. No price increases, prices went down. And they've also testified that they use the other products that they're buying to get better pricing for office products. And then to say let's define a relevant product market that blindly ignores those other products is not appropriate and is not useful. What it will do, Your Honor, it will result in an inaccurate prediction, just like if you use the HHI and the market definition from a mere two years ago in this exact space.

Miss Sullivan also mentioned leakage. And I'm going to just cover it from Office Depot's perspective. Leakage, again, Your Honor, is when you win a contract and you have a contract with the customer and they're not buying all their needs from you. For example, if a customer has a $1,000 office supply needs, they have a contract with Office Depot and they're buying only $100, simple math, 100 divided by 1,000, leakage rate is 90 percent, so they're only buying 10 percent of their needs.

And when I was at the FTC, Your Honor, it was very important, and I know it's important for them there as well, to test merging parties' arguments proposals, to see if something is made for litigation. If parties coming in say, Oh, if we ever try to raise prices, customers could do X. And then you search through all their documents and you don't see one mention of X, probably not a very good argument, Your Honor. Here Office Depot and Staples -- Office Depot has been obsessed with leakage, worried about leakage for a long period of time.

So what this is, is an ordinary course document done on a weekly basis, used in the last deal, Office Depot/Office Max, and this expected compliance percentage is that simple -- I hope that simple formula I explained. What is that customer's office product needs and how much are they buying? And here -- actually, I should have said

office needs because if they have a contract, the expected compliance percentage covers all of that. Covers all of that. It's what the contract is. That reflects business realities.

And you can see, Your Honor, some customers are buying a very small portion of their needs from Office Depot. And the FTC is claiming that Office Depot and Staples is the only ones who do these really, really important things, then why are customers signing contracts and buying a very little percentage of their needs?

And this happens all the time. It is not something that we put together for this matter. It's something that they are tracking in the ordinary course and they're trying to do something about it.

A few years ago Office Depot invested in this tool called Prism, P-R-I-S-M, which, again, is used to measure leakage and to try to do something about it. Prism is used for other things, but that is a very important function. They've invested millions of dollars in this tool. They've been able to use this tool to track the thousands of locations of companies that aren't buying out their contract and they're trying to do something about it.

The FTC doesn't think Prism is accurate. Office Depot, in the ordinary course, is using it. They're using it successfully. They're increasing sales, and they're

identifying sales opportunities from those folks who aren't buying off the contract. Miss Reinhart said, Well, if RFPs weren't so important, why are they spending so much time on them? We're not saying that RFPs aren't important, Your Honor, we are, and they're very important to Office Depot because if they don't win an RFP, they have a zero-point-zero percent chance of getting a sale. You have to win the contract, if you're Office Depot, to even have a chance, to even have a chance to have customers buy off of that.

So all things being equal, Office Depot wants to win a contract, but that contract is really the first inning of a nine inning game. If you win that contract, there's no volume requirements necessary. It's basically a price list. Customer gets a price list, you have to sell -- Office Depot has to sell the products at that price, they're bound, but the customer doesn't have to buy so much as a pencil from that contract. It is unlike any other contract you've seen. And again, this is for the large customers, Your Honor.

If the FTC is right, and Staples/Office Depot are the only two significant competitors in this space, why are their contracts so one-sided? Why can't they get customers to say, Okay, we will commit to buying some volume?

So the FTC -- I'm sorry, not the FTC, Office Depot has been using Prism now for a couple of years. They're identifying leakage in the ordinary course and it's working.

It's helping to increase their sales and trying to do what they can to minimize or to reduce leakage. It's challenging, but it's working.

Office Depot also has an inside sales organization, ISO, based away from the company, based in Austin, Texas that has hundreds of employees that are just trying to grow share volume with their customers. That is their primary purpose, to grow share volume. Again, they're doing that and they're having some success because customers are signing contracts that don't have any requirements in it and they're trying to get people to buy off of it.

And they -- Office Depot wishes, Office Depot wishes they lived in a world, they lived in a world that competed in a world that the FTC describes; that they have only one other competitor, that they have all this leverage, and even with these large, powerful corporations Office Depot can somehow call its own shots and have its way. It doesn't reflect business or market realities, Your Honor. And the FTC has the burden and obligation to define a product market and do the analysis that reflects business realities.

On the last deal, I represented Office Depot when they were acquiring Office Max. This year, of course, I'm involved in this deal representing Office Depot. And for at least now three years, if not longer, the business people

have been telling me and I've been telling the FTC that this leakage is significant, that it's rampant and a lot of it is going to Amazon.com.

Now, typically customers usually aren't calling up and say, Hey, bad news, I didn't buy from you and I bought from someone else. They just see it going and they see they are losing sale. And they've always thought Amazon.com was the cause of the leakage, testified about that, and see it in the documents. So when the FTC was doing the investigation, one of the first things they should have got was data from Amazon.com.

Amazon.com offers millions of office products SKUs. This is the number one source that the business people think the leakage went to. Their own experts cited an article, an independent survey that said 50 percent of responding companies buy office supplies from Amazon and that the use of Amazon for office supplies and companies -- increase the larger the customer gets. And this independent survey was cited in Dr. Shapiro's report. And yet the FTC did not get office supply SKUs for large customers from Amazon.com. They got some -- we've gotten some data from Amazon Business, gotten some documents. And the documents, as Miss Sullivan has said, have been very informative and show a vivid, strong, growing competitive force. But no one, no one has done the analysis to say what leakage is

going to Amazon.com, and they should have gotten that data.

There's been some discussion about Office Depot's documents, Your Honor. I think their documents show clearly -- and we've turned over 15 million pages of documents combined, in total, between Staples and Office Depot, they reflect, I think, recognition, a clear recognition of the challenges and difficulties they face in competing in the space. And sometimes you see desperation expressed in the documents. But what you clearly see, Your Honor, is a firm commitment, a firm resolve to continue, to try to continue to serve its customers, their number one priority, as effectively and as efficiently as possible.

They want to continue to serve these customers, give them the best pricing they can and continue to be relevant. Again, Your Honor, that is the only motivation for this deal. And they're using the last deal with all the synergies they're getting now, they're going to continue getting in the future, and the synergies that they reinvested into their customers by better pricing.

Synergies, again, it's a very important point, benefited every customer of Office Depot; every customer, not just the most powerful that the FTC is worried about. It benefited folks in their brick and mortar, mom and dad buying office supplies, small, medium businesses. And that's an important balance in what this Court should do,

that the synergies that will result from this deal, well in excess of $1 billion, using the exact same Office Depot playbook, since they just went through it a mere two years ago. Those synergies from this deal will end up benefitting every customer of Staples, every customer.

And balance that against FTC's concern of 1,000 of the most powerful, largest customers in the world. There is no allegation the -- we -- they've looked at it, there's no allegation that retail customers, small businesses, mom and dad's, kids needing office supplies or back to school supplies, there's no allegation that they'll be harmed. In fact, they've conceded they won't be, it's not in their complaint, and that's all part of the overlap merger analysis as well.

Your Honor, in closing, let me go back to the first theme I mentioned, is common sense. And I respectfully suggest, Your Honor, just use common sense here. I think this common sense will dictate that this deal will not harm large, powerful customers in purchasing paperclips and pencils. Common sense dictates that just like Office Depot/Office Max, mom and pop businesses, small businesses, medium size businesses, all businesses will receive better pricing and benefit from this transaction. Common sense also dictates that individuals, the one that was the source of a lot of discussion in the last merger,

you looked at that, that individuals cannot be harmed by this transaction, will not be harmed by this transaction and will benefit from it. The Mrs. Jones and Mr. Smith will benefit from this transaction, and there are no suggestions otherwise.

Finally, Your Honor, common sense dictates that this court should deny the FTC's request to block a merger that will benefit for everyone. Office Depot thanks the Court in advance for a fair hearing. And this deal is critically important to Office Depot and it benefits Office Depot shareholders. But most importantly, to them this will benefit their customers and allow them to continue to serve their customers going forward, and we need the Court's assistance to do that.

Thank you very much, Your Honor. If you have any questions, I'm happy to answer them.

THE COURT: All right, Counsel. Thank you.

Let me just say this: Many of us use standup desks. And the reason I'm saying this now, as opposed to three weeks, since the last trial, is because I didn't think of it before, but if anyone feels comfortable or uncomfortable sitting in those very uncomfortable chairs, please stand up for as long as you'd like to. So if you see me standing up or my law clerk standing up, it's not because we are trying to get out of here quickly, because we feel

comfortable standing up. So I invite you to do the same.

You may call your first witness.

MS. REINHART: Thank you. Your Honor, the plaintiffs are calling Mr. Gregg O'Neill from American Electric Power. He's just outside.

THE COURT: Are there paralegals in the courtroom?

MS. REINHART: Yes, there are.

THE COURT: Let me extend my appreciation to them. They're the unsung heroes and never get the credit that they deserve. I know how hard you work to make us look good, I know that. So on behalf of everyone, thank you very much. And to the ones that aren't here, please tell them we appreciate everything they do.

MS. REINHART: We do have the best paralegals at our agency, Your Honor. I've been in the practice for 20 years. I've never seen anything like it.

Your Honor, Mr. Gregg O'Neill is here and he has counsel with him. And I recall Your Honor's gracious offer to allow them to --

THE COURT: Any nonparty's attorney may sit in the witness -- in the jury box over there, or anyone else who has an attorney may sit in the witness box.

MS. REINHART: Your Honor, Mr. Ryan Quillian will be conducting this examination.

I wanted one clarification regarding the exhibits,

since we have in our order that we will be moving for admission at the end of each witness for the exhibits, then they will be put on the ECF at night. Do you wish Mr. Quillian to move for admission of the exhibits at the end of the examination?

THE COURT: Probably should, since there may be others reviewing this record. Probably so.

MR. QUILLIAN: All right.

GREGG O'NEILL,

was called as a witness and, having been first duly sworn, was examined and testified as follows:

THE COURT: All right. Good afternoon, sir.

THE WITNESS: Good afternoon.

MR. QUILLIAN: May it please the Court, my name is Ryan Quillian. I'm here on behalf of Federal Trade Commission.

DIRECT EXAMINATION

BY MR. QUILLIAN:

Q. Good afternoon, Mr. O'Neill. Thank you for being here today. Will you please state your name for the record and spell it, please?

A. My name is Gregg, G-R-E-G-G, Paris, P-A-R-I-S, O apostrophe N-E-I-L-L.

Q. Who's your current employer, Mr. O'Neill?

A. American Electric Power.

Q. Is it okay to refer to American Electric Power as AEP?

THE COURT: I'm going to stop you one second. I think my realtime just got disconnected.

Go ahead. Go ahead.

MR. QUILLIAN: Thank you, Your Honor.

BY MR. QUILLIAN:

Q. Mr. O'Neill, how long have you been employed by AEP?

A. Approximately 15 years.

Q. What's your current job title?

A. Category Manager of Corporate Procurement.

Q. How long have you been in that role?

A. A little over two years.

Q. What are your job responsibilities as Category Manager?

A. We primarily facilitate the acquisition of goods and services. We create and manage the contracts that are associated with those.

Q. Do you have any job responsibilities relating to office supplies?

A. I do. That's one of the categories I manage.

Q. Can you describe --

THE COURT: Let me ask you to pull that microphone down. The only reason I ask you is because we have overflow rooms and if you're not speaking directly into the microphone, your voice will not get amplified and go to those rooms. Thank you.

THE WITNESS: Yup.

THE COURT: Okay. It's working now. That's okay. It's working now.

BY MR. QUILLIAN:

Q. What are your responsibilities as they relate to office supplies?

A. Similar to the general responsibilities, which is to facilitate the acquisition of office supplies through a contract.

Q. Do you have any responsibilities relating to choosing an office supplies vendor?

A. We coordinate that effort. Our internal customer ultimately makes that decision based on the facts that we collect.

Q. What is your role, if any, in that process?

A. We facilitate the sourcing process. So we -- we sort of manage the process of identifying the market, looking at suppliers and building business requirements, things like that.

Q. Do you have any responsibilities relating to managing the contract of office supplies?

A. Yes. Once we have a contract in place, our job is to look at the metrics of KPIs within the contract and -- and ensure compliance with the vendor.

Q. And what are KPIs?

A. Key performance indicators.

Q. And can you explain what metrics and KPIs are?
A. Different terms; SLA, service level agreement, key performance indicators. It's just a way to measure performance outside of cost. So some of our typical metrics we have in office supplies would be on-time delivery, order accuracy, return policies, things like that.
Q. What if -- do you have a specific metric for on-time delivery that you track?
A. Right now our on-time delivery metric is 98.5 percent.
Q. How long have you been involved in procurement at AEP?
A. A little over six years.
Q. And how long have you been involved in the office supplies procurement realm?
A. A little over two.
Q. So since you've been category manager?
A. That's correct.
Q. What is AEP?
A. We are a provider of electricity. We generate and transmit and distribute electricity in 11 states.
Q. Are those your primary lines of business?
A. Yes. Generation, transmission, and distribution.
Q. Is AEP in the Fortune 500?
A. We are in the Fortune 200.
Q. Does AEP operate in a regulated industry?
A. We do.

