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February 10, 2009

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VIA FEDERAL EXPRESS

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

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

Dear Ms. Jenkins:

Enclosed is the deposition transcript of Kevin C. Higgins for filing in the above-captioned matter. This deposition was received today by DP&L, and is being filed pursuant to DP&L's Notice of Filing Depositions, which was filed on February 6, 2009.

Very truly yours,

R. Holtzman Hedrick

R. Holtzman Hedrick

RHH/tes
Enclosure

BEFORE THE

PUBLIC UTILITIES COMMISSION OF OHIO

-O-

IN THE MATTER OF THE APPLICATION OF DAYTON POWER AND LIGHT COMPANY FOR APPROVAL OF ITS ELECTRIC SECURITY PLAN	Case No. 08-1094-EL-SSO
IN THE MATTER OF THE APPLICATION OF DAYTON POWER AND LIGHT COMPANY FOR APPROVAL OF REVISED TARIFFS	Case No. 08-1095-EL-ATA
IN THE MATTER OF THE APPLICATION OF DAYTON POWER AND LIGHT COMPANY FOR APPROVAL OF CERTAIN ACCOUNTING AUTHORITY PURSUANT TO OHIO REV. CODE §4905.13	Case No. 08-1096-EL-AAM
IN THE MATTER OF THE APPLICATION OF DAYTON POWER AND LIGHT COMPANY FOR APPROVAL OF ITS AMENDED CORPORATE SEPARATION PLAN	Case No. 08-1097-EL-UNC

Deposition of:
KEVIN C. HIGGINS

-O-

Place: Energy Strategies, LLC
215 South State Street
Suite 200
Salt Lake City, Utah 84111

Date: February 6, 2009

Reporter: Clark Edwards, CSR/RPR

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APPEARANCES

For the Dayton Power and Light Company:
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EXHIBITS

(No Exhibits Marked)

KEVIN C. HIGGINS,

called as a witness, being first duly sworn, was deposed and testified as follows:

EXAMINATION

BY MR. SHARKEY:

Q. Good afternoon, Mr. Higgins. I guess it's still morning there perhaps.
A. Hello, Mr. Sharkey.
Q. As you know, my name is Jeff Sharkey. I represent the Dayton Power and Light Company in this matter. The first question I have for you is how you came to be an expert witness on behalf of the Kroger Company. Just curious because of your address being in Salt Lake City, Utah.
A. Well, I'm an independent consultant. I do regulatory consulting work around the United States. And I've done quite a bit of consulting on behalf of the Kroger Company since 2000.
Q. When you say you've done consulting, is that advising them regarding energy-related matters?
A. Yes, and also preparing expert testimony on their behalf in regulatory proceedings.
Q. And what jurisdictions have you offered testimony in behalf of the Kroger Company?

A. Arkansas, Colorado, Georgia, Idaho, Illinois, Indiana, Kansas, Kentucky, Michigan, Nevada, New Mexico, Oregon, South Carolina, Texas, Virginia, Washington, West Virginia. And I've filed affidavits at the Federal Energy Regulatory Commission on behalf of Kroger as well.
Q. So that's all been done since 2000?
A. Correct. Ohio as well. I omitted Ohio.
Q. I figured that one out.
Have you previously provided testimony in any DP&L proceeding?
A. No, I have not.
Q. Okay. Your testimony, looking at page two, line 15, identifies an AEP IGCC cost recovery proceeding that you testified in?
A. Yes.
Q. What was that about?
A. That was about AEP's proposal to gain approval for a cost recovery mechanism for an IGCC power plant that they had proposed to construct.
It was a proposal in front of the Ohio Commission, involved authorization to proceed with the project in various cost recovery mechanisms.
Q. Okay. Your organization Is Energy Strategies, LLC?

A. Yes.
Q. Your testimony says you are a principal. How many principals are there?
A. There are four principals.
Q. Does that mean each of the four of you are equal owners?
A. No.
Q. How many employees does it have?
A. Do you want an approximate number or do you want a specific number? I can do a count in about, you know, a minute and a half.
Q. An approximate number.
A. We have approximately, including the principals, approximately 20 employees.
Q. Okay. Your responsibilities for Energy Strategies, LLC, do you principally do consulting work or do you principally provide testimony or some other task?
A. Principally I provide consulting work that includes a large percentage of preparation of expert testimony. So I guess --
I mean, I consider expert testimony to be consulting work, if you will, but the regulatory practice area, we call it, is my principal area of responsibility here at the firm.

Q. Okay. Do you do some what I'd call consulting work that doesn't involve testimony?
A. Yes.
Q. Okay. How much of that do you do?
A. Well, it varies from time to time but probably over the course of the year maybe 20 percent of my time is spent on consulting that does not involve a regulatory proceeding.
Q. Okay. Your testimony says you completed the course work and a field examination for a Ph.D. in economics.
Am I right in assuming that you have not received the Ph.D. or done a dissertation?
A. That is correct.
Q. What is your undergraduate degree in?
A. Education.
Q. What materials did you review to prepare your testimony?
A. I reviewed the company's application along with the -- its testimony filed by its witnesses, exhibits. I also reviewed the Amended Substitute S.B. 221. Those were the primary materials that I reviewed.
Q. Did you review any of the historic stipulations that the Dayton Power & Light Company has

entered into?
A. Yes, I did. Those were included with the application.
Q. Okay. You reviewed just the ones that were included with the application?
A. Yes.
Q. Do you have a copy of the Notice of Deposition available to you?
A. Yes, I do.
Q. Okay. The notice requests, among other things, documents that you have cited to or relied upon for your testimony?
A. Yes.
Q. We haven't received any documents and I want to know if there are such documents other than details filing that you've described.
A. No, other than, again, Amended Substitute S.B. 221.
Q. Do you have, either in paper copy or electronically, any calculations, spreadsheets, work papers, things like that?
A. No.
Q. What was that?
A. No.
Q. Okay. I didn't hear you clearly. We were

speaking at the same time.
Do you have available to you a copy of our Revised Code 4928.143?
A. Yes, I do.
Q. Is that one of the items you reviewed in preparing your testimony?
A. Yes.
Q. Can you turn to Subsection D of that section?
A. Yes. I have it.
Q. Okay. In the first sentence after the comma, that section says that it applies to an electric distribution utility that has a rate plan that extends beyond December 31, 2008.
Do you see that?
A. Yes.
Q. Do you know if the Dayton Power and Light Company has a rate plan that extends beyond December 31, 2008?
A. Yes. That's my understanding.
Q. And do you know whether any utility in Ohio besides DP&L had such a rate plan at the time the statute was enacted?
MR. YURICK: I'll object, relevance, but you can go ahead and answer.

THE WITNESS: I'm not aware of any other utility that had a rate plan extending beyond that date.

