BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

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In the Matter of the Application of The Dayton Power and Light Company For Approval of its Electric Security Plan :	Case No 12-426-EL-SSO
In the Matter of the Application of The Dayton Power and Light Company For Approval of Revised Tariffs :	Case No 12-427-EL-ATA
In the Matter of the Application of The Dayton Power and Light Company For Approval of Certain Accounting Authority :	Case No 12-428-EL-AAM
In the Matter of the Application of The Dayton Power and Light Company For the Waiver of Certain Commission Rules :	Case No 12-429-3L-WVR
In the Matter of the Application of The Dayton Power and Light Company To Establish Tariff Riders :	Case No 12-672-EL-RDR

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EXPERT DEPOSITION OF: KEVIN C. HIGGINS

Location: 215 South State Street, Suite 200

Date: March 8, 2013 - 11:37 a.m.

Reporter: Denise Kirk, CSR/RPR

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A P P E A R A N C E S

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I N D E X

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March 8, 2013 11:37 a.m.

P R O C E E D I N G S

KEVIN C. HIGGINS,

Called as a witness herein, being

First duly sworn was examined

And testified as follows:

EXAMINATION

BY MR. SHARKEY:

Q. Good afternoon, Mr. Higgins. I guess it would still morning where you are. It's afternoon here.

A. Just barely.

Q. As you know, my name is Jeff Sharkey and I represent the Dayton Power and Light Company in this proceeding.

If you would, first of all, please state your name.

A. My name is Kevin C. Higgins.

Q. And you are a principal at Energy Strategies, LLC?

A. Yes.

Q. Okay. Is a principal similar to what in a law firm is called a partner?

A. Yes.

Q. Okay. How long have you been with Energy

Strategies?
A. Since 1995.
Q. Okay. What did you do before that?
A. Prior to joining Energy Strategies, I was the Chief of Staff to the Chairman of the Salt Lake County Commission. I had that position four years.
Prior to that, I was with the Utah Energy Office in various capacities, ultimately becoming the Assistant Director of the Utah Energy Office. I was with the Utah Energy Office between 1983 and 1990.
Prior to that, I was with the Utah Power & Light Company where I was a -- I worked in their corporate modeling and operations research department.
Q. Okay. I just have a couple of basic questions. Is there anybody in the room with you besides yourself and our court reporter?
A. No.
Q. Can you describe for me the materials that you've brought with you for the deposition today?
A. I brought my testimony, my exhibit, some work papers that supported my testimony, and I also have documents -- primarily documents that were Public Utility Commission of Ohio documents that are referenced in my testimony in case there are any questions about those.

I have a couple of excerpts from Dayton Power & Light's filing in case there are any references to those. So I have them handy.

I also have a laptop at my disposal. The screen is blank at the moment, but it would allow me to call up electronically the company's filing, if you have any questions that require referring to those documents.

Q. Okay. Do you have available to you a copy of Dr. Chamber's second revised testimony that you referred to?

A. I do.

Q. We'll come back to that. I plan to ask you some questions about that testimony.

If you would, please, in your prefiled testimony turn to page seven.

A. (Witness complies.)

Q. Actually, if you'd turn to page eight.

A. Okay.

Q. You describe there what I would describe as a balancing test; is that accurate?

A. Yes.

Q. Okay. And on one side of the balancing test you refer to -- you say that the commission may find that the DP&L's proposed SSR provides a type of certainty for retail electric service; right?

A. Correct.

Q. And then the other side of the balance that you describe are for customer specific items. Let me strike that.

The other side of the balance are things that you assert would reduce the amount of needed SSR for the Dayton Power & Light Company?

A. Yes. I would more generally describe them as other factors the Commission should take into consideration, which would have the effect of reducing the SSR compared to the company's request.

Q. Focusing on the initial part, do you believe that the Commission could reasonably conclude that DP&L was entitled to some level of an SSR?

A. I believe the Commission may reasonably conclude that. I think that -- I will say that my personal opinion is that I would give greater weight personally to the fact that the transition adjustment period has ended.

So I do think the Commission could reasonably find that no SSR is warranted in that light. However, you know, recognizing that the Commission did make a finding in the AEP-Ohio case that indicated that on the basis of there being certainty for a retail electric service that some type of continued charge for shopping customers was warranted. I realize that the -- I recognize that the Commission may make a finding of that nature.

Q. Then let me talk about the items that are on the other side of the balance. It appears to me on page eight you talk about the transition cost matter that you just mentioned. Is that a fair characterization, really, of the first item that you say should be balanced against DP&L's request?

A. Yes.

Q. Then the second item it appears, you say, should be balanced against DP&L's request starts at the bottom of page eight, line 23, that paragraph, which are the interests of long-term shoppers. Is that a fair characterization of the second item?

A. Yes, Mr. Sharkey. And, I guess, just to put a fine point on it, under the umbrella of the first item, there are several components to that. So the transition costs or transition charge item has a few components to it that each warrant some weight.

But then, yes, given that, the second category, you might say, of considerations would be the implications for long-term shopping customers.

Q. Right now I'm trying to get a 50,000-oot view, big picture list of your items. Then we'll come back and discuss them in detail. I just want to make sure I have a complete list first.

A. Fair enough.

Q. Then it looks to me from pages nine on to ten, that you are critical of certain pricing decisions that DP&L has made and suggest that those pricing decisions have caused some of the problems and should weigh against DP&L's SSR request?

A. That's generally fair.

Q. And then it looks like you then go on page ten to your analysis of how the factors balance, but I want to make sure that before we go any further that I've got a complete list. Do those three items seem like a fair list?

A. Yes.

Q. Okay. Let me talk to you then about the transition costs item. First of all, were you involved at all in the 1999 Ohio cases in which transition costs issues were decided?

A. Yes.

Q. Who were you representing in those cases?

A. I did work on behalf of the Kroger Company in those cases.

Q. And did you work on DP&L's request for transition costs?

A. I believe I did, as I recall.

Q. I was on that case, but my memories are blurry. It's been many years ago.

A. Well, I don't mean to interrupt you, Mr. Sharkey, but, as I recall, a number of these cases were settled prior to there being testimony filed by intervenors.

So I believe, if my memory serves me correctly, that that may have been the case for the Dayton Power & Light case.

But I did advise the Kroger Company on each of the major retail competition dockets that took place in Ohio at that time for the four major utility groups.

So I would have been involved in advising Kroger on the Dayton Power & Light matter.

Q. Okay. And I will represent to you that your memory is accurate, that DP&L did settle.

Do you recall that the calculation that was used in those transition cost cases to determine the amount of transition costs was the difference between the book value and the fair market value of the generation assets?

A. No, I do not recall that to be the

transition adjustment.

Q. Do you recall that -- do you believe that some other formula was used or are you telling me you don't remember?

A. I'm trying to recall for a moment. And, perhaps, maybe I am going to agree with your characterization.

As I recall, the pricing was based on the difference between, you know, cost of service rates, generation rates, and market projected rates, which is, in some ways, comparable to the difference between a net book value of generation and market value, as I recall those being applied to the price of generation for customers.

