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February 5, 2009

VIA FEDERAL EXPRESS

Public Utilities Commission of Ohio  
Attention: Renee Jenkins  
Docketing Division  
180 E. Broad Street, 10th Floor  
Columbus, OH 43215

PUCO

RECEIVED-DOCKETING DIV  
2009 FEB -6 AM 10:28

RE: DP&L ESP Filing, Case No. 08-1094-EL-SSO *et al*

Dear Ms. Jenkins:

Enclosed are: (1) fourteen (14) copies of The Dayton Power and Light's Notice of Filing Depositions; and (2) deposition transcripts of:

- a. Gonzalez, Wilson
- b. Ibrahim, Amr A.
- c. Duann, Daniel J.
- d. Yankel, Anthony J.
- e. McClelland, Barry E.
- f. Pullins, Steven W.
- g. Fein, David I.
- h. Woolridge, J. Randall
- i. Bowser, Joseph G.
- j. Sawmiller, Daniel J.
- k. Murray, Kevin M. ✓
- l. Dickstein, Shelley J. (awaiting transcript)
- m. Frye, Mark R. (awaiting transcript)
- n. Higgins, Kevin C. (awaiting transcript)

Very truly yours,



R. Holtzman Hedrick

RHH/tes  
Enclosures



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## BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

- - -

In the Matter of the :  
Application of The Dayton :  
Power and Light Company : Case No. 08-1094-EL-SSO  
For Approval of Its :  
Electric Security Plan. :

- - -

In the Matter of the :  
Application of The Dayton :  
Power and Light Company : Case No. 08-1095-EL-ATA  
For Approval of Revised :  
Tariffs. :

- - -

In the Matter of the :  
Application of The Dayton :  
Power and Light Company :  
For Approval of Certain : Case No. 08-1096-EL-AAM  
Accounting Authority :  
Pursuant to Ohio Rev. :  
Code §4905.13. :

- - -

In the Matter of the :  
Application of The Dayton :  
Power and Light Company : Case No. 08-1097-EL-UNC  
For Approval of Its :  
Amended Corporate :  
Separation Plan. :

- - -

## DEPOSITION

of Kevin M. Murray, taken before me, Julieanna  
Hennebert, a Notary Public in and for the State of  
Ohio, at the offices of McNees, Wallace & Nurick,  
LLC, 21 East State Street, 17th Floor, Columbus,  
Ohio, on Wednesday, February 4, 2009, at 1:30 p.m.

- - -

## 1 APPEARANCES:

2 Faruki, Ireland & Cox, P.L.L.  
 By Mr. Jeffrey Sharkey  
 3 500 Courthouse Plaza, SW  
 10 North Ludlow Street  
 4 Dayton, Ohio 45402  
 5 On behalf of the Applicant.

6  
 7 McNeese, Wallace & Nurick, LLC  
 Ms. Lisa G. McAlister  
 8 Fifth Third Center, Suite 1700  
 21 East State Street  
 9 Columbus, OH 43215  
 10 On behalf of Industrial Energy  
 Users-Ohio.

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1 Wednesday Afternoon Session,  
 2 February 4, 2009.

3 ---  
 4 STIPULATIONS

5 It is stipulated by and between counsel for  
 6 the respective parties that the deposition of Kevin  
 7 M. Murray, a witness called by the Applicant under  
 8 the applicable Rules of Civil Procedure, may be  
 9 reduced to writing in stenotypy by the Notary, whose  
 10 notes thereafter may be transcribed out of the  
 11 presence of the witness; and that proof of the  
 12 official character and qualification of the Notary is  
 13 waived.

14 ---  
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1 KEVIN M. MURRAY

2 being by me first duly sworn, as hereinafter  
 3 certified, deposes and says as follows:

4 EXAMINATION

5 BY MR. SHARKEY:

6 Q. Good afternoon, Mr. Murray. As you know,  
 7 my name's Jeff Sharkey and I represent Dayton Power  
 8 and Light in this matter.

9 I'd like you to start by explaining to me  
 10 which members of the IIR are represented by IEU in  
 11 this matter.

12 A. I don't know that I could identify a  
 13 comprehensive list. I could identify a couple.

14 Q. Okay.

15 A. Delphi. Other than that I don't know.  
 16 I'd have to look at some of our records.

17 Q. Can you tell me how businesses get to be  
 18 members of IEU?

19 A. It's a voluntary organization.  
 20 People/companies elect to become members on an annual  
 21 basis.

22 Q. And I assume there's some fee or some  
 23 such associated payments to IEU to pay for Lisa and  
 24 you and others?

25 A. There is an annual membership fee in

1 addition when there are things such as proceedings at  
 2 the PUCO.

3 Companies that are directly affected by  
 4 those proceedings will normally choose to fund  
 5 participation in that as a separate activity of the  
 6 membership.

7 Q. Does IEU do anything besides represent  
 8 those businesses in front of the PUCO?

9 A. Yes.

10 Q. What else does it do?

11 A. IEU is a competitive retail electric  
 12 supplier in the state of Ohio.

13 Q. Anything else?

14 A. It's an -- IEU has a broader purpose than  
 15 just representing companies before Public Utilities  
 16 Commission of Ohio. They're involved in advocacy on  
 17 behalf of the organization and its members in for  
 18 example the General Assembly.

19 Q. Does it represent its members in front of  
 20 FERC too?

21 A. There are times that IEU has gotten  
 22 involved in FERC pursuits.

23 Q. Anything else?

24 A. Not that I recall.

25 Q. And you have been working at IEU for I

1 think it says the McNees firm for 11 years?

2 A. Yes.

3 Q. Can you describe for me the relationship  
4 between the McNees firm and IEU Ohio?

5 A. Sam Randazzo who is a partner here or a  
6 member of the LLC, I guess is the term, is general  
7 counsel to Industrial Energy Users-Ohio. I believe  
8 the other work that is done by the firm is as a  
9 contractor to IEU Ohio.

10 Q. Is IEU Ohio an actual legal entity or is  
11 it just --

12 A. I believe it's a 5013C Corporation  
13 registered with the State of Ohio.

14 Q. Has all of the work that you do since  
15 you've been employed by the McNees firm been on  
16 behalf of IEU Ohio?

17 A. No.

18 Q. What other work do you do besides work on  
19 behalf of IEU Ohio?

20 MS. McALISTER: I'm going to insert an  
21 objection, I guess, beyond the scope of this case.

22 But obviously if you know, you can  
23 answer.

24 A. The law firm has other clients that ask  
25 us to do various types of work from time to time.

1 And I've been involved in those types of activities.

2 It's been work on behalf of in some cases  
3 individual industrial companies. In other cases  
4 we've done or our firm has done work for other  
5 utilities in the state.

6 And my activities would be  
7 regulatory/engineering type support in those types  
8 of -- when those types of engagements occur.

9 Q. Is most of your work since you've been at  
10 McNees on behalf of IEU Ohio or would you say most of  
11 it has been for other projects?

12 A. It varies on a year-to-year basis. I am  
13 quite heavily involved in and our firm represents a  
14 group of industrial customers that are active in the  
15 Midwest ISO and I'm quite heavily involved in that.  
16 So recent years I'd say that's probably half my time.

17 Q. Midwest ISO related matters?

18 A. Yes.

19 Q. And you submitted testimony on behalf of  
20 IEU Ohio in other utilities' ESP cases.

21 A. Yes.

22 Q. First Energy's, Duke's. Did you submit  
23 testimony in AEP as well? There it is. It says you  
24 did.

25 A. Good, because it's been tough to

1 remember.

2 Q. What did you review to prepare your  
3 testimony in this case?

4 A. I reviewed the company's application, I  
5 reviewed some responses to interrogatories. I  
6 reviewed FERC form 1 filings.

7 I reviewed presentations that were posted  
8 on Dayton's website -- linked to Dayton's website  
9 associated with quarterly earnings conference calls.  
10 I also reviewed transcripts of those calls.

11 I reviewed the prior stipulations dealing  
12 with the prior rate plan and the extension of that  
13 rate plan as well as the Commission's orders in those  
14 cases. And SB-221.

15 There may be some -- I've got a stack  
16 here so there may be something I've overlooked.

17 Q. When you said you reviewed the prior  
18 stips, stipulations in DP&L's as you refer to  
19 company's --

20 A. Yes.

21 Q. Did you review the ETP stipulation from  
22 the 1999 case?

23 A. I don't recall.

24 Q. The what I call the first RSP stipulation  
25 from DP&L's 2002 case?

1 A. Yes, I reviewed that.

2 Q. And then second RSP stipulation from the  
3 '05 case?

4 A. Yes.

5 Q. The first piece of your testimony --  
6 strike that.

7 On page 4 of your testimony you identify  
8 the number of topics that you discuss. Under the  
9 paragraph "Fifth," you're talking about the proposed  
10 creditworthiness provision.

11 A. Yes.

12 Q. And then the footnote says "This  
13 modification is addressed in the Direct Testimony of  
14 Joe Bowser."

15 A. Yes.

16 Q. So I take it it's not in your testimony.  
17 I didn't see anything relating to that subject.

18 A. Other than the what's stated on this  
19 page, you're correct.

20 Q. Okay. Please talk first then about your  
21 first topic, it begins on page 5 of your testimony  
22 about customer-sited capabilities.

23 I understand the topic there to be  
24 whether or not businesses who institute their own  
25 energy efficiency and demand response programs can

1 opt out of the Dayton Power and Light Company EER; is  
2 that fair?

3 A. I would probably state it slightly  
4 differently than you have, but your general  
5 characterization captures what I'm talking about.

6 Q. You understand that the Public Utilities  
7 Commission of Ohio has promulgated draft rules on  
8 that subject?

9 A. Yes.

10 Q. And fair to say that those, the final  
11 rules, are sort a long time in coming out? They've  
12 been pending in draft form for quite a while.

13 A. That's my understanding.

14 Q. Are you aware that there have been very  
15 diverse suggestions made by different groups on what  
16 should be in the final form of those rules?

17 A. It's been a long time since I looked at  
18 the comments. But obviously people submitted  
19 different comments.

20 Q. What did other Ohio electric utilities  
21 have in their ESP filings relating to the opt out  
22 measures that you discuss in your testimony?

23 A. It varied. I'm working from fuzzy memory  
24 at this point, given the wave of cases that have come  
25 by.

1 I don't believe that First Energy  
2 addressed it as part of their market rate option. I  
3 believe they acknowledged their requirement as part  
4 of their electric security plan but didn't provide  
5 any details on how this section of the law was to be  
6 pursued or implemented by customers.

7 I believe AEP's application is similar.  
8 In the case of Duke Energy Ohio I don't believe their  
9 initial application directly addressed this, although  
10 there may be some disagreement by the company on  
11 that.

12 However, there was a stipulation filed in  
13 the case that ultimately was adopted by -- with  
14 modifications by the PUCO that does address some of  
15 the -- some aspects of this provision in the  
16 legislation.

17 Q. Is there -- your testimony is critical of  
18 the Dayton Power and Light Company for not including  
19 more detail.

20 What additional detail do you believe the  
21 Dayton Power and Light should have included in its  
22 application?

23 A. I think there needs to be an  
24 identification of how customers are to take advantage  
25 of or pursue the opportunities that exist in the

1 legislation.

2 I recognize that we're all dealing with  
3 the lack of final rules. At the same time the  
4 requirement took affect January 1, 2009, my  
5 understanding.

6 So there is an obligation on the part of  
7 Dayton Power and Light to comply with requirements of  
8 the law, and things need to start happening from my  
9 perspective, if for nothing else other than  
10 identifying to customers a point of contact, what  
11 information they're going to have to provide, what do  
12 they need to do on their side in order to integrate,  
13 I think the term that's used in the Bill, their  
14 capabilities to company's more full requirements.

15 Q. I assume you have no obligation -- no  
16 objection to the Dayton Power and Light Company  
17 complying with the Commission rules that are to be  
18 finalized sometime soon, hopefully.

19 A. No.

20 Q. Do you know where the draft rules include  
21 provisions relating to the topics that you've  
22 discussed?

23 In particular I have in mind how a  
24 customer's EE and DR programs would be integrated  
25 into the utility's system.

1 A. My recollection is the rules do address  
2 this. But it's been literally months since I looked  
3 at the rules.

4 Q. Do you have an opinion as to how a  
5 customer's EE and DR programs could and should be  
6 implemented into a utility's programs?

7 A. Yeah, yes. Let's look at demand response  
8 first.

9 Q. Okay.

10 A. I interpret demand response generally as  
11 the customer taking actions that reduces their peak  
12 demand at the time of system peak being incurred by  
13 Dayton Power and Light.

14 So you could have things like customers  
15 that are willing to take interruptible service  
16 arrangements that would logically seem to me to be a  
17 fit towards meeting Dayton Power and Light's peak  
18 demand reduction obligations.

19 So even just inventorying or identifying  
20 the customers that are currently served under  
21 interruptible arrangements would seem to be a step in  
22 that direction.

23 The company identifying that it's willing  
24 to make additional interruptible service available  
25 would also be a step that I think would at the end

1 likely contribute towards the peak demand reduction  
2 obligations.

3 The energy efficiency probably becomes a  
4 little less straightforward because you typically  
5 would be ranking those types of projects based upon  
6 some sort of cost benefit criteria.

7 But there is also identification of not  
8 just negotiated efficiency but other types of actions  
9 that the customer can take on their side of the meter  
10 that count towards the portfolio obligations.

11 And trying to at least inventory what's  
12 out there or identify to customers that this is an  
13 option that the company's willing to consider or  
14 discuss further, would seem to be moving the process  
15 forward.

16 Q. Do you know if other Ohio electric  
17 utilities have implemented the procedures and plans  
18 that you're describing the Dayton Power and Light  
19 Company should be entering?

20 A. I'm aware that there's some discussions  
21 between customers and other utilities along these  
22 lines. I haven't personally been involved in them.

23 Q. Let me ask you about the Dayton Power and  
24 Light Company's request for a fuel deferral. And let  
25 me first ask you have you reviewed Ohio Revised Code

1 Section 4928.143(D)?

2 A. Yeah, that's part of SB-221, so yes.

3 Q. Let me hand you a copy of 4928.143. If  
4 you'd turn to page 3, there in subsection D at the  
5 end of the line is a clause that describes the fact  
6 that that subsection applies to "Electric  
7 distribution utility that has a rate plan that  
8 extends beyond December 31, 2008."

9 My question to you is at the time this  
10 Bill was enacted, it's true, isn't it, that DP&L was  
11 the only electric utility that had a rate plan  
12 extended beyond December 3, 2008?

13 A. That's my understanding.

14 Q. Have you heard this provision referred to  
15 as the "DP&L provision" or other similar phraseology?

16 A. No, I haven't.

17 Q. The section goes on, the last sentence of  
18 it that begins with the word "However." Do you see  
19 that?

20 A. Yes.

21 Q. We'll just take a moment to read that  
22 sentence.

23 Have you had a chance to read it now?

24 A. Uh-huh.

25 Q. First question is, would you agree that

1 fuel costs are one of the costs that DP&L incurs to  
2 provide a standard service offer pursuant to section  
3 4928.141?

4 MS. McALISTER: I'll object, it calls for  
5 a legal conclusion. But to the extent you're not  
6 relying on a legal analysis, you can answer.

7 A. This sentence doesn't speak towards fuel  
8 one way or the other.

9 Q. Well, let me ask without looking at the  
10 section.

11 The question is, would you agree that the  
12 fuel costs are a cost that a utility incurs to  
13 provide standard service offer to customers?

14 A. That may be.

15 Q. Would you expect them to incur fuel costs  
16 to provide standard service offer?

17 A. If they're operating their own  
18 generation, yes.

19 Q. At the time this section was enacted,  
20 other than fuel costs are you aware of any costs that  
21 had increased significantly for the Dayton Power and  
22 Light Company since the time of DP&L's 2005 RSP  
23 stipulation?

24 A. Well, two problems I have responding to  
25 your question; one, I'm not sure how you define

1 "significantly," and second is I think it assumes a  
2 conclusion that I don't necessarily agree with.

3 Q. Well, let's start with the first one.

4 Let's define "significantly" as more than 15 percent.

5 A. Okay.

6 Q. Setting aside fuel costs for now, are you  
7 aware of any cost that has increased significantly  
8 for the Dayton Power and Light Company associated  
9 with providing a standard service offer between the  
10 time that DP&L's second RSP stipulation was signed  
11 and the time this statute was enacted?

12 A. I haven't performed that type of  
13 analysis.

14 Q. So you're not aware of any such costs?

15 A. I haven't performed that type of  
16 analysis.

17 Q. Are you aware of general market  
18 conditions in which the utilities and the cost that  
19 utilities incur?

20 A. Somewhat.

21 Q. Are you aware of any cost items that have  
22 increased significantly, using the same definition,  
23 since the 2005 RSP stipulation?

24 A. There has been a variety of commodities  
25 that have seen in some cases significant upswings in

1 cost as well as some rather dramatic decreases in  
2 costs over the last six to nine months.

3 Various categories of fuel come to mind:  
4 Natural gas, oil, coal. A number of other  
5 commodities, things like aluminum, copper.

6 Other types of cost categories that have  
7 seen rather dramatic swings to my understanding are  
8 things like construction costs.

