

BEFORE THE
PUBLIC UTILITIES COMMISSION OF OHIO

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

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Deposition of SHARON L. NOEWER, taken as if
upon cross-examination before Holly C. Calcei, a
Registered Merit Reporter, Certified Realtime
Reporter and Notary Public within and for the
State of Ohio, at the offices of FirstEnergy, 76
South Main Street, 15th Floor, Akron, Ohio, at
9:06 a.m. on Tuesday, March 12, 2013, pursuant to
notice and/or stipulations of counsel, on behalf
of the Applicant, Dayton Power and Light Company,
in this cause.

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On behalf of the Intervenor,
Duke Energy etail Sales and
Duke Energy sset Management.

ALSO PRESENT:

Scott J. Casto, Esq.
FirstEnergy Corp

1 SHARON L. NOEWER, of lawful age, called by
2 the Applicant, Dayton Power and Light Company,
3 for the purpose of cross-examination, as provided
4 by the Rules of Civil Procedure, being by me
5 first duly sworn, as hereinafter certified,
6 deposed and said as follows:

7 CROSS-EXAMINATION OF SHARON L. NOEWER

8 BY MR. SHARKEY:

9 Q. Good morning, Miss Noewer. As you know, my name
10 is Jeff Sharkey and I represent the Dayton Power
11 and Light Company in this matter.

12 Can we start by having you state your name
13 for the record?

14 A. My name is Sharon Noewer.

15 Q. Okay. And you're employed by FES?

16 A. By FirstEnergy Solutions, yes.

17 Q. And what is your position?

18 A. My position is director of competitive market
19 policies.

20 Q. Okay. Can you tell me what that means?

21 A. Yes. As I state on my testimony on Page 1, I'm
22 responsible for overseeing and coordinating
23 initiatives involving state Public Utility
24 Commissions, including the PUCO, the FERC and the
25 regional transmission organizations.

1 Q. Have you ever filed testimony previously in any
2 proceedings?

3 A. Yes.

4 Q. Which ones?

5 A. In Pennsylvania in the DP&L default service case.
6 And also in Pennsylvania, in the Duquesne default
7 service case.

8 Q. Okay. Have you ever been deposed before?

9 A. Yes.

10 Q. Okay. And how many times?

11 A. Twice.

12 Q. And then did you ever testify live at any of
13 those hearings that you've submitted testimony
14 in?

15 A. I've testified live once, but not in either of
16 those PA commission hearings that I mentioned.

17 Q. What matter did you testify live in?

18 A. It was a personal injury case.

19 Q. Okay. FirstEnergy Solutions, if I call them FES,
20 that's kind of commonly referred to, isn't it?

21 A. Yes.

22 Q. They are a CRES provider in the State of Ohio,
23 correct?

24 A. Yes.

25 Q. Registered to do business in DP&L service

1 territory?

2 A. Yes.

3 Q. And FES frequently bids in competitive auctions
4 in the State of Ohio?

5 A. Can you clarify what you mean by competitive
6 bids?

7 Q. Well, you're familiar with the fact that a number
8 of utilities within the State of Ohio have had
9 auctions to set generation prices and to supply
10 power?

11 A. Yes, I'm familiar.

12 Q. Okay. And FES has bid in at least a number of
13 those auctions, hasn't it?

14 A. Yes, it has.

15 Q. And it's submitted winning bids at a number of
16 auctions?

17 A. Yes.

18 Q. If you would turn -- let me step back.

19 FES is not a customer of the Dayton Power and
20 Light Company?

21 A. That's correct.

22 Q. Okay. If you'd turn to Page 6 of your pre-filed
23 testimony.

24 Is it fair to say generally that Roman
25 Numeral III of your testimony addresses whether

1 DP&L's ESP provides non-quantifiable benefits?

2 A. I think generally that's correct, yes.

3 Q. Okay. And the purpose of this section is to
4 support the argument that DP&L's ESP does not
5 pass the ESP versus MRO test?

6 A. The purpose of Section III is to indicate, as
7 stated there in my testimony, that none of the
8 terms and conditions identified by DP&L as
9 non-quantifiable benefits reflect benefits of the
10 proposed ESP, and even if they were benefits,
11 they were not in any event overcome by the ESP's
12 cost as calculated by FES Witness Ruch.

13 In addition to that, you asked me about the
14 ESP versus MRO test and I do address that here,
15 but it's also addressed in more detail in Witness
16 Ruch's testimony.

17 Q. Yes, I'm familiar with Mr. Ruch's testimony and
18 I'll ask him about that later.

19 Let's start -- let me ask you, starting on
20 Page 6, Line 22, you testify regarding whether
21 DP&L's ESP reflects a faster transition to market
22 rates and offer an opinion that DP&L's ESP
23 doesn't provide benefits because it does not go
24 to a hundred percent competitive bidding in year
25 one.

1 Is that a fair characterization of your
2 testimony?

3 A. No. If you look at Page 7, what I'm saying there
4 is that -- at the bottom of Page 6, excuse me --
5 is that DP&L's customers should have access to
6 full market rates before June of '16, so that the
7 transition to rates should be quicker than what
8 DP&L is suggesting.

9 Q. How quick should it happen?

10 A. It should happen a hundred percent immediately.

11 Q. Okay. And you view the fact that it doesn't have
12 an immediate hundred percent competitive bidding
13 to show that it does not, it's not a
14 non-quantifiable benefit?

15 A. My view is that DP&L can't count it as a
16 non-quantifiable benefit because it already filed
17 a market rate offer. And if you're looking at
18 what it's filing now in terms of an ESP, that
19 it's not quick enough and the next time that it
20 would need to file something, say an MRO, it
21 would be a hundred percent to market immediately.

22 Q. Let's talk about that.

23 It's your view that because DP&L's already
24 filed one MRO, that that was its first filed MRO
25 and the statutory percentages are no longer

1 applicable to an MRO that DP&L would subsequently
2 file?

3 A. I think the statute is always applicable, but,
4 yes, I think that those specific percentages that
5 are listed in the statute refer to the first time
6 that DP&L filed its MRO.

7 Q. Do you think that the statutory percentages that
8 are in the MRO statute serve any purpose?

9 A. I'm not a lawyer, so in my view the purpose is
10 whatever the plain face of the statute says. And
11 I've already described what I thought my
12 interpretation of that was.

13 Q. Let me ask it differently then.

14 Do you believe they have any benefits?

15 MR. LANG: Do you mean the
16 blending has benefits?

17 MR. SHARKEY: The blending
18 percentages in the MRO statute.

19 A. Again, I think I've answered that the best I can.
20 I believe that there are in the statute in both
21 the ESP and the MRO different blending plans that
22 can be approved, but in this case I believe that
23 DP&L's ought to be a hundred percent now.

24 Q. That's not my question.

25 My question is, do the blending percentages

1 in the MRO statute provide any benefits which you
2 are aware?

3 A. No, not in this case.

4 Q. In any case?

5 A. I think in some case there could be, sure.

6 Q. What benefits could be presented in other cases?

7 A. I don't know.

8 Q. You would agree that if you compare the blending
9 percentages in DP&L's ESP plan to the blending
10 percentages under the MRO statute, that DP&L
11 moves to a hundred percent competitive bidding
12 more rapidly?

13 A. No, I don't agree with that.

14 Q. Why not?

15 A. As I just testified, I believe that the MRO
16 requires that after you file your first one, that
17 you go to a hundred percent competitive bid.

