

BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

- - -

In the Matter of the :  
Application of The Dayton :  
Power and Light Company : Case No. 12-426-EL-SS0  
for Approval of its :  
Electric Security Plan. :

In the Matter of the :  
Application of the Dayton :  
Power and Light Company : Case No. 12-427-EL-ATA  
for Approval of Revised :  
Tariffs. :

In the Matter of the :  
Application of the Dayton :  
Power and Light Company : Case No. 12-428-EL-AAM  
for Approval of Certain :  
Accounting Authority. :

In the Matter of the :  
Application of the Dayton :  
Power and Light Company : Case No. 12-429-EL-WVR  
for the Waiver of Certain :  
Commission Rules. :

In the Matter of the :  
Application of the Dayton : Case No. 12-672-EL-RDR  
Power and Light Company :  
to Establish Tariff Riders:

- - -

PROCEEDINGS

before Mr. Gregory A. Price and Mr. Bryce A.  
McKenney, Hearing Examiners, at the Public Utilities  
Commission of Ohio, 180 East Broad Street, Room 11-C,  
Columbus, Ohio, called at 9:00 a.m. on Wednesday,  
March 27, 2013.

VOLUME VIII

- - -

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1 Wednesday Morning Session,  
2 March 27, 2013.

3 - - -

4 EXAMINER MCKENNEY: Let's go on the  
5 record at this time.

6 The Public Utilities Commission of Ohio  
7 calls at this time and place Case No. 12-246-EL-SSO  
8 being in the Matter of The Dayton Power & Light  
9 Company for Approval of its Electric Security Plan.

10 My name is Bryce McKenney, with me is  
11 Gregory Price, we are the Attorney Examiners assigned  
12 by the Commission to hear this case.

13 Major, are you ready to call your first  
14 witness?

15 MAJOR THOMPSON: Yes, sir. FEA would  
16 like to call Mike Gorman.

17 EXAMINER MCKENNEY: Mr. Gorman, please  
18 raise your right hand.

19 (Witness sworn.)

20 EXAMINER MCKENNEY: Thank you. Please be  
21 seated. Please state your name and business address  
22 for the record.

23 THE WITNESS: My name is Michael Gorman,  
24 my business address is 16690 Swingley Ridge Road,  
25 Chesterfield, Missouri.

1 MICHAEL P. GORMAN

2 being first duly sworn, as prescribed by law, was  
3 examined and testified as follows:

4 DIRECT EXAMINATION

5 By Major Thompson:

6 Q. Where are you employed, Mr. Gorman?

7 A. Brubaker & Associates, BAI.

8 Q. Who are you appearing for today?

9 A. Federal Executive Agencies.

10 MAJOR THOMPSON: I'd like to mark for an  
11 exhibit FEA Exhibit 1 and 1A, that's the public and  
12 redacted copies of his testimony.

13 EXAMINER McKENNEY: They will be so  
14 marked.

15 (EXHIBITS MARKED FOR IDENTIFICATION.)

16 Q. Were those exhibits prepared by you?

17 A. Yes.

18 Q. Do you have any corrections?

19 A. Just one correction. On Exhibit MPG-2,  
20 page 2, under Notes, it says DPL has an investment  
21 grade credit rating of triple-B minus, I'd like to  
22 change that to "DPL has a credit rating of double-B  
23 from Standard & Poor's."

24 Q. That's the only correction?

25 A. Yes.

1           Q.    If I asked you those same questions  
2 today, would the answers be the same?

3           A.    Yes.

4           MAJOR THOMPSON:   The witness is available  
5 for cross.

6           EXAMINER MCKENNEY:   Thank you.

7           EXAMINER PRICE:   Can I ask you a question  
8 about your change?

9           THE WITNESS:   Yes.

10          EXAMINER PRICE:   Were you striking the  
11 words "investment grade" or were you leaving those  
12 in?

13          THE WITNESS:   I'm striking those words.  
14 It's no longer an investment grade bond rating.

15          EXAMINER PRICE:   Perfect.

16          EXAMINER MCKENNEY:   OCC?   Mr. Berger?

17          MR. BERGER:   No questions, your Honor.

18          EXAMINER MCKENNEY:   Mr. Williams?

19          MR. WILLIAMS:   No questions, your Honor.

20          MR. SHERMAN:   No questions, your Honor.

21          EXAMINER MCKENNEY:   Mr. Olikier?

22          MR. OLIKER:   No questions, your Honor.

23          EXAMINER MCKENNEY:   Mr. Boehm?

24          MR. BOEHM:   No questions, your Honor.

25          EXAMINER MCKENNEY:   Mr. Yurick?

1 MR. YURICK: No questions. Thank you,  
2 your Honor.

3 EXAMINER MCKENNEY: Mr. Faruki?

4 MR. FARUKI: Thank you, your Honor.

5 - - -

6 CROSS-EXAMINATION

7 By Mr. Faruki:

8 Q. Good morning, Mr. Gorman, it's nice to  
9 see you in person since we met on the phone during  
10 your deposition.

11 A. Thank you. It's nice to see you also.  
12 Good morning.

13 Q. Let me ask you, sir, about the correction  
14 you just made on your MPG-2 for a moment. Do you  
15 have that handy?

16 A. Yes.

17 Q. I take it that what happened here was  
18 since the preparation of your exhibit, MPG-2, the  
19 credit rating was changed? Is that what happened?

20 A. The credit rating was changed around  
21 November of last year, but the credit report cited  
22 here was prior to November of last year.

23 Q. I see. Did you examine why the credit  
24 rating changed?

25 A. Yes. I quoted S&P in that credit rating

1 change in my testimony.

2 Q. So the one quoted in your testimony is  
3 the more recent one.

4 A. Yes.

5 Q. Okay. Now, as I understand it, you have  
6 done work for Federal Executive Agencies seven or  
7 eight times, none in Ohio; is that right?

8 A. Yes.

9 Q. You have been with the Brubaker firm 22  
10 or 23 years; is that right?

11 A. Approximately, yes.

12 Q. And looking at the appendix to your  
13 testimony, not the exhibit but the appendix, with  
14 regard to your qualifications is it accurate that you  
15 have extensive experience working with large energy  
16 users or customers?

17 A. Yes.

18 Q. And I take it most of your work is in  
19 regulatory rate setting proceedings on behalf of  
20 large electric customers; is that right?

21 A. Yeah, most of the work is. We also do  
22 competitive solicitations on behalf of large  
23 customers.

24 Q. You're not an accountant; is that  
25 correct?

1           A.    That's correct.

2           Q.    Not a lawyer?

3           A.    Correct.

4           Q.    Let me ask something that I've been  
5 asking a number of the witnesses.  You have a  
6 definition of "financial integrity" that you use; is  
7 that right?

8           A.    I do.

9           Q.    Your definition of "financial integrity"  
10 is that it refers to setting rates at a level on  
11 regulated cost of service reflecting prudent and  
12 reasonable costs that are adequate to provide  
13 earnings and cash flow that are sufficient to  
14 maintain the credit standing of the utility and that  
15 allows it to attract additional capital to make  
16 investments to maintain high quality reliable service  
17 of the utility company.  Is that right?

