

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application
of The Dayton Power and Case 12-426-EL-SSO
Light Company for Approval of
Its Market Rate Offer.

In the Matter of the Application
of The Dayton Power and Case 12-427-EL-ATA
Light Company for Approval of
Revised Tariffs.

In the Matter of the Application
of The Dayton Power and Case 12-428-EL-AAM
Light Company for Approval of
Certain Accounting Authority.

In the Matter of the Application
of The Dayton Power and Case 12-429-EL-WVR
Light Company for Waiver of
Certain Commission Rules.

In the Matter of the Application
of The Dayton Power and Case 12-672-EL-RDR
Light Company to Establish
Tariff Riders.

* * *

Deposition of KENNETH ROSE, Ph.D.,

Witness herein, called by The Dayton Power and
Light Company for cross-examination pursuant to
the Rules of Civil Procedure, taken before me,
Michelle A. Elam, a Notary Public in and for the
State of Ohio, at The Office of the Ohio
Consumers' Counsel, 10 West Broad Street, Suite
1800, Columbus, Ohio, on Wednesday, the 13th day
of March, 2013, at 9:30 a.m.

* * *

1	EXAMINATION CONDUCTED	PAGE
2	BY MR. FARUKI:	4

3

4	EXHIBITS MARKED	PAGE
5	(Thereupon, DP&L Rose Exhibit Number	3
6	1, a document entitled Direct	
7	Testimony of Kenneth Rose, Ph.D.,	
8	was marked for purposes of	
9	identification.)	

10 (Thereupon, DP&L Rose Exhibit Number 3
11 2, an addendum to the Direct
12 Testimony of Kenneth Rose, Ph.D.,
13 was marked for purposes of
14 identification.)

1 APPEARANCES:

2 On behalf of Dayton Power and Light:

3 Faruki, Ireland & Cox, P.L.L.

4 By: Charles J. Faruki
5 Attorney at Law
6 500 Courthouse Plaza, S.W.
7 10 North Ludlow Street
8 Dayton, Ohio 45402

9 On behalf of The Office of the Ohio Consumers'
10 Counsel:

11 The Office of the Ohio Consumers' Counsel

12 By: Maureen Grady
13 Attorney at Law
14 10 West Broad Street
15 Suite 1800
16 Columbus, Ohio 43215-4228

17 ALSO PRESENT:

18 Daniel Duann (Telephonically)

19 * * *

20 (Thereupon, DP&L Rose Exhibit Number
21 1, a document entitled Direct Testimony of Kenneth
22 Rose, Ph.D., was marked for purposes of
23 identification.)

24 (Thereupon, DP&L Rose Exhibit Number
25 2, an addendum to the Direct Testimony of Kenneth
Rose, Ph.D., was marked for purposes of
identification.)

1 KENNETH ROSE, Ph.D.
2 of lawful age, Witness herein, having been first
3 duly cautioned and sworn, as hereinafter
4 certified, was examined and said as follows:

5 CROSS-EXAMINATION

6 BY MR. FARUKI:

7 Q. Good morning, Mr. Rose. I'm
8 Charlie Faruki, and I represent the applicant
9 in this case, the Dayton Power and Light. I
10 introduced myself to you off the record. Would
11 you tell us your full name and where you
12 reside?

13 A. My name is -- good morning. My
14 name is Ken Rose -- Kenneth Rose, my full name,
15 and I live in Upper Arlington, Ohio. And I'm
16 an independent consultant.

17 MR. FARUKI: Maureen, I thought I
18 heard somebody join us.

19 MS. GRADY: Yes.

20 MR. FARUKI: Can we see if there's
21 somebody else on the phone?

22 MR. DUANN: This is Mr. Duann with
23 the OCC.

24 MR. FARUKI: Good morning. Anybody
25 else on the line before we start? Okay.

1 Q. I have marked -- or had the court
2 reporter mark as Exhibit 1 to your deposition a
3 copy of your prefiled testimony, although I
4 told you off the record you can use the one
5 that you brought with you if you'd like. Your
6 counsel informed me that you have a correction
7 to your testimony as well.

8 A. Right.

9 Q. Can you explain for the record --
10 or unless you wanted to do that, Maureen --
11 what the correction is?

12 MR. FARUKI: I've marked the page you
13 gave me, Maureen, as Exhibit 2.

14 MS. GRADY: Why don't you go ahead
15 and just go through the correction, Mr. Rose.

16 THE WITNESS: The correction was to
17 question twenty-two. And basically it's to delete
18 can and insert is DP&L's proposed service
19 stability rider a permissible charge stabilizing
20 or providing certainty regarding retail electric
21 service. And the answer has not changed. The
22 answer is the same.

23 Q. Okay. Thank you. When were you
24 engaged in this matter?

25 A. December of last year, 2012.

1 Q. Is this the first engagement
2 you've had with Consumers' Counsel?

3 A. Yes.

4 Q. And is there a --

5 A. Well, let me correct that.

6 Q. Go ahead.

7 A. I was in the original MRO, I was
8 asked to participate then; but then later on,
9 it turned out I didn't really get involved in
10 the case. So this is the first time that I'm
11 actually submitting testimony.

12 Q. The MRO you're referring to was
13 the DP&L MRO that was withdrawn?

14 A. That's right.

15 Q. Okay. Have you testified in
16 matters before?

17 A. Not before the PUCO.

18 Q. What sort of matters have you
19 testified in?

20 A. In Ohio?

21 Q. Start with that.

22 A. I've testified to the legislature,
23 but I've never testified before the Commission.

24 Q. Have you testified in court?

25 A. No, not in Ohio.

1 Q. Have you testified before other
2 agencies in Ohio?

3 A. Not testimony, no.

4 Q. And have you been deposed before?

5 A. No, actually. I've been
6 cross-examined, but not -- not deposition.

7 Q. So this is your first deposition;
8 is that correct?

9 A. On a utility matter. I was
10 deposed once on a car accident many years ago.

11 Q. All right. Outside Ohio, have you
12 testified in court?

13 A. No.

14 Q. Outside Ohio, have you testified
15 before agencies?

16 A. Yes.

17 Q. What agencies would those be?

18 A. The Illinois Commerce Commission.
19 A number of state legislatures, which I believe
20 are listed in my vitae. Those include
21 Michigan, Illinois, Indiana, Pennsylvania
22 Public Utility Commission. Connecticut. I've
23 also testified before the Arizona Corporation
24 Commission. That's their public utility
25 commission. There may be others. I can't --

1 those are the ones I can recall offhand.

2 Q. When I studied attachment one to
3 your testimony -- which you have before you,
4 correct?

5 A. Yes.

6 Q. When I studied it, attachment one
7 to your testimony, it appeared to me that your
8 testimony and presentations before public
9 utility commissions or state public service
10 commissions were not in cases that had issues
11 similar to this case. Is that right or is that
12 not correct?

13 A. Well, most of the testimony has
14 been involved in -- I'd say generally on the
15 issues of restructuring the electricity market
16 and bringing competition to the area, the
17 state.

18 I've also testified before FERC, that
19 just occurred to me, and that's been on wholesale
20 matters. Now, that's not oral testimony. That's
21 written testimony. That's how FERC does it.

22 Q. The testimony that you've given in
23 state public utility commissions and state
24 public service commissions has been testimony
25 that did not involve an electric security plan;

1 is that right?

2 A. Well, that's unique to Ohio. In
3 Illinois, the issue was opening up having a
4 competitive bid for the residential customers.
5 I was representing -- or a witness for the
6 attorney general in Illinois. And the issue
7 was competition. So many of the issues were
8 similar; but the procedures that Ohio has,
9 they're unique to Ohio as every state has its
10 own procedures and history.

11 Q. You are -- you describe yourself
12 on page 1 of attachment one as an independent
13 consultant; is that right?

14 A. That's right.

15 Q. That means you're not employed by
16 or affiliated with either OCC or a law firm
17 that's in this case; is that correct?

18 A. That's correct.

19 Q. Are any of your articles that you
20 list ones that you consider to be pertinent to
21 the issues in this case? And if so, which
22 ones?