So it was based on the difference between cost based rates as they were reflected in rates at that time and projected market prices for generation.

Q. I want to make sure I understand what you are telling me. I think I do. But it would be, as you recall, the net present value of the difference between the expected market rate and the then existing regulated rates?

A. Yes, in that -- it was of that general nature, uh-huh.

Q. Okay.

A. That's my recollection.

Q. And it's your view that the -- well, let me step back.

The SSR that has been composed by DP&L is calculated differently, isn't it?

A. I'm hearing some music in the background.

(Discussion off the record.)

Q. (By Mr. Sharkey) Let's go back on the record.

A. The SSR proposed by DP&L is not calculated in the same exact manner as the prior transition cost recovery. However, it is, in my view, comprised entirely of generation related costs which, of course, is what the transition adjustment -- or transition charge calculation was comprised of.

Q. At that's the reason that you believe that DP&L's request for SSR is -- or at least past recovery of transition costs should be weighed against its current request for the SSR?

A. Well, there's a little bit more to it than that. The past recovery of transition costs was an attempt to allow customers to pay off, if you will, a portion of what you might call the legacy costs of generation that the utility had incurred on behalf of serving all customers.

And, for that reason, it was a payment for generation service, even for customers who had continued on to shop from someone else.

The proposal for the SSR is very, very similar in substance to that. It is, in fact, a continued payment for generation service to help the utility recover the costs of that legacy generation even for customers who are shopping and purchasing their power from somebody else.

So in its essential form, it is, in my opinion, a form of transition cost recovery. Whether the calculation of the charge is exactly the same as it was previously, is not the essential point, in my mind.

In my mind it's the fact that the customers are -- shopping customers would be required to continue to pay for recovery of the utility's generation costs despite the fact that they are now shopping.

Q. Let me go back to the prior topic that was balancing. I want to ask you a followup question that occurred to me.

You quote on page eight at lines three through eight the statute that I believe you were discussing the elements underneath that statute; is that fair?

A. Well, somewhat. I'm referring to the statute because the Commission referred to the statute. So for purposes of complete presentation, it was the Commission that referenced this statute. And so that's why I cite to it. And the Commission referenced it in its AEP-Ohio order.

Q. Do you see anything in that statutory section that authorizes or requires the Commission to perform a balancing test of the type you propose?

MR. YURICK: I'm sorry. This is Mark. I guess I'm going to object to the form of the question as being a little overbroad. And I would ask (you to clarify. Do you mean in the text or anything just generally?

MR. SHARKEY: I'm asking, Mark, just so we're clear, regarding page eight, lines three through eight, Mr. Higgins has quoted 4928.143(B)(2)(d), and I'm asking about whether anything within that section CC authorizes and requires the Commission to perform a balancing test.

MR. YURICK: In the text?

MR. SHARKEY: Yeah, in that section.

MR. YURICK: I'm sorry. I appreciate the clarification.

Q. (By Mr. Sharkey) Do you understand the question that -- the conversation I just had with Mr. Yurick, Mr. Higgins?

A. Yes, I do, Mr. Sharkey.

I would say that an inherent aspect of this Section (d) that is quoted is that some type of balancing would need to be conducted because it's not a black-and-white prescription.

It indicates that there are, in essence, various factors that can be considered. And the Commission drew the conclusion that this supported, you know, an allowance of some sort for providing certainty for retail electric service.

So it seems to me that inherent in attempting to apply this provision that something must be taken into consideration and balanced in coming up with the decision.

Q. Are you aware of any prior instances in which the Commission engaged in a balancing test when setting a rate underneath that subsection?

A. To my knowledge, this AEP decision, which was fairly recent, may have been the first time the Commission cited to this section in approving a mechanism of this sort.

I don't know that for sure, but it seems to me that when the commission referenced this section, I don't recall them citing to any of the previous decisions they had made that relied on this section.

Q. Are you aware of anyplace in that AEP decision that you are referring to where the Commission endorses a balancing test like you proposed?

A. Well, I don't recall the words "balancing test", but I certainly believe that in reaching its decision in the AEP-Ohio case, the Commission did, in fact, balance various factors.

So I would say on the whole, yes, they did conduct a balancing of interests in reaching the decision that they reached.

Q. Can you point me to any specific words in Subsection (d) quoted in your testimony that suggests that the Commission should consider past recovery of transition charges when setting a rate underneath that charge?

A. Well, there's no specific reference to it in this one section. I mean, it speaks for itself.

Q. Are you aware that the subsection that we are looking at was enacted after the 1999 cases had been completed?

A. Yes, I am.

Q. And was enacted as a part of the 2008 legislation; right?

A. Correct.

Q. If you'd turn to page seven of your testimony, you say at the very top on line one that: "I am not aware of any provision in amended substitute Senate Bill 3 which began the restructuring of the Ohio retail electric market over ten years ago, that provide for a new round of transition cost recovery." Do you see that?

A. Yes.

Q. But you are aware, I think, obviously you cited the following pages, that DP&L's recovered -- is entitled to certain charges under the newly enacted 4928.143 (B)(2)(d)?

A. Well, I think it remains to be seen whether you are entitled to recovery of those costs or not. I mean, I'll note that even though there's been subsequent legislation passed in Ohio on this general subject, that legislation did not repeal the limitations on transition costs recovery that were introduced with amended substitute Senate Bill 3.

So, to my knowledge, those limitations as to the timing of transition costs recovery are still in effect. And it seems to me that the extent to which the Commission may rely on the subsection (d) that we've been talking about, you know, I suppose remains to be seen in the upcoming case -- in your case.

Q. The next item that you identified in your balancing act was the interest of long-term shoppers?

A. Yes.

Q. Did you define long-term shoppers as persons who have been shopping for more than three years?

A. Yes.

Q. How did you arrive at the three-year figure?

A. It seemed to be a reasonable representation of customers who began shopping within one year of the approval of your last rate stabilization charge.

So, in essence, I was looking for a way to define customers who began shopping within that first year which, let's say, approximately 2009, and were already shopping prior to the very recent surge in shopping that you've had in the last year.

Q. Why do you believe that long-term shoppers have any different interests than short-term shoppers?

A. I believe that it's appropriate to distinguish them if the Commission decides to pursue these additional charges on customers for shopping; that is, that certainly at a high level, if in fact the Commission were to determine that transition costs recovery has been completed per those sections of the statute, then that would apply equally to all customers whether they've been long-term customers or near-term customers.

On the other hand, Dayton Power & Light has made this case that it is at some financial risk due to the -- in significant part -- due to the large increase in shopping that has occurred recently and may occur in the future.

I believe that if in response to that argument the Commission is inclined to extend these substantial rate stabilization charges or SSR and continue to require shopping customers to subsidize the cost of Dayton Power & Light's generation, then it is fair to ask the question that perhaps a distinction should be drawn between customers who have not been relying on DP&L's generation service in the recent past and, in fact, have been in the market for at least three years, have been paying for their own generation service for that period continuously.

