

BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO

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

February 15, 2013 - 9:35 a.m.

J. Kennedy & Associates

570 Colonial Park Drive, Suite 305

Roswell, Georgia 30075

Judith L. Leitz Moran, RPR, CCR-B-2312

## 1 INDEX OF EXHIBITS

2 For The DP&amp;L

3 EXHIBIT DESCRIPTION PAGE

4 1 Direct Testimony and Exhibits 5

5 of Lane Kollen on Behalf of

6 The Ohio Energy Group March

7 2013

8  
9 For The OCC

10 EXHIBIT DESCRIPTION PAGE

11 1 Direct Testimony of Stephen 79

12 J. Baron on Behalf of the

13 Kentucky Industrial Utility

14 Customers, Inc.

15  
16  
17 INDEX OF EXAMINATION PAGE

18 By Mr. Faruki 5

19 By Mr. Berger 72

20 By Mr. Faruki 102

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22 (Pursuant to OCGA 15-14-37 (a) and (b) a

23 written disclosure statement was submitted by

24 the court reporter to all counsel present at

25 the deposition and is attached hereto.)

1                   LANE KOLLEN,  
2   being first duly sworn, was examined as  
3   follows:

4                   THE WITNESS:   I do.

5                   MR. FARUKI:   On the record.

6                   EXAMINATION

7   BY MR. FARUKI:

8           Q     Good morning, again, Mr. Kollen.  My  
9   name is Charlie Faruki, I introduced myself to  
10  you off the record.

11           MR. FARUKI:  Would the court reporter  
12  give the witness a copy of his direct testimony  
13  marked as DP&L Exhibit 1 to his deposition.

14                   (DP&L Exhibit 1 marked.)

15           A     I have it.

16  BY MR. FARUKI:

17           Q     And Mr. Kollen, if you prefer to use  
18  the copy that you brought, that's perfectly  
19  acceptable.  I just wanted to have the  
20  testimony marked as an exhibit.

21           A     Okay.

22           Q     Tell us your name, and is your  
23  business address the one stated on the first  
24  page of your testimony?

25           A     Yes, my name is Lane Kollen,

1 K-O-L-L-E-N. And my business address is as  
2 stated in the testimony.

3 Q Did you have any changes or  
4 corrections you wanted to make to your  
5 testimony?

6 A No.

7 Q Can you tell me when you were  
8 retained in this case, approximately?

9 A I was not retained personally. Our  
10 firm was retained, I believe, the early part of  
11 last year.

12 Q Early 2012?

13 A Correct.

14 Q What was the scope of your  
15 engagement?

16 A I was not involved early on in the  
17 process. My partner, Steve Baron, was  
18 initially involved on behalf of OEG, and worked  
19 with Mr. Boehm. And then I became involved  
20 personally the earlier part of this year.

21 But the scope of the involvement was  
22 to review the company's initial filing and then  
23 to work with counsel on the development of  
24 OEG's positions.

25 Q And what was the goal of those

1 positions?

2 A The objective was to, first of all,  
3 review the company's filing and then to respond  
4 to it with what we thought were appropriate  
5 recommendations and proposals.

6 Q Have you or your firm worked with  
7 Mr. Boehm or OEG previously?

8 A Yes.

9 Q And on what sorts of matters?

10 A Well, with respect to OEG, we've  
11 worked on rate making matters in Ohio with  
12 respect to Mr. Boehm and his partner,  
13 Mr. Kurtz. We've worked on cases in other --  
14 and in other states, Kentucky being primary  
15 among those other states.

16 Q While I'm on that subject, any other  
17 states besides Kentucky and Ohio?

18 A Yes, we've also worked on behalf of  
19 another client of the Boehm Kurtz Law Firm,  
20 Kroger, in other -- other states. I can't give  
21 you a complete list of those because I  
22 personally haven't been involved in them.

23 Q Can you tell me approximately how  
24 many times you or your firm have been involved  
25 with either Mr. Boehm or Mr. Kurtz?

1           A     I would say probably at least several  
2     dozen proceedings. We have a long-term  
3     relationship with the Boehm Kurtz firm and the  
4     predecessor to that firm.

5           Q     And then the same question, if I  
6     could, with regard to OEG, Ohio Energy Group.

7           A     I believe that Ohio Energy Group was  
8     formed maybe seven or so years ago, and I think  
9     that we've had some level of involvement in  
10    various cases in Ohio really since -- since  
11    about that time, seven years ago.

12          Q     Can you estimate for me about how  
13    many cases that would have been in Ohio?

14          A     I would say probably a dozen or less.

15          Q     Would you say six to twelve?

16          A     That would be a reasonable guess.

17          Q     Is that your best estimate?

18          A     Sitting here today, yes.

19          Q     And for this engagement, is there an  
20    hourly rate that you are charging for your  
21    time, sir?

22          A     There is.

23          Q     What is it?

24          A     I am not certain. It's -- if I had  
25    to hazard a guess, I would say it would be



1     \$265 per hour.

2           Q     I really wasn't trying to force you  
3     to guess. Let me ask it this way. Is \$265  
4     your ordinary rate?

5           A     I'm not certain. I believe that's  
6     pretty close to it.

7           Q     Okay.

8           A     It could be \$275, I'm just not  
9     certain.

10          Q     Okay. Sorry, I didn't mean to cut  
11     you off. You paused and I thought you were  
12     done.

13          A     Fair enough. I'm sorry, it's a  
14     little bit difficult to interact when you have  
15     the phone and the distance between you, so...

16          Q     No problem. No problem at all.  
17                 When did you begin working on your  
18     testimony?