18 Q. Well --

19 A. So I don't think that it's faster.

20 Q. I'm going to ask you to compare the numbers
21 instead of the legal argument.

22 The numbers in DP&L's ESP provide for a more
23 rapid transition to a hundred percent competitive
24 bidding than the numbers in the ESP in the MRO
25 statute, don't they?

1 A. I don't think you can distinguish it like that,
2 take one part but not the other. I think it's
3 all part of the same discussion. So, no, I don't
4 agree with you.

5 Q. So you're not capable of comparing the numbers in
6 DP&L's ESP plan to the numbers in the ESP
7 statute?

8 A. I can compare a number, certainly.

9 Q. That's what I've asked you to do.

10 A. But I don't think it's -- you know, I think that
11 it's separating it inappropriately.

12 Q. That's not my question.

13 My question is, can you compare the numbers
14 for me? Can you?

15 A. Yes, I can compare the numbers and I don't think
16 it's appropriate, though, to do that.

17 Q. It's not your role to determine whether my
18 questions are appropriate or what's appropriate.
19 It's your job to answer my questions.

20 My question is, if you compare the numbers,
21 it's true, isn't it, that DP&L's ESP transitioned
22 to a hundred percent competitive bidding more
23 rapidly than an MRO?

24 MR. LANG: Object to the
25 characterization.

1 To the extent that he, the
2 question that he asked you after his
3 improper instruction, if you can answer the
4 question, please do so.

5 A. I think if you look solely at a number, a
6 percentage, even though I think it's
7 inappropriate to do so, it's on a different pace
8 than what's in the MRO blending percentages.

9 Q. A more rapid pace, isn't it?

10 A. Again, I don't agree with the summarization that
11 it's an appropriate comparison, but it is more
12 rapid.

13 Q. On Page 7 you discuss competitive retail
14 enhancements that are included in DP&L's ESP,
15 don't you?

16 A. Yes.

17 Q. And you sponsored the opinion starting on Line 6
18 that DP&L is seeking to charge customers for
19 these enhancements and so they cannot be deemed a
20 benefit of the ESP, right?

21 A. That's what my testimony says.

22 Q. You then go on to say that DP&L should have
23 implemented those enhancements years ago, right?

24 A. My testimony says, "should have instituted most
25 of those enhancements years ago," yes.

1 Q. Are you aware of any PUCO rule that DP&L is in
2 violation of by not having implemented those
3 enhancements earlier?

4 A. Not a specific rule, but I believe that it's the
5 commission's mission to promote competitive
6 electric service and those are the standards that
7 we have in Ohio and other utilities have
8 implemented those same enhancements.

9 Q. But you're not aware of any rule, specific rule
10 that DP&L's in violation of?

11 A. There's no specific rule, but again, my
12 commentary stands in what I said.

13 Q. Are you aware of any specific order that DP&L is
14 in violation of by not having implemented those
15 enhancements earlier?

16 A. No, it doesn't change my opinion, though, that
17 they shouldn't implement those enhancements.

18 Q. Do you agree with me that DP&L is not currently
19 providing those enhancements that it has
20 proposed?

21 A. We're just talking about the six specific
22 enhancements in Dona Seger-Lawson's testimony
23 still?

24 Q. Yes.

25 A. The enhancements that you refer to, some of them

1 I see more as an improvement in service or easy
2 to do business with type of enhancement or
3 something that the customer, would improve the
4 customer's satisfaction with actually shopping.
5 So to me, not providing it now makes it sound as
6 though it's a service that is something that they
7 haven't done yet, and whereas some of them I
8 believe are more removing a barrier that exists.

9 Q. Let me ask the question differently.

10 DP&L, do you agree that DP&L should implement
11 the six items contained in Miss Seger-Lawson's
12 testimony?

13 A. Yes.

14 Q. And that that would make business easier for FES
15 in DP&L service territory?

16 A. As I said, I think that some of them are
17 supplier, easier for suppliers to do business
18 with DP&L. But I think there are others that
19 were listed that just make the satisfaction of a
20 customer who's already chosen to shop easier for
21 them.

22 Q. You also understand that DP&L's Witness Malinak
23 has sponsored an opinion that a non-quantifiable
24 benefit of DP&L's ESP is that it provides
25 regulatory flexibility?

1 A. Yes.

2 Q. Okay. And did you understand him to be referring
3 to the fact that the MRO statute says that once
4 an MRO has been approved, a utility can no longer
5 have ESP?

6 A. Could you say that again, please.

7 Q. Sure.

8 Did you understand him to be referring to his
9 understanding of the ESP and MRO statutes and
10 that if an ESP -- if a utility has an approved
11 MRO, it could no longer have an approved ESP?

12 A. So just to clarify, are you saying that once you
13 have an MRO, you can't go back and have an ESP?
14 Is that what you're suggesting that I agree to?

15 Q. I'm not suggesting whether you agree to it or
16 not. I'm asking whether you understand that's
17 what Mr. Malinak had put in his testimony.

18 A. Oh, I understand that's what he put in his
19 testimony. And from my view, these competitive
20 retail improvements, if you will, that are being
21 offered can be done and should be done regardless
22 of whether it's an ESP or an MRO.

23 Q. I was going to ask you about that because
24 Mr. Ruch says that's in your testimony, but I
25 didn't see that in your testimony.

1 Is that in your testimony somewhere?

2 MR. LANG: What, what in
3 particular?

4 MR. SHARKEY: That competitive
5 improvements should be offered under either
6 an ESP or an MRO.

7 A. I don't know that there is a specific reference,
8 but that's my belief.

9 Q. Back to Page 7 of your testimony, you have the
10 sentence starting on Line 11, "I do not
11 understand how DP&L could claim that the terms of
12 a statute are a significant benefit of the
13 proposed ESP."

14 Are you referring there to Mr. Malinak's
15 testimony regarding regulatory flexibility that
16 we were discussing a moment ago?

17 A. Yes.

18 Q. And you don't understand that position taken by
19 Mr. Malinak?

20 A. I don't and I describe why I don't in the parts
21 of my testimony in the lines that follow that.
22 Again, it relates to the fact that once DP&L has
23 filed its first MRO, any subsequent MRO would not
24 be subject to the same restrictions from a
25 regulatory perspective.

1 Q. Let me ask how that would work, the first filed
2 MRO question would work.

3 So the utility at 10:00 a.m. files an MRO
4 application and then two hours later withdraws
5 that MRO application and files a second one. Are
6 you saying that the utility's second filed MRO
7 application, as you understand it, would be free
8 from the statutory requirements regarding
9 percentages as to competitive bidding?

10 A. Yes.

11 Q. Okay. So as a practical matter, if a utility
12 wished to be free of those statutory percentages,
13 in your view it would be a pretty simple
14 procedure for the utility to avoid them, right?

15 A. That's a very tough hypothetical because in my
16 view, the situation that you've described to me
17 when I said yes, I don't know what the details of
18 what are included in each of those filings, so,
19 and there needs to be some review and I'm certain
20 the commission would take that review and look at
21 the MRO and make sure that it wasn't just simply
22 a, you know, trying to circumvent the system.

23 But in this case, DP&L had an MRO that it
24 filed and this would be a second subsequent
25 proceeding related to a second MRO.

1 Q. Can you point me -- strike that.

2 Are you aware of any language in the statute
3 that would require the commission to do some type
4 of test to determine that the first filed MRO was
5 sufficiently real or, I forget which terms you
6 used, but sufficiently substantial so that it
7 would count?