9 But again, I haven't performed any  
10 specific analysis of Dayton's cost incurred by Dayton  
11 Power and Light.

12 Q. Some of the cost items that you  
13 identified were fuel related.

14 A. Uh-huh.

15 Q. Ones that were not, I heard you mention  
16 commodities. You mentioned copper and aluminum and  
17 construction costs.

18 Do you know if the Dayton Power and Light  
19 Company has incurred any costs associated with  
20 copper, aluminum, or construction since the 2005 RSP  
21 stipulation?

22 A. I haven't done that type of analysis.

23 Q. But you're not aware of any.

24 A. Again, I'm not aware one way or the  
25 other.

1 Q. What test -- let me step back.

2 I think from your testimony that you  
3 recommend to the Commission not to grant DP&L's  
4 request to defer fuel costs under this section; is  
5 that fair?

6 A. As proposed by the company.

7 Q. What test do you believe the Commission  
8 should use to determine whether to permit recovery of  
9 fuel costs under this section?

10 A. I don't know that this section is even  
11 applicable to Dayton based upon the prior stipulation  
12 that exists.

13 Q. Why do you say that?

14 A. The stipulation defined the rates that  
15 would be in existence through 2010. And I believe as  
16 I referenced in my testimony, on page -- beginning on  
17 the bottom of page 11 and carrying over to page 12,  
18 there was a provision in the stipulation  
19 recommendation that addressed the possibility that  
20 subsequent legislation in Ohio may be enacted that  
21 affected rates, terms, and conditions of the  
22 stipulation.

23 And the provision provided that in such  
24 an event the company and signatory parties were good  
25 faith negotiations to amend the stipulation to the

1 extent necessary to endeavor to preserve the  
2 respective benefits of the stipulation from  
3 customers' perspectives.

4 One of the benefits of the stipulation  
5 were stable rates through 2010. And I think the  
6 proposed deferral of fuel is around that result.

7 Q. First of all, is there anything -- first  
8 of all, do you have a copy of the 2005 stipulation  
9 handy?

10 A. It's in the box. I can dig for it.

11 Q. I've got a copy here that you can take a  
12 look at.

13 Is that the 2005 stipulation that you  
14 were referring to?

15 A. It appears to be.

16 Q. Is there anything in that stipulation  
17 that expressly prohibits the Dayton Power and Light  
18 Company from seeking a deferral of fuel costs?

19 A. To be honest, Jeff, I don't recall. I'd  
20 have to go through the document. I don't recall that  
21 the stipulation even uses the term "deferral," but  
22 that's what I'm trying to go through here and verify.

23 Q. Go ahead and take your time.

24 A. I don't see the word "deferral" in the  
25 document.

1 Q. So the answer to my question is there's  
2 nothing there that expressly prohibits a deferral?

3 A. It doesn't address it one way or the  
4 other.

5 Q. Let me ask you about your testimony,  
6 about the provision in that stipulation regarding, my  
7 word, not yours, renegotiation if there's changes to  
8 the legislation.

9 Do you have that section available to  
10 you? I believe its section 1G starting on page 6.

11 A. It's in my testimony, if I copied it  
12 accurately.

13 Q. Do you understand that -- let me step  
14 back.

15 I understand the nature of your testimony  
16 to be that you believe that if DP&L is going to seek  
17 deferral fuel costs on the stipulation, it should  
18 have approached IEU and others regarding a  
19 renegotiation of the stipulation to preserve the  
20 energy benefits of the stipulation?

21 A. I'm not in a position to offer a legal  
22 opinion as to the precise meaning of the words in the  
23 stipulation.

24 What I've tried to do in my testimony is  
25 identify language in the stipulation that my layman's

1 understanding seems to address the present  
2 circumstances and contemplates there will be some  
3 negotiations to amend the stipulation.

4 And I've identified in my testimony that  
5 based upon the application and the materials that  
6 have been filed there has been no identification of  
7 any such discussions taking place. There may or may  
8 not be discussions.

9 Q. Based on your understanding, I'm not  
10 asking for a legal opinion, just your understanding,  
11 did the obligations in section 1G run both ways;  
12 meaning it imposes obligations upon both DP&L and IEU  
13 Ohio?

14 A. Well, I think the obligations are mutual  
15 to engage in good faith in the negotiations, but I  
16 think the practical reality is that only Dayton Power  
17 and Light would be in the position to at least  
18 initially identify whether or not subsequent  
19 legislation that's been enacted affects the rates,  
20 terms, and conditions of the stipulation.

21 I mean, the improved tariff rates are  
22 what would continue its affect after some action by  
23 the company.

24 Q. Your understanding of Senate Bill 221  
25 creates a host of new costs and risks for the Dayton

1 would be -- the onus is on Dayton Power and Light to  
2 identify if in fact they believe the legislation  
3 makes it or has the effect of -- affects the rates,  
4 terms, and conditions of the stipulation.

5 Q. In preparing your testimony, focusing on  
6 fuel here, were there any factors or matters that you  
7 had considered including in your testimony but didn't  
8 hit the written page?

9 MS. McALISTER: Can I have that question  
10 read back.

11 (Record read.)

12 A. I'm not sure I understand your question.

13 Q. Were there any things that you thought  
14 about including in your testimony but didn't?

15 A. Not that I recall.

16 Q. Did you consider any of the costs and  
17 risks, my characterization, imposed on the Dayton  
18 Power and Light Company by Senate Bill 221 in  
19 preparing your testimony on fuel?

20 A. Which costs and risks are you referring  
21 to?

22 Q. The items we just discussed regarding  
23 energy efficiency and demand response programs,  
24 Senate Bill 221 has a significantly excessive  
25 earnings test.

1 Power and Light Company, including among other things  
2 certain obligations to spend money on energy  
3 efficiency and demand response programs that would  
4 have the end result of reducing DP&L sales, correct?

5 A. There are the portfolio obligations. I  
6 don't know that I would agree with your  
7 characterization that they impose a host of costs and  
8 risks.

9 There's a compliance obligation there.  
10 The precise cost in complying with the legislation is  
11 not something that's known at this point in time.

12 Q. If it turns out that Senate Bill 221  
13 imposes costs upon the Dayton Power and Light Company  
14 that exceed costs that were imposed on this -- under  
15 this RSP stipulation so the Dayton Power and Light  
16 Company is economically worse off due to the  
17 legislation, would you agree that IEU had an  
18 obligation under section 1G to sit down with DP&L and  
19 negotiate to return to DP&L the respective benefits  
20 and compromise reached under the RSP stipulation?

21 A. As I think I've previously stated, I  
22 think the obligation to engage in good faith  
23 negotiation would extend to any signatory party to  
24 the stipulation.

25 But as a practical matter I think it

1 Did you consider those provisions in  
2 Senate Bill 221 when preparing your testimony  
3 relating to fuel?

4 A. Not sure I make the connection.

5 Q. Just a question. Did you consider there  
6 to be a connection, so did you consider those when  
7 you were preparing the testimony?

8 A. I recognize there's provisions regarding  
9 those two items in Senate Bill 221. I'm not sure I  
10 see the linkage to the fuel deferral.

11 Q. So you did not consider those items in  
12 preparing your opinions on fuel.

13 THE WITNESS: Can you read the question  
14 back again.

15 (Record read.)

16 A. I recognize that there's provisions in  
17 SB-221 dealing with energy efficiency, conservation,  
18 and significantly excess earnings test, however, I  
19 don't see the linkage between those items and the  
20 requested fuel deferral.

21 Q. So the answer to my question is you did  
22 not consider those in preparing your testimony on  
23 fuel.

24 A. I recognize they exist. I don't see the  
25 linkage.



1 Q. So you didn't consider them.

2 A. I considered them. I don't see that  
3 they're linked.

4 I'll follow that up with they may be  
5 linked to the extent that somebody would say default  
6 under the subsequent legislation provision and that a  
7 party in this case Dayton Power and Light would  
8 believe that those provisions affect the rates,  
9 terms, and conditions of the stipulation.

10 Q. If you refer back to .143(D), which I  
11 provided to you. Do you understand the second  
12 sentence of that section that begins with the word  
13 "However," as permitting the Dayton Power and Light  
14 Company to request to recover or defer incremental  
15 fuel costs that are not being recovered under its  
16 existing rate plan?

17 MS. McALISTER: Objection to the extent  
18 it calls for a legal conclusion.

19 A. The sentence speaks towards provisions  
20 for the incremental recovery or deferral of any costs  
21 that are not being recovered on the rate plan that  
22 are incurred to comply with section 4928.141(B) -- I  
23 misspoke there, section 4928.141 or division B in  
24 section 4928.64, or division A in section 4928.66.

25 So I would read that. You'd have to go

1 back and look at those other sections of the  
2 legislation but it would seem to be referencing other  
3 specific categories and costs that are identified in  
4 those three sections of the legislation --

5 Q. Okay.

6 A. -- as opposed to be universally all  
7 costs.

8 Q. Do you know what section 4928.141 is?

9 A. It's the -- I have it here in my box of  
10 stuff. It's the first section dealing with MRO and  
11 ESP provisions of the Bill.

12 Q. Fair to say that that section requires  
13 Dayton Power and Light to provide standard service  
14 offer?

15 A. I have to look at the language.

16 Q. If it does, would you agree with me that  
17 to the extent that Dayton Power and Light Company  
18 owns generating assets and uses those assets to  
19 supply standard service offer that fuel would be one  
20 of the costs that would be recoverable under this  
21 section?

22 A. May or may not be.

23 Q. Why do you say it "may or may not be"?

24 A. Again, refers to incremental recovery of  
25 costs that are not being recovered under the rate

1 plan.

2 So they need to be an examination of the  
3 costs and a determination that they are or are not  
4 being recovered under the existing rate plan.

5 Q. Let's just focus for now let's assume  
6 that Dayton Power and Light Company has incremental  
7 fuel costs above what are being recovered under its  
8 existing rate plan.

9 We'll explore that more in the future,  
10 but assuming it has those costs, would you agree that  
11 this provision provides that DP&L could recover or  
12 defer such costs?

13 A. The sentence is permissive and it uses  
14 the term "may," not "shall." It doesn't speak to --  
15 sorry. Strike that.

16 So it's permissive as opposed to a  
17 requirement and I think you would have to reconcile  
18 this provision in the legislation with the provision  
19 in the stipulation that you previously identified.  
20 It's permissive but it certainly doesn't require that  
21 as an outcome.

22 Q. It's permissive as to fuel costs.

23 A. It's permissive as to -- as you I think  
24 phrased the assumption, assume that there's  
25 incremental fuel costs that Dayton is recovering

1 under its rate plan.

2 Q. Based on your experience, would you agree  
3 that the fuel costs are the most volatile costs  
4 utilities incur to provide a standard service offer?

5 A. I don't know.

6 Q. Do you believe fuel costs to have been  
7 volatile over the last several years?

8 A. Yes.

9 Q. Are you aware of any other costs that a  
10 utility incurs that has been volatile over the last  
11 several years?

12 A. I haven't done any independent analysis.

13 Q. You're not aware of any?

14 A. I haven't done an independent analysis.

15 Q. Do you believe you'd know if another cost  
16 item was volatile?

17 A. Well, I believe when we were talking  
18 earlier I identified things like copper, aluminum, a  
19 number of other commodities, construction costs,  
20 categories across that have seen significant  
21 volatility up and down in recent years.

22 But I have not done any examination on as  
23 to whether Dayton has incurred those costs,  
24 significant amounts of those costs, and whether  
25 Dayton itself has experienced cost volatility.

1 Q. Let me ask you some questions about your  
2 testimony as to the 1.8 cents that Ms. Dona  
3 Seger-Lawson testifies is the amount of recovery in  
4 DP&L's current rates associated with fuel. Do you  
5 recall your testimony on that subject?

6 A. Yes.

7 Q. And if I understand it correctly, it is  
8 your testimony that in the historic EFC cases the  
9 utility could recover only a certain amount of the  
10 costs that the Dayton Power and Light Company now  
11 seeks to defer. Is that fair?

12 A. Yes.

13 Q. So that it's your testimony that there  
14 were some costs DP&L analysis to defer that wouldn't  
15 have been in the old EFC rate, saying the same thing  
16 a different way; is that right?

17 A. Yes.

18 Q. What items do you have in mind that were  
19 cost items that Dayton Power and Light Company now  
20 incurs and seeks to defer that were not included in  
21 historic EFC proceedings?

22 A. I've given a couple of examples in my  
23 testimony beginning at the bottom of page 8 and  
24 carrying over to page 9, that they would be, for  
25 example, purchased power costs associated with demand

1 capacity costs, as well as gross receipts tax or any  
2 revenue based tax occasioned by fuel revenues, costs  
3 associated with chemical or consumable supplies  
4 associated with the operation of environmental  
5 equipment. And gypsum disposal costs from the  
6 operation of flue gas desulfurization equipment were  
7 also not recoverable through the EFC.

8 Q. Let's work back. Gypsum disposable  
9 costs, the last one that you mentioned, you  
10 understand DP&L's last EFC proceeding was in 1999?

11 A. That's my understanding.

12 Q. Do you know if the Dayton Power and Light  
13 Company was incurring gypsum disposal costs in 1999?

14 A. I don't know, but I do know that they  
15 just in the last couple years put scrubbers on a  
16 number of the coal-fired facilities.

17 So with respect to those particular  
18 plants you would not expect to have seen this type of  
19 an expense back in 1999.

20 Q. So you would agree -- phrase that  
21 differently.

22 You're not aware of gypsum disposal costs  
23 that were in DP&L's base rates as opposed to the EFC  
24 recovery rate, as of 1999.

25 A. I think the company's last base rate case

1 was all through stipulation, so-called black box  
2 stipulation. So trying to answer precisely what  
3 costs are or are not being recovered to base rates is  
4 a difficult if not impossible question to answer.

5 Q. Fair enough.

6 But at that time at the last base rate  
7 case, 1991, do you know whether DP&L incurred any  
8 gypsum disposal costs at all?

9 A. I don't know.

10 Q. It's your belief it did not incur those  
11 costs?

12 A. I don't know.

13 Q. What would your understanding be of why  
14 the utility would be incurring gypsum disposal costs?

15 A. It's primarily referring to the flue gas  
16 desulfurization.

17 Q. Moving up in your answer, you refer to  
18 chemical or consumable supplies associated with the  
19 operation of environmental equipment; is that right?

20 A. Yes.

21 Q. And do you know whether Dayton Power and  
22 Light Company had that equipment installed in 1999?

23 A. I don't know.

24 Q. Have you made any effort to find out?

25 A. I have not done that analysis as part of

1 this proceeding.

2 Q. You refer in the prior sentence to  
3 purchased power costs associated with demand or  
4 capacity costs. Can you tell me what that means?

5 A. Historically, this may go back prior to  
6 the days in which regional transmission organizations  
7 operated so-called regional energy markets.

8 But if a utility was contracting for  
9 power on a longer term basis with another seller, it  
10 was not uncommon for the contract to provide for a  
11 two-part charge; one part consisting of a fixed fee  
12 or demand cost based upon the amount of capacity that  
13 was being sold, and the other part of the contract  
14 providing for some sort of energy based cost or  
15 price.

16 And in those types of circumstances it's  
17 my understanding that the Ohio Commission's policy  
18 was that the energy related costs were eligible for  
19 recovery through the EFC mechanism, but any demand or  
20 capacity related costs could be recovered but would  
21 have to be recovered through a base rate case. Or  
22 recognized in a base rate case type of proceeding.

23 Q. Do you know whether the Dayton Power and  
24 Light Company incurred any such costs, I'm referring  
25 to the capacity costs, at the time its rates were

1 last set?

2 A. I think ones I previously identified the  
3 last case was resolved through a black box  
4 stipulation. So it's not really possible to identify  
5 what specific costs are being recovered through base  
6 rates.

7 Q. The question isn't how were those rates  
8 set, the question is was the Dayton Power and Light  
9 Company to your knowledge incurring any such costs at  
10 the time that the Dayton Power and Light Company's  
11 rates were most recently set?

12 A. I have not attempted to look at that so I  
13 don't know.

14 Q. And then you also refer to a gross  
15 receipts tax. Do you see that on page 9, line 3?

16 A. Yep.

17 Q. Can you describe for me what that is?

18 A. Gross receipts taxes are taxes imposed on  
19 the gross receipts of electric utility. And this is  
20 an identification that those types of taxes were not  
21 recoverable through the fuel adjustment mechanism.

22 To the extent a utility incurred any of  
23 those types of taxes or revenue based taxes  
24 associated with purchase power, it would have to be  
25 recovered again through some type of base rate

1 recognition.

2 Q. And do you know what the Dayton Power and  
3 Light Company would have incurred such costs last  
4 time its rates were set?

5 A. Again, last time its rates were set there  
6 were stipulations, so it's not possible to answer  
7 that question.

8 Q. It's not a question about how the rates  
9 were set in stipulation, it's a question of actual  
10 costs the Dayton Power and Light Company was  
11 incurring at that point in time.

12 A. I don't know.

13 Q. Is it your understanding that the Dayton  
14 Power and Light Company seeks to defer such costs in  
15 this matter?

16 A. I don't recall the witness' name but I  
17 think it might be Mr. Campbell.

18 Q. He is a DP&L witness, yes.

19 A. He testifies and he identifies certain  
20 FERC accounts that the company want to make eligible  
21 for recognition through the deferral. And we can dig  
22 up his testimony and identify the specific FERC  
23 accounts, if that would be helpful.