Q. Is AEP itself a regulated entity?
A. Yes, we are.
Q. Does AEP have any regulatory obligations relating to its costs?
A. Yes, we do. We are obligated to keep our costs as low as possible for our ratepayers.
Q. Do those regulatory obligations apply to office supplies?
A. It applies to everything that we acquire or purchase.
Q. And when you --
A. Including office supplies.
Q. I'm sorry?
A. I said including office supplies.
Q. And you mention ratepayers. Who are ratepayers?
A. So that's you, that's -- that's everybody in here who has an electric bill. We have an obligation to both the regulatory and otherwise to do the best we can to provide the maximum value to our ratepayers, to our end customer.
Q. Where are AEP's headquarters?
A. Columbus, Ohio.
Q. In how many states does AEP serve customers?
A. We are in 11 states for customers, and we have a presence in 15 states from California to Michigan, Texas, Virginia. We pretty much cover the -- most of the country.
Q. Why is there a difference between the number of states in which you have a presence and the number of states in

which you serve customers?
A. Sometimes we'll have a call center in a state in which we don't have customers. We have retail operations in Illinois, for an example, we have lobbyists in Washington, DC, those types of things.
Q. What types of facilities does AEP run?
A. We have about 420 facilities that would have some type of staffing; power plants, distribution centers, regional distribution centers, garages, machine shops, office buildings.
Q. How many of those 420 purchase office supplies?
A. At some point or another they probably all do.
Q. Are AEP's facilities typically located in major cities?
A. Not very often. That's one of the challenges that we face as a utility provider. Most of our customers are in rural or more remote areas.
Q. How does that affect, if at all, the services that AEP requires from an office supplies vendor?
A. Makes it a little more challenging to get product delivered to a location. Or, conversely, if we had to actually drive somewhere to pick up a product, that would be impractical. Oftentimes that drive could be several hours.
THE COURT: Go ahead, Counsel.
BY MR. QUILLIAN:
Q. How many employees does AEP have?
A. Approximately 17,500.

Q. Who is AEP's primary office supplies vendor?
A. Today it's Office Depot.
Q. Does AEP have a contract with Office Depot?
A. Yes, we do.
Q. When was that signed?
A. Last week.
Q. Congratulations.

Does AEP segment its office supplies purchases from Office Depot into categories in the ordinary course of business?

A. In -- in general we don't. If we look at level 3 data, Office Depot has predetermined categories and we simply follow that data set. But if we summarize it up, it's usually office supplies, office furniture, technology and incidental jan san.

Q. You mentioned level 3 data. Can you please explain what that is?

A. So level 3 data is just the granularity of data that they can provide. So if you're looking at level 1 data, level 1 will just tell you I bought something from Office Depot. Level 2 data will tell you I bought batteries from Office Depot. Level 3 will tell you I bought an eight-pack of Duracell high performance batteries from Office Depot.

Q. Thank you.

You mentioned four categories: Office supplies,

furniture, technology, and jan san; is that right?
A. Yes.
Q. And what's included in the office supplies subcategory?
A. Typically consumables, pens, paper, paperclips, Post-its, those type of items.
Q. Does AEP purchase consumables -- those consumables from Office Depot?
A. Yes, we do.
Q. Does AEP have a contract to purchase those consumables from any other vendor?
A. We do not.
Q. Why not?
A. We prefer to have one provider for that product category, and right now that's Office Depot.
Q. You mentioned office furniture. What's included in AEP's office furniture category?
A. So office furniture would be your typical desks, credenzas, file cabinets, lateral files, cubicle walls and components, demountable wall systems, chairs, conference chairs, conference tables.
Q. Does AEP purchase office furniture from Office Depot?
A. We do not.
Q. Why not?
A. We've chosen a different strategy for -- for furniture as a category and today we're using Haworth.

Q. And who is Haworth?
A. Haworth is -- there's -- there's three or four major office furniture companies in the United States, Haworth, Steelcase and Herman Miller. We've been using Haworth.
Q. Why does AEP choose to purchase office furniture from Haworth?
A. It aligns better with our furniture strategy.
Q. Does AEP run a separate sourcing event for office furniture?
A. We ran a separate event in, I think, the end of 2013.
Q. Okay. Does Haworth sell consumable office supplies?
A. They do not.
Q. What is included -- you mentioned technology products. What's included in those -- in that category?
A. From an office supply perspective, that's primarily peripheral items; keyboards, mice, USB flash drives, cables, things -- incidental items.
Q. Does AEP purchase technology products from Office Depot?
A. The ones I just mentioned we can. We -- we don't purchase all of that through them. We do have other providers.
Q. Does AEP have contracts to purchase technology products from any other vendors?
A. We do for computers, servers, large hardware items.
Q. And why is that?
A. Again, that better aligns with our strategy around that

product category.
Q. Does AEP run a separate RFP or sourcing event for technology products?
A. We have multiple sourcing events, depending on what the product is.
Q. Do AEP's other technology product vendors also sell consumable office supplies?
A. Not to my knowledge.
Q. You mentioned jan san products. What are those?
A. It's janitorial sanitation products. From Office Depot that's more incidental spend for us or convenience spend. We'll buy some coffee, coffee filters, maybe some spray cleaner to clean off a desk. I mean, most of our commercial, if not all of our commercial jan san is part of a janitorial contract that also provides labor.
Q. So AEP has contracts to purchase jan san services from other vendors?
A. It's an integrated purchase. It's both materials and labor.
Q. What materials are included?
A. Any commercial cleaning products needed to perform the service. So that's typically going to be floor cleaner, sanitizers, soap to refill soap dispensers, chemicals for cleaning carpet, things like that.
Q. Why does AEP take that approach for jan san products?

A. Again, our -- we have a different category strategy for janitorial services and it just better aligns with what our strategy is.
Q. Does AEP run a separate sourcing event for jan san products?
A. We run a separate sourcing event for janitorial services, which includes product.
Q. Do AEP's other jan san service and product vendors also sell consumable office supplies?
A. Not to my knowledge.
Q. And are you familiar with the term break room supplies?
A. Yes.
Q. And what are those?
A. What I just mentioned; coffee, coffee filters, maybe bottled water, typical items you'd find in a break room, perhaps candy or mints.
Q. Does AEP purchase break room supplies from Office Depot?
A. I'm sure that we do, very minor amount.
Q. Are those also part of the jan san category?
A. In general that's where we put them. Whether that's appropriate I don't know, but --
Q. How much does AEP spend on office products per year?
A. Average about 2.1 million.
Q. And what percentage of that would be on AEP's office supply subcategory?

A. Approximately 75 percent.
Q. Are you familiar with the phrase "manage print services"?
A. I am.
Q. And what is that?
A. Manage print services is a program that we use at AEP for our main printer functions. We use multi-functional devices which are capable of printing, scanning, and copying. We have a contract in place today with Xerox. And in addition to providing that piece of equipment, they come in and perform all the maintenance and repairs on that equipment and they also provide the ink and toner necessary to keep it functional.
Q. Does Xerox provide copy paper as a part of the management services agreement?
A. They do not.
Q. Did AEP run a separate RFP for manage print services?
A. Yes, we did.
Q. Who provides AEP's copy paper?
A. Today that's Office Depot.
Q. How is pricing structured under AEP's contract with Office Depot?
A. In general, we have a core list and a noncore list. The core list typically represents the products that we use the most. Whether that's -- typically by volume. Sometimes we'll also have less frequently used items, but because of

the high dollar value we'll include that on the core list. That is the list that we focus on when it comes to price negotiation.

Q. Is there an actual list?

A. Yes, there's an actual list. We have about 600 unique products on that list, each one with a unique part number or SKU number.

Q. And what's a SKU?

A. A stock keeping unit. It's just a unique way to identify a component numerically.

Q. And who determines which items are included on the core list?

A. We typically work with the office supply provider, in this case Office Depot, and we look at the data and we collaboratively come up with a list that makes sense to us to use and then we review that list, typically anywhere from three to four times a year.

Q. And how did AEP and Office Depot determine the products they put on the core list currently?

A. Same methodology. We look at frequency of use, volume, cost and, you know, create the list from there.

Q. And how is pricing structured for core items?

A. The core item pricing, we put that list together and we really focus on the bottom line when comparing with other vendors. But we also do random line item checks to make --

and just compare individual products. We also check for unit of measure discrepancies.

Q. When you said -- you mentioned you compare with other vendors. What other vendors do you compare your core list with?

A. So in this case we had Staples also on the sourcing event. So we provided an identical list to Office Depot, as well as to Staples. That was all 600 items on the core list, about 400 line items on the noncore list and we compared the total of those 1,000 items. We then went back and looked at line items, just built a formula with an Excel spreadsheet to show the delta between the two, and then we selected anything that had a -- a standard deviation greater than X and then we'd explore those line items as to why there was such a difference.

Q. And how -- how did the prices compare between Staples and Office Depot?

A. We had to go through a few iterations. We had some issues with unit of measure. So we would ask for a price with a six-pack of Kleenex, as an example. Vendor A would provide the price for a six-pack, vendor B would provide a price for a single unit. So, obviously the -- the cost would be very different and we'd have to go back to that vendor and ask for clarification and new pricing. So we had several rounds of that.

Q. And going back to the pricing structure on the contract, what are noncore items?
A. So, noncore is anything outside of that list of 600. It -- it essentially represents the vast majority of Office Depot's SKU numbers.
Q. And how many noncore items are available to AEP for purchase?
A. You'd have to ask Office Depot, but I'm going to say probably 28- to 30,000 SKUs.
Q. And how is pricing structured for the noncore items?
A. We typically get a -- a flat percent discount off of that, the list price, the published price.
Q. How does pricing for noncore items compare to pricing for core items?
A. It's typically not as favorable, but it's also less frequently consumed by AEP. So you can't get the best price on every single product every single time. That's -- that's not a good business model for Office Depot, I would imagine. So it's a give and take. They have to be profitable and we also have to have good value. So that's a nice middle ground.
Q. When you say less frequently consumed, are you referring to the noncore items?
A. Yes.
Q. So the majority of the products that AEP consumes are on the core list?

A. They are.
Q. Does AEP's contract with Office Depot contain any rebates?
A. They do.
Q. And what are -- what types of rebates?
A. The current contract has an annual rebate and it also has an incremental rebate. The annual rebate is simply a percent based off annual spend, which is due at the end of the year. Incremental rebate was an incentive that was put in by Office Depot to help drive better adoption of the office supply program.
Q. Why -- why would Office Depot want to drive better adoption?
A. As far as program adoption, we both have the same goal. Office Depot wants all the office supply spend to go through them, and as AEP we want as much of the office supply spend as we can to go through them as well. It's -- it's in our best interests and in theirs.
Q. Why is it in AEP's best interests to -- why is that in AEP's best interest?
A. Basically we're getting the best price that we can, and that best price is then passed on to our ratepayers and that's -- that's my primary job, is to extract the best value I can, whether it's office supplies, office furniture, rental equipment, whatever the category is.
Q. And the ratepayers are your customers?

A. The ratepayers are -- is AEP's customers, yes.
Q. Does AEP actively encourage its employees to purchase through its office supplies program?
A. Yes, we do.
Q. In what ways?
A. We use a few methods. So we have an internal website that is frequently visited by most AEP employees. We'll publish articles on that internal site, let them know about the program, how the program works.

We have an A to Z index on that site and if you click on "O" for office supplies, it will outline what the program is, how it works, how you can sign up and participate in that program. We also do corrective actions. We will do regular audits of our expense account spending. And the subject matter of those audits rotate quite frequently, but office supplies is in that rotation. And if we notice somebody buying office supplies from somebody other than our contracted vendor, we'll usually send them an e-mail or some type of communication to let them know that there is a program in place and that our preference is they follow the program.
Q. And how do the AEP employees typically react to those requests?
A. It's usually not a problem. From my experience, what we typically find is that they're buying off-contract not

because they don't want to comply with the program, they just weren't aware of the program. And so once you make them aware of the program and the benefits to AEP, it's usually not an issue.

Q. Do certain AEP employees purchase more office supplies than other AEP employees?

A. Yes. So we are structured, in many locations, where an administrative assistant will be responsible for office supplies for a large group of people or departments. So we have about 14,000 people with a corporate card and we have about 12- to 1300 people that buy the vast majority of office supplies.

Q. You mentioned a few ways that AEP encourages its employees to purchase through the office supply program, do you have any examples you can provide today?

A. Of --

Q. Of how AEP encourages its employees.

A. We had one where we had an admin that reported to a vice president, decided to go to a website to purchase a whiteboard, dry erase board. And they thought they got a better price on that product and they wrote up a little analysis and gave it to their -- she gave it to the vice president. He sent it over to my vice president to say why is the Office Depot program more expensive than buying on this website? And that eventually made its way down to me

and we had to research that.

So we looked up what they were trying to buy, a dry erase board, and I went out to the Office Depot site to discover there is over 300 varieties of whiteboards. So once you get in the particulars of, you know, what size whiteboard, what type of frame material, is it aluminum, is it wood, is it metal, is it a thick frame, a thin frame, is it magnetic, is it nonmagnetic, it is porcelain coated, with a tray or without a tray. Once you got all the variables together, you factor in a rebate and you factor in the delivery cost from the website, it turned out that our Office Depot program would have saved that person probably double-digit percentages on the cost.

Q. And do you remember what website that was?

A. I believe it was Amazon.

Q. And so because you had a better price, did you feel it necessary to go to Office Depot and ask them to improve their price for that?

A. Well, they already had the best price on that product. But we take that as a learning experience and an opportunity to educate. So we reached back out to that individual who initially did all that work and showed them the complete picture of how this program operates and so after that point, there wasn't too much of an issue and they've been buying on contract ever since.