23 A. There are quite a number of things
24 that I've written over the years that pertain
25 to retail access, retail markets. One last

1 year, June of last year, which I believe is
2 listed in my vitae, looks at the performance
3 of -- the relative performance of restructured
4 states versus states that have gone to retail
5 access, like Ohio.

6 Q. Is that the first listed article?

7 A. Actually, I don't have the vitae
8 attachment.

9 Q. You can use mine.

10 A. If you give me the title --

11 Q. Well, look at mine. I'm giving
12 you attachment one and showing you the page.
13 It says Articles.

14 A. That's it.

15 Q. Actually, I'll let you use my copy
16 and ask you, on the same topic, are there
17 articles that you list there which you consider
18 pertinent to the issues in this case, other
19 than the one you've just given me?

20 A. Well, if I could ask you to be a
21 little bit more specific about pertinent. I'm
22 answering the question assuming that in a
23 general area of restructure and retail access.
24 But if you mean more specific, on DP&L's case,
25 then, no, there's nothing in here that would --

1 Q. That was my question. Is there an
2 article, other than the one you did give me
3 from June, that you consider to be relevant to
4 the issues in the DP&L case?

5 A. No.

6 Q. Okay. What is your compensation
7 arrangement with OCC?

8 A. You mean the amount or the
9 arrange -- it's a contract arrangement, and
10 it's an hourly rate.

11 Q. What is your hourly rate on this
12 engagement?

13 A. I believe we have it at one eighty
14 per hour.

15 Q. Can you estimate for me how much
16 time you have spent in this matter prior to
17 today?

18 A. No. I haven't added -- I haven't
19 added that up. It's on my calendar, but I
20 haven't sent them an invoice yet. So I don't
21 have that itemized yet.

22 Q. So you were engaged in December
23 but have not yet sent an invoice?

24 A. No. The real work on this hasn't
25 really started until January.

1 Q. Do you know how much time you've
2 spent since January approximately?

3 A. Again, I haven't sent an invoice.
4 So I don't know.

5 Q. Did you write all of your own
6 testimony?

7 A. I wrote this testimony myself, and
8 then there was assistance from the OCC staff on
9 some of the particulars.

10 Q. What do you mean when you say
11 there was assistance from the OCC staff on some
12 of the particulars?

13 A. Well, in several cases we talk
14 about advice of counsel. So relevant portions
15 of the Ohio law in the citations, they provided
16 assistance on that.

17 Q. And who was that counsel?

18 A. Maureen.

19 Q. Now, while we're on that subject,
20 you are not an attorney; is that correct?

21 A. That's correct.

22 Q. So to the extent that you are
23 expressing legal opinions or conclusions in
24 various parts of your testimony, is it accurate
25 that you have not had legal training?

1 A. I have not had legal training, but
2 I am familiar with the law in Ohio.

3 Q. But you don't consider yourself
4 competent by training to express opinions or
5 conclusions of law, do you?

6 A. Not in the strict legal sense of
7 the word, but I can -- I've had some experience
8 working with the legislators that have -- so
9 the legislation as it translated into the Ohio
10 code, I'm familiar with that.

11 Q. So if I can shorten this up, when
12 you are expressing at various points a point of
13 law on which you were advised by counsel, you
14 are accepting for purposes of your testimony
15 the principle of law as it was expressed to you
16 by OCC's counsel; is that right?

17 MS. GRADY: Mr. Faruki, can I ask you
18 to specify in the testimony to what you're
19 referring? Give the witness some context for your
20 question.

21 Q. You know, sir, there are various
22 points in your testimony that you express legal
23 opinions and conclusion?

24 A. Yes.

25 Q. One of those, for example, is page

1 2, lines twenty-one and twenty-two; is that
2 right?

3 A. Yes.

4 Q. Another one is page 4, lines
5 twenty to twenty-two; is that right?

6 A. Yes.

7 Q. I'll use those as examples in my
8 question -- well, let me give you some more
9 examples. Page 12, another one is the answer
10 that begins at line eight of page 12. Is that
11 right?

12 A. Yes.

13 Q. Another one is on the same page,
14 page 12, that begins on line fifteen; is that
15 right?

16 A. Well, sixteen on the corrected
17 version.

18 Q. Oh, my apology. It's the line
19 that begins an answer no, per my understanding
20 and advice of counsel, the SSR is not, that's
21 yet another point at which you're expressing a
22 legal opinion or conclusion?

23 A. Yes.

24 Q. When you say in this answer per my
25 understanding and advice of counsel, that was

1 counsel at OCC?

2 A. That's correct.

3 Q. On page 13, you have a line -- at
4 least line four on my copy begins additionally.
5 Is it still line four on yours?

6 A. Yes.

7 Q. That answer where you are talking
8 about what a particular provision of the
9 revised code was intended for, that's yet
10 another legal opinion or conclusion, correct?

11 A. Yes.

12 Q. So is the next sentence where you
13 make a -- it begins I conclude, where you're
14 talking about a conflict with Section 4928.141;
15 is that right?

16 A. Yes.

17 Q. And another one at the beginning,
18 at line ten that explains what a particular
19 section of the revised code, to use your word,
20 clearly states; is that right?

21 A. Yes.

22 Q. I'll just -- there are some
23 others, but I'll just use those as examples.
24 When you express those legal opinions, you are
25 doing so in reliance on the statements or

1 advice that you receive from OCC's counsel?

2 A. Well, based on my own conclusions
3 not as an attorney but somebody who is familiar
4 with restructuring. That's my interpretation.

5 Q. And that's then an interpretation
6 of a nonlawyer that is a layperson as to the
7 law; is that right?

8 A. As a nonlawyer. I wouldn't say a
9 layperson because I think I'm more familiar
10 with than your average person at least the
11 topic.

12 Q. Let me ask it this way: Do you
13 consider yourself to be competent to testify on
14 points of law exclusive of being advised by OCC
15 on points of Ohio law?

16 A. No.

17 Q. These various provisions that
18 we've looked at in your testimony are part of
19 the assumptions on which your testimony is
20 based; is that right?

21 A. Assumptions that were in -- that
22 are in the -- in the testimony. I have to
23 comport with the law at least in some way. I
24 can't say anything that is contrary to the law.
25 So some interpretation is required. If -- if

1 I -- if the laws were written differently, then
2 the conclusions would have to be different.
3 But I'm looking at it as an economist and what
4 makes sense within the context of Ohio law.

5 Q. Okay. That's not quite my
6 question. I'm asking you if these expressions
7 in your testimony of what Ohio law is are some,
8 not all, but some of the assumptions on which
9 your testimony is based?

10 A. The assumptions come from my
11 understanding of how a competitive market would
12 operate. And, again, it has to be within the
13 context of the law. So it's my interpretation
14 of the law and how it comports with what the --
15 how a competitive market would operate.

16 Q. These statements of Ohio law then
17 are part of a foundation for your opinions,
18 right?

19 A. I would say the foundation is
20 based on my understanding of how competitive
21 markets work. And then it's the interpretation
22 of the law, whether or not it fits with what
23 the legislators intended and what's in the
24 revised code.

25 Q. So what you're saying -- you

1 correct me if I misstate this. What you're
2 saying is that these statements of Ohio law are
3 not part of the foundation of your opinions but
4 in your mind are integral parts of your
5 opinions; is that right?

6 A. Right. Well, it can't be contrary
7 to the law. So it's an integral part.

8 Q. You are not an accountant; is that
9 correct?

10 A. That's correct.

11 Q. Is your testimony dependent in any
12 way on opinions or testimony of other witnesses
13 for OCC?

14 A. No, not really. Other witnesses,
15 as you know, have taken other -- have been
16 addressing other parts of the company's
17 filings. But mine is not really dependent on
18 theirs.

19 Q. As part of your engagement, did
20 you learn what positions OCC was taking in this
21 case with regard to DP&L's ESP?

22 A. Yes, that was discussed.

23 Q. Tell me what your understanding is
24 of those positions.

25 A. Is there anything specific?

1 Q. No. I just want to know what you
2 know.

3 A. The basic position that the OCC is
4 taking, that they have taken, that they would
5 prefer to go to one hundred percent of the
6 market starting right away rather than the
7 gradual schedule that the company has proposed.

8 I believe there's other witnesses
9 that will testify on the earnings, projections,
10 and also -- and I don't know the specifics of
11 those. And others are also talking about the
12 other issues related to the earnings profile and
13 potential transition costs.

