

1 economically rational for them. Because you
2 assumed that they wouldn't -- while the filing is
3 approved, they wouldn't be corporately separated
4 for the first auction.

5 Q. Any others?

6 A. As I've told you before, I'm sure that there are,
7 if I followed your hypothetical correctly.
8 That's just one example that I can think of at
9 the moment, but that's my whole point is that
10 there could be.

11 Q. I'm going to make a note to ask again this
12 question at the end of the deposition so that you
13 have more time to think through it, so if there's
14 any others that you think of as we go, you have
15 an opportunity to do so.

16 The item that you identified specifically was
17 potential improprieties at a competitive bidding
18 auction, right?

19 A. No. It was in setting up the parameters for the
20 bid.

21 Q. Okay. To provide some advantage to DPLER that
22 wouldn't be an advantage to others?

23 A. Just an example.

24 Q. I understand. I'm just asking you about the
25 example that you gave me.

1 First of all, would you agree with me that
2 whether or not DP&L received the SSR would not
3 alter any incentives that DP&L or DPLER might
4 have to structure the auctions?

5 A. I think that when you're talking about subsidies
6 and funds, whether it's an SSR or the switching
7 tracker or the, any of those, it's all related to
8 financial funds that are at the wherewithal of
9 DP&L.

10 So to me, whether you call it SSR or put a
11 different label on it, it's still the same pot
12 and it's still to me any actions that they take,
13 I can't possibly know what they would do, and
14 that's the point.

15 Q. Well, here's my question to you: You've
16 identified an incentive that the DP&L allegedly
17 has to structure the auction to favor DPLER. And
18 my question is that the incentive to do so is no
19 different regardless of whether DP&L is receiving
20 the SSR or not, right?

21 A. It could be different.

22 Q. Identify -- are you aware of any specific reasons
23 that it would be different?

24 A. I don't know that it can or can't. It's a
25 hypothetical that you're giving me that doesn't

1 exist. I'm not a member of DPLER or DP&L, I
2 don't know what discussions they have about how
3 they plan to maximize their profit. I don't
4 know.

5 Q. Well, that's the point, is the incentive you have
6 identified to structure the auction in a way that
7 favors DPLER would be the same -- strike that.

8 Are you aware of any reason that that
9 incentive would be different based upon whether
10 or not DP&L receives the SSR?

11 A. I am not aware if it could be different or the
12 same, I don't know.

13 Q. Are you aware of any rational economic reason
14 that DPLER would change its competitive behavior
15 based upon whether or not DP&L receives the
16 switching tracker?

17 A. Same answer, I don't know what DPLER or DP&L
18 consider to be economically rational. My point
19 is is that they're not corporately separated,
20 therefore there could be.

21 Q. But you can't identify any rational economic
22 reason that there would be?

23 A. As I've stated in my previous answers, I believe
24 that the subsidies that DP&L are receiving
25 benefit DPL and benefit, and possibly benefit

1 DPLER, so there could be and, there certainly
2 could be and that's the point, they're not
3 separated, so I can't possibly know how to define
4 it differently.

5 Q. All I can ask you is what you know. And what I
6 think you've told me is that you're not aware of
7 any rational economic reason that DPLER would
8 alter its behavior based upon whether or not DP&L
9 received the switching tracker, but there could
10 be such a reason; is that right?

11 A. No.

12 Q. What was incorrect with that statement?

13 A. I thought you asked me whether there was any
14 economic rational basis for DPLER to do anything
15 differently, and I said in my opinion when you
16 receive a subsidy like that at DP&L, that there
17 certainly could be. They're not structurally
18 separated.

19 Q. I understood that your testimony is that there
20 could be a rational economic reason for DPLER to
21 act differently based upon whether or not DP&L
22 receives the SSR.

23 My question to you is: Are you aware of any
24 economic, any rational economic reason that DPLER
25 would alter its behavior -- strike that.

1 Are you aware of any rational economic reason
2 for DPLER to alter its behavior based upon
3 whether or not DP&L receives the switching
4 tracker?

5 A. It's a very incomplete hypothetical, again,
6 similar to the one that you were asking me on the
7 SSR. When I think about economically rational
8 behavior, I think that the reason is is because
9 it would benefit them. So however that may
10 transform itself to me is what the economically
11 rational reason might be.

12 Q. But you can't give me any specific conduct that
13 you believe DPLER could rationally do differently
14 with the goal of maximizing its profits based
15 upon whether or not DP&L receives the SS -- I'm
16 sorry, the ST?

17 A. It's the same answer that I gave for the SSR,
18 that it could provide them some advantage and
19 also procurements, it could provide them some
20 advantage in retail offers that they make to
21 customers because DP&L is receiving a subsidy.

22 Q. How could any of those changes alter -- let me
23 step back.

24 We have your suggested -- if we had your
25 suggested result, namely no switching tracker and

1 DPLER had determined its strategy for maximizing
2 its profits for 2014, does that part of the
3 hypothetical make sense to you?

4 A. Can you say it again?

5 Q. Sure.

6 We have your supposed -- I want you to
7 compare two different situations. The first
8 situation is the one that you propose in which
9 the commission has rejected the switching tracker
10 and --

11 A. But everything else in the filing is the same?

12 Q. Yes.

13 -- and DPLER in that hypothetical situation
14 has identified its profit maximizing strategy,
15 whatever it may be, then I want you to compare
16 that situation to another situation where we're
17 looking at 2014 under a situation in which DP&L
18 does receive the switching tracker. Can you
19 identify for me -- and it's one thing to say
20 DPLER could alter its behavior. Anything is
21 possible.

22 I want to know if you can identify for me any
23 rational economic reasons that DPLER would change
24 its behavior between those two situations.

25 A. Now we're dealing with compound hypotheticals

1 that are compared to one another and I'm just not
2 comfortable answering in that sort of
3 hypothetical situation that doesn't exist today.
4 I don't know.

5 Q. Let's then move on --

6 MR. SHARKEY: Let's go off the
7 record for a second.

8 - - - -

9 (Thereupon, a discussion was had off the
10 record.)

11 - - - -

12 Q. Let me ask you about the modifications to the,
13 your proposed modifications to the competitive
14 bidding plan.

15 First of all, you said earlier that it would
16 be possible theoretically for DP&L to structure
17 the competitive bidding plan so that it favors
18 DPLER over other potential bidders.

19 My question to you is: Are you aware, first
20 of all, of any specific facts that DP&L has made
21 any deliberate efforts to do that?

22 A. No.

23 Q. Okay. Are you -- having reviewed the competitive
24 bidding plan -- strike that.

25 Did you review the competitive bidding plans

1 that have been submitted by DP&L?

2 A. I reviewed the CBP plan that's in the
3 application.

4 Q. Okay. Did you identify any aspects of the plan,
5 the pieces that you saw, that provided an
6 advantage to DPLER as a bidder as compared to
7 other bidders?

8 A. Not that I recall, but your question is echoing
9 back what you thought you heard me say was about
10 the structure of the CBP and I recall talking
11 about just merely the fact of communication about
12 the details of what would be happening and when.

13 Q. You would agree with me, first of all, that
14 you're not aware of any specific facts that any
15 improper communications as to the competitive
16 bidding have occurred between DP&L and DPLER?

17 A. No, I'm not and there hasn't been any competitive
18 bidding yet.

19 Q. But there are now plaintiffs competitive bidding,
20 right?

21 A. Which haven't been approved by the commission,
22 yes.

23 Q. And you would agree with me that the incentive to
24 have those improper communications would be the
25 same whether or not DP&L was receiving any

1 alleged subsidies?

2 A. I don't know if they would be the same. My point
3 is that, you know, DP&L has the generation rate
4 now and that's why you need structural separation
5 so there are no questions like this for you to
6 ask about, that there are no possibilities for
7 there to be any incentive to do anything other
8 than what's economically rational.