18          A.    Yes.

19          Q.    Now, you consider that to be a definition  
20 of "financial integrity" that is generally accepted?

21          A.    For the purpose of setting regulated rate  
22 structures I believe it captures the appropriate  
23 objectives for both -- preserving the interest of all  
24 stakeholders in the process.

25          Q.    Would that be the definition of

1 "financial integrity" that you would use in this  
2 proceeding?

3 A. Yes.

4 Q. As I understand your testimony, you are  
5 not proposing a distribution rate case filing be made  
6 because your testimony is that you do not know what  
7 is driving DP&L's earnings erosion; is that correct?

8 A. That's correct.

9 Q. You do not have a range of ROEs that you  
10 would suggest or sponsor in this case; is that right?

11 A. That's correct.

12 Q. And your testimony, your prefiled  
13 testimony, is silent on the switching tracker and  
14 deals with the SSR but not the switching tracker; is  
15 that right?

16 A. I do not take a position on the switching  
17 tracker, that's correct.

18 Q. You have not made any examination of the  
19 steps required to make generation separation occur  
20 with regard to DP&L, correct?

21 A. That is correct in terms of the actual  
22 physical structure of the company. But in terms of  
23 rates, appropriate rates determined in this  
24 proceeding, I am taking the position that the SSR  
25 revenue requirement should not reflect lost margins



1 created by the merchant generation operations.

2 Q. Well, in doing your work did you give any  
3 consideration to the wish of the Commission or its  
4 staff that DP&L separate its generation structurally,  
5 that it separate it into a separate entity?

6 A. I understood that DP&L was proposing to  
7 delay that separation till after this ESP period, but  
8 my testimony dealt with estimating the appropriate  
9 revenue requirement, if any, for SSR to support  
10 regulated operations knowing that they have not yet  
11 separated generation from the wires business.

12 Q. So it's correct that you did not make any  
13 examination of the steps that would be required to  
14 make generation separation come about as to DP&L.

15 A. Not per this testimony.

16 Q. Nor did you examine DP&L's obligations to  
17 refinance debt that would mature during the proposed  
18 five-year period of the ESP; is that right?

19 A. Yes.

20 Q. You agree with me that in deciding what  
21 to do with DP&L's ESP application the Commission  
22 needs to balance the interests of customers,  
23 competitors, and DP&L?

24 A. Yes.

25 Q. When you did your analysis for this case,

1       you were aware that the applicant in this case is the  
2       Dayton Power & Light Company and not only the T and D  
3       business or, separately, the generation business,  
4       right?

5             A.     Correct.

6             Q.     And are you aware that when a company in  
7       Ohio files for an ESP, electric security plan, it is  
8       required to provide pro forma financial projections  
9       that state the financial effect on the utility of the  
10      ESP -- of the implementation of the ESP?

11            A.     That's my understanding, yes.

12            Q.     And you understand those projections are  
13      required to be filed for the duration of the proposed  
14      ESP?

15            A.     That's my understanding.

16            Q.     You made two recommendations in your  
17      testimony; one, that the SSR not be approved for  
18      adoption, and then an alternative recommendation that  
19      if the Commission adopts one, it should be in the  
20      amount of \$90 million; is that right?

21            A.     Yes.

22            Q.     And that \$90 million alternative  
23      recommendation, if I can call it that, would be a  
24      recommendation of \$90 million for each of the five  
25      years of the ESP period; is that correct?

1           A.    If adopted, yeah, that would be an annual  
2 revenue requirement.

3           Q.    Yes, sir.

4                   And you arrived at that \$90 million via  
5 two adjustments and I want to ask you about them  
6 separately. Let me ask you first about the subject  
7 of O&M expense adjustments. We talked about that at  
8 your deposition, right?

9           A.    Correct.

10          Q.    You used, in your adjustments, the  
11 amounts of O&M reductions over the period of the ESP  
12 that were identified by DP&L, but you realized that  
13 DP&L is still investigating those and has not yet  
14 determined whether those adjustments over the five  
15 years are possible or desirable; is that right?

16          A.    Well, in part it is. I understand DPL is  
17 still investigating whether or not those O&M expense  
18 reductions are achievable, but I also recognize that  
19 DPL has relied on those O&M expense reductions for  
20 other economic studies for their company dealing with  
21 impairment studies on generating assets.

22                   So I think there is some confidence in  
23 those level of O&M expense adjustments by the company  
24 because they did use them, and economic studies to  
25 disclose impairment results on the generating assets

1 which were subsequently disclosed to public market  
2 participants.

3 Q. Just so my record is clear, you  
4 understand that DP&L has not yet determined that  
5 these O&M expense adjustments over the five-year  
6 period are or are not possible; is that right?

7 A. That's my understanding of Mr. Jackson's  
8 testimony, yes.

9 Q. And you subtracted from the O&M expense  
10 levels in the projections the full amount of the  
11 total of the various potential expense reductions  
12 that the company is examining for each of the years  
13 in question; is that right?

14 A. It is.

15 Q. Of course, you have no personal knowledge  
16 about the components of those potential O&M expense  
17 reductions, do you?

18 A. I do not.

19 Q. You have not run or managed an electric  
20 utility company either, have you?

21 A. Correct.

22 Q. We talked in your deposition -- let me  
23 see if I can shorten this up a little.

24 You agree with me, as to deferring  
25 maintenance, in order to save money one consequence

1 of such a deferral can be that when the maintenance  
2 needs to be done later, it can be more expensive?

3 A. Yes. If you were deferring maintenance,  
4 that's correct. If you are able to streamline your  
5 operation, make them more efficient and reduce your  
6 O&M costs, then you're not deferring the maintenance,  
7 you're simply making your operations more efficient.

8 Q. In what you read did you see that some of  
9 these potential O&M reductions are deferred  
10 maintenance?

11 A. My understanding is they're looking at  
12 O&M cost reductions to assess the viability of those  
13 estimates.

14 Q. That doesn't quite answer my question.

15 Do you understand that some of those  
16 reductions consist of deferring maintenance in  
17 various years?

18 A. I don't know that for certain, no.

19 Q. Okay. And it's your testimony also that  
20 you do not address or offer an opinion on whether the  
21 cost savings are achievable without reductions in  
22 service quality; is that right?

23 A. That's correct.

24 Q. The other adjustment, your second  
25 adjustment that you made, was with regard to capital

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1 structure and there what you did was adjust the  
2 capital structure to a 50 percent debt/50 percent  
3 equity ratio; is that right?

4 A. It is.

5 Q. Did you see that DP&L's Witness Chambers  
6 made the same adjustment in his schedule?

7 A. A separate forecast, yes.

8 Q. Let me talk for a minute, then, with you  
9 about how you got to \$90 million. The driving force  
10 for that number, to use your words, was the impacts  
11 on DP&L's ROE of the adjustments you were looking at?

12 A. Over the first two years of the forecast  
13 predominantly.

14 Q. And is it correct that that \$90 million  
15 figure is the number that produced an ROE of 7  
16 to 11 percent through 2014?

17 A. Yes.

18 Q. Okay. But then after 2014, that is in  
19 2015 and for the rest of the five-year ESP period,  
20 the ROE would fall below 7 percent; is that right?

21 A. It is.

22 Q. So the way that you got to the  
23 \$90 million figure was to ask the question what would  
24 be the dollar figure for an SSR, under your  
25 assumptions, that would produce an ROE in the range

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1 of 7 to 11 percent?