14 Q. Let me narrow my question a little
15 bit. Insofar as the subjects that you are
16 covering in your testimony, I'll leave aside
17 any other OCC witnesses, what do you
18 understand -- or what did you learn in the
19 process of this engagement about what OCC's
20 positions were?

21 MS. GRADY: I'm going to make an
22 objection and instruct the witness not to reveal
23 any information that might have been communicated
24 by the attorneys as being covered by
25 attorney-client. And I would instruct the witness

1 not to divulge any attorney-client conversations.

2 MR. FARUKI: Unless he relied on it
3 in forming his opinions?

4 MS. GRADY: My recommendation stands
5 as it is.

6 MR. FARUKI: I'll offer a stipulation
7 that he's not waiving it; but if he relied on
8 something that you or another lawyer said in
9 making his opinion, then I'm entitled to learn
10 that. I'm not interested in chasing after a
11 waiver. Is that fair?

12 MS. GRADY: I hear what you are
13 saying. You can go ahead and answer with the
14 instructions in mind that I gave you.

15 THE WITNESS: I don't recall anything
16 specific on being given any direction by the OCC.
17 I think, rather, I offered my opinion early on of
18 what positions could be taken in this on the
19 company's filings.

20 Q. You say you offered your opinion
21 early on. What opinion or opinions were those?

22 A. Well, after seeing the company's
23 filing, it was -- I came to the understanding
24 of what the company was filing was an extension
25 of asking for more transition costs since a lot

1 of the costs were related to generation. And
2 that's confirmed in what the witnesses for the
3 company also wrote. And my opinion was that
4 based on Ohio law and based on my understanding
5 of what we're heading toward in a restructured
6 electric generation market, that those were --
7 what the company was asking for was
8 inconsistent with those.

9 Q. Any other opinions?

10 A. That's basically the crux of what
11 my testimony is about, is on the continued
12 recovery of transition costs.

13 Q. And you say that was based upon
14 Ohio law and what the company is heading for;
15 is that right?

16 A. Where Ohio is headed generally,
17 toward a competitive generation market.

18 Q. Okay. How did you come to
19 formulate your opinions then?

20 A. For some time now, since 1999,
21 Ohio passed their first law, the objective
22 being to develop a competitive generation
23 market. And in a competitive generation
24 market, just as an economist now, it's -- the
25 suppliers generally don't get -- are not

1 allowed some recovery of any market losses,
2 which is basically what the company has asked
3 for. And originally, the company was given the
4 potential stranded cost or was allowed to
5 recover, an opportunity to recover the stranded
6 cost or transition cost as stated in the law,
7 and that was part of the agreement that led to
8 the '99 law. And the company has also had
9 other filings that allowed them to recover
10 these transition costs. But it's clear that
11 the state is heading toward a competitive
12 generation market.

13 There's also still that provision
14 in the law that was put in the '99 act that
15 stated that the company, after the market
16 development period, utilities, not just DP&L,
17 but all utilities, would be fully on their own
18 in a competitive market. And that, in general,
19 is the objective, and that's an objective --
20 just a regulatory objective that the state
21 seems to still be headed in.

22 Q. That last statement was with
23 reference to one of the provisions of the
24 revised code?

25 A. Yes.

1 Q. So I don't get too far down the
2 road and forget, your prefiled testimony that
3 we've marked as Exhibit 1, does it contain all
4 of your opinions in this case?

5 A. Yes.

6 Q. Let me go back to a statement you
7 made a minute ago where you said the crux of
8 your testimony is -- revolves around transition
9 costs. Do you remember that?

10 A. For generation.

11 Q. Yes. Do you consider that your
12 testimony has opinions that do not revolve
13 around transition costs for generation?

14 A. I don't believe so. I don't think
15 there is anything -- most of it was on that
16 issue of continued recovery of transition
17 costs. I don't believe there's any other -- it
18 revolves around either that -- those legal
19 issues that you cited or the economic argument.

20 Q. Take a look at page 5 of your
21 testimony, please. I had some questions about
22 this page.

23 Let me start with this. And I'm
24 looking in particular at question ten and the
25 answer to it. Is it accurate that your opinions

1 and your recommendation to the Commission is not
2 based on your review or analysis of the financial
3 analysis and results of DP&L's witnesses Craig
4 Jackson and Bill Chambers?

5 A. The part of their testimony that
6 deals with the company's potential financial
7 impact, I am not stating an opinion whether or
8 not that is correct or not.

9 Q. So if I can expand that a little
10 bit just for clarity of my record, you're not
11 offering opinions on DP&L's financial integrity
12 here; is that correct?

13 A. That's correct.

14 Q. It's also accurate that you are
15 not agreeing or disagreeing with the financial
16 results and analysis presented by DP&L through
17 its witnesses Jackson and Chambers; is that
18 right?

19 A. I am not agreeing or disagreeing.
20 Right.

21 Q. If you go down to the next one,
22 question eleven, have -- have you read the
23 testimony of Mr. Jackson, both prefiled and his
24 deposition?

25 A. Yes.

1 Q. And you know that Mr. Jackson
2 explained a number of times that the company
3 was not looking for a guarantee of earnings but
4 was looking for an opportunity to earn a rate
5 of return in a range?

6 MS. GRADY: I'm going to object. I
7 think that that assumes claims not in evidence. I
8 think it's a mischaracterization.

9 Q. Answer my question.

10 MS. GRADY: But you can answer.

11 THE WITNESS: Could you restate that?

12 MR. FARUKI: I'll have her read it
13 back.

14 (Thereupon, the record was read.)

15 THE WITNESS: The focus of my
16 testimony was primarily on recovery through the
17 SSR. And I didn't, again, look -- the SSR was
18 very specific in the testimony that it was to
19 ensure the financial integrity of the company.
20 That's what I'm referring to, not the opportunity.

21 Q. You understood from your reading
22 to start with, that the SSR was directed to
23 DP&L's financial integrity?

24 A. Yes.

25 Q. That was the rationale that the

1 company is presenting for it?

2 A. Yes.

3 Q. Now, you said you read the Jackson
4 testimony, both his prefiled testimony and his
5 deposition. Did you see that Mr. Jackson said
6 that the company did not want a guarantee but
7 wanted the opportunity to earn a return within
8 a specific range?

9 A. Well, I interpret that to mean
10 that the opportunity means that they'd still be
11 able to recover potential generation losses. I
12 don't see that as a -- as different than
13 talking about ensuring the financial integrity
14 of the company.

15 Q. With respect, sir, you're not
16 answering my question. I'm asking you, since
17 you've read Jackson, whether you saw that he
18 said that what DP&L is seeking here is the
19 opportunity to earn a return within a specified
20 range?

21 A. Yes, I saw that.

22 Q. Let me go back earlier in your
23 testimony. I meant to ask you a little bit
24 more about your independent consultancy
25 business. Is this a solo practice for you or

1 do you have partners or associates with you?

2 A. For the consulting, I'm by myself.

3 I do work with others at different

4 organizations, but --

5 Q. No, I meant in your own business.

6 Do you have other people? Do you have

7 employees in your business?

8 A. No, I do not.

9 Q. Do you have co-owners in your
10 business?

11 A. No.

12 Q. And what is -- I'm not interested
13 in how much you make, but what are the sources
14 of your income as a consultant?

15 A. Well, I also do work with a
16 consumer group in Michigan that does --
17 primarily is focused on wholesale market and
18 FERC issues. I also do have an affiliation
19 with the Institute of Public Utilities, which
20 is mentioned in the background there. I'm a
21 senior fellow with them, which means that I
22 teach in their programs, mostly on
23 restructuring issues and history of utility
24 regulation, that sort of thing. And I do get
25 some compensation for that.

1 Q. For the teaching?

2 A. Sorry?

3 Q. For the teaching?

4 A. For the teaching, right. For the
5 lectures. I was recently retained by a group
6 of -- it's Utilities -- Municipal Utilities,
7 Rural Co-ops, Investor Owned Utilities, and the
8 National Association of Regulators to work on
9 PURPA-related issues, which is something that
10 I've done on and off. So that's a contract
11 basis. I'm working with others on that.