9 So the point of my testimony is get the
10 corporate separation done so that there are no
11 questions on the CBP.

12 Q. Is it your view that DPL -- strike that.

13 You understand that DPL, Inc. is the parent
14 corporation of DP&L and DPLER?

15 A. Yes.

16 Q. Okay. Is it your view that DPL, Inc. has the
17 incentive to cause its subsidiaries to maximize
18 DPL, Inc.'s profits?

19 A. I don't know what DPL, Inc.'s business objectives
20 are.

21 Q. I understand you don't know, but would you assume
22 that those are its business objectives?

23 A. I don't know. I would think most businesses
24 would want to maximize their profit.

25 Q. Whether or not the generation assets were in DP&L

1 or in DPLER would not alter the overall
2 enterprise's incentives to structure the
3 competitive bidding to favor DPLER, right?

4 A. I don't understand the question.

5 Q. Well, you've told me that the overall enterprise
6 has an incentive to engage in some type of
7 conduct as to the competitive bidding that would
8 provide an advantage to DPLER, right?

9 A. No. You asked me whether there was any incentive
10 for DPLER to do anything, an example of something
11 that they might do that they could do to
12 advantage themselves in this process, and I
13 answered that there could be that one, where
14 there would be communications on the CBP.

15 Q. Okay. So from an overall enterprise level, the
16 incentive to have those type of communications
17 doesn't change based upon whether or not the
18 generation assets are located at DP&L or located
19 at DPLER, right?

20 A. I don't think that's true, no.

21 Q. How would the incentives change if you look at it
22 from a DPL, Inc. perspective?

23 A. I don't know that I can answer that.

24 Q. Are you aware of any reasons that it would --
25 strike that -- any rational economic reasons that

1 DPL, that the incentive to have those
2 communications would change based upon whether or
3 not the assets are located at DP&L or at DPLER?

4 A. I don't know, there could be.

5 Q. Can you identify any as you sit here now?

6 A. Well, you have DP&L who is not only setting up
7 the auctions, but also still has the generation
8 and was receiving subsidies for that generation
9 and has not corporately separated. So to me, I
10 would think there would be benefits on the side
11 of DP&L, that DPL, Inc. might be influenced by.
12 There should be no incentive on behalf of DP&L to
13 really have any concern about the outcome of the
14 SSO auction, which is why the generation assets
15 should be separated.

16 Q. From a DPL, Inc. perspective, if you view it as
17 an enterprise, you have identified the fact that
18 there is some incentive for DP&L to share
19 information or structure the auction or do things
20 that would advantage DPLER at the auction, right?

21 A. Could be.

22 Q. Okay. And that I understand. I'm not disputing
23 with you that there could be that incentive.

24 But what I'm trying to determine is from a
25 DPL, Inc. perspective why that incentive would be

1 any different based upon whether or not the
2 generating assets are located in DP&L or are
3 located in DPLER. It would seem to me that that
4 incentive would be the same regardless of where
5 the generation assets are.

6 A. I don't know.

7 Q. Okay. You understand that DP&L intends to use
8 Charles River Associates as the competitive
9 bidding manager, whatever the title may be?

10 A. Yes.

11 Q. Are you familiar with Charles River Associates?

12 A. Yes.

13 Q. Do you understand that they've run other auctions
14 in Ohio?

15 A. I believe so.

16 Q. Do they run FirstEnergy's?

17 A. I don't know. I definitely am familiar with
18 their name, though.

19 Q. Any reason to doubt their competence?

20 A. No.

21 Q. Any reason to doubt their integrity?

22 A. No.

23 Q. Starting on Page 11, continuing onto 12, you
24 respond to the question, "What additional
25 information should be included in the CBP plan,"

1 and then you identify various pieces of
2 additional information, right?

3 A. Right.

4 Q. Did you read DP&L's CBP -- strike that.

5 Did you read DP&L's Book 2 to determine
6 whether the information that you've described
7 there is in fact included in that book?

8 MR. LANG: Book 2 of the
9 application?

10 MR. SHARKEY: Book 2 of the second
11 revised amended application, whatever its
12 title may be.

13 MR. LANG: Okay.

14 A. I read the entire application. The information
15 that I did see that was included is outdated.

16 Q. That's not my question to you. My question to
17 you is -- oh, maybe it is responsive to my
18 question.

19 A. Uh-huh.

20 Q. And I didn't understand it at first.

21 You're saying -- are you saying that the
22 information that you've listed here is included
23 in the application but needs to be updated?

24 A. Partially, yes, you've got that partially
25 correct. It needs to be updated and the

1 information in there, for example, the number of
2 auctions is included, but not the proposed
3 auction timeline, when the auction will actually
4 occur --

5 Q. Okay.

6 A. -- for example. So it's not included, all of the
7 information here is not included and it's
8 outdated.

9 Q. Okay. The proposed auction timeline, you
10 understand that that's not included because the
11 commission hasn't set a date for the auction?

12 A. Well, that's true that they haven't set a date
13 for the auction, but there can be anticipated
14 timing. For example, in the second year, it's
15 clear what auction percentages that DP&L is
16 expecting to have in that CBP. And if they are
17 approved, then there should be some timing
18 associated with what that expected timeline would
19 be. You can propose those in the application.
20 They're not there. And in addition to that, the
21 first auction starts in the past.

22 Q. I didn't understand your statement about what
23 could be in the schedule but is not there.

24 Can you identify that more specifically for
25 me?

1 A. I don't have Witness Lee's auction schedule in
2 front of me, it's in one of his exhibits. On
3 that schedule it lists the number of tranches and
4 the products that he's proposing for the tranches
5 that I believe should be changed, as I've
6 described in my testimony. But he does not
7 indicate when or how far ahead of each of the
8 auctions they expect to hold, ahead of each of
9 the power flow that they expect to hold the
10 auction.

11 And in addition to that, the first auction
12 covers the power flow period beginning January of
13 '13, which is in the past.

14 Q. You would agree with me that neither you nor DP&L
15 knows when it is that the commission will issue
16 an order regarding DP&L's ESP, right?

17 A. Right.

18 Q. Assuming that order requires DP&L to have
19 competitive bidding, neither you nor DP&L know
20 the date the commission will select for the
21 beginning of power flow, right?

22 A. I think that's probably -- that's true for the
23 first auction because that's now in the past, so
24 I think that depending upon when the commission
25 chooses or can, or does decide to approve or not

1 approve or have DP&L file an approved plan, I
2 guess it could be sometime in the future.

3 But I think for future auctions, unless the
4 commission changes the timing of any SSO auction,
5 I think that we do know that time period,
6 although, we would suggest that it happen
7 immediately.

8 Q. You understand that DP&L has proposed that power
9 begin to flow from later year auctions on June 1
10 of each successive year so that DP&L -- so that
11 power flow would coincide with the PJM capacity
12 year?

13 A. That's correct. But they don't indicate how far
14 ahead of time they expect to hold the auction and
15 that is something that's usually typically
16 included in CBP plans.

17 Q. Okay. I understand.

18 Do you support DP&L's proposal that power
19 flow delivery begin on June 1 of the succeeding
20 years?

21 A. Not the way that it's structured. I do believe
22 that if in fact the commission approves, you
23 know, not just the first auction, but the second
24 auction, that there ought to continue to be in
25 the second, third and fourth years one and two

1 and three-year products, three-year products.

2 So necessarily if you have a two-year product
3 or a three-year product, it would extend the span
4 into and past the following year's June 1 start.

5 So I'm not even sure that that's what DP&L is
6 suggesting, because they do have some laddering
7 of products in their exhibit.