2 A. Well, one of the parameters was an ROE in  
3 the range of 7 to 11, as requested by DP&L. I looked  
4 at the details of the forecast and thought most of  
5 the earnings erosion after the first two years  
6 appeared to be related to the generation function.  
7 Consequently, I wasn't confident that the earnings  
8 erosion was related to regulated service or  
9 unregulated service.

10 So I thought a level of revenue for SSR  
11 to support the earnings target the first two years  
12 would be appropriate and any earnings erosion  
13 thereafter could be corrected by DPL in a new --  
14 several different ways, including filing a rate case  
15 for wires service, if one was necessary, to correct  
16 the earnings deficiency, or, based on uncertain  
17 outlooks on what the profits would be from wholesale  
18 market generation transactions.

19 So there's no certainty of what is  
20 causing the earnings erosion in the latter years of  
21 the forecast, it's just more uncertain in the initial  
22 years of the forecast and part of the earnings  
23 erosion may be mitigated by DP&L through options it  
24 has for regulatory actions to correct earnings.

25 Q. Well, two things; first, you said

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1 "maybe." You don't have enough information to tell  
2 that it would be, do you?

3 A. Not based on Mr. Jackson's forecast I  
4 don't, no. His forecast did not include enough  
5 detail to identify what was causing the earnings  
6 erosion.

7 Q. And with regard to -- let's go back to my  
8 question because I don't think I have an answer yet.

9 As to how you derive the \$90 million,  
10 what you did was asked the question: What would be  
11 the figure that would produce a return on equity in  
12 the range of 7 to 11 percent through 2014; is that  
13 right?

14 A. Not completely right, but I looked at the  
15 revenue requirement that would preserve that return  
16 on equity level. I noted that it fell below 7  
17 percent in the latter years of the forecast, which I  
18 then did more detailed review of to determine whether  
19 or not the \$90 million would be adequate.

20 And because I couldn't identify the cause  
21 of the earnings erosion in the latter years of the  
22 forecast, I found, in my judgment, 90 million was  
23 reasonable.

24 Q. Okay. Well, let's look at your  
25 deposition a minute. Do you have one with you?



1           A.    I do not.

2           Q.    If you would take a look, please, with me  
3           at page 48, I asked you this question -- tell me when  
4           you have page 48 at line 12.

5           A.    I'm there.

6           Q.    I asked you the question: "I will ask  
7           you in a minute about the out years, but I think you  
8           answered my question. Just so I am understanding it,  
9           you derived \$90 million by examining, under the  
10          assumptions you made of course, what would be the  
11          figure that would produce a return on equity in the  
12          range of 7 to 11 percent through 2014; is that  
13          right?"

14                   Your answer was: "Yes."

15                   Have I read that correctly?

16          A.    You did, but your question here was a  
17          little different than the question you just asked me  
18          because you didn't ask me to ignore the latter years  
19          in the question I just answered. This asked me to  
20          disregard years after the second year.

21          Q.    All right. So --

22          A.    So when I looked at it in total, what I  
23          answered was how I went about this process. But in  
24          looking at just the first two years, I did try to  
25          impute a revenue that supported an ROE in the 7

1 to 11 percent range.

2 Q. All right. I understand. And you did  
3 not challenge the 7 to 11 percent range itself  
4 through the end of 2014; is that right?

5 A. I did not. Mostly because I don't think  
6 the analysis in general supports any level of revenue  
7 requirement in the SSR, but if one would be approved,  
8 I've made adjustments to a level I thought was more  
9 reasonable based on some relatively conservative  
10 assumptions and reviewing the results of  
11 the forecast.

12 MR. FARUKI: I'll move to strike the part  
13 of the answer after "I did not." It's a  
14 nonresponsive speech.

15 EXAMINER MCKENNEY: Motion to strike is  
16 granted.

17 Mr. Gorman, please try to be responsive  
18 directly to the question that's asked.

19 THE WITNESS: Yes, sir.

20 Q. If we look after 2014, sir, in this case  
21 you are not offering an opinion about an SSR revenue  
22 level that would maintain a particular ROE level; is  
23 that correct?

24 A. That's correct.

25 Q. After 2014.

1948

1           A.     Yeah. The \$90 million was derived based  
2     on the entire forecast period recognizing the ROE  
3     range was met in the first two years but the ROE  
4     eroded thereafter for reasons that I could not  
5     identify, therefore, I found it inappropriate to  
6     increase the SSR revenue requirement to correct that  
7     earnings deficiency.

8           Q.     And then would you look with me at your  
9     MPG-2 schedule or exhibit.

10          A.     I'm there.

11          Q.     This is titled "Credit Metrics," let me  
12     start there. What are you meaning by "credit  
13     metrics" or how are you using that term here?

14          A.     I'm using that term consistent with how  
15     Standard & Poor's uses the term, and that is to rely  
16     in part on some financial ratios to assess cash flow,  
17     balance sheet, and earnings strength of the company,  
18     which is a component of their review in assigning  
19     bond ratings for utility companies and general  
20     corporate bond issuers.

21          Q.     And if we look at column 4, the one  
22     that's labeled "ROE" with a 4 under it, what we see  
23     is that there are forecasted declining ROEs over the  
24     five-year period; is that correct?

25          A.     Yes.

1           Q.    Now, just maybe clarifying my own  
2           question, the ROEs that are shown here decline each  
3           year from the previous year?

4           A.    Correct.

5           Q.    I think maybe your one correction on  
6           direct examination took care of my next question.  
7           You're aware that Standard & Poor's has already  
8           dropped the company's rating to double-B.

9           A.    Yes.

10          Q.    And that's a below investment grade  
11          rating; is that correct?

12          A.    That's correct.

13          Q.    Which is not desirable?

14          A.    It is not.

15          Q.    If you look at page 13 of your testimony,  
16          you are quoting, it actually begins on page 12, but  
17          you are quoting a Standard & Poor's report on DP&L;  
18          is that right?

19          A.    Yes.

20          Q.    And at the top of 13 you quote, it's the  
21          second full sentence in your quote at the top of 13,  
22          you quote as follows: "We expect increasing  
23          competition from lower wholesale electricity prices  
24          to materially reduce DPL's profit margins in the next  
25          12 to 24 months." Have I read that correctly?

1 A. Yes.

2 Q. Did you make an independent examination  
3 of whether or not that statement is true or likely to  
4 be true?

5 A. I didn't challenge it. It seemed like a  
6 pretty reasonable outlook to me.

7 Q. You agree with me that as DP&L shifts to  
8 a market-based provider of generation service its  
9 margins will shrink unless market prices increase.