And it seems to me that for those customers it may be reasonable to make a distinction and indicate that because part of DP&L's case rests on the impact of recent shopping, that these long-term shopping customers have not been part of that causation.

So for that reason I think that a distinction can be drawn if the Commission is inclined to respond to Dayton Power & Light's arguments about the impacts on the company of recent shopping.

Q. Are you aware of any Commission orders or promises made by DP&L to long-term shoppers that they would no longer have to pay non-bypassable charges at the expiration of DP&L's prior ESP?

A. Well, DP&L promised customers that they would not have to pay transition charges after 2003. DP&L promised that in the stipulation that was entered into in the '99 docket and the Commission approved that promise, if you will, and relied on it in approving that stipulation.

So subsequent to that time, it is true that additional -- extensions of the obligation of shopping customers to pay for generation charges have been adopted. And, you know, I'm not aware of promises that DP&L may or may not have made subsequent to that time about the cessation of charges. But certainly a promise was made in the '99 docket.

Q. Let's go back to the topic of transition costs in this statute. You understand that currently in Ohio there's a statute that says that DP&L cannot recover transition charges; correct?

A. That the period for recovering them has expired.

Q. And you are aware that there's a statute that's cited in your testimony that permits DP&L to get stability charges; right?

A. I'm aware that the Commission has relied upon that section in ordering stability charges in the AEP-Ohio case.

Q. We already established that the second statute, 4928.143(B)(2)(d) was enacted subsequently; right?

A. Correct.

Q. But, nonetheless, it's your opinion that stability charges are the same as transition charges?

A. In substance they are fundamentally the same. With respect to shopping customers, they're a continued charge to underwrite the cost of Dayton Power & Light's generation service for customers who are shopping, which is fundamentally stranded cost recovery.

Q. Do you believe that the general assembly by has misdefined these charges?

A. I'm not questioning the general assembly's definition of charges.

Q. Well, you agree that the general assembly has said no transition charges but yes to stability charges; right?

A. The general assembly has allowed that there may be an electric security plan that may provide for the items in (d). And I don't see stability charges listed in item (d).

Q. Fair enough. I'm talking about stability charges in relation to the last phrase that it would have the effect of stabilizing or providing certainty regarding retail electric service.

A. Correct, but I don't see -- I do not see any statement in (d) that explicitly states that the general assembly was authorizing stability charges to be charged to shopping customers.

Q. How would you define the charges that are authorized in that subsection? I was using "stability charges" just as a shorthand but if you'd prefer a different term...

A. You know Section (d), again, I acknowledge that the Commission interpreted that to allow for these security related charges in the AEP-Ohio case, but I don't see in Section (d), in my plain reading of it, that it specifically states that shopping customers would be subject to stabilization charges.

It refers to terms, conditions or charges relating to limitations on customer shopping for retail electric generation service.

So, to me, that phrasing requires quite a bit of interpretation, if you are going to draw a clear path to specifically authorizing stabilization charges for shopping customers.

Now, I acknowledge the Commission did that. But you are asking me about what the general assembly said. And I'm not seeing, you know, a clear statement in this statement language (d) that says, you know, these kinds of stabilization charges can be enacted for shopping customers.

Q. Well, actually, my last question to you, Mr. Higgins, was a lot simpler. It was just what phrase would you use to refer to the charges authorized under that section?

A. Fair enough. I'm still thinking. I'm trying to give you a good answer -- a fair answer to that question.

Q. How about if we call it "stability charges" and we'll stipulate that it's my term, not yours?

A. Fair enough.

Q. Okay. So then my question is: You understand that the general assembly has authorized -- strike that.

You understand that the general assembly, as currently written, has barred the recovery of transition charges but has authorized the recovery of stability charges; right?

A. Per -- yes, per your definition relating to Section (d) here.

Q. But it's nonetheless your opinion that stability charges and transition charges are the same thing?

A. That, in substance, they are the same thing, uh-huh, substantively.

And I recognize you may give a different legal interpretation of one in the code and the other but, in substance, they're the same.

Q. Let's go back to then the distinction you drew between long-term shoppers.

A. Yes.

Q. Would you agree that long-term shoppers and short-term shoppers and non-shoppers all have a common interest in paying as low a rate as reasonably possible?

A. Yes.

Q. And they all have a common interest in receiving reliable service?

A. Yes.

Q. They all have an interest in ensuring that the Dayton Power & Light Company maintains its ability to provide stable service?

A. Yes.

Q. They all have an interest in making sure that Dayton Power & Light Company can maintain its financial integrity?

A. Yes.

Q. Let me turn then to page nine of your testimony, the paragraph that extends from line 14 on to line ten of page ten.

A. Okay.

Q. And I am sort of focused on -- actually it begins at the bottom of line 20. On line 20 on page nine?

A. Yes.

Q. DP&L "faced the risk that pricing SSO rates too aggressively would result in a loss of sales to the market"; do you see that?

A. Yes.

Q. As I read this paragraph -- and tell me if you disagree. You are suggesting that DP&L has priced its power too high which has resulted in customers switching, which has decreased DP&L's revenue and caused DP&L's need for the SSR; is that a fair characterization of what you are saying here?

A. That's a generally fair characterization. I guess I would maybe qualify it by saying, you know, that the SSO rates could have been set lower by DP&L had you chosen to -- had DP&L chosen to offer a lower price, and that may have had different implications for the degree of switching that later occurred.

Q. So, basic economics, they set the price too high, which caused a reduction in the quantity, which has contributed to the financial integrity Dayton Power & Light Company is having?

A. Yes.

Q. Then if you would turn to page four of your testimony.

A. Okay.

Q. I'm on line eight.

A. Yes.

Q. You say in this sentence there: "In

effect, DP&L proposes to underwrite in significant part the anticipated reduction in its SSO rates by increasing the non-bypassable charge to customers by 88 percent. This proposition is fundamentally unreasonable." Do you see that?

A. Yes.

Q. If I understand what you are saying there, is that you are critical of DP&L's decision to reduce its SSO prices because that's going to result in reduced revenue for DP&L and increase DP&L's need for an SSR; is that right?

A. Well, not exactly right. I'm critical of DP&L proposing to underwrite the costs of its proposed reduction going forward in SSO rates by increasing the costs charged to shopping customers.

So I'm not critical of DP&L for lowering its SSO rates or proposing to lower them at this time, although in a way I would say that it's coming a bit late to staunch the tide of customers who have left.

But I'm critical of the company's attempt to underwrite that cost by charging an even greater stability charge to shopping customers.

Q. But it does appear that what you are suggesting is that DP&L's decision then to lower its prices is contributing to DP&L's need for the SSR;

right?

A. Well, you know, this is DP&L's proposal, right? So, in my view, what DP&L is doing is that it is, you know, very late in the game proposing to reduce its SSO rates; but, in reducing them, is looking for someone else to pick up the tab, if you will. And you are asking the shopping customers to pick up the tab for that. So that's where my criticism is.