8 Q. Do you understand that -- well, do you know
9 whether DP&L proposes one, two, and three-year
10 products to be offered beginning in the second
11 year of competitive bidding?

12 A. The schedule's outdated that's in the
13 application, but the schedule that is there shows
14 that there are one, two, and three-year products
15 in the second auction, but not in the third,
16 fourth or fifth. It's single product that I
17 recall.

18 Q. Let me ask you about the load cap.

19 You oppose DP&L's proposal to have an 80
20 percent load cap, right?

21 A. Yes.

22 Q. You're aware that other utilities in Ohio have an
23 80 percent load cap?

24 A. Yes, I am, and I put that in my testimony, but we
25 are not in favor of those either.

1 Q. Does FirstEnergy have a load cap for its
2 competitive bidding?

3 A. Yes. And we are opposed to that as well.

4 Q. Is it your view that just because a feature is
5 used in one utility's service area, that it
6 doesn't necessarily mean it's best for every
7 utility's service area?

8 A. A feature of what?

9 Q. Well, first of all, this specific feature, the
10 fact that it's used elsewhere doesn't mean that
11 it is rational to apply it in DP&L's service
12 territory?

13 MR. LANG: You're still asking
14 about the load cap?

15 MR. SHARKEY: I am.

16 A. Well, we don't feel that it should be in any of
17 the EDUs in Ohio. So I don't think it should be
18 used in DP&L's, nor do I in any of the others.

19 Q. Okay. You say at the bottom of Line 12 --

20 A. What page are you on?

21 Q. Did I say Line 12?

22 MR. LANG: Line 12.

23 Q. I misspoke. You say on the bottom of Page 12,
24 Line 23 that load caps serve as an artificial
25 limit on competition.

1 Can you explain what you mean by that?

2 A. It's in the rest of the sentence there, because
3 if you have the lowest price bidder who is
4 willing to serve more, then you would get a lower
5 price for customers. And to me, that's one of
6 the key benefits of competition, that you have
7 competitive bidding and you can get the lowest
8 price possible as the market is willing to
9 provide.

10 Q. You discuss on Page 13 credit limit caps.

11 First of all, can you describe for me how you
12 understand the credit limit caps that DP&L has
13 proposed would work?

14 A. The way that I understand it from a table in the
15 filing and Section 6.4 of the master SSO supply
16 agreement, there's a credit limit cap that caps
17 suppliers' participation based on their
18 investment grade rating.

19 So in addition to them having an independent
20 credit requirement, the ICR, they also have this
21 ICT and then a cap on the ICT.

22 Q. So as you understand it, an entity that had, for
23 example, a BB plus credit rating will be
24 permitted to supply only a certain amount of
25 power at the competitive bidding auction? Is

1 that --

2 A. Certain amount of power as it relates to the
3 dollar amounts that are located here, that are
4 located in my testimony and in the master supply
5 agreement and capped at that level. And my
6 testimony says that we already believe that there
7 are independent credit requirements that cover
8 suppliers bidding in the auction. There's no
9 need for this additional cap.

10 Q. Do you know whether Duke has similar credit limit
11 caps to what DP&L proposes?

12 A. I think that Duke may have similar credit limit
13 caps, but FirstEnergy does not.

14 Q. What about AEP?

15 A. I don't know.

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

18 Q. I'm sorry, if you want to finish your answer, go
19 ahead before we go off the record.

20 A. Which AEP has not had their competitive bid
21 auction yet, so I'm not aware of what the details
22 are finalized yet for anything related to
23 independent credit.

24 Q. Okay. Done with your answer?

25 A. Uh-huh.

1 MR. SHARKEY: Okay. Let's go off
2 the record.

3 - - - -

4 (Thereupon, a discussion was had off the
5 record.)

6 - - - -

7 Q. You offered testimony regarding reasonable
8 arrangements starting on Page 13 of your
9 testimony, right?

10 A. Yes.

11 Q. You ask that the reasonable arrangements to which
12 DP&L is a party with customers in its service
13 territory be included in the competitive bidding
14 auction, right?

15 A. Yes.

16 Q. Do you understand that a reasonable arrangement
17 is a contract?

18 A. Yes, I do.

19 Q. Okay. Have you reviewed those reasonable
20 arrangements to determine what the terms and
21 conditions contained in the contract are?

22 A. No, I haven't.

23 Q. Do you know whether those contracts permit them
24 to be terminated so that the counterparty could
25 participate in competitive bidding auctions?

1 A. No, and that's not my point. My point is that if
2 they could and do, that it would be an
3 opportunity for them to receive a lower price and
4 then also lower the delta revenue that other
5 customers have to pay.

6 Q. Is it your view that if the contracts don't
7 permit themselves to be terminated, that in that
8 instance they should not be terminated?

9 A. I wasn't sure of the tense of that question.

10 Q. Yeah, it was a very poorly worded question. Let
11 me withdraw it and rephrase it.

12 I want you to suppose there's a contract that
13 extends, it's a contract between DP&L and another
14 customer that extends through 2016 and there's
15 nothing in the contract that's permitted to be
16 terminated, is it your testimony that such
17 contracts should not be terminated to permit the
18 customers to participate in competitive bidding?

19 A. I'm still not sure on the tense, so let me just
20 answer it and see if it gets to what you're
21 asking me.

22 My position is not that we should interfere
23 with a contract of a customer and if they have a
24 firm contract at a firm contract price, that
25 would continue.

1 However, if there was an opportunity to have
2 that contract and that customer participate in
3 the auction either because DP&L allowed it or the
4 commission allowed it or jointly, the commission,
5 the customer and DP&L allowed it, we think that
6 could be and would be of benefit to those
7 customers and certainly to the other customers
8 who have to pay the delta revenue.

9 Q. But if the contract prohibited the customer from
10 participating and DP&L objected to making an
11 alteration to the contract, is it your view that
12 in that case the contract should continue as it
13 exists?

14 A. The contract should continue as it exists if the
15 parties that are involved, you know, deem it to
16 be so.

17 Q. I guess then I'm trying to figure out what it is
18 that you want the commission to do. Let me maybe
19 ask it this way.

20 If the contract would permit the customer to
21 terminate the contract at any time for any
22 reason, the customer would then have the ability
23 to terminate the contract and, if it wanted to,
24 become an SSO customer and participate in a
25 competitive bidding, right?

1 A. Could you say the question again?

2 Q. Sure.

3 Suppose the contract has a clause that says
4 the customer can terminate the contract at any
5 time for any reason.

6 In that instance the customer, if it wanted
7 to, could terminate the contract, become an SSO
8 customer of the Dayton Power and Light Company
9 and then have its load up for bid, right?

10 A. It certainly could. Or if the term ends before
11 the end of an SSO auction, and again, depending
12 upon who the parties are, these are reasonable
13 arrangements so I know they have some purview
14 under the commission's authority, so it may not
15 just be the customer and DP&L, it may also be in
16 the commission's view.

17 Q. Okay. Then can you, can you explain to me -- let
18 me step back.

19 If you assume that the contract goes for a
20 term and doesn't permit the customer to terminate
21 at any reason and DP&L doesn't want to terminate
22 the contract, is there anything in that situation
23 that you're asking the commission to do?

24 A. If it's a strict contract between the customer
25 and DP&L, then no, but in this case, these are

1 reasonable arrangements that are under the
2 commission's purview. So if there's no
3 alternative there for them to consider that these
4 arrangements should be included in the auction
5 then, then no.

6 But I do think it's certainly a benefit to be
7 considered because if in fact these customers can
8 get a lower price, then the price then to the,
9 that goes into the delta revenue for other
10 customers that have to pay would also be lower.

11 Q. Okay. You mentioned specifically
12 Wright-Patterson Air Force Base on Page 14,
13 Line 2 of your testimony, right?