12 Q. Just for clarity, PURPA stands for
13 what?

14 A. Public Utilities Regulatory Policy
15 Act. Regulatory -- Public Utilities Regulatory
16 Policy Act. I always forget which one is
17 plural.

18 Q. I think you have it right. So
19 that's a current engagement?

20 A. That's a current engagement.
21 That's just recently started.

22 Q. Any others?

23 A. I also have a contract with Argon
24 National Lab, which is a former employer of
25 mine, to work on some issues in the west

1 mostly related to hydropower and also -- it's
2 hydropower and the impact on developing markets
3 for the western -- western states.

4 Q. Is that a complete list?

5 A. Well, there's other things that
6 I've done in the past. Those are the current
7 things I'm working on.

8 Q. The consumer group in Michigan is
9 named what?

10 A. It's called Mich CARE. CARE is an
11 acronym for Consumers Against Rate Excess.

12 Q. That's a nappy acronym.

13 A. Which I did not invent. You'll
14 find them cited in FERC issues, the things that
15 I worked on. They are also involved in some of
16 the smaller utilities in Michigan, but that I
17 don't work on.

18 Q. You meant state issues as opposed
19 to federal?

20 A. Right.

21 Q. So your wholesale market?

22 A. Wholesale market. And MISO, the
23 Midwest MISO.

24 Q. I think you said this, but just to
25 be sure, you've not submitted testimony before

1 the Public Utilities Commission of Ohio in the
2 past; is that right?

3 A. That's correct. I did say early
4 on in there that I in the past have done some
5 work with the Commission, the Commission staff
6 some years ago. In the vitae, you'll find
7 things that related to competitive bidding, I
8 believe, in the mid to early 1990s. That was
9 very different. That's competitive bidding,
10 which we were talking about then, which was
11 competitive bidding for new power supply. It's
12 not the same, what other companies and
13 utilities are doing in Ohio with competitive
14 bidding for the SSO.

15 Q. So it's accurate that your
16 previous work with the Commission staff was on
17 a subject or subjects that have nothing to do
18 with this case; is that right?

19 A. That's right. Not with this case.

20 Q. Look at page 2, please. Is it
21 accurate that your answer to question five is a
22 summary of your opinion in this case?

23 A. Yes.

24 Q. What did you do to analyze the SSR
25 in this case?

1 A. Well, that's -- in the testimony,
2 I looked at what the company witnesses were
3 saying was the basis for the SSR, why they felt
4 that they need -- they needed the SSR.

5 Q. You pause. Sometimes I'm not sure
6 if you're done.

7 A. I'm done.

8 Q. And what did you see in your
9 reading or analysis was the basis?

10 A. The witnesses -- and I cited that
11 in here, they -- and also in response to one of
12 their -- one of the questions that we -- that
13 the OCC had asked. Let me find the relative
14 part.

15 Q. Sure.

16 (Pause in proceedings.)

17 THE WITNESS: The SSR, just a
18 summary, is explained in question nineteen on page
19 10. On line nineteen at the end there, the
20 company has defined these risks as including the
21 risk that the forward gas curve will decrease, the
22 risk that there will be increased competition in
23 DP&L's service territory, and the risk associated
24 with transitioning to a one hundred percent
25 competitive bid process. And then those are my

1 words summarizing what the company was asking,
2 DP&L faces the risk that its SSO rate is higher
3 than the retail market price for electric service
4 and its customers will switch to competitive
5 electric generation suppliers offering service at
6 lower market-based rates.

7 Q. You've just read part of the
8 answer on page 11 -- or 10 and 11?

9 A. That's right. Down to line six.

10 Q. Let me ask you about that since
11 we're on that piece of text. You understand,
12 first of all, that DP&L bases its claim or
13 proposal for an SSO on the company's need as a
14 whole for financial integrity?

15 A. Yes. For -- and I believe I
16 mentioned that in the testimony, that it
17 probably includes the regulated services as the
18 generation.

19 Q. You understand that it is the
20 Dayton Power and Light that is the applicant in
21 this case?

22 A. Yes.

23 Q. The portion of the answer that you
24 read that begins on page 10, line nineteen
25 where you are enumerating certain risks -- do

1 you see that sentence? It's the sentence that
2 runs from 10 onto 11.

3 A. Right. What I just read?

4 Q. Yes, sir. With regard to that, do
5 you -- let me ask you some questions about
6 that. Do you agree that the company faces a
7 risk that the forward gas curve will decrease?

8 A. I didn't analyze whether or not
9 those -- that analysis was correct. But I
10 don't disagree, again, with that's a
11 possibility.

12 Q. Same type of question on the next
13 risk, sir, where you write, and I'll quote, the
14 top of page 11, the risk that there will be
15 increased competition in DP&L's service
16 territory. Do you agree that the company faces
17 that risk?

18 A. Yes.

19 Q. Then you say last, quote, the risk
20 associated with transitioning to a one hundred
21 percent competitive bid process, end of quote.
22 Do you agree that the company faces that risk?

23 A. Yes.

24 Q. Is it accurate, though, that your
25 analysis did not include an evaluation of these

1 various risks?

2 A. In terms of trying to estimate the
3 potential impact, no, I did not.

4 Q. Okay. Did it include an analysis
5 of those risks in any other respect? Because
6 as I've read your testimony, it doesn't. If
7 I've missed something, tell me.

8 A. The only thing I was looking for
9 was whether or not those risks comported with
10 operation in a general -- in a competitive
11 generation market.

12 Q. So you did not evaluate either
13 quantitatively -- quantitatively or
14 qualitatively the risks that you're talking
15 about here; is that correct?

16 A. That's correct.

17 Q. Let me go back to page 2 and the
18 answer to the question please summarize your
19 conclusion. Part of the basis of that opinion
20 or conclusion is one of the legal opinions that
21 we talked about before that appears on the
22 sentence running from page 2 onto page 3; is
23 that right?

24 A. That's right.

25 Q. Take a look at page 3. Do you

1 have as an economist a definition of financial
2 integrity that you would offer?

3 A. I'm an economist. I'm not a
4 financial analyst. And your -- the analysis
5 that was being done for the company was done by
6 a financial analyst. So I don't really have an
7 opinion on that, whether or not it's -- what it
8 means, financial integrity, other than as the
9 company stated it, that it's a -- a possibility
10 and the reason for the SSR.

11 Q. There's a couple of things in that
12 answer I want to ask you about. You are not a
13 financial analyst; is that right?

14 A. That's right.

15 Q. Your opinion -- I'll withdraw
16 that.

17 You do not offer an opinion then on a
18 definition of financial integrity; is that
19 correct?

20 A. No, I did not define it.

21 Q. You have not in your engagement in
22 this case at least done an analysis of
23 financial integrity; is that right?

24 A. No. I believe another --

25 Q. That's correct?

1 A. That's correct. I believe another
2 witness will be addressing that.

3 Q. You do not dispute the fact that
4 DP&L has a need for financial integrity, do
5 you?

6 A. I don't dispute or confirm it. I
7 just accepted what the company was saying in,
8 again, looking at the SSR.

9 Q. Turn to page 4.

10 A. (Witness complies with request.)

11 Q. In the answer to question eight,
12 there are a couple of points I want to ask
13 about. You start out by explaining that
14 Mr. Jackson projects DP&L's financial
15 condition, on a total company basis, for 2013
16 through 2017, right?

17 A. That's right.

18 Q. And you are not offering an
19 opinion on whether or not that is a correct
20 approach to this matter?

21 A. That's right. Well, I'm not
22 offering an opinion on whether or not that
23 analysis was correct.

24 Q. Nor are you offering an opinion on
25 whether the analysis should be done on a total

1 company basis; is that right?

2 A. I didn't offer an opinion here. I
3 do believe that they were talking about the
4 total company and not breaking it down by -- by
5 subcategories, regulated versus deregulated.

6 Q. You are not offering an opinion
7 that -- as to whether or not financial
8 condition or financial integrity, either one,
9 should be analyzed on a total company basis
10 versus broken down; is that correct?

11 A. I am saying that is no longer the
12 responsibility of the rate payers to continue
13 to pay that and ensure that at least for the
14 generation portion of it.