10 A. I do agree with that.

11 Q. You do not offer your own forecast of  
12 market prices over the five-year ESP period, do you?

13 A. I do not.

14 Q. Or over a shorter period than five years,  
15 do you?

16 A. Correct.

17 Q. Thank you, sir.

18 MR. FARUKI: Your Honor, that's all I  
19 have.

20 EXAMINER MCKENNEY: Thank you.

21 Does staff have cross-examination?

22 MR. MARGARD: I do not. Thank you, your  
23 Honor.

24 EXAMINER MCKENNEY: Redirect, Major?

25 MAJOR THOMPSON: Nothing, your Honor.

1951

1 EXAMINER MCKENNEY: Thank you, Mr. --  
2 sorry.

3 EXAMINER PRICE: Can't escape yet.

4 - - -

5 EXAMINATION

6 By Examiner Price:

7 Q. You're appearing on behalf of the Federal  
8 Executive Agencies?

9 A. Yes.

10 Q. Which includes Wright-Patt Air Force  
11 Base.

12 A. Correct.

13 Q. What percentage of FEA's load is in  
14 Dayton's service territory is Wright-Patt? If you  
15 took the total pie of FEA's load in DP&L's service  
16 territory, what percent would Wright-Patt be?

17 A. You know, I would have to provide that to  
18 you. I don't know. A large percentage.

19 Q. Are you familiar with the terms of the  
20 reasonable arrangement that Wright-Patt has with  
21 DP&L?

22 A. I'm aware of the reasonable arrangement  
23 that they have, yes, but I didn't look at the  
24 specific constructs of their rates itself.

25 Q. And they pay -- well, the baseline for

1 their rates is the standard service offer rate; is  
2 that correct?

3 A. Yes.

4 Q. And then they receive a subsidy off of  
5 that.

6 A. A discount off of that.

7 Q. A discount.

8 A. Yes.

9 Q. And there's a term; is that correct?

10 A. Yes.

11 Q. And the term is how long?

12 A. I believe it goes through 2014.

13 Q. At the end of the term Wright-Patt can  
14 either shop or renew the reasonable arrangement; is  
15 that correct?

16 A. Yes.

17 Q. So there was nothing to stop Wright-Patt  
18 instead of doing the reasonable arrangement from just  
19 going to market, it was just a better deal to get the  
20 reasonable arrangement from Dayton; is that correct?

21 A. At the time the reasonable arrangement  
22 was entered into.

23 Q. At the time in 2011.

24 A. Yes.

25 EXAMINER PRICE: That's it. Thank you.

1953

1 EXAMINER McKENNEY: Thank you,  
2 Mr. Gorman. You are excused.

3 MAJOR THOMPSON: I'd like to move FEA  
4 Exhibit 1 and 1A into the record.

5 EXAMINER McKENNEY: Any objection?  
6 (No response.)

7 EXAMINER McKENNEY: It will be so  
8 admitted.

9 (EXHIBITS ADMITTED INTO EVIDENCE.)

10 MAJOR THOMPSON: FEA would like to call  
11 Mr. Brian Collins.

12 EXAMINER PRICE: Let's go off the record  
13 one moment.

14 (Discussion off the record.)

15 EXAMINER PRICE: Let's go back on the  
16 record.

17 Mr. Collins, would you raise your right  
18 hand.

19 (Witness sworn.)

20 EXAMINER PRICE: Please be seated and  
21 state your name and business address for the record.

22 THE WITNESS: My name is Brian C.  
23 Collins. My business address is 16690 Swingley Ridge  
24 Road, Chesterfield, Missouri.

25 EXAMINER PRICE: Thank you.



1954

1 Please proceed, Major.

2 - - -

3 BRIAN C. COLLINS

4 being first duly sworn, as prescribed by law, was  
5 examined and testified as follows.

6 DIRECT EXAMINATION

7 By Major Thompson:

8 Q. Where are you employed?

9 A. Brubaker & Associates.

10 Q. Who do you represent here today?

11 A. FEA.

12 MAJOR THOMPSON: I'd like to mark FEA  
13 Exhibit 2 for identification.

14 EXAMINER PRICE: It will be so marked.

15 (EXHIBIT MARKED FOR IDENTIFICATION.)

16 Q. What is that?

17 A. That is the direct testimony prepared by  
18 me.

19 Q. Do you have any corrections to that?

20 A. I do not.

21 Q. If I asked you the same questions today,  
22 would your answers be the same?

23 A. Yes.

24 MAJOR THOMPSON: I'd like to make the  
25 witness available for cross.

1955

1 EXAMINER PRICE: Thank you.

2 Mr. Berger?

3 MR. BERGER: Just a couple of questions.

4 - - -

5 CROSS-EXAMINATION

6 By Mr. Berger:

7 Q. Good morning, Dr. Collins.

8 A. Good morning. It's Mr. Collins.

9 Q. Mr. Collins, okay, thank you.

10 Just to be clear about your  
11 recommendation, you're recommending that customer  
12 switching would be responsible for any past costs  
13 associated with their service, and by "past costs" I  
14 mean under- or overcollections of any riders for  
15 which they were paying at the time they decided to  
16 switch service; is that right?

17 A. That's correct. I think you're referring  
18 to page 11 of my testimony at the top of it.

19 Q. Yes, I am.

20 And when you say they wouldn't be  
21 responsible for future charges, however, that would  
22 be anything that was incurred by the company on their  
23 behalf after the date that they provide notification  
24 of a switch or would that be after the date when they  
25 actually switched?

1956

1           A.     That would probably be the date after  
2 they switched and began taking, you know, power from  
3 a third-party supplier.

4           Q.     Okay. And do you know whether the  
5 company has the ability to track these riders  
6 currently by individual customer?

7           A.     I do not.

8           Q.     Would that be a critical part of your  
9 recommendation, if --

10          A.     I think the customers would pay the  
11 average costs under the riders. I think that would  
12 be a fair way to do it.

13          Q.     So even if the company wasn't able to  
14 determine what particular costs the customer was  
15 responsible for, would you have them being  
16 responsible for the average under- or overcollection,  
17 for example, of the fuel rider.

18          A.     Right.

19                 MR. BERGER: That's all I have. Thank  
20 you.

21                 EXAMINER PRICE: Just to follow up  
22 Mr. Berger's line of questioning. Were you intending  
23 your proposal to apply to residential customers or  
24 were you solely intending it to apply to commercial  
25 and industrial customers?

1957

1 THE WITNESS: I didn't really make the  
2 distinction. I guess when I wrote the testimony I  
3 was thinking all customers but, you know, the  
4 proposal would definitely apply to larger -- larger  
5 customers.

6 EXAMINER PRICE: It would be quite a  
7 consumer education effort to explain the proposal to  
8 your average Dayton residential customer, wouldn't  
9 it?

10 THE WITNESS: I think that's a fair  
11 statement.

12 EXAMINER PRICE: Thank you.

13 Mr. Williams?

14 MR. WILLIAMS: No questions, your Honor.

15 EXAMINER PRICE: Mr. Sherman?

16 MR. SHERMAN: No questions, your Honor.

17 EXAMINER PRICE: Mr. Olikar?

18 MR. OLIKER: No questions, your Honor.

19 EXAMINER PRICE: Mr. Boehm?

20 MR. BOEHM: No questions, your Honor.

21 EXAMINER PRICE: Mr. Yurick?

22 MR. YURICK: No questions, your Honor.

23 Thank you.

24 EXAMINER PRICE: Mr. Sharkey?

25 MR. SHARKEY: Yes, thank you, your Honor.

## CROSS-EXAMINATION

By Mr. Sharkey:

Q. Mr. Collins, my name is Jeff Sharkey, we met on the phone a number of weeks ago --

A. Yes.

Q. -- whenever that may be, time has blurred now, but, as you know, I represent The Dayton Power & Light Company.

A. Yes.

Q. Your testimony addresses DP&L's request for a reconciliation rider; correct?

A. That's correct.

Q. You understand that DP&L proposes to include certain costs related to competitive bidding in the reconciliation rider?