14 A. Yes.

15 Q. You understand that Wright-Patterson Air Force
16 Base is represented in this very case by counsel
17 and has engaged its own experts?

18 A. No.

19 Q. Are you aware that Wright-Patterson Air Force
20 Base is a member of the Federal Executive
21 Agencies?

22 A. No.

23 Q. Do you know whether the Federal Executive
24 Agencies are parties to this pending case?

25 A. I thought they were.

1 Q. Okay. Have you seen testimony filed from persons
2 from Brubaker & Associates on behalf of the
3 Federal Executive Agencies?

4 A. No, I haven't reviewed other intervenors'
5 testimonies other than FES.

6 Q. Okay. Let me turn you to Page 16 of your
7 testimony where you sponsor an opinion that
8 auction related costs should be recovered in a
9 separate, fully bypassable rider.

10 Do you see that?

11 A. Yes.

12 Q. Do you know whether there's a provision in
13 FirstEnergy's currently governing rate plan that
14 would permit FirstEnergy to recover auction costs
15 through a non-bypassable charge in certain
16 circumstances?

17 A. I'm aware of one, and it's not the same
18 mechanism.

19 Q. How does the FirstEnergy mechanism work as you
20 understand it?

21 A. FirstEnergy has a percent over which if the
22 bypassable charges become greater, that it would
23 flip to non-bypassable, but it's a completely
24 different percentage of. So for in this case,
25 DP&L is suggesting that it's a percentage of the

1 actual reconciliation rider that would change,
2 but in FirstEnergy's case it's a percentage of
3 the total CBP auction costs and generation
4 revenues, which is a much, much bigger number.

5 Q. Would you support a proposal as to auction costs
6 for DP&L that was similar to FirstEnergy's?

7 A. My preference actually would be Duke's.

8 Q. How does Duke's work?

9 A. It's similar, but the percentage is ten percent
10 rather than five percent.

11 There's another difference, here, though,
12 too, is the entire reconciliation rider, as I
13 mentioned, has different components in it. The
14 components here are different than the components
15 in the FirstEnergy or Duke rider.

16 Q. That I understand. I'm just focusing about the
17 auction costs.

18 A. Oh.

19 Q. And I understand that the riders work
20 differently, but I was just trying to figure out
21 if you would support a rider that was separate
22 from the reconciliation rider for the Dayton
23 Power and Light Company that operated similarly
24 to the FirstEnergy or Duke riders that you've
25 described.

1 A. Just for CBP auction costs?

2 Q. Just for CBP auction costs.

3 A. Yes.

4 Q. Let me then ask you about your objection to
5 including amounts associated with the fuel, rpm,
6 TCRR-B and AER riders in a non-bypassable charge.

7 As an initial matter, I'm not asking if you
8 agree with this, I just want to ask you if you
9 understand DP&L's position.

10 Do you understand that it's DP&L's position
11 that there are certain amounts that it was
12 entitled to recover under those riders, but in
13 given periods doesn't recover the totality of the
14 amount?

15 A. Could you restate that?

16 Q. Sure.

17 Do you understand that DP&L has stated that
18 there are certain amounts that DP&L's entitled to
19 recover under those various riders that in a
20 given period, we'll call it period number one,
21 for whatever reason DP&L doesn't recover?

22 A. Yes, I understand they have deferral balances.

23 Q. Okay.

24 A. That they exist and that they need to forecast
25 better.

1 Q. Your solution to the existence of the deferral
2 balances would be to forecast better?

3 A. It certainly is one.

4 Q. Okay. And by forecast better, what is it that
5 they should be forecasting?

6 A. Shopping load versus non-shopping load.

7 Q. Okay. Any forecast would nonetheless still have
8 a risk that the forecast was wrong and that DP&L
9 would result in an under recovery, right?

10 A. Certainly.

11 Q. And there could still, even if DP&L were to
12 forecast better, as you've described it, end up
13 in a situation where it has deferral balances in
14 those various riders in period one, right?

15 A. Yes, and that's why I suggest that they continue
16 to recover those in a non-bypassable basis until
17 those riders are either over or under recovery
18 has been returned to or collected from customers,
19 at which time the riders will be eliminated.

20 Q. You said non-bypassable. I'm pretty sure you
21 didn't mean that.

22 MR. LANG: Yeah, you said
23 non-bypassable.

24 THE WITNESS: I did?

25 MR. LANG: Yeah, you did.

1 THE WITNESS: Sorry. Thank you.

2 A. On a bypassable basis, as they had been.

3 Q. Do you understand that there is a risk that those
4 rider deferral balances may continue to grow over
5 time and thus become under your proposal charged
6 to an ever smaller group of SSO customers?

7 A. I don't agree that that's a big risk, because if
8 it's forecasted properly, I don't believe that
9 the amount of these reconciliation riders would
10 incentivize as DP&L believes additional customers
11 to shop.

12 So I think that it just needs to continue to
13 be recovered on a bypassable basis as it is today
14 until it's fully recovered.

15 Q. I understand your view that that's not a big
16 risk.

17 You would agree with me that it's possible
18 that the deferral balance could continue to grow
19 substantially as switching continues to occur?

20 A. I don't think it could if in fact it's forecasted
21 well or could or should.

22 Q. But if it's forecasted poorly it could, couldn't
23 it?

24 A. Yes, but I don't think that if it's forecasted
25 poorly, that that would be any reason why it

1 should flip to charge customers who are shopping
2 additional charges which they are not responsible
3 for. It's like having them pay twice.

4 Q. Let me ask you about your testimony regarding the
5 AER-N.

6 You understand that DP&L's proposed the AER-N
7 as a placeholder for the Yankee facility that it
8 has constructed?

9 A. Yes.

10 Q. You recommend that DP&L's proposal for the AER-N
11 be rejected?

12 A. Yes.

13 Q. Okay. Do you know whether the ESP statute
14 permits a non-bypassable charge associated with
15 solar facilities to be implemented if certain
16 criteria are met?

17 MR. LANG: Just objection to the
18 extent you're requesting a legal
19 conclusion.

20 But if you can answer, you can
21 answer what you know.

22 A. I reviewed the statute. I'm not sure that I'm
23 aware of specific language in there that
24 specifically says that, but my point here is, and
25 it's also in Dr. Lesser's testimony, that there

1 also needs to be considered when it's a
2 competitive service like AER-N is expecting to
3 include for a solar facility, that it should
4 consider competitive options to fill that rather
5 than construction of that facility and recovery
6 from captive rate payers.

7 Q. It's true, isn't it, that you don't sponsor any
8 testimony regarding whether or not the
9 constructions for the Yankee facility were
10 incurred or expended on or after January 1, 2009?

11 A. I've described to you what the extent of my
12 testimony is on that. Dr. Lesser has more
13 details, so I would defer you to him on
14 additional details.

15 Q. It's true, isn't it, that you don't address
16 whether the statutory elements in the section
17 relating to the AER -- strike that, start over,
18 because that's a poorly worded question.

19 It's true, isn't it, that you don't address
20 whether the elements of the statute that permit
21 non-bypassable charges for environmental
22 construction are satisfied?

23 A. To me, it's similar to the discussion we had
24 earlier about the statute. The statute that
25 you're referring to is embodied in 4928, which is

1 about competitive retail electric service. So
2 while I have not in my testimony considered what
3 you're talking about specific standards one by
4 one, I believe that as a statute that certainly
5 my point is that you should not receive
6 non-bypassable cost recovery for a generating
7 facility without first determining that something
8 for the generation service that you could
9 substitute that's competitively bid.

10 Q. The comparison that you're making between the
11 Yankee facility and something that would be
12 supplied via competitive bid, did I correctly
13 understand that that was the comparison that you
14 were making?