BY MR. SHARKEY:

Q. Okay. So, the best of your knowledge, this subsection would apply to DP&L and DP&L only?

A. To the best of my knowledge it applies to DP&L. You know, I hadn't assessed whether it may or may not have applied to other utilities.

Q. If you refer to the second sentence of Subsection D that begins with the word: "However..."

A. Yes.

Q. Would you take a moment to read that?

A. Sure. Yes. I have read it.

Q. Okay. Are you familiar with Section 4928.141 of the Revised Code?

A. Yes, I am.

Q. Do you understand that that's the section that obligates utilities to provide a standard service offer?

MR. YURICK: Again, I'll object. You can go ahead and answer, Kevin. I'm just going to object on the basis that the statute speaks for itself.

You can go ahead, though.

THE WITNESS: Yes.

BY MR. SHARKEY:

Q. Would you agree that fuel costs are a cost DP&L will incur to provide a standard service offer?

A. Yes.

Q. Are you aware of any other cost item that has increased significantly that DP&L would incur to provide a standard service offer other than fuel?

A. I am not aware of any.

Q. As to DP&L's request for a fuel deferral, did you consider any factors or matters that are not discussed in your testimony?

A. No.

Q. You opine in your testimony that DP&L should not be permitted to defer fuel costs pursuant to the 2005 RSP stipulation; is that correct?

A. That is correct.

Q. Do you believe that the General Assembly was unaware of DP&L's 2005 RSP stipulation when it enacted Subsection D that we were just looking at?

MR. YURICK: Objection, but you can go ahead and answer.

THE WITNESS: I imagine there's a reasonable chance that they were aware of that stipulation. I really don't know.

BY MR. SHARKEY:

Q. Do you know whether the General Assembly considered the argument you've articulated in your testimony relating to whether the 2005 RSP stipulation would permit DP&L to recover -- rather, to defer fuel costs?

MR. YURICK: Objection again, but you can go ahead and answer to the extent you can.

THE WITNESS: I don't know.

BY MR. SHARKEY:

Q. Do you have a copy of the 2005 RSP stipulation available to you?

A. Yes. It will take me a moment to call it up here on my computer.

Q. Okay. Let me know when you're ready.

A. I had it all set up to go. While we were talking it logged me out. It's a new computer, so I need to change that default.

Q. That's fine.

A. It will just take me another second to get it ready here.

MR. YURICK: Do you have a case number on that by any chance?

MR. SHARKEY: I do. It's Case Number 05-276-EL-AIR --

MR. YURICK: Thank you.

BY MR. SHARKEY: -- for the Public Utilities Commission of Ohio.

MR. YURICK: Appreciate it. Thank you.

THE WITNESS: Yes. I have it now. Thank you.

BY MR. SHARKEY:

Q. Would you agree that that stipulation is silent on the subject of deferrals?

A. Well, without rereading the entire thing, I can tell you that the first time that I read it I was looking to see if it explicitly addressed deferrals and I did not see any reference to that, so I would agree with that.

Q. And in your testimony, page line 13, line 14, you quote Section II.F of that stipulation?

A. Yes, I do.

Q. Is that correct?

A. Yes.

Q. Can you tell me why?

A. Yes. Pardon me one second. I've got something that keeps popping up here.

I quoted it because this section indicates that the parties have an obligation to make a good faith effort to preserve the essential economic relationships established according to stipulation if, among other things, it's modified by the Ohio General Assembly.

And so it seemed to me that as DP&L is relying upon an action of the Ohio General Assembly to change what I believe is a component of the essential economic relationship established in the stipulation, it appeared to be a relevant passage.

Q. Do you know whether the Kroger Company was a signatory party to the 2005 stipulation?

A. To my knowledge they were not.

Q. Okay. Is it your belief nonetheless that the Kroger Company has some right to enforce or rely upon that section?

A. I can't give you a legal opinion about that. I know that the Commission considered the balance of interests involved with the stipulation and considered the overall public interest which includes Kroger in approving the stipulation.

So, even though Kroger is not a party to the stipulation, the balance of interests was certainly considered by the Commission in adopting the stipulation in putting the plan in place that was recommended by the stipulation.

Q. You understand, don't you, that Senate Bill 221 creates a number of new obligations for Ohio

electric utilities including establishing certain energy efficiency targets and certain alternative energy targets?

A. Yes, I am.

Q. If the net effect of Senate Bill 221 was to impose due net costs upon the Dayton Power and Light Company, would you agree that under the section of the RSP stipulation that you've quoted, the Commission should modify the 2005 RSP stipulation to put DP&L back in the same position it would have been before Senate Bill 221?

A. Not necessarily. However, let me add that to the extent that the provisions in S.B. 221 to which you refer are viewed as impacting the essential economic relationship of the stipulation then I believe that an effort should be made to preserve those essential economic relationships on behalf of the company which I believe is also reflected in my recommendations on your ESP proposal.

That is, I think that there is a distinction between allowing the company to recover costs it incurs in enacting these additional provisions of S.B. 221 from the provisions in 221 that speak to the standard service offer.

Q. Just so I'm sure I understand your answer,

you would agree that, to the extent there's new net costs in Senate Bill 221, the Commission should do something to preserve the economic relationships established in the 2005 RSP stipulation?

A. If the Commission determines that these additional obligations in S.B. 221 affect the essential economic relationships in the stipulation then I believe the company's interests and costs should be considered in implementing these additional provisions.

You know, it's not necessarily clear to me on its face that a law that gets adopted that requires Dayton Power and Light Company to procure alternative energy necessarily, you know, impacts the stipulation. It may but, you know, I don't know that it necessarily does.

In the context of my testimony, that's in some ways maybe a moot point because I recognized that irrespective of the stipulation, the law creates certain obligations for Dayton Power and Light Company beyond the provision of the standard service offer and, you know, I believe that it's reasonable that if a utility is given additional responsibilities that it have a reasonable opportunity to recover the costs associated with implementing those responsibilities.

So, to me the issue of whether Dayton Power and Light Company is entitled to recover costs associated with the government mandate stands on its own. So, I hope that's an answer to your question.

Q. It does. You offered an opinion that the alternative energy segment of the Senate Bill 221 likely or may not affect essential economic relationships.

Do you have the same opinions regarding the alternative energy requirements and in particular the fact that that statute requires DP&L to incur certain costs that would have the purpose of reducing DP&L's own sales?

A. Let me ask for a clarification, Mr. Sharkey. In your question you directed me to respond to the alternative energy programs, and I thought maybe you were going to ask me about the energy efficiency programs.

Q. You're correct. If I said alternative energy I misspoke and I meant to say the energy efficiency program, so you're dead-on right.

A. Okay. It may be the case that the energy efficiency programs that are required by the law, you know, may or may not affect the essential economic relationships in the stipulation.