8 MR. LANG: Objection to the extent
9 you're asking her for a legal opinion.

10 But to the extent that you can
11 provide your, what you know as a layperson
12 of the statute, you can go ahead and try to
13 answer it.

14 A. I don't think there's anything that would be
15 verbatim in the statute that says that. However,
16 we are very aware that it's the commission's job
17 to, and mission to implement the statute to the
18 best of its ability. So in my view, that's what
19 it would be doing in this case and in every case.

20 Q. Turn to the testimony that goes from Pages 7 to 9
21 of your testimony.

22 Is it fair from a 50,000 foot view to say
23 that you are on those pages discussing Ohio's
24 policy in favor of competition?

25 A. No, I don't think that's fair at the 30,000 foot

1 level. I don't think that that properly
2 characterizes the detail that's in these pages.

3 Q. I use that phrase because on Page 3, Line 6, you
4 say that section discusses Ohio State policy
5 regarding competition and how competition
6 benefits customers.

7 Is that phrase a fair characterization of
8 what's in Section IV?

9 A. Yes, I think it is, but it doesn't take in part
10 over all of the detail that's there.

11 Q. I understand that.

12 What distinction were you drawing between the
13 phrase you used on Page 3, Lines 6 and 7 and the
14 phrase that I used to describe what was in
15 Section IV?

16 A. Well, I don't recall the exact words now, but I
17 think it was the 30,000 foot level.

18 Q. In any event, other than policies regarding
19 favoring competition, does Section IV identify or
20 discuss any other Ohio policies as you understand
21 them?

22 A. I don't think I understand the question.

23 Q. Well, have you read Ohio Revised Code 4928.02?

24 A. Yes.

25 Q. You're aware that that section contains a list of

1 the policies of the State of Ohio?

2 A. Yes.

3 Q. Okay. And have you read Phil Harrington's
4 testimony in this case?

5 A. Yes.

6 Q. You're aware that his testimony offers the
7 opinions that DP&L's ESP furthers a number of the
8 policies of the State of Ohio, right?

9 A. Yes.

10 Q. It's true, isn't it, that you don't sponsor any
11 testimony in this pre-filed testimony that
12 contradicts Mr. Harrington's opinions that those
13 various policies, other than the policy for
14 competition, are satisfied by DP&L's ESP?

15 A. I still don't think I understand that question
16 because to me, if you look at Witness
17 Harrington's testimony, he refers to that
18 discussion on policies in a very broad sense, as
19 well as introducing at a policy level DP&L's
20 entire application. And I certainly do, as well
21 as Witness Lesser and Witness Ruch, have issues
22 with what's in the filings, so, no, I can't agree
23 to what you're saying.

24 Q. Is there any point in your testimony other than
25 in this subsection where you're specifically

1 addressing the policies of the State of Ohio?

2 A. I think all of it's addressing the policies of
3 the State of Ohio, because the policy of the
4 State of Ohio refer to competition.

5 Q. Other than the policy for the State of Ohio for
6 competition, are you aware of any other policies
7 contained in 4928.02?

8 A. 4928, the title of that is Competitive Retail
9 Electric Service, so, again, yes, I think that
10 all of the testimony by FES by all of the
11 witnesses addresses the policies of 4928.02 and
12 4928.

13 Q. I understand your assertions that the testimony
14 addresses the policy favoring competition. Set
15 that policy aside, I'm asking you about other
16 policies.

17 You understand that that section contains
18 other policies as well, correct?

19 A. I understand it contains other policies, but it's
20 embodied within 4928, which is about competition.

21 Q. And you understand that Mr. Harrington's
22 testimony addresses not only the policy in favor
23 of competition but other policies as well?

24 A. Within that same statute, I understand that, yes.

25 Q. Okay. And my question to you is: Other than

1 Ohio's policy in favor of competition, does your
2 testimony specifically address any other policies
3 as you understand them from 4928.02?

4 A. I've answered that the best I can. I think this
5 is embodied in the entire statute, it addresses
6 the policies within that statute.

7 Q. Okay. Can you describe for me, can you identify
8 for me any policies, other than a policy in favor
9 of competition, that are contained in 4928.02
10 that your testimony furthers?

11 A. I can't sit here without it in front of me and
12 make that comparison, no.

13 Q. The only specific reference to policy in the
14 State of -- strike that.

15 The only specific reference in your testimony
16 to State of Ohio policies is to the policy in
17 favor of competition, right?

18 A. No. Again, my testimony goes back to the entire
19 4928.

20 Q. Okay. Without regard to whether the policy's in
21 4928.02 or not, can you identify any policy other
22 than favoring competition that your testimony
23 addresses?

24 MR. LANG: Just objection. Asked
25 and answered.

1 But try and answer it again.

2 MR. SHARKEY: Just so we're clear,
3 my prior answers were -- my prior questions
4 were intended to be limited to what was
5 listed in 4928.02. I intend this to be a
6 broader question to be any policy.

7 MR. LANG: In 4928?

8 MR. SHARKEY: No, any policy at
9 all. So if she's aware of policies that,
10 other than competition that your testimony
11 addresses, that's what I want to know.

12 A. I think my testimony addresses what's in 4928 and
13 as I sit here today, I can't list any other
14 specific ones.

15 Q. Any specific policies other than favoring
16 competition?

17 A. Other than what's in 4928 and all that it
18 embodies.

19 Q. Well, let's be specific because I don't think
20 that responded to my question.

21 Is it true that you can't identify any
22 specific policies that your testimony addresses
23 other than favoring competition?

24 A. I said no. I said that I think that my testimony
25 addresses what's in 4928.

1 Q. Well, then what specifically in addition to
2 favoring competition, specific policies does your
3 testimony address besides competition?

4 MR. LANG: Objection again. Asked
5 and answered.

6 A. I don't know how to answer it any differently.
7 My testimony addresses what's in 4928, the entire
8 statute, it's entitled Competitive Retail
9 Electric Service. Within that statute, there are
10 a number of policies listed there. I believe
11 that my testimony addresses those.

12 Q. You understand that the 4928.02 has, for example,
13 policies relating to environmental compliance
14 issues, right?

15 A. Yes.

16 Q. It also has specific policies regarding providing
17 benefits to low income persons?

18 A. I don't know.

19 Q. Okay. Those are some examples of policies,
20 whether you know that they're in the statute or
21 not.

22 So when I ask you, does it promote any other
23 policies, I am asking you for things along those
24 lines or anything else besides competition, and I
25 just want a clean answer to my question, that you

1 can't identify any other policies other than
2 promoting competition that your testimony
3 addresses?

4 MR. LANG: Objection to the form.

5 But you can answer.

6 A. I think there are a number of things addressed in
7 4928 related to competitive retail electric
8 service, including competition and a balance of
9 other things, and I believe that my testimony
10 addresses the entire statute.

11 Q. What other things?

12 MR. LANG: Read through your
13 testimony.

14 Q. And the question is not what does your testimony
15 address, but what policies from the State of Ohio
16 do you believe that your testimony addresses.

17 A. My testimony addresses the Ohio State policy
18 regarding competition, it addresses corporate
19 separation, it addresses the transition for
20 utilities from standard service offered to full
21 market prices, it addresses the competitive bid
22 plan, it addresses generation related riders and
23 issues related to customer metering, billing,
24 enrollment, switching fees, eligibility files
25 which are all barriers to competition.