Q. You mentioned some audit reports earlier. What's your role in the audit reporting process?
A. Minimal. So I get results of an audit process, if it's in my area. And it's my responsibility to investigate and make recommendations for improvements, if needed.
Q. So for office supplies, you would review the reports?
A. That's correct.
Q. And how often do you review them?
A. The reports are generated maybe once or twice a year. If they're doing an audit on a different category but they happen to notice a large dollar value on office supplies, that will usually raise a red flag and kick out to me as well.
Q. How frequently do you get a red flag on office supplies?
A. Not very often.
Q. What's contained in the audit reports?
A. So you have -- we start out with tier one data, so it's a pretty high level. We don't get much tier two or tier three data through the expense report system. So I'll use Amazon as an example. We have a purchase that says Amazon, that's all it says. So the only way we understand what the spend is behind that is whatever that employee types in the free-format field in the expense report.
Q. Is there any expense reporting requirements within AEP, in terms of -- do expenses have to be approved?
A. Yes. So we have a couple requirements. So one is you

have to use a corporate card. If you use a personal card, our general rule is you won't be reimbursed. The second rule is all expenses have to be reviewed and approved by a manager.

Q. So you mentioned there are about 12- to 1300 heavy purchasers of office supplies; is that right?

A. Correct.

Q. How frequently do the auto reports turn up that they are purchasing off-contact for office supplies?

A. I can't remember the last time one of those users showed up in a report.

Q. How much of AEP's office supplies purchases go through those 12- to 1300 users?

A. I would estimate, say between 80 and 85 percent.

Q. How extensive are AEP's employees off-contract purchases of office supplies?

A. Generally, I would say it's minimal.

Q. And how do you know that?

A. Just from experience, looking at the data, understanding the maturity of our program. This is -- the office supply program is one probably one of our more mature programs at AEP. So most people are aware of it. The ones who usually aren't are usually new hires, or somebody who's in the very remote location with limited access to e-mail and our internal website.

Q. Do the audit reports inform your position that off-contract spend is minimal?
A. I think it does, yes.
Q. Does AEP do anything to discourage its employees from purchasing off contract?
A. We try positive reinforcement, that's more our mode. So if we identified spend that is off contract, we'll use it as an educational moment to correct behavior. We try not to do that in a negative way.
Q. And just one last question about the 12- to 1300 heavy users. Are they typically purchasing for themselves, their own consumption?
A. They're usually buying for groups. They're either buying for an entire facility, a floor within a high rise building, or one or two or multiple departments.
Q. Does AEP require a potential office supplies vendor to meet any criteria before AEP will even consider them?
A. Yes, we do.
Q. What are those criteria?
A. In our last sourcing event, we have a lot of business requirements and then we have some that we call knockout criteria. And knockout criteria is if they can't meet that particular component, they're no longer considered. So our knockouts were they had to service all 15 states in which we have employees, that was the first one. Another one is to

have a customizable web portal, level 3 reporting, and the ability to negotiate both on price and rebate, the ability to lock-in pricing. And then I think our metrics were mostly business requirements. I don't think they were knockout. I would have to look at the contract to double check that.

Q. So you mentioned that one of the AEP knockout criteria is the ability to deliver it to all of AEP's locations; is that fair?

A. That's correct.

Q. Okay. And how does that benefit AEP?

A. In a few ways. So one is just from an internal administrative perspective, both from program management and contract management. I have one program manager today that runs the entire office supply program. If we broke that up into regional or local services, one person couldn't manage that. We would have to hire more people to manage the same amount of spend for the same products in the same areas.

Same on the contract side. I have over 1,000 contracts under my management. I don't need to add to that unnecessarily. And that's why one player really is beneficial to us.

Q. So would you say that AEP requires a single office supplies vendor that can service all of its locations?

A. That was the knockout criteria, yes.

Q. We talked about level 3 data earlier. Why is that important to AEP?
A. So we are always trying to improve performance and value and you can't make improvements if you can't measure what you're doing. And so the level 3 data allows us to understand on a more granular level of where our spend is, which will also help us identify where our opportunity is.
Q. Is that why it's one of AEP's knockout criteria?
A. That is correct.
Q. You also mentioned a customizable web portal; is that right?
A. Yes.
Q. Okay. What is that?
A. So we order office supplies through Office Depot business website. That website has the ability to customize. So if we -- for an example, we don't want our employees buying computers through Office Depot. That website allows us to block all computers. So an employee goes in and searches, they don't -- they won't find any because that category has been blocked.

It allows us to do custom messaging. So for example, we are trying to drive behavior to use generic products versus name brand. So 3M brand Post-its, so when they go in and purchase a 3M brand Post-it, put it in their shopping cart, we have the ability to pop up a message that

said, Did you know if you bought the Office Depot generic brand, you could save X amount or X percent? So that's a customizable feature.

Another feature is product replacement. So in that same example, if I ordered 3M brand Post-its, but as a company we decided we are strictly sticking with private label brands, we would automatically substitute their 3M brand with the private label brand at the checkout process.

So that's another example of customized website, and that's -- they also offer the ability to just put in pretty much any kind of messaging or text that you would like the enduser to see. So if we're running, you know, some type of promotion or whatever, we can put a banner in there with some language to help drive that.

Q. Who's providing that functionality?

A. Office Depot.

Q. You mentioned that you're trying to drive generic. Why is that?

A. We're back to the same driver for procurement, which is to drive down cost in value, and get that value to our ratepayers.

Q. So the generic products are cheaper than brand name products?

A. Typically they are, yes.

THE COURT: You're able to track purchases from a

company like Amazon, are you?

THE WITNESS: We are not. So Amazon, we did reach out to Amazon as we started our sourcing event. I made a phone call to them to understand what their capabilities were. And at that time they had level 1 reporting data, so we wouldn't -- all we would see is a purchase, Amazon, and that was it. So at that point, along with a few other reasons, we took them off the list for consideration.

THE COURT: Go ahead.

BY MR. QUILLIAN:

Q. Why is a customizable web portal one of AEP's knockouts?

A. We think we can extract value from that. We can drive behavior and drive better program adoption using those tools, and that's important to us. It was important enough to make it a knockout criteria.

Q. Why is it important?

A. We're back to the value proposition. We want to get the best value.

Q. So can you walk me through how a new admin person, personnel would sign up and buy something on the web portal?

A. So typically if a new hire comes in and they need to acquire office supplies, we usually direct them to an office assistant that manages a cabinet full of office supplies. But if they had to go to the site and sign up, we typically send them to our internal website, agency index, "O" for

office supplies and just let them follow the directions on that page.

So they would read through, understand the program at a high level. We don't put in rebate information or that type of information on that page, just because we don't want that to get out. But there's a link to the Office Depot business site, they would follow that link to the website. Once on Office Depot's site they would request a user ID and a password. That request, I believe, is also put in front of the program manager, make sure they're an AEP employee and that they're allowed to participate in that program.

Once that's been established, they would select a ship to location. So we have a predetermined ship to locations on the website. That's mainly so that people aren't buying things for personal use and sending it to their house or whatever. And after that, they'll put in their corporate credit card and once that credit card information is entered and accepted, they're ready to browse the catalog and purchase product.

Q. And what happens after they select a product for purchase?

A. Similar to most other sites, it goes into a shopping cart, you go into your shopping cart, you confirm your order. If we're using the customized messaging or the automatic replacement, they may notice that some of their products got replaced in the shopping cart. They click

confirm. At that point the order is placed. Right now, if that order is placed before 2:00 p.m. it will typically arrive the next business day at the facility.

Q. Does the web portal allow for greater monitoring of the program?

A. Not so much from a monitoring. That's the data entry point of the sale, so that feeds into the various reports that Office Depot can generate for us.

Q. Does the user ID allow you to track who's buying what within AEP?

A. Yes. On level 3 data we can see who bought it, what they bought, how much they bought, how much they paid, where it's shipped, when it's shipped. Pretty much every line item or data component that we find valuable.

Q. Why do you find those data components valuable?

A. We're back to the measure and improve. We want to improve our cost profile and drive down price and we can't do that if we can't measure what we're doing.

Q. You mentioned the ability to negotiate pricing and rebates, is that right, as one of the knockout criteria?

A. I don't know if that was specifically as a knockout criteria, but that is a business requirement, for us to have that ability.

Q. Why is that a business requirement?

A. We find value in being able to have that dialogue with

the vendor. If there's no give and take, we typically don't -- at least we don't think we're getting the best value. And that usually is the case.

Q. You also mentioned locked-in pricing. What does that mean?

A. Yes. We try to get core pricing locked down for a period of time. In our most recent contract it was locked down for the first year. And all that does is provide a measure of consistency for us and predictability in our cost profile.

Q. You say it's locked down for the first year. How frequently can core prices change after the first year?

A. After the first year we usually visit that annually or semiannually, and that's a negotiable point, again. We would like to lock it down for a year. Oftentimes we can do that, but market conditions can be such where that's just not possible and we may do six months or a different period of time.

Q. Does AEP have a dedicated sales representative or account manager at Office Depot?

A. Yes, we do.

Q. And who is that?

A. Alicia Alarie is our main contact and then we also work a lot with her boss, Eric Pirwitz.

Q. And how long have they been on the AEP account?

A. In one form or another, I think they've been around ten-plus years.
Q. And does AEP see any value in having continuity in their account managers?
A. Yes. We actually often put that in our contracts, that you cannot change account management without our authorization.
Q. Why do you include that in your contracts?
A. We find value in having a stable account management team. In this case Eric and Alicia have been on our account for a long time, so they start to learn a lot more about how our business works, what our pain points are. They can also help understand where there's potential value to drive down costs.
Q. And would they be considered field sales representatives or account managers?
A. We call them account managers. Some people call them outside sales representatives. There's several terms.
Q. Is that different from inside sales representatives?
A. Yeah. Typically an inside sales representative would be somebody who works from an office and does not go out to the field and visit locations.
Q. Does Office Depot have inside sales representatives for AEP as well?
A. I'm sure they do. I never talk to them. I always talk

to Alicia or Eric. They may coordinate behind the scenes with an inside sales team.

Q. You talked about how Office Depot provides next day delivery. Do you remember that?

A. Yes.

Q. Okay. Is that important to AEP?

A. Delivery's important to us. Consistent delivery is important to us, whether it's one day or two. What we don't want to do is wonder if we're going to get our materials in a day or a week or three weeks.

And we, certainly, don't want to have to send an employee out, get in the car and drive somewhere to pick up a box of pens. So -- so delivery's pretty important.

Q. Is that a business requirement?

A. It is a business requirement.

Q. And how does that provide -- how does the consistency of delivery provide value to AEP?

A. Again, it keeps our costs low. So it's pretty expensive to send an employee to drive down to pick up a product. Or if they can't get their product when they expect it, it could impact whatever job they're doing or work they're performing.

Q. Does that relate in any way to some of the ways AEP's facilities are disbursed and not in major cities?

A. I mean, for us, it's an impact, as well. We have a lot

of facilities. Take Texas for an example. Take the State of Texas, block out any major metropolitan area, and we're everywhere else.

So if you want to get a set of Post-its and, you know, the nearest town of any consequence is a three-hour drive, delivery's really important.

Q. And Office Depot is able to do that on a next-day basis?

A. Yes.

Q. Does AEP have any metrics to measure the consistency of delivery?

A. I think we have an on-time delivery metric in the contract. I'm not sure what the percentage is.

Q. Okay. Does AEP have to pay extra for next-day delivery?

A. No. That's just part of their program.

We actually asked them to provide pricing for two-day delivery. We thought maybe we could get our costs down, and it was, basically, the same price. They pretty much told us their business model is created and operates around next-day delivery, so no savings for two-day.

Q. So we spoke about knockout criteria earlier. What -- which vendors operating today meet AEP's knockout criteria?

A. Office Depot and Staples.

Q. Any other vendors?

A. None that we found.

Q. How do you know that?

A. So we look in a variety of ways to final vendors. In this case, we had a team of several people. We asked one of the team members to work with our diversity coordinator. And the diversity coordinator's job is to help us find diverse vendors that meet our criteria.

We had another person go into our Ariba tool, which is our electronic sourcing software. And any business that -- company that wants to do business with AEP has to go to AEP.com and register in the Ariba tool. Part of the registration process is they outline the goods and services that they can provide and they, also, provide a NICS code or multiple NICS codes, and we use that information, also, to vet out potential suppliers.

In this case, the program manager had a consulting firm come in in 2013 to evaluate office supplies and how we manage the program. And she dusted that off a little bit, just looked it over to make sure it was still valid as far as market conditions. And so we relied on that a little bit, and the recommendation of that consulting firm was a national strategy, as well. That same program manager also talked to a few regional players to see what opportunity was there.

And, typically, how we -- how we operate, is if you find a positive result, bring it back to the team, and then we'll further explore it. In this case, nobody came

back with -- with any of those results. So, at that point we were done with, you know, the market analysis component.

Q. So they didn't identify anybody who can meet AEP's knockout criteria?

A. Correct.

Q. And you mentioned a "NICS code." Can you explain what that is, please?

A. That is the North American Industry Classification System.

Q. And what do they provide? What does -- what does a NICS code provide?

A. It's just a -- it's a uniform way to understand products and services in the North American market. That's about the best I can do on that one.

Q. What are some examples of regional office suppliers?

A. You can -- Viking Office Supplies is one; they're regional. There's W.B. Mason out of Cleveland; they're a regional player.

I think Guy Brown is regional, as well, and then you have local players. You probably have hundreds of local players. I -- I live in a small town outside of Columbus, and we have an office supply company. He has one facility, but I'm not going to ask him to ship office supplies to Laredo, Texas. That just doesn't make sense for -- for a company our size.