I mean, again, I didn't base my recommendation in my testimony on whether or not it affected that essential economic relationship because, again, I believe that if the company is asked to incur certain costs in response to the statue that then the company is entitled to recover the costs it incurs on its own merit.

I imagine that someone could make an argument that undertaking the energy efficiency programs required in the law could affect the economic relationships in the stipulation.

And, you know, I would certainly be open to considering myself that argument but, you know, I hadn't formulated an opinion as to whether it did or not.

Q. Let me ask you some questions about the 1.8 cent figure that DP&L uses as the base for calculating the deferral.

A. Sure.

Q. You have testimony on pages I think 14 and 15 that you don't believe that 1.8 cents is the correct base. And what I'm hoping is that you can elaborate on that because I'm not sure I understood your testimony.

A. Sure. As I understood the company's

testimony, the company proposes to use 1.8 cents per kilowatt hour as the base fuel cost, if you will, based on a calibration exercise which went back and looked at the fuel cost that was the fuel charge that was in place, you know, a number of years ago, in fact, specifically the fuel charge that was in place in 1999.

And then a company assigned another five mills per kilowatt hour to that based on certain decisions that occurred in the intervening period with respect to the company's rate stabilization plan.

And the discussion in my testimony is that, well, you know, that's a calibration exercise but it doesn't really tell the Commission what the fuel costs are that Dayton Power and Light is incurring.

And it doesn't say whether or not the company's current generation-related revenues that it recovers from customers recover the company's fuel and purchase power costs or not because in order to do that you would have to look at all the costs that are incurred by the company for generation service both for fuel and purchase power and for non-fuel costs and look at the revenues collected.

And you would have to look at the totals

to see whether or not the company is under-recovering or over-recovering its generation costs and whether as part of that it's over-recovering or under-recovering its fuel and purchase power costs.

Q. So, correct me if I'm wrong but your testimony is that the Commission should take a broader look at DP&L's generation costs as a whole as opposed to just its fuel costs?

A. My testimony is that if the Commission were to consider allowing for a fuel deferral, you know, if my first argument is not persuasive to the Commission, then in order to do that it is necessary to look at the company's total generation costs and the company's total generation revenues in order to determine whether or not incremental rate relief is necessary.

And obviously there would also have to be information provided on just what the fuel and purchase power costs are of course.

Q. If that exercise were performed and it showed that DP&L's total generation costs had increased since 2005 -- and again, we're assuming the Commission rejects your first argument -- would you then believe that the comparison --

Let me strike that.

What base would you use to determine the amount of the deferral?

A. I believe that it would be necessary to look at the total generation costs, identify what portion of those costs are fuel and purchase power related, to look at the generation revenues collected by the company, and also to consider non-jurisdictional sales margins.

And to the extent that there is a difference between the costs incurred and the revenues collected in total then there would be an argument that some portion of that is, you know, fuel and purchase and power related.

So that you would be looking at any incremental cost that's being incurred relative to the revenues that are being collected, again, net of off-system sales margins.

So that would be, you know, a necessary part of the exercise.

Q. Do you know how DP&L's current generation rates -- let me strike that.

Do you know about DP&L's 1991 rate case?

Are you familiar with that case?

A. The 1991 rate case?

Q. Correct.

A. I can't recall it. I mean, I may have seen it referred to in passing in some of the materials that I've reviewed but I don't have -- you know, I can't recall details of it.
Q. Do you know whether that was DP&L's last base rate case?
A. Under what one might call traditional regulation?
Q. Correct.
A. I don't know. It may be. I don't have reason to doubt that. I have seen reference to a fuel clause case in 1999 but I imagine you're making a distinction between base rate and the fuel clause case in your question.
Q. I was.
A. Okay. Well, I accept, you know, that it would have been in 1991 based on your representation.
Q. And are you familiar with DP&L's 1999 electric transition plan case?
A. I have some familiarity with it only because I assisted Kroger in 2000 in reviewing the various cases that had been filed.
You know, it was a number of years ago, so I don't have firsthand, I mean, or clear recollection of the details but at one time I did look at the

filing. And as I recall, that was -- I believe that that was resolved through a stipulation.
Q. It was. Do you remember how DP&L's rates were unbundled in that case?
A. I don't recall with specificity. I mean, I'm familiar with much of the bundling that occurred in Ohio, so I imagine it might not be different from other unbundling but I can't recall specifically with -- you know, in the case of DP&L.
Q. And you have at least some familiarity with the rate stabilization charge, right, because you've testified about the rate stabilization stipulation from 2005?
A. Well, yes, it's referenced in this testimony.
Q. Okay. Do you dispute the testimony of Donna Seger-Lawson that the amount of cost recovery in DP&L's currently-existing rates that's associated with fuel is 1.8 cents?
A. To a certain extent I do, yes. I mean, just as stated in my testimony, I don't dispute the math exercise that Ms. Seger-Lawson went through to derive the 1.8 cent number.
I mean, again, I would describe that as a calibration exercise. It's an attempt to use numbers

that were previously approved to impute a fuel charge equivalent to current rates.
It's not an evaluation of the company's actual fuel and purchase power costs and it does not include a full reconciliation of the company's generation-related revenues and its generation-related costs.
I believe that that type of full reconciliation would be necessary to, you know, proceed with an argument that the company ought to be allowed to defer incremental fuel costs.
Q. Let me see if I have got your opinion correctly and you tell me if I'm misstating it.
You don't deny that DP&L is recovering 1.8 cents associated with fuel in its current rates but you believe the Commission should take a broader look at DP&L's total generation-related revenue and total generation-related costs in ruling upon DP&L's request for a fuel deferral?
A. Not exactly. Again, I think that the Commission ought to be able to rule upon the company's request for a fuel deferral without going through this exercise based on the point we discussed previously in my testimony; namely, that a fuel deferral changes the essential economic relationships of the stipulation.

However, if the Commission decides that that concern of mine, notwithstanding, that it wants to explore whether or not the company should be allowed to defer fuel costs then I believe that it would be necessary to evaluate the entirety of the company's generation-related revenues and its generation-related costs net of off-system sales margins in order to determine whether or not there is a shortfall in cost recovery in the first instance.
And, you know, moreover, the 1.8 cent per kilowatt hour figure quoted by the company in my opinion is an imputation of base fuel charges and does not necessarily represent the appropriate baseline for comparison for determining whether there ought to be fuel deferral or not.
Q. Suppose the Commission disagreed with your opinion, both your opinion about the RSP stipulation and your opinion about looking at the total revenues and total costs, generation related of the company, and instead concluded it should determine the amount of fuel recovery that is included in DP&L's existing rate plan to set a base.
In that instance, do you have any basis for disagreeing with Donna Seger-Lawson's testimony that that number is 1.8 cents?