19          A     I think about two weeks ago.

20          Q     Can you tell me approximately how  
21     many hours you have in this engagement, not of  
22     course counting today?

23          A     Personally, probably about 50.

24          Q     Has there been anyone helping you?

25          A     Yes, Mr. Futral, who is a manager of

1 consulting with our firm.

2 And he assisted me on the development  
3 of the return on equity analyses that I address  
4 in my testimony.

5 And, let's see, he also assisted in  
6 preparing some of that information prior to the  
7 time that I wrote the testimony.

8 Q Would you spell his name for the  
9 court reporter.

10 A Yes. It is F-U-T-R-A-L. Randy  
11 Futral.

12 Q Did he write any of the testimony?

13 A He did not.

14 And then in addition to Mr. Futral,  
15 Mr. Baron assisted me in the cost allocation  
16 and rate design portion of the analysis and  
17 testimony.

18 Q And what did he do in that regard?

19 A He wrote that section of the  
20 testimony, the first draft.

21 Q Did anyone else help you?

22 A Other than counsel, no.

23 Q Did counsel write any part of the  
24 testimony?

25 A No.

1           Q     Was any part of your testimony based  
2     on previous testimony in another case?

3           A     Well, the opening first few questions  
4     generally are the same as testimony that I file  
5     in other cases.  Although, it's somewhat  
6     customized for the jurisdiction and the client.  
7     And -- but other than that, that is similar.

8                     But I don't recall that there's a  
9     direct overlap with other testimony that I've  
10    written.  There is some similarity in some of  
11    the concepts that I addressed in this testimony  
12    with testimony, for example, that I put in in  
13    the Ohio Power proceeding.  I believe it was  
14    11-346.  But there's no, to my recollection, no  
15    verbatim testimony other than the opening few  
16    questions and answers.

17          Q     I don't know the 11-346 case by a  
18    number.  Was that an ESP case?

19          A     Yes.

20          Q     And how many ESP cases have you  
21    testified in?  Either regardless of whether you  
22    testified live, how many have you filed  
23    testimony in?

24          A     I think four or five.

25          Q     I have looked at your education and

1 professional experience. I'm on Page 2, sir.

2 And you are not an economist; is that  
3 right?

4 A I don't have a degree in economics,  
5 if that's the question. As far as economic  
6 analysis, that I do. But I would not consider  
7 myself or describe myself as an economist by  
8 training. I should say by education.

9 Q And I see in your answer to the  
10 question that begins on Line 4 that you do not  
11 mention either economics or being an economist  
12 in that answer; is that right?

13 A Yes, that's true. I did have  
14 economic education as part of my degree  
15 programs, but I don't -- I generally consider  
16 myself more in the area of an accounting, tax,  
17 financial planning and regulatory expert.  
18 Although, I do testify extensively on economic  
19 issues.

20 Q How much of your work is in state  
21 public service commissions as opposed to  
22 courts?

23 A I would say more than 90 percent of  
24 it. And by that -- by the categorization of  
25 state commissions, I would -- the reason I say

1 90 percent is that probably 9 or 10 percent of  
2 the work that I do is at the Federal Energy  
3 Regulatory Commission. I haven't testified  
4 before any local, federal -- or state or  
5 federal court for a number of years. So that  
6 would have a very low percentage even averaged  
7 over 25 or 30 years.

8 Q There's a little bit of scratchiness  
9 on the phone and I think I missed how much --  
10 what's the portion of your work that you do at  
11 FERC, at the Federal Energy Regulatory  
12 Commission?

13 A I would say roughly 10 percent. It  
14 may be as much as 15. But maybe 10 to 15  
15 percent and then 85 to 90 percent would be at  
16 the state level.

17 Q And I believe you say in your  
18 testimony that you have testified approximately  
19 200 times; is that right?

20 A I believe it's more than that, but  
21 yes.

22 Q And is that testimony including or  
23 excluding depositions?

24 A Excluding. I'm talking there about  
25 prefiled testimony.

1           Q     In the last several years, how much  
2     of your time professionally is taken up with  
3     either preparing or giving testimony?

4           A     Well, I would -- if you would permit  
5     me, I would like to broaden the question to  
6     include the preparation, the analytical aspects  
7     of preparing the testimony.

8                     And I would say it's at least 90  
9     percent because some of the work that we do  
10    involves preparation of reports that are then  
11    used by regulatory agencies or the staffs of  
12    the regu -- the state regulatory commissions  
13    and doesn't find its way into prefiled  
14    testimony. So I would say approximately 90  
15    percent result in testimony.

16          Q     Let me take you to Page 3 of your  
17    testimony. Actually, before I do that, let me  
18    ask you a few other points before we start  
19    looking at text.

20                    You are aware, first of all, that the  
21    applicant in this proceeding is the Dayton  
22    Power and Light Company?

23          A     Yes.

24          Q     And you're aware that when a  
25    Commission order issues in this case, the rates

1 that will be set are for the Applicant, the  
2 Dayton Power and Light Company?

3 A Yes.

4 Q And with regard to the subject of  
5 potential cost savings, you have read, I take  
6 it, the testimony of Craig Jackson, who I'll  
7 represent to you is the CFO of DP&L?

8 A Yes.

9 Q And let me broaden my question.  
10 You've read his prefiled testimony as well as  
11 his deposition; is that correct?

12 A Yes. Most of his deposition.

13 Q And you saw in the parts of his  
14 deposition that you read, at least some of the  
15 questioning with regard to potential O&M cost  
16 reductions, correct?

17 A Yes.

18 Q You understand that he is saying that  
19 these cost reductions that the company has  
20 looked at are potential ones and that no  
21 decision has been made on whether to implement  
22 them?