Q. Why not?
A. It's not practical. It's not cost effective. My job is to -- to make things cost effective.
Q. And did -- did the diversity coordinator identify any vendors that met AEP's knockout criteria?
A. Not to my knowledge.
Q. And did the team find any -- in the Ariba tool, were there any vendors who met AEP's knockout criteria?
A. Outside of Staples and Office Depot, there was not.
Q. And the regional players, I think you mentioned Viking Office Supply, did they meet AEP's knockout criteria?
A. They did not.
Q. And what did -- why didn't they meet AEP's knockout criteria?
A. That particular example was just based on Google search. And they're a small player, a regional player, and they're operating out of, I think, Minnesota, if I'm not mistaken.

But their footprint didn't align with our footprint. They -- you know, they couldn't cover the vast areas that we have, so at that point we removed them.
Q. And you mentioned W.B. Mason. Did they meet AEP's knockout criteria?
A. They are a regional player. They're heavy in the northeast. And if you look at their website and the territories that they have operations, they are in two of

the 11 states where I have customers.

Q. And when did you do that research into W.B. Mason?

A. In the last month, thereabouts.

Q. Did AEP do anything else to analyze its options for vendors of office supplies?

A. I think that was pretty much it.

Q. And just to confirm, other than Staples and Office Depot, none met the knockout criteria?

A. None that we researched, no.

Q. And what -- was that in -- in connection with the most recent office supply sourcing event?

A. Yes.

Q. Is that, also, called an RFP or a request for proposal?

A. An RFP or a request for proposal is part of our sourcing process. Our process is a little more inclusive. That's just one component.

Q. Can you describe the process, generally?

A. Typically, we look at stakeholders. We want to understand who are going to be impacted by whatever event we're working on.

We'll look at risk to try to understand risk and can we mitigate it, can we classify it? We assign a lot of roles and responsibilities within the team, so everybody knows what they're on the hook for.

We look at our current contract to understand are

there any that precludes us from -- from going to a bid event? Is there a notification clause to terminate or advance notice to terminate, things like that.

We get into business requirements, and we'll spend a lot of time on that, understanding business requirements for AEP and our internal customer.

We look at the -- the supply market and the market in general and try to understand what's available in the market and -- and how that aligns with what we're trying to accomplish. And then, at that point, we get into the RFX process, which is request for quote, proposal, information, several different varieties.

That's a fairly lengthy process. And then once award, we have a contract phase. And then after contract, we have a management, which is ongoing for the life of the contract.

Q. And is that -- that whole sourcing event process, is that specific to office supplies or does it apply more broadly?

A. We apply that to everything that we run through procurement, which is about $5 billion annually.

Q. Okay. When did AEP begin its most recent office supplies RFP?

A. It was around October of 2014.

Q. I meant sourcing. I meant more broadly. Was that still

October of 2014?

A. You mean, for the overall process?

Q. When did you begin the sourcing event process for office supplies?

A. October 2014.

Q. Okay.

THE COURT: The RFPs, are prices locked in for a number of years? Is that --

THE WITNESS: It varies. So --

THE COURT: Yeah. Is it more typical than not, that the prices are locked in?

THE WITNESS: It's very specific to the category you're talking about.

If you're dealing with, you know, raw metals or chemicals, you can really lock it in for more than three months. But if I'm dealing with a very stable product, I might be --

THE COURT: Such as? Stable product, such as?

THE WITNESS: A more stable product would be feeder pumps. In a power plant that's a pretty stable product. It's just a motor that pumps water into a power plant. And that's a stable item, and we can usually lock those prices in for five years.

THE COURT: So -- so the more common products you can lock in for a longer period of time?

THE WITNESS: Commonality, I don't -- I don't think really drives it. It's more the underlying drivers behind the market.

So if you get into office furniture, for an example --

THE COURT: Office supplies. Let's talk about that briefly.

THE WITNESS: Office supplies is pretty stable.

THE COURT: It's pretty stable. You can lock them in, the prices in for years, sir?

THE WITNESS: The only exception we have in office supplies is paper. And our paper price is adjusted quarterly, and the adjustment's made based on the paper and pulp index, right? So it's a market index.

THE COURT: Pens, toner, ink. Lock them in, three, four years?

THE WITNESS: We, typically, can get about a year just because, typically in this case, Office Depot isn't comfortable going out two or three years. They don't know where the market's going to be in two or three years.

THE COURT: Okay.

BY MR. QUILLIAN:

Q. And did AEP follow its standard set of sourcing event procedures for the office supplies at RFP -- or, sourcing event?

A. We did.
Q. And what were your responsibilities relating to that sourcing event?
A. I sort of led that event and coordinated the efforts among the team members, and really ensured compliance, that we were following the process.
Q. Okay. Can you give me some examples of what your role was?
A. Really, just more of a -- I mean, I participated in each step throughout the process, but I typically would challenge a team member if they wanted to gloss over a step.

I sort of challenged why they didn't want to investigate it further and/or document results, but that --
Q. For the what? I'm sorry. I couldn't hear you.
A. Or challenge them as to why they wanted to gloss over a particular step, or maybe not document all of the information that was requested in a particular template.
Q. Okay. And why does AEP follow a standard set of procedures for sourcing events?
A. It came out a conclusion -- we had McKinsey come in, and I think about 2010, and help us do internal analysis of where we were as a company and opportunities to improve. And one of the things they noticed was in the procurement organization we weren't consistent enough and they felt we were leaving money on the table many times in the RFP process.

So as a result of that we engaged with a third party to help develop some training for us and helped develop a more mature procurement model that we could follow. We often did the right steps and oftentimes in the right order, but documentation was lacking and we would tend to recycle materials. So if we had a scoped document from the last time, we would, instead of starting over, we would just dust off the old one and update it a little bit, so we did things like that. They also introduced a component that we called counterproposal or demand negotiation, that's been a very effective tool for us as well.

THE COURT: Excuse me one minute. Anyone else experiencing problems with the realtime feed?

UNIDENTIFIED SPEAKER: Yes.

THE COURT: Let's take a 15-minute recess.

(Recess.)

THE COURT: All right, folks, too many people using the internet in the courtroom. We're overburdened. So I'm going to have to ask people who are not in the well of the court to disconnect the internet. I'm sorry, but people are paying a lot of money for realtime, they can't get it. Thank you for understanding.

All right. You may proceed.

MR. QUILLIAN: Thank you, Your Honor.

BY MR. QUILLIAN:

Q. Mr. O'Neill, did your team have a motto during the 2015 office supplies RFP?
A. Yes, we did.
Q. What was it?
A. People are passionate about their pens.
Q. How did that motto come about?
A. So one of the things that we talked about in our program was forced replacement. So there was a lot of private label products out there that are more economical, including pens. And when we mentioned that as a team, that we were looking or considering to do that, and we mentioned pens, we had the look of fear on several people's faces of, That's okay, just don't mess with my pen. And it just became sort of the running joke of the sourcing event.

It's sort of a -- another funny anecdote on that, but I had to do a presentation to an executive committee and that was our opening statement, was people are passionate about their pens. And the next thing you know, I had executive level people pulling their pens out, looking at it and comparing it with the person sitting next to them. And we had probably a five- or six-minute conversation on what type of pen do you like. So we learned real quick, we can substitute some things, but we cannot substitute pens.
Q. From start to finish, about how long did the 2015 sourcing event for office supplies take?

A. About six months.
Q. And what about contract negotiations after that?
A. That took about nine months.
Q. Total of about 15 months?
A. Correct.
Q. And does the AEP agreement with Office Depot have separate components?
A. Um --
Q. Are there any components to the contract?
A. Well, we have the terms and conditions, which is more of the legal language, and we have about six templates and we start with one of those. We negotiate that separately. We have the core price list, which is attached to the contract, that is simply a spreadsheet of 600 products, and then we have a scope document which outlines how we're going to work together. We include the metrics in that section, how we're going to measure them, when we're going to measure them, consequences if metrics aren't met, things like that. So those are probably the three big components.
Q. Can you give me some examples of what's in the scope document?
A. Some of the things we put in there is we require the management team to come on site to facilities that we choose, and typically during the lunch hour, and provide free little giveaways or tchotchke or whatever to just bring

employees over and talk to them about the office supply program, and sort of like a informal educational event. So that's one example. Our delivery metrics are in that scope of work. We put reporting requirements in that scope of work. So, our expectations around what we want to see in a report, the frequency of that report, the format of that report, those types of things.

Q. What are AEP's reporting requirements?

A. Because we've worked with Office Depot for a while and we do have a comfort level with them, we simply -- our terms are a little bit more broad in this case in that the same level of level 3 reporting data be available to us at our request. And we had -- we almost put in there a requirement that they push it out every month, and we kept that out just because we're getting it every month anyway and felt it was redundant.

Q. And which of the three components, terms and conditions, core list, and the scope document took up the majority of the time?

A. The core list was -- that took a couple weeks. We just had some clarifications.

Because we were with Office Max before this, Office Max was acquired by Office Depot. So our old core list was using Office Max SKUs, and we now had to convert everything over to Office Depot SKUs, so that took a little

bit of time to work through that.

The legal Ts and Cs took a few months. We had language around subrogation, indemnification. That wasn't of any consequence. It was more of just saying it in the right way. And then, probably, the rest of that was on the scope document.

Q. So was the scope document -- would you characterize any of those as more important than any others?

A. The scope document is -- is more what I work with going forward for the next three years.

Q. And was that the result of negotiations with Office Depot?

A. It was.

Q. And is that -- was that an individualized negotiation? How would you -- how would you characterize the negotiation between AEP and Office Depot over the scope document?

A. So the scope document, I mean, it's -- it's a one-of-a-kind document.

It is created and -- and negotiated with that vendor for each different case. So a scope document for office supplies looks nothing like a scope document for rental equipment; two completely different categories, different strategies, different measures of value to both of those.

Q. During the 2015 RFP, did AEP consider sourcing office supplies on a regional basis?

A. We talked about it in the beginning. Conversationally, as the sourcing team, we wanted to understand was that an option for us? And we had the sourcing team, along with the program manager, and we concluded that was not a good option for AEP.

Q. Why not?

A. The administrative burden, for one, on AEP. We felt we'd would have to hire more resources to make that work.

We also have $2 million in spend, which is a decent amount of spend for office supplies. And if we broke that up into a regional model, now instead of having $2 million of leverage with one vendor, I have maybe $100,000 of leverage with 20 vendors. And that's not as valuable as a single vendor with a larger dollar amount.

Q. Why isn't it as valuable?

A. Supply and demand. It's just market economics.

You know, if you were going to buy ten cars, you would get a much better deal if you went to one dealer and negotiated for ten cars, as opposed to buying one car from ten dealers. Same principle.

Q. Okay. And did AEP issue regional RFPs in 2015?

A. We did not.

Q. For the same reasons?

A. Correct.

Q. Are you -- you spoke earlier about a conversation you

had with Amazon Business. Do you remember that?
A. Yes.
Q. And did AEP evaluate Amazon Business during the 2015 RFP process?
A. We had -- we had a phone call with them to understand their capabilities. And at that time they didn't meet many of our knockout criteria, so they were eliminated from consideration, and we really didn't look at them after that.
Q. Which knockout criteria did they not meet?
A. So the level 3 reporting, they could not do that. No price negotiations, no rebates. Next day delivery was not an option, although they did have a two-day delivery, which you know, wasn't terrible.

Also, although, not maybe a knockout, but -- well, on the knockout side, they didn't have -- their web site didn't have the customization capabilities that -- that we found valuable. So the custom messaging, especially, the ability to block other product.

You know, so if we adopted that program and rolled that out to our employees and said, Amazon's the place to go for office supplies, you know, they could make the assumption of, I can buy from Amazon, so they'll start buying anything and everything from Amazon -- and they sell everything.

And we have a lot of other programs in place, and

we don't want to jeopardize those programs by having that spend going in the wrong place. So that was probably one of the big factors. And I don't think they have outside sales representatives or an account management team that would travel.

Q. Is that, like, the account representatives you mentioned from Office Depot earlier?

A. Similar, yeah. We -- we want people who can come to our facilities, work with us on different events, different discovery opportunities for value, creation, things like that.

Q. Amazon didn't offer that?

A. Not based on the phone call I had, which was back, I think, early 2015.

Q. Based on those discussions, did you consider Amazon a viable option for AEP's office supplies --

A. Not at that time.

Q. -- programs?

A. Sorry. Not at that time, no.

Q. And what criteria would Amazon have to meet before AEP would consider Amazon a viable option?

A. The ones we just discussed. They need to be able to shape that -- that web environment to fit our needs. That's probably number one.

Pricing, locked in pricing. So the pricing from Amazon is what you see today is what you pay today and what

you see tomorrow, you pay tomorrow. So we'd want to talk about that. And, also, on rebates.

Q. Okay. Can you describe -- can you compare locked-in pricing that you get today with the locked-in -- or, the pricing on Amazon?

A. So today our core list pricing is locked in for one year. So we know whatever we're paying on day one, we'll pay on day 365.

With Amazon it is -- the price changes. I don't know when they change their price. It could be daily. It could be multiple times a day, I don't know. But there's no guarantee that that price would remain stable.

Q. Is pricing stability important to AEP?

A. Yes, it is.

Q. And why is that?

A. We're circling back to the original proposition, which is we want to extract the best value we can for AEP, which eventually will make its way to the ratepayers, as well.

Q. So which vendors did AEP ultimately invite to its 2015 RFP?

A. Office Depot and Staples.

Q. Did you request that they submit bids?

A. We asked them to price out a list of 1,000 SKUs.

Q. What was included in that 1,000 SKUs?

A. That was our complete core list of, approximately, 600

products and 400 other products. We also asked for samples for around 15 products.

Q. And that was for both companies?

A. Both companies.

Q. Did AEP ask for any other pricing information from the two bidders?

A. As we got into the -- toward the tail end of the negotiation process, we had a counterproposal. And in the counterproposal we asked for some rebates and other incentives.