A. If the Commission had gotten to that point and disagreed with, again, yes, those first two points I had made then I would agree that the number that Ms. Seger-Lawson derives would be a way to measure the fuel and purchase power cost recovery in current rates. You know, I don't know that it would be the only way to do so but it would be one way to do it.
Q. Can you give me any other ways?
A. Well, it seems to me that it would also be important to consider non-jurisdictional sales margins in allowing any fuel deferral.
And so it would be necessary to consider the relationship of non-jurisdictional sales margins with respect to that 1.8 cent number; namely, whether or not they were included originally in the 1999 number. So, you know, it would be another factor that would need to be taken into account.
Q. Let me ask about your testimony about non-jurisdictional sales.
First of all, I would assume you would agree it would be appropriate for DP&L to purchase power, rather, in those instances when it's economical to do so to serve retail base-load customers, correct?
A. Yes.
Q. And you also understand, don't you, that

there are instances in which DP&L doesn't need all of its generating assets to provide service to its customers and sales generation into the market?
A. Correct.
Q. I assume you have no objection to the Dayton Power and Light Company selling its power into the market, correct?
A. Certainly not.
Q. And, in fact, retail customers are better off if DP&L does sell because a percentage of DP&L's fixed generating asset costs are then allocated to those sales as opposed to retail customers, correct?
A. Well, in a rate case that would be the case. I mean, at this point, as I understand it, the rates are set per plan.
So I assume that DP&L's ability to make non-jurisdictional sales was a factor in the company agreeing to the rate plan that's currently in effect.
So, I mean, I don't dispute that as a general proposition, allowing utility to make off-system sales, you know, benefits the utility and the customers generally.
However, at any point in time the benefits from those sales might actually be flowing entirely to shareholders until the point at which rates get

reestablished in which case there might be a new revenue requirement determined under traditional rate making that would reflect the margins from these non-jurisdictional sales.
But, you know, at least at the present time it would seem to me that when the company makes these sales it's a benefit to the company.
Q. Are you aware of any state public utility commission that has allocated profits for utilities made on off-system non-jurisdictional sales to retail customers?
A. Yes.
MR. YURICK: Objection. You can go ahead and answer to the extent you can.
THE WITNESS: Yes. It's the norm.
So, I mean, I could go down and -- I guess state by state as I'm familiar with the decisions that different commissions have made.
But in traditional rate making it's the norm for either 100 percent of the margin from off-system sales to be assigned to customer benefits or at least a significant portion of those benefits to be assigned to customers.
Would you like specific examples?
BY MR. SHARKEY:

Q. Please.
A. Sure. That's the case, for example, in Utah. In Utah when there is a rate proceeding the utility determines what portion of its -- what its projected off-system sales margins are in calculating its net power cost and 100 percent of that is credited against the revenue requirement collected from customers. So 100 percent of the benefit flows to customers.
Similarly, that is done in Oregon. That is also done in Arizona. That is also done in the state of Washington.
It's also done when rates are set in West Virginia. Certainly in the AEP territory in West Virginia there is a flow-through of off-system sales margins to the benefit of customers there.
I don't recall off the top of my head if it's 100 percent or if it's a sharing mechanism but certainly it's recognized.
It's recognized in Kentucky when rates are set; that is, there is a customer benefit from off-system sales margins that flows to customers.
You know, I could I guess go back to the list of states I've testified in and further describe -- it's recognized in Montana.

It's -- well, those are the ones in which I have testified in which I have, you know, firsthand recollection of those determinations.

It's also recognized in New Mexico. It's not necessarily 100 percent but at least 75 percent of the benefit goes to customers.

Q. What incentive to utilities in those states that you've identified where 100 percent is allocated to retailers, what incentive do they have to make off-system sales?

A. Well, it differs from state to state.

If the state does not have a fuel adjustor mechanism then what happens is when rates are set and 100 percent of the margin goes to customers, that is built into rates.

Once that's built into rates then the company has every incentive to make off-system sales margins because the incremental or decremental impact of doing so or not doing so flows to the company's bottom line.

So, in other words, you know, you set rates and within the rate you take into consideration the off-system sales margin.

Then once that is done the utility has every incentive to make off-system sales because it

flows directly to the utility.

You know, it's not as if the day-to-day changes in revenues necessarily flow to customers. In fact, they don't if you don't have a fuel adjustor.

And let me just pause one moment and mention that I also recall -- I'm trying to think of states near Ohio.

Indiana provides for customer recovery of off-system sales margins that are built into rates. That's the case for the Duke Indiana territory.

Now, for states that have fuel clauses, it may be the case that all of the margins may flow to customers. It depends. It varies from state to state. In Indiana there is a provision for sharing of off-system sales margins between the company and customers.

As I recall, I believe it's a -- more than 50 percent of the benefit goes to customers. I don't recall the exact split.

In Kentucky, my understanding is that there's a 50/50 split in the fuel adjustor.

So, again, you set rates and assign the full off-system sales margin to customers in rates but then as you go forward in the fuel adjustor there is a sharing mechanism of incremental margins that are

reflected in the fuel adjustor.

So each state has a little bit different take on it. Arizona has a fuel adjustor for Arizona Public Service Company, and that fuel adjustor is a 90/10 split; that is, 90 percent of the fuel costs above base costs are paid by customers. Ten percent is absorbed by the company.

And similarly, there's a symmetrical 90/10 split from the off-system sales margins; that is, 90 percent of the benefit goes to customers. Ten percent goes to the utility.

So, you know, there's more examples of that if you'd like but those are examples of ways in which the utility retains an incentive to make off-system sales.

Q. For those states in which there was no EFC mechanism that you had described, do customers pay 100 percent of the fixed costs of the utility including a rate of return on the utility's assets?

A. In the states I have described rates are set -- these are all states in which rates are set under what we might call traditional cost-of-service regulation.

In those states rates are set such that the utility is given a reasonable opportunity to

recover its fixed costs including a return on its assets. Of course there is no guarantee that the rates will allow the utility to do that but that is the target that is set when rates are established.

Q. And are you familiar with Ohio's pattern of using a jurisdictional allocator to allocate fixed assets to jurisdictional and non-jurisdictional sales?

A. I assume that in the calculations. I mean, that's not unusual.

Q. For those states that permit 100 percent recovery of off-system sales in the rate setting mechanism, do they use a jurisdictional allocator on the same method?

A. Well, it may not be exactly the same method. They do use a jurisdictional allocator.

The jurisdictional allocator typically distinguishes the state jurisdictional sales from what we might call FERC jurisdictional sales obligations which is distinct from most off-system sales which are, you know, often described as opportunity sales or economy energy, that sort of thing.