A. Yes, that's my understanding.

Q. And your testimony does not address that request, correct?

A. Right, I take no position on that.

Q. You also understand DP&L proposes to include certain costs associated with competitive enhancements in the reconciliation rider.

A. That's correct.

Q. And your testimony also does not address that request that, right?

1 A. That's right.

2 Q. You also understand that DP&L intends to  
3 include in the reconciliation rider certain amounts  
4 associated with various bypassable riders, fuel, RPM,  
5 TCRR-B, AER, and the CBT?

6 A. Yes.

7 Q. Okay. And your testimony addresses that  
8 proposal, correct?

9 A. That's correct.

10 Q. As an initial matter, you understand that  
11 DP&L sometimes does not collect the full amount due  
12 under those riders when its SS customers -- from SSO  
13 customers, rather, in a particular period.

14 A. Yes, that's my understanding.

15 Q. Okay. And that DP&L then defers those  
16 unrecovered amounts to recover from SSO customers in  
17 subsequent periods?

18 A. Yes.

19 Q. Okay. And DP&L's concern is that if SSO  
20 customers switch, then DP&L's going to be recovering  
21 that deferred amount from a continually smaller group  
22 of SSO customers.

23 A. Yes, that's my understanding of the  
24 company's concern.

25 Q. Okay. And you would agree with me that

1960

1 under this scenario it could end up with DP&L seeking  
2 to recover a very large deferral balance from a  
3 fairly small group of customers?

4 A. That could be. One of the things that I  
5 noticed about the company's proposal, it seems that  
6 you did not account for, you know, any sales of power  
7 procured for SSO customers, the revenues being  
8 associated with those in the off-system market being  
9 used to offset the costs of those SSO customers.

10 Q. We'll go back to that. I know you've got  
11 some proposals and I'm going to discuss those, but  
12 first I want to make sure we're on common ground as  
13 to the problem.

14 A. Sure.

15 Q. But you do agree with me that if those  
16 riders remain truly bypassable with deferral balances  
17 being recovered in subsequent periods, if that  
18 process were to remain in place, the situation may  
19 well arise where DP&L would be recovering very large  
20 deferral balances from an ever-smaller group of SSO  
21 customers.

22 A. That could be a possibility.

23 Q. Okay. Then on page 6, line 13 of your  
24 testimony you address the point, I believe you  
25 mentioned -- you referred to a moment ago, that --

1961

1 you say "The lack of support for this level," which  
2 you're referring there to the 10 percent threshold  
3 level, correct?

4 A. Correct.

5 Q. We'll come back to the 10 percent  
6 threshold level that DP&L proposes, but you say "The  
7 lack of support for that level is particularly  
8 troublesome as it appears the Company has failed to  
9 consider that any revenues it receives for power  
10 bought for SSO customers but later sold off-system  
11 after those customers switch will offset its incurred  
12 costs."

13 Did I read that accurately?

14 A. Yes.

15 Q. And down in line 20, the same page, you  
16 describe that "as a serious flaw in the Company's  
17 proposal," correct?

18 A. Yes.

19 Q. As an initial matter, this flaw that you  
20 have asserted exists would appear only in a situation  
21 where DP&L has actually contracted to buy power with  
22 the intent of using it to serve SSO customers who  
23 then later switch.

24 A. Yes, that was the intent of my testimony.

25 Q. Do you know whether DP&L ordinarily has



1962

1 sufficient load for generation assets that it owns to  
2 serve its SSO load?

3 A. I do not know that.

4 Q. Okay. Do you recall that at your  
5 deposition I told you I was having trouble  
6 understanding your suggestion here and asked you to  
7 walk through an example of how you believe -- what,  
8 rather, you believe was the serious flaw in DP&L's  
9 proposal?

10 A. Yes.

11 Q. Okay. And I think what you told me is  
12 that you wanted -- you assumed that DP&L had entered  
13 a contract to purchase power at \$20 per MWh to serve  
14 customers during a particular year; do you remember  
15 that?

16 A. Yes, I remember.

17 Q. Okay. You then assumed that the customer  
18 would leave on July 1 of that year so that the  
19 company could not recover the \$20 per megawatt-hours  
20 that it purchased to serve that customer.

21 A. That's correct.

22 Q. That question kind of ended up garbled  
23 but you understood my point.

24 A. Yes, and I'm assuming this is an example  
25 under the company's proposal as proposed in the

1963

1 testimony.

2 Q. What I think this is is the explanation  
3 at the deposition that you gave me of your criticism  
4 of the company's proposal.

5 A. Yes, that's my understanding, my  
6 recollection.

7 Q. Okay. You then at deposition said if the  
8 market price of power were to raise to \$25, then DP&L  
9 could sell some of the power that it had purchased at  
10 a profit and use the excess \$5 to offset some of the  
11 deferral amounts that The Dayton Power & Light  
12 Company is seeking to recover in the reconciliation  
13 rider, right?

14 A. Right. Not only would they recover the  
15 full \$20 that they incurred for the contract, they  
16 would also have, you know, an extra \$5 to offset any  
17 deferrals and the deferrals could be, you know,  
18 errors in forecasting or anything like that under the  
19 riders.

20 Q. Again, first of all, this example would  
21 be applicable only in a situation where DP&L had  
22 entered into long-term contracts to supply customers  
23 who later switched.

24 A. Or else it also could apply to, you know,  
25 generation that the company used to provide power to

1964

1 the customer. You know, if they're using power and  
2 not a contract, using power from their own  
3 generation, I think it still would apply.

4 Q. Well, we'll come back to that.

5 In any event, you would agree with me  
6 that the market prices could just as easily be lower  
7 than DP&L's \$20 per megawatt-hour procurement cost  
8 that you used in your example, correct?

9 A. It could.

10 Q. Okay. So DP&L could have either profits  
11 or losses associated with the fact that the customer,  
12 in your example, switched.

13 A. It could.

14 Q. Okay. Let me --

15 EXAMINER PRICE: Can I ask a follow-up  
16 question to that, Mr. Sharkey?

17 MR. SHARKEY: Absolutely.

18 EXAMINER PRICE: I hate to disrupt your  
19 case.

20 If the market price was above the  
21 standard service offer price, why would a customer  
22 switch? Embedded in your hypothetical's assumption  
23 is that there is a differential that the market price  
24 is higher than at least their standard service offer  
25 procurement. That being the case, why would a

1965

1 customer switch?

2 THE WITNESS: Well, at the time they make  
3 the decision, you know, it would depend on the market  
4 price. The market price could be lower than the SSO  
5 offer but then, you know, markets could change and,  
6 you know, they could be below market like later on  
7 after they switch.

8 Depend -- I'm sorry, go ahead.

9 EXAMINER PRICE: I understand markets can  
10 go up and down, but it seems -- isn't it the case  
11 that your hypothetical tends to assume that it's a  
12 study market above what the SSO load is? The SSO  
13 price is.