Q. Here's the simple cause/effect question. I'm not asking whether you are critical of DP&L or not. But you are opining here that DP&L's decision to lower its prices is causing DP&L to have lower profit and is, thus, contributing to DP&L's need for an SSR, which you say shouldn't be funded by shopping customers; is that right?

A. Yeah. Well, I agree that in proposing to reduce the SSO rate, that DP&L is looking for a funding source to make up for those reduced revenues. That funding source is the SSR, and that falls not just on SSO customers, but on shopping customers as well.

Q. Here's then what I'm trying to figure out how they're consistent.

A. Okay.

Q. You told me in your testimony on pages nine and ten that DP&L's decision to charge too high of an SSR -- I'm sorry -- let me start over.

You say that DP&L's decision to charge too high an SSO rate has contributed to DP&L's need for the SSR; but then appears here on page four where you are claiming that DP&L's decision to lower its SSO rates are causing DP&L's need for an SSR.

MR. YURICK: I'm sorry. There would be an objection to the form of the question at this point, Jeff. I just wanted to interject it.

A. And, Mr. Sharkey, do you have a question for me about that?

Q. Yeah. Can you explain to me whether or not those two pieces of testimony are consistent with each other?

A. Yes, they're perfectly consistent with one another. First of all, we have to account for the passage of time here.

In the references on pages nine and ten, I'm discussing the company's prior decisions in setting the SSO.

As part of those prior decisions, Dayton Power & Light entered a settlement agreement in which the company would be not subject to the significantly excessive earnings test as a consequence of entering into that settlement agreement, not subject to it for a three-year period.

It appears to me that the company had hoped, by entering into that agreement and by being excluded from that test, that the company had hoped to earn significant profits from its pricing arrangement that was put in effect at that time.

Let's face it, we don't know what the future is going to bring with respect to market prices.

So my point here -- and the reason my point is not contradictory -- is that if in negotiating the current level of SSO rates and in setting up a situation in which the company may have hoped to achieve significantly excessive earnings or earnings that would -- that might have otherwise been capped due to that test, had the company instead chosen a more modest goal, and had set the SSO lower, it would not have required an increase in the rate stabilization charge because it would have been setting a goal for a lower profitability.

So the company had the opportunity to propose a lower SSO rate. That would have provided some risk protection against losing load if market prices fell and -- but would have provided a more modest profitability target at the time. But, nevertheless, it may have been a profitability target that would have been reasonable.

The company didn't choose to do that. The company chose a pricing strategy that, in hindsight, produced SSO rates that turned out to be not competitive.

And now, after the fact, after a significant portion of load has been lost in response to that pricing, the company is now looking to reduce the SSO rate and fund it by now increasing the rate stabilization charge or calling it a new name and increasing it substantially.

So those aren't contradictory situations at all. I think that the company could have proposed a lower SSO rate back in 2009 without having to have a higher rate stabilization charge at that time if it had set a more modest profitability target.

Q. That's not what my question is about, Mr. Higgins. My question is: It's really a pricing compared to profit decision question is what it is. And here it is. You have an economist background; right?

A. I am an economist.

Q. You are, of course, familiar with basic supply and demand curves; right?

A. Yes.

Q. Now, here's the question: On pages nine and ten, you've told me that DP&L had set its price too high, which had caused customers switching, i.e. quantity to decline, and thus has caused its profitability to decline, and thus caused its need to lead to the SSR. So it's basically price too high equals declining profits.

Then on page four, you have told me that DP&L's decision to lower its price is also going to be lowering its profits and causing its need for the SSR. So lowering price also equals less profit.

What I'm trying to figure out is why those two comparisons as to pricing, too high a price and lowering the price, in your view, both lead to lower profit?

A. Well, again, I'll go back to the fact that the proposal in this case by Dayton Power & Light to reduce its SSO and have that accompanied by an increase in the rate stabilization charge or SSR, that's the company's proposal, that's not my proposal. That's the company's proposal.

So, apparently, Dayton Power & Light

believes it's necessary to have the proposal for a lower SSO be accompanied by this increase in non-bypassable charge. I do believe I've explained to you that my point on page four and on nine and ten are consistent.

What occurred in the past when the company set its SSO where it did, in the short-term I would have expected that that would have led to higher profits. In fact, I think that's what Dayton Power & Light anticipated.

But we live in a dynamic world. So had things remained static and had market prices been high or increased, then in fact by setting a high SSO rate that would have increased the company's profits. And I think the company intended it to do so.

So the missing ingredient and, I guess, the thing you are looking for in terms of explanation is that the world does change. And market prices did not remain high, as is pointed out in the company's own testimony. They came down.

So it's because of the reduction in price that later occurred, that is what made the initial SSO pricing turn out to be a cause for lower profits.

It would not have been a cause for lower profits in and of itself, but it was because other prices changed, and that made the decision in hindsight to have been one that caused a reduction in profit. So I hope that helps clear it up.

Q. Well, then explain to me how DP&L's decision on a going-forward basis to reduce its price reduces its profit, as described on page four of your testimony?

A. Well, again, that's DP&L's proposal. I haven't proposed that.

Q. I'm not asking about what the proposal is. You've told me that the results of their proposal is that it will have reduced profits and increased need for an SSR. And I want to understand why DP&L's proposal to reduce its prices resulted in lower profit.

A. What I've said is that -- let's be clear about what I've said. I believe what I've said is that it is the company's case that by reducing the SSO that it believes it needs to increase the SSR to make up for the revenues that are eroded from that, okay?

So what you are asking me then is: Is there an inconsistency in what I've testified here?

Q. Yes.

A. No, I don't believe so. The lowering of the SSO rate by itself will allow the company to retain more load, and in so doing, in fact could allow the company to retain some margin by retaining load, but it might also cause an overall reduction in profits as a result of the lower price the company receives.

But, again, let me go back. There's nothing contradictory about that. Like I said before, three years ago when the company opted to keep the SSO as high as it did, in and of itself, assuming no other price changes, that would have been an action that was likely to increase its profitability, okay? So higher SSO rate, higher profits, all other things being equal, but not all things remained equal. But all of the things being equal, the higher SSO rate would have been expected to lead to higher profits for the company. It did not turn out that way because not all things remained equal.

Now, today, 2013, the company is proposing to lower its SSO rates. All things remaining equal, that would likely reduce the profitability of the company or reduce its margins, although it might also mitigate some of the revenue erosion from customers leaving.

But, nevertheless, those are perfectly consistent observations on my part, all other things remaining equal higher SSO rates, higher profits; lower SSO rates, lower profits. But in between, as time actually occurs, things don't always remain equal.

So there are other factors that might occur that, in hindsight, would tell us that actually a decision to have kept prices high might have, in fact, caused in the long run revenue erosion. So I hope that's clear.

Q. Let me ask you some questions about the law of supply and demand. I'm not talking about DP&L, just basic Economics 101.

A. Okay.

Q. It's true, isn't it, that if you draw a firm supply curve that -- in the demand curves, there's a profit maximizing point at some point, I guess, along the supply curve for the particular company; correct? And, by the way, I'm assuming not perfect competition. So some market other than perfect competition.