Q. We'll take a look at that in a minute.

Did AEP ask for any non-price information from the two bidders?

A. So, yeah. We asked about program implementation and -- and what their capabilities were. We asked -- talked about the metrics, on-time delivery, order accuracy, things of that nature. They were pretty comparable in those regards.

We talked about the website; how their website operated; what was the customizable capabilities of their websites. And those were, also, comparable.

Q. They were comparable on the non-price estimates?

A. Yes.

Q. Were they comparable on the pricing aspects, as well?

A. They were close enough to keep them both in consideration.

Q. Can you provide a little more detail on that?

A. Well, they weren't identically priced. I mean, one was less expensive than the other, but the margin was minimal, and we were still working through issues with unit of measure.

So it was -- with 100 percent certainty we couldn't say it was apples to apples, but -- but they were both close enough that we both moved forward to the next step.

Q. Does Staples and Office Depot provide pricing on a SKU-by-SKU basis?

A. They did, yeah.

Q. For the 1,000 --

A. Yeah, for the 1,000 items.

Q. Did Staples and Office Depot submit any proposals for rebates during that initial period?

A. We talked about it informally, but that wasn't part of the 1,000 items.

Q. And after you received these bids or the pricing information and the non-price conversations, what happened next?

A. So the next step after we evaluated that and felt they were both still viable players, we moved on to the next step of our process, which is the counter proposal or demand process.

Q. And why does AEP engage in the counterproposal or demand process?

A. We have found and proven that we can get extra value by using that process, and that was the case with office supplies, as well.

Q. And can you -- can you provide some -- like, how does that demand process work?

A. So we go through the RFP. We ask questions and ask for pricing; they provide a response, and sometimes that response just isn't good enough.

We want more from a discount perspective or maybe a lower price or some other service, so we create a counter-proposal. And we bring the vendor in, we sit them down, and present the counterproposal to them. We did that with both Staples and Office Depot, and whatever those responses are, they come back. We do some analysis on that, along with the original pricing and the original business requirements. And we used all of that information to make a determination of -- of who's going to provide the best value for AEP.

Q. Was it your understanding that Staples and Office Depot knew they were competing against each other?

A. Yes.

Q. And how did you come to that understanding?

A. Staples told us that they knew Office Depot was our incumbent, and has been our incumbent for a while.

On the Office Depot side, I don't remember explicitly if they'd mentioned Staples, but conversationally,

it was pretty common knowledge that the only other competitor to Office Depot was Staples.

Q. Do you have a binder in front of you, Mr. O'Neill, or --

A. I do not.

Q. Okay.

MR. QUILLIAN: May I approach, Your Honor?

THE COURT: Sure.

MR. QUILLIAN: Do you have a binder of the documents?

THE COURT: I think so. Yes.

BY MR. QUILLIAN:

Q. Mr. O'Neill, if you could please turn to the tab marked PX 07365. And let me know when you've had a chance to review that document.

It'll also be shown on screens, if that's easier for you.

A. I'm familiar with this document.

Q. Have you seen it before?

A. I have.

Q. What is it?

A. This is a counterproposal list for Office Depot.

Q. Who created this?

A. The sourcing team that I was a part of created the document.

Q. Did you participate in creating the document?

A. I did.
Q. And when was it created?
A. I would say sometime before April 21st, 2015.
Q. Is it your team's regular practice to prepare documents like this?
A. It is.
Q. I don't want to go through each individual item, but I wanted to cover the main headings and go through a couple of examples.

On the first page, which is PX 07365-001, it looks like there's a heading that says, "Pricing."

Do you see that?
A. I do.
Q. Okay. And is that one of the topics that AEP discussed with Office Depot during the demand negotiation?
A. Yes, it was.
Q. Okay. And if you turn to Page 2, there's a -- there's two headings there: One, Program Implementation, and the other Program Management. Do you see those?
A. I do.
Q. And on Page 3 at the bottom right, it's not formatted exactly the same, but it says, Contract Metrics.

Do you see that?
A. I do.
Q. Are those the four primary topics you covered with

Office Depot during the demand negotiation?
A. Yes, it is.
Q. Did you cover the same topics with Staples during --
A. Yes.
Q. Did you have a negotiation with Staples, as well?
A. Yes, we did. We prepared a similar document with similar categories.
Q. So going back to the first page under the pricing heading in the second -- there are a number of items that say, Original Proposal.

Can you please describe what the Original Proposal lines mean?
A. So, the original proposal is what we presented to Office Depot in this case; that was our request, or our ask.
Q. And then there are a number of revised sections. What does the revised section mean?
A. That is the response we received from that vendor.
Q. And who put -- who completed that revised section?
A. So during that demand process, we provide this document to the vendor in a Word document. And they are the ones who type in that revised section and then send it back.
Q. So in this case it was Office Depot?
A. That's correct.
Q. Okay. In the second proposal listed, their original proposal under pricing on Page 1 says that you asked for a

blank percent annual rebate and that Office Depot agreed to that same blank percent annual rebate.

Do you see that?

A. I do.

Q. So did Office Depot ultimately agree to this percentage rebate?

A. They did.

Q. Did it -- was it included in the contract?

A. If it wasn't explicitly included in the contract, we have contract language that references this document in its entirety.

Q. So this document in its entirety was incorporated into the contract by reference?

A. Yes. That is correct.

Q. Okay. So the next line under -- the next line in the paragraph underneath that reference was -- it says, "Additionally, in order to help capture rogue spend, Office Depot will offer a blank percent year-over-year growth rebate for year one of the program."

And what does that mean to you?

A. So that was something we actually didn't even ask for. That was offered by Office Depot. And it was really an incentive to AEP to help identify and shift off-contract spend to the Office Depot program.

Q. So Office Depot offered that to AEP?

A. That is correct.
Q. And -- and, to your knowledge, why would Office Depot want to move rogue spending to the Office Depot program?
A. I think it's in the best interest of both Office Depot and AEP. We do -- we do our best to get all of our office supplies spend on contract.

They benefit because they're going to get more volume from us, in addition to the 2.1 they get today. So they win by getting increased volume, and we win because more of our spend is going through a program that has greater discounts and rebates.

Q. If you turn to Page 3 under the contract -- contract metrics heading, the original proposal and the agreement read that Office Depot -- well, the revised section reads that Office Depot agrees to recommend and implement strategies to maintain a core/non-core ratio of between blank and blank.

Do you see that?
A. I do.
Q. All right. And what is the core/non-core ratio referenced here?
A. That's just a ratio of spend between items on the core list and items that are not on the core list, and we want to maintain a minimum ratio of that spend profile.
Q. Why?

A. It's to our benefit to get as much spend as we can on that core list. That's where we've driven the most value from the negotiations.

So the more spend that's on the non-core list, the higher price we're paying and the less value we've generated for AEP and the ratepayers.

Q. And does AEP have any goals relating to the core/non-core ratio?

A. Yes. So we have two ratios listed; one is a minimum and one is a -- more of a target goal.

Q. So you can put that, your binder to the side for just a second. We'll be coming back to it shortly.

What was the result of the demand negotiation process?

A. So both vendors came back with their own responses. One was more favorable than the other, in this case Office Depot.

So that, in consideration with the other components of our sourcing event, we awarded the contract to Office Depot.

Q. How was the Office Depot proposal more favorable?

A. It was just a better value proposition for AEP, both financially and non-financially.

Q. Can you give me any examples of how it was better financially or non-financially?

A. Better rebates, better rebate structure, better price

protection, and a little bit more robust on the support services.

Q. And how did the pricing terms of the new contract with Office Depot compare to the prior contract with Office Depot?

A. I think the pricing was significantly better.

Q. And what makes you say that?

A. If you just look at the line item pricing on the products we were buying before we started the event and you look at the same line item pricing after, there was a pretty big difference.

Q. And what caused that improvement in pricing terms, in your opinion?

A. In my opinion, the direct result of introducing competition. This was the first time that we took office supplies and actually did a full sourcing event in quite some time, and I -- I think the results show that.

Q. Now, prior to conducting the full sourcing event, how did -- did AEP have contracts for office supplies?

A. We did.

Q. And how long were those typically, in duration?

A. Usually three years.

Q. And so how did AEP go from one contract to the next without a sourcing event?

A. Usually what would happen is we had a contract with,

say, Corporate Express. They were acquired by Bosie Cascade. So then we had to open the contract to change names and language. Bosie Cascade was acquired by Office Max, so then we would have to open up the contract. And anytime we open up the contract, we're going to find a opportunity to negotiate. And then Office Max was being acquired by Office Depot.

So we were getting ready to go to a sourcing event and Office Depot asked us to delay that, so that they can focus on their merger. And so we did a one year extension. And then in October 2014, after the merger was complete, we started the sourcing event, to find out Staples wanted to merge with Office Depot.

Q. And how did conducting the sourcing event compare to renegotiating contracts?

A. So I was not involved directly with the renegotiations of prior contracts, that was before my role, current role. But typically it was conversational. The office supply vendor and the program manager would sit down together and really just discuss what can you do for me? They would give us a couple courtesy points on discount and then we would move on from there.

Q. Which, would you say, would result in more savings to AEP?

A. We definitely got more savings out of the competitive

bid process, no question.
Q. In terms of your contracts, do they have a termination clause in them?
A. Most of our contracts have a standard termination clause, 30 days notice, terminate for any reason.
Q. Does your office supplies contract have that in it, with Office Depot?
A. Yes, it does.
Q. Who can terminate with notice?
A. It's a mutual agreement, so either party can terminate without cause with a 30-day notice.
Q. So I would like to take a look at a couple more documents. If you turn in your tab to PX 07136, it's the third tab.
A. Okay.
Q. Let me know when you've had a chance to take a look.
A. Yes, I'm familiar with this document.
Q. Have you seen it before?
A. Yes, I have.
Q. And what is it?
A. This is a very high level summary of the office supplies sourcing event that I presented to our executive committee on April 28th, 2015.
Q. Is executive committee -- is that what EC stands for in the heading?

A. That's correct.
Q. Who created this document?
A. I did.
Q. Around April 28, 2015?
A. Pretty sure, yeah.
Q. Is it your regular practice to prepare documents like this?
A. No. This is the first time I did this type of document.
Q. What about, is it your regular practice to prepare notes for meetings?
A. Yeah. I do that quite a bit, actually.
Q. How frequently do you present to the executive committee?
A. This was my first.
Q. And why did you make this presentation?
A. A lot of it was just timing. So our chief procurement officer meets with that executive committee on a quarterly basis. The agenda is extensive, but one of the agenda items is typically to share a success story with what procurement has done recently. And it just so happened that the timing of the executive committee meeting and where we were in the sourcing process was well-aligned for us to come in and tell the story.
Q. Was that because it was a good story?
A. Yes, it was.

Q. If you look -- there's only one page to the document. But at the top, above the black line, there is -- the scope reads that -- Develop a program to reduce office supply costs and consumption through the competitive bidding process and supplier collaboration. Do you see that?
A. I do.
Q. And would that accurately describe the scope of the office supplies RFP?
A. That's a high level description. That's accurate, yes.
Q. So AEP wanted to reduce its costs?
A. We always want to reduce our costs. That's pretty much my job.
Q. And on the results section, it reads: The recently awarded agreement delivers direct cost reduction and outlines a partnership program that involve marketing, training, enduser education and performance metrics. Do you see that?
A. Yes, I do.
Q. Does that reflect the results of the RFP process?
A. At a high level it does.
Q. So AEP was able to reduce its costs?
A. Yes.
Q. And the next section reads: Potential 2016 cost reductions. Direct cost O and M reduction in 2016 -- oh, I'm sorry. The next section reads: Potential 2016 cost

reductions. Direct costs O and M reduction in 2016 is estimated at blank on an annual spend of blank. Do you see that?

A. Yes, I do.

Q. What is O and M?

A. Operations and maintenance. It's how we classify office supply expenditures, as opposed to a capital improvement.

Q. How would you characterize that amount of savings?

A. Significant.

Q. And why?

A. We really entered into the sourcing process thinking we were going to get another percent, or maybe 2 percent savings, and we got much more than that as a result of the competitive bid process. So we were very happy with the results of our efforts.

Q. In the second paragraph under the solid line there it reads: In an ever-collapsing office supply market, we have essentially been using the same office supply vendor for 15-plus years and we are essentially down to two viable vendors. What does that mean to you?

A. Pretty much what it says, is we're in a marketplace now where competition is, for us, Office Depot and Staples, and that's pretty much it. Any option outside of that is just not a good option for us.

Q. Why is any option outside of that not a good option?

A. It doesn't fit our strategy. We believe it's going to increase our costs. It's going to increase the administrative complexity of managing that spend without getting any value back for the editing, increased costs.
Q. You mentioned Staples and Office Depot, are they the two viable vendors referenced here?
A. Yes, they are.
Q. If you could turn to PX 07366, please. Second to last tab. Let me know when you've had a chance to take a look at that.
A. Yes, I'm familiar.
Q. You've seen this document before?
A. Yes, I have.
Q. And what is it?
A. This is an executive summary of the sourcing event.
Q. Who created it?
A. I did.
Q. When did you create it?
A. On Monday, May 11th, 2015.
Q. Is it your regular practice to prepare documents like this?
A. Yes, it is. I do this for every sourcing event I'm a part of.
Q. In the second paragraph, the second to last line that starts with: It was decided. Do you see that?