The upshot being is that there is typically not a jurisdictional or typically not a specific allocation that is assigned to the off-system sales that produced the margins that are assigned to

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retail customers.
Does that help? I mean, what I'm saying is, there's typically not -- even though other states have jurisdictional allocators that they use to delineate the state jurisdictional sales, there is typically not a separate category of cost allocation for the off-system sales that produce the margins that are credited to retail customers.
Q. Okay. I think I understand but let me discuss this a different way to make sure I'm understanding you correctly. I guess it's the same idea but going at it a different way.
You're familiar with the principle that a utility is entitled to a reasonable return on its assets, correct?
A. Correct.
Q. Okay. And for the purpose of this question, let's assume that that's ten percent.
And I realize that number can vary from case to case and from matter to matter but let's assume it's ten percent.
A. Okay.
Q. If in Ohio a utility had a million dollars in assets and half of its sales were jurisdictional, it would be entitled, as I understand it, to a ten

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percent return on $500,000 to be included in its rates. Is that consistent with your understanding?
A. Not necessarily because, you know, it seems to me that Ohio these days is operating under an entirely different paradigm.
Q. Well, fair enough. But just if we go back historically how rates had been set before deregulation.
A. If we go back historically to how rates were set before deregulation, quite frankly, I would have to do a more detailed review of a rate order, you know, from an Ohio case back in the 1990s, say, to definitively answer that question.
Q. Okay. And if I'm understanding you correctly, in a state like Utah under that circumstance the customers would pay a ten percent return on the full million dollars in assets but they'd also get the benefits of the off-system sales credited to them.
Am I understanding you correctly?
A. Yes, generally, yes, for purposes of this discussion, that's a reasonable depiction.
Q. Okay. Do you know whether DP&L's generation assets are operated pursuant to a Commission-approved corporate separation plan?

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A. My understanding is that that is the case, that these corporate separation plans were plans that the Commission has approved or at least reviewed for the various Ohio utilities.
I mean, I'm familiar with the fact that DP&L has filed a second amended corporate separation plan. So I take it, based on that, there's already a corporate separation plan in place.
Q. Do you know whether DP&L's existing corporate separation plan gives retail customers any superior rights to the generation assets than other customers have?
MR. YURICK: Objection. You can go ahead and answer if you can.
THE WITNESS: I don't know.
BY MR. SHARKEY:
Q. You propose in your testimony, Mr. Higgins, page 16, line 18, that DP&L not be permitted to recover carrying charges or a tax gross-up if the fuel deferral was authorized?
A. That is correct.
Q. Would you agree that if there are no carrying charges and no tax gross-up that DP&L would not recover revenue sufficient to cover the amount of the fuel deferral?

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A. No, not necessarily.
Q. Why wouldn't you agree?
A. Because this question has as a premise that a fuel deferral has been awarded.
Q. Right.
A. And, you know, as we discussed earlier today, I have raised some concerns as to whether or not, if a fuel deferral is awarded, whether or not the incremental costs to the company would be measured correctly.
And so it's certainly possible, for example, if the Commission were to disagree with my recommendations with respect to the 1.8 cent and the need to look at total company generation revenues and costs before awarding a fuel deferral, it's entirely possible that the company would be fully recovering its costs and still have a fuel deferral mechanism.
So, now, if we have as a premise of this question that the Commission had determined to award a fuel deferral, you know, with my first objection notwithstanding, and then had gone through an analysis similar to the one I described and as part of that kind of analysis had determined that there was an incremental cost being incurred by the company that the company ought to be able to differ then, you know,

I would agree that the company would not be recovering, say, the opportunity cost of the delay in recovering this incremental cost.

But of course, as you see in my testimony, since I believe that this recovery in the first instance is really analogous to a windfall in light of the stipulation, the 2005 stipulation, I believe it's reasonable that there not be any recovery of this opportunity cost.

Q. Assuming the Commission established a methodology for setting the deferral, whether you agreed with that methodology or not, would you agree that typical Commission practice would be to permit the recovery of carrying charges and a tax gross-up on the amounts the Commission permitted to be deferred?

A. Not necessarily. I'm thinking about the first energy fuel deferral that was permitted a couple of years ago.

And my recollection is that the carrying charges on that fuel deferral are different from the carrying charges permitted on other regulatory assets that FirstEnergy has, specifically that the carrying charges on the fuel deferral I believe are lower.

I believe they are limited to the company's cost of debt.

So, I don't agree that in Ohio it's always or necessarily generally the case that a fuel deferral is allowed to recover the kind of carrying charges proposed by the company with the tax gross-up.

Q. At least FirstEnergy permitted a tax gross-up as well?

A. I don't recall off the top of my head. Since the recovery was limited to the cost of debt and it did not include the cost of equity, it may not have included a tax gross-up.

But I don't know specifically without going back and reviewing the details in that case.

Q. Are you aware of any commission precedent that followed your proposal that no carrying charges whatsoever be permitted?

A. Not off the top of my head, no. Let me just say not in Ohio off the top of my head.

And I do recall in other states there have been determinations of no carrying charges allowed in certain instances but I couldn't site them to you right now in terms of which states they were and what cases they were but I know it's occurred.

Q. Do you recall in those situations why carrying charges were denied to the utility?

A. Again, since I can't recall the specifics,

I mean, I'd be speculating, but, you know, it generally speaks to the equities of the circumstance the Commission's addressing.

Q. Let me turn to your testimony about DP&L's request for lost revenue associated with its DCEM programs.

A. Mr. Sharkey, do you have a page you'd like to refer me to?

Q. Your testimony is generally on pages 17 through 20.

A. Got it.

Q. And my first question to you is, are you aware that the statute, specifically 4928.143(B)(2)(h) that is cited in your testimony on pages 17 and 18 permits in some situations the recovery of the lost revenue?

A. Yes, with respect to infrastructure modernization.

Q. And that's your understanding of what that statutory section permits?

A. Yes.

Q. Do you oppose DP&L's recovery of lost revenue that results from infrastructure improvements?

A. Not necessarily but it really would depend on what type of -- it would depend on the calculation

the company was making and whether or not the calculation of lost revenue was truly associated with infrastructure improvement or whether it was associated with some other activity.

I mean, it seems to me that the law allows recovery of lost revenue on infrastructure on modernization. It doesn't indicate necessarily that it must be provided.

So I believe it would have to be reviewed on a case-by-case basis as to its merit.

Q. What type of infrastructure improvements could or would result in lost revenue for a utility?

A. Well, there are certain kinds of investments in the SmartGrid, for example, that can allow for reductions in line losses. At least, I have seen certain discussions along those lines.

And if line losses are reduced then that may result in fewer sales through the meter, you know, to the company, so, a volumetric reduction in sales as a result of reducing line losses.

And so that's an example of a potential revenue loss that might come from infrastructure improvement. It's a fairly I would say narrow type of revenue loss.

Q. Would you agree that the company would need to make significant infrastructure modernization and improvements to be able to implement time-of-use rates, peak-time rebates and critical peak pricing?

A. It really depends. I mean, many utilities already have the metering in place. They do time-of-use pricing.

You know, it really depends case by case, utility by utility as to how much investment -- how much new investment would be required to be able to implement those kinds of programs.