24 Q. It could.

25 A. I've got it right here I think.

1 Q. I do not have a copy, so if I could look  
2 over your shoulder.

3 A. Yes. And in his, Gregory Campbell's  
4 Book I testimony on page 3, he identifies this is  
5 cost that -- potential deferral of costs that  
6 includes costs booked into FERC accounts 501 fuel,  
7 502 steam expenses, 509 allowances, 547 fuel, 555  
8 purchased power, 411.8 gained from disposition of  
9 allowances, and 411.9 losses from disposition of  
10 allowances.

11 And in his testimony he provides a  
12 narrative explanation of the categories of cost that  
13 fall into these various FERC accounts.

14 Q. Is it your understanding that the Dayton  
15 Power and Light Company seeks to defer in this case  
16 gross receipts taxes associated with fuel?

17 A. My understanding of the company's  
18 proposal is it's not specific. Mr. Campbell has  
19 identified certain categories of cost and it would  
20 incur -- and the cost eligible for deferral would  
21 include any actual costs incurred by the company in  
22 2009 and 2010 that fall into these accounts except  
23 where there's a specific exception noted in his  
24 testimony.

25 So it's probably not possible to identify

1 today exactly what all the categories of cost that  
2 the company may incur in 2009 and 2010. You would  
3 probably have to wait and see what the actual costs  
4 were.

5 Q. If we assume that the company did not  
6 incur and there is no current recovery in rates for  
7 gypsum disposal costs, costs associated with chemical  
8 or consumable supplies, or purchased power costs  
9 associated with capacity, that would leave in your  
10 list only this gross receipts tax or revenue based  
11 tax item; is that correct?

12 THE WITNESS: Can you reread the question  
13 please.

14 (Record read.)

15 A. I don't think so. I think you're  
16 misinterpreting my testimony.

17 What I have tried to do in my testimony  
18 is identify examples of where there are categories of  
19 costs that DP&L is potentially seeking to defer that  
20 previously weren't recoverable through the EFC case.

21 And what Mr. Campbell is identifying as  
22 the FERC accounts and the types of cost that can be  
23 booked under those accounts, I don't think you can do  
24 a cross-check one versus the other.

25 There very well may be a number of

1 categories of cost that I have not identified as  
2 being recoverable through the EFC rate that may fall  
3 into the FERC accounts that Mr. Campbell has  
4 identified.

5 Q. Let me step back.

6 You don't dispute, do you, that the costs  
7 DP&L seeks to recover are fuel or fuel-related costs?

8 A. No.

9 Q. And if I understand the substance of your  
10 objections on the calculation of 1.8 cents, the  
11 concern is if we look only at the EFC rate and the  
12 RSS rate to calculate the amount DP&L is recovering  
13 in rates, you may be missing some costs that Dayton  
14 Power and Light Company is in fact already incurring  
15 recovering in rates.

16 A. I think what I've tried to point out in  
17 my testimony is I think the mathematical approach the  
18 company's employed is flawed.

19 Q. Did you disagree with my statement or are  
20 you agreeing with my statement?

21 THE WITNESS: Could you read the question  
22 back.

23 (Record read.)

24 A. I believe I agree with your -- yeah. I  
25 mean, that is what I've tried to point out, and

1 again, I think the mathematical approach is flawed in  
2 that it is not -- does not look at costs on a broad  
3 enough basis in order to be able to answer the  
4 question of whether or not the company's recovering  
5 its fuel costs.

6 Q. On page 9, lines 1 through 8, you  
7 identify an example of some such costs which you  
8 believe the Dayton Power and Light Company may be  
9 recovering in rates that are not included in either  
10 the RSS rate or in the EFC rate. Correct?

11 THE WITNESS: Read that again.

12 (Record read.)

13 A. My testimony in terms of line 1 to line 8  
14 is really addressing the categories of cost that  
15 could not be recovered to the EFC.

16 Q. Are there -- strike that.

17 Can you identify costs that you believe  
18 the Dayton Power and Light Company is currently  
19 recovering through base rates, which I'll define as  
20 generation rates excluding the EFC and RSS, that you  
21 believe the Dayton Power and Light Company currently  
22 seeks to defer and recover?

23 A. If you look at my testimony on page 10,  
24 beginning on line 2, I am trying -- I indicate that  
25 in order to answer that type of question you'll have

1 to undertake a much more extensive analysis that  
2 would look very close to a traditional cost of  
3 service analysis used to determine whether or not  
4 rate increase is warranted.

5 Q. Is the answer to my question then you're  
6 not aware of such costs?

7 A. The company has not provided that  
8 information in this application.

9 Q. Are you aware of any costs that you  
10 believe may fall into that category?

11 A. Under what category?

12 Q. Category being they were costs the Dayton  
13 Power and Light Company included -- incurred at the  
14 time of its last rate case, thus, presumably some  
15 portion of DP&L's current base rates, but that DP&L  
16 now seeks to defer as part of the requested fuel  
17 deferral?

18 A. No, what I've indicated is I think you  
19 would have to do a cost of service analysis looking  
20 at current period revenues and expenses to answer the  
21 question of whether or not Dayton is or is not  
22 recovering certain categories of costs through its  
23 rates.

24 I don't think going back to a '91 rate  
25 case is relevant at this particular point in time.

1 Q. Well, whether it is or isn't, are you  
2 aware of any costs the Dayton Power and Light Company  
3 incurred in 1991 that DP&L currently seeks -- strike  
4 that.

5 Are you aware of any costs the Dayton  
6 Power and Light Company incurred in 1991 and are,  
7 thus, presumably part of base rates as I defined the  
8 term earlier that the Dayton Power and Light Company  
9 now seeks to defer?

10 A. Again, I don't think you can answer that  
11 question because the '91 case was resolved through a  
12 black box stipulation.

13 Q. Again, it's a cost question, it's not a  
14 rate question. The costs the Dayton Power and Light  
15 Company incurred at the time.

16 A. You're referring to the cost Dayton Power  
17 and Light incurred in 1991. 1991 costs weren't even  
18 relevant.

19 Q. Whether they're relevant or not, the  
20 question is are you aware of any costs Dayton Power  
21 and Light Company incurred in 1991 that Dayton Power  
22 and Light Company currently seeks to defer as part of  
23 the fuel?

24 A. My understanding is Dayton Power and  
25 Light is proposing to incur costs that it incurs in

1 certain categories based upon actual costs incurred  
2 in 2009 and 2010. So the costs that were actually  
3 incurred in 1991 are irrelevant.

4 Q. Is it your testimony that as I understood  
5 your testimony, tell me if I'm wrong, is that DP&L's  
6 request for a fuel deferral may result in double  
7 recovery of certain costs for the Dayton Power and  
8 Light Company?

9 A. Point me to my testimony where I say  
10 that.

11 Q. You don't use those words but I  
12 understood that to be the substance of your  
13 testimony, and I think earlier you agreed that DP&L's  
14 proposed deferral would result in DP&L recovering  
15 costs -- strike that.

16 Is it your opinion that DP&L's request  
17 for a fuel deferral would not result in a double  
18 recovery?

19 THE WITNESS: Can you read the question  
20 back?

21 Q. Let's strike that. Strike the word  
22 "opinion."

23 What I want to know is is it your  
24 testimony that the Dayton Power and Light Company's  
25 request for deferral would result in a double

1 recovery of costs?

2 A. Potentially, yes. By virtue of the prior  
3 rate plan stipulation which provided for fixed rates  
4 through 2009-2010.

5 To the extent that you're taking costs  
6 that are incurred in 2009 and 2010 and moving them  
7 outside that period for recovery when the rates that  
8 were prescribed for 2001 and 2010 were intended to  
9 fully compensate the company, then I think, yes  
10 you're setting up the potential for double recovery.

11 Q. Let's set aside the RSP stipulation.  
12 What I'm trying to do is, first of all, understand  
13 your objection to the company's calculation of a 1.8  
14 cents in fuel costs that DP&L is currently  
15 recovering.

16 If I understand your testimony, you  
17 believe there may be some additional money beyond 1.8  
18 cents the Dayton Power and Light Company is currently  
19 recovering associated with fuel and fuel-related  
20 costs.

21 A. I think in order to answer the question  
22 of what costs the company are recovering currently  
23 fuel and fuel related you have to do a comprehensive  
24 analysis that is close to a traditional cost of  
25 service analysis.

1 And absent that level of analysis and  
2 detail, you cannot answer the question that you've  
3 posed.

4 Q. So you're not aware of any such costs.

5 MS. McALISTER: Asked and answered.  
6 Objection.

7 MR. SHARKEY: He's moved his testimony  
8 around enough time I'm just trying to make sure I  
9 understand.

10 Q. You can't identify any such costs?

11 A. Absent that type of analysis I don't  
12 believe anybody can identify costs.

13 Q. And you haven't undertaken that kind of  
14 analysis.

15 A. No.

16 MS. McALISTER: Off the record.  
17 (Off the record.)

18 Q. Back on the record.

19 I want to turn to your testimony about  
20 the financial condition of the Dayton Power and Light  
21 Company that runs approximately from pages 9 to 11.

22 I think more like 10 through -- strike  
23 that. I have page numbers terribly wrong but it's  
24 really mostly on pages 12 through 14 or so.

25 Have you made any attempt to determine

1 what financial impact Senate Bill 221 will have on  
2 the Dayton Power and Light Company in 2009 and 2010?

3 A. I reviewed the presentations and  
4 transcripts of the Dayton Power and Light earnings  
5 quarterly conference calls, and during one of those  
6 conference calls there was a projection of the  
7 impacts of SB-221 on the company's consolidated  
8 earnings.

9 Q. Do you recall what those projections  
10 were?

11 A. Let me see if I specifically referenced  
12 it in my testimony. I'm going to need to look at the  
13 transcript.

14 Counsel has pointed me to where I've  
15 addressed this in my testimony. And it actually  
16 appears on page 17, and during the third quarter  
17 earnings conference call, Barbos is identified as  
18 DP&L Corp. president and CEO in a transcript.

19 Identified that if the company did not  
20 get any approval for the recovery of cost it was  
21 seeking in the ESP proceeding project 2009 earnings  
22 to be \$2 to 2.20 per share.

23 And although I didn't mention it in my  
24 testimony, I believe the earnings transcripts  
25 indicates that if the company got recovery, I think

1 the projected earnings in the 2.40 to 2.60 per share  
2 range.

3 Q. Do you have that transcript available?

4 A. Yes.

5 Q. Can I see it?

6 A. (Witness complies.)

7 The actual conference calls are posted as  
8 audio files accessible over the Internet, but the  
9 company that broadcasts them will sell you a  
10 transcript for a fee.

11 And if I could, Lisa's just pointed out  
12 an error in my prior comment. I think when I was  
13 verbally responding I referenced, and I was looking  
14 at page 13, I referenced the projected earnings in  
15 the absence of approval of the ESP application would  
16 be 2.40 to 2.60 a share.

17 On page 16 of my testimony I've  
18 identified that John Gillen indicated 2001  
19 projections were \$2 to 2.60 per share. So my 2.40 I  
20 previously stated was in error.

21 Q. Do you know whether the Dayton Power and  
22 Light Company -- step back.

23 You're familiar with the fact that Senate  
24 Bill 221 has a significantly excessive earnings test?

25 A. Yes.

1 portion of that calculation, lines 17 through 22.

2 MS. McALISTER: Just before Kevin answers  
3 that one, we might want to note in the record that he  
4 has just entered identified confidential information.

5 MR. SHARKEY: It will be identified as  
6 confidential.

7 Off the record for a minute.

8 (Off the record.)

9 Q. Let's go back on the record.

10 The question to you, Mr. Murray, simply a  
11 methodology question.

12 A. I'll try to walk you through the  
13 methodology.

14 We received, "we" being IEU Ohio received  
15 in response to interrogatories two responses that  
16 were designated confidential. One of these provides  
17 estimated coal costs for the years 2009 to 2010  
18 reflects both contractual obligations as well as  
19 projected coal sales.

20 We also received a second schedule that  
21 provides estimated fuel deferral for the years 2009  
22 to 2010 that includes a total number, annual number  
23 during those years for what's labeled fuel and  
24 purchased power costs.

25 You can see the numbers there and there.

1 Q. Do you know what the Dayton Power and  
2 Light Company subjected to that test in 2009 and  
3 2010?

4 A. I don't recall. Something in my memory  
5 suggests no, but I'd have to go back and review the  
6 legislation.

7 Q. Okay. On page 14 of your testimony, on  
8 line 21, you testify, as I understand it, DP&L's  
9 projected 2009 to 2010 costs are less than the cost  
10 DP&L incurred in 2006 through 2008? Can you explain  
11 how you made that calculation?

12 A. Jeff, you lost me there, so could you --  
13 could we either reread the question or could you hit  
14 me with it again?

15 Q. Let me strike that and you refer to a  
16 calculation on page 14 starting on line 17. Take a  
17 moment and read that. And then what I'd like you to  
18 explain to me is how you made that calculation.

19 A. Are you referring to, and I don't know if  
20 we need to identify here, this is the portion of my  
21 testimony that's redacted.

22 **CONFIDENTIAL**

23 **REDACTED**

24 Q. Correct, on through the rest of that  
25 sentence. What I'm referring to would be the bottom

1 Q. Just for our record you're referring to  
2 the confidential document DP&L 3057, line C?

3 A. The 3057, third line on the schedule.  
4 Which is labeled line C.

5 Q. Okay.

6 A. In response to IEU Ohio's first set of  
7 interrogatories and production of documents,  
8 question 3, and requested for calendar year 2006 what  
9 was the company's actual retail jurisdictional costs  
10 incurred for accounts 501 fuel, 502 steam expenses,  
11 509 allowances, 547 fuel, 555 purchased power, and  
12 account 411.8 gains from the disposition of  
13 allowances, and 411.9 losses from disposition of  
14 allowances, the company's actual retail  
15 jurisdictional costs, and those were provided in this  
16 response to the interrogatory.

17 And that same set, question 4 asked for  
18 calendar year 2008 what was the actual year-to-date  
19 jurisdictional costs, and we were provided a response  
20 that -- again from those same accounts we were  
21 provided a response that identified actual costs in  
22 January through November 2008.

23 What I've done, which is an unlabeled  
24 work paper of my own, is I've summed those amounts  
25 for each of the three years, recognizing that 2008 is

1 only 11 months, and compared it to the projected  
2 costs on confidential Exhibit 3057, line C.

3 Q. Do you know whether the Dayton Power and  
4 Light Company seeks to defer all of the costs that  
5 the Dayton Power and Light Company records in the  
6 seven FERC accounts we looked at earlier that are  
7 identified in Mr. Campbell's testimony?

8 A. My understanding is the company's  
9 proposing to defer costs above what the company has  
10 identified they believe as being recoverable rates.

11 So they will -- my understanding  
12 mathematically of what will happen is the total  
13 amount of those costs in those categories you'll have  
14 a first step where you have to allocate the costs  
15 between what I would call opportunity sales  
16 customers, not term customers, short-term opportunity  
17 sales versus retail jurisdictional and term wholesale  
18 customers.

19 Second step is to break that category of  
20 costs into the bucket of those costs -- cost of those  
21 accounts allocated to the retail customers.

22 The company will then calculate the  
23 amount of revenue it believes it's recovering in  
24 current rates based upon the 1.8 cents that  
25 Ms. Seger-Lawson identifies in her testimony, and the

1 difference between those two amounts would be what  
2 the company seeks to defer.

3 Q. Do you know -- step back.

4 You would anticipate Dayton Power and  
5 Light Company to incur and record a variety of cost  
6 items in those seven FERC accounts in 2009 and 2010?

7 A. Yes.

8 Q. Is it your understanding that all of the  
9 items that would be expected to be recorded in those  
10 seven accounts are fuel related?

11 A. I would not characterize them that way.  
12 I think the best thing to do would be to again go  
13 back and look at Mr. Campbell's testimony and he  
14 provides an accurate narrative description of what  
15 specific items are prescribed by FERC to be  
16 recognized in those accounts.

17 I think the label of "fuel related" is  
18 close enough from the standpoint of this case in  
19 terms of trying to classify the categories of cost  
20 into something other than fuel, if you want to attach  
21 a label on them.

22 But different people may take exception  
23 to the precise characterization of some of these  
24 categories of cost as to whether or not they're fuel  
25 related.

1 Q. Do you have a copy of Mr. Campbell's  
2 testimony in front of you?

3 A. Yes.

4 Q. It's true, isn't it, that he explains  
5 that the Dayton Power and Light Company is not  
6 seeking to defer all of the costs that will be  
7 recorded in the seven FERC accounts but rather  
8 seeking to defer only some of the costs that are  
9 incurred that are recorded in those seven FERC  
10 accounts?

11 A. And as I believe we discussed earlier  
12 when you were talking about his testimony, in his  
13 narrative description he identifies certain  
14 exemptions when the company is not proposing to defer  
15 costs that are in fact recorded in these FERC  
16 accounts.

17 Q. Would you agree with me then that the  
18 comparison you've made of projected DP&L's projected  
19 deferral to the costs DP&L recorded in those seven  
20 FERC accounts in 2006 through 2008 is comparing cost  
21 items that aren't apples to oranges because they are  
22 cost items in 2006 to 2008 that are not included in  
23 2009-2010?

24 A. I don't know that to be the case.

25 Q. Is it your belief that the figure shown

1 on DP&L 3057, line C, to be the total amount that the  
2 Dayton Power and Light Company projects to incur in  
3 the seven FERC accounts in 2009-2010?