23 A I think I was a little unclear on  
24 that. I think if maybe you could refer me back  
25 to the deposition. There was quite a bit of

1 discussion of whether or not he would even  
2 answer those questions. I think there were  
3 claims of privilege and things like that.

4 But my recollection is that he did  
5 state that no decision had been made with  
6 respect to the implementation or the magnitude  
7 of the reductions.

8 Q And then let me ask some more  
9 questions about that general topic. You agree  
10 with me that if an electric company makes O&M  
11 expense reductions that there can be  
12 consequences of those reductions?

13 MR. BOEHM: Excuse me, Charlie. You  
14 mean financial consequences?

15 MR. FARUKI: No, I was -- thank you,  
16 David, I was really talking about operational  
17 consequences to the company.

18 MR. BOEHM: Oh, okay.

19 A I don't know that I would necessarily  
20 agree with that as a general principle. There  
21 could be operational concerns.

22 For example, if as a cost savings  
23 measure all of the operations centers were shut  
24 down, then there would be a deterioration in  
25 service quality or the ability to maintain the



1 system. That would be one extreme.

2 The other end would be a situation  
3 where there, perhaps, were savings in other  
4 post retirement benefits, for example,  
5 requiring retirees to pay more of their medical  
6 care costs. In which case it wouldn't have any  
7 effect on the operations of the company.

8 So there are other -- there are  
9 various areas where cost reductions can be  
10 achieved that would have no effect on the  
11 operations of the company whatsoever.

12 BY MR. FARUKI:

13 Q Also, let me give you a couple of  
14 other examples and ask some further questions.

15 If a company decides -- an electric  
16 company decides to save on O&M expenses by  
17 deferring some system maintenance, such as tree  
18 trimming expense, it can actually end up paying  
19 more money later when it does that work; is  
20 that right?

21 A I wouldn't say that I would agree  
22 with that as a general principle. For example,  
23 you wouldn't expect the utility to make  
24 reductions such as that indiscriminately, and  
25 that it would use data-driven analyses to

1 determine where it would be appropriate to cut  
2 back, if indeed it cuts back in those areas.

3 And then presumably it would use its  
4 management discretion to then make the most of  
5 the dollars that it had remaining.

6 So I can't agree with you that it  
7 would cost more to do it in the future. In  
8 fact, there actually may be cost savings by in  
9 effect of -- in effect targeting vegetation  
10 management to specific circuits rather than  
11 doing a blanket type of approach like some  
12 utilities do through a cycle vegetation  
13 management program.

14 In other words --

15 Q Even with a -- I'm sorry, I thought  
16 you were done.

17 A Yeah, I'm sorry, I just sort of  
18 picked up another thought, but go ahead.

19 Q Even with a targeted vegetation  
20 management program, deferring some of those  
21 costs or postponing them, can also result in  
22 reliability concerns such as unexpected  
23 outages, right?

24 A Again, I can't agree with that as a  
25 general principle because utility management I

1 don't believe -- well, certainly not reasonable  
2 and prudent utility management wouldn't  
3 implement reductions indiscriminately.

4 And, you know, I think we could look  
5 at an extreme and say, well, if you  
6 discontinued vegetation management all  
7 together, it would have an effect on  
8 reliability. I would agree with that  
9 statement.

10 But, you know, an undefined  
11 reduction, I wouldn't agree that it would have  
12 any effect necessarily on reliability, simply  
13 because it's just not enough information. And  
14 I don't think the utility management would act  
15 indiscriminately.

16 Q Are you done with your answer?

17 A Yes. Sorry.

18 Q No, that's all right. You paused and  
19 I don't mean to cut you off.

20 A No, no, I appreciate that.

21 Q So let me make sure I understand. I  
22 was not suggesting indiscriminate cuts. As I  
23 take your testimony now you're saying that  
24 utility management can always know and decide  
25 what type of vegetation management cutbacks

1     there are in a way that will avoid any effect  
2     on outages or service, is that your testimony?

3             A     Well --

4             MR. BOEHM: Please direct us to what  
5     part of the testimony, Charlie.

6             THE COURT REPORTER: I'm sorry,  
7     Mr. Boehm, I didn't hear that.

8             THE WITNESS: The court reporter  
9     didn't hear that, didn't hear what Dave said.

10            MR. BOEHM: I was asking, Lane, for a  
11     reference to your part of the testimony so we  
12     could follow along.

13            What part of the testimony would that  
14     be, Charlie?

15            MR. FARUKI: There's no testimony on  
16     vegetation management. He and I are talking  
17     about an example of that.

18            MR. BOEHM: But you referenced that  
19     you understood his testimony. Can you  
20     generally give me a reference to where that is?

21            MR. FARUKI: He may be able to do it  
22     faster than I. By the way, I'm going to have  
23     the court reporter read the question back after  
24     I answer Dave's question.

25

1 BY MR. FARUKI:

2 Q But, do you remember, Mr. Kollen,  
3 where you talk about cost reductions? I think  
4 it was around Page 10, but I'll stand to be  
5 corrected by you, Mr. Kollen, on that point.

6 A Well, I don't know if Mr. Boehm's  
7 concern was with respect to testimony on  
8 vegetation management or if it went to your  
9 broader question on cost reductions.

10 But on Page 10, I do talk about the  
11 significant cost reduction initiatives that the  
12 company has under consideration that were  
13 addressed in Mr. Jackson's deposition. But I  
14 didn't talk specifically about vegetation  
15 management.