15 A. I was saying by competitive bid or through market
16 sources.

17 Q. Okay. You would agree with me that the relevant
18 comparison for determining whether or not the
19 charge should be permitted under the statute be
20 based upon the facts as they existed at the time
21 the utility had made the decision?

22 MR. LANG: Objection to the extent
23 you're calling for a legal conclusion.

24 But you can answer, if you can.

25 A. I don't know.

1 Q. Okay. Let me switch to the SSR and the ST.

2 It's true, isn't it, that you don't sponsor
3 any testimony regarding whether those items are a
4 term condition or a charge?

5 A. Can you define those terms for me, term condition
6 or charge?

7 Q. Do you understand what a charge is?

8 A. Yes.

9 Q. Do you agree with me that the SSR and the ST
10 would be charges?

11 A. I don't know the term of the definition how
12 you're using it, but to me they are being charged
13 to customers and collected by DP&L, at least
14 that's their proposal.

15 Q. So you do understand the word "charge," there'd
16 be a charge if they're approved?

17 A. To me they're being charged and they're either
18 under a rider or a tariff, and those are rates
19 that are charged to customers.

20 Q. It's true, isn't it, that you do not sponsor any
21 testimony regarding whether the SSR and ST relate
22 to limitations on customers shopping for retail
23 electric generation service, bypassability,
24 standby, backup or supplemental power service,
25 default service, carrying costs, amortization

1 periods, and accounting or deferrals, including
2 future recovery of such deferrals?

3 A. I didn't follow that.

4 Q. I will hand you a copy of the statute.

5 I ask you to take a look at Ohio Revised Code
6 Section 4928.143 b to d. It's on Page 2.

7 A. Okay.

8 Q. And my question to you is: It's true, isn't it,
9 that there's nothing in your pre-filed testimony
10 that we've been talking about today that
11 addresses one way or the other whether the SSR
12 and the ST relate to limitations on customers
13 shopping for retail electric generation service,
14 bypassability, standby, backup or supplemental
15 power service, default service, carrying costs,
16 amortization periods, and accounting or
17 deferrals, including future recovery of such
18 deferrals?

19 A. I don't know if I understand it well enough to
20 know.

21 Q. You're not aware as you sit here today of
22 anything in your testimony that addresses that
23 topic, are you?

24 A. Not as I sit here today.

25 Q. Okay. Are you aware of anything that -- strike

1 that.

2 Are you aware of anything in your testimony
3 that addresses whether or not the SSR and ST
4 would have the effect of stabilizing or providing
5 certainty regarding retail electric service in
6 DP&L's service territory?

7 A. I do have comments in my testimony related to
8 that. That in fact I think that it provides a
9 subsidy generation which impacts the competitive
10 market in an unfavorable fashion.

11 Q. Is it true that there's nothing in your testimony
12 that addresses whether or not the SSR -- strike
13 that.

14 Is it true that there's nothing in your
15 testimony that addresses whether or not DP&L
16 could provide stable service within its service
17 territory without the SSR or the ST?

18 A. Well, stable service to me means distribution,
19 and if that were the case, then DP&L would have
20 filed a distribution case. So, no, I'm not
21 addressing whether or not DP&L's stable,
22 adequate, you know, distribution system is an
23 issue in this case.

24 Q. Are you aware -- strike that.

25 You're well aware of the fact that DP&L, an

1 entity currently owns transmission, distribution
2 and generation assets, correct?

3 A. Yes.

4 Q. First of all, do you know whether DP&L will be
5 able to provide stable distribution service if as
6 a corporate entity it has insufficient funds to
7 pay its bills as they come due?

8 MR. LANG: Objection to the
9 hypothetical as incomplete, lack of
10 foundation.

11 Answer if you can.

12 A. Can you repeat it?

13 Q. Sure.

14 Do you know whether DP&L will be able to
15 provide a stable distribution service if it has
16 insufficient revenues to pay its bills as they
17 come due?

18 MR. LANG: Okay. Same objection.

19 Go ahead.

20 A. I don't know that it has insufficient bills to
21 pay, insufficient revenue to pay its bills, so I
22 can't answer.

23 Q. You don't know whether it would have insufficient
24 revenue to pay its bills if the SSR or the ST
25 were denied?

1 A. I thought your question related to whether or not
2 they had the ability to provide distribution
3 service because of that.

4 Q. That was that question. This is -- and I'm
5 following up on your answer.

6 The next question to you is: Do you know
7 whether DP&L would have sufficient revenue to pay
8 its bills if the SSR and the ST were rejected?

9 A. Sufficient revenue for what, to pay its bills,
10 you said, completely?

11 Q. Pay its bills as they become due in the ordinary
12 course.

13 A. I don't know that I can answer that.

14 Q. The answer is you don't know whether DP&L would
15 have sufficient revenue to pay its bills as they
16 become due?

17 A. I think that if they didn't, they should file a
18 distribution case, so I don't know. Corporately
19 separate and file a distribution case.

20 Q. And it's also true that you don't know whether
21 DP&L could provide stable distribution service if
22 as a corporate entity it has insufficient funds
23 to pay its bills?

24 MR. LANG: Objection to the
25 hypothetical. Again, lack of foundation.

1 You can answer.

2 MR. SHARKEY: I would agree with
3 you for the foundation.

4 A. My recollection of DP&L's testimony, and it could
5 have been in a deposition, was that they did have
6 adequate distribution service and revenues to
7 cover the distribution.

8 Q. That's not my question.

9 You understand, first of all, that DP&L as it
10 currently exists is an integrated business that
11 owns transmission, distribution and generation
12 assets, right?

13 A. Correct.

14 Q. And you understand that DP&L has first mortgage
15 bonds that require it to pay substantial amounts
16 to the bond holders, correct?

17 A. Yes.

18 Q. And those bond holders would have certain rights
19 as against DP&L's assets if DP&L doesn't pay the
20 amounts due under those bonds, right?

21 A. Yes, I believe that there are some bond holder
22 restrictions that need to be taken care of.

23 Q. And you understand that in the ordinary course of
24 operating its business, DP&L pays bills
25 associated with various things that would range

1 from coal to employee salaries to paying
2 companies who are employees to clear lines,
3 right?

4 A. Yes.

5 Q. My question to you is, if DP&L has a corporate
6 enterprise that owns transmission, distribution
7 and generation assets like it does today, had
8 insufficient funds to pay those bills, do you
9 know whether it could provide a stable
10 distribution service?

11 MR. LANG: Same objection as
12 earlier to the hypothetical and lack of
13 foundation.

14 But if you know, you can answer.
15 Just don't speculate.

16 A. I don't know, but I think that's what DP&L has to
17 prove.

18 Q. You address starting on Page 19 various items
19 that you describe as barriers to retail
20 competition, correct?

21 A. Yes.

22 Q. First question to you is, are you aware of
23 anything in the statute that authorizes the
24 commission to consider and issue orders in an SSO
25 case relating to alleged barriers to competition?

1 A. We've discussed the statute before and I think
2 that it's about competitive retail electric
3 service and the commission's required to
4 implement rules and regulations and guidelines in
5 keeping with that statute. So, yes, I think they
6 do have the ability to do that.

7 Q. Are you aware of anything in the statute that
8 says the commission shall or may consider the
9 nature of whether there are barriers to
10 competition when the commission is ruling upon an
11 SSO?

12 A. I don't know that it's explicitly written in the
13 statute, but I know that the commission believes
14 that it does, because after the last case that we
15 intervened in for DP&L, it directed us to raise
16 some of our issues on barriers to competition in
17 the DP&L's next rate plan.