A. Yes.
Q. Okay. It reads: It was decided to issue an RFP for the complete office supply core list to the two suppliers capable of serving our needs, Staples and Office Depot. Do you see that?
A. Yes, I do.
Q. What does that mean to you?
A. Pretty much we felt there was only two players that can meet our needs, Office Depot and Staples, and those are the two that were part of the sourcing event process.
Q. So what does this table on this page reflect to you?
A. So this is just -- I created this document for my own use. I do a lot of sourcing events throughout the course of a year. In this case, this is a three-year agreement and two-and-a-half years from now I'm going to pull my file out and look at this and this will help refresh my memory of what we did. The table is really just a breakdown representing the different areas in which we were able to garner savings from this process.
Q. What does the total savings for office supplies and paper row represent?
A. It represents a really big number.
Q. And is that annual savings?
A. In general, it's annual savings. There are a couple line items that were a one-time only, but for the most part

it's annual.
Q. Which ones were one-time only?
A. The 10 percent off all orders for 90 days, so that was a one-time event.
Q. Anything else?
A. No.
Q. And the number here under the total savings for office supplies and paper, are you on track to hit that number for 2016?
A. In general, we are, yes.
Q. So that is reflective of the savings you expect to get this year?
A. Yes, it is.
Q. Who is AEP's next best option for office supplies after Office Depot?
A. Staples.
Q. You can put the binder to the side.
A. Okay.
Q. And why is Staples the next best option?
A. Just based on our information from our sourcing event, they were very competitive with Office Depot. And, you know, the difference between the two at the end of the day was not significant. So even with Staples, we would have done okay, just not quite as well.
Q. And after Office Depot and Staples, what's the -- what's

the next best option after that?

A. Then we're in trouble. We don't have a good -- I don't think we have a good option after that. We would have to look at suboptimal models, regional or local models, which we've already proven is not best for AEP.

MR. QUILLIAN: At this time I have no further questions, Your Honor.

THE COURT: All right. It's almost 5:00 o'clock. How long will your cross-examination take?

MS. SULLIVAN: Probably like an hour, Your Honor.

THE COURT: So, we have the Amazon issue. Here's my thoughts about resolving the Amazon issue. I know there are replies, and I did get seven or so. Is that right?

MS. SULLIVAN: Yes, Your Honor.

THE COURT: I think that makes more sense, to try and resolve that tomorrow morning at 9:00 o'clock. You say about an hour, hour and a half or so?

MS. SULLIVAN: Yes, Your Honor.

THE COURT: Excuse me one second.

(Pause.)

THE COURT: Why don't we do this: It's been a fairly productive day. How would you feel about starting and ending at 6:00 o'clock, with the understanding that you can proceed tomorrow if we don't finish before 6:00?

MS. SULLIVAN: I'll try to finish today.

THE COURT: I'm not trying to make you accelerate, but I would like to use the time.

MS. SULLIVAN: That's fine. And, Your Honor, we have copies of the exhibits for counsel and the witness, if I may.

THE COURT: Again, I'm not trying to get you to accelerate it. I'll give you whatever time you need to finish up tomorrow morning.

MS. SULLIVAN: I appreciate that, Your Honor. Thank you, Your Honor.

CROSS-EXAMINATION

BY MS. SULLIVAN:

Q. Mr. O'Neill, we haven't met. I'm Diane Sullivan and I represent the folks at Staples and I have a couple of questions for you. I'll try to get you out of here.

A. Okay.

THE COURT: Don't put any undue pressure. I'm just trying to use the time, that's all. But don't -- I don't want you to depart from your whatever cross-examination you've prepared. So don't interpret it that way.

MS. SULLIVAN: I understand, Your Honor. Thank you, and I appreciate it.

BY MS. SULLIVAN:

Q. Mr. O'Neill, you mentioned that AEP is one of the largest utilities companies in America, right?

A. I don't know if I said that or not, but that's probably an accurate statement.
Q. And, well, that's true, that AEP is one of the largest utility companies in America?
A. Let's go with that.
Q. And you acknowledge that it is a Fortune 200 company?
A. That is correct.
Q. It is a really big company, $32 billion company?
A. In my opinion, that is correct.
Q. It's four or five times bigger than Staples or Office Depot?
A. I don't know. I don't know what the market cap is for either of those companies.
Q. Fair enough. And AEP is in the business of providing power, electricity to customers?
A. That is correct.
Q. And one thing, Mr. O'Neill, I think we can agree upon is that no matter what happens here, if Staples merges with Office Depot, it's not going to impact AEP's ability to deliver electricity to its customers?
A. That is a fair statement.
Q. The lights will still go on?
A. I hope so.
Q. Even if Staples takes over or merges with Office Depot, right?

A. I would hope so, yes.
Q. In fact, AEP does not view this proposed merger as posing any significant risk that could impact the company or its customers, true?
A. At a corporate level, I think that's a fair statement.
Q. And you are here today testifying for the government, but the truth is that AEP's corporate position is that this merger would have a low impact on the company?
A. Yes, this merger would not impact our ability to create or deliver electricity.
Q. And AEP does not consider office products to be mission critical for the company?
A. Again, at a corporate level, I don't think they will consider it mission critical to generate power.
Q. And you had mentioned, Mr. O'Neill, that your spend on office products at AEP is about 2.1 million annually?
A. It was on average 2.1 million, yes.
Q. And that's 1,000th of 1 percent of your corporate spend, right?
A. I think that math is correct, yes.
Q. So when we're talking about savings to your ratepayers, we're not talking about any impact at all?
A. I would disagree with that statement.
Q. But the truth is that your corporate spend on office supplies is 1,000th of 1 percent of AEP's corporate spend?

A. Yes.
Q. And AEP's contract with Office Depot includes office supplies, right?
A. That is what the contract is for.
Q. And you had mentioned, sir, you were good enough to mention that Office Depot has been your primary supplier for more than a decade, Office Depot and it's legacy companies?
A. Including legacy companies, that would be correct.
Q. And you -- the new contract is for three years?
A. Correct.
Q. And we can pull it out, but many of the office product prices are locked in for three years, fixed?
A. The core list, I believe, is locked in for one year.
Q. We'll look at that in a few minutes.
A. Okay.
Q. But I want to talk a little bit about the office products market, if I could.
A. Okay.
Q. And you were good enough to give the FTC a declaration in this case. Do you remember that, Mr. O'Neill?
A. I do.
Q. Incidentally, sir, you mentioned that there were other people who actually were the ones who investigated potential bidders or suppliers in connection with your recent RFP, right?

A. Yes, that was a team effort.
Q. But you weren't the guy or the gal who was on the ground doing that investigation?
A. Not in every aspect, no.
Q. Do you know -- and the folks who actually evaluated potential bidders or suppliers, they didn't come here today to speak on behalf of AEP, right?
A. That is correct.
Q. And I want to show, if I could, Your Honor -- and, Mr. Coates, if I could have the Elmo?
THE COURTROOM DEPUTY: Sure.
BY MS. SULLIVAN:
Q. I'm sorry, Mr. O'Neill. If you look at tab one of the binder here.
A. This binder?
Q. Yeah. Thank you.
A. Okay.
Q. And I would like to show you, with the Court's permission, your declaration that you gave to the FTC in this case, December 2nd, 2015, right?
A. Yes.
Q. Okay. And as I understand it, the FTC called your company and said, Can you help us? Can you talk to us and can you give us an affidavit in connection with our efforts to oppose the merger, essentially?

A. In general, that's true.
Q. Incidentally, did you work with the FTC to prepare your testimony today?
A. What do you mean?
Q. With the lawyers, did you meet with them, did you talk to them about the questions, did you talk to them on the phone, did they give you questions?
A. We did converse, yes.
Q. And about your testimony?
A. Yes.
Q. About the questions they would ask you?
A. In general, yes.
Q. And did, then, they discuss the answers they would like you to give?
A. No.
Q. And did they give you any documents?
A. I have seen this binder, yes.
Q. Did they give you any other documents?
A. Not outside of this binder.
THE COURT: You said "this binder," you're referring -- which one are you referring to?
MS. SULLIVAN: The one from the FTC (indicating).
BY MS. SULLIVAN:
Q. And, Mr. O'Neill, if we could take a look at your declaration -- and I would like to take a look at paragraph

4, if I could. And you talk about your spend for, quote, unquote, office products in your paragraph 4. Do you see that?

A. I do.

Q. And then you define office products in four different categories, right?

A. Yes.

Q. And you talk about office products including office furniture, technology items, jan san, which is janitorial sanitation items, and I think you also said that includes break room, like coffee, et cetera?

A. Typically speaking, yeah.

Q. And then you talk about consumable office supplies, right? Do you see that?

A. Yes.

Q. And you say -- and consumable office supplies includes copy paper and ink and toner and some other general office supplies, paperclips, tape, folders, et cetera, right?

A. Correct.

Q. So you include, in consumable office supplies, ink and toner, correct, sir?

A. Yes, I did.

Q. And the truth is, Mr. O'Neill, that in your contract with Office Depot all of these categories of office products are included, right?

A. Yes.
Q. And your RFP to bid for the contract included asking for information about all of the pricing, et cetera, for all of these categories of office products?
A. I would say no, it does not.
Q. Well, you signed a contract with Office Depot to include all of these office products?
A. We signed a contract for a list of 600 core products, along with some other terms and conditions. Our RFQ included 1,000 products, none of which were office furniture.
Q. Okay. So -- and we're going to take a look at precisely what you buy from Office Depot, hopefully today. But your spend with Office Depot is approximately 2.1 million? It was in 2014?
A. Correct.
Q. And that included, according to your affidavit, these category of products, right?
A. It includes those general four categories.
Q. So your spend, if I could just put up this, and hope people can read my chicken scratch, but -- okay. So when AEP signed its contract with Office Depot, it had a bunch of products included in that contract where you got specific pricing?
A. That is correct.

Q. And you categorize them as office products in your declaration, right?
A. Yes.
Q. You looked at it, right? Office products?
A. Um-hum.
Q. And so office products, under your contract with Office Depot, included these things: Consumable office supplies, office furniture, according to you, technology items, and break room, jan san, that's in the contract, right?
A. I don't think those four categories are specifically mentioned in the contract, but I would say they are included or part of the contract.
Q. In other words, they are products that have specific pricing under the contract?
A. No, they are not.
Q. Okay. We'll take --
A. They did not have specific pricing for office furniture under that contract.
Q. Okay. So when you talk about consumable office supplies, Mr. O'Neill, you told us that you include ink and toner in that category, right?
A. That's correct.
Q. And you mentioned that it's important for AEP to have a single office supply vendor. Do you remember that testimony?
A. Yes.

Q. But in fact, you disaggregate or separate your spend for ink and toner. You buy some from Office Depot and some from Xerox, correct?
A. That is correct.
Q. And you also, as part of your contract with Office Depot, include technology items, and that's part of the spend, right?
A. That is correct.
Q. And you also include -- and, actually, you've identified as consumable office supplies break room, stuff like coffee, tea, et cetera, right?
A. Correct.
Q. And you also include, Mr. O'Neill, in your definition of consumable office supplies jan san products, Purell, Bounty paper towels and things like that?
A. Correct.
Q. And those are all part of your contract with Office Depot?
A. Yes, they are.
Q. And other office supply products that are in your contract with Office Depot are technology -- so we put break room and jan san up there, I guess -- are technology, and at least in your declaration you talk about office furniture, right?
A. Yes, I say that's a product category available in office supplies.

Q. And -- okay. Thank you.

And I should have said, in addition to these things, Mr. -- I should have asked you, I'm sorry, in addition to ink and toner, break room and jan san being in your definition of consumable office supplies, you would also put pens, papers, folders, things like that?

A. Yes. Correct.

MR. QUILLIAN: Your Honor, I'm concerned that this demonstrative mischaracterizes the testimony in the declaration. Consumable office supplies is listed separately from these other categories.

THE COURT: Well, you'll get a chance to redirect, Counsel, if there's some confusion in the record.

BY MS. SULLIVAN:

Q. Well, Mr. O'Neill, to kind of maybe clear this up, you gave a deposition in this case, right?

A. Yes.

Q. And you swore that these things were all part of your definition of consumable office supplies, correct?

A. Correct.

Q. Same way you're testifying today?

A. Yes.

Q. Okay. Okay. I would like to, if I could, Mr. O'Neill, take a look at tab -- do you have the black binder in front of you?

A. I do not.
Q. I'm sorry.
Your Honor, if may?
THE COURT: Sure, absolutely. Let me just say, any attorney may approach any witness without asking permission to do so.
MS. SULLIVAN: Thank you, Your Honor.
THE WITNESS: Done with that one?
MS. SULLIVAN: Yes. And there's tabs.
THE WITNESS: Okay. This is much thicker.
BY MS. SULLIVAN:
Q. So, if you could be good enough, Mr. O'Neill, to turn to page -- I'm sorry, to tab five of the black binder, and that is what's been marked as Defense Exhibit 324. Do you have it, sir?
A. I'm sorry?
Q. Do you have the document?
A. Yes, I do.
Q. Thanks for finding it. And looking at this -- let me set this down. If I could, Mr. Coates.
Did I do something to break it?
THE COURTROOM DEPUTY: No.
BY MS. SULLIVAN:
Q. And if we look, this is a document that AEP generated in --

THE COURT: I'm sorry, is this tab 5?

MS. SULLIVAN: Yes. I'm sorry, Your Honor. It's tab 5 of the Court's binder.

THE COURT: I have it. All right.

BY MS. SULLIVAN:

Q. Defense Exhibit 324. And is this an e-mail dated November 13th, 2015 from somebody at AEP to the FTC, copy to you, right, Mr. O'Neill?