16 Q Okay. Thank you.

17 MR. FARUKI: Let me ask if we could  
18 have Judi read back my question.

19 (Whereupon, the requested portion of  
20 the record was read by the reporter.)

21 A No, my testimony is that utility  
22 management will use data-driven analysis. In  
23 other words, statistical analysis to assess  
24 risk factors and deploy the vegetation  
25 management resources to maximum effect in order

1 to avoid reliability problems or minimize those  
2 reliability problems.

3 It's not a perfect science, but it is  
4 something that utility management has some  
5 discretion over and I would expect them to act  
6 appropriately.

7 If indeed this all follows from these  
8 cost reduction initiatives that I haven't seen  
9 and that Mr. Jackson wasn't allowed to discuss  
10 at the deposition, so...

11 BY MR. FARUKI:

12 Q And what do you mean the cost  
13 reduction initiatives that you have not seen?

14 A Well, I haven't seen a list of these  
15 initiatives. I believe that the attorney  
16 defending Mr. Jackson instructed him not to  
17 answer any questions with respect to those cost  
18 reduction initiatives.

19 Q You do not know the details of the  
20 cost reduction initiatives, is that what you're  
21 saying?

22 A That's correct.

23 Q And you are unable to evaluate the  
24 desirability then of the various cost  
25 initiatives; is that correct?

1           A     I believe that the attorney that was  
2 cross-examining Mr. Jackson was precluded from  
3 inquiring into those areas by counsel for the  
4 company.

5           Q     You haven't answered my question. My  
6 question is, isn't it true that you do not have  
7 enough information to evaluate these potential  
8 cost reduction initiatives?

9           A     I don't and I haven't.

10          Q     Can you go to Page 3 of your  
11 testimony and the answer to the question on  
12 Line 9. Is it correct that your -- you have a  
13 two-part recommendation with regard to the SSR;  
14 one is that it be rejected and alternatively  
15 that it be limited to the amount of the  
16 \$73 million charge that is currently in rates?

17          A     Yes.

18          Q     In connection with the alternative  
19 recommendations, sir, have you taken a look at  
20 the effect on the company of continuing the  
21 charge at the \$73 million level in terms of the  
22 company's financial integrity over the period  
23 of the ESP?

24          A     I'm not really sure what you mean by  
25 taking a look, but I have reviewed

1 Mr. Chambers' financial projections under  
2 various scenarios, one of which is no SSR and  
3 one of which is no SSR and no ST.

4 And, you know, the alternative  
5 recommendation that I have in my testimony  
6 would be something between the company's base  
7 case which has the full effect of the SSR and  
8 the ST, and the case where it has neither. So  
9 the 73 million would be someplace in the middle  
10 of that.

11 Q As you would use the term "financial  
12 integrity," what does it mean? Can you give me  
13 a definition?

14 A Yes, that would be -- could be  
15 defined by a number of financial metrics. But,  
16 generally, it would be defined by earnings. If  
17 it were a publicly-traded company, earnings per  
18 share, cash flow, various coverage ratios.  
19 Those types of financial metrics.

20 Q Those metrics that you were just  
21 listing, you would agree with me are some of  
22 the tools that you would use to assess  
23 financial integrity; is that right?

24 A Yes.

25 Q Let me ask you, though, can you tell



1 me a definition of financial integrity as you  
2 would state it?

3 A Well, I think that we could look at  
4 it from a number of different perspectives, but  
5 I think that I would say the broadest  
6 definition of financial integrity would be the  
7 ability of the company to pay its bills and  
8 continue as a going concern.

9 Q Using -- I'll withdraw that. You  
10 consider that a generally accepted definition?

11 A I don't know where I would look to  
12 get a generally accepted definition, but I  
13 think that it correctly characterizes the  
14 general use of that term.

15 Q Using that definition, have you made  
16 an analysis of DP&L's financial integrity over  
17 the period of the ESP proposed by the company,  
18 the five-year period, in terms of what  
19 continuation of the charge of \$73 million would  
20 mean for the company's financial integrity?

21 A I haven't done the specific  
22 quantitative analysis; in other words, putting  
23 the \$73 million into Mr. Chambers' analysis.  
24 But as I described previously, the  
25 \$73 million is at some point between the

1 company's base case and its worst case  
2 scenario.

3 And so if you look at the financial  
4 metrics extending the \$73 million present RFC  
5 over the next five years, the earned returns on  
6 equity, just using that as one financial  
7 metric, would be something greater than the  
8 worst case quantified by Mr. Chambers and  
9 something less than the company's base case.

10 Q I understand. Just so my record is  
11 clear, have you made any independent analysis  
12 of financial integrity of DP&L for the  
13 five-year period proposed for the ESP?

14 A Well, in the interest of giving you a  
15 complete answer, I would say yes but not from a  
16 specifically quantitative approach. In other  
17 words, what I've done is I've gone through and  
18 I've said, listen, your base case is  
19 fundamentally flawed. It significantly  
20 understates the company's net income going  
21 forward. And I identify the reasons why it  
22 understates that net income. No distribution  
23 rate increases, you know, the choice of funding  
24 capital expenditures through common equity as  
25 opposed to growing some form of debt, failure

1 to reflect any cost reduction initiatives.

2           Regardless of whether or not I did or  
3 was able to assess those cost reduction  
4 initiatives, I mean, that would be a  
5 responsible and I think expected management  
6 approach to dealing with any financial  
7 deterioration as it is widely throughout  
8 industry.

9           And then the third -- or the fourth  
10 thing, of course, would be the selection of  
11 projected RPM values in the out years on the  
12 low side of the range developed by the  
13 company's consultants.