4 A. Based upon the label that is attached to  
5 line C on Exhibit 3057, that appears to be the case.  
6 And there's a narrative description in the notes that  
7 identifies what is reflected on line C.

8 Q. If it turns out that in fact the cost  
9 items in line C are only a subset of what was  
10 included in the seven FERC accounts, the subset being  
11 fuel-related items, in that case would you agree that  
12 the comparison that you made in your testimony in  
13 page 14, lines 17 through 22, was an  
14 apples-to-oranges comparison?

15 A. In looking at the interrogatory that  
16 produced this response, there seems to be the  
17 potential for some discrepancy between the two sets  
18 of numbers in that the responses to interrogatories,  
19 IEU's first set of interrogatories, was asking for  
20 year-to-date retail jurisdictional costs for accounts  
21 501, 502, 509, 547, 555, 411.8, and 411.9.

22 Whereas the question phrased -- question  
23 11 phrased in the second set of interrogatories  
24 requested the company to forecast purchased power  
25 costs expected to defer in 2009-2010

1 So to the extent that the number  
2 identified on Exhibit 3057, line C, includes costs  
3 that fall into accounts 501, 502, 509, 547, 555,  
4 411.8, and 411.9, that the company incurs but is not  
5 proposing to defer, there's a slight  
6 apples-and-orange comparison there.

7 However, I believe the exceptions that  
8 Mr. Campbell identifies in his testimony are probably  
9 relatively minor in terms of cost.

10 Q. On pages 18 to 20 you respond to a  
11 question about whether you are opposed to DP&L  
12 seeking to establish some type of fuel recovery  
13 mechanism under any circumstances.

14 What I'm hoping you can do is to put into  
15 English that I'll understand better what it is that  
16 you're proposing and what it is that you believe will  
17 be acceptable.

18 A. What I've tried to indicate is that my  
19 recommendation is not that the Commission never  
20 entertain any type of fuel recovery mechanism.

21 I've identified previously in my  
22 testimony that I believe the prior stipulation  
23 imposed an obligation on all parties in the event of  
24 a legislative change to get back together and try to  
25 negotiate an outcome that preserved the stipulation

1 while respecting the relative economic beneficiaries  
2 under the prior stipulation.

3 I think it's not unreasonable in the  
4 context of those types of negotiations to raise the  
5 question of the fuel deferral.

6 And it's fair game to talk about that,  
7 but from my perspective I think that entertaining a  
8 fuel deferral is something that would only be logical  
9 in the context of an ESP that has a longer term life  
10 than the present plan that's only scheduled to run  
11 through 2010.

12 Q. What term of ESP do you have in mind?

13 A. I didn't offer a specific number in my  
14 testimony. I would suggest that the term needs to  
15 have some alignment with the term of which any fuel  
16 deferrals are being recognized.

17 Q. Are you proposing that the Commission  
18 extend DP&L's ESP beyond 2010?

19 A. I'm not sure if the Commission has the  
20 ability to do that. What I was trying to suggest,  
21 again, I think pointing back to the provision in the  
22 stipulation, I think there's the opportunity for the  
23 signatory parties to negotiate that type of outcome.

24 And to the extent that they presented a  
25 negotiated resolution that included the longer term

1 ESP to the Commission, I believe the Commission would  
2 be permitted to approve it.

3 Q. Let me ask you about your testimony that  
4 starts on page 21 relating to a separate  
5 consideration by the Commission of AMI and Smart Grid  
6 from DP&L's energy efficiency demand response  
7 programs.

8 As an initial matter would you agree that  
9 AMI at least would be needed to implement time of use  
10 rates, peak time rebates, and critical peak pricing?

11 A. Not necessarily.

12 Q. How could DP&L implement those type of  
13 pricing mechanisms without having some form of  
14 advanced metering infrastructure?

15 A. In the past one of the AEP operating  
16 companies had a tariff several years back that was  
17 called I think an advanced time of day rate.

18 And they would -- the rate as it was  
19 structured was available to larger customers but they  
20 would look at the historical load trends across the  
21 course of a year and define each hour of each day  
22 into one of four pricing periods.

23 So literally the prices, the hourly  
24 prices were set a year ahead of time in advance based  
25 upon historical load shaping.

1 They also had, if -- my memory's vague  
2 here, but they had some type of communication  
3 equipment where they would provide the customer a  
4 signal of what was called a critical peak pricing,  
5 and it was for, working again from memory, this is  
6 probably not identical that was in the tariff, but it  
7 was on order of magnitude if the peak demand was in  
8 5 percent of the all time forecast peak, they'd  
9 initiate what was called a critical peak pricing hour  
10 and the prices were administratively set and would  
11 escalate to some value of 70, 80 cents per kilowatt  
12 hour.

13 So again, in terms of degree of  
14 sophistication, it's not necessarily as sophisticated  
15 as you might put in place with AMI infrastructure but  
16 it's an example of a tariff rate that provided  
17 pricing signals that varied to the customer over the  
18 course of the year trying to recognize that the  
19 system would demand in total varied.

20 You also have examples of where even  
21 residential customers may be provided on-peak or  
22 off-peak rates or seasonal differentiated rates.  
23 Some of First Energy companies have, for example,  
24 summer and winter rates.

25 So there are things that you can do to



1 provide those types of pricing signals that would  
2 tend to encourage customer behavior that starts --  
3 stops short of an AMI.

4 Q. For the AEP example that you had offered,  
5 how did AEP determine how much usage a customer had  
6 in a given hour?

7 A. As I mentioned, these were larger  
8 customers, so in the case of larger customers their  
9 existing metering infrastructure had a capability of  
10 registering hourly usage.

11 Q. Do you know whether the Dayton Power and  
12 Light Company could implement time of use rates, peak  
13 time rebates, and critical peak pricing across the  
14 service territory to all customers without  
15 implementing some form of AMI technology?

16 A. I don't know.

17 Q. Would you expect that some form of  
18 metering that could register time of use would need  
19 to be installed at each customer's facility or home  
20 for DP&L to be able to implement those type of  
21 pricing options?

22 A. Not necessarily. Again, I identified  
23 First Energy has some rates that are winter versus  
24 summer differentiated. You wouldn't need any kind of  
25 hourly pricing to provide that kind of price

1 structure.

2 Q. But if there's going to be an hourly  
3 price structure, you need some form of AMI  
4 technology, correct?

5 A. If your intent is to have the customer  
6 see and respond to those prices, in time, I would  
7 agree, you're going to need some type of  
8 infrastructure to communicate the information.

9 Q. Have you made any attempts to determine  
10 whether DP&L can achieve the energy efficiency and  
11 demand response targets in Senate Bill 221 without  
12 implementing time of use rates, peak time rebates, or  
13 critical peak pricing?

14 A. No.

15 Q. Let me turn you to your testimony on page  
16 22, line 14, addressing DP&L's request for lost  
17 revenues.

18 And in fact on line 20 you refer to the  
19 fact that Dayton Power and Light Company may be able  
20 to sell freed up generation into the market. Do you  
21 see that?

22 A. Yes.

23 Q. You would agree with me that DP&L may  
24 well not be able to sell all of the freed up  
25 generation into the market, correct?

1 A. That's possible.

2 Q. Would you propose that Dayton Power and  
3 Light Company be able to recover lost revenues  
4 associated with generation it was unable to sell in  
5 the market?

6 A. Well, I think what I identified is my  
7 understanding of the lost revenue calculation extends  
8 beyond the period of 2010. After that period of time  
9 it's not known who will be providing generation  
10 service or how it will be priced.

11 So I think the assumption that the  
12 company has made that it is entitled to lost  
13 generation, particularly after that date, is flawed.

14 Q. Okay, well, let's assume for the sake of  
15 our discussion here that customers haven't switched.  
16 Meaning taking their generation in the Dayton Power  
17 and Light Company.

18 In that instance, at least as to those  
19 customers, would you agree that it was appropriate  
20 for DP&L to recover lost revenue as to generation it  
21 was unable to sell in the market?

22 A. Can you clarify what year time frame your  
23 question applies to?

24 Q. Let's start with 2009-2010.

25 A. In 2009 and 2010 it's possible that as a

1 result of customer energy efficiency there may be  
2 generation freed up that the company is not able to  
3 sell or not able to sell at a margin, if that makes  
4 sense.

5 So that raises the question of whether or  
6 not there should be some recognition of lost  
7 revenues.

8 I think the presumption of that set of  
9 conditions is problematic. There's nothing that the  
10 company -- there's no information that the company  
11 has provided in their application to demonstrate that  
12 that in fact will be the outcome.

13 And given that the majority of the  
14 company's units are coal fired, I think 99 percent of  
15 their energy allocated to retail customers comes off  
16 of coal-fired units, there would seem to be a very  
17 high probability that there would be an opportunity  
18 to sell the freed up power off system

19 Q. So in the case it sells the freed up  
20 power -- let's stick with the original series of  
21 questions, first of all.

22 But in the event it is unable to sell  
23 that freed up power, you would agree it would be  
24 appropriate for the Dayton Power and Light Company to  
25 recover lost revenues on that power.

1 A. Not necessarily. I think you need to be  
2 looking at the totality of the company revenues and  
3 expenses.

4 The example that you have provided  
5 suggests a set of conditions that would make it  
6 reasonable to ask and answer the question whether or  
7 not the companies should or should not get some  
8 recognition of lost revenues. I don't think there  
9 should be a presumed answer one way or the other.

10 Q. How would you propose to determine  
11 whether the company should get lost revenues in those  
12 situations?

13 A. I haven't thought about that.

14 Q. Suppose the company is able to sell  
15 generation into the market but does so such that the  
16 revenue it recovers is less than it would recover  
17 under retail rates.

18 Do you believe it would be appropriate to  
19 consider recovery of lost revenues in that  
20 circumstance?

21 A. Again, I think the answer would be the  
22 same as my prior answer in that it would be  
23 reasonable to take that question under consideration  
24 without a presumption one way or the other.

25 Q. And as I read your testimony, you have

1 costs.

2 So as both expenses, revenues, and  
3 billing determinants shift on a year-to-year basis,  
4 there's a fairly immediate regulatory recognition of  
5 that.

6 And that's at least an example of a set  
7 of circumstances where you wouldn't necessarily or  
8 you might have a very difficult time arguing that  
9 there are these lost transmission related revenues.

10 I don't recall, maybe I overlooked it,  
11 but I don't believe the company's application is  
12 speaking at all on lost transmission revenues. My  
13 recollection was only that it referred to lost  
14 distribution for generation related revenues.

15 MR. SHARKEY: Let's go off the record.  
16 (Off the record.)

17 Q. I have a little bit more, not very much.

18 Referring back to DP&L's calculations of  
19 the 1.8 cent figure, and it's your understanding,  
20 isn't it, the 1.8 figure includes 1.3 cents for its  
21 EFC rate and .5 cent for the RSS rate?

22 I'm not asking if you agree with it,  
23 that's how you understand DP&L calculated it.

24 A. That's my understanding of how DP&L  
25 calculated it.

1 not addressed DP&L's request to recover lost revenue  
2 associated with transmission distribution or the rate  
3 stabilization charge; is that correct?

4 A. On page 23 of my testimony I indicate  
5 that any lost revenue should be limited to lost  
6 distribution rate of revenues.

7 Q. You include transmission related to  
8 revenues?

9 A. I don't know that there would be any lost  
10 transmission related to revenues by virtue of the  
11 way -- of how FERC transmission rates are regulated  
12 and assessed.

13 Q. Can you explain that to me?

14 A. Not necessarily with respect to Dayton  
15 Power and Light, because I've not looked specifically  
16 at how their FERC -- how their transmission rates are  
17 set under PJM and under FERC.

18 But I can give you another example based  
19 on utilities that are active in Midwest ISO where  
20 I've got a lot more familiarity with how their rates  
21 are set.

22 A lot of the utilities in Midwest ISO  
23 employ what is called a formula rate in which their  
24 actual transmission rates are updated once a year  
25 based upon a prior year FERC form 1 filing of actual

1 Q. Focusing on the .5 cent for the RSS  
2 charge, is it your understanding that the RSS charge  
3 is intended to include recovery for the Dayton Power  
4 and Light Company of items beyond fuel?

5 A. I need to do some digging to answer that  
6 question.

7 Q. I may be able to help you.

8 A. My understanding of the .5 cents is it is  
9 an outgrowth of a stipulation in Case No.  
10 05-276-EL-AIR, which is a provision created by Dayton  
11 Power and Light's -- misspoke here.

12 The RSP stipulation which I think is a  
13 prior stipulation extended Dayton's market --  
14 extended Dayton's market developed period till 2005  
15 and created a rate stabilization period which covered  
16 the years 2006 to 2008, permitted Dayton Power and  
17 Light to seek to recover increases in fuel,  
18 environmental, security, and tax costs, subject to a  
19 limit equal to 11 percent of Dayton Power and Light's  
20 January 1, 2004 generation rate.

21 In Case 05-276-EL-AIR, the company filed  
22 an application seeking to increase its revenue by  
23 slightly over 76 million, which was an increase of  
24 11 percent reflecting increases in a number of those  
25 categories of cost, which included fuel,

1 environmental, security, and tax costs.

2 My recollection is the actual increase in  
3 costs that the company had demonstrated was more than  
4 the \$76 million increase but they were capped at the  
5 11 percent increase level.

6 So the rate stabilization surcharge is  
7 intended to recover all or some portion of any one of  
8 those categories of cost.

9 You really can't -- I recognize what the  
10 company has done is attribute basically the hundred  
11 percent of that cost to fuel.

12 But again, you could argue that some  
13 portion of that is attributed to security cost or  
14 environmentally.

15 You go back and try to look at the actual  
16 filing and look at the total costs that the company's  
17 demonstrated and were filed in Case No. 05-276.

18 Q. Would you agree that the company's  
19 attributing all of that .5 cents to fuel in its  
20 request for deferral has the effect of lowering the  
21 deferral the company is seeking in this case?

22 A. I believe that would be the mathematical  
23 outcome.

24 MR. SHARKEY: I have no more questions at  
25 this time.

1 (Signature not waived.)  
2 (Deposition concluded at 3:30 p.m.)  
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1 State of Ohio :  
2 : SS:

3 County of \_\_\_\_\_ :  
4 I, Kevin M. Murray, do hereby certify that I  
5 have read the foregoing transcript of my deposition  
6 given on Wednesday, February 4, 9; that together with  
7 the correction page attached hereto noting changes in  
8 form or substance, if any, it is true and correct.

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Kevin M. Murray

I do hereby certify that the foregoing  
transcript of the deposition of Kevin M. Murray was  
submitted to the witness for reading and signing;  
that after he had stated to the undersigned Notary  
Public that he had read and examined his deposition,  
he signed the same in my presence on the \_\_\_\_\_ day  
of \_\_\_\_\_, 2008.

Notary Public

My commission expires \_\_\_\_\_, \_\_\_\_\_.

CERTIFICATE

1 State of Ohio :  
2 : SS:

3 County of Franklin :  
4 I, Julieanna Hennebert, Notary Public in and  
5 for the State of Ohio, duly commissioned and  
6 qualified, certify that the within named Kevin M.  
7 Murray was by me duly sworn to testify to the whole  
8 truth in the cause aforesaid; that the testimony was  
9 taken down by me in stenotypy in the presence of said  
10 witness, afterwards transcribed upon a computer; that  
11 the foregoing is a true and correct transcript of the  
12 testimony given by said witness taken at the time and  
13 place in the foregoing caption specified and  
14 completed without adjournment.

I certify that I am not a relative, employee,  
or attorney of any of the parties hereto, or of any  
attorney or counsel employed by the parties, or  
financially interested in the action.

IN WITNESS WHEREOF, I have hereunto set my  
hand and affixed my seal of office at Columbus, Ohio,  
on this 4th day of February, 2009.

Julieanna Hennebert, Registered  
Professional Reporter, and  
Notary Public in and for the  
State of Ohio.