A. Right. When marginal cost equals marginal revenue, that will be the profit maximizing point of level of output for the firm.

Q. And if you have those drawn on a piece of paper, it's easy to see where the point is, right, where the marginal cost and marginal revenue curves intersect?

A. Correct.

Q. If you are doing business in the real world, you don't have the benefit of having those curves to know where it is that your profit maximizing price is; right?

A. I don't know necessarily. But for purposes of -- when you say doing business in the real world, you don't know what your marginal cost is or your marginal revenue is, I don't necessarily agree with that. Firms may have different degrees of information about what those things are.

Q. Well, the marginal revenue curve is derived from the demand curve; right?

A. Correct.

Q. Would you have agree with me it's difficult for a firm to determine what the demand curve is?

A. Firms do not have perfect knowledge of what the demand curve is. Again, different firms may have different degrees of information about what that looks like.

Q. Okay. So an individual firm who is making a pricing decision, it's true, isn't it, that that firm may be able to increase its profits by increasing the price a little bit and getting more revenue on fewer sales?

A. Right. It becomes a function of price elasticity.

Q. But, similarly, depending upon where the firm is on its curve, it may be that increasing the price causes such a -- causes more customers to leave than the extra price gained so that they lose profit?

A. Correct.

Q. So one can't determine the reasonableness of pricing decisions without having the marginal costs and marginal revenue curves available to them?

A. Well, I think you can make inferences about reasonableness. But I think that -- but I believe your question is one doesn't have per knowledge of what the marginal costs or let's say what the marginal revenue is.

So, without perfect knowledge, it may be that by increasing prices, a firm might lose profitability; similarly increasing profits could cause a firm to gain profitability.

The firm doesn't have perfect knowledge in advance of which of those things will occur. I will agree to that.

Q. For the Dayton Power & Light Company, have you -- it's true, isn't it, that in the Dayton Power & Light Company, you haven't sponsored any marginal costs or marginal revenue curves?

A. Correct.

Q. And you don't know whether DP&L's pricing decisions that you discuss in your testimony would have caused increased profits or decreased profits for the Dayton Power & Light Company?

A. No. What I know is that DP&L included a provision in the stipulation that set the SSO rates that would have exempted the company from the scrutiny of a significantly excessive earnings test.

So I draw the inference from that provision of the settlement agreement, which I believe is paragraph 20, that it was the hope of the Dayton Power & Light Company to be able to achieve significant profitability from the pricing terms of that arrangement.

So it's information that I am using to draw that inference, although I do not have a -- I have not conducted a marginal cost or a marginal revenue study for Dayton Power & Light.

Q. Is it your expectation that all businesses have the hopes of earning significant profits?

A. Certainly.

Q. So the fact that the Dayton Power & Light Company, when it negotiated the 2008 stipulation, may have hoped to earn significant profits is neither surprising nor unusual?

A. Agreed.

Q. Okay. And just so I'm sure I have a clear record, it is true that you don't know whether the Dayton Power & Light Company's historic pricing decisions have caused increase or decreased profits for it; right?

A. Well, I am aware based on the information filed in this case by Mr. Chambers that for -- I believe it was for 2011, the return in equity was robust, at least based on the representations I've seen in his exhibits.

But, you know, whether -- but barring that, I don't know whether the immediate result of the company's pricing decisions caused an increase or a decrease in the company's profits at that time.

Q. Okay. I'm still not sure I've got a clean answer. You don't know whether pricing decisions by the company have increased or decreased its profitability; right?

A. Well I would say, to be complete, I do believe that the company's pricing decisions have ultimately caused a reduction in its profitability because the company locked in SSO rates that turned out to be high relative to market options.

So, certainly, over a period of time, I do believe that those pricing decisions have eroded the company's profitability by pricing the SSO product too high.

Now, in the short-term, it's possible that those pricing decisions may have increased profitability, I don't know.

Q. Well, how could you know even over the long-term whether or not those pricing decisions were profit maximizing?

A. Because I've read the company's testimony. And the company's testimony indicates that because the company has lost substantial load shopping, it has caused a financial hardship for the company. That's the thrust of the company's testimony, at least in part.

So I am drawing that inference from the company's case.

Q. Well, then, so is it your view that the company would have been more profitable if it had lowered its prices to market rate so there was no switching?

A. I believe the company may have been more profitable had it set an SSO rate at the outset of the current, you know, pricing period, 2009.

Had it set its SSO rate lower at that time, by doing so, it may have reduced the company's short-term profitability, but may have resulted in less shopping, less load lost as a result of that and less margin erosion as a result of that.

So, therefore, today the company may have made a more -- may have been more profitable had it set lower prices at that time and with those prices remaining in effect, yes.

Q. But it's the same business who is facing a decision to raise or lower its price; raising your price may increase your profits or it may decrease your profits; right?

A. Correct.

Q. So the Dayton Power & Light Company -- it works the same way, decreasing your price may increase your profitability because you get more customers, or it may harm your profitability because you lose revenue on the price reduction; right?

A. Yes.

Q. So you don't know whether the Dayton Power

& Light Company would have been more profitable historically had it lowered its price; all you know is it would have had a higher quantity?

A. It is true that, perhaps, by having a high price such as it has had or the price that it's had, that the short-term profits that the company may have earned from that higher price might have outweighed the lower profitability the company is now experiencing. That is possible.

Although, of course, my related question is: Who should bear the consequences of those decisions?

So it's certainly the case that perhaps the company's pricing decisions over the long-term put more money in its pocket than not, but with respect to the going-forward period with respect to where we are today, I do believe it's reasonable to believe that the higher SSO price that was selected rather than a lower price is contributing to the company's reduction in profitability today and as evidenced in the company's case.

But, perhaps, if you looked over a period of time, maybe those higher prices maybe in fact measured over a three-year period, maybe those higher prices in fact were in total the cause of greater profitability than less.

Q. So you don't know whether or not DP&L's pricing decisions on a historic basis were profit maximizing or not; right?

A. I don't know if they were profit maximizing or not over the full period of time. You know, again, I do believe that having prices that are not competitive with the market has contributed to at least the reduction in the company's profitability.

Q. You don't know whether DP&L's plan to reduce prices in the future is profit maximizing or not either, do you?

A. I don't know whether it's plan to reduce prices in the future is profit maximizing.

Q. To determine whether the historic decisions were profit maximizing, you would need to derive marginal costs and marginal revenue curves, wouldn't you?

A. Well, you'd have to -- yes, you'd have to do that, and you'd have to conduct some -- you know, a fair amount of analysis as to what might have happened under different pricing proposals.

Q. You have not done that analysis, have you?

A. No.

Q. And on a going-forward basis, the same is true; right? You would need a lot of analysis to determine whether that decision was profit maximizing and you have not done that analysis?

A. No, I have not attempted to measure what the profit maximizing outcome for the Dayton Power & Light Company is.

Q. Back in your testimony, page ten.

A. Yes.

Q. You state that as a result of the -- you say that taking into account all of the factors, I recommend that if the Commission determines that a rate stability charge is warranted that the charge be no greater than the current rate stabilization charge; do you see that?