14 THE WITNESS: I don't know if I would  
15 characterize it as that way.

16 EXAMINER PRICE: Okay. Well, must be my  
17 misunderstanding then.

18 Thank you, Mr. Sharkey.

19 MR. SHARKEY: Thank you, your Honor. You  
20 actually asked the question I was going to, so I'll  
21 move on to my next topic.

22 Q. (By Mr. Sharkey) On page 6 of your  
23 testimony you describe the fact that DP&L's  
24 reconciliation rider has a 10 percent threshold that  
25 you believe is arbitrary, correct?

1966

1 A. Yes.

2 Q. If you were to assume that the Commission  
3 agreed with DP&L's concept of converting some amount  
4 of the unrecovered deferrals into a nonbypassable  
5 rider, it's true, isn't it, that you don't sponsor an  
6 alternative to DP&L's 10 percent figure?

7 A. That's correct.

8 Q. And you do not sponsor an alternative way  
9 to calculate such a figure, do you?

10 A. I do not.

11 Q. Okay. One of your objections to DP&L's  
12 proposal regarding the reconciliation rider is that  
13 the unrecovered deferrals were not caused by switched  
14 customers, correct?

15 A. That's correct.

16 Q. Okay. But you would agree with me,  
17 though, that the remaining SSO customers that did not  
18 switch did not cause the costs associated with the  
19 switching customers to be incurred and then later  
20 deferred either, correct?

21 A. That's correct.

22 Q. Okay. And you'd agree with me that DP&L  
23 didn't cause those amounts to be deferred either,  
24 right?

25 A. Right.

1967

1 Q. Let me ask you about your notice plan  
2 because I had a little trouble understanding that.

3 A. Okay.

4 Q. Under your plan, customers would have to  
5 give notice in advance of competitive bidding of  
6 whether they intend to switch to a CRES provider  
7 during the following 12-month cycle, correct?

8 A. That's correct.

9 Q. Okay. You understand that DP&L proposes  
10 that power from competitive bidding would begin to  
11 start to flow on June 1 of most years?

12 A. Yes, that's my understanding.

13 Q. Okay. You don't have a proposal as to  
14 how far in advance of that date notice would be  
15 given.

16 A. No, I think in my testimony I said that  
17 would be good to consult with the company to make  
18 sure they would have enough time.

19 Q. Okay. But under your plan, customers  
20 that take SSO service for the year would pay their  
21 share of both unrecovered costs -- strike that --  
22 would pay their share of costs under the rider plus  
23 their share of deferrals under the various riders,  
24 correct?

25 A. That's correct.

1968

1           Q.    And then customers that switched with  
2           timely notice would pay only their share of past  
3           unrecovered costs?

4           A.    That's correct.

5           Q.    Okay.  Then what would customers that  
6           switched without timely notice pay?

7           A.    They would pay the riders the deferred  
8           costs up until the next auction, assuming that they  
9           give notice that they're going to continue to take  
10          CRES service in the next year's auction.

11          Q.    Okay.  Well, what's the difference  
12          between what customers that give notice and customers  
13          that don't give notice on a timely basis, what's the  
14          difference between the amounts that they pay?

15          A.    The amounts?

16          Q.    Yes.

17          A.    Just generally speaking?

18          Q.    Yeah, just so we're clear, I thought you  
19          told me that customers that switched with timely  
20          notice would pay their share of the unrecovered  
21          amounts associated with past deferrals.

22          A.    At the time they switch.

23          Q.    At the time they switch.  Okay.  Then if  
24          somebody fails to give notice and switches, what do  
25          they pay?

1969

1           A.    They would continue to pay the rider  
2 costs and the deferrals because, assuming that the  
3 company had incurred auction power costs to serve  
4 that customer, if they didn't give timely notice, the  
5 company assumed that they would be on the system for  
6 the entire year of the auction period.

7           Q.    Okay.  So if you switched without giving  
8 timely notice, you would continue to pay the full  
9 amount of those riders and the customer's share of  
10 the deferred unrecovered costs associated with those  
11 riders.

12          A.    Yes, that's correct.

13          Q.    Mr. Berger asked you some questions about  
14 whether DP&L's billing system is currently programmed  
15 to provide the functionality you're describing.  I  
16 believe you told him that you don't know whether  
17 DP&L's billing system is capable of providing that  
18 functionality in DP&L's systems today; is that right?

19          A.    That's correct.

20          Q.    You also don't know how much it would  
21 cost to implement that functionality.

22          A.    I do not.

23          Q.    Okay.  And so you don't know whether the  
24 benefits of your proposal would outweigh those costs,  
25 do you?



1970

1 A. I do not.

2 Q. And you don't have a proposal regarding  
3 who would pay the costs of modifying DP&L's billing  
4 system to perform those functions?

5 A. I do not. In my testimony I do not take  
6 a position on that.

7 Q. You understand that DP&L has proposed  
8 riders in this case that are intended to maintain its  
9 financial integrity and enable it to provide reliable  
10 service?

11 A. Yes.

12 Q. Okay. You agree with me that it's  
13 important to customers that DP&L be able to provide  
14 reliable service?

15 A. Yes.

16 Q. And you would agree with me that it's  
17 important to customers that DP&L be able to maintain  
18 its financial integrity.

19 A. Yes.

20 MR. SHARKEY: Your Honors, no further  
21 questions.

22 - - -

23 EXAMINATION

24 By Examiner Price:

25 Q. I just have a follow-up question to the

1971

1 question about timely notice. Have you reviewed the  
2 way other Ohio EDUs procure their energy in  
3 competitive bids, through competitive bids?

4 A. It's been a long time since I have done  
5 so. I think I looked at the AEP ESP several years  
6 ago, but --

7 Q. Have you looked at FirstEnergy or Duke?

8 A. I have not.

9 Q. Are you aware that it's not unusual for  
10 the auction for power supply in Duke or FirstEnergy  
11 to take place the previous fall, in October or  
12 November? For power to be delivered June 1st, it's  
13 not unusual for the auctions, for at least some of  
14 the tranches to take place the previous fall, like in  
15 October or November.

16 A. I'm not aware of when the auctions occur  
17 for those customers but, you know, it probably  
18 wouldn't be unusual to do so.

19 Q. So your idea of "timely notice" would be  
20 the notice they would have to give before those  
21 auctions, so if Dayton were to procure on a similar  
22 schedule and have an October auction, you would  
23 expect notice then to be sometime in September for  
24 the following June.

25 A. Right. Correct.

1972

1           Q.    And you think we can explain this to  
2   residential customers in this state?

3           A.    Well, I think in that case I think the  
4   proposal would really apply to only the larger  
5   customers.

6           EXAMINER PRICE:   Okay.   Great.   Thank  
7   you.

8           THE WITNESS:   Thank you.

9           EXAMINER PRICE:   Mr. Margard?

10          MR. MARGARD:   I have no questions.   Thank  
11   you, your Honor.

12          EXAMINER PRICE:   Redirect?

13          MAJOR THOMPSON:   Nothing, your Honor.

14          EXAMINER PRICE:   You're excused.   Thank  
15   you.

16          THE WITNESS:   Thank you.

17          MAJOR THOMPSON:   We ask to move Exhibit 2  
18   into the record.

19          EXAMINER PRICE:   Any objections to the  
20   admission of Exhibit 2?

21          (No response.)