14           So having said all of that, I did do  
15 an independent analysis to that extent. I did  
16 not take it down, however, into a specific  
17 quantifiable set of financial statements, but I  
18 roughly estimated the effects of some of the  
19 issues and concluded that if you are able -- if  
20 you are able to reconstruct or if I had  
21 reconstructed Mr. Chambers' analysis on a rough  
22 analytical basis, I probably would come down in  
23 the \$73 million range.

24           Q     Let me make sure my record is clear,  
25 Mr. Kollen. Regardless of whether it is

1 contained in your prefiled testimony, is it  
2 true that you did not prepare -- I'm not  
3 talking about whether or not you tested. Is it  
4 true that you did not prepare a quantitative  
5 analysis of DP&L's financial integrity for the  
6 period of the RFC?

7 A I didn't prepare a set of financial  
8 statements in the format that Mr. Chambers did  
9 to specifically quantify the concerns that I  
10 had with the company's base case and that then  
11 were reflected in all of the alternative  
12 scenarios prepared by Mr. Chambers.

13 But I did do some rough estimates, as  
14 I described in my testimony, of the effects of  
15 certain of the flaws in those financial  
16 projections prepared by the company.

17 Q Yeah, I think you understand what I'm  
18 interested in is if, for example, you prepared  
19 a spreadsheet analysis that was a quantitative  
20 analysis of financial integrity, and if not  
21 referenced or attached to your testimony, I  
22 want to know if it's in existence or if you did  
23 not do it?

24 A Okay, I did not prepare any separate  
25 or independent spreadsheet analyses.

1 Q Okay.

2 A The quantitative analysis that I  
3 performed are described in my testimony.

4 Q Okay. And just so my question is  
5 broad enough, I was asking, of course, about  
6 the five-year period proposed for the ESP. The  
7 same answer would hold true for any lesser  
8 period, three years or four years or something  
9 like that?

10 A Right. That's correct. The  
11 quantitative analysis that I did using  
12 spreadsheets was with respect to the historic  
13 period, the 12 years.

14 Q Did you take a look at what the ROEs  
15 would be each year over the projected ESP  
16 period?

17 A I did when I reviewed Mr. Jackson's  
18 and then Mr. Chambers' analyses and then  
19 attempted to assess the effects of the various  
20 flaws that I identified in those analyses. But  
21 that -- as far as quantifying the effects, they  
22 are what I've described in my testimony. I did  
23 not perform a separate independent spreadsheet  
24 analyses.

25 Q Okay. On Page 3 of your answer,

1 Lines 10 to 14. I want to make sure I  
2 understand the basis for this.

3 One basis for the recommendation that  
4 you're stating there is deep analysis, historic  
5 profitability, and resulting ROEs; is that  
6 right?

7 A Yes.

8 Q And another basis is your contention  
9 that the base case financial forecast is overly  
10 pessimistic; is that right?

11 A Yes.

12 Q And so your conclusion or one of your  
13 conclusions is that the SSR and the Switching  
14 Tracker can be denied without causing  
15 substantial financial distress to the company;  
16 is that correct?

17 A I don't think I would phrase it that  
18 way at all. I think that the company's  
19 financial situation is in large measure of its  
20 own discretion and obviously is caused by  
21 retention of the generation assets within the  
22 utility itself.

23 I don't think there's any question,  
24 but that if the generation assets were not in  
25 the utility that there wouldn't be any concern

1 as far as financial distress. There are  
2 various riders in place, the company has the  
3 ability to get distribution rate increases,  
4 there's a transmission cost recovery rider, et  
5 cetera, et cetera.

6 So the proximate cause of any  
7 financial distress is the unregulated  
8 generation assets.

9 Q Let me ask you about a couple of  
10 things in that answer.

11 You said that if the generation  
12 assets were not in the utility, then the  
13 company would not be in financial distress; is  
14 that right?

15 A That's correct. Just as it would not  
16 have earned the extreme supra-normal returns  
17 historically which, of course, were not shared  
18 with customers.

19 Q You understand that the company had  
20 different owners during the period of time that  
21 you examined historic ROEs?

22 A Yes, I believe AES acquired DPL Inc.  
23 in late 2011. And so --

24 Q When you say a generation -- I'm  
25 sorry, were you done?

1           A     I was going to say, and so, it had  
2     different owners for most of the time period,  
3     the historic time period that I examined,  
4     because DPL Inc. was a publicly traded company  
5     itself until late 2011 when it was acquired by  
6     AES.

7           Q     So when you say that if the  
8     generation assets were not in the utility the  
9     company would not be in financial distress, are  
10    you saying that one reason for the company's  
11    financial distress is that it still has the  
12    generation assets in DP&L?

13          A     Yes.

14          Q     Have you, yourself, tried to quantify  
15    the level of financial distress over either the  
16    five-year ESP period or any lesser period of an  
17    ESP?

18          A     I don't understand the question. I  
19    thought we had gone through that, what I had  
20    done with respect to my review of Mr. Chambers  
21    analysis and whether or not I had done any  
22    independent quantitative analyses, so I'm not  
23    really sure if this is a -- I don't understand  
24    the question.

25          Q     All right. Any time you don't



1 understand one of my questions, some of them  
2 are not good, I will admit, just let me know.

3 Is it your opinion that the SSR and  
4 the Switching Tracker can be denied without  
5 causing substantial financial distress to DP&L?

6 A Oh, okay, I'm sorry, that was a  
7 question you asked me previously and I guess I  
8 didn't really get around to answering it.

9 I would say that it's not a denial of  
10 these two requests that causes the financial  
11 distress. It's the fact that the generation  
12 assets reside within the utility that is  
13 causing the projected financial distress.