15 Q. On page 4, same question eight,
16 you discuss customer switching. Do you see
17 that?

18 A. Yes.

19 Q. Have you examined as part of your
20 work in this case, the trend in customer
21 switching for DP&L?

22 A. I looked at the PUCO numbers on
23 customer switching for the company.

24 Q. What did you find?

25 A. For residential customers, I

1 believe the -- this is as of last fall so the
2 numbers may have been updated -- but I believe
3 it was about twenty-two percent of the
4 customers, about twenty-five percent of the
5 residential load that it may have changed. The
6 general trend has been increasing over time so
7 it may be a little higher today.

8 Q. Increasing switching you mean?

9 A. Right.

10 Q. You have not made an examination
11 as part of your work on the extent to which a
12 more accelerated or more aggressive blending
13 schedule in this case would affect DP&L's
14 financial integrity, have you?

15 A. No, I have not done that financial
16 analysis, no.

17 Q. Take a look at page 4. Have you
18 looked in this case at the history of DP&L's
19 corporate separation plans?

20 A. No, I didn't.

21 Q. So you're not offering testimony
22 with regard to DP&L's history of financial
23 separation; is that right?

24 A. No. That's correct.

25 Q. As I understand your testimony,

1 you correct me if I'm wrong, you are not
2 offering opinions with regard to generation
3 separation in this case; is that right?

4 A. That's correct.

5 Q. In the answer that runs from page
6 5 onto page 6, tell me the basis for that
7 opinion.

8 A. Well, I stated earlier, this is in
9 answer to question twelve. The basis of that
10 is that the generation business is being
11 deregulated and as it's deregulated, after a
12 fairly lengthy transition period, that the
13 customers then should no longer be responsible
14 for any losses that the company may have in the
15 generation market.

16 Q. And that's your view, I take it,
17 regardless of whether the generation assets
18 have been -- have been separated yet or not?

19 A. That's correct.

20 Q. So that opinion is made without
21 reference to the financial integrity of DP&L;
22 is that right?

23 A. Well, the basis of the SSR was to
24 ensure the financial integrity of the company.
25 Otherwise, if you weren't asking for it, it

1 wouldn't be an issue.

2 Q. I understand. But your opinion
3 about this on question twelve is not influenced
4 by the fact that DP&L has not separated its
5 generation, correct?

6 A. That's correct.

7 Q. Let me ask you some questions
8 about transition costs. You know that
9 transition recovery cost was provided for in a
10 law that was passed in 1999?

11 A. Yes.

12 Q. You have looked at that law, I
13 take it?

14 A. Yes.

15 Q. You also know that more recently,
16 specifically in 2008, the legislature in Ohio
17 passed a new law that includes the section
18 under which this case is brought for an ESP?

19 A. Yes.

20 Q. That's 4928.143, right?

21 A. Yes, I believe that's right.

22 Q. I'll just represent to you that it
23 is. That's Maureen's and mine favorite section
24 of the statute. Have you read -- without
25 regard to the case number, have you read the

1 law that the general assembly passed that
2 governs ESPs?

3 A. Yes.

4 Q. And you are aware that that's the
5 statute that DP&L has made its application
6 under in this case?

7 A. Yes.

8 Q. That statute does not deal with
9 transition costs, does it?

10 A. It's still in the statute from the
11 '99 law on transition costs. And the section
12 of the law -- well, the section of the Ohio
13 code that I cited was from the '99 law which
14 says that after the market development period,
15 the company would no longer -- no company, no
16 utility in Ohio would be able to recover the
17 transition cost beyond the market development
18 period. That's cited in my testimony.

19 Q. And you're now telling me a
20 particular provision of the revised code?

21 A. Yes.

22 Q. Is it your testimony that that
23 provision is in the ESP statute?

24 A. That's from the '99 law and still
25 is in the revised code.

1 Q. And it's not in the ESP statute,
2 is it?

3 A. No.

4 Q. So you -- you understand that this
5 case is brought not under the '99 law but on
6 the subsequently passed statute that governs
7 ESPs; is that right?

8 MS. GRADY: I'm going to object. I'm
9 not sure that this witness can identify or has the
10 knowledge to know what the -- what statute the
11 application was brought under. I think we've been
12 through now a couple iterations. Are you talking
13 about the current application and not the initial
14 application, the second revised application?

15 MR. FARUKI: Yes, the one in which
16 he's offering his testimony.

17 MS. GRADY: If you can answer that,
18 go ahead and answer it.

19 MR. FARUKI: I'm going to have her
20 read it back for you.

21 (Thereupon, the record was read.)

22 THE WITNESS: Yes.

23 Q. The transition cost analysis under
24 the 1999 law essentially compared the book
25 value of assets to the market value of the

1 assets; is that right?

2 A. That's right.

3 Q. Did you review the testimony in
4 that case?

5 A. I -- not all of it, no.

6 Q. Sorry. Go ahead.

7 A. I'm familiar with what the
8 company -- what the conclusions were from that
9 and also what some of the conclusions were of
10 the cases involving other Ohio utilities.

11 Q. What -- what testimony did you
12 read from that case?

13 A. The only thing that I did was to
14 look at the -- at the testimony from -- is it
15 Luciani?

16 Q. Yes. Tell me what page you're on.

17 A. I'm on page 7.

18 Q. Thank you.

19 A. At the top of the page, it begins
20 just the total amount that was requested by the
21 company and then the company was given an
22 opportunity to recover that. It was defined
23 then by this DP&L witness. That's the part
24 that I reviewed.

25 Q. Did you look at any other

1 testimony in the case?

2 A. No.

3 Q. Let me see if I can summarize
4 this. In that case, the analysis was that if
5 the market value of the assets was less than
6 book value, then the company had stranded
7 costs; is that right?

8 A. That's right. That's the
9 generation stranded cost. The law allows for
10 other types of recovery of deferred assets in
11 other potential transition costs or stranded
12 costs that the company may be entitled to as
13 well.

14 Q. As I read your testimony, though,
15 you were talking about generation transition
16 costs; is that right?

17 A. That's correct.

18 Q. So with regard to -- I'm just
19 trying to stick to your testimony. With regard
20 to the analysis that you did in this case, it's
21 focused on generation stranded costs or
22 generation transition costs, right?

23 A. That's correct.

24 Q. And as to that, again, if the
25 market value is less than book value, then the

1 company would be said to have transition costs,
2 correct?

3 A. That's correct.

4 Q. You have -- have you reviewed all
5 of DP&L's filings in this case?

6 A. Just the parts that I cited that
7 pertain to the SSR.

8 Q. Okay. You know then that with
9 respect to the SSR -- I'll withdraw that.

10 The SSR is the focus of your
11 testimony, correct?

12 A. That's correct.

13 Q. So you know with regard to the
14 SSR, that the analysis that the company has put
15 forward is not a stranded cost analysis?

16 A. Well, they don't call it a
17 stranded cost, but they are talking about
18 general rate costs. It's pretty clear that
19 they're talking about losses in a competitive
20 generation market. Loss of revenue, for
21 example, was cited, I believe, by Mr. Jackson.
22 Mr. Jackson, on page 7 of his second revised
23 testimony gave a list of six different
24 categories that went into the other financial
25 forecast and clearly retail, wholesale revenue

1 estimates, for example, they're projecting that
2 the retail and wholesale revenue would be
3 lower. And as you defined stranded costs, that
4 means that the stranded costs or the losses of
5 the company would increase as the market price
6 were to go lower.

7 Q. With regard to the SSR, you agree
8 with me that the analysis put forward by the
9 company does not compare the market value of
10 generation assets to the book value?

11 A. Not to book value. I don't
12 believe they did that.

13 MR. FARUKI: Off the record.

14 (Thereupon, an off-the-record
15 discussion was had.)

16 (Thereupon, a break was had.)

17 Q. Back on the record. Let me ask
18 about a different subject.

19 Is it accurate that you have not
20 looked at and do not express an opinion on the
21 statutory basis, that is the basis in the law for
22 the SSR?