18 Q. Which case are you talking about?

19 A. It was either the AES, DP&L merger case, or the
20 ATA case that they filed shortly thereafter.

21 Q. Are you aware of any specific commission rule
22 relating to competitive enhancements that DP&L is
23 not in compliance with?

24 A. The statute says that they should promote and
25 encourage retail competition or in other words

1 like that, and to me that is the proposed rule,
2 that is the statute and that's what the
3 commission is charged with doing. And they
4 recently, even in the AEP case changed the
5 switching fee for AEP which we considered to be a
6 barrier in that case, recognizing that it's
7 something that needed to be more levelized across
8 the state in terms of a standard.

9 Q. Are you aware of any specific rule that
10 establishes the cutoff for when a utility can
11 require a customer to have an interval meter?

12 A. Again, there's not a specific rule, but it's the
13 standard in the state that the commission has
14 approved. Every other supplier, at least Duke
15 and AEP Ohio, their interval meter threshold is
16 200 kW.

17 Q. It's true, isn't it, that you can't cite me to
18 any specific rule that DP&L is in violation of?

19 A. There is no specific rule. I indicated that it's
20 an overall objective to promote competition in
21 the state and remove barriers.

22 Q. Are you aware of any specific commission order
23 that DP&L is in violation of?

24 A. No.

25 Q. Who do you believe should pay any costs

1 associated with the provisions that you suggest
2 DP&L should be ordered to implement?

3 A. Well, I think for the most part, at least the
4 ones that are in DP&L's testimony today, that
5 there are things that should have either been
6 removed or in one case was already there but was
7 taken away, or at least it's in my testimony,
8 like on the eligibility file shopping flag,
9 that's something that did once exist that doesn't
10 now, so I think there's probably very little cost
11 to that one.

12 For those smaller items, I don't think
13 that -- I think they should just be implemented.
14 For things like, for example, the web-based
15 system, which is a newer initiative in the state,
16 I think that we would not be opposed to a,
17 recovering that from customers in a
18 non-bypassable rider, since I think all customers
19 benefit from that.

20 Q. It's true, isn't it, that you don't sponsor any
21 analysis, charts, exhibits that show that
22 customers do in fact benefit from those type of
23 retail enhancements that you've identified?

24 A. No, I don't have a chart, but I have listened to
25 a customer call and other calls in the call

1 center that, where customers don't get enrolled
2 and get rejected and are concerned about that.
3 So for me, it's not always about providing
4 additional service, it's about having a
5 customer's experience with shopping be a positive
6 one. I don't know how you would put that on a
7 chart.

8 Q. Have you read the testimony of OCC Witness Hagens
9 (phonetic)?

10 A. I have not read any other intervenor testimony
11 other than FES's.

12 Q. If customers were opposed to paying the costs
13 associated with, for example, with the web-based
14 design item that you've described, do you agree
15 that customers shouldn't have to pay for them?

16 A. I haven't read Hagens' testimony, so I don't
17 know. I'd have to think about it in context with
18 what he said.

19 Q. I'm not asking you about Hagens' testimony, but
20 just in --

21 A. I'm sorry, I thought you did.

22 Q. I did earlier, but I intended then to move away
23 from the subject --

24 A. Okay.

25 Q. -- because you hadn't read it.

1 But to ask a broader question that is, if
2 customers are opposed to paying for the costs of
3 a web-based system because they believe that the
4 benefits to them do not exceed the costs, do you
5 still believe that customers should be required
6 to pay for the implementation of that item?

7 A. In that particular item, the web-based system, I
8 think that that's a commission decision about the
9 benefits that it can provide to facilitating the
10 information flow from utilities to suppliers to a
11 benefit of all customers, so I think that the
12 customers should pay for that.

13 Q. If you heard -- strike that.

14 Are you familiar with the notion that a
15 utility can recover its costs only if they were
16 prudently incurred?

17 A. Yes.

18 Q. Okay. And one consideration in whether they were
19 prudently incurred is whether the expected
20 benefits exceed the expected costs?

21 MR. LANG: Objection to the extent
22 it calls for a legal conclusion.

23 But if you know the answer, go
24 ahead.

25 A. Could you restate the question?

1 Q. Do you know whether one part of a prudent review
2 is to determine whether the expected benefits
3 exceed the expected costs?

4 A. No, I don't know that.

5 Q. Is it true that we can't look at your testimony
6 and find an analysis of whether the expected
7 benefits exceed the expected costs of the various
8 items that you say DP&L should do?

9 A. No, you can't find that analysis, but it's
10 awfully hard in context for me to think about
11 this when DP&L is requesting a billing over
12 market.

13 Q. Let's focus specifically on customer metering.

14 If I understand this, your position
15 accurately -- strike that.

16 Is it your understanding that DP&L currently
17 requires customers to have an interval meter when
18 they exceed 100 kW?

19 A. And if they shop.

20 Q. Sorry, and if they shop.

21 A. Yes.

22 Q. And it's your proposal that the number should be
23 200 kW? Do I understand that right?

24 A. Yes.

25 Q. Okay. What's the source of the 200 kW number?

1 A. It's the same standard that AEP, Ohio Power and
2 Duke have in their tariffs as well. It
3 represents a customer size that is a little bit
4 of a larger customer. The difficulty with those
5 under 200 kW is that they're smaller customers,
6 so the cost of putting in the meter becomes a
7 barrier to their entry into shopping.

8 Q. It's true, isn't it, that there's no study or
9 analysis in your testimony that shows
10 mathematically that the 100 kW or the 200 kW
11 figure is superior?

12 A. I don't think it's mathematically here, no, but
13 it is a standard in Ohio, and again, knowing the
14 shopping statistics as they are, the customers
15 that are not shopping are the smaller customers.

16 Q. Do you know -- strike that.

17 It's also likely that smaller customers are
18 less sophisticated in terms of their knowledge of
19 their options to switch than larger customers?

20 A. They could be, but they're also very sensitive to
21 nominal values that require them to install an
22 interval meter at 500 plus dollars.

23 Q. What's your basis for that statement?

24 A. Customer experience.

25 Q. Have you communicated with specific customers who

1 have told you that?

2 A. Our sales force has.

3 Q. In DP&L's service territory?

4 A. I don't know.

5 Q. Do you know what DP&L's cost for an interval
6 meter is?

7 A. The cost to DP&L or the cost that they charge
8 customers?

9 Q. The cost to the customer.

10 A. I recall it being around \$500.

11 Q. Do you know how DP&L's charge to customers
12 compares to FirstEnergy's charge to customers?

13 A. Not exactly.

14 Q. Do you understand the numbers are pretty close?

15 A. I don't know.

16 Q. Turn, if you would, to Page 21, Line -- actually,
17 it starts on Page 20. One of the topics that's
18 addressed in your answer starts at the bottom of
19 Line 20 and extends onto Line 21 and relates to
20 rate ready percentage off billing, right?

21 A. Yes.

22 Q. What is rate ready percentage off billing?

23 A. Rate ready percentage off billing is where a
24 supplier has the ability to provide the utility
25 with one rate that they can translate into the

1 utility's consolidated billing system which
2 allows the customer's generation portion of their
3 bill to be a guaranteed percent off of the
4 utility's price to compare components.

5 Q. The idea being that the CRES provider can go to
6 its customer and say we promise you a five
7 percent discount and then have that actually
8 happen through the billing system?

9 A. Correct. If it's five percent discount off of
10 the utility's price to compare.

11 Q. And you understand that CRES providers can make
12 that calculation themselves, but describe it as
13 overly burdensome, inefficient and ineffective,
14 right?

15 A. Yes.

16 Q. And the reason is that DP&L's price to compare
17 changes several times throughout the year? One
18 of the reasons, right?