And so I'll leave it at that.

Let me put it this way. For example, a number of these programs don't necessarily result in lost revenues. I mean, for example, time-of-use pricing may not result in lost revenues to the utility.

So there may be a cost involved in putting in the meters to implement time-of-use pricing but there's not necessarily a revenue lost to the company from implementing time-of-use pricing.

Q. Why not?

A. Well, because time-of-use pricing involves setting prices higher in certain times of the day and lower in other times of the day. And usually the design is developed to be revenue neutral to the

utility.

So, you know, you have a current flat energy charge, say, and you look at the pattern of usage under that charge and you design a rate that says, well, I'm going to collect more of this revenue on peak and less of it off peak and when I'm done I'm going to collect the same amount of revenue.

Now, it may be that customers respond to the time-of-use pricing in such a way as to reduce revenues to the utility but that, you know, remains to be seen. It's not necessarily what would happen.

Q. Would you agree that programs like DP&L's proposed programs that would result in replacement of inefficient light bulbs or inefficient appliances result in a modernization of the assets used in DP&L's service territory?

A. Well, it might be a modernization of the appliances used by customers. I do not consider that to be infrastructure modernization because, you know, in my view, infrastructure modernization occurs on the utility's assets.

And, you know, improving, for example, the energy efficiency of light bulbs and appliances in people's homes are energy efficiency investments that occur on the customer premises.

So, does it improve society's energy efficiency? Yes, I would certainly agree with that.

But, you know, the examples you gave I believe are distinct from infrastructure modernization and are examples of customer energy efficiency.

Q. You testified earlier that you didn't believe time-of-use rates would result in a lost revenue for the company.

A. Can I make a correction, please?

I said it would not necessarily result in lost revenue and then I went on to describe a circumstance in which it could. So, I certainly didn't say it would not result in lost revenue.

Q. Could time-of-use rates result in lost revenue for a company?

A. It could in the example that I described a few minutes ago. It would depend on -- you know, it would depend on how the rates were designed, whether the design of the rate was revenue neutral to the utility or not, and it would depend on the degree of customer responsiveness to the time-of-use rates.

And it would also, of course, depend on the utility's ability to have rates reset by the Commission pursuant to a rate order of some kind at another point in the future.

Q. As to peak-time rebates and critical peak pricing, what are your opinions as to whether or not those could or would lead to a revenue reduction for a company?

A. Well, in terms of reductions in sales revenue to the company, it may or may not impact sales revenues or it may not impact sales revenues very much. I mean, it depends on how the programs are structured.

For example, you know, if a company is sending, you know, a critical peak price signal to customers, you know, it may be that customers avoid using or reduce the usage, their usage of energy in those critical peak periods but then, you know, use energy at another time of the day.

They would pay less at that other time than they would have paid during the critical peak.

But whether that's a net change in revenue from what the utility would have otherwise collected without the program remains to be seen.

You know, it could be more recovery, it could be the same or it could be less.

Q. Let me ask you about your testimony regarding shared savings on page 20.

A. Sure.

Q. If I understand your opinions, you believe that a shared savings shouldn't be permitted under any circumstances to be recovered?

Let me state that differently. You believe that the utilities shouldn't be entitled to a share of the savings under any circumstances?

A. No. Actually, that's not what my testimony says. If you look at line 19 of page 20, I say that:

"...if lost revenue is not included in cost recovery, then 100 percent of the cost reductions experienced by the utility should be passed through to customers on a going-forward basis at such times that SSO rates are reset by the Commission."

Which means that until SSO rates are reset by the Commission, 100 percent of the cost reductions would be retained by shareholders.

Again, that's in the case in which lost revenue is not included in cost recovery.

So, you know, I hope that makes sense to you. I mean, I can explain further if you'd like.

Q. No. I understand.

So the utility would be entitled to shared savings under your proposal only if, A, it's denied lost revenue and, B, only during the period of time in between SSO proceedings?

A. Correct.

Q. What's the basis of your opinion that recovery or, I'm sorry, that shared savings should be permitted only if lost revenue is not granted?

A. Because it seems to me that first -- I mean, as you're aware, I object to the recovery of lost revenue in the energy efficiency program.

And it seems to me that if you are charging customers for the full cost of the program to start with; that is, the direct cost, and the customers are also paying the utility for revenues the utility alleges it has lost as a result of conducting the energy efficiency programs then it doesn't seem to me that the utility has done anything to warrant the kind of shared savings that's being proposed here.

The customers foot all the costs. The customers pay the utility for revenues they otherwise -- you know, are being lost per the company's calculation, and the utility wants a share of the benefit, you know, 50 percent of the benefit, no less, on top of that.

I think that that's inequitable.

So that's the basis for my opinion.

Q. And what's the basis for your opinion regarding the timetable meaning it be permitted only between SSO proceedings?

A. Well, that's a case in which there is no lost revenue recovery. And in that situation it's analogous to the way rates are set generally.

That is, you set rates from time to time. And in between the rate-setting exercises the utility maybe at risk for certain cost recovery and it also stands to benefit if it is very efficient and can recover revenues that are significantly above it's costs. And so the situation I'm describing here is analogous to that.

You put out a program. The customers are paying the direct cost of that program. That program results in the utility being able to avoid certain fixed costs that it would otherwise have to incur because you're saving energy.

But rates are set. And so the benefit of avoiding that fixed cost incurrence that the utility would otherwise have to experience I believe can reasonably be retained by the utility.

It's sort of -- you know, it's like, in

between rate cases the utility's entitled to recover or it's entitled to the benefit of efficiency gains in between rate cases so long as it's also exposed to the risks of inefficiencies between rate cases.

And so, in my view what I'm describing on lines 19 to 22 of page 20 is analogous to that traditional type of arrangement.

Q. You opine on page 22 that customers should get access to their own metering data if DP&L's infrastructure investment rider is approved, right?

A. Yes, I do.

Q. Now, if granting that access would cause the utility to incur a cost, would you agree the customer should pay that cost?

A. I would -- I mean, to the extent that there is a cost incurred in providing the information, it ought to be part of the overall program cost.

In other words, if you're going to go through this very significant expense which this AMI program is, then it's important to provide the information to customers that can allow them to make wise energy choices.

And you don't want to have any unnecessary barriers to customers to getting that information.

So if you're going to go through all this trouble and expense, then do it in a way that provides the customers with information that allows them to make good decisions and include that incremental expense in the cost of the program.

Q. Let's go back to the shared savings.

Do you know, in the states that have implemented programs similar to Dayton Power & Light, similar to Senate Bill 221 that include energy efficiency and demand reduction targets, do those states typically permit utilities to retain some or all of the shared savings?

A. It varies on a case-by-case basis. You know, I don't think one can say that it's typically done one way or another way.