23 A. I didn't express an opinion on
24 that, no.

25 Q. Take a look at page 8, please.

1 You are talking in the answer to question
2 fifteen about the company's transition to
3 competition, correct?

4 A. That's correct.

5 Q. You refer to two of DP&L's cases,
6 the 05-264 and the 08-1094 case; is that right?

7 A. That's right.

8 Q. Did you review the opinions in
9 those cases?

10 A. Not all of it, no.

11 Q. Some of it?

12 A. Just the -- just the general
13 outline about the time that was given for --
14 and how long they ran the -- the rate
15 stabilization period and the ESP, how long they
16 ran.

17 Q. Did you read in the materials that
18 you read from those cases that the company's
19 corporate separation plan that provided for
20 functional separation was approved?

21 A. I don't recall that.

22 Q. You -- sorry.

23 A. I don't recall which of those that
24 was in, but --

25 Q. Do you recall -- I don't

1 understand your answer. Do you recall reading
2 about that at all or are you saying you don't
3 remember whether that was in the cases or not?

4 A. I don't recall which of those
5 cases that was asked for.

6 Q. You remember, though, that it was
7 at least in one of those cases; is that
8 correct?

9 A. Yes.

10 Q. Page 9. The -- you're being asked
11 in line seven a question, is there any
12 authority to support your opinion that DP&L's
13 transition period has been long enough. And
14 your answer includes the statement yes, I
15 understand that Ohio law prohibits, et cetera.
16 Do you see that?

17 A. Yes.

18 Q. This is a question and answer in
19 which you're being asked for legal authority
20 and your response is to state what Ohio law
21 prohibits; is that right?

22 A. That's correct. It's explained in
23 the next question, seventeen.

24 Q. Yes. Then seventeen is explaining
25 the basis of the answer to question sixteen.

1 And the basis is Section 4928.38?

2 A. That's correct.

3 Q. Go back up to lines three to five.

4 You have a statement that reads, and now, DP&L
5 is seeking to deny consumers the benefit of a
6 market price at a time when consumers could
7 greatly benefit from a low market price. Have
8 I read that correctly?

9 A. Yes.

10 Q. You're aware that DP&L has
11 proposed a blending schedule for rates that
12 would result from an auction to be blended into
13 the price?

14 A. Yes.

15 Q. And do you remember what the
16 schedule is?

17 A. I believe it was ten percent
18 initially. Then in 2014, it is forty percent,
19 2015 is seventy percent, and then fully in the
20 market in 2016.

21 Q. So this statement that I read, the
22 and now sentence is not accurate because the
23 blending percentages that you just recounted
24 would give consumers some of the benefit of a
25 market price, right?

1 A. Not as quickly as one hundred
2 percent right away would.

3 Q. I understand that. But the
4 statement that DP&L is seeking to deny
5 consumers isn't really accurate, is it?

6 A. It's -- it's still less than one
7 hundred percent.

8 Q. So that's what you mean by denial?

9 A. Yes.

10 Q. Anything less than a hundred
11 percent is a denial?

12 A. That's not permitting customers to
13 get the market price.

14 Q. My question is, in your view, is
15 anything less than a hundred percent a denial?

16 A. Yes.

17 Q. And you also know since you've
18 looked at the statutes that there's no
19 requirement for DP&L to go to market a hundred
20 percent all at once, is there?

21 A. Well, that's the issue that's
22 before the Commission. They'll have to decide
23 how long and how fast to go to competition.

24 Q. Yes, sir. And you know that
25 there's no requirement that the company go to

1 competition all at once, a hundred percent, is
2 there?

3 A. That's correct.

4 Q. Page 10 has an answer that begins
5 on line sixteen that I want to ask you about.
6 You say yet -- in line seventeen -- yet
7 transmission and distribution operations are
8 not the cause of the financial integrity
9 claims. And what's your basis for that?

10 A. Because the company didn't
11 separate out the transition distribution from
12 the generation portion.

13 Q. So you don't know yourself whether
14 it's T and D operations that are the cause of
15 the financial integrity claim or generation
16 operations or both, do you?

17 A. Well, from the testimony, they do,
18 again -- the cited part of Mr. Jackson's
19 testimony, it appears that -- and the answer to
20 the question is I don't know specifically how
21 much is which category, but it seems to include
22 generation costs based on what the witnesses
23 have said.

24 Q. Okay. So, again, literally, your
25 statement that T and D operations are not the

1 cause is not accurate, now you're saying that
2 well, now it includes generation; is that
3 correct?

4 A. The company never said that it was
5 transmission and distribution operations that
6 caused it.

7 Q. Well, you're expressing an opinion
8 here, I thought, in what you think. Is it
9 your -- do you have an opinion -- let me ask it
10 this way: Do you have an opinion on whether or
11 not T and D operations are part of the cause of
12 the financial integrity claims, or is that not
13 an opinion you're offering?

14 A. I'm not really offering an opinion
15 on that because I don't know the specifics of
16 that.

17 Q. Fair enough. I think I asked you
18 about the rest of that answer. Your opinion
19 with regard to transition costs is based in
20 part on the statute that you're quoting at
21 pages 11 and 12, the answer that runs from 11
22 onto 12; is that right?

23 A. That's a different part of the
24 statute than the part that says that after the
25 market development period, they would not --

1 companies would not be able to collect
2 transition costs. This is saying -- referring
3 to being able to recover transition costs that
4 may have already been recovered.

5 Q. I understand. And my question is,
6 whether your opinion about transition costs is
7 based in part on this law that you're quoting?

8 A. Yes.

9 Q. Go to page 12, please. Answer
10 twenty-one reads, it is my understanding, based
11 on advice of counsel, that a utility may only
12 include a provision in its ESP that is
13 specifically listed in Revised Code
14 4929.143(B)(2). I do not believe DP&L's
15 service stability rider falls under those
16 provisions. Have I read that correctly?

17 A. Yes.

18 Q. Have you read all of 143(B)(2)?

19 A. Yes. In the answer to the next
20 question, the specific part of it, which is
21 subpart D, is quoted there.

22 Q. And the part -- subpart D that
23 you're quoting -- I'll withdraw that.

24 What you are doing in questions
25 twenty-one and twenty-two is giving your analysis

1 of this statute; is that right?

2 A. That's correct.

3 Q. Does the SSR relate to
4 bypassability in any way?

5 A. I don't believe so.

6 Q. Why do you say that?

7 A. Well, bypassability refers -- I
8 believe what the statute refers to is the
9 customer's ability to be able to bypass the
10 utility and receive power from somebody else.
11 And generally, if you're -- most of these
12 residential customers don't have that ability.

13 Q. Bypassability is a term in your
14 understanding that refers to whether or not a
15 charge is bypassable; is that correct?

16 A. Well, I read this part
17 differently. If it refers to the bypassability
18 of a specific charge, then the SSR as the
19 company has proposed it would be
20 non-bypassable. It would be required that all
21 customers pay it whether they receive service
22 from the utility or not.

23 Q. Let me go back to my question,
24 though. The term bypassability relates to
25 whether or not a particular charge is

1 bypassable; is that correct?

2 MS. GRADY: Are you giving an opinion
3 on the law or are you -- are you asking him to
4 accept your definition or --

5 MR. FARUKI: Neither. I'm asking him
6 if he agrees with what I just said.

7 MS. GRADY: Can I have the question
8 reread, please?

9 (Thereupon, the record was read.)

10 MS. GRADY: Are you talking about
11 bypassability in the law as written in this
12 statute or are you talking about generally
13 bypassability?

14 MR. FARUKI: I'm talking about the
15 term bypassability.

16 MS. GRADY: Outside of the law?

17 MR. FARUKI: Let's start with that.

18 THE WITNESS: Well, my
19 understanding -- and it's a term I used myself.
20 It can have -- since it doesn't say bypassable
21 charge, it could also mean bypassing the utility,
22 say, as a large customer might do when they
23 generate power themselves and bypass the utility.
24 That's an older use of the term than probably
25 predates the '99 law.

1 Q. So is it your testimony that
2 143(B)(2) is part of the '99 law?

3 A. No, I believe that part was from
4 2008.

5 Q. Okay. And --

6 A. Bypassability is an issue back to
7 the '80s. That's very old.

8 Q. And you know that the SSR is a
9 charge?

10 A. Yes.

11 Q. And your answer twenty-two says in
12 line sixteen -- part of which is quoting a
13 statute -- but line sixteen says or charge that
14 is, as stated, in Revised Code
15 4929.143(B)(2)(d) relating to limitations on,
16 right?