1 It refers to Witness Ruch and to Dr. Lesser's
2 testimony, as well as the anti-competitive nature
3 of some of the things that are in DP&L's
4 testimony.

5 So in answer to your question, one of the
6 policies that I would see that my testimony, in
7 addition to just competition, it also relates to
8 benefits for competition for customers.

9 Q. So policies would be competition, competition for
10 customers? Are there other policies besides
11 those two?

12 MR. LANG: Are you asking her to
13 repeat what she just said?

14 MR. SHARKEY: Strike the question.

15 Q. You listed a number of things that your testimony
16 addresses.

17 It's true, isn't it, that all of those are
18 related to the policy for competition?

19 A. I think that all of them relate to, again, 4928.
20 I think that just to strictly define it in a
21 small box that says it's just competition, I
22 think it's for the entire benefit of the state.

23 Q. My question was, do they all relate to
24 competition?

25 A. Yes, because the statute's 4928, which is

1 competitive retail electric service.

2 Q. Does your testimony address any points that are
3 not related to the Ohio policy favoring
4 competition? Any policies?

5 A. Yes, there are other policies that are in the
6 statute that I believe my testimony addresses as
7 well.

8 Q. What policies?

9 A. The policies that include the commission's
10 mission to, you know, to promote competition in
11 the state and provide for benefits for customers.

12 Q. That's all?

13 A. Well, there are other things listed in the
14 statute. Again, I mentioned I don't have it in
15 front of me.

16 Q. I'm not asking -- all I'm asking for you is what
17 your testimony sponsors and -- strike that.

18 If you would turn -- do you agree that in
19 evaluating DP&L's ESP plan, that the commission
20 should consider the interest of the utility
21 customers and third parties?

22 A. Who are the third parties?

23 Q. Include entities like FirstEnergy Solutions,
24 perhaps others.

25 A. So the question is again? Could you repeat the

1 question now with that clarification?

2 Q. Sure.

3 Do you agree that the commission should
4 consider the interests of the utility, customers
5 and third parties in evaluating DP&L's ESP?

6 A. Do I think the commission should consider the
7 utility, the utility's customers and third
8 parties, like intervening parties in this case?

9 Q. Intervening parties and other third parties who
10 might be affected.

11 A. Yes. And I think that they do.

12 Q. You agree with me that the commission should
13 consider all of those interests?

14 A. Yes.

15 Q. On Page 9, Line 1, you state that DP&L's ESP
16 would hinder competition.

17 Do you see that?

18 A. Yes.

19 Q. You understand that DP&L currently doesn't have
20 competitive bidding, right?

21 A. If you're referring to a wholesale competitive
22 procurement for its SSO load, yes. I do believe
23 that DP&L does participate in other competitive
24 procurements.

25 Q. On Page 9 Section V starts. And the topic of

1 Section V is Corporate Separation, right?

2 A. Yes.

3 Q. On Line 15 [sic] you state, "Almost fourteen
4 years has passed since S.B. 3 was enacted and
5 EDUs were put on notice of the requirement for
6 corporate separation."

7 Do you see that?

8 A. Yes, I see it.

9 Q. Actually, let me strike that and we'll come back
10 to that topic.

11 On Line 15 you say that FES has no comments
12 on the proposed third amended corporate
13 separation plan itself.

14 Do you see that?

15 A. Yes.

16 Q. Are you aware of any facts suggesting that DP&L
17 is violating its currently operative corporate
18 separation plan?

19 A. I'm not aware of violations. However, I do raise
20 in my testimony, and Dr. Lesser does as well,
21 that there are things that could be occurring.
22 There's potential for risk for sharing of
23 information that shouldn't be between DP&L and
24 DPLER. And there is the one instance that I am
25 aware of where there's a subsidy of DPLER in the

1 fuel rider.

2 Q. Okay. I'm not sure if -- your answer started
3 like it was a no in the beginning and may have
4 changed to a yes at the end, so let me ask the
5 question again.

6 Are you aware of any facts suggesting that
7 DP&L is violating its ESP?

8 A. Violation is such a strong word, that's why I
9 said that, you know, again, I don't have a lot of
10 information about what the, what is happening,
11 but I think there's potential risk for that
12 without full corporate separation.

13 So I'm not aware of, no, any violations, but
14 I don't know that there aren't any either.

15 Q. I understand that you're not there day to day.
16 I'm just asking if you're aware of any facts that
17 there were violations.

18 Let me ask you about the subsidy of DPLER and
19 the fuel rider.

20 You state in your testimony, I don't know if
21 I can find it quickly or not, that DP&L should
22 sell power to DPLER at a wholesale market rate?
23 That's actually Page 18, Line 16.

24 Do you see that?

25 A. Yes, I see that.

1 Q. Are you aware that DP&L has asserted in this case
2 that it does sell power to DPLER at a wholesale
3 market rate?

4 MR. LANG: Objection to the
5 characterization.

6 But if you can answer, go ahead.

7 A. Well, my testimony here is that while DP&L's
8 authorized to recover an SSR and has not, and/or
9 has not completed corporate separation.

10 Q. I'm just asking -- I'm not asking about going
11 forward basis, I'm asking about what exists
12 today.

13 And do you understand that DP&L has asserted
14 in this case that it in fact does sell power to
15 DPLER at a wholesale market rate?

16 MR. LANG: Objection. The same
17 objection to form and characterization and
18 I guess ambiguous in terms of what you mean
19 by asserting in this case.

20 But try to answer.

21 Q. If you don't know what DP&L's claims are in this
22 case, tell me. I'm just asking you if you're
23 aware whether DP&L has made that claim in this
24 case.

25 A. I've found that in reading the application in the

1 responses to discovery that that's not clear, so,
2 no.

3 Q. Are you aware -- so, no, you don't know whether
4 that's DP&L's claim in this case or not?

5 A. I don't think that it's clear that that's DP&L's
6 claim in every case, in every response that
7 they've given.

8 Q. Are you aware of any -- strike that.

9 It's true, isn't it, that you don't sponsor
10 any testimony or exhibits that purport to show
11 that DP&L is selling generation to DPLER at a
12 price other than wholesale market prices?

13 A. I don't in my testimony, but I would refer you to
14 Dr. Lesser's.

15 Q. Regarding DP&L's plan to transfer its generation
16 assets, you assert that DP&L should transfer them
17 sooner than December 31, 2017, right?

18 A. Yes.

19 Q. Okay. Do you know that one of the reasons that
20 DP&L has stated that it can't transfer them
21 sooner than that date was that it has liens
22 contained in its first mortgage bonds that would
23 prohibit it from transferring generation assets?
24 Just so we're clear, I'm not asking whether you
25 disagree with that, I'm just asking if you

1 understand that DP&L has stated that.

2 A. No, I don't think they have. I think they have
3 stated that it is a complex issue.

4 Q. Okay.

5 A. But I don't think the word "prohibit" -- you
6 know, upon further explanation by the witnesses
7 is that it's not impossible, it's that it is
8 complex. And I think the commission should order
9 it so that it's done.

10 Q. Have you reviewed the DP&L first mortgage bonds
11 to determine what restrictions, if any, they
12 contain on the ability of DP&L to transfer its
13 generation assets?

14 A. No, and I don't need to because I think that
15 whatever it would take would be less than the
16 billing above market that DP&L is asking from its
17 customers.