My commission expires February 19, 2013.  
(JUL-1365)

<p><b>A</b></p> <p><b>ability</b> 55:20</p> <p><b>able</b> 39:3 58:20 59:19,24 60:3 61:2,3 62:14 65:7</p> <p><b>absence</b> 46:15</p> <p><b>absent</b> 44:1,11</p> <p><b>acceptable</b> 54:17</p> <p><b>accessible</b> 46:8</p> <p><b>account</b> 49:12</p> <p><b>Accounting</b> 1:11</p> <p><b>accounts</b> 35:20,23 36:6,13,22 37:22 37:23 38:3 49:10 49:20 50:6,21 51:6,10,16 52:7 52:10,16,20 53:3 53:10,20 54:3</p> <p><b>accurate</b> 51:14</p> <p><b>accurately</b> 21:12</p> <p><b>achieve</b> 59:10</p> <p><b>acknowledged</b> 11:3</p> <p><b>action</b> 22:22 69:11</p> <p><b>actions</b> 13:11 14:8</p> <p><b>active</b> 7:14 63:19</p> <p><b>activities</b> 7:1,6</p> <p><b>activity</b> 5:5</p> <p><b>actual</b> 6:10 35:9 36:21 37:3 42:1 46:7 49:9,14,18 49:21 63:24,25 66:2,15</p> <p><b>addition</b> 5:1</p> <p><b>additional</b> 11:20 13:24 43:17</p> <p><b>address</b> 11:14 13:1 21:3 22:1</p> <p><b>addressed</b> 9:13 11:2,9 19:19 45:15 63:1</p> <p><b>addressing</b> 39:14 59:16</p> <p><b>adjournment</b> 69:9</p> <p><b>adjustment</b> 34:21</p> <p><b>administratively</b> 57:10</p>	<p><b>adopted</b> 11:13</p> <p><b>advance</b> 56:24</p> <p><b>advanced</b> 56:14,17</p> <p><b>advantage</b> 11:24</p> <p><b>advocacy</b> 5:16</p> <p><b>AEP</b> 7:23 56:15 58:4,5</p> <p><b>AEP's</b> 11:7</p> <p><b>affect</b> 12:4 22:22 26:8</p> <p><b>affixed</b> 69:13</p> <p><b>aforsaid</b> 69:6</p> <p><b>afternoon</b> 3:1 4:6</p> <p><b>agree</b> 15:25 16:11 17:2 23:6,17 27:16 28:10 29:2 31:20 38:24 52:17 53:11 56:8 59:7 59:23 60:19 61:23 64:22 66:18</p> <p><b>agreed</b> 42:13</p> <p><b>agreeing</b> 38:20</p> <p><b>ahead</b> 20:23 56:24</p> <p><b>alignment</b> 55:15</p> <p><b>allocate</b> 50:14</p> <p><b>allocated</b> 50:21 61:15</p> <p><b>allowances</b> 36:7,9 36:10 49:11,13,14</p> <p><b>aluminum</b> 18:5,16 18:20 29:18</p> <p><b>amend</b> 19:25 22:3</p> <p><b>Amended</b> 1:15</p> <p><b>AMI</b> 56:5,9 57:15 58:3,15 59:3</p> <p><b>amount</b> 30:3,9 33:12 38:12 50:13 50:23 53:1</p> <p><b>amounts</b> 29:24 49:24 51:1</p> <p><b>analysis</b> 16:6 17:13 17:16 18:10,22 29:12,14 30:14 32:25 40:1,3,19 43:24,25 44:1,11 44:14</p>	<p><b>annual</b> 4:20,25 48:22</p> <p><b>answer</b> 6:23 16:6 21:1 25:21 32:2,4 32:17 35:6 39:3 39:25 40:5,20 41:10 43:21 44:2 62:6,9,21,22 65:5</p> <p><b>answered</b> 44:5</p> <p><b>answers</b> 48:2</p> <p><b>anticipate</b> 51:4</p> <p><b>anybody</b> 44:12</p> <p><b>APPEARANCES</b> 2:1</p> <p><b>appears</b> 20:15 45:16 53:5</p> <p><b>apples</b> 52:21</p> <p><b>apples-and-orange</b> 54:6</p> <p><b>apples-to-oranges</b> 53:14</p> <p><b>applicable</b> 3:8 19:11</p> <p><b>Applicant</b> 2:5 3:7</p> <p><b>application</b> 1:3,6,9 1:13 8:4 11:7,9,22 22:5 40:8 46:15 61:11 64:11 65:22</p> <p><b>applies</b> 15:6 60:23</p> <p><b>approach</b> 38:17 39:1</p> <p><b>approached</b> 21:18</p> <p><b>appropriate</b> 60:19 61:24 62:18</p> <p><b>approval</b> 1:4,7,10 1:14 45:20 46:15</p> <p><b>approve</b> 56:2</p> <p><b>approximately</b> 44:21</p> <p><b>argue</b> 66:12</p> <p><b>arguing</b> 64:8</p> <p><b>arrangements</b> 13:16,21</p> <p><b>aside</b> 17:6 43:11</p> <p><b>asked</b> 44:5 49:17</p> <p><b>asking</b> 22:10 53:19</p>	<p>64:22</p> <p><b>aspects</b> 11:15</p> <p><b>Assembly</b> 5:18</p> <p><b>assessed</b> 63:12</p> <p><b>assets</b> 27:18,18</p> <p><b>associated</b> 4:23 8:9 17:8 18:19 30:4 30:25 31:3,4 32:18 33:3 34:24 36:16 37:7,9 43:19 60:4 63:2</p> <p><b>assume</b> 4:22 12:15 28:5,24 37:5 60:14</p> <p><b>assumes</b> 17:1</p> <p><b>assuming</b> 28:10</p> <p><b>assumption</b> 28:24 60:11</p> <p><b>attach</b> 51:20</p> <p><b>attached</b> 53:4 68:4</p> <p><b>attempt</b> 44:25</p> <p><b>attempted</b> 34:12</p> <p><b>attempts</b> 59:9</p> <p><b>attorney</b> 69:10,11</p> <p><b>attribute</b> 66:10</p> <p><b>attributed</b> 66:13</p> <p><b>attributing</b> 66:19</p> <p><b>audio</b> 46:8</p> <p><b>Authority</b> 1:11</p> <p><b>available</b> 13:24 21:9 46:3 56:19</p> <p><b>aware</b> 10:14 14:20 16:20 17:7,14,17 17:21 18:23,24 29:9,13 31:22 40:6,9 41:2,5,20 44:4</p>	<p>54:24 55:21 56:16 64:18 66:15</p> <p><b>Barbos</b> 45:17</p> <p><b>base</b> 31:23,25 32:3 32:6 33:21,22 34:5,25 39:19 40:15 41:7</p> <p><b>based</b> 14:5 19:11 22:5,9 29:2 31:2 33:12,14 34:23 37:10 42:1 50:24 53:4 56:24 63:18 63:25</p> <p><b>basically</b> 66:10</p> <p><b>basis</b> 4:21 7:12 33:9 39:3 64:3</p> <p><b>beginning</b> 19:16 30:23 39:24</p> <p><b>begins</b> 9:21 15:18 26:12</p> <p><b>behalf</b> 2:5,10 5:17 6:16,19 7:2,10,19</p> <p><b>behavior</b> 58:2</p> <p><b>belief</b> 32:10 52:25</p> <p><b>believe</b> 6:7,12 11:1 11:3,7,8,20 19:7 19:15 21:10,16 24:2 26:8 29:6,15 29:17 38:24 39:8 39:17,21 40:10 43:17 44:12 45:24 50:10 52:11 54:7 54:16,22 56:1 62:18 64:11 66:22</p> <p><b>believes</b> 50:23</p> <p><b>beneficiaries</b> 55:1</p> <p><b>benefit</b> 14:6</p> <p><b>benefits</b> 20:2,4 21:20 23:19</p> <p><b>best</b> 51:12</p> <p><b>better</b> 54:15</p> <p><b>beyond</b> 6:21 15:8 15:12 43:17 55:18 60:8 65:4</p> <p><b>Bill</b> 12:13 15:10 22:24 23:12 24:18</p>
<p><b>B</b></p> <p><b>B</b> 26:23</p> <p><b>back</b> 19:1 21:14 24:10 25:14 26:10 27:1 31:8,19 33:5 38:5,22 40:24 42:20 44:18 46:22 47:5 48:9 51:3,13</p>				

24:24 25:2,9 27:11 45:1 46:24 59:11 <b>billing</b> 64:3 <b>bit</b> 64:17 <b>black</b> 32:1 34:3 41:12 <b>Book</b> 36:4 <b>booked</b> 36:6 37:23 <b>bottom</b> 19:17 30:23 47:25 <b>Bowser</b> 9:14 <b>box</b> 20:10 27:9 32:1 34:3 41:12 <b>break</b> 50:19 <b>broad</b> 39:2 <b>broadcasts</b> 46:9 <b>broader</b> 5:14 <b>bucket</b> 50:20 <b>businesses</b> 4:17 5:8 9:24	<b>capability</b> 58:9 <b>capacity</b> 31:1 33:4 33:12,20,25 37:9 <b>capped</b> 66:4 <b>caption</b> 69:8 <b>captures</b> 10:5 <b>carrying</b> 19:17 30:24 <b>case</b> 1:4,7,10,14 6:21 8:3,22,25 9:3 11:8,13 26:7 31:25 32:7 33:21 33:22 34:3 36:15 37:20 40:14,25 41:11 51:18 52:24 53:5,11 58:8 61:19 65:9,21 66:17,21 <b>cases</b> 7:2,3,20 8:14 10:24 17:25 30:8 <b>categories</b> 18:3,6 27:3 29:20 36:12 36:19 37:1,18 38:1 39:14 40:22 42:1 50:13 51:19 51:24 65:25 66:8 <b>category</b> 40:10,11 40:12 50:19 <b>cause</b> 69:6 <b>cent</b> 64:19,21 65:1 <b>Center</b> 2:8 <b>cents</b> 30:2 38:10 43:14,18 50:24 57:11 64:20 65:8 66:19 <b>CEO</b> 45:18 <b>certain</b> 1:10 23:2 30:9 35:19 36:19 40:22 42:1,7 52:13 <b>certainly</b> 28:20 <b>CERTIFICATE</b> 69:1 <b>certified</b> 4:3 <b>certify</b> 68:3,9 69:5 69:10	<b>chance</b> 15:23 <b>change</b> 54:24 <b>changes</b> 21:7 68:4 <b>character</b> 3:12 <b>characterization</b> 10:5 23:7 24:17 51:23 <b>characterize</b> 51:11 <b>charge</b> 33:11 63:3 65:2,2 <b>chemical</b> 31:3 32:18 37:7 <b>choose</b> 5:4 <b>circumstance</b> 62:20 <b>circumstances</b> 22:2 33:16 54:13 64:7 <b>Civil</b> 3:8 <b>clarify</b> 60:22 <b>classify</b> 51:19 <b>clause</b> 15:5 <b>clients</b> 6:24 <b>close</b> 40:2 43:24 51:18 <b>coal</b> 18:4 47:22 48:17,19 61:14 <b>coal-fired</b> 31:16 61:16 <b>Code</b> 1:12 14:25 <b>Columbus</b> 1:21 2:9 69:13 <b>come</b> 10:24 18:3 <b>comes</b> 61:15 <b>coming</b> 10:11 <b>comment</b> 46:12 <b>comments</b> 10:18,19 <b>commission</b> 1:1 5:16 10:7 12:17 19:3,7 54:19 55:17,19 56:1,1,5 68:16 69:18 <b>commissioned</b> 69:4 <b>Commission's</b> 8:13 33:17 <b>commodities</b> 17:24 18:5,16 29:19 <b>communicate</b> 59:8	<b>communication</b> 57:2 <b>companies</b> 5:3,15 7:3 56:16 57:23 62:7 <b>company</b> 1:4,7,10 1:14 10:1 11:10 11:18 12:16 13:23 14:19 16:22 17:8 18:19 19:6,24 20:18 22:23 23:1 23:13,16 24:18 26:14 27:17 28:6 30:10,19 31:13 32:22 33:24 34:9 35:3,10,14,20 36:15,21 37:2,5 38:14 39:8,18,21 40:7,13 41:2,6,8 41:15,21,22 42:8 43:9,18,22 44:21 45:2,19,25 46:9 46:22 47:2 50:4,5 50:9,22 51:2,5 52:5,14 53:2,24 54:4 58:12 59:19 60:3,12,17 61:2 61:10,10,24 62:2 62:11,14 65:4,21 66:3,10,21 <b>company's</b> 8:4,19 12:14 14:13,24 31:25 34:10 36:17 38:18 39:4 42:24 43:13 45:7 49:9 49:14 50:8 61:14 64:11 66:16,18 <b>compared</b> 50:1 <b>comparing</b> 52:20 <b>comparison</b> 52:18 53:12,14 54:6 <b>compensate</b> 43:9 <b>competitive</b> 5:11 <b>completed</b> 69:9 <b>compliance</b> 23:9 <b>complies</b> 46:6	<b>comply</b> 12:7 26:22 <b>complying</b> 12:17 23:10 <b>comprehensive</b> 4:13 43:23 <b>compromise</b> 23:20 <b>computer</b> 69:7 <b>concern</b> 38:11 <b>concluded</b> 67:2 <b>conclusion</b> 16:5 17:2 26:18 <b>condition</b> 44:20 <b>conditions</b> 17:18 19:21 22:20 24:4 26:9 61:9 62:5 <b>conference</b> 8:9 45:5 45:6,17 46:7 <b>confidential</b> 48:4,6 48:16 49:2 50:2 <b>connection</b> 25:4,6 <b>conservation</b> 25:17 <b>consider</b> 14:13 24:16 25:1,5,6,11 25:22 26:1 62:19 <b>consideration</b> 56:5 62:23 <b>considered</b> 24:7 26:2 <b>consisting</b> 33:11 <b>consolidated</b> 45:7 <b>construction</b> 18:8 18:17,20 29:19 <b>consumable</b> 31:3 32:18 37:8 <b>contact</b> 12:10 <b>contemplates</b> 22:2 <b>context</b> 55:4,9 <b>continue</b> 22:22 <b>contract</b> 33:10,13 <b>contracting</b> 33:8 <b>contractor</b> 6:9 <b>contractual</b> 48:18 <b>contribute</b> 14:1 <b>copied</b> 21:11 <b>copper</b> 18:5,16,20 29:18
--	--	---	---	---

<b>copy</b> 15:3 20:8,11 36:1 52:1 <b>Corp</b> 45:18 <b>Corporate</b> 1:15 <b>Corporation</b> 6:12 <b>correct</b> 9:19 23:4 37:11 39:10 47:24 59:4,25 63:3 68:5 69:7 <b>correction</b> 68:4 <b>correctly</b> 30:7 <b>cost</b> 14:6 16:12 17:7,18,21 18:1,6 18:10,12 23:10 29:15,25 30:19 33:12,14 36:5,12 36:19,20 37:1,22 38:1 39:14 40:2 40:19 41:13,16 43:24 45:20 47:9 50:20 51:5,19,24 52:20,22 53:8 54:9 65:25 66:8 66:11,13 <b>costs</b> 16:1,1,12,15 16:20,20 17:6,14 18:2,8,17,19 19:4 19:9 20:18 21:17 22:25 23:7,13,14 24:16,20 26:15,20 27:3,7,20,25 28:3 28:7,10,12,22,25 29:3,3,6,9,19,23 29:24 30:10,14,25 31:1,2,5,9,13,22 32:3,8,11,14 33:3 33:4,18,20,24,25 34:5,9 35:3,10,14 36:5,6,21 37:3,7,7 37:8,19 38:6,7,13 39:2,5,7,17 40:6,9 40:12,22 41:2,5 41:14,17,20,25 42:1,2,7,15 43:1,5 43:14,20,22 44:4 44:10,12 47:9,23	48:17,24 49:9,15 49:19,21 50:2,4,9 50:13,14,20,20 52:6,8,15,19 53:20,25 54:2 64:1 65:18 66:1,3 66:16 <b>counsel</b> 3:5 6:7 45:14 69:11 <b>count</b> 14:10 <b>County</b> 68:2 69:3 <b>couple</b> 4:13 30:22 31:15 <b>course</b> 56:21 57:18 <b>Courthouse</b> 2:3 <b>covered</b> 65:15 <b>Cox</b> 2:2 <b>created</b> 65:10,15 <b>creates</b> 22:25 <b>creditworthiness</b> 9:10 <b>criteria</b> 14:6 <b>critical</b> 11:17 56:10 57:4,9 58:13 59:13 <b>cross-check</b> 37:24 <b>current</b> 30:4 37:6 40:15,20 50:24 <b>currently</b> 13:20 39:18,21 41:3,22 43:14,18,22 <b>customer</b> 13:11 14:9 57:3,17 58:2 58:5 59:5 61:1 <b>customers</b> 7:14 11:6,24 12:10 13:14,20 14:12,21 16:13 20:3 50:16 50:16,18,21 56:19 57:21 58:8,8,14 60:15,19 61:15 <b>customer's</b> 12:24 13:5 58:19 <b>customer-sited</b> 9:22	<b>D</b> <b>D</b> 15:4 <b>date</b> 60:13 <b>day</b> 56:17,21 68:11 69:13 <b>days</b> 33:6 <b>Dayton</b> 1:3,6,9,13 2:4 4:7 10:1 11:18,21 12:7,16 13:13,17 14:18,23 16:21 17:8 18:10 18:18 19:11 20:17 22:16,25 23:13,15 24:1,17 26:7,13 27:13,17 28:6,25 29:23,25 30:10,19 31:12 32:21 33:23 34:8,10 35:2,10 35:13 36:14 38:13 39:8,18,21 40:12 40:21 41:2,5,8,14 41:16,20,21,24 42:7,24 43:18 44:20 45:2,4 46:21 47:1 50:3,5 51:4 52:5 53:2 58:11 59:19 60:2 60:16 61:24 63:14 65:3,10,16,19 <b>Dayton's</b> 8:8,8 18:10 65:13,14 <b>dealing</b> 8:11 12:2 25:17 27:10 <b>December</b> 15:8,12 <b>decreases</b> 18:1 <b>default</b> 26:5 <b>defer</b> 19:4 26:14 28:12 30:11,14,20 35:14 36:15 37:19 39:22 40:16 41:9 41:22 50:4,9 51:2 52:6,8,14 53:25 54:5 <b>deferral</b> 14:24 20:6 20:18,21,24 21:2 21:17 25:10,20	26:20 35:21 36:5 36:20 40:17 42:6 42:14,17,25 48:21 52:19 55:5,8 66:20,21 <b>deferrals</b> 55:16 <b>define</b> 16:25 17:4 39:19 56:21 <b>defined</b> 19:14 41:7 <b>definition</b> 17:22 <b>degree</b> 57:13 <b>Delphi</b> 4:15 <b>demand</b> 9:25 13:7 13:10,12,18 14:1 23:3 24:23 30:25 33:3,12,19 56:6 57:7,19 59:11 <b>demonstrate</b> 61:11 <b>demonstrated</b> 66:3 66:17 <b>deposes</b> 4:3 <b>deposition</b> 1:17 3:6 67:2 68:3,9,11 <b>describe</b> 6:3 34:17 <b>describes</b> 15:5 <b>describing</b> 14:18 <b>description</b> 51:14 52:13 53:6 <b>designated</b> 48:16 <b>desulfurization</b> 31:6 32:16 <b>detail</b> 11:19,20 44:2 <b>details</b> 11:5 <b>determinants</b> 64:3 <b>determination</b> 28:3 <b>determine</b> 19:8 40:3 44:25 58:5 59:9 62:10 <b>developed</b> 65:14 <b>difference</b> 51:1 <b>different</b> 10:15,19 30:16 51:22 <b>differentiated</b> 57:22 58:24 <b>differently</b> 10:4	31:21 <b>difficult</b> 32:4 64:8 <b>dig</b> 20:10 35:21 <b>digging</b> 65:5 <b>Direct</b> 9:13 <b>direction</b> 13:22 <b>directly</b> 5:3 11:9 <b>disagree</b> 38:19 <b>disagreement</b> 11:10 <b>discrepancy</b> 53:17 <b>discuss</b> 9:8 10:22 14:14 <b>discussed</b> 12:22 24:22 52:11 <b>discussion</b> 60:15 <b>discussions</b> 14:20 22:7,8 <b>disposable</b> 31:8 <b>disposal</b> 31:5,13,22 32:8,14 37:7 <b>disposition</b> 36:8,9 49:12,13 <b>dispute</b> 38:6 <b>distribution</b> 15:7 63:2,6 64:14 <b>diverse</b> 10:15 <b>division</b> 26:23,24 <b>document</b> 20:20,25 49:2 <b>documents</b> 49:7 <b>Dona</b> 30:2 <b>double</b> 42:6,17,25 43:10 <b>DP&amp;L</b> 15:10,15 16:1 21:16 22:12 23:4,18,19 28:11 30:14 32:7 35:18 37:19 38:7,12 40:15 41:3 42:14 43:14 45:18 47:10 49:2 52:19 53:1 54:11 56:12 58:20 59:10,23 60:20 64:23,24 <b>DP&amp;L's</b> 8:18,25
--	---	---	--	---