17 A. Right.

18 Q. And my question to you is, do you
19 know whether the SSR is a charge that relates
20 to bypassability or not within the meaning of
21 this language?

22 A. I don't believe that applies in
23 this case.

24 Q. Because?

25 A. The -- if the -- the understanding

1 is that the utility of the company, as most
2 companies in Ohio, eventually will be one
3 hundred percent of the market. The issue of a
4 bypassable charge for generation doesn't really
5 apply anymore.

6 Q. You agree with me that the SSR is
7 a charge?

8 A. Yes.

9 Q. Does it affect customer shopping?

10 A. It may. As a non-bypassable
11 charge, it may affect shopping because it
12 raises the price for alternative suppliers. So
13 customers would stay with the utility.

14 Q. It affects what is commonly known
15 as head room?

16 A. Yes.

17 Q. And you know that as proposed,
18 DP&L's SSR is posted as a non-bypassable
19 charge?

20 A. Yes.

21 Q. With regard to this answer to
22 question twenty-two, do you know or have you
23 learned that the Public Utilities Commission
24 has approved a charge similar to the SSR under
25 this .143(B)(2)(d) provision that you quote?

1 A. Are you referring to the AEP case?

2 Q. Yes, sir.

3 A. Yes, I'm aware of that. And I've
4 addressed that issue on page 14 of my testimony
5 stating that in the AEP case, which also talked
6 about their impacts on their financial --
7 financial impacts of what they're proposing,
8 but it's tied specifically with the capacity
9 cost, which is not part of DP&L's proposal.

10 Q. What's tied specifically to the
11 capacity cost?

12 A. The -- I don't recall the charge
13 that AEP called it, but they had a -- they were
14 asking for a non-bypassable charge, too,
15 because they are a fixed resource -- have a
16 fixed resource requirement in PJM and they were
17 looking to recover that from customers.

18 Q. So it's your testimony that in the
19 AEP case, the non-bypassable charge that was
20 approved by the Commission was based on the
21 fixed resource requirement feature of the
22 company's plan?

23 A. It was based on that.

24 Q. On page 13, I can't remember if I
25 asked you, beginning at line four, you're

1 talking about Section 4928.143 still. And you
2 say you do not believe that that provision of
3 the revised code was intended to allow for
4 recovery of transition costs, et cetera. Do
5 you see that language?

6 A. At line four?

7 Q. Yes, sir. Do you see that?

8 A. Yes.

9 Q. Okay. So here you're offering an
10 opinion about what a provision of the revised
11 code was intended by the legislature to allow;
12 is that right?

13 A. Yes.

14 Q. You've never even served in the
15 legislature, have you?

16 A. I have not been a legislator, no.

17 Q. Are you aware whether Ohio has
18 official Ohio legislative history or not?

19 A. I don't understand your question.

20 Q. Do you know what legislative
21 history means in the analysis of legislative
22 statutes?

23 A. You mean what the legislative
24 service commission writes?

25 Q. My question is, do you know what

1 legislative history means in the analysis of
2 legislative statutes?

3 A. Just in laymen's terms. You may
4 be using -- asking for a specific legal
5 interpretation of that; but just as a layman's
6 understanding of it, I'm aware of that.

7 Q. Did you try to see whether there
8 is in existence any legislative history of
9 4928.143?

10 A. No.

11 Q. On page 14, you have another legal
12 opinion at line fourteen, when you say any such
13 charge is completely contrary to the law. Do
14 you see that?

15 A. Yes.

16 Q. That's another legal opinion?

17 A. The first part of that sentence is
18 my interpretation of the statute. The second
19 part is on competitive markets.

20 Q. Page 15, answer twenty-five ends
21 with the sentence, on the positive side, if the
22 company is able to earn a profit, even in
23 excess of what would have been allowed under
24 regulation, the company is able to retain that
25 market gain. Have I read that correctly?

1 A. Yes.

2 Q. That statement is not true in view
3 of the significantly excessive earnings test in
4 the statute, is it?

5 A. Not from the company's analysis.
6 But market conditions could change and the
7 analysis would change. If market prices were
8 to go up significantly, the company would be
9 earning significant profits.

10 Q. I think you misunderstood my
11 question. Let me ask it this way: Are you
12 aware that there's a provision in the statutes
13 commonly known as the significantly excessive
14 earnings test?

15 A. Yes, I've heard of that.

16 Q. Have you read it?

17 A. I've seen that, yes.

18 Q. Do you know what it does?

19 A. It's not your -- it's not clear to
20 me at this point whether or not if Ohio were
21 fully in a competitive market, if that -- if
22 that section of the law would still pertain.
23 I'll leave that to the legal minds to figure
24 out. But what I'm trying to say is there's
25 some asymmetry to the idea of whether or not

1 the company is able to recover losses in the
2 market or keep or retain any gain that they
3 have in the market.

4 Q. I know you're trying to say that,
5 but I think my question boils down to this:
6 You don't know whether or not the fact that the
7 Ohio law contains a significantly affected --
8 significantly excessive earnings tests affects
9 the accuracy of this statement, do you?

10 A. I'm not offering any legal opinion
11 on that, no. This is purely a statement as an
12 economist in how competitive markets work.

13 Q. So this statement is made without
14 reference to whether it's accurate under the
15 law, right?

16 A. That's correct.

17 Q. In the next answer, number
18 twenty-six -- I'll withdraw that.

19 On page 16, lines eight and nine,
20 you use the phrase improper
21 cross-subsidization. Do you see that?

22 A. Yes.

23 Q. What do you mean by that?

24 A. If a -- as the term is generally
25 used by economists, it refers to profits that

1 may be made in the regulated side of the
2 business -- I'm sorry -- yes, profits and/or
3 costs. It can refer to profits and/or costs
4 where the costs can be shifted over to the
5 regulated side of the business or the profits
6 can be shifted over to the deregulated side of
7 the business. And this is a common term that
8 was used in regulatory proceedings for some
9 time.

10 Q. So you're saying that
11 cross-subsidization could be applied either to
12 costs or to profits?

13 A. That's correct.

14 Q. And you're also saying it could be
15 shifted either from the regulated business to
16 the unregulated business or vice versa?

17 A. Profits going to the unregulated
18 part and costs going to the regulated part.

19 Q. I see. And have you tried to --
20 I'll withdraw that.

21 What analysis have you made here,
22 if any, quantitatively about whether
23 cross-subsidization has occurred in DP&L's
24 business?

25 A. I'm simply expressing a concern

1 that that's a possibility, if -- if the company
2 is allowed to recover generation costs while
3 other suppliers in the market do not have that.

4 Q. Okay. So your point here in the
5 answer to question twenty-seven is that that's
6 a possibility?

7 A. That's correct.

8 Q. You have not tried to quantify it?

9 A. That's correct.

10 MR. FARUKI: Off the record. I may
11 be close to being done, Maureen. Let me take a
12 few minutes and look --

13 MS. GRADY: Sure. That's fine.

14 MR. FARUKI: -- at my notes, and I'll
15 see if I have anything else.

16 (Thereupon, a break was had.)

17 Q. Let's go back on the record.
18 Would you look at your Exhibit 1?

19 A. I don't have my exhibit --

20 MR. FARUKI: Do you have an extra?
21 Or I can give him mine.

22 Q. I'm interested in your KR Exhibit
23 1 that says DP&L stranded cost as of December
24 31, 2000. Are we looking at the same page?

25 A. That's right.

1 Q. What is the source of this?

2 A. This came from the company's
3 filing, I believe.

4 Q. In what case?

5 A. In the original filing that's
6 cited in the testimony.

7 Q. Tell me what page you're on.

8 A. On page 6.

9 Q. Line?

10 A. Ten. There's a footnote there on
11 the application of Dayton Power and Light,
12 September, 2000.

13 Q. Sorry. In the text, before we get
14 to the footnote, you're talking about the
15 answer to question thirteen?

16 A. That's correct.

17 Q. That's the answer that describes a
18 transition charge of four hundred forty-one
19 million dollars?

20 A. Yeah. The specific number that's
21 in this chart is at the bottom of the page on
22 line nineteen, the two thirty-one number.