22          EXAMINER PRICE:   Seeing none, it will be  
23   admitted.

24          (EXHIBIT ADMITTED INTO EVIDENCE.)

25          MR. BOEHM:   Your Honor, my witness has

1973

1 arrived from the sunny south where he had to have his  
2 wings de-iced before taking off from Atlanta. So I  
3 would call Mr. Lane Kollen.

4 (Witness sworn.)

5 (Discussion off the record.)

6 EXAMINER PRICE: Please state your name  
7 and business address for the record.

8 THE WITNESS: My name is Lane Kollen. My  
9 business address is J. Kennedy & Associates  
10 Incorporated, 570 Colonial Parke Drive, Suite 305,  
11 Roswell, Georgia, 30075.

12 EXAMINER PRICE: Let's go off the record  
13 for a moment.

14 (Discussion off the record.)

15 EXAMINER PRICE: Let's go back on the  
16 record.

17 - - -

18 LANE KOLLEN

19 being first duly sworn, as prescribed by law, was  
20 examined and testified as follows.

21 DIRECT EXAMINATION

22 By Mr. Boehm:

23 Q. Mr. Kollen, do you have in front of you a  
24 document entitled "Reformatted Direct Testimony and  
25 Exhibit of Lane Kollen"?

1974

1 A. Yes.

2 MR. BOEHM: I'd like to mark that for  
3 identification, your Honor, as OEG Exhibit No. 1.

4 EXAMINER PRICE: So marked.

5 (EXHIBIT MARKED FOR IDENTIFICATION.)

6 MR. BOEHM: And I would caution people  
7 that the "reformatted" means that the original  
8 version had some pagination problems so we sent this  
9 out again. Try to use this as you follow along.

10 Q. Mr. Kollen, does this Exhibit OEG No. 1  
11 represent your prepared direct testimony in this  
12 case?

13 A. Yes, and exhibits. Are you going to  
14 separately mark the exhibits?

15 Q. And was this prepared by you or under  
16 your direction and control?

17 A. Yes.

18 Q. And if I were to ask you the questions --  
19 do you have any changes to this?

20 A. No.

21 Q. Okay. If I were to ask you the questions  
22 contained therein, would your answers be the same?

23 A. Yes.

24 MR. BOEHM: I submit the witness for  
25 cross-examination, your Honor.

1975

1 EXAMINER PRICE: Thank you.

2 Mr. Berger?

3 - - -

4 CROSS-EXAMINATION

5 By Mr. Berger:

6 Q. Good morning, Mr. Kollen. How are you?

7 A. Good morning. We finally get to meet in  
8 person.

9 Q. Yes. I'm Tad Berger, I'm with the Ohio  
10 Consumers' Counsel, we spoke previously at your  
11 deposition.

12 A. Yes.

13 Q. Would I be correct that Mr. Baron drafted  
14 the testimony you presented with respect to cost of  
15 service and rate design issues?

16 A. Yes, that's correct.

17 Q. And would you agree with me that the last  
18 time that you performed a cost allocation study was  
19 more than five years ago?

20 A. Yes.

21 Q. But your client decided they only wanted  
22 one person testifying on these issues and, between  
23 you and Mr. Baron from your firm, you drew the short  
24 straw; is that correct?

25 A. That's true. But it's rather a simple

1976

1 issue from our perspective that this is a fixed  
2 charge or a fixed cost related to the return on  
3 equity and so it simply should be allocated on  
4 demand.

5 Q. You did not prepare a proposed revenue  
6 allocation, did you?

7 A. No, other than what I described in my  
8 testimony, because of the simplistic nature of our  
9 recommendation.

10 Q. But you recommend that costs be allocated  
11 on a 1CP or coincident peak method; is that correct?

12 A. Yes, in this proceeding that's correct.

13 Q. And the last time you proposed an  
14 allocation methodology for production plant was more  
15 than five years ago; is that correct?

16 A. Yes, that would be correct.

17 Q. And you don't recall ever having  
18 testified to a 1CP methodology or any other  
19 allocation methodology for production plant in any  
20 prior proceeding, do you?

21 A. Not sitting here. I could go through my  
22 list of expert appearances, but not sitting here.

23 Q. Okay. And you're taking no position in  
24 this proceeding on the intraclass residential rate  
25 design, is that --

1977

1           A.     That's correct.

2           Q.     And you've never previously testified  
3 regarding intraclass residential rate design, have  
4 you?

5           A.     No, not in Ohio.

6           Q.     Would I be correct that neither you nor  
7 Mr. Baron performed any quantitative analysis to  
8 determine whether the 1CP method appropriately  
9 represented each customer class's responsibility for  
10 production related costs in this case; is that  
11 correct?

12          A.     Well, it's correct that I didn't perform  
13 an independent cost of service analysis. Again, our  
14 approach was rather straightforward and really is  
15 more of a policy approach rather than a quantitative  
16 approach in this sense: This proposed service  
17 stability rider is based upon a deficiency in the  
18 return on equity. To increase the return on equity,  
19 it's a fixed cost, therefore, it should be allocated  
20 on demand. We don't think that there's necessarily a  
21 quantitative study that needs to follow that.

22          Q.     You did not perform one, though.

23          A.     That's correct.

24                 MR. BERGER: Thank you.

25                 That's all I have, your Honor.



1978

1 EXAMINER PRICE: Thank you.

2 Mr. Williams?

3 MR. WILLIAMS: No questions, your Honor.

4 EXAMINER PRICE: Mr. Sherman?

5 MR. SHERMAN: No questions, your Honor.

6 EXAMINER PRICE: FES?

7 MR. HAYDEN: No questions.

8 EXAMINER PRICE: IEU?

9 MR. OLIKER: No questions, your Honor.

10 EXAMINER PRICE: Mr. Yurick?

11 MR. YURICK: No questions at this time,  
12 your Honor.

13 EXAMINER PRICE: Major?

14 MAJOR THOMPSON: No questions.

15 EXAMINER PRICE: Ms. Mooney?

16 MS. MOONEY: No questions.

17 EXAMINER PRICE: Mr. Faruki?

18 MR. FARUKI: Thank you, your Honors.

19 - - -

20 CROSS-EXAMINATION

21 By Mr. Faruki:

22 Q. Good morning, Mr. Kollen, I'm Charlie  
23 Faruki, we met on the phone at least in your  
24 deposition, and I represent DP&L in this matter.

25 A. Good to meet you in person too.

1 Q. Yes, sir. Same here.

2 Your firm was retained initially in  
3 early-2012; is that right?

4 A. Yes, that's correct.

5 Q. But you personally became involved early  
6 in 2013, correct?

7 A. Yes.

8 Q. I take it that you have a long-standing  
9 relationship with Mr. Boehm and his firm.

10 A. I do. And our firm does.

11 Q. And your firm does. And as I understand  
12 it, that long-term relationship with the Boehm-Kurtz  
13 firm stretches back to its predecessor law firm; is  
14 that right?

15 A. Yes, that's correct.

16 Q. If I can summarize what we were talking  
17 about initially at your deposition, it sounds as if  
18 your firm and you are the go-to witness firm for him;  
19 is that right?