19 A. That's one of the reasons.

20 Q. Do you know how often DP&L's price to compare
21 changes?

22 A. Well, it depends. It depends on what component
23 you're referring to and Dona Seger-Lawson's
24 testimony includes that, but we've also attached
25 at the back the components of the PTC. I don't

1 know if it states on here how often each change,
2 but they're varying as well as whether they are
3 calculated based on a service rendered versus
4 bills rendered basis also varies.

5 Q. Which chart were you looking to in your
6 testimony? Sorry. Is that SLN-2?

7 A. Yes.

8 Q. And why does it matter whether they're on a
9 service rendered or bill rendered basis?

10 A. What matters is that they're not on a consistent
11 basis, so you have customers who are meter read
12 on different days of the month. There are over
13 20 meter reading cycles in a month and if you are
14 a service rendered customer, if the PTC change is
15 based on a service rendered component, then any
16 time after the effective date of a tariff change,
17 what you would be required to do would be to
18 prorate that customer's usage based on their
19 meter reading date.

20 So it's not just that you have PTC components
21 that change at different times throughout the
22 year, you also have the service rendered versus
23 bill rendered, on top of which you have 20 plus
24 meter read cycles for each customer all combined
25 into one. And it would require a supplier to, A,

1 get every change to a rider in a timely fashion,
2 assuming that DP&L files them that way, program
3 them and then make sure that everything is exact.
4 So that's why it becomes somewhat ineffective, as
5 opposed to providing a rate to the utility when
6 everything is already in their system and it
7 would calculate for you.

8 Q. Do you know how much it would cost to modify
9 DP&L's billing system to provide that service?

10 A. I don't know. I do know that, again, the other
11 utilities in this state provide it.

12 Q. Let's turn to Page 22 of your testimony.

13 You object to DP&L's 20 cent per consolidated
14 bill and 12 cent per dual bill charge, right?

15 A. Yes.

16 Q. And those are charges that are made to CRES
17 providers?

18 A. Yes.

19 Q. And have you -- first of all, do you know what
20 EDI costs DP&L incurs to provide consolidated
21 billing or dual billing?

22 A. Did you say EDI costs?

23 Q. Yes.

24 A. No, I don't.

25 Q. For consolidated billing -- let me step back.

1 What's the difference between consolidated
2 billing and dual billing?

3 A. Consolidated billing is the utility provides the
4 bill, the generation charges on the bill. Dual
5 billing is the supplier provides a separate bill
6 for generation services.

7 Q. And is it true that a customer -- I'm sorry, the
8 CRES providers that are serving residential
9 customers have generally used a consolidated
10 billing methodology?

11 How about if I strike CRES providers and ask
12 you just about FirstEnergy Solutions.

13 A. FirstEnergy Solutions typically does, yes.

14 Q. Now, in that circumstance, does FirstEnergy, when
15 it's a consolidated bill, do you believe that
16 FirstEnergy Solutions should bear some share of
17 the printing and postage costs that are incurred
18 to issue the consolidated bill?

19 A. I don't think so, because the bill is already
20 going out on behalf of the utility, so I don't
21 think that they should. And the other suppliers
22 in the state don't charge for that.

23 Q. If DP&L did not offer consolidated billing, then
24 FirstEnergy Solutions would have to incur costs
25 associated with printing of postage to bill

1 customers, right?

2 A. Yes.

3 Q. Okay. With DP&L offering consolidated billing,
4 why should FirstEnergy receive the entirety of
5 the cost savings associated with the fact that
6 now there is one bill instead of two being
7 issued?

8 A. Well, I think that's a cost effective way to do
9 it, though, if you already have a bill going out
10 by the utility, then if we're just adding our
11 charges to it, it doesn't add anything to that
12 mailing.

13 Q. Well, I understand that now the costs between
14 DP&L and FES have been cut approximately in half
15 by using consolidated billing, right? At least
16 the cost of printing and postage?

17 A. Yes.

18 Q. Okay. The question is, why should FirstEnergy
19 Solutions get the entirety of that cost savings
20 instead of sharing that cost savings with DP&L?

21 A. Even if that were true, which I'm not suggesting
22 that maybe suppliers shouldn't pay something, but
23 20 cents per bill is egregious.

24 Q. Do you know what DP&L's costs are to issue a
25 consolidated bill?

1 A. No, I don't, but again, the other suppliers in
2 the state don't charge 20 cents per bill.

3 Again, to me, it's just another barrier for
4 smaller customers or for suppliers to serve
5 smaller customers.

6 Q. Do you know whether that 20 percent, 20 cent per
7 consolidated bill charge and the 12 cent dual
8 bill charge were approved by the commission in an
9 earlier proceeding?

10 A. It's in a tariff, so it would have had to have
11 been in a prior proceeding, but just because it
12 was approved then doesn't mean it's appropriate
13 for now.

14 Q. Turn, if you would, to Pages 23 and 24. The
15 question's at the bottom of 23, but the answer
16 extends onto 24.

17 A. Okay.

18 Q. You're describing the DP&L customer switching
19 fee?

20 A. Yes.

21 Q. And you describe that DP&L charges that amount to
22 customers instead of to CRES providers? Right?

23 A. Yes.

24 Q. And you object to that and say that it should be
25 charged to CRES providers?

1 A. Yes.

2 Q. Okay. Earlier you told me that certain costs,
3 for example, associated with implementing a new
4 billing system should be charged to customers
5 instead of to CRES providers.

6 My question to you is: What standard do you
7 use to determine whether a particular cost should
8 be charged to CRES providers or to customers?

9 A. I think when I answered that question, it was
10 related specifically to the web-based system.

11 Q. Right.

12 A. That's what we were talking about.

13 Q. It was.

14 A. And in particular that was about providing a
15 service to easing, if you will, the communication
16 of information to suppliers about customers who
17 wanted to shop. So in that case, the customers
18 who were shopping would benefit from that, and
19 hence the customers who wanted to shop would
20 benefit from that.

21 Here the difference is this fee gets charged
22 directly to customers. They see the charge on
23 their bill as associated with being able to shop
24 and it's a barrier to them choosing to shop. So
25 in this case the fee can be charged, but it needs

1 to be charged to the supplier. I think it
2 depends on the charge.

3 Q. It's true, isn't it, that you do not sponsor any
4 testimony regarding whether DP&L could maintain
5 its financial integrity if your proposals in your
6 testimony were implemented?

7 A. I don't provide specific testimony about
8 financial integrity of DP&L, but Dr. Lesser does.

9 Q. Do you believe that it's in FirstEnergy
10 Solutions' best interest that DP&L be able to
11 maintain and provide a stable service?

12 A. Say that again, please.

13 Q. Do you believe it is in FES's best interest that
14 DP&L be able to provide stable service?

15 A. Does stable service mean reliable service?

16 Q. You can define it that way, yes.

17 A. I do think that it is in FES's best interest that
18 DP&L be able to provide reliable service and that
19 if in fact reliability I believe is a function of
20 the distribution system and if they need
21 additional funds or support for that, they should
22 file a distribution case.

23 Q. You do not sponsor any testimony regarding
24 whether DP&L could provide reliable service if
25 your proposals in this case were implemented, do

1 you?

2 MR. LANG: Objection to form and
3 ambiguous.

4 But you can go ahead.

5 A. I was going to ask you to rephrase it or repeat
6 it, please.

7 Q. Happy to.

8 Just so we're clear, there's a difference
9 between having an opinion and sponsoring
10 opinions. The sponsoring opinions are the
11 opinions that are contained in your written
12 testimony.

13 Do you understand that?

14 A. Yes.

15 Q. And it's true, isn't it, that you don't sponsor
16 any opinions in your written testimony regarding
17 whether DP&L could provide reliable service if
18 your various proposals were implemented?