A. That is correct.

Q. And the subject matter is the FTC's document request, right?

A. That is correct.

Q. And in connection with the FTC's investigation in this case, they asked you for some documents?

A. Yes. Correct.

Q. And this is -- was part of your response?

A. Yes, it is.

Q. And this is the spend report from AEP in terms of how much they spent with Office Max, Office Depot, right?

A. Yes, it is.

Q. And if we turn to the second page --

THE COURT: Counsel, you know what, I'm sorry to interrupt you, but I'm sensitive to the fact, I'm told by the technology people, Mr. Cramer's office, that if a witness or an attorney is away from the microphone, you're

probably not going to be heard in the overflow room. So we don't have to do it today, we have these lavalieres, if I'm pronouncing them correctly.

MS. SULLIVAN: I'll make sure I have them tomorrow.

THE COURT: I think we have them, don't we?

THE COURTROOM DEPUTY: Yes.

THE COURT: I ask you to wear that so people understand what's going on.

MS. SULLIVAN: I apologize.

THE COURT: No, wasn't your fault.

BY MS. SULLIVAN:

Q. So you had somebody at AEP run the numbers about how much spend over the last -- it looks like three years, from 2012 to 2014, how much you spent --

THE COURT: You know what, I'm never going to make an attorney stand at that lectern either. I used to hate it when I practiced law. But I understand with the technology, you prefer to stand there.

MS. SULLIVAN: That's good to know, Your Honor. How about using easels and things?

THE COURT: Counsel, you know what, I think the attorney who doesn't use all that is losing the benefit of a powerful tool.

MS. SULLIVAN: I appreciate that.

THE COURT: Sure.

BY MS. SULLIVAN:

Q. And so AEP, in response to the FTC's request, broke down its spend with Office Depot for office supplies over the last three years, correct?

A. Correct.

Q. And you actually brought -- broke it down by categories, right?

A. Yes, we did.

Q. And you have paper products, stationery, filing, adhesives, labels, and you have furniture and accessories. Do you see that?

A. Yes, I do.

Q. So AEP has -- and in fact, the furniture category is growing, right? It looks like based on this data it went from 5 percent in 2012 to 13 percent in 2014. Do you see that?

A. I do see that.

Q. And you -- and AEP, this is part of the Office Depot-AEP contract, this is the list of things that the company bought consistent with its relationship with Office Depot?

A. Yes, that represents what was purchased in those years.

Q. Pursuant to the contract?

A. I don't know if it was pursuant to a contract, but that's what we purchased.

Q. And you have -- you also purchased office and desk

accessories, correct?
A. That is correct.
Q. And mail room and janitorial supplies, correct?
A. Yes.
Q. It looks like -- that the paper and stationery buys went down over the years, while the furniture and some of these other things went up, right? Office and desk accessories?
A. It would appear so, yes.
Q. And AEP, pursuant to its contract with Office Depot, gets preferred pricing for these items, as compared to what you would pay at retail?
A. We get preferred pricing for some items within those categories, but not all items in those categories.
Q. And so -- and you don't have ink and toner -- is ink and toner included in this?
A. I don't think we have that broken out separately, but it's in there.
Q. So it's in one of these things?
A. Yeah, I'm not sure which one, though.
Q. Fair enough. But the fact remains that AEP buys or bought over the last three years all of these items supplied by Office Depot?
A. That's correct.
Q. And it's about 12 different categories of products, right?
A. I didn't count, but that looks reasonable.

Q. And AEP -- now, office products are not the only, as you made clear, not the only products that AEP procures for the company to operate, right?
A. Correct.
Q. And, in fact, you have over 500 vendors and suppliers?
A. I haven't done a count lately, but we have quite a few.
Q. Yeah. You have a manual that we'll talk about. You guys have -- fair to say that AEP is a pretty sophisticated buyer of supplies?
A. That's your opinion, yes.
Q. And would you agree?
A. I think we're pretty good at it.
Q. In fact, you have about 125 procurement people who work at getting the company the best prices and soliciting bids and evaluating from your wide variety of vendors?
A. That is an approximate number, yes.
Q. And 125 is kind of like a small army of procurement people?
A. It could be referenced that way, I suppose.
Q. And you have a number of tools that AEP uses to make sure they get the best prices from all their vendors?
A. I'm not sure what your definition of a "tool" is, but I'll say okay to that.
Q. Okay. And, well, let's talk about some of the things that you -- you guys do, you gals, the gals that work for

you to get the best prices. One thing you have is that AEP uses procurement consultants?

A. Can you define that?

Q. Sure. Well, you mentioned you've used McKinsey, you've used TMG, and you consult, what do we do? How do we get the best prices? How can we do the best job for our business, right?

A. Yes, that's correct.

Q. And in fact -- and you've acknowledged that AEP is among the most sophisticated buyers of products, like office supplies, for business, right?

A. I did not say that, no.

Q. AEP is a very sophisticated buyer of products, like office supplies, for its businesses?

A. I think you said that, not me.

Q. Can we -- Mr. O'Neill, we have a deposition here, and it is tab 2. And I want to point you to page 67.

And, George, if we could, with the Court's permission, play clip 15.

A. I'm sorry, what page?

Q. It's page 67, line 25. Clip 15.

Do we have technical difficulties?

A. What line are you on? Page 67?

Q. Yes. Let me just do it the old fashioned way. Page 67, line 25. "Question: Would you consider AEP to be a

sophisticated purchaser of office supplies?"

"Answer: I would."

A. Looks like I do.

Q. And talking about consultants, AEP used an outside consultant called TMG to help them put together a sourcing procurement manual, right?

A. That is correct.

Q. And it's about 155 pages of how to get the best prices from your vendor, among other things, right?

A. That sounds about right, yes.

Q. And I want to just talk about -- and you actually were one of the 16 category managers that provided input into the methodology here, right?

A. That's correct.

Q. What's your category?

A. My category is real estate and workplace services, environmental, and safety.

Q. You're not the office supplies guy?

A. That's under the workplace services umbrella, so that's all facility management.

Q. Got it. And this manual put together by you and your consultants has a very sophisticated -- if I could show -- this is Defense Exhibit 22, show on Elmo. And, Mr. O'Neill, this is tab 3 in your binder. I apologize, sir. Showing Defense Exhibit 22 on page 4.

Tab 3, Your Honor, of the black binder.

And it lays out a pretty extensive nine-step process in terms of how to source and deal with vendors, right?

A. This appears to be a draft version of that process, yes.

Q. And there's -- this is what you guys produced to us. Is this not the final?

A. No, this is not.

Q. Okay. But I take it you produce -- what you produced is pretty close to the final?

A. Close enough.

Q. And it goes through a whole bunch of things that AEP and their procurement experts should do when negotiating with vendors, right?

A. Yes, it does.

Q. And one of the things it says is, in sourcing information is power, right?

A. I'm sorry, where are you referring to?

Q. I'm sorry. I'm going to page 108. Talking about information when you're dealing with your suppliers, information is power, right?

A. That is what it says, yes.

Q. And your successes determine -- is based on how well your team is prepared, right?

A. What line are you on?

Q. I'm sorry.
A. I'm sorry, I'm just --
Q. This line (indicating).
A. Yes, it does.
Q. And the manual also goes on to say that prior to negotiations -- this is on page -- next page. Prior to negotiations provide the minimum information required to suppliers, right?
A. Yes.
Q. Don't tell them anything?
A. That's what it says.
Q. Okay. Because information is power and don't tell them anything.

You also -- it also talks about how to schedule supplier negotiations strategically, right? Like who you bring in first and things like that?
A. That's what it says, yes.
Q. And it says things like never disagree -- you probably remember, you wrote part of it, right?
A. I was part of a team, yes.
Q. Never disagree with a team member in front of the vendor, right? Do you remember that?
A. I think that was stated somewhere, yes.
Q. And assess body language?
A. That was in there somewhere, as well.

Q. And it talks about use of various tools to get the best prices, including reverse auctions, RFPs, and things like that, right?
A. Correct.
Q. And they say that reverse auctions can achieve rapid downward price pressure. Do you remember that?
A. I do.
Q. And it's a really good thing to do when you've got commodity products?
A. Correct.
Q. All right. Because, quote, it exploits losing the business or a prospective -- it exploits an incumbent's concern about losing the business or a prospective supplier's hunger for the new business, right?
A. I'm sure it says that somewhere.
Q. And the manual also says, on page 89, Make sure you involve the lawyers in drafting the contract, right?
A. Let me read that one real quick.
(Pause.)
Q. Involve the legal department?
A. Yes, it does.
Q. And, in fact, and we can look at the manual in more detail, your policy is that AEP's contracts should be the controlling one; in other words, use your draft?
A. That is our preferred approach, yes.

Q. And in addition to helping with this -- and your -- and your whole team was trained on this manual by TMG, right?
A. That is correct.
Q. About how to get better prices and assess vendors, et cetera, right?
A. Correct.
Q. And TMG also came in to give in-house training on the same subject, right?
A. That is correct.
Q. And if I could find it here -- and, in fact, less than a year ago your 125 procurement employees went through a ten-day training program with this outside consultant, TMG, right?
A. I'm not exactly sure on the timeframe, but that sounds about right.
Q. Okay. And TMG created a document, and we have it at tab 4. Mr. O'Neill, if you could go to it.

And, Your Honor, it's at tab 4. Defense Exhibit 25.

And this was one of the training tools, you told us, Mr. O'Neill, that TMG used in the training session when it came last year, in 2014, to your group, right?
A. That's correct.
Q. And this -- in this exercise, TMG assessed the impact on the company of purchasing office supplies, right?
A. No. That's not correct.

Q. Okay. Let's take a look at it.

So I think you said your new motto is that We're passionate about our pens?

A. "People are passionate about their pens."

Q. People are passionate. Fair enough.

But in the TMG exercise it says a pen is a pen is a pen, is a commodity category, the exception is the brat user, correct?

A. That's what it says, yes.

Q. And "A pen is a pen," that's what it says?

A. That's what it says.

Q. And it says here that -- does the total -- so -- so this tool involves ink, toner, pens, office supplies?

A. This tool really didn't involve any of that.

This is a training exercise to teach people how to understand and interpret Porter's Five Forces. Because it was a training exercise, we didn't talk through the specifics of office supply categories or specific products.

Q. Yeah. But the products that either your company or the consultants put in this tool were office supplies, ink and toner, and pens, right?

A. Yeah. That's the general example.

Q. Yeah. And what they wanted to do is assess or go through with your trainees the business impact of office supplies, the buying of office supplies, right?

A. They wanted to teach someone how to have the ability to assess business impact, correct.
Q. Yeah. And so when looking at the business impact of buying office supplies, one of the questions asked is: Does total purchase cost represent a major part of the expense base? Are anticipated savings significant? And the answer is, for office supplies, business impact, as you've acknowledged, low?
A. Well, so keep in mind, this is a training exercise. This was not used in an actual sourcing event.
If you noticed, all of these high-low balls are to the left. That's because we never moved them because it was a training exercise.
Q. Yeah. But going back to my question, Mr. O'Neill, you've acknowledged that the business impact of office supplies from AEP's standpoint is low?
A. It is. I don't want you to mischaracterize what this is saying.
Q. And this also goes on to say that the overall spend -- now, this comes from AEP, right, not your consultant -- the overall spend represents one-1000th of a percent of AEP revenue, correct?
A. I think that's what it says, yes.
Q. Okay. And then it asks: Are customers willing to pay?
In other words, pay more for these products? How

does it impact perceived value?

And, again, low. A pen is a pen, right? Commodity category.

A. That's what it says in this training document, yes.

Q. And also asked: Does the category differentiate the end product in an important way?

And, again, this tool used, if you're training your people, commodity item.

If the pen runs out of ink, you just pick up another one, right? Not mission critical?

A. Yep. So this training document that we didn't modify or control, that's what it says.

Q. Well, you didn't stand up and say: No, that's wrong, right?

Your people sat through the training exercise and you were trained on it and you put some of this information in the manual, true?

A. True. But the -- it's irrelevant. It was a training event. It wasn't used to make a decision.

Q. And it was used to train your procurement people in how to make decisions?

A. It was used in an example for that, yes.

Q. And going on into the TMG exercise, it asks about whether access to leading technology is critical. And for the office supply category, again, low, as long as the

laptop portal is functional; again, low business impact, according to this tool?

A. And, once again, since this was a training document and we didn't move the high-low balls, that is correct, what you're looking at.

Q. And we have supply -- and, again, failure or shortage of all supplies, again low.

We have cabinets strategically located under backup.

And overall business impact, you type it in here. Commodity based, category impact low, right?

A. And, again -- once again, this training document, that's what it says.

Q. But sitting here, representing AEP, the corporation recognizes that this is a low impact category in terms of the business.

You've already acknowledged that, right, sir?

A. I believe I have.

Q. And talking about your contracts, Mr. O'Neill, with your vendors, they are nonexclusive, generally?

A. It depends on the category and the vendor. Sometimes they are; sometimes they are not.

Q. Fair enough. Your office supply contracts have been nonexclusive?

A. That's correct, yes.

Q. In other words, your contract with Office Depot permits AEP to by pens, papers, janitorial supplies, furniture, break room supplies from other vendors, as well?
A. Yes. We would not be violating the contract, if we did that.
Q. If you find lower prices, you or your people can go buy it somewhere else?
A. That's correct. We wouldn't violate the contract if we did that.
Q. And I think that you said that you guys try to monitor off-contract spend, right?
A. We keep an eye on it. We -- I wouldn't call it "monitoring."
Q. Okay. Yeah. You have a random audit process where office supplies is included once a year, if that, right?
A. Once or twice a year, typically.
Q. So it's not like you're auditing off-contract spend every month for office supplies?
A. That's a fair statement.
Q. And I want to take a look -- and, you know, sir, that AEP has bought office supplies from Amazon, for example?
A. Yes.
Q. And you know that they have bought office supplies from Walmart and Target, for example?
A. You can make that assumption, yes.