18 Q. Have you contacted any of the bond holders to
19 determine whether they would consent to release
20 any rights they have to prohibit DP&L from
21 transferring its generation assets?

22 A. No, I haven't.

23 Q. Have you reviewed the bonds to determine whether
24 they are presently callable?

25 A. No, I haven't. Again, I think those are issues

1 that need to be worked out.

2 Q. Do you understand that another reason that DP&L
3 has asserted that it can't transfer its
4 generation assets any sooner than that date is
5 that it could not obtain financing for the
6 separate generation and T&D businesses at
7 commercially reasonable terms?

8 And again, I'm just asking if you understand
9 that's a claim that DP&L has made. I'm not
10 asking whether you agree with it.

11 A. I didn't follow that.

12 MR. LANG: Yeah, objection. Lack
13 of foundation.

14 Do you need to hear it again?

15 THE WITNESS: I'm sorry, I didn't
16 follow that.

17 Q. I'll start it again.

18 Do you know whether one of the reasons that
19 DP&L has asserted in this case that it cannot
20 transfer its generation assets is that it
21 couldn't obtain new financing under commercially
22 reasonable terms to do so?

23 MR. LANG: Objection. Lack of
24 foundation.

25 You can answer it, if you can.

1 A. I can't answer that.

2 Q. You don't know whether that's a claim that DP&L
3 has made in this case?

4 A. Not the way that you've stated it.

5 Q. Let me just be clear.

6 Are you aware of some other or different
7 related assertion that DP&L has made?

8 A. Yes.

9 Q. Okay. What is it that you're aware of?

10 A. That it would be difficult or even maybe costly
11 to provide additional, to get a new financing,
12 but not that it would be, not be possible.

13 Q. Okay. Have you contacted any third-party lenders
14 to identify terms under which DP&L could achieve
15 the new financing?

16 A. No.

17 Q. Have you done any analysis at all to attempt to
18 determine terms under which DP&L could obtain new
19 financing?

20 A. No, I haven't.

21 Q. Now, back to the point I started with on Page 9,
22 Line 22, you have the sentence that says, "Almost
23 fourteen years has passed since S.B. 3 was
24 enacted and EDUs were put on notice of the
25 requirement for corporate separation."

1 Do you see that?

2 A. Where are you again?

3 Q. Page 9, Line 22.

4 A. Yes.

5 Q. Okay. And S.B. 3 is a reference to Senate Bill 3
6 that was enacted in 1999, right?

7 A. Yes.

8 Q. And is it your understanding that that statute
9 required utilities to make a prompt transfer of
10 their generation assets to an affiliate?

11 A. I recall that the statute mandated that there be
12 a separation from generation transmission and
13 distribution.

14 Q. And was it your understanding that the statute
15 was required to happen on some timetable?

16 A. I don't recall if there was a timetable in the
17 statute.

18 Q. Okay. But it was your understanding that they
19 were required under the statute to legally
20 separate their generation assets from their
21 transmission and distribution assets?

22 A. I'm not a lawyer and you used the word "legally,"
23 but structurally separate I would agree with.

24 Q. Okay. That's a fair answer.

25 But I want you to -- by legally separate, I

1 mean that the generation assets would be owned by
2 an entity different than the entity that owns the
3 transmission and distribution assets. Okay?

4 Does that make sense to you?

5 A. So by entity, you could include in that affiliate
6 and subsidiary?

7 Q. Well, I'd include an affiliate, but let's assume
8 not a subsidiary. So it's either transferring
9 generation assets to an affiliate or selling them
10 to a third party so that they're owned by
11 somebody different.

12 A. Yes.

13 Q. And what I'm trying to understand is, is it your
14 assertion -- strike that.

15 Is it your understanding that you're
16 describing on Line 22 that the utility was
17 required to legally separate its generation
18 assets, as we've just described the term "legally
19 separate"?

20 A. If you describe it as transfer or divest, then
21 yes.

22 Q. Okay. Is it your understanding of how the
23 statute operates that the utility could make
24 that -- I'm talking about Senate Bill 3 -- that
25 the utility could make that transfer at any time?

1 A. No.

2 Q. Do you have a different understanding?

3 A. I'm sorry, what's the question?

4 Q. You understand that DP&L proposes to transfer its
5 generation assets by December 31 of 2017, and I
6 think your testimony implies but doesn't
7 necessarily state, that the transfer is too slow
8 and violates the statutory requirements.

9 I'm trying to figure out if that is in fact a
10 fair reading of your testimony.

11 A. I think that it's too slow, yes. I think that it
12 needs to be done sooner and should be done
13 immediately. Whether or not it's in violation of
14 the statute, my testimony here is that it's been
15 a long time since the statute was passed and that
16 it should be sooner rather than later.

17 Q. Okay.

18 A. But again, you used the word "violation." And,
19 you know, I don't think that it's in keeping with
20 the statute that they don't do it sooner rather
21 than later.

22 Q. And then you reflect, you refer to the fact that
23 EDUs were put on notice of the requirement for
24 correct corporate separation.

25 What significance do you attribute to the

1 fact that the utilities were on notice?

2 A. That they knew about it.

3 Q. I understand that that's the meaning of the term
4 "notice," so they knew about it. What was it
5 that they should have done having been on notice?

6 A. Corporately separated.

7 Q. At a time sooner than they in fact did?

8 A. Well, they haven't done yet, right.

9 Q. You then refer at the bottom of Page 9, Line 24
10 to preventing further cross subsidies between the
11 utility and competitive affiliates.

12 Do you see that?

13 A. Yes.

14 Q. What cross subsidies are you referring to?

15 A. Well, under DP&L's application they're requesting
16 that they get recovery of the SSR. And in that
17 case, if they get that subsidy of their
18 generating business, they'll have that available
19 to them before they even corporately separate, so
20 there's an opportunity for them to provide a
21 subsidy to their affiliate business, as one
22 example.

23 Q. So when you refer to competitive affiliates, you
24 are in that line -- strike that.

25 Any other examples?

1 A. Yes. I mentioned the one about the fuel rider.

2 Q. Okay. Others?

3 A. Dr. Lesser mentions the potential for others.

4 Q. Which ones are you aware of as you sit here?

5 A. Sharing of information.

6 Q. I'm trying to get a little list here. You had
7 sharing of information, DPLER fuel issue, the
8 SSR. I think you mentioned one that I'm not
9 remembering now to include in my list.

10 A. The switching tracker is another one.

11 Q. Okay. That's a new one that I don't think you
12 mentioned earlier. I thought you mentioned one a
13 moment ago that I'm forgetting. Sharing of
14 information, DPLER fuel, SSR, ST.

15 Any other competitive subsidies, or cross
16 subsidies rather than you're referring to?

17 A. I also mentioned Dr. Lesser's testimony, that he
18 also discusses this issue. Those are the ones
19 that I can think of at the moment.

20 Q. Okay. Are you aware of any specific facts that
21 DP&L has shared information with DPLER or any of
22 its other separate legal affiliates in a manner
23 that violated the corporate separation rules or
24 the corporate separation plan?

25 A. No, I don't know that. I think there's the risk

1 for that happening, though, without full
2 structural separation.

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

5 - - - -

6 (Thereupon, a recess was had.)

7 - - - -

8 Q. Before we went off the record, Miss Noewer, we
9 were discussing subsidies, and my next question
10 to you is, do you believe that FES is at some
11 form of competitive disadvantage due to any of
12 the alleged subsidies that you've identified?