16:22 17:10 19:3 30:4 31:10,23 40:15 42:5,13,16 47:8 52:18 55:18 56:6 59:16 63:1 64:18 <b>DR</b> 12:24 13:5 <b>draft</b> 10:7,12 12:20 <b>dramatic</b> 18:1,7 <b>due</b> 23:16 <b>Duke</b> 11:8 <b>Duke's</b> 7:22 <b>duly</b> 4:2 69:4,5	<b>employee</b> 69:10 <b>enacted</b> 15:10 16:19 17:11 19:20 22:19 <b>encourage</b> 58:2 <b>endeavor</b> 20:1 <b>energy</b> 2:10 6:7 9:25 11:1,8 14:3 21:20 23:2 24:23 25:17 33:7,14,18 56:6 57:23 58:23 59:10 61:1,15 <b>Energy's</b> 7:22 <b>engage</b> 22:15 23:22 <b>engagements</b> 7:8 <b>English</b> 54:15 <b>entered</b> 48:4 <b>entering</b> 14:19 <b>entertain</b> 54:20 <b>entertaining</b> 55:7 <b>entitled</b> 60:12 <b>entity</b> 6:10 <b>environmental</b> 31:4 32:19 65:18 66:1 <b>environmentally</b> 66:14 <b>equal</b> 65:19 <b>equipment</b> 31:5,6 32:19,22 57:3 <b>error</b> 46:12,20 <b>escalate</b> 57:11 <b>ESP</b> 7:20 10:21 27:11 45:21 46:15 55:9,12,18 56:1 <b>establish</b> 54:12 <b>estimated</b> 47:22 48:17,21 <b>ETP</b> 8:21 <b>event</b> 19:24 54:23 61:22 <b>exactly</b> 37:1 <b>examination</b> 4:4 28:2 29:22 <b>examined</b> 68:11 <b>example</b> 5:18 30:25	39:7 57:16,23 58:4 62:4 63:18 64:6 <b>examples</b> 30:22 37:18 57:20 <b>exceed</b> 23:14 <b>exception</b> 36:23 51:22 <b>exceptions</b> 54:7 <b>excess</b> 25:18 <b>excessive</b> 24:24 46:24 <b>excluding</b> 39:20 <b>exemptions</b> 52:14 <b>Exhibit</b> 50:2 53:5 54:2 <b>exist</b> 11:25 25:24 <b>existence</b> 19:15 <b>existing</b> 26:16 28:4 28:8 58:9 <b>exists</b> 19:12 <b>expect</b> 16:15 31:18 58:17 <b>expected</b> 51:9 53:25 <b>expense</b> 31:19 <b>expenses</b> 36:7 40:20 49:10 62:3 64:2 <b>experience</b> 29:2 <b>experienced</b> 29:25 <b>expires</b> 68:16 69:18 <b>explain</b> 47:10,18 63:13 <b>explaining</b> 4:9 <b>explains</b> 52:4 <b>explanation</b> 36:12 <b>explore</b> 28:9 <b>expressly</b> 20:17 21:2 <b>extend</b> 23:23 55:18 <b>extended</b> 15:12 65:13,14 <b>extends</b> 15:8 60:7 <b>extension</b> 8:12 <b>extensive</b> 40:1	<b>extent</b> 16:5 20:1 26:5,17 27:17 34:22 43:5 54:1 55:24 <hr/> <b>F</b> <hr/> <b>facilities</b> 31:16 <b>facility</b> 58:19 <b>fact</b> 15:5 24:2 38:14 46:23 52:15 53:8 59:18,19 61:12 <b>factors</b> 24:6 <b>fair</b> 10:2,10 19:5 27:12 30:11 32:5 55:6 <b>fairly</b> 64:4 <b>faith</b> 19:25 22:15 23:22 <b>fall</b> 36:13,22 38:2 40:10 54:3 <b>familiar</b> 46:23 <b>familiarity</b> 63:20 <b>Faruki</b> 2:2 <b>February</b> 1:22 3:2 68:4 69:13,18 <b>fee</b> 4:22,25 33:11 46:10 <b>FERC</b> 5:20,22 8:6 35:20,22 36:6,13 37:22 38:3 50:6 51:6,15 52:7,9,15 52:20 53:3,10 63:11,16,17,25 <b>Fifth</b> 2:8 9:9 <b>figure</b> 52:25 64:19 64:20 <b>filed</b> 11:12 22:6 65:21 66:17 <b>files</b> 46:8 <b>filing</b> 63:25 66:16 <b>filings</b> 8:6 10:21 <b>final</b> 10:10,16 12:3 <b>finalized</b> 12:18 <b>financial</b> 44:20 45:1	<b>financially</b> 69:11 <b>find</b> 32:24 <b>fired</b> 61:14 <b>firm</b> 6:1,4,8,15,24 7:4,13 <b>first</b> 4:2 7:22 8:24 9:5,20,21 11:1 13:8 14:25 15:25 17:3 20:7,7 27:10 43:12 49:6 50:14 53:19 57:23 58:23 61:21 <b>fit</b> 13:17 <b>fixed</b> 33:11 43:3 <b>flawed</b> 38:18 39:1 60:13 <b>Floor</b> 1:21 <b>flue</b> 31:6 32:15 <b>focus</b> 28:5 <b>focusing</b> 24:5 65:1 <b>follow</b> 26:4 <b>follows</b> 4:3 <b>footnote</b> 9:12 <b>forecast</b> 53:24 57:8 <b>foregoing</b> 68:3,9 69:7,8 <b>form</b> 8:6 10:12,16 56:13 58:15,17 59:3 63:25 68:5 <b>formula</b> 63:23 <b>forward</b> 14:15 <b>four</b> 56:22 <b>frame</b> 60:22 <b>Franklin</b> 69:3 <b>freed</b> 59:20,24 61:2 61:18,19,23 <b>front</b> 5:8,19 52:2 <b>fuel</b> 14:24 16:1,7,12 16:15,20 17:6 18:3,13 19:4,9 20:6,18 21:17 24:6,19 25:3,10 25:12,20,23 26:15 27:19 28:7,22,25 29:3,6 30:4 31:2 34:21 36:6,7,16
---	--	--	--	--

38:7 39:5 40:16 41:23 42:6,17 43:14,19,23,23 48:21,23 49:10,11 51:10,17,20,24 54:12,20 55:5,8 55:15 65:4,17,25 66:11,19 <b>fuel-related</b> 38:7 43:19 53:11 <b>full</b> 12:14 <b>fully</b> 43:9 <b>fund</b> 5:4 <b>further</b> 14:14 <b>future</b> 28:9 <b>fuzzy</b> 10:23	22:15 23:22 <b>gotten</b> 5:21 <b>grant</b> 19:3 <b>Gregory</b> 36:3 <b>Grid</b> 56:5 <b>gross</b> 31:1 34:14,18 34:19 36:16 37:10 <b>group</b> 7:14 <b>groups</b> 10:15 <b>guess</b> 6:6,21 <b>gypsum</b> 31:5,8,13 31:22 32:8,14 37:7	<b>identical</b> 57:6 <b>identification</b> 11:24 14:7 22:6 34:20 <b>identified</b> 18:13 22:4 27:3 28:19 29:18 34:2 36:19 38:1,4 45:17,19 46:18 48:4,5 49:21 50:7,10 54:2,21 58:22 60:6 <b>identifies</b> 35:19 36:4 50:25 52:13 53:7 54:8 <b>identify</b> 4:12,13 9:7 14:12 21:25 22:18 24:2 34:4 35:22 36:25 37:18 39:7 39:17 44:10,12 47:20 <b>identifying</b> 12:10 13:19,23 37:21 <b>IEU</b> 4:10,18,23 5:7 5:11,14,21,25 6:4 6:9,10,16,19 7:10 7:20 21:18 22:12 23:17 48:14 49:6 <b>IEU's</b> 53:19 <b>IIR</b> 4:10 <b>immediate</b> 64:4 <b>impact</b> 45:1 <b>impacts</b> 45:7 <b>implement</b> 56:9,12 58:12,20 <b>implemented</b> 11:6 13:6 14:17 <b>implementing</b> 58:15 59:12 <b>impose</b> 23:7 <b>imposed</b> 23:14 24:17 34:18 54:23 <b>imposes</b> 22:12 23:13 <b>impossible</b> 32:4 <b>improved</b> 22:21	<b>include</b> 12:20 36:21 63:7 65:3 <b>included</b> 11:21 30:20 39:9 40:13 52:22 53:10 55:25 65:25 <b>includes</b> 36:6 48:22 54:2 64:20 <b>including</b> 11:18 23:1 24:7,14 <b>increase</b> 40:4 65:22 65:23 66:2,4,5 <b>increased</b> 16:21 17:7,22 <b>increases</b> 65:17,24 <b>incremental</b> 26:14 26:20 27:24 28:6 28:25 <b>incur</b> 16:15 17:19 29:4 32:10 36:20 37:2,6 41:25 51:5 53:2 <b>incurred</b> 13:12 18:10,19 26:22 29:23 32:7 33:24 34:22 35:3 36:21 40:13 41:3,6,15 41:17,21 42:1,3 43:6 47:10 49:10 52:9 <b>incurring</b> 31:13 32:14 34:9 35:11 38:14 <b>incurs</b> 16:1,12 29:10 30:20 41:25 54:4 <b>independent</b> 29:12 29:14 <b>indicate</b> 39:24 54:18 63:4 <b>indicated</b> 40:18 46:18 <b>indicates</b> 45:25 <b>individual</b> 7:3 <b>industrial</b> 2:10 6:7 7:3,14	<b>information</b> 12:11 40:8 48:4 59:8 61:10 <b>infrastructure</b> 56:14 57:15 58:9 59:8 <b>initial</b> 11:9 56:8 <b>initially</b> 22:18 <b>initiate</b> 57:9 <b>insert</b> 6:20 <b>installed</b> 32:22 58:19 <b>instance</b> 60:18 <b>institute</b> 9:24 <b>integrate</b> 12:12 <b>integrated</b> 12:24 <b>intended</b> 43:8 65:3 66:7 <b>intent</b> 59:5 <b>interested</b> 69:11 <b>Internet</b> 46:8 <b>interpret</b> 13:10 <b>interrogatories</b> 8:5 48:15 49:7 53:18 53:19,23 <b>interrogatory</b> 49:16 53:15 <b>interruptible</b> 13:15 13:21,24 <b>inventory</b> 14:11 <b>inventorying</b> 13:19 <b>involved</b> 5:16,22 7:1,13,15 14:22 <b>Ireland</b> 2:2 <b>irrelevant</b> 42:3 <b>ISO</b> 7:15,17 63:19 63:22 <b>item</b> 29:16 37:11 <b>items</b> 17:21 18:12 24:22 25:9,11,19 30:18,19 51:6,9 51:15 52:21,22 53:9,11 65:4
<b>G</b> <b>G</b> 2:7 <b>gained</b> 36:8 <b>gains</b> 49:12 <b>game</b> 55:6 <b>gas</b> 18:4 31:6 32:15 <b>general</b> 5:18 6:6 10:4 17:17 <b>generally</b> 13:10 <b>generating</b> 27:18 <b>generation</b> 16:18 39:20 59:20,25 60:4,9,13,16,20 61:2 62:15 64:14 65:20 <b>Gillen</b> 46:18 <b>give</b> 63:18 <b>given</b> 10:24 30:22 58:6 61:13 68:4 69:8 <b>go</b> 20:20,22,23 26:25 33:5 47:5 48:9 51:12 64:15 66:15 <b>goes</b> 15:17 <b>going</b> 6:20 12:11 21:16 40:24 45:12 59:2,7 <b>good</b> 4:6 7:25 19:24	<b>H</b> <b>half</b> 7:16 <b>hand</b> 15:3 69:13 <b>handy</b> 20:9 <b>happen</b> 50:12 <b>happening</b> 12:8 <b>heard</b> 15:14 18:15 <b>heavily</b> 7:13,15 <b>help</b> 65:7 <b>helpful</b> 35:23 <b>Hennebert</b> 1:19 69:4,15 <b>hereinafter</b> 4:2 <b>hereto</b> 68:4 69:10 <b>hereunto</b> 69:12 <b>high</b> 61:17 <b>historic</b> 30:8,21 <b>historical</b> 56:20,25 <b>Historically</b> 33:5 <b>hit</b> 24:8 47:13 <b>home</b> 58:19 <b>honest</b> 20:19 <b>hopefully</b> 12:18 <b>hoping</b> 54:14 <b>host</b> 22:25 23:7 <b>hour</b> 56:21 57:9,12 58:6 <b>hourly</b> 56:23 58:10 58:25 59:2 <b>hundred</b> 66:10	<b>I</b>	<b>J</b>	<b>January</b> 12:4 49:22