There are various types of program parameters that have been set up over the years for energy efficiency programs.

Q. Do you know why some states have permitted the recovery of shared savings?

A. Yes. Utilities have argued that they have a disincentive to promote energy efficiency because of the way their rates are set and because of the fact that utilities often or typically recover part of their fixed cost through volumetric sales.

And in response to these arguments by

utilities, some commissions have permitted recovery of various types of incentives to utilities to encourage them to promote energy efficiency.

Q. And is that the same reason -- let me step back. Have states other than Ohio permitted utilities to recover lost revenue?

A. The lost revenue argument is typically made in the framework that I just described.

MR. SHARKEY: Let's go off the record for a bit.

(The proceedings were at recess from 12:50 p.m. to 13:04 p.m.)

BY MR. SHARKEY:

Q. So, let's go back on the record.

Do you have accessible to you again the Revised Code Section 4928.143(D)?

A. Yes.

Q. Okay. We talked earlier about the second sentence of that statue that permits the incremental recovery or the deferral of costs not being recovered under DP&L's current rate plan that it incurs to comply with 4928.141.

My question to you, what test would you propose the Commission use to determine whether to authorize recovery under that sentence?

A. The first test would be for the Commission to refer to Section II.F of the stipulation in 2005 and to also review that part of the stipulation in the context of its order approving the stipulation and to ascertain whether any change in rates or allowance of deferral is necessary or appropriate in light of that information.

Should the Commission determine that some recognition of incremental cost or cost deferral is appropriate after considering that provision in the stipulation then I believe the Commission ought to look at the company's total generation revenue and total generation cost as well as the company's fuel and purchase power cost along the lines described in my testimony and along the lines we discussed earlier today. That information ought to be considered by the Commission in making a determination.

So, the kinds of things that I describe in my testimony on this topic and which we discussed previously are the things I think the Commission should consider if they determine that incremental cost recovery or a deferral is justified.

Q. Next topic. Does your testimony address whether DP&L should implement AMI or SmartGrid?

A. No.

Q. Have you discussed with anyone whether 4928.143(D) was intended to permit DP&L to recover fuel costs?

A. No.

Q. Have you discussed with anyone ever whether DP&L was intended to be permitted to recover some costs under that section?

A. No.

Q. Did you discuss the meaning of that section with anybody as to any cost?

A. Well, when you say "discuss," I mean, obviously I have provided my testimony to counsel for Kroger and they reviewed it.

But, you know, outside of my communications with counsel, I have not had any discussions with anybody on that.

Q. Okay. And as to your discussions with counsel, can you describe for me what was discussed about 4928.143(D)?

MR. YURICK: There will be an objection, but you can go ahead and answer to the extent that you can if you can recall.

THE WITNESS: Yes. I'm sitting here trying to recall. I don't recall a specific, you know, discussion on the point.

You know, I sent my testimony to counsel and received comments back and the -- I don't recall a specific discussion on that --

Well, hold on. I think -- I'm trying to reflect back on this case and the kinds of discussions we had. Yes, I think I probably have discussed it with counsel and I expressed my view that the --

It appeared that Dayton Power and Light was relying on this change in the statute to basically change the balance of the equities in the settlement agreement that it had entered into in 2005 and my view that I didn't think that was reasonable nor consistent with the terms of the stipulation.

And, you know, I certainly did not have -- counsel for Kroger certainly did not challenge that view.

BY MR. SHARKEY:

Q. Did you discuss whether that section was intended to implement that change from the RSP stipulation?

MR. YURICK: One minute here. You know, I'm going to object and I'm going to state the basis for my objection on the record. And this would go for the previous question too.

I want to make it clear that I'm not

waiving any attorney-client privilege should it apply. I'm also not waiving any work product privilege should that apply. So I'm going to object to the form of the question. I'm going to let the witness answer to the extent that he can.

THE WITNESS: I don't have any recollection of anyone telling me that this provision in the law was intended to allow DP&L to recover certain specific costs.

BY MR. SHARKEY:

Q. Did anybody ever tell you it was intended to permit DP&L to recover some costs?

A. No.

Q. Did you consider whether that section was intended to permit DP&L to recover some costs?

A. Well, the language is called out by DP&L in its own application.

And so it occurred to me that it wasn't any coincidence that DP&L was referencing this language. And it occurred to me that perhaps DP&L viewed that language as a special deal that allowed them to change the terms of its stipulation.

And that's about as far as my thought process went on it. I mean, it occurred to me that maybe DP&L had reason to believe it could change the

stipulation it agreed to by virtue of this language but I didn't have any other indication that that was the case.

Q. Did you inquire from Kroger's counsel as to whether that was the intent?

MR. YURICK: Let there be an objection, the same grounds. You can go ahead and answer to the extent that you can.

THE WITNESS: I don't think I did.

BY MR. SHARKEY:

Q. Why not?

MR. YURICK: Objection. You can go ahead and answer to the extent that you can.

THE WITNESS: Well, again, it occurred to me that DP&L might have believed this was a special deal for DP&L.

And I figured that if there was a special understanding that was common knowledge that this was for DP&L, A, you know, that might be mentioned to me; B, it might not be --

It might not really affect the arguments in my testimony anyway since Section II.F of the stipulation appeared to anticipate actions of the Ohio General Assembly that might affect the stipulation and still had a standard for retaining the benefits in the

stipulation.

So, it seemed to me that even if DP&L felt this was special language for it, there was still a threshold question that the Commission needed to consider about whether the stipulation anticipated things might be changed down the line and had a path forward for resolving it.

So, it seemed to me it didn't affect the argument that I was making in the first instance.

BY MR. SHARKEY:

Q. Let me ask you about the non-jurisdictional opportunity sales made by the Dayton Power & Light Company.

A. Sure.

Q. Are you familiar with FERC's jurisdiction?

A. Generally, yes.

Q. Do you know whether those sales made by the Dayton Power and Light Company are subject to FERC jurisdiction?

A. I'm sure they are.

Q. And do you know whether FERC regulates the rates that the Dayton Power and Light Company can charge in those sales?

A. I'm sure FERC does. I mean, even sales that are at market prices are still made at market

prices subject to FERC regulatory authority and approval. So I would be very surprised if they were not made subject to FERC regulation.
Q. You testified earlier that DP&L may experience lost revenue as a result of line losses.
Can you explain how that would happen?
A. Well, my understanding is that it wasn't really as a result of line losses. It was as a result of reducing line losses.
Q. I apologize. That is what you testified to. That is what I meant to say.
A. No problem. My understanding is that there are certain SmartGrid investments that can be made that would allow the distribution system to operate in such a way that line losses are reduced.
Q. Okay. That I understand.
A. Okay. And, you know, I'm an engineer. I'm not an electrical engineer and so I can't tell you from memory what, you know, specific investment activities occur to make that possible.
But, you know, as an economist I'm aware that this engineering claim is made that this can occur. And so that's, basically, my understanding without going back and kind of rereading some of the materials on SmartGrid, that it can allow the grid to