13 A. Yes.

14 Q. What?

15 A. As I point out in, on Page 4 of my testimony,
16 that when you receive subsidies for your
17 generating assets through a service stability
18 rider and the switching tracker, that that
19 provides subsidies to DP&L and to its generation,
20 to DPLER that other CRES suppliers don't get and
21 don't have, so it's disadvantaged to not only FES
22 but to other suppliers in the market.

23 Q. FES retains the ability to bid into DP&L's
24 auctions whether these alleged subsidies occur or
25 not, right?

1 A. When you say these auctions, what are you
2 referring to?

3 Q. Well, you understand that the Dayton Power and
4 Light Company has proposed to conduct a wholesale
5 auction for suppliers to bid to serve load in
6 DP&L's service territory?

7 A. For their SSO customers, yes.

8 Q. And whether or not DP&L receives what you
9 describe as subsidies, FES will be able to bid
10 into that auction when it occurs, right?

11 A. It will be able to bid. However, if DP&L
12 receives subsidies, its, DPLER will be able to
13 receive, have more of a competitive advantage.

14 Q. Well, do you believe that DPLER -- strike that.

15 Does FES ever voluntarily, to your knowledge,
16 sell generation at below market rates?

17 A. I don't know.

18 Q. Are you aware of any instances in which FES has
19 made a deliberate decision to sell market power
20 below market rates?

21 A. I'm not aware of any.

22 Q. Is it true that FES, as you understand its
23 bidding practices, would not bid to sell
24 generation at a price below FES's expected future
25 market rates?

1 A. I don't understand the question.

2 Q. Are you aware of any facts that suggest -- let me
3 step back.

4 Do you know when FES is preparing a bid, if
5 it makes an estimate of what future market rates
6 would be in the area of where the bidding is
7 occurring?

8 A. The question still is a little confusing. The
9 future market rates in the area it's bidding, can
10 you explain that part of the sentence?

11 Q. Sure.

12 If it's an auction for delivery of power,
13 hypothetically for 2014, do you know if FES
14 prepares a projection of what the price of market
15 power would be during 2014?

16 A. You say "the price," the price from where? Or --
17 I'm not sure what you mean.

18 Q. Any price.

19 A. I don't understand what you're asking.

20 Q. Well, the question is, do you know -- if you
21 don't, just tell me -- but do you know when FES
22 is preparing to submit a bid in an auction,
23 whether FES makes any estimate of what market
24 prices will be during the time it would be
25 obligating itself to sell power through the

1 auction?

2 A. FES has a number of things it looks at when it
3 bids. I really can't answer that.

4 Q. Just so we have a clear record, you don't know
5 whether or not FES considers future market prices
6 when it prepares to submit a bid at an auction?

7 A. I asked you to further define future market
8 prices and you really haven't for me, so I can't
9 answer it for that reason. I don't know really
10 what you mean by that in your terminology.

11 Q. Okay. Well, then does FE -- by market prices, I
12 mean any analysis of market prices, so it could
13 be a projection of generation prices at
14 particular hubs, it could be an analysis of FES
15 experts as to what it thinks the future is going
16 to be for the price to deliver generation in a
17 particular area. I'm using market prices as a
18 broadly defined term.

19 And the question is, do you know whether FES
20 considers market prices, projected market prices
21 when it prepares to bid at an auction?

22 A. Given that clarification and also pointing out to
23 you that I'm not responsible for pricing at FES,
24 nor what they consider in their bids, that would
25 seem generally reasonable that they would

1 consider it based on what we've narrowly defined
2 it as.

3 Q. Well, I defined it broadly. Why did you describe
4 that I defined it narrowly?

5 A. Well, you at least further defined what you meant
6 by it. I was unclear what you meant by future
7 market prices.

8 Q. Are you aware of any facts that would suggest --
9 strike that.

10 Are you aware of any instances in which FES
11 has submitted bids at auctions that were lower
12 than what FES believed the market prices to be?

13 A. I'm not responsible for developing FES's bidding
14 in any of the auctions, as I replied in the prior
15 answer as well, so, no, I'm not responsible for
16 it and, no, I'm not aware.

17 Q. Are you aware of any instance in which DPLER has
18 bid in an auction at a rate that was lower than
19 the expected market price?

20 A. I'm not aware if they have or haven't.

21 Q. Are you aware of whether DPLER has entered into
22 any contracts with customers to provide
23 generation at a price below the then expected
24 future market prices?

25 A. I'm not aware of what DPLER's bidding strategy

1 is, nor what they bid in auctions and that really
2 isn't the point of my testimony. My testimony,
3 as I describe it, is that DPLER and DP&L should
4 not be able to bid in their own auctions when
5 they're receiving the subsidies that it's
6 suggesting that it should receive from the
7 commission, which we don't agree with, but that's
8 my point.

9 Q. I'm asking you about your reference to subsidies
10 still, I'm on Page 9, Line 24, I'm still
11 referring to that reference to subsidies and not
12 what would happen in future bidding.

13 Are you aware of any reason that DPLER or
14 DP&L would sell generation at below market rates
15 if DP&L received the SSR?

16 MR. LANG: Objection to form.

17 Go ahead.

18 A. You reference at below market rates and you're
19 asking me if I see any reason why they would,
20 either DP&L or DPLER would provide pricing that
21 was below market; is that correct?

22 Q. Right.

23 A. My point is that it's subsidizing their bidding.
24 It doesn't necessarily need to be below market to
25 be subsidized and be more competitive than others

1 are able to be in the marketplace to distort
2 competition.

3 But in this case I have no idea what would
4 motivate, you know, DP&L. I mean, the point is
5 that the subsidy's there, however they choose to
6 use it, it could happen.

7 Q. Let's focus on that. Suppose the options
8 available to DP&L were either, A, to receive the
9 SSR and sell its generation at a market rate or,
10 B, take the SSR and sell its generation at a
11 below market rate.

12 Are you aware of any reason that you believe
13 DP&L would select option B?

14 MR. LANG: Objection to incomplete
15 hypothetical and lack of foundation.

16 You can answer, if you can.

17 A. I don't think I can answer. There's so many
18 options that are available. I don't know that I
19 believe that there could just be those two. I
20 don't know what the others may be, but I'm
21 certain there are.

22 Q. Well, I'm just asking you if those are the
23 choices put in front of them, are you aware of
24 any reason that it would be economically rational
25 for DP&L to pick option B?

1 MR. LANG: Same objection.

2 A. I don't know that I can answer that because I
3 don't know what else is going on, so I don't
4 think it's -- I can't answer.

5 Q. The question is, are you aware of any reason that
6 it would be economically rational? And is it
7 true that you are not aware of any reason that it
8 would be economically rational for DP&L to pick
9 option B?

10 MR. LANG: Same objection, I
11 guess.

12 A. I have no way of knowing what would be an
13 economically rational decision for DP&L.

14 Q. So you are not aware of any reason that selecting
15 option B would be economically rational?

16 A. I'm also not aware -- correct, and I'm also not
17 aware if there would be a reason why it would be.
18 I don't have an answer based on what you've asked
19 me.

20 Q. If DPLER is bidding at auctions at expected
21 market rates or higher, does the fact that DP&L
22 receives the SSR harm if yes?