65:20	12:1 19:20 21:8	Lisa's 46:11	4:8,11 23:25	modification 9:13
Jeff 4:7 20:19	22:19 23:10,17	list 4:13 37:10	35:15 56:8	modifications
47:12	24:2 26:6 27:2,4	literally 13:2 56:23	matters 7:17 24:6	11:14
Jeffrey 2:2	28:18 47:6	little 14:4 64:17	McAlister 2:7 6:20	moment 15:21
Joe 9:14	legislative 54:24	LLC 1:21 2:7 6:6	16:4 24:9 26:17	47:17
John 46:18	let's 13:7 17:3,4	load 56:20,25	44:5,16 48:2	money 23:2 43:17
Julieanna 1:18	28:5,5 31:8 42:21	logical 55:8	McNees 1:20 2:7	months 13:2 18:2
69:4,15	43:11 48:9 60:14	logically 13:16	6:1,4,15 7:10	50:1
JUL-1365 69:19	60:24 61:20 64:15	long 10:11,17	mean 22:21 38:25	moved 44:7
jurisdictional 49:9	level 44:1 66:5	longer 33:9 55:9,25	meaning 21:22	moving 14:14
49:15,19 50:17	life 55:9	look 4:16 13:7	22:12 60:16	32:17 43:6
53:20	Light 1:4,7,10,14	20:12 27:1,15	means 33:4	MRO 27:10
<b>K</b>	4:8 10:1 11:18,21	34:12 36:1 38:11	measures 10:22	Murray 1:18 3:7
Kevin 1:18 3:6 4:1	12:7,16 13:13	39:2,23 40:2	mechanism 33:19	4:1,6 48:10 68:3,7
48:2 68:3,7,9 69:5	14:18,24 16:22	45:12 51:13 56:20	34:21 54:13,20	68:9 69:5
kilowatt 57:11	17:8 18:11,18	66:15,16	mechanisms 56:13	mutual 22:14
kind 44:13 58:24	20:17 22:17 23:1	looked 10:17 13:2	meeting 13:17	<b>N</b>
58:25	23:13,15 24:1,18	50:6 63:15	member 6:6	name 35:16
know 4:6,12,15	26:7,13 27:13,17	looking 16:9 40:19	members 4:10,18	named 69:5
6:22 12:20 14:16	28:6 30:10,19	46:13 53:15 62:2	4:20 5:17,19	name's 4:7
18:18 19:10 23:6	31:12 32:22 33:24	losses 36:9 49:13	membership 4:25	narrative 36:12
27:8 29:5,15	34:8,10 35:3,10	lost 47:12 59:16	5:6	51:14 52:13 53:6
31:12,14,14 32:7	35:14 36:15 38:14	60:3,7,12,20 61:6	memory 10:23 47:4	Natural 18:4
32:9,12,21,23	39:8,18,21 40:13	61:25 62:8,11,19	57:5	nature 21:15
33:23 34:13 35:2	41:2,6,8,14,17,21	63:1,5,5,9 64:9,12	memory's 57:1	necessarily 17:2
35:12 42:23 46:21	41:22,25 42:8,24	64:13	mention 18:15	56:11 57:14 58:22
47:1,19 50:3 51:3	43:18 44:20 45:2	lot 63:20,22	45:23	62:1 63:14 64:7
52:24 58:11,16	45:4 46:22 47:2	lowering 66:20	mentioned 18:16	necessary 20:1
63:9	50:4,5 51:5 52:5	Ludlow 2:3	31:9 58:7	need 12:8,12 28:2
knowledge 34:9	53:2 58:12 59:19	<b>M</b>	meter 14:9	45:12 47:20 58:18
known 23:11 60:9	60:3,17 61:24	M 1:18 3:7 4:1 68:3	metering 56:14	58:24 59:3,7 62:1
<b>L</b>	63:15 65:4,17	68:7,9 69:5	58:9,18	65:5
label 51:17,21 53:4	Light's 13:17 65:11	magnitude 57:7	methodology 48:11	needed 56:9
labeled 48:23 49:4	65:19	majority 61:13	48:13	needs 11:23 55:14
lack 12:3	limit 65:19	margin 61:3	Midwest 7:15,17	negotiate 23:19
language 21:25	limited 63:5	market 11:2 17:17	63:19,22	54:25 55:23
27:15	line 15:5 34:15	59:20,25 60:5,21	million 65:23 66:4	negotiated 14:8
larger 56:19 58:7,8	39:13,13,24 47:8	62:15 65:13,14	mind 12:23 18:3	55:25
law 6:24 11:5 12:8	47:16 49:2,3,4	markets 33:7	30:18 55:12	negotiation 23:23
layman's 21:25	50:2 53:1,5,7,9	materials 22:5	minor 54:9	negotiations 19:25
leave 37:9	54:2 59:16,18	mathematical	minute 48:7	22:3,15 55:4
legal 6:10 16:5,6	lines 14:22 39:6	38:17 39:1 66:22	misinterpreting	never 54:19
21:21 22:10 26:18	48:1 53:13	mathematically	37:16	new 22:25
legislation 11:16	linkage 25:10,19,25	50:12	missing 38:13	nine 18:2
	linked 8:8 26:3,5	matter 1:3,6,9,13	misspoke 26:23	normally 5:4
	Lisa 2:7 4:23		65:11	

North 2:3	19:20 22:13 33:17	<b>P</b>	permit 19:8	43:2
Notary 1:19 3:9,12	48:14 68:1 69:2,4	page 9:7,19,21 15:4	permitted 56:2	power 1:4,7,10,14
68:10,14 69:4,16	69:13,17	19:16,17,17 21:10	65:16	4:7 10:1 11:18,21
note 48:3	Ohio's 49:6	24:8 30:23,24	permitting 26:13	12:7,16 13:13,17
noted 36:23	oil 18:4	34:15 36:4 39:6	personally 14:22	14:18,23 16:21
notes 3:10 53:6	Okay 4:14 9:20	39:23 44:23 45:16	perspective 12:9	17:8 18:11,18
noting 68:4	13:9 17:5 27:5	46:14,17 47:7,16	55:7	20:17 22:16 23:1
November 49:22	47:7 49:5 60:14	53:13 56:4 59:15	perspectives 20:3	23:13,15 24:1,18
number 9:8 18:4	old 30:15	63:4 68:4	phrases 31:20	26:7,13 27:13,17
29:19 31:16 37:25	once 63:24	pages 44:21,24	phrased 28:24	28:6 30:10,19,25
48:22,22 54:1	ones 18:15 34:2	54:10	53:22,23	31:12 32:21 33:3
55:13 65:24	onus 24:1	paper 49:24	phraseology 15:15	33:9,23 34:8,10
numbers 44:23	on-peak 57:21	paragraph 9:9	piece 9:5	34:24 35:2,10,14
48:25 53:18	operated 33:7	part 11:2,3 12:6	PJM 63:17	36:8,15 37:8
Nurick 1:20 2:7	operating 16:17	15:2 32:25 33:11	place 22:7 57:15	38:14 39:8,18,21
	56:15	33:13 40:16 41:7	69:8	40:13 41:2,6,8,14
<b>O</b>	operation 31:4,6	41:22	plan 1:5,15 8:12,13	41:16,20,21,24
object 16:4	32:19	participation 5:5	11:4 15:7,11	42:7,24 43:18
objection 6:21	opinion 13:4 21:22	particular 12:23	26:16,21 28:1,4,8	44:20 45:2,4
12:16 26:17 43:13	22:10 42:16,22	31:17 40:25	29:1 43:3 55:10	46:21 47:1 48:24
44:6	opinions 25:12	particularly 60:13	plans 14:17	49:11 50:3,5 51:4
objections 38:10	opportunities	parties 3:6 19:24	plants 31:18	52:5 53:2,24
obligation 12:6,15	11:25	54:23 55:23 69:10	Plaza 2:3	58:11 59:19 60:2
23:9,18,22 54:23	opportunity 50:15	69:11	please 9:20 37:13	60:16 61:18,20,23
obligations 13:18	50:16 55:22 61:17	partner 6:5	point 10:24 12:10	61:24,25 63:15
14:2,10 22:11,12	opposed 27:6 28:16	party 23:23 26:7	23:11 35:11 38:16	65:3,11,16,19
22:14 23:2,5	31:23 54:11	pay 4:23	38:25 40:25 42:9	practical 22:16
48:18	opt 10:1,21	payments 4:23	pointed 45:14	23:25
obviously 6:22	option 11:2 14:13	peak 13:11,12,17	46:11	precise 21:22 23:10
10:18	options 58:21	14:1 56:10,10	pointing 55:21	51:23
occasioned 31:2	oranges 52:21	57:4,7,8,9 58:12	policy 33:17	precisely 32:2
occur 7:8	order 12:12 39:3	58:13 59:12,13	portfolio 14:10	prepare 8:2
offer 16:2,13,16	39:25 43:21 57:7	pending 10:12	23:5	preparing 24:5,19
17:9 21:21 27:14	orders 8:13	people 10:18 51:22	portion 40:15	25:2,7,12,22
27:19 29:4 55:13	organization 4:19	People/companies	47:20 48:1 66:7	prescribed 43:8
offered 58:4	5:17	4:20	66:13	51:15
office 69:13	organizations 33:6	percent 17:4 57:8	posed 44:3	presence 3:11
offices 1:20	original 61:20	61:14 65:19,24	position 21:21	68:11 69:6
official 3:12	outcome 28:21	66:5,11	22:17	present 22:1 55:10
off-peak 57:22	54:25 55:23 61:12	performed 17:12	possibility 19:19	presentations 8:7
OH 2:9	66:23	17:15 18:9	possible 34:4 35:6	45:3
Ohio 1:1,11,20,22	outgrowth 65:9	period 40:20 43:7	36:25 60:1,25	presented 55:24
2:4 5:12,16 6:4,9	outside 43:7	60:8,8 65:14,15	posted 8:7 46:7	preserve 20:1
6:10,13,16,19	overlooked 8:16	periods 56:22	potential 36:5	21:19
7:10,20 10:7,20	64:10	permissive 28:13	43:10 53:17	preserved 54:25
11:8 14:16,25	owns 27:18	28:16,20,22,23	potentially 37:19	president 45:18

<p><b>presumably</b> 40:14 41:7</p> <p><b>presumed</b> 62:9</p> <p><b>presumption</b> 61:8 62:24</p> <p><b>previously</b> 23:21 28:19 34:2 37:20 46:20 54:21</p> <p><b>price</b> 33:15 58:25 59:3</p> <p><b>priced</b> 60:10</p> <p><b>prices</b> 56:23,24 57:10 59:6</p> <p><b>pricing</b> 56:10,13,22 57:4,9,17 58:1,13 58:21,25 59:13</p> <p><b>primarily</b> 32:15</p> <p><b>prior</b> 8:11,12,17 19:11 33:2,5 43:2 46:12 54:22 55:2 62:22 63:25 65:13</p> <p><b>probability</b> 61:17</p> <p><b>probably</b> 7:16 10:3 14:3 36:25 37:3 54:8 57:6</p> <p><b>problematic</b> 61:9</p> <p><b>problems</b> 16:24</p> <p><b>Procedure</b> 3:8</p> <p><b>procedures</b> 14:17</p> <p><b>proceeding</b> 31:10 33:1,22 45:21</p> <p><b>proceedings</b> 5:1,4 30:21</p> <p><b>process</b> 14:14</p> <p><b>produced</b> 53:16</p> <p><b>production</b> 49:7</p> <p><b>Professional</b> 69:16</p> <p><b>programs</b> 9:25 12:24 13:5,6 23:3 24:23 56:7</p> <p><b>prohibits</b> 20:17 21:2</p> <p><b>project</b> 45:21</p> <p><b>projected</b> 46:1,14 47:9 48:19 50:1 52:18,18</p>	<p><b>projection</b> 45:6</p> <p><b>projections</b> 45:9 46:19</p> <p><b>projects</b> 7:11 14:5 53:2</p> <p><b>promulgated</b> 10:7</p> <p><b>proof</b> 3:11</p> <p><b>proposal</b> 36:18</p> <p><b>propose</b> 60:2 62:10</p> <p><b>proposed</b> 9:9 19:6 20:6 42:14</p> <p><b>proposing</b> 41:25 50:9 52:14 54:5 54:16 55:17</p> <p><b>provide</b> 11:4 12:11 16:2,13,16 27:13 29:4 33:10 57:3 58:1,25</p> <p><b>provided</b> 19:23 26:11 40:7 43:3 49:15,19,21 57:16 57:21 61:11 62:4</p> <p><b>provides</b> 28:11 36:11 48:16,21 51:14</p> <p><b>providing</b> 17:9 33:14 60:9</p> <p><b>provision</b> 9:10 11:15 15:14,15 19:18,23 21:6 26:6 28:11,18,18 55:21 65:10</p> <p><b>provisions</b> 12:21 25:1,8,16 26:8,19 27:11</p> <p><b>Public</b> 1:1,19 5:15 10:6 68:11,14 69:4,16</p> <p><b>PUCO</b> 5:2,8 11:14</p> <p><b>purchase</b> 34:24</p> <p><b>purchased</b> 30:25 33:3 36:8 37:8 48:24 49:11 53:24</p> <p><b>purpose</b> 5:14</p> <p><b>pursuant</b> 1:11 16:2</p> <p><b>pursue</b> 11:25</p>	<p><b>pursued</b> 11:6</p> <p><b>pursuits</b> 5:22</p> <p><b>put</b> 31:15 54:14 57:15</p> <p><b>P.L.L.</b> 2:2</p> <p><b>p.m.</b> 1:22 67:2</p> <hr/> <p style="text-align: center;"><b>Q</b></p> <hr/> <p><b>qualification</b> 3:12</p> <p><b>qualified</b> 69:5</p> <p><b>quarter</b> 45:16</p> <p><b>quarterly</b> 8:9 45:5</p> <p><b>question</b> 15:9,25 16:11,25 21:1 24:9,12 25:5,13 25:21 32:4 34:7,8 35:7,8,9 37:12 38:21 39:4,25 40:5,21 41:11,13 41:14,20 42:19 43:21 44:2 47:13 48:10,11 49:8,17 53:22,22 54:11 55:5 60:23 61:5 62:6,23 65:6</p> <p><b>questions</b> 30:1 61:21 66:24</p> <p><b>quite</b> 7:13,15 10:12</p> <hr/> <p style="text-align: center;"><b>R</b></p> <hr/> <p><b>raise</b> 55:4</p> <p><b>raises</b> 61:5</p> <p><b>Randazzo</b> 6:5</p> <p><b>range</b> 46:2</p> <p><b>ranking</b> 14:5</p> <p><b>rate</b> 8:12,13 11:2 15:7,11 26:16,21 27:25 28:4,8 29:1 30:15 31:24,25 32:6 33:21,22 34:25 38:2,11,12 39:10,10 40:4,14 40:24 41:14 43:3 56:17,18 57:16 63:2,6,23 64:21 64:21 65:15,20</p>	<p>66:6</p> <p><b>rates</b> 19:14,21 20:5 22:19,21 24:3 26:8 30:4 31:23 32:3 33:25 34:6,7 34:11 35:4,5,8 37:6 38:13,15 39:9,19,20 40:15 40:23 41:7 43:3,7 50:10,24 56:10 57:22,22,24 58:12 58:23 59:12 62:17 63:11,16,20,24</p> <p><b>reached</b> 23:20</p> <p><b>read</b> 15:21,23 24:10,11 25:13,15 26:25 37:14 38:21 38:23 39:11,12 42:19 47:17 62:25 68:3,11</p> <p><b>reading</b> 68:10</p> <p><b>reads</b> 47:22</p> <p><b>reality</b> 22:16</p> <p><b>really</b> 34:4 39:14 44:24 66:9</p> <p><b>reasonable</b> 62:6,23</p> <p><b>rebates</b> 56:10 58:13 59:12</p> <p><b>recall</b> 5:24 8:23 20:19,20 24:15 30:5 35:16 45:9 47:4 64:10</p> <p><b>receipts</b> 31:1 34:15 34:18,19 36:16 37:10</p> <p><b>received</b> 48:14,14 48:20</p> <p><b>recognition</b> 35:1,21 61:6 62:8 64:4</p> <p><b>recognize</b> 12:2 25:8 25:16,24 57:18 66:9</p> <p><b>recognized</b> 33:22 51:16 55:16</p> <p><b>recognizing</b> 49:25</p> <p><b>recollection</b> 13:1</p>	<p>64:13 66:2</p> <p><b>recommend</b> 19:3</p> <p><b>recommendation</b> 19:19 54:19</p> <p><b>reconcile</b> 28:17</p> <p><b>record</b> 24:11 25:15 37:14 38:23 39:12 44:16,17,18 48:3 48:7,8,9 49:1 51:5 64:15,16</p> <p><b>recorded</b> 51:9 52:7 52:9,15,19</p> <p><b>records</b> 4:16 50:5</p> <p><b>recover</b> 26:14 28:11 30:9 38:7 39:22 60:3,20 61:25 62:16 63:1 65:17 66:7</p> <p><b>recoverable</b> 27:20 31:7 34:21 37:20 38:2 50:10</p> <p><b>recovered</b> 26:15,21 27:25 28:4,7 32:3 33:20,21 34:5,25 39:15</p> <p><b>recovering</b> 28:25 38:12,15 39:4,9 39:19 40:22 42:14 43:15,19,22 50:23</p> <p><b>recovers</b> 62:16</p> <p><b>recovery</b> 19:8 26:20 27:24 30:3 31:24 33:19 37:6 42:7,18 43:1,7,10 45:20,25 54:12,20 62:19 65:3</p> <p><b>redacted</b> 47:21</p> <p><b>reduced</b> 3:9</p> <p><b>reduces</b> 13:11</p> <p><b>reducing</b> 23:4</p> <p><b>reduction</b> 13:18 14:1</p> <p><b>refer</b> 8:18 26:10 32:17 33:2 34:14 47:15 59:18</p> <p><b>referenced</b> 19:16</p>
--	--	---	--	---