be utilized in a way that cuts back on line losses.
Q. I understand that and I understand that DP&L's testimony here suggests that the technology will reduce line losses.
A. Okay.
Q. What I don't understand is how reducing line losses can result in lost revenue.
A. Oh, I'm sorry. Okay. If line losses are reduced then there is fewer sales through the meter to the customer. So in a way, reduction of line losses is akin to an energy efficiency improvement.
You are able to -- you know, you're able to improve the final output with fewer losses coming off the system but, you know, it might result in fewer sales. I mean, at least that was my take-away from reading the company's testimony on it.
Now, perhaps, you know, I have misspoke in indicating that that could lead to lost revenue but that was my initial take-away when I read the company's testimony.
Q. Now, I'm not an electrical engineer either, Mr. Higgins, but my understanding of reducing line losses, the same amount of generation goes through the customer's meter and is used by the customer but the company generates less electricity to

produce that power and to get it to the meter.
A. Yes. I can see that. And so, you know, I would, you know, upon reflection on that would agree that that's what would occur. And so there may not be any lost revenue in that particular instance.
Q. Okay. Are there any circumstances in which you can think of that infrastructure improvements would result in lost revenue?
A. Well, I mean, I'm just sitting here reflecting, I mean, anything of course that would result in fewer sales as a result of that investment. And so, you know, if the investment caused fewer sales then, you know, that would result in lost revenues.
Now, I don't have an example off the top of my head but, you know, I guess I'd have to reflect a while on that.
Q. Well, let me come back to that because I'm going to ask you the same question again after you've had a few minutes to reflect on it.
A. Sure.
Q. The last piece of your testimony deals with generation aggregation.
If I understand your proposal, you're suggesting that Kroger should be able to aggregate its various stores within the DP&L service territory and

purchase as one customer rather than as many?
A. Well, it's not exactly that, Mr. Sharkey. It's really -- it's similar to that but it's not quite purchasing as one customer.
It's really more along the lines of having the customer's demand for billing purposes measured on a coincident basis over all its facilities rather than being measured on an individual basis as it's done now.
Q. Okay. And the purpose of that would be to reduce the demand charge to Kroger?
A. Well, it would generally -- it wouldn't reduce the demand charge but it would reduce the amount of demand that's being billed to any customer whose load was measured this way.
So the charge itself, when I refer to charge, I mean the rate itself wouldn't change but the amount of demand that is measured would change because it would be measured by viewing all the facilities operating simultaneously rather than individually.
I mean, the basis being that right now that each individual facility may experience its peak usage at any particular time during the month and that becomes the basis for its billing demand.
And of course these different facilities

may be peaking at different times during the month.
And so right now the total billing demand paid by the customer is the sum of all these individual peaks whereas if they are measured at the same time, the basis of the -- the demand being billed would be each facility's share of that peak billing demand in that month.
And so that would be the basis for charging the customer for its demand usage.
Q. Do you know if DP&L's existing rate plan permits for generation aggregation as you have described it?
A. I'm not aware. I'm not aware of it allowing it.
Q. Then let's return to the question I told you I was going to return to; namely, whether infrastructure improvements could result in lost revenue. And you said you wanted to have an opportunity to think about that.
A. Sure.
Q. I know I've been busy peppering you with questions on other subjects, but having had a few more moments, are there any circumstances in which lost revenue -- are there any circumstances of which you're aware that lost revenue could result from

infrastructure improvements?
A. Well, I believe that, you know, if the infrastructure investment is directly associated with SmartGrid and if the SmartGrid investment causes customer usage to change, then you could have a revenue loss, you know, so called, associated with the SmartGrid investment. It would have to affect customer usage.
But, you know, as I read the company's SmartGrid proposal, it may affect customer usage in certain ways. So, I imagine there could be some lost revenues associated with, you know, the implementation of SmartGrid.
Q. In what way would you expect SmartGrid to affect customer usage?
A. If the company takes actions through its SmartGrid implementation that shut customer usage off at certain times, you know, if through SmartGrid the customer usage is curtailed, I imagine that that could be a lost revenue to the company.
You know, I mean, the company's advocacy of SmartGrid and its explanation of SmartGrid anticipates, you know, a number of different applications and I imagine that it's certainly possible that as some -- you know, as part of some of

those applications customer usage could be changed.
Q. There's nothing associated with infrastructure improvements of which you are aware that would ordinarily be expected to result in lost revenue?
A. Again, I mean, it depends on how the company intends to implement SmartGrid and what the company intends to do with it.
Q. I understand.
A. Okay.
Q. I'm just trying to figure out if there's something -- for example, if a company implements a program where they are replacing inefficient light bulbs with efficient light bulbs, obviously the purpose and intent is to result in a lower usage which will result in expected declining sales.
A. Correct.
Q. That's the whole point of the program.
I'm trying to figure out if there's some similar, typical and expected result of SmartGrid that would result in a declining usage.
A. Well, when you say "typical," we have to bear in mind that SmartGrid is not at this point typical. SmartGrid is new.
Q. Fair enough.

A. And so the company describes various applications and others, not just Dayton Power and Light but others have described various applications of SmartGrid and the various benefits that could be provided by SmartGrid. And among them include, you know, better information and communications.
And, you know, I believe I've seen references in some of these discussions to SmartGrid, you know, allowing for customer usage patterns to be changed, you know, either directly by the utility or by a program that gets implemented because SmartGrid is available.
And so it's certainly possible that as a part of implementing SmartGrid that there are implications for customer usage patterns and therefore the revenues paid by customers.
So, you know, so I can't say anything is typical at this point but I do believe that that's a part of what is envisioned with SmartGrid implementation.
MR. SHARKEY: Okay. I have no further questions at this time.
I believe our court reporter wanted us to make our order on the record.
So, I'll state for the record that I would

like a copy of the transcript e-mailed to me by close of business Monday to the e-mail address I gave off the record.

MR. YURICK: And I'd like the same.

(The deposition was concluded at 1:35 p.m.)

* * *

Reporter's Certificate

State of Utah)
County of Salt Lake)

I, Clark Edwards, Certified Shorthand Reporter, Registered Professional Reporter, and Notary Public for the State of Utah, do hereby certify;

THAT the foregoing proceedings were taken before me at the time and place set forth herein; that the witness was duly sworn to tell the truth, the whole truth, and nothing but the truth; and that the proceedings were taken down by me in shorthand and thereafter transcribed into typewriting under my direction and supervision;

THAT the foregoing pages contain a true and correct transcription of my said shorthand notes so taken.

IN WITNESS WHEREOF, I have subscribed my name and affixed my seal this ____ day of ___________________, 2009.

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Notary Public

My commission expires
October 22, 2011