A. Yes.

Q. I note that you and I both used the phrase "stability charge". You called it a "rate stability charge: Didn't you?

A. Correct. Yes, again, if the Commission -- look, I acknowledge that the Commission has determined that rate stability charges may be warranted. They did so in the AEP-Ohio case.

Q. It's true, isn't it, that you don't sponsor any arithmetic calculations that you've used to arrive at this conclusion that the -- any rate

stability charge should be no greater than the current rate stabilization charge?
A. Can you please just qualify for me the first part of your question, Mr. Sharkey?
Q. Sure. I'll ask it differently.
I've looked at your charts that are attached to your testimony, and there's nothing there that I can look at to say: These are the numbers he's added up to determine the proposed amount of the rate stability charge; right?
A. Well, the proposed amount of the rate stability charge would be approximately $73 million per year at your current rates based on the billing determinants that the company has provided in this case.
Q. And it's true, isn't it, that I can't look at -- first of all, at any of the charts that are attached to your testimony and see any mathematical calculations that you've used to arrive at the $73 million?
A. I do refer to the $73 million in my testimony and I didn't attach an exhibit showing the calculation but --
Q. No --
A. Yes.

Q. I'm not talking about historic cost. I'm talking about a going-forward cost. I can't look at your charts and say: Here's how he has determined that for the years 2013 and the years 2014 based on these numbers, that $73 million is a reasonable number, can I?

A. When you say "reasonable number", are you asking whether $73 million is an accurate number?

Q. No. What I'm saying is I understand that $73 million is the historic number. So what I'm asking you is -- well, let's ask it differently.

That's a number that you have selected based on historic numbers, not a number that you've calculated by some arithmetic means to be appropriate into the rest of 2013 and into 2014; is that right?

A. Well, I do quibble a bit with your question but, hopefully, I can answer it.

My proposal that in balancing these factors that the charge be no greater than the current rate stabilization charge is a policy-based recommendation taking into account the fact that shopping customers who would have to pay this charge have not been shown to be causing anymore costs on the DP&L system than they are causing today.

So, in that sense, it is mathematical in that we recognize that there's a charge today to these customers. There's no evidence that these customers are causing any greater cost to be incurred.

So, given that piece of math, it does not seem reasonable to me for these charges to be increased beyond what they are today, after taking into account all of these factors.

Q. I don't think that's exactly what I've asked. What I've asked is -- well, let me ask it differently.

There's no calculation that you've done that shows DP&L's projected revenues, expenses and profitability in 2013 and 2014 that have led you to your proposed $73 million cap on the rate stability charge; correct?

A. That's not exactly correct, because I have tested the general results of that proposal against the exhibits that Mr. Chambers had developed.

So there's a discussion a little bit later in my testimony about that, specifically on page two.

Q. I'm familiar with that.

A. So if I can just finish, sir, so I would say that my proposal has a couple of prongs to it. On the one hand, I have made a recommendation that the going-forward charges be no greater than the current charges for the reasons I've given, and I have subjected that recommendation to a high level return on equity assessment based on the company's filed case, which provides some basic parameters in that regard.

So it does have a -- it is tied in or there is a reference to the projected returns on equity that Mr. Chambers makes.

Q. Well, let's see if that's what you are telling me. You are telling me that you determined the $73 million amount and then checked it for reasonableness against Mr. Chambers' chart; is that fair?

A. That's fair. I checked it for -- and I believe it's inherently reasonable -- but I subjected it to an additional check, if you will, against the return on equities proposed by Mr. Chambers. So I've provided additional information in that regard.

So you asked me whether I considered these other -- this other information. And I'm telling you that the recommendation for a charge that's no greater than the current charge does stand on its own, but was subjected to a check or a benchmarking against Mr. Chambers' calculations.

Q. Mr. Higgins, it's a simple question that I think I asked you a little bit ago, and I don't think I've gotten an answer. It's true, isn't it, that the $73 million figure is a figure that you selected based upon policy consideration, not based upon a mathematical calculation; right?

A. I will agree to that -- I will agree, yes, to that, subject to the qualification that, you know, part of the math in my recommendation is that I see no evidence of additional costs being incurred or caused by these customers.

So, you know, if you don't consider that to be math, then I would say I would agree, yes.

Q. Are you aware of any other customers who have caused those costs to be incurred?

A. SSO customers caused these costs to be incurred because they're purchasing from the company. So SSO customers are getting their generation service from the company and so, presumably, these are costs associated with the company's generation service.

Q. Which costs are you referring to?

A. I am referring to the costs of the company's generation service, which is what this SSR is. This SSR is a portion of the company's generation costs.

You asked me whether other customers are causing these costs to be incurred. And I'm saying yes, customers who take generation service from Dayton Power & Light are the customers who cause the generation costs to be incurred, unless it's imprudent, in which case they're not.

Q. Let me ask you about that. You understand that one of the reasons that the Dayton Power & Light Company is experiencing potential financial integrity issues is the declining wholesale price for generation; right?

A. I understand that is one of the reasons that's been provided, yes.

Q. Are you aware of anything that SSO customers have done to cause that?

A. No, they haven't caused that.

Q. You are aware another one of the reasons the Dayton Power & Light Company may be having financial integrity issues in the future is that existing customers have switched to competitive providers?

A. Yes.

Q. And existing SSO customers didn't do anything to cause that either, did they?

A. No, they didn't do anything to cause that, and I'm not fault finding them, by any means.

However, to the extent that your generation costs were prudently incurred, then if it's the company's intention to recover those costs, then it would seem to me that if there is a question as to whether or not you are entitled to full recovery on a per unit basis of those costs, it would appear to me that the customers who utilized that service are the ones who are causing it to be incurred, as a whole.

MR. SHARKEY: Let's go off the record.

(Brief recess.)

Q. (By Mr. Sharkey) Mr. Higgins, we've been discussing through the day some economic principles like supply and demand curves, the marginal cost and marginal revenue curves. My question to you then is: Can you cite to me any economic principle that you used to arrive at your recommendation that the amount of the rate stability charge be set at $73 million on a going-forward basis?

A. Well, it's what I would call an economic/regulatory principle, and that is that since I see no evidence that the shopping customers who see their costs increased as a result of the company's proposal are causing any additional costs, that as a matter of economic and regulatory principle, they shouldn't pay any higher charges.

So that's the fundamental principle that I'm relying upon.

Q. It's true, isn't it, that you don't sponsor any study that shows whether DP&L could provide stable service with a $73 million SSR?

A. A study that would demonstrate that DP&L could provide stable service?

Q. Correct.

A. No, I did not sponsor a study with respect to whether the company would or could provide stable service.

Q. I want to turn you then to pages 12 and 13 of your testimony.

A. Yes.

Q. You there refer to some analysis that we discussed earlier where you compared your $73 million proposal to Dr. Chambers' exhibits?

A. Yes.

Q. Right?

A. Yes.

Q. It looks to me like you have attempted to avoid having to deal with any confidentiality obligations under the Commission's rules by not citing specific numbers in Dr. Chambers' exhibits; is that right?