23 MR. LANG: Objection to incomplete
24 hypothetical, lack of foundation.

25 You can answer.

1 Q. And by the way, I just want to -- I asked whether
2 it would harm FES. I want to focus on FES's
3 ability to compete in that specific auction, just
4 to be clear, but I'm just focused on the auction.

5 A. Yes, I think so.

6 Q. How?

7 A. DP&L, when it's receiving subsidies gets, you
8 know, a billion dollars above market that it's
9 requesting if in fact the commission allows that,
10 which I don't think it should, it will have that
11 amount of funds to distribute how it chooses, and
12 one of those may be to add that to their
13 competitive generating bids, their generation,
14 and using those funds towards that generation and
15 having that generation then used to compete in
16 the auction is not a level playing field, because
17 intervenors like FES or suppliers like FES don't
18 have the same ability to get the subsidies and
19 put that into their generation.

20 When it's true competition, as I state in my
21 testimony, generation in the market, generators
22 in the market are incented to keep their costs
23 down and have their generating units run most
24 efficiently as possible, and by receiving the
25 subsidy, if in fact DP&L chooses to do that with

1 it, it wouldn't be.

2 Q. So is the idea that DPLER -- strike that.

3 Is it the idea that the FES is injured
4 because without the alleged subsidy, DPLER might
5 be unable to participate in the auctions and that
6 therefore the auction price might be higher?

7 A. I didn't understand the question. Can you say it
8 again?

9 Q. Sure.

10 You have -- I'm focusing here on prices that
11 result from the auctions, and is it your concern
12 that the subsidy as you described it to DPLER
13 will permit DPLER to participate in the auctions
14 and drive the price lower?

15 A. No.

16 Q. Is FES at all concerned -- strike that.

17 Do you believe that the price -- strike that.

18 So you are not concerned that DPLER's
19 participating in the auction would injure FES by
20 driving prices down in the auction?

21 A. That was not what I was referring to in my
22 remarks. I was referring to the fact that they
23 had subsidies.

24 Q. So then if the participation of DPLER doesn't
25 drive down the winning price at an auction, how

1 is FES injured by the participation of DPLER?

2 A. Because it's not a level playing field. It's not
3 a true competitive market with true competitors
4 competing for that load. It's DPLER who receives
5 a subsidy.

6 Q. I understand DPLER is receiving money.

7 What I'm trying to ask you is, do you believe
8 FES, as a result of DPLER receiving money, would
9 receive less money at auctions?

10 A. It could, just by the mere fact that DPLER has
11 participated. And also I think that it's, you
12 know, the subsidies that DP&L is requesting also,
13 you know, causes customers to pay more.

14 Q. Just focusing on -- my questions are intended to
15 focus on injury to FES, which you've told me you
16 think exists.

17 And what I'm trying to determine is how FES
18 would be injured at an auction if DPLER received
19 the items you've identified as subsidies? Can
20 you tell me how FES would be injured at an
21 auction?

22 A. I think I did. The first was that I agreed with
23 you that if DPLER is participating while
24 receiving an above market subsidy to the tune of
25 a billion dollars, they would be participating in

1 their own auction and therefore then they would
2 have an opportunity to subsidize their bid price
3 or subsidize the generating units and therefore
4 then there may be less available for other
5 suppliers.

6 In addition to that, the customers who again
7 may be served by DPLER might have less incentive
8 to switch or shop with other suppliers like FES
9 because they as well are paying more.

10 Q. I'm sorry, could you repeat that last part of
11 your answer? I don't think I understand it.

12 A. The customers may be less incentivized to switch
13 or to shop with other suppliers as well because
14 they will be receiving more with the subsidies
15 that DP&L is receiving through non-bypassable
16 charges.

17 Q. Okay. I just want to focus on FES at the
18 auctions. And your concern is that if -- well,
19 first of all, is it correct that you don't have
20 any concern as to pricing that would result at
21 the auctions from whether DPLER participated or
22 not?

23 A. There are -- it could be the pricing. There are
24 a myriad of things that could happen and that's
25 the point, that DPLER should not participate

1 while DP&L is receiving any subsidy that they get
2 and/or while they're not corporately separated.

3 Q. So your concern is that -- one of your concerns
4 is that if DPLER participates, that's another
5 bidder and that may drive down the price that FES
6 is able to receive at those auctions?

7 A. I don't think drive down the price was my
8 concern. I said provide, you know, a competitive
9 platform for all suppliers to be able to
10 participate and that, you know, being able to bid
11 on that load, there's only so much load there.
12 And that while DPLER is bidding, that, you know,
13 they shouldn't be bidding while they're receiving
14 a subsidy or while DP&L is receiving a subsidy.

15 Q. I understand you say that they shouldn't be and
16 I'm trying to determine what injury you believe
17 FES would suffer if they in fact did so.

18 And you have identified for me the fact that
19 there's another bidder, so there may be a lower
20 quantity that FES might win; is that right?

21 A. Yes.

22 Q. Are you also concerned that the presence of DPLER
23 could drive down the price at the auction?

24 A. As it relates to the quantity, yes.

25 Q. Tell me what you mean by the qualifier "as it

1 relates to the quantity."

2 A. So if DPLER is able to bid at a lower CBP price
3 than the other suppliers in the auction and then
4 also is able to get up to 80 percent of the load,
5 that again is the same issue, that, you know,
6 there's less load there and they're the ones who
7 were able to be subsidized and be able to bid
8 into the auction. Again, only while they're
9 corporately separated or receiving any subsidy.
10 Beyond that, I have no concerns with DPLER if
11 they were to bid in any auction, but just in this
12 case under those circumstances.

13 Q. Are you aware of any facts that suggest that
14 DPLER's bidding behavior at an auction would be
15 different if DP&L was receiving the SSR?

16 A. I don't know if it would be different. My point
17 is it could be different.

18 Q. Why could it be different? What rational
19 economic -- strike that.

20 What rational economic reason would DPLER
21 have to alter its bidding strategy based upon
22 whether or not DP&L is receiving an SSR?

23 A. Because they're one entity. They're functionally
24 separated, but not structurally separated, so
25 that in and of itself.

1 Q. Well, you understand DPLER is a legally separate
2 entity from DP&L?

3 A. Yes, but they are still part of DP&L. The
4 generation is not separated yet.

5 Q. I understand that. Okay.

6 But still, why would -- what rational
7 economic reason would DPLER have to alter its
8 bidding strategy at an auction based upon whether
9 or not DP&L is receiving a competitive subsidy?

10 A. If it benefits the overall corporation.

11 Q. How could it? That's the question. What
12 rational -- are you aware of any way that DPLER
13 could improve the profitability of the entire
14 enterprise by changing its bidding -- strike
15 that.

16 Suppose DPLER has a bidding strategy that it
17 would otherwise ordinarily use at an auction to
18 maximize its profits. Are you aware of any
19 reason that strategy would be different based
20 upon whether or not DP&L is receiving the SSR?

21 MR. LANG: Objection to incomplete
22 hypothetical.

23 You can try to answer.

24 A. I can't begin to know what all the possibilities
25 would be in that hypothetical in terms of an

1 answer.

2 Q. I think the answer is clear, but is it true that
3 you are not aware of any reasons that DPLER would
4 alter its bidding strategies at an auction based
5 upon whether or not DP&L is receiving the SSR?

6 A. I think there certainly could be, as I said. But
7 I don't have a specific example as I sit here
8 today.

9 Q. Then let's focus on competition for retail
10 customers and I'll ask you the same question:
11 Are you aware of any reason that DPLER would
12 alter its strategy to attempt to receive business
13 from retail customers based upon whether or not
14 DP&L is receiving an SSR?