14 The question that the Commission has  
15 to answer is, does it want to essentially make  
16 the utility whole for the lost revenues  
17 resulting from the unregulated generation  
18 activities. That's the question.

19 Q The other question the Commission has  
20 to answer is what it is going to do over the  
21 next several years in terms of the total  
22 company's financial condition; is that right?

23 A Yes, if the Commission believes it  
24 has an obligation to do anything at all with  
25 respect to that issue.

1           Q     Have you taken a look at -- I'll  
2     withdraw that.

3                     You read that the company has said in  
4     its filing that it is going to make an  
5     application to separate the generation assets?

6           A     Yes, by the end of 2017.

7           Q     Have you made an analysis of what it  
8     would take financially to separate the  
9     generation assets?

10          A     For DP&L, no. I've done that for a  
11     number of utilities, but not for DP&L.

12          Q     Have you made an analysis of how long  
13     it would take to separate the generation assets  
14     for DP&L?

15          A     Again, I haven't done an analysis  
16     specifically for DP&L, but I have for other  
17     utilities and it can be done in relatively  
18     short order.

19          Q     But you don't know that as to DP&L,  
20     do you?

21          A     I have no reason to believe DP&L is  
22     unique in that respect.

23          Q     Is that because you haven't looked at  
24     facts such as which of its debt issues cannot  
25     be called before they mature?

1           A       There are ways around those issues.

2       For example, one of the projects that I have  
3       been involved in on behalf of Louisiana Public  
4       Service Commission staff was a separation of  
5       Energy Gulf States' utilities into two  
6       jurisdictionally vertically integrated  
7       utilities.

8                   And that involved a separation of the  
9       debt, separation of the assets between the two  
10      jurisdictions.

11                  And the solution that we came to in  
12      that particular case was that the new entity  
13      located in Texas would provide a guarantee  
14      under what was called the Debt Assumption  
15      Agreement to the original utility which  
16      retained a portion of the debt for the very  
17      reasons that you posited in your question.

18                  So there are ways around that.

19           Q       Did that have to be approved by  
20      either the bond holders or the bond trustee?

21           A       My recollection is that it did not.

22           Q       And you don't know because you  
23      haven't studied the debt issuances as to DP&L  
24      to learn what approvals by bond holders or bond  
25      trustees would be necessary; is that right?

1           A     I haven't looked specifically at  
2     DP&L. But my experience is that these things  
3     can be worked out. There's almost always a  
4     solution if people are looking for one.

5           Q     But, again, you haven't examined the  
6     applicable terms of DP&L's debt issuances, have  
7     you?

8           A     And, again, no. But I don't think  
9     it's really necessary.

10          Q     Why do you say it's not necessary?

11          A     Well, because we know that the  
12     proximate cost of the projected deterioration  
13     and the company's financial integrity is due to  
14     the unregulated generation activities. We know  
15     that. Because that's where the inability to  
16     get regular rate making -- cost-based rate  
17     making recovery exists. Distribution and  
18     transmission is covered.

19                 So the only place where the  
20     deterioration could occur is in the unregulated  
21     generation activities.

22                 And then to the extent that the  
23     company has not, in its discretion, has chosen  
24     not to divest its generation assets to either  
25     an affiliate or a third party.

1           You know, of course, there generally  
2   are some hurdles in anything that you attempt  
3   to do in terms of corporate reorganizations or  
4   the purchase or sale of assets, but those are  
5   hurdles. Those are merely hurdles. You deal  
6   with them and you resolve those hurdles.

7           Q     As I read your testimony, you are not  
8   offering an opinion on some period of time in  
9   which you are testifying that DP&L can separate  
10   its generation, are you?

11          A     No, I was simply making the  
12   observation that that is the proximate cause of  
13   the financial deterioration and for that reason  
14   it's not an appropriate foundational or  
15   predicate for the SSR or the ST.

16          Q     On Page 3, I had a couple of  
17   questions about your testimony beginning at  
18   Line 6.

19                First of all, you saw the evidence  
20   presented by DP&L's witness, Bill Chambers, in  
21   which he suggests that rejection of the SSR  
22   would jeopardize DP&L's financial integrity; is  
23   that right?

24          A     Yes, I read that testimony. And I  
25   disagree with the analysis to the extent that

1 the base case is fundamentally flawed, and for  
2 that reason I don't believe the company has met  
3 its burden of proof.

4 Q Well, on burden of proof, that's not  
5 your decision, is it, that's the Commission's?

6 A True. And it's not my decision on  
7 any of the company's request. I can just offer  
8 an opinion as to how I see the circumstances  
9 and then make a recommendation as to an  
10 appropriate response to the circumstances.

11 Q And you did not, as I understand it,  
12 take a look at whether an SSR that was above  
13 \$73 million, your alternative recommendation,  
14 but lower than what I'll call the  
15 Jackson/Chambers recommendation in the case, as  
16 to what that would do to the company, did you?

17 A I didn't look at it in terms of  
18 performing a quantitative analysis using a  
19 spreadsheet to go back to the prior questions.

20 However, I can tell you, once again,  
21 that proportionately more money would result in  
22 higher returns, all else being equal. And when  
23 you're talking about more money, it just simply  
24 results in a higher earned rate of return than  
25 if you didn't have that same amount of money.

1           So if you introduce more revenues  
2   into the financial projections compared to the  
3   73 million, necessarily the returns go up.

4           Q     Okay. On Page 4, Line 15 through 17,  
5   you say, another reason that the Commission  
6   should reject the increases and mechanisms  
7   proposed by DP&L is that they improperly  
8   subsidize the Company's unregulated generation  
9   activities. Do you see that?