45:11 46:13,14 <b>referencing</b> 27:2 <b>referred</b> 15:14 64:13 <b>referring</b> 20:14 24:20 32:15 33:24 41:16 47:19,21,25 49:1 64:18 <b>refers</b> 27:24 <b>reflected</b> 53:7 <b>reflecting</b> 65:24 <b>reflects</b> 48:18 <b>regarding</b> 21:6,18 24:22 25:8 <b>regional</b> 33:6,7 <b>register</b> 58:18 <b>registered</b> 6:13 69:15 <b>registering</b> 58:10 <b>regulated</b> 63:11 <b>regulatory</b> 64:4 <b>regulatory/engin...</b> 7:7 <b>related</b> 7:17 18:13 33:18,20 43:23 51:10,17,25 63:7 63:10 64:9,14 <b>relating</b> 9:17 10:21 12:21 25:3 56:4 <b>relationship</b> 6:3 <b>relative</b> 55:1 69:10 <b>relatively</b> 54:9 <b>relevant</b> 40:25 41:18,19 <b>relying</b> 16:6 <b>remember</b> 8:1 <b>renegotiation</b> 21:7 21:19 <b>Reporter</b> 69:16 <b>represent</b> 4:7 5:7 5:19 <b>represented</b> 4:10 <b>representing</b> 5:15 <b>represents</b> 7:13 <b>request</b> 14:24 19:4 26:14 42:6,16,25	59:16 63:1 66:20 <b>requested</b> 25:20 40:16 49:8 53:24 <b>require</b> 28:20 <b>requirement</b> 11:3 12:4 28:17 <b>requirements</b> 12:7 12:14 <b>requires</b> 27:12 <b>reread</b> 37:12 47:13 <b>residential</b> 57:21 <b>resolution</b> 55:25 <b>resolved</b> 34:3 41:11 <b>respect</b> 31:17 63:14 <b>respecting</b> 55:1 <b>respective</b> 3:6 20:2 23:19 <b>respond</b> 54:10 59:6 <b>responding</b> 16:24 46:13 <b>response</b> 9:25 13:7 13:10 23:3 24:23 48:15 49:6,16,19 49:21 53:16 56:6 59:11 <b>responses</b> 8:5 48:15 53:18 <b>rest</b> 47:24 <b>result</b> 20:6 23:4 42:6,14,17,25 61:1 <b>retail</b> 5:11 49:9,14 50:17,21 53:20 61:15 62:17 <b>return</b> 23:19 <b>Rev</b> 1:11 <b>revenue</b> 31:2 34:23 37:10 50:23 60:7 60:20 62:16 63:1 63:5 65:22 <b>revenues</b> 31:2 40:20 59:17 60:3 61:7,25 62:2,8,11 62:19 63:6,8,10 64:2,9,12,14 <b>review</b> 8:2,21 47:5	<b>reviewed</b> 8:4,5,6,7 8:10,11,17 9:1 14:25 45:3 <b>Revised</b> 1:7 14:25 <b>right</b> 30:16 32:19 35:25 <b>risks</b> 22:25 23:8 24:17,20 <b>RSP</b> 8:24 9:2 16:22 17:10,23 18:20 23:15,20 43:11 65:12 <b>RSS</b> 38:12 39:10,20 64:21 65:1,2 <b>rules</b> 3:8 10:7,11,16 12:3,17,20 13:1,3 <b>run</b> 22:11 55:10 <b>runs</b> 44:21 <hr/> <b>S</b> <hr/> <b>sake</b> 60:14 <b>sales</b> 23:4 48:19 50:15,17 <b>Sam</b> 6:5 <b>saying</b> 30:15 <b>says</b> 4:3 6:1 7:23 9:12 <b>SB-221</b> 8:14 15:2 25:17 45:7 <b>schedule</b> 48:20 49:3 <b>scheduled</b> 55:10 <b>scope</b> 6:21 <b>scrubbers</b> 31:15 <b>seal</b> 69:13 <b>seasonal</b> 57:22 <b>second</b> 9:2 17:1,10 26:11 48:20 50:19 53:23 <b>section</b> 11:5 15:1 15:17 16:2,10,19 19:4,9,10 21:9,10 22:11 23:18 26:12 26:22,23,24,24 27:8,10,12,21 <b>sections</b> 27:1,4	<b>security</b> 1:5 11:4 65:18 66:1,13 <b>see</b> 9:17 15:18 20:24 25:10,19,24 26:2 34:15 37:3 45:11 46:5 48:25 59:6,21 <b>seek</b> 21:16 65:17 <b>seeking</b> 20:18 37:19 45:21 52:6 52:8 54:12 65:22 66:21 <b>seeks</b> 30:11,20 35:14 36:15 38:7 39:22 40:16 41:3 41:9,22 50:4 51:2 <b>seen</b> 17:25 18:7 29:20 31:18 <b>Seger-Lawson</b> 30:3 50:25 <b>sell</b> 46:9 59:20,24 60:4,21 61:3,3,18 61:22 62:14 <b>seller</b> 33:9 <b>sells</b> 61:19 <b>Senate</b> 22:24 23:12 24:18,24 25:2,9 45:1 46:23 59:11 <b>sense</b> 61:4 <b>sentence</b> 15:17,22 16:7 26:12,19 28:13 33:2 47:22 47:25 <b>separate</b> 5:5 56:4 <b>Separation</b> 1:15 <b>series</b> 61:20 <b>served</b> 13:20 <b>service</b> 13:15,24 16:2,13,16 17:9 27:13,19 29:4 40:3,19 43:25 58:14 60:10 <b>Session</b> 3:1 <b>set</b> 34:1,8,11 35:4,5 35:9 43:11 49:6 49:17 53:19,23	56:24 57:10 61:8 62:5 63:17,21 64:6 69:12 <b>sets</b> 53:17 <b>setting</b> 17:6 43:10 <b>seven</b> 50:6 51:6,10 52:7,9,19 53:3,10 <b>shaping</b> 56:25 <b>share</b> 45:22 46:1,16 46:19 <b>Sharkey</b> 2:2 4:5,7 44:7 48:5 64:15 66:24 <b>shift</b> 64:3 <b>short</b> 58:3 <b>short-term</b> 50:16 <b>shoulder</b> 36:2 <b>shown</b> 52:25 <b>side</b> 12:12 14:9 <b>signal</b> 57:4 <b>signals</b> 57:17 58:1 <b>signatory</b> 19:24 23:23 55:23 <b>Signature</b> 67:1 <b>signed</b> 17:10 68:11 <b>significant</b> 17:25 29:20,24 <b>significantly</b> 16:21 17:1,4,7,22 24:24 25:18 46:24 <b>signing</b> 68:10 <b>similar</b> 11:7 15:15 <b>simply</b> 48:10 <b>sit</b> 23:18 <b>situations</b> 62:12 <b>six</b> 18:2 <b>slight</b> 54:5 <b>slightly</b> 10:3 65:23 <b>Smart</b> 56:5 <b>sold</b> 33:13 <b>somebody</b> 26:5 <b>Somewhat</b> 17:20 <b>soon</b> 12:18 <b>sophisticated</b> 57:14 <b>sophistication</b> 57:14
--	--	--	--	---

<p>sorry 28:15  sort 10:11 14:6  33:14  so-called 32:1 33:7  speak 16:7 28:14  speaking 64:12  speaks 26:19  specific 18:10 27:3  34:5 35:22 36:18  36:23 51:15 55:13  specifically 45:11  63:15  specified 69:8  spend 23:2  SS 68:1 69:2  stabilization 63:3  65:15 66:6  stable 20:5  stack 8:15  standard 16:2,13  16:16 17:9 27:13  27:19 29:4  standpoint 51:18  start 4:9 12:8 17:3  60:24  starting 21:10  47:16  starts 56:4 58:2  state 1:19,21 2:8  5:12 6:13 7:5  10:3 68:1 69:2,4  69:17  stated 9:18 23:21  46:20 68:10  statement 38:19,20  statute 17:11  steam 36:7 49:10  stenotypy 3:9 69:6  step 13:21,25 19:1  21:13 38:5 46:22  50:14,19 51:3  stick 61:20  stips 8:18  stipulated 3:5  stipulation 8:21,24  9:2 11:12 16:23</p>	<p>17:10,23 18:21  19:11,14,18,22,25  20:2,4,8,13,16,21  21:6,17,19,20,23  21:25 22:3,20  23:15,20,24 24:4  26:9 28:19 32:1,2  34:4 35:9 41:12  43:3,11 54:22,25  55:2,22 65:9,12  65:13  stipulations 3:4  8:11,18 35:6  stops 58:3  straightforward  14:4  Street 1:21 2:3,8  strike 9:6 28:15  39:16 41:3 42:15  42:21,21 44:22  47:15  structure 59:1,3  structured 56:19  stuff 27:10  subject 9:17 10:8  30:5 65:18  subjected 47:2  submit 7:22  submitted 7:19  10:18 68:10  subsection 15:4,6  subsequent 19:20  22:18 26:6  subset 53:9,10  substance 38:9  42:12 68:5  suggest 55:14,20  suggestions 10:15  suggests 47:5 62:5  Suite 2:8  summed 49:24  summer 57:24  58:24  supplier 5:12  supplies 31:3 32:18  37:8</p>	<p>supply 27:19  support 7:7  Suppose 62:14  surcharge 66:6  sure 16:25 24:12  25:4,9 44:8 55:19  SW 2:3  swings 18:7  switched 60:15  sworn 4:2 69:5  system 12:25 13:12  57:19 61:18</p> <hr/> <p style="text-align: center;"><b>T</b></p> <hr/> <p>take 9:16 11:24  13:15 14:9 15:21  20:11,23 47:16  51:22 62:23  taken 1:18 69:6,8  talk 9:20 55:6  talking 9:9 10:5  29:17 52:12  targets 59:11  tariff 22:21 56:16  57:6,16  Tariffs 1:8  tax 31:1,2 34:15  37:10,11 65:18  66:1  taxes 34:18,18,20  34:23,23 36:16  technology 58:15  59:4  tell 4:17 33:4 42:5  tend 58:2  term 6:6 12:13  20:21 28:14 33:9  41:8 50:16,17  55:9,12,14,15,25  terms 19:21 22:20  24:4 26:9 39:13  51:19 54:9 57:13  terribly 44:23  territory 58:14  test 19:1,7 24:25  25:18 46:24 47:2</p>	<p>testifies 30:3 35:19  testify 47:8 69:5  testimony 7:19,23  8:3 9:5,7,13,16,21  10:22 11:17 19:2  19:16 21:5,11,15  21:24 22:4 24:5,7  24:14,19 25:2,7  25:22 30:2,5,8,13  30:23 35:22 36:4  36:11,24 37:16,17  38:17 39:13,23  42:4,5,9,13,24  43:16 44:7,19  45:12,15,24 46:17  47:7,21 50:7,25  51:13 52:2,12  53:12 54:8,22  55:14 56:3 59:15  62:25 63:4 69:6,8  they'd 57:8  thing 30:15 51:12  things 5:1 12:8  13:14 18:5,8 23:1  24:13 29:18 57:25  think 6:1 11:23  12:13 13:25 17:1  19:2 20:5 22:14  22:16 23:21,22,25  28:17,23 31:25  34:2 35:17,25  37:15,15,23 38:16  38:17 39:1 40:18  40:24 41:10 42:13  43:9,21 44:22  45:25 46:12 51:12  51:17 55:3,7,21  55:22 56:17 60:6  60:11 61:8,14  62:1,8,21 65:12  third 2:8 45:16  49:3  thought 24:13  62:13  three 27:4 49:25  till 65:14</p>	<p>time 6:25,25 7:16  10:11,17 12:3  13:12 15:9 16:19  16:22 17:10,11  20:23 23:11 32:6  33:25 34:10 35:4  35:5,11 40:14,25  41:15 44:8 56:9  56:10,17,24 57:8  58:12,13,18 59:6  59:12,12 60:8,22  64:8 66:25 69:8  times 5:21  today 37:1  ton 47:23  topic 9:21,23  topics 9:8 12:21  total 48:22 50:12  53:1 57:19 66:16  totality 62:2  tough 7:25  traditional 40:2  43:24  transcribed 3:10  69:7  transcript 45:13,18  46:3,10 68:3,9  69:7  transcripts 8:10  45:4,24  transmission 33:6  63:2,7,10,11,16  63:24 64:9,12  trends 56:20  tried 21:24 37:17  38:16,25 54:18  true 15:10 52:4  68:5 69:7  truth 69:6  try 48:12 54:24  66:15  trying 14:11 20:22  32:2 39:24 43:12  44:8 51:19 55:20  57:18  turn 15:4 44:19</p>
--	---	---	--	--

59:15 turns 23:12 53:8 two 16:24 25:9 48:15 51:1 53:17 two-part 33:11 type 7:7 17:12,15 18:22 31:18 33:22 34:25 39:25 44:11 54:12,20 55:23 56:12 57:2 58:20 59:7 types 6:25 7:1,7,8 14:5,8 18:6 33:16 34:20,23 37:22 55:4 58:1 typically 14:4	updated 63:24 upswings 17:25 usage 58:5,10 use 19:8 42:11 56:9 58:12,18 59:12 Users-Ohio 2:10 6:7 uses 20:21 27:18 28:13 utilities 1:1 5:15 7:5,20 10:6,20 14:17,21 17:18,19 29:4 63:19,22 utility 15:7,11 16:12 29:10 30:9 32:14 33:8 34:19 34:22 utility's 12:25 13:6	wave 10:24 way 16:8 18:24 21:3 30:16 51:11 62:9,24 63:11 ways 22:11 website 8:8,8 Wednesday 1:22 3:1 68:4 weren't 37:20 41:17 We'll 15:21 28:9 we're 12:2 we've 7:4 WHEREOF 69:12 wholesale 50:17 willing 13:15,23 14:13 winter 57:24 58:23 witness 3:7,11 25:13 35:16,18 37:12 38:21 39:11 42:19 46:6 68:10 69:7,8,12 word 15:18 20:24 21:7 26:12 42:21 words 21:22 42:11 work 6:8,14,18,18 6:25 7:2,4,9 31:8 49:24 working 5:25 10:23 57:5 worse 23:16 wouldn't 30:14 58:24 64:7 writing 3:9 written 24:8 wrong 42:5 44:23	48:17,21,23 49:25 56:16 65:16 year-to-date 49:18 53:20 year-to-year 7:12 64:3 Yep 34:16  \$ \$2 45:22 46:19 \$55.10 47:23 \$76 66:4  0 05 9:3 05-276 66:17 05-276-EL-AIR 65:10,21 08-1094-EL-SSO 1:4 08-1095-EL-ATA 1:7 08-1096-EL-AAM 1:10 08-1097-EL-UNC 1:14  1 1 8:6 12:4 39:6,13 63:25 65:20 1G 21:10 22:11 23:18 1.3 64:20 1.8 30:2 38:10 43:13,17 50:24 64:19,20 1:30 1:22 10 2:3 39:23 44:22 11 6:1 19:17 44:21 50:1 53:23 65:19 65:24 66:5 12 19:17 44:24 13 46:14 14 44:24 47:7,16 53:13 59:16 143(D) 26:10 15 17:4	16 46:17 17 45:16 47:16 48:1 53:13 17th 1:21 1700 2:8 18 54:10 19 69:18 1991 32:7 41:3,6,17 41:17,21 42:3 1999 8:22 31:10,13 31:19,24 32:22  2 2 39:24 2.20 45:22 2.40 46:1,16,19 2.60 46:1,16,19 20 54:10 59:18 2001 43:8 46:18 2002 8:25 2004 65:20 2005 16:22 17:23 18:20 20:8,13 65:14 2006 47:10 49:8 52:20,22 65:16 2008 15:8,12 47:10 49:18,22,25 52:20 52:22 65:16 68:12 2009 1:22 3:2 12:4 36:22 37:2 42:2 43:6 45:2,21 47:2 47:9 48:17,21 51:6 60:25 69:13 2009-2010 43:4 52:23 53:3,25 60:24 2010 19:15 20:5 36:22 37:2 42:2 43:6,8 45:2 47:3,9 47:22 48:17,22 51:6 55:11,18 60:8,25 2013 69:18 21 1:21 2:8 47:8 56:4
U Uh-huh 15:24 18:14 ultimately 11:13 unable 60:4,21 61:22 uncommon 33:10 undersigned 68:10 understand 9:23 10:6 21:13,15 24:12 26:11 30:7 31:10 38:9 43:12 43:16 44:9 47:8 54:15 64:23 understanding 10:13 12:5 15:13 18:7 22:1,9,10,24 31:11 32:13 33:17 35:13 36:14,17 41:24 50:8,11 51:8 60:7 64:19 64:24 65:2,8 understood 42:4,12 undertake 40:1 undertaken 44:13 units 61:14,16 universally 27:6 unlabeled 49:23 unreasonable 55:3	U vague 57:1 value 57:11 varied 10:23 57:17 57:19 varies 7:12 variety 17:24 51:5 various 6:25 18:3 36:13 verbally 46:13 verify 20:22 versus 37:24 50:17 58:23 virtue 43:2 63:10 volatile 29:3,7,10 29:16 volatility 29:21,25 voluntary 4:19  W wait 37:3 waived 3:13 67:1 walk 48:12 Wallace 1:20 2:7 want 35:20 42:23 44:19 48:3 51:20 warranted 40:4	Y yeah 13:7 15:2 38:24 year 49:8,18 56:21 56:24 57:18 60:22 63:24,25 years 6:1 7:16 29:7 29:11,21 31:15		

22 48:1 53:13 59:16	53:21 54:3			
221 22:24 23:12				
24:18,24 25:2,9	6			
45:1 46:24 59:11	6 21:10			
23 63:4	7			
3	70 57:11			
3 15:4,12 34:15	76 65:23			
36:4 49:8	8			
3:30 67:2	8 30:23 39:6,13			
3057 49:2,3 50:2	80 57:11			
53:1,5 54:2				
31 15:8	9			
4	9 30:24 34:15 39:6			
4 1:22 3:2 9:7 49:17	44:21 68:4			
68:4	91 40:24 41:11			
4th 69:13	99 61:14			
411.8 36:8 49:12				
53:21 54:4				
411.9 36:9 49:13				
53:21 54:4				
43215 2:9				
45402 2:4				
4905.13 1:12				
4928.141 16:3				
26:23 27:8				
4928.141(B) 26:22				
4928.143 15:3				
4928.143(D) 15:1				
4928.64 26:24				
4928.66 26:24				
5				
5 9:21 57:8 64:21				
65:1,8 66:19				
500 2:3				
501 36:6 49:10				
53:21 54:3				
5013C 6:12				
502 36:7 49:10				
53:21 54:3				
509 36:7 49:11				
53:21 54:3				
547 36:7 49:11				
53:21 54:3				
555 36:7 49:11				