19 MR. LANG: Same objection as to
20 form.

21 But go ahead.

22 A. I don't personally sponsor testimony about how
23 FirstEnergy Solutions' proposals impact DP&L's
24 ability for financial integrity, but Dr. Lesser
25 does. And I, as a general feeling, believe that

1 it's for DP&L to prove in this case and that they
2 haven't. They're requesting over a billion
3 dollars in subsidies and I believe that those are
4 improper.

5 Q. Your answer addressed -- actually, let me step
6 back.

7 MR. SHARKEY: Jim, you have posed
8 a form objection to the question. What's
9 the objection? Because I want to know if I
10 need to fix the question.

11 MR. LANG: Sure. I wasn't clear
12 what you meant when you referred to the
13 various proposals in the testimony, I
14 wasn't clear whether you were still on like
15 the section in the back about competitive
16 changes or whether you're talking about,
17 you know, everything in the testimony, for
18 example, eliminating the SSR. That wasn't
19 clear.

20 MR. SHARKEY: Okay. Thank you.

21 Q. Your answer used the phrase "financial
22 integrity," but I want to ask about reliable
23 service. So, and in responding to your counsel's
24 objection, we'll clean up the question.

25 Your testimony contains a large number of

1 proposals that you list. Many, maybe not all of
2 them, but many of them on Page 5, right?

3 A. Yes.

4 Q. It's true, isn't it, that there's no place in
5 your testimony where we can go and look and find
6 an analysis that shows whether DP&L could provide
7 reliable service if some or all of your proposals
8 were implemented?

9 A. There isn't, because many of my proposals relate
10 to competition and competitive electric
11 generation, which I believe is a competitive
12 business. And when you ask about reliable
13 service, to me, again, that's distribution and I
14 believe that those would be addressed in a
15 distribution case.

16 So, no, my testimony deals with competitive
17 electric generation service and eliminating
18 barriers to competition.

19 Q. We are approaching a cutoff point where your
20 attorney will need to go to another deposition.

21 MR. SHARKEY: Let's go off the
22 record for a second.

23 - - - -

24 (Thereupon, a discussion was had off the
25 record.)

1

2 Q. I told you awhile ago that as we approached the
3 end of your deposition that I was going to again
4 ask you whether or not you're aware of any
5 rational economic reason that DPLER would change
6 its business strategies based upon whether or not
7 DP&L received the SSR.

8 It's now been an hour, maybe two hours since
9 that happened. In the succeeding hour or two,
10 have you thought of anything else that you wanted
11 to add to your prior answers to those questions?

12 A. Not on my answer to that question, but I
13 certainly haven't been thinking about it. I've
14 been thinking about this.

15 Q. I understand.

16 A. So, no. My concern principally in my testimony
17 is about DP&L and their ownership of generation
18 and the subsidies that they're requesting.

19 Q. I understand that you've been focused on this,
20 but I told you I'd give you an opportunity to
21 answer that question again as we approach the
22 end.

23 A. Okay.

24 MR. SHARKEY: Let's go back off
25 the record.

1 - - - -

2 (Thereupon, a recess was had.)

3 - - - -

4 MR. SHARKEY: I don't have
5 anything else. We're done, Sharon.

6 THE NOTARY: Signature? I don't
7 know if you still do that with this type of
8 a case.

9 MR. LANG: Yeah, we still do that.

10 MR. SHARKEY: Do you want to ask
11 if anybody else on the line has any
12 questions?

13 MR. LANG: Is there anyone still
14 on the line who wanted to ask questions in
15 say the next 30 seconds?

16 MR. FINENENG: This is Phil
17 Fineneng, no questions.

18 MR. LANG: Thank you, Philip. I
19 think we're good.

20 THE NOTARY: And then the
21 signature?

22 MR. LANG: We will not waive
23 signature.

24 - - - -

25 (Deposition concluded at 1:23 p.m.)

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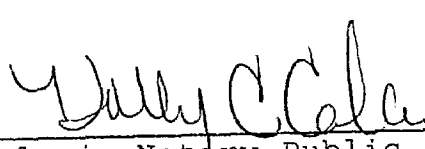
SHARON L. NOEWER

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3 C E R T I F I C A T E
4

5 The State of Ohio,) SS:
6 County of Cuyahoga.)

7 I, Holly C. Calcei, a Notary Public within
8 and for the State of Ohio, authorized to
9 administer oaths and to take and certify
10 depositions, do hereby certify that the
11 above-named witness was by me, before the giving
12 of their deposition, first duly sworn to testify
13 the truth, the whole truth, and nothing but the
14 truth; that the deposition as above-set forth was
15 reduced to writing by me by means of stenotypy,
16 and was later transcribed into typewriting under
17 my direction; that this is a true record of the
18 testimony given by the witness; that said
19 deposition was taken at the aforementioned time,
20 date and place, pursuant to notice or
21 stipulations of counsel; that I am not a relative
22 or employee or attorney of any of the parties, or
23 a relative or employee of such attorney or
24 financially interested in this action; that I am
25 not, nor is the court reporting firm with which I
am affiliated, under a contract as defined in
Civil Rule 28(D).

18 IN WITNESS WHEREOF, I have hereunto set my
19 hand and seal of office, at Cleveland, Ohio, this
20 15th day of March, A.D. 20 13.

21
22 
23 Holly C. Calcei, Notary Public, State of Ohio
24 1750 Midland Building, Cleveland, Ohio
25 My commission expires March 13, 2015



C E R T I F I C A T E

The State of Ohio,) SS:
County of Cuyahoga.)

I, Holly C. Calcei, a Notary Public within and for the State of Ohio, authorized to administer oaths and to take and certify depositions, do hereby certify that the above-named witness was by me, before the giving of their deposition, first duly sworn to testify the truth, the whole truth, and nothing but the truth; that the deposition as above-set forth was reduced to writing by me by means of stenotypy, and was later transcribed into typewriting under my direction; that this is a true record of the testimony given by the witness; that said deposition was taken at the aforementioned time, date and place, pursuant to notice or stipulations of counsel; that I am not a relative or employee or attorney of any of the parties, or a relative or employee of such attorney or financially interested in this action; that I am not, nor is the court reporting firm with which I am affiliated, under a contract as defined in Civil Rule 28(D).

IN WITNESS WHEREOF, I have hereunto set my hand and seal of office, at Cleveland, Ohio, this ____ day of _____, A.D. 20 ____.

Holly C. Calcei, Notary Public, State of Ohio
1750 Midland Building, Cleveland, Ohio 44115
My commission expires March 13, 2015

ERRATA SHEET

To the reporter:

I have read the entire transcript of my deposition taken on March 12, 2013. I request that the following changes be entered upon the record for the reasons indicated. I have signed my name to the signature page and authorize you to attach the same to the original transcript.

Page	Line	Change	Reason
4	5	"DP&L" should be "PPL"	Typographical error
12	17	"shouldn't" should be "should"	Typographical error
19	3	"Harrington" should be "Herrington"	Typographical error
30	25	"in" should be "and"	Typographical error
32	16	"billing" should be "billion"	Typographical error
70	19	"plaintiffs" should be "plans for"	Typographical error
106	8	"Hagens" should be "Hagans"	Typographical error
106	16 and 19	"Hagens'" should be "Hagans'"	Typographical error
106	18	"he" should be "she"	Typographical error
108	11	"billing" should be "billion"	Typographical error
123	16 and 17	"Fineneng" should be "Sineng"	Typographical error

3/19/13
Date

Sharon L. Noewer
Sharon L. Noewer

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Commission of Ohio Docketing Information System on

3/20/2013 3:10:48 PM

in

Case No(s). 12-0426-EL-SSO, 12-0427-EL-ATA, 12-0428-EL-AAM, 12-0429-EL-WVR, 12-0672-EL-RDR

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