10          A     I do.

11          Q     You do not state a basis for that  
12   here. So let me ask you, what is your basis  
13   for that?

14          A     Well, the only reason for the  
15   company's projected deteriorating returns over  
16   the next five years is the fact that the  
17   generation assets reside within the utility.

18                 We covered this before in the sense  
19   that the distribution costs are eligible for  
20   recovery under normal cost based rate making,  
21   the company already has a Transmission Cost  
22   Tracker, so with respect to the wires portion  
23   of the business there would be no financial  
24   deterioration within a -- you know, within a  
25   reasonable bandwidth of authorized rate of

1 return.

2 But the fact that there is a  
3 projected financial deterioration is that the  
4 company has retained the cost structure of its  
5 unregulated generation assets within the  
6 utility but has less and less revenue coming  
7 in. And that really is the specific cause of  
8 the financial deterioration.

9 And so if the company then has  
10 authorized any additional revenue to cover  
11 those losses, then I think that's an improper  
12 subsidization of the unregulated generation  
13 activities.

14 That was my logical process.

15 Q Are you aware that all of DP&L's debt  
16 is secured by all of the cash flows of the  
17 company, not just cash flows for generation or  
18 for T&D?

19 A As I told you before, I had not  
20 investigated the company's loan covenants or  
21 indentures. It is not unusual that an  
22 indenture, a bond indenture will include or  
23 cover or have as security the entirety of a  
24 utility's assets. I don't think that's  
25 normally tied to cash flows, but rather tied to



1 the assets themselves.

2 But in my experience, there are  
3 work-arounds associated with that as far as  
4 divestiture of assets. In other words, rather  
5 than it being something -- a hide behind, it's  
6 just simply a hurdle that needs to be resolved.

7 Q A hurdle that here you have not  
8 analyzed?

9 A No, no, but I don't think I need to.  
10 I mean, I'm not advising the company on how to  
11 divest its assets.

12 You asked me previously if I had any  
13 knowledge with respect to divestiture of assets  
14 and I said, yes, I have quite a bit of  
15 experience in that area.

16 And if the biggest hurdle is finding  
17 some work-around with respect to a bond  
18 indenture requirement, that is a relatively, in  
19 the grand scheme of things, insignificant  
20 issue.

21 Q On Page 4, Line 19, you begin a  
22 sentence saying: Aside from the fact that this  
23 does not constitute a statutory basis for  
24 recovery.

25 That's a statement of law, isn't it?

1           A     Well, I didn't see a statutory basis  
2     in the company's application wherein the  
3     financial integrity concept was grounded. And  
4     so I was just simply saying I don't see a  
5     statutory basis for this claim.

6           Q     You didn't answer my question.

7                     When you are talking about whether or  
8     not there is a statutory basis, you are  
9     expressing a conclusion or opinion of law,  
10    right?

11          A     I don't think so. I think I'm saying  
12    that I don't see a statutory basis for recovery  
13    here. The company certainly did not allege one  
14    on the basis of financial integrity. So I  
15    don't see that there is one. And that is not a  
16    legal opinion, that's a conclusion.

17          Q     And it's a conclusion about a point  
18    of law, namely, what is in the statute, isn't  
19    it?

20                    MR. BOEHM: Charlie, with all due  
21    respect, we can argue this in front of the  
22    attorney examiner on a motion to strike if you  
23    like.

24                    MR. FARUKI: That's fair, David. I  
25    still want an answer to the question.

1 MR. BOEHM: I think he has. I think  
2 he's given you an answer. Let's face it, if we  
3 were to strike everything that was based on the  
4 reason that it's a statute, your testimony, a  
5 lot of your testimony, a lot of everybody's  
6 testimony wouldn't be allowed. This is how  
7 it's been done for years.

8 So, you know, I think we can deal  
9 with that in front of the attorney examiner.

10 MR. FARUKI: You know, well, I want  
11 the court reporter to read my question back.

12 (Whereupon, the requested portion of  
13 the record was read by the reporter.)

14 A Well, I'm not really quite certain  
15 that I can answer that question yes or no. All  
16 I can say is that I don't see a statutory basis  
17 for recovery of a regulated rate of return on  
18 unregulated generation assets if we look at the  
19 entirety of the sentence.

20 And I then go on to say that, the  
21 Company's evidence to this point is  
22 demonstrably and fundamentally flawed.

23 And I don't see that the company  
24 stated a statutory basis to recover the SSR or  
25 the ST on the basis of financial integrity.

1           And there certainly is no statutory  
2   basis of which I am aware that entitles it to a  
3   regulated rate of return or an opportunity to  
4   earn a regulated return on unregulated  
5   generation assets.

6           That's all I'm saying.

7   BY MR. FARUKI:

8           Q     On Page 5, Line 2, you talk about  
9   rewarding the Company for failure to divest its  
10   generation assets. Do you see that?

11          A     Yes.

12          Q     You did not study the history of  
13   DP&L's corporate separation plan that show  
14   Commission approval of its functional  
15   separation rather than legal or structural  
16   separation; is that correct?

17          A     I think I did read some documents  
18   with respect to that and I was aware that there  
19   was a functional separation.

20          Q     Were you further aware that the  
21   company's second amended corporate separation  
22   plan, which I'll tell you was dated in October  
23   of 2008 and approved by the Commission, allowed  
24   functional separation to continue?

25          A     I don't dispute that.

1 Q Would you go down to the next  
2 paragraph that begins, Still another reason.

3 This is the part of your testimony  
4 where you look back at the history of returns  
5 on equity; is that right?

6 A Yes.

7 Q And you seem to take the view that  
8 because DP&L was successful in the past, it  
9 should be denied a future opportunity to be  
10 viable; is that your testimony?