A. That's correct.

Q. Which is fine, by the way. I'm not being critical, I'm just inquiring. And I'm going to stick with the same convention and ask some questions without citations to the numbers and see if we can keep from having to deal with putting this deposition, in part, under seal.

A. Okay.

Q. Do you have Dr. Chambers' testimony available to you?

A. I do.

Q. If you would turn to WJC-1?

A. Yes.

Q. Do you see if Dr. Chambers has projected ROE figures in column L for the years 2013 through 2017?

A. Yes.

Q. As an initial matter, you don't sponsor any testimony that suggests that his calculation of those projected ROE numbers is unreasonable, do you?

A. Correct.

Q. And then you compare in your testimony the ROE numbers from WJC-1 to WJC-3; correct?

A. No. I believe I compare the numbers from WJC-2 to WJC-4.

Q. I apologize. WJC-2 and WJC-4. You in particular -- well, let me step back.
It's true, isn't it, that at no point in your testimony do you suggest that any of Dr. Chambers' calculations or projections or numbers were unreasonable or seemed incorrect?
A. That is true.
Q. You compare on line WJC-2 the ROEs that are shown in column K, lines two and three --
A. Yes.
Q. -- to WJC-4, the ROEs in column K in lines two and three; right?
A. Yes.
Q. And you conclude that your projected -- that under your recommendation that the SSR be set at $73 million, DP&L would earn an ROE somewhere between those two figures; right?
A. Yes, based on the assumptions used in Dr. Chambers' exhibits.
Q. Okay. As an initial matter, you haven't identified where between those figures the ROE would fall, do you?
A. Well, I didn't, because I wanted to not refer to confidential information. So for my own purposes, I did calculate where they would fall, and I

did point out in my testimony that the revenues that would be produced under my proposal would be somewhere in the range of 47 to 52 percent of the company's proposed SSR in those two years, which is approximately midway. It's not exactly midway. And that would allow the reader who has access to Dr. Chambers's confidential exhibits to see for themselves what is about midway.

But, I mean, I did calculate it for my own benefit.

Q. Well, I understand that your proposed SSR is, ballpark, half of DP&L's proposed SSR; right?

A. Correct.

Q. And that means that the resulting ROE would be ballparked in the middle of the two ROEs on WJC-2 and WJC-4 that we were comparing?

A. I think at a high level, yes, because of the following reason. I mean, Dr. Chambers's calculations showed what the return in equity would be under the company's proposal, that was in Exhibit 2, and in Exhibit 4 showed what it would be if there were no recovery. So we have a couple of end points available to us from Dr. Chambers's calculations.

So with my proposal being about midway between those, I think it's reasonable to infer that the ROE would be about midway between them, at a high level.

Q. Are you familiar with processes commonly used in utility rate making cases to derive a return on equity?

A. Yes.

Q. The common methodologies would be using a discounted cash flow methodology and a comparables methodology?

A. Well, you are talking now about trying to set a return equity in a rate case?

Q. Yes. My question to you is: When utility commissions attempt to -- utility commissions do set a return on equity, is it common that they would consider both a discounted cash flow and a comparables methodology?

A. Yes.

Q. And you are aware that Dr. Chambers has at least done a comparables methodology?

A. Well, my understanding is that Dr. Chambers has made a projection of what the return in equity would be.

But, you know, in other words, one can use these methodologies you refer to for purposes of recommending a return in equity, and then one can also attempt to project an actual return on equity based on the projected cash flow of the firm.

Q. Let me ask you this -- I mean, if you would turn within his testimony to page 58.

A. Okay. I don't have his entire testimony in front of me, Mr. Sharkey.

Q. I don't know that you'll need to look at it. I'll read you a piece of it. He said, starting on line three to line four, that a range for ROE of 7.7 percent and 10.4 percent reflects a rate of return that investors could reasonably expect to receive from similarly situated utility companies.

A. Okay.

Q. My question to you is simply this: There's nothing in your testimony that criticizes or disagrees with Dr. Chambers's conclusions I just read to you; correct?

A. I don't address his conclusion in that regard.

Q. Okay. That's all I wanted on that subject.

Turning back then still in Dr. Chambers' exhibit --

MR. YURICK: Jeff, this is Mark. Can I have like five minutes?

MR. SHARKEY: Do you need a break, you're saying?

MR. YURICK: I need a five-minute break here real quick.

MR. SHARKEY: Sure. Let's go off the record.

(Brief recess.)

Q. (By Mr. Sharkey) Mr. Higgins, is it your proposal that the $73 million charge last for the full five years that DP&L proposes for its ESP?

A. That would be up to the Commission. I really don't have a specific period of time for which I propose it as a alternative to what the company has recommended.

And, as I'm sure you are aware, I recommend a specific sunset provision for shopping customers that would be five years from the date that they started shopping.

So I don't have a specific time horizon at which I recommend the charge continue.

Q. Okay. Do you see that the projected ROEs that Dr. Chambers proposes in 2015, 2016 and 2017 decline over time?

A. Yes.

Q. And you don't have any reason to disagree with the reasonableness of those projections?

A. I don't have reason to disagree with the reasonableness of the projections, but they are projections. And I do comment that the further you go into the future, attempting to project returns on equity, the less reliable they become.

But, you know, given that that's the exercise that Dr. Chambers was engaged in, I don't have a criticism per se of how he did it.

Q. Let me ask you some questions about the sunset date that you just mentioned. Can you describe your sunset proposal to me, how that would work? Because I'm not sure I understand it because I haven't reviewed your testimony.

A. Certainly. The intent of the proposal would be that for a customer -- or that a customer who has been continuously shopping, the SSR charge would cease after five years, so that it would be applied at the individual shopping customer level, that one would identify the initiation of the shopping date, confirm that the customer has been continuously shopping since that date, and then once five years has been reached, the customer would no longer be subject to the charge.

Q. Okay. Now, you have told me just a moment ago that we don't know what the future will hold in terms of market prices for generation; right?

A. Correct.

Q. You don't know if five years from now that Dayton Power & Light Company will have ongoing needs for a stability charge of some sort?

A. Correct; we don't know what those requirements or interests or desires will be.

Q. If in five years DP&L can satisfy the same statutory elements that we discussed earlier in 4928.143(B)(2)(d), are you aware of any reason that the Commission should deny DP&L ongoing recovery of charges that would be permissible under that statute?

A. Yes.

Q. What would those be?

A. Well, if I understand the company's intentions correctly, the company intends to file a plan to divest its generation. And if I understand correctly that according to that plan, the company would be fully divested within the next five years.

So I would not understand what the basis would be for a utility which no longer owned generation to continue to receive generation subsidies from shopping customers.

So as a threshold matter, I guess I don't understand what the basis would be for a charge after that time.

Q. Well, I'm just asking you to assume that Dayton Power & Light Company, for whatever reason, is able to satisfy the statutory elements that we looked at earlier. With that assumption in mind, are you aware of any reason that it should not be entitled to have ongoing benefits of the provisions of the statute?