Q. Well, you know they have, right?
A. I have not seen the data to support that, no.
Q. Well, let's take a look at tab 6 of your binder, Defense Exhibit 19. And, again, Mr. O'Neill, so I understand it, this was produced in response to a request from the FTC about your office supply spend, right?
A. I don't think it was produced for that reason. This looks more of a -- I don't want to say "generic," but it was probably produced for internal reasons.
Q. Okay. Fair enough. So, and if we look at the document, it's titled the category office supplies, right?
A. Yes.
Q. And it says -- let's take a look, input. Supply names, vendor codes, right?
A. Yes.
Q. And so somebody ran a search for office supplies and who your vendors are, right?
A. Not really. So this report is -- it looks like we're requesting to understand what our spend was in office supplies.

And our database is -- is pretty large, so we usually have to provide keywords to help expedite the search process. So, in this case, it looks like keywords were vendor names.

Q. Oh, so if you didn't put the vendor name in, the spend

wouldn't come up?
A. That's correct.
Q. Oh, I see. Oh, fair enough.
And so it looks like the vendor names that were put in were Office Max, Amazon -- oops. I did something bad here.
Office Max, Amazon, Staples, Office Depot, Walmart and Target, right?
A. Yes.
Q. And it says: We want to know if other vendors that sold us office supplies that are not listed," right?
A. Correct.
Q. Do you see that?
But apparently -- or at least we don't have the documents where we put the names of the other vendors that also sold office supplies to AEP, we don't have that category?
A. I don't see it, no.
Q. We just have Amazon, Staples, Walmart, Target?
A. Those appear to be the names that were provided, yes.
Q. And you also, if we look at tab 7, and that's Defense Exhibit 14, and, Mr. O'Neill, was that produced for the FTC? Or is this another internal?
A. This was produced for somebody in this room. I thought it was at the request of you or Office Depot.

Q. Okay. Fair enough. And this breaks down office supplies spend for select vendors from 2012 through 2015, right?
A. That's the title of the report, yes.
Q. And so it only includes the vendors that were selected that were searched for, right?
A. Yes. You provided the names.
Q. And it includes these years (indicating), right?
A. Yes.
Q. And it talks about office supply spend?
A. That was the title I put in the report, yes.
Q. And it talks about office supply spend for Amazon and it only goes -- it's only partial for 2015, right?
A. Correct.
Q. And in 2014 it lists $505,000 for Amazon, right?
A. That is correct.
Q. That would be a bigger number than the number you said was a big savings in your new contract with Office Depot, right?
A. I don't know because I didn't reference the number in the contract.
Q. Yeah, but we just -- when the FTC counsel was asking you questions, you were saying I went to the -- I gave a presentation to the executive board that we were saving four-hundred-and-fifty-some-odd-thousand-dollars on a

contract, isn't that great? But actually you're spending more with Amazon off contract here than you're saving, right?

A. So, one, I didn't reference the number of savings in that agreement because it was redacted. Thank you for mentioning it. The 505,000 in 2014 was spent with a company called Amazon.com. What that spend reflects I don't know because I don't have tier or level three data available from Amazon.

Q. So, but at least when you went to look for office supplies spend for 2014, in your official response to a subpoena request, you said we had 505,000 office supplies spend from Amazon, right?

A. I said in response to a request for office supply litigation I was asked to provide spend for these companies. I was not asked to clarify what that spend was.

Q. And you listed 505,000 from Amazon for 2014?

A. That's correct.

Q. That would be -- if you have $2.1 million in spend, as you set forth in your declaration, that's about 20 percent?

A. Ball park, yes.

Q. So 20 percent off-contract spends with Amazon?

A. I have 20 percent spend, but I don't know if it's off contract because I don't know what that spend represents.

Q. Well, you say here it's office supplies, right?

A. That's in supply to an office supplies litigation request, yes.
Q. You have off-contract spend with Staples as well?
A. Correct.
Q. And your spend with Amazon looks like it was growing every year?
A. That's what it would appear, yes.
Q. That's even before the launch of Amazon Business, right?
A. I don't know when Amazon Business launched, so I don't know.
Q. Okay. If you accept my representation, Counsel, that Amazon launched -- Amazon Business launched April 28th, 2015, the 2014 spend would be all before Amazon Business even launched?
A. If your assumption is correct, that is correct.
Q. So, this was business supplies bought on Amazon.com?
A. That's product bought from Amazon. It could be car batteries; I don't know what that is.
Q. You say -- you categorize it as office supply spend, right?
A. No, I categorize it in response to an office supplies litigation request.
Q. And your spend with Amazon is 214,000?
A. Yes, that's what this shows, yes. Must buy a lot of car batteries.

Q. When you were asked to give us your office supply spend for Amazon, did you make it up?
A. I was asked to give spend for Amazon. I was not asked to give office supplies spent for Amazon.
Q. But you put it here. Fair to say, Mr. O'Neill, you characterize it as office supply spend?
MR. QUILLIAN: Objection. Asked and answered.
THE COURT: I need to get a clarification on this.
BY MS. SULLIVAN:
Q. Fair to say, Mr. O'Neill, you entitled this document Office Supply Spend. That is your title?
A. That is the title of the document, yes.
THE COURT: Is that what this means?
THE WITNESS: No. I was asked to provide spend for that list of vendors as a direct request in response to this litigation.
THE COURT: So it doesn't mean office supply spend?
THE WITNESS: No, that's the title I put in there.
THE COURT: I understand that. I'm just trying to understand, what does this mean? It says: Office supplies spend for select vendors 2012 through 2015, and you have a number of vendors and you have a number of dollar amounts. So, do the vendors and the dollar amounts mean what the title says, title of this document says these figures and vendors mean?

THE WITNESS: A better title would be: Vendor spend for select list of vendors.

THE COURT: So is your answer no?

THE WITNESS: I'm sorry, I'm not sure what the question was.

THE COURT: Either these vendors and the dollar amounts mean office supplies spent for these vendors or they mean something else, and I'm just trying to understand what this document means.

THE WITNESS: I would have to categorize it as something else then. For Staples --

THE COURT: But you prepared this, right?

THE WITNESS: I did, yes.

THE COURT: Well, at the time you prepared it what did you intend it to mean?

THE WITNESS: To provide the spend that was ran through AEP.

THE COURT: For office supplies?

THE WITNESS: For those vendor names.

THE COURT: For office supplies?

THE WITNESS: For any spend.

THE COURT: So that would mean something other than office supplies?

THE WITNESS: For Amazon, that is correct.

THE COURT: Why does it say office supplies then,

as opposed to something else that's more accurate?

THE WITNESS: Well, HiTouch is an office supply company --

THE COURT: Just answer my question. Why does it say: Office supplies spend for select vendors, as opposed to something that would be more accurate, in view of your testimony today?

THE WITNESS: I felt that was relatively accurate at the time, with the exception --

THE COURT: Why is it not accurate now?

THE WITNESS: She's focusing on Amazon, and Amazon spend is more than office supplies, whereas the other companies listed are office supply companies, all they do is sell office supplies, whereas Amazon sells a lot more than office supplies.

THE COURT: Right. But this document purports to show what Amazon spent for office supplies for the years '12, '14, and '15, if I'm reading this correctly. And this is something you prepared. What you're saying, it means something different than office supplies spent?

THE WITNESS: I think for Amazon, yes.

THE COURT: You prepared it. Tell me what it means.

THE WITNESS: I'm trying to. So the Amazon spend is the amount of money we spent with Amazon.com, regardless

of what the product was.

THE COURT: Okay. So it means something other than office supplies?

THE WITNESS: Yes. I cannot distinguish office supplies from --

THE COURT: Well, why don't you name it -- why don't you give it a title: Office supplies spent -- I'm sorry, who was this prepared for?

THE WITNESS: It was a request from, I think, either Staples or Office Depot. They wanted to know how much we spent with these companies.

THE COURT: For office supplies, right?

THE WITNESS: The request was spend for the company. I don't think they specified for office supplies.

THE COURT: Well, let's assume they did. You specified these figures for office supplies, right?

THE WITNESS: That's what the title says, yes.

THE COURT: This is something you prepared though, right?

THE WITNESS: Right. And I'm saying for the Amazon, this is total spend for Amazon because I cannot --

THE COURT: Okay. And not office supplies. All right.

THE WITNESS: Because I can't separate out.

THE COURT: I think I understand.

BY MS. SULLIVAN:

Q. Mr. O'Neill, you acknowledge that your company buys office supplies from Amazon?

A. I'm sure that we have, yes.

Q. And, in fact, if we look at tab 8 in your binder, Mr. O'Neill --

THE COURT: I'm sorry. I wasn't trying to give you a hard way to go, but you prepared this document. It's not like someone's showing you a document saying can you interpret this document? This is something that you prepared. So I'm trying to figure out just what you intended when you prepared it.

So forgive me for pestering you with questions, I'm just -- I'm the jury here. I have to figure out what the facts are. So that's why I'm asking all those questions. So I apologize for pestering you with a lot of questions.

THE WITNESS: No problem.

BY MS. SULLIVAN:

Q. Mr. O'Neill, if you can turn to tab 8. And tab 8 in Defense Exhibit 15. And, Mr. O'Neill, was this another document prepared by AEP in litigation or is that a normal course document?

A. I'm not sure. I'm going to assume this was just an internal document.

Q. This is dated April 2014?
A. That's correct.
Q. And it talks about office and kitchen supply and cellular accessories analysis with credit card transactions just for the month of April 2014, right?
A. Correct.
Q. And it breaks down spend, right, by vendor?
A. Yes, it does.
Q. And you see Office Max, we see MicroCenter, we see Best Buy, we see PayPal, we see Sam's Club, Walmart, Amazon, a whole host of companies that your employees are buying office supplies and kitchen supplies and cellular accessories from, right?
A. That's what this shows, yes.
Q. Many of it off contract, and there's a list attached to this document that itemizes what was purchased or what they sought reimbursement for, right?
A. Yes.
Q. And most, if not all of these items, are part of your contract with Office Depot, right?
A. I don't know. I would have to review that list.
Q. Okay. Things like, if we go through, and -- I'm sorry, before we do that, if we look at this, that would be about $429,000 in -- and if you deduct the 219 with Office Max and Office Depot, that's about 240, 235. So we have about

200,000 just for the month of April in off-contract spend, right? Just for the month of April, 200,000?

A. I would disagree.

Q. Well, we have 200,000 in product purchased from people that aren't Office Max or Office Depot?

A. Yes, but I do have contracts with some of those people.

Q. Fair enough. In other words, you have contracts with some of these people to supply the same items that are also part of your Office Depot contract?

A. The contracts typically aren't that specific. We have a contract to agree to purchase product.

Q. Any kind of product?

A. For some of them, yes, for others, no.

Q. So in other words, if you have a contract with Office Depot for pens, erasers, et cetera, you may also have a contract with Walmart or Best Buy or Sam's Club that allows you to buy the same thing?

A. So the contract I was referring to was Harper Engraving and they provide all our business cards and other print materials.

Q. Okay.

A. We do not have a contract with Walmart, though.

Q. But if you look at the list of off contract -- list of products bought here, from Amazon, for example, we have dry erase board, janitorial supplies, dry erase markers, those

are part of items that would be on your Office Depot contract as well?

A. In general, that's correct.

Q. If we go through the same thing, we have label supplies, iPhone chargers are part of your Office Depot contract. In fact, if we went through this list, Mr. O'Neill, 75 percent or maybe all of these products could be purchased under Office Depot contract, right?

A. I don't know. I haven't gone through the list.

Q. Well, take a quick look at it, flip through a few pages. Fair to say a large number of these products are covered by your Office Depot contract?

A. I'm sure some of the products are covered, yes.

Q. And so you have employees, just in the month of April 2014, going off contract, or going to other vendors besides Office Max to buy the same products covered by your contract with them, right?

A. That's what it shows, yes.

Q. Including to Amazon?

A. Correct.

Q. And this non -- the non-Office Depot purchases total almost half of the total spend for April, right, just for the month of April?

A. That's about right.

Q. And that would be 200,000 -- that would be 10 percent,

almost, of your annual spend, off contract, just for the month of April?

A. Approximately, I would say that's correct.

MS. SULLIVAN: I'm sorry, Your Honor.

THE COURT: That's all right. If you want to stop for the evening, that's fine.

MS. SULLIVAN: That's fine with me, Judge. I'll take it up to you, thank you.

THE COURT: Do you want to stop right there? Is this connected with your line of questioning? Were you moving from the area?

MS. SULLIVAN: It's a perfect time to end, Your Honor.

THE COURT: We'll start tomorrow with the Amazon issue. That's sealed, that motion was sealed, correct, the pleadings?

MS. SULLIVAN: The motion is, yes.

THE COURT: So the Court will be sealed at 9:00 o'clock and we'll proceed with the public trial at 9:30.

I have to ask you not to discuss your testimony with anybody. We'll see you at 9:30. Enjoy your evening.

* * *

CERTIFICATE OF OFFICIAL COURT REPORTER

I, JANICE DICKMAN, do hereby certify that the above and foregoing constitutes a true and accurate transcript of my stenograph notes and is a full, true and complete transcript of the proceedings to the best of my ability.

Dated this 22nd day of March, 2016.

/s/_____

Janice E. Dickman, CRR, RMR
Official Court Reporter
Room 6523
333 Constitution Avenue NW
Washington, D.C. 20001

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