11 A That's a complete mischaracterization  
12 of my testimony. Essentially what I'm saying  
13 here is that DP&L was very happy to earn  
14 supra-normal returns historically and to retain  
15 those supra-normal returns without providing  
16 any benefits to customers in terms of rate  
17 reductions. And that needs to be weighed  
18 against the company's request now when it looks  
19 forward to sub-normal returns.

20 Q So under your reasoning, if the  
21 company has performed poorly in those years,  
22 you would be supporting supra-normal returns  
23 now?

24 A No, that's --

25 Q Is that what you're saying?

1           A     No, that's kind of a ridiculous  
2     assessment.

3           Q     Is there a downward trend of DP&L's  
4     ROE at present?

5           A     Well, there is on a short-term trend  
6     line basis. 2011 and '12 were down. '13, of  
7     course, is not completed so we don't know what  
8     that will actually be. But over the last two  
9     years there's been --

10          Q     Have you --

11          A     -- a downward trend.

12          Q     Sorry about that.

13          A     Yeah.

14                 Over the last two years there's been  
15     a downward trend.

16          Q     Have you taken a look at the trend in  
17     customer switching?

18          A     It has increased or the switching  
19     rate is higher, I should say. The rate of  
20     switching isn't necessarily greater, but the  
21     cumulative effect of switching is growing.

22          Q     Yes, sir.

23                 Have you analyzed whether or not the  
24     beginning of blending of auction-based rates  
25     would affect the company's financial picture?

1 A It would.

2 Q Negatively?

3 A Yeah. Well, yes, there would be  
4 lower revenues all else equal.

5 Q And do you agree that the focus of  
6 the Commission should be on the position of the  
7 company now and going forward, and by going  
8 forward I mean during the ESP period?

9 A I don't understand the question.

10 Q Are you familiar with the regulatory  
11 phrase "some costs are irrelevant"?

12 A Some costs are irrelevant?

13 Well, they're not irrelevant for rate  
14 making purposes, if that's what you're asking.

15 Q What you are arguing here is that  
16 DP&L's past returns are relevant to what the  
17 Commission would do with regard to DP&L's  
18 financial integrity; is that right?

19 A I'm arguing and I'm making, I think,  
20 a compelling case. I'm sure you're smiling at  
21 that. But I'm arguing that as a matter of  
22 equity, when the company was earning  
23 supra-normal returns by virtue of retaining the  
24 deregulated or unregulated generation assets  
25 within the utility, there was no offer by DP&L

1 and no in my assessment ability for the  
2 Commission to grab those supra-normal returns  
3 and return those to customers in the form of  
4 rate reductions.

5 Now, the company is asking precisely  
6 that, that any sub-normal returns essentially  
7 that it be made whole on those, at least up to  
8 a reasonable level over to the next five years.  
9 And it just seems to me to be an inequitable,  
10 unbalanced and inconsistent request.

11 Q It seems to me that you are  
12 essentially suggesting that over the next five  
13 years the company should be punished for  
14 returns that you consider to be excessive?

15 A No, I would look at it -- I'm sorry,  
16 I didn't mean to interrupt.

17 Q That's all right.

18 Isn't that the substance of what  
19 you're saying?

20 A No, I'm arguing that the company  
21 should not be rewarded.

22 Q Let me ask you about your testimony  
23 at Line 17 of Page 5.

24 When you recommend that the SSR  
25 revenue requirement be allocated using a 1 CP



1 production demand allocator, is that for the  
2 reason that you believe the SSR revenues  
3 represent recoveries solely of demand-related  
4 production costs?

5 A Yes, the company has couched its case  
6 in terms of really a single financial metric,  
7 and that is the return on equity. And return  
8 on equity clearly, and the translation into a  
9 revenue requirement, clearly is a  
10 demand-related cost. It is nothing other than  
11 a demand-related cost because it's tied to the  
12 investment in the generation plant.

13 Q What would your approach do with  
14 regard to OEG or its members?

15 A Compared to what?

16 Q What would be the effect of adopting  
17 what you're suggesting by the members of OEG on  
18 whose behalf you're appearing?

19 A Compared to the company's proposal?

20 Q Yes, sir.

21 A I believe that that information was  
22 provided to OEG confidentially in settlement  
23 discussions, so I'm not sure that I can  
24 publicly state it.

25 Q So for purposes of your testimony

1 here, in effect you don't know what the effect  
2 would be on OEG's customers?

3 A No, I do know, but I think you're  
4 asking me to publicly state it and I believe  
5 that that's confidential information that was  
6 provided by DP&L to OEG's counsel during  
7 settlement discussions.

8 MR. FARUKI: David, how do you want  
9 to handle this, if he's going to testify about  
10 this?

11 MR. BOEHM: Well, that's my  
12 recollection, that if we want to talk about --  
13 I remember getting this thing from Donna and I  
14 thought that my understanding was that was  
15 confidential.

16 Now, if you want to tell me it's not  
17 confidential, you know, it's up to you.

18 MR. FARUKI: Well, let me pass that  
19 for the moment.

20 BY MR. FARUKI:

21 Q Go to the top of Page 6 then, the  
22 first full sentence that begins, For the  
23 residential rate class.

24 Can you just clarify for me what part  
25 of DP&L's proposal OEG is not objecting to?

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**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 Lane Kollen (Part 1 of 2) electronically filed by Mr. Jeffrey S Sharkey on behalf of The Dayton Power and Light Company