A. Not to be argumentative, Mr. Sharkey, but I think I answered the question. The predicate of the question is that you are saying assume they continue to satisfy the requirements of the section.

And I'm saying, well, as I understand your filing, you are not even going to own generation. So I don't understand the premise under which a charge would continue to apply.

So, I mean, if we want to reduce it to tautologically and say, well, if tautologically somehow Dayton Power & Light is in a similar set of circumstances five years from now, to the extent that this section applies today, will it apply five years from now? I guess I would say tautologically perhaps it would. But I would also qualify that by saying I don't understand why it would.

Q. Let me ask you about your recommendation

relating go to the Switching Tracker?
A. Sure.
Q. Do you reject -- you recommend that the Commission reject DP&L's request for that Switching Tracker?
A. Yes.
Q. Okay. Do you understand that rejection of that Switching Tracker would result in further reductions to the projected ROEs from Dr. Chambers that we looked at earlier; right?
A. Correct, assuming increased switching which, I think, you know, would be a matter of some speculation, because with the SSO rate expected to come down, one would think that that would put a dampener on the amount of switching that it does in the future.
Q. Regardless, you haven't performed any analysis to determine what effect the Commission's accepting of your recommendation would have on DP&L's financial integrity, have you?
A. With respect to the Switching Tracker? Is that what you are asking, sir?
Q. Correct.
A. With respect to the Switching Tracker, that is correct.

Q. Turn, if you would, to page ten of your testimony.
A. Sure.
Q. Starting on line eight there's a clause that says: "The majority of the shopping load assigned to an affiliate, DP&L Energy Resources, and thus has remained within DP&L's corporate family."
Why did you put that clause in your testimony?
A. Because I think that in the balancing factors, it's probably useful for the Commission to take into consideration that the loss of load to shopping that the company has experienced has gone to an affiliate rather than to a completely separate third party because, to a certain extent, that affiliate is able to continue to earn margins from sales that that would actually supplement the company's overall financial stability more than had those sales gone to a third party.
Q. Are you familiar with the corporate separation rules that are in force in Ohio?
A. Generally, yes.
Q. Are you aware of any ability of the Dayton Power & Light Company to subsidize its DPLER?
A. I'm not aware of anything subsidizing for

it. My intent here is not based on subsidization -- or referenced to subsidization.

Q. I understand, so let's move on.

Are you aware of any ability of DPLER to subsidize the Dayton Power & Light Company?

A. No.

Q. Let me ask you about the reconciliation rider that Dayton Power & Light Company proposes.

A. Yes.

Q. You recommend that the Commission reject that proposal, don't you?

A. I recommend that the Commission rejects the part of the proposal that suggests that this be a non-bypassable charge.

Q. It's true, isn't it, that you don't sponsor any analysis of what effects rejecting the bypassable nature of the charge would have upon DP&L's financial integrity?

A. Correct, because I think it should be rejected as a matter of principle.

Q. But you don't know what effect that will have on DP&L financially; right?

A. Correct.

Q. Would you support increasing the SSR to account for any money that might be lost if your proposal regarding the reconciliation rider was adopted?

A. Not for shopping customers, no.

Q. Do you have an understanding of why DP&L has proposed that amounts in the fuel rider, RPM rider, PCRB and VAR and proposed CBP should be shifted from those riders into the reconciliation rider?

A. Yes, I've read Emily Robb's testimony on the subject.

Q. Okay. So you have an understanding that the concept is that there's deferrals in those existing bypassable riders; right?

A. Yes.

Q. And DP&L sets its rates at the beginning of a period to collect the amounts of the deferrals over the existing group of customers; right?

A. Yes.

Q. And the fact is if they're switching, DP&L won't recover all the entire amount of the deferrals; right?

A. Correct.

Q. So that then it will have still more deferrals to recover over a smaller group of customers?

A. Correct. But I will point out, Mr.

Sharkey, that the company's proposal fails to take into account the treatment of customers who were shopping prior to these deferrals.

And, you know, I believe it's the company's burden to put together a coherent proposal that treats the various sectors of customers fairly.

So I think had the company proposed something that was more tailored to assign costs directly to the customers for whom these costs were incurred, then that might have, you know, caused me to have a different assessment of it. But the company made no such attempt and, in fact, simply wishes or proposes to charge customers who have been shopping since 2009 for these deferral costs, which they have absolutely no role in causing to be incurred.

I think the company has gotten an affirmative burden to put something forward that is essentially fair.

Barring that, I think the Commission should reject it, the non-bypassable component of this.

Q. My question had nothing to do with your answer. The question was: Do you understand that those events are, in fact, occurring?

MR. SHARKEY: And can I have my question

reread, please, and then have you respond.

(Previous question so read by the Reporter.)

A. Yes.

Q. Do you understand that as the amount of deferrals continues to grow, that will continue to increase the size of the bypassable charge?

A. Yes.

Q. And it's true that the end result of maintaining the existing process in place could result in a very large deferral balance being collected from a very small group of customers?

A. Given the options that the company has put out there to address this issue, yes.

Q. And you understand that the reason the company has proposed its proposal to put a certain portion of the deferral balances into the reconciliation rider was to avoid the problems that I've just discussed?

A. I think the company did not take the analysis far enough and made no attempt to assign the costs to the customers who may have incurred them; that is, made no attempt to perhaps roll them off to the cohorts of customers as they may have left and shopped.

I think the company took a simple -- took an approach that did not take into consideration the consequences for customers who did not cause these costs to be incurred.

So I think given the choice that the company has provided, which are either, A, to do it the way the company proposes which is a non-bypassable rider that everyone has to pay, irrespective of whether they caused these costs; or, B, reject it, which is what I am recommending with respect to the bypassability -- with respect to the non-bypassability, I agree with you. And I think where we'd wind up.

But I think the company could also have proposed something that made a greater effort to reasonably align the charges with those customers who caused them. The company chose not to do that.

MR. SHARKEY: Let's go off the record.

(Discussion off the record.)

MR. SHARKEY: I'm done.

(Proceedings concluded at 1:44 p.m.)

-oOo-

Deponent's Certificate.

I, KEVIN HIGGINS, deponent herein, do hereby certify and declare the within and foregoing transcription to be my deposition in said action taken on March 8, 2013; that I have read, corrected, and do hereby affix my signature to said deposition.

DATED this _____ day of _______________, 2013.

____
Deponent

STATE OF UTAH) ss.

SUBSCRIBED AND SWORN to before me this _____ day of ____________________, 2013.

____
Notary Public residing in
____

My Commission Expires:
____

Reporter's Certificate

State of Utah)
County of Salt Lake)

I, Denise Kirk, Certified Shorthand Reporter and Registered Professional Reporter 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 this 13th day of March, 2013.

Denise Kirk

Denise Kirk, CSR/RPR

Reporter's Certificate

State of Utah)
County of Salt Lake)

I, Denise Kirk, Certified Shorthand Reporter and Registered Professional Reporter 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 this 13th day of March, 2013.

Denise Kirk, CSR/RPR