15 A. Yes.

16 Q. What?

17 A. I think as both the wholesale and retail entity,
18 DPLER, that all of the financials roll up to the
19 corporate and in my view they may be willing to
20 accept less of a margin on a retail sale or in
21 the competitive procurements than it would
22 otherwise if it knew that they're, DP&L was
23 getting this large subsidy that it's requesting
24 in this case.

25 Q. Is it your belief that DP&L as a corporate

1 enterprise is engaged in efforts to maximize its
2 profits?

3 A. I would think most corporate entities are.

4 Q. That's Economics 101, isn't it?

5 A. Is that a question?

6 Q. You've got an economics degree from undergrad,
7 don't you?

8 A. Yes.

9 Q. Are you aware of any reason that, that the
10 corporate enterprise's profits would be -- strike
11 that.

12 Focus on DPLER. Are you aware of any reason
13 that DPLER could alter its behavior based upon
14 whether or not DP&L was receiving an SSR that
15 would alter the enterprise's ability to maximize
16 its profits?

17 A. I think that was a compound question. Could I
18 hear that again?

19 MR. SHARKEY: Can you read it?

20 Because I doubt I could say it accurately
21 again.

22 - - - -

23 (Thereupon, the requested portion of
24 the record was read by the Notary.)

25 - - - -

1 A. Did that make sense to you?

2 Q. It's a garbled question. It does have an idea in
3 it, but the words may not have really expressed
4 it, so I'll start over.

5 Okay. You've told me that you believe that
6 the organization, including the parent and its
7 subsidiaries, has a goal of maximizing its
8 profits, right?

9 A. I assume so.

10 Q. And there's two alternative scenarios I wanted
11 you to consider; one is DP&L receives the SSR and
12 the other is DP&L does not receive the SSR.

13 Okay?

14 And then the question to you is, are you
15 aware of any competitive decisions that DPLER
16 could rationally make differently with a goal of
17 maximizing its profits under either of the two
18 scenarios?

19 Does that make sense or do you want me to
20 reword it?

21 A. I think that's my point, if I understand your
22 question correctly, is that DPLER could. I'm not
23 saying as I sit here today I know all of the ways
24 that they could, but certainly they could change
25 their behavior because DP&L is receiving a, an

1 SSR. And again, you're limiting it to the SSR,
2 but in this case there are many other components
3 here that are included in what I consider to be
4 subsidies that DP&L is requesting.

5 Q. Okay. I'm just asking you at this point about
6 the SSR.

7 A. Yes, I'm aware.

8 Q. So I think the answer to this question I have
9 now, but let's make sure I've got a clean record.

10 If we established what DPLER's rational
11 profit maximizing conduct would be in a situation
12 where DP&L was not receiving an SSR, okay, does
13 that make sense to you?

14 A. Again, not really, because we've talked about
15 this as the hypothetical.

16 Q. Sure.

17 A. I don't know what DPLER considers to be its
18 economic rational behavior.

19 Q. All I'm asking you for is what you know and if
20 the answer is that you don't know, that's --

21 A. I don't know what DPLER considers to be its
22 economically rational behavior.

23 Q. Whatever that economically rational behavior
24 could be, and it could be any range of things
25 from going out of business to bidding at auction,

1 to focusing on serving SSO customers through, but
2 not through auctions -- I said SSO customers, I
3 misspoke -- serving retail customers as a CRES
4 provider, whatever its strategy may end up being
5 in a scenario where DP&L is not receiving the
6 SSR, can you identify for me any rational
7 economic reason that DPLER would change that
8 strategy based upon DP&L receiving the SSR?

9 MR. LANG: Objection to form and
10 lack of foundation.

11 Go ahead.

12 A. The hypothetical just doesn't make sense to me.
13 I can't answer it.

14 Q. You can't identify any rational reason DPLER
15 would alter its conduct?

16 A. I think when we started this whole discussion
17 along these lines, I said that I believe that
18 DPLER had a number of options, none of which I
19 know what they consider to be economically
20 rational, so for me to say that I'm aware of or
21 not aware of any, you know, is my only answer.

22 Q. Okay.

23 A. I think there could be because it benefits,
24 again, the overall corporation.

25 Q. Could be is different than I'm aware of a

1 rational economic reason.

2 It's true, isn't it, that you are not aware
3 of any rational economic reason that DPLER would
4 change its behavior based upon whether or not
5 DP&L was receiving the SSR?

6 MR. LANG: Objection to form.

7 Go ahead.

8 A. The one that I am aware of is that if in fact
9 there's a benefit to overall DP&L or DPL, then I
10 think that they could and would. I think that it
11 gives DP&L many more options by getting an above
12 market billion dollar subsidy, that, no, I don't
13 know specifically as I sit here today what action
14 they would take, so, no, I am not aware of a
15 specific action, but there certainly could be.

16 Q. I'm not asking you to identify what actions they
17 would take. I'm asking you to tell me whether
18 you're aware of any rational actions they could
19 take that would be serving the goal of maximizing
20 profits based upon whether or not DP&L received
21 the SSR.

22 MR. LANG: Objection to form
23 again.

24 A. Could you restate it, please?

25 Q. Sure.

1 Are you aware of -- well, let's start from
2 the beginning.

3 DPLER, if it were denied the SSR, would have
4 some goal or strategy you assume to maximize its,
5 the corporate enterprise's profits, you would
6 expect, wouldn't you?

7 A. I didn't follow the beginning of that.

8 Q. Sure.

9 A. You said if DPLER received the SSR.

10 Q. Okay. Let's start from the beginning. Let's
11 suppose there's no SSR charge.

12 A. And no switching tracker and no --

13 Q. I'll come back to the switching tracker.

14 A. What's confusing me, though, is that you're
15 isolating it and in this case that's not an
16 isolated circumstance.

17 Q. Okay. At this point I want you to assume that
18 the filing is approved in total, except that the
19 SSR was rejected. But the thing we're switching
20 is the SSR. Okay? Otherwise the filing is
21 approved in total. And I want you to assume that
22 DPLER has a profit maximizing strategy that would
23 be in place in the event that the SSR was
24 rejected in total.

25 And the question is, are you aware of any

1 rational reason with the goal of maximizing
2 profits that DPLER would change that strategy if
3 DP&L were to receive the SSR?

4 A. I didn't follow that.

5 MR. SHARKEY: Can you read it to
6 her, please.

7 - - - -

8 (Thereupon, the requested portion of
9 the record was read by the Notary.)

10 - - - -

11 MR. LANG: Objection to form again
12 and his continuing on the hypothetical.

13 A. It's difficult for me to follow that
14 hypothetical, but since you assume that the
15 filing was approved in total except for the SSR,
16 that would mean that DPLER would be allowed to
17 bid in its own auctions even though it wasn't
18 corporately separated.

19 So to me, it would be in DPLER's benefit to
20 talk with DP&L who was actually organizing the
21 CBP such that they could organize that in a
22 fashion that would benefit DPLER. So that would
23 be one way that they could in fact operate in a
24 way that could maximize the company's profits,
25 but at the same time do what I believe would be

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Summary: Deposition of Sharon L. Noewer (Part 1 of 2) electronically filed by Mr. Jeffrey S Sharkey on behalf of The Dayton Power and Light Company