23 Q. That's the last column of your
24 Exhibit 1?

25 A. The last row. Oh, that's correct,

1 of Exhibit 1.

2 Q. Yeah. Last column, last row.

3 A. Right.

4 Q. And what is Exhibit 1 showing?

5 A. That's just -- that was just meant
6 to back up that the company was given the
7 opportunity -- file for and was given the
8 opportunity to recover stranded costs. I'm not
9 taking issue with the numbers, just that they
10 were able to recover it.

11 Q. And this was a chart showing
12 stranded costs as of thirteen years ago; is
13 that right?

14 A. That's right.

15 Q. Do you know how these costs were
16 computed?

17 A. Well, the general approach was to
18 look at the -- you can see in the columns the
19 book value and then the revenue that the
20 company expected to be able to recover in a
21 competitive market. And then the difference
22 between -- if it turns out that there were
23 costs that were above the market value, that's
24 the portion of the stranded cost.

25 Q. Can you match up these columns

1 with the items you just mentioned?

2 A. The two thirty-one is -- the two
3 thirty-one on the last line -- on the last
4 column. I believe, too, that we also asked --
5 asked the company how much was actually
6 recovered, and we didn't receive a response to
7 that.

8 Q. That's not my question. The --
9 let's do it this way.

10 A. Well, there may be something
11 missing here to match it up with the four four
12 one number of the total cost, but that was --

13 Q. Your answer is -- you're talking
14 about page 7, line two, four four one?

15 A. I don't recall where the four four
16 one came from exactly, no.

17 Q. On page 7, line two?

18 A. Right.

19 Q. Your testimony on page 6, line
20 six, rolling onto page 7 talks about two
21 hundred thirty-one million after tax in
22 stranded costs plus two hundred ten million in
23 carrying costs; is that right?

24 A. That's right.

25 Q. Where is the -- is the two hundred

1 ten million on your Exhibit 1?

2 A. I don't see it. And that's --
3 that's an oversight. There should be both
4 numbers, and I don't have either one.

5 Q. Yes, sir. And then the four
6 hundred forty-one million that's on page 7,
7 line two, you're not sure of the source of
8 that?

9 A. Well, that's the total of those
10 two numbers.

11 Q. Of which two numbers?

12 A. Of the two thirty-one and the two
13 ten.

14 Q. So the two ten and the four
15 forty-one are not appearing on your exhibit; is
16 that correct?

17 A. The two ten and the total. Right.

18 Q. Can you explain to me then,
19 leaving aside your Q and A, what the
20 calculations are on your Exhibit 1?

21 A. Well, this was not my calculation.

22 Q. I didn't ask you that. I'm asking
23 if you can explain it.

24 A. Well, my understanding is that
25 this was the company's filing for each of

1 the -- those are the power plants, the net
2 investment, the book value for each of the
3 plants and the potential, what they calculated
4 at the time, the after-tax stranded cost, and
5 then they portion it out for the Ohio share,
6 which is ninety-eight point two percent, and
7 then they added up for each of the generators,
8 generation facilities.

9 Q. The column that is headed net
10 investment represents what?

11 A. I believe that's the net book
12 value. So that would be net of depreciation is
13 how I interpreted that.

14 Q. Do you know or are you guessing?

15 A. That would be a standard
16 definition of net investment. I don't --
17 again, I didn't take issue with the claim or
18 that the number was incorrect.

19 Q. My question is a bit different.
20 I'm asking if you know what net investment is
21 as it is used here, or is this surmise on your
22 part?

23 A. It's my interpretation.

24 Q. What does the value column
25 represent?

1 A. I think that's the -- again, my
2 interpretation is that that is the value of the
3 asset, the market value of the asset. And I
4 believe somewhere they said that they used a
5 projection of the market value of the --
6 basically the cash flow of selling the -- of
7 selling the power from the power plant, which
8 would be roughly equal to what a -- if somebody
9 were to buy the plant would be very similar.

10 I've done a similar calculation
11 myself some time ago for other companies, not for
12 DP&L. But you try to estimate the stream of
13 revenue over a number of years that the power
14 plant would earn, and then the difference between
15 those two is that what they're labeling here as
16 after-tax stranded costs. That's the amount that
17 wouldn't be recovered in a market.

18 Q. Are you saying that the value
19 column is a discounted cash flow analysis as of
20 December 31, 2000?

21 A. That's right. But I -- it's a
22 discounted cash flow of the -- of what the
23 company's projections were at that time.

24 Q. Meaning 1999 or 2000 when that
25 case was pending?

1 A. Right.

2 Q. Now, in the years since that time,
3 since this is March of 2013, have you looked at
4 the capital investments that the company has
5 made in any of these plants?

6 A. No.

7 Q. Have you looked at the capital
8 investments that the company has made in any
9 other capital facilities that it owns?

10 A. No.

11 Q. Do you know whether or not each of
12 these generation stations is still operating?

13 A. Offhand, I don't.

14 Q. Do you know whether or not the
15 company has other sources of generation that it
16 has built or expanded in the year since 2000
17 that are not accounted for here?

18 A. That's possible.

19 Q. But you don't know?

20 A. I don't know.

21 Q. And you didn't look at that?

22 A. I'm not -- I'm not disputing the
23 company's estimates or what -- or even their
24 analysis going forward today. I'm not taking
25 issue with the numbers and the estimates that

1 the company has made on that, just whether or
2 not generation costs ought to be continued to
3 be recovered.

4 Q. When you say you're not disputing
5 the estimates the company has made, you're
6 talking about estimates of what, just so my
7 record --

8 A. The earnings that we were talking
9 about earlier.

10 Q. You have not made an analysis
11 up-to-date, that is up to 2013 --

12 A. Of stranded costs?

13 Q. -- of stranded costs, have you?

14 A. No.

15 Q. A couple other questions. You're
16 aware that the company has in its current rates
17 a non-bypassable charge in the amount of
18 seventy-three million dollars annually?

19 A. I don't recall the exact amount.

20 Q. You're aware there is a
21 non-bypassable charge even though you may not
22 remember that it's seventy-three million?

23 A. That's correct.

24 Q. And you're not expressing any
25 opinions with regard to that charge, are you?

1 A. No.

2 Q. Is it accurate that your -- you
3 have not made, as part of your engagement, a
4 financial analysis of DP&L's T and D business?

5 A. I have not.

6 Q. Or a financial analysis of its
7 generation business?

8 A. That's correct.

9 MR. FARUKI: Okay. Thank you, sir,
10 for your time. Maureen, that's all I have.

11 THE WITNESS: Thanks.

12 MS. GRADY: Thank you. We will want
13 to review that and have him check for signature
14 and -- so we're not going to waive that.

15 MR. FARUKI: Off the record.

16 (Thereupon, the deposition was
17 concluded at 11:16 a.m.)

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1 I, KENNETH ROSE, Ph.D., do hereby certify
2 that the foregoing is a true and accurate
3 transcription of my testimony.
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8 Dated _____
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1 STATE OF OHIO)

2 COUNTY OF MONTGOMERY) SS: CERTIFICATE

3 I, Michelle A. Elam, a Notary
4 Public within and for the State of Ohio, duly
5 commissioned and qualified,

6 DO HEREBY CERTIFY that the
7 above-named KENNETH ROSE, Ph.D., was by me first
8 duly sworn to testify the truth, the whole truth
9 and nothing but the truth.

10 Said testimony was reduced to
11 writing by me stenographically in the presence
12 of the witness and thereafter reduced to
13 typewriting.

14 I FURTHER CERTIFY that I am not a
15 relative or Attorney of either party, in any
16 manner interested in the event of this action,
17 nor am I, or the court reporting firm with which
18 I am affiliated, under a contract as defined in
19 Civil Rule 28(D).

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1 IN WITNESS WHEREOF, I have hereunto set
2 my hand and seal of office at Dayton, Ohio, on
3 this 15th day of March, 2013.



Michelle A. Elam

6 MICHELLE A. ELAM
7 NOTARY PUBLIC, STATE OF OHIO
8 My commission expires 5-2-2015
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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 Kenneth Rose, Ph.D. electronically filed by Mr. Jeffrey S Sharkey on behalf of The Dayton Power and Light Company