20 A. I don't know what you mean by that, but I  
21 would say this, that we have represented customers,  
22 usually large customers, in Kentucky and Ohio, and  
23 have been retained by the Boehm-Kurtz law firm to do  
24 so.

25 Q. And you have been involved with Mr. Boehm

1980

1 or his law firm in at least several dozen  
2 proceedings; is that right?

3 A. I believe that's correct.

4 Q. The intervenor here, OEG, that Mr. Boehm  
5 represents was formed about seven years ago  
6 approximately; is that correct?

7 A. I'm not certain about that, but that does  
8 sound about right.

9 Q. That was the estimate you gave me,  
10 correct?

11 A. I don't recall. But it does sound about  
12 right.

13 Q. All right. There have, since the  
14 formation of OEG, been between 6 and 12 cases in Ohio  
15 before this Commission in which OEG has been involved  
16 on behalf of large energy users; is that correct?

17 A. At least that many, yes.

18 Q. Okay. And you personally have testified  
19 over 200 times, excluding depositions; is that right?

20 A. Yes.

21 Q. About 90 percent of your testimony is  
22 before state Public Service Commissions and the  
23 Public Utilities Commission of Ohio; is that right?

24 A. Yes.

25 Q. About 10 percent of it is at FERC,

1981

1 correct?

2 A. Yes.

3 Q. As to your own time, at least 90 percent  
4 of your professional time, not your personal time, is  
5 taken up with the preparation of reports and prefiled  
6 testimony sponsoring those reports as well as with  
7 your testifying live; is that correct?

8 A. Yes. And as well as the analyses that  
9 goes into the development of the testimony.

10 Q. You are not an economist by education; is  
11 that correct?

12 A. That's correct, other than the economic  
13 training that is part of a Bachelor of Business  
14 Administration degree and the economics courses  
15 necessary for an MBA.

16 Q. And you are aware that the applicant in  
17 this case is The Dayton Power & Light Company?

18 A. Yes. With a "The" in front of the  
19 "Dayton."

20 Q. Yes.

21 A. Because when I worked for Toledo Edison  
22 Company it was "The Toledo Edison Company."

23 Q. That's an old-fashioned convention that  
24 still survives with a lot of companies.

25 EXAMINER PRICE: It's "The Ohio State

1982

1 University" too.

2 THE WITNESS: Is that right?

3 MR. FARUKI: That's exactly right.

4 That's where I went to law school.

5 Q. You're also aware that when the  
6 Commission issues its order in this case, the rates  
7 that it would be approving are rates for the  
8 applicant, The Dayton Power & Light Company, right?

9 A. Yes, that's correct.

10 Q. Which is an integrated utility.

11 A. It is at this time, yes.

12 Q. You have a two-part recommendation with  
13 regard to the SSR in this matter; one part being that  
14 it should be rejected and then, if I can call this in  
15 the alternative, a recommendation that the amount of  
16 the SSR be limited to the \$73 million nonbypassable  
17 charge that is currently in rates.

18 A. Yes. That would be the RSC. And that  
19 would only be if the Commission believed that it was  
20 appropriate to provide a nonbypassable charge for  
21 retail rate stability and also, then, coupled with  
22 that alternative recommendation, as you've  
23 characterized it, would be a recognition that the  
24 company's quantification was overstated and needed to  
25 be modified, correct.

1983

1 MR. FARUKI: Your Honor, I'll move to  
2 strike the volunteered -- the volunteered statement  
3 about overstatement. When I asked him --

4 EXAMINER PRICE: I'll have her read back  
5 the question and answer.

6 MR. FARUKI: Okay.

7 EXAMINER PRICE: Can I have the question  
8 and answer again, please?

9 (Record read.)

10 MR. FARUKI: Your Honor, when I asked him  
11 that in his deposition, the answer to that question  
12 was: "Yes."

13 EXAMINER PRICE: Well, yes, Mr. Boehm?

14 MR. BOEHM: Your Honor, I think it's fair  
15 in the interest of completeness. It's in his  
16 testimony, you know.

17 EXAMINER PRICE: We are going to deny the  
18 motion to strike this time; however, we are going to  
19 caution the witness to listen to counsel's question  
20 and answer the question posed and only the question  
21 posed.

22 THE WITNESS: Yes, your Honor.

23 Q. (By Mr. Faruki) Sir, you have a  
24 definition of "financial integrity" that you are  
25 using in this proceeding; is that right?

1984

1 A. Do you have a reference to my testimony?

2 Q. Well, yes. Isn't it true that you define  
3 "financial integrity" as follows: That the company  
4 should have the ability to pay its bills and continue  
5 as a going concern?

6 A. Yes, that's fair. I don't think that was  
7 in my testimony, but I would agree with that.

8 Q. I asked you at your testimony and that's  
9 what you gave me, but you agree with it, don't you?

10 A. I do, yes.

11 Q. Okay. That definition, you believe,  
12 correctly characterizes the general use of that term  
13 "financial integrity" correct?

14 A. I do.

15 Q. You agree with me that, generally  
16 speaking, financial integrity would be defined by  
17 earnings?

18 A. Yes, along with other financial metrics.

19 Q. With regard to the comments in your  
20 testimony about generation assets -- let me see if I  
21 can approach it this way: It is your view that if  
22 the generation assets were not in the utility, were  
23 not within DP&L, then DP&L would not be in financial  
24 distress? Is that right?

25 A. Yes, that's true.

1985

1           Q.    Saying that a little bit differently, you  
2           are saying, from your analysis in this case, that one  
3           reason for DP&L's financial distress is that it still  
4           has the generation assets within DP&L; is that right?

5           A.    I don't know if I would agree with the  
6           characterization as "one reason" because that implies  
7           that there are other reasons. I believe it is the  
8           reason for the financial distress.

9           Q.    Let me show you your deposition, then.  
10          Did you bring your deposition with you?

11          A.    I don't have a copy of it with me.

12          Q.    There you go, sir.

13                Would you look with me at page 32 and  
14          tell me when you have page 32, line 7. Do you have  
15          that?

16          A.    Yes, I do.

17          Q.    On page 32 I asked you the question: "So  
18          when you say that if the generation assets were not  
19          in the utility, the company would not be in financial  
20          distress, are you saying that one reason for the  
21          company's financial distress is that it still has the  
22          generation assets in DP&L?"

23                Answer: "Yes."

24                Have I read that correctly?

25          A.    Yes.



1986

1 MR. BOEHM: Your Honor, object. This is  
2 not impeachment. It's confirmation. When you say  
3 "one reason" and then at one point in time you say  
4 "it's the reason," I don't see a contradiction there.  
5 If the one reason is the reason, it's the same.

6 MR. FARUKI: He rejected the question  
7 when I asked it before I impeached him. When I asked  
8 it in the form of "one reason," he said no, it's not  
9 one reason, it's the reason.

10 EXAMINER PRICE: Objection's overruled.  
11 The transcript says what it says.

12 Q. (By Mr. Faruki) Sir, you have not made an  
13 analysis of what it would take financially for DP&L  
14 to separate its generation assets into a separate  
15 company, have you?

16 A. No; that's correct.

17 Q. Your testimony discusses a quantitative  
18 analysis using a historic 12-year period but you did  
19 not do an independent quantitative analysis of DP&L's  
20 financial integrity forward looking over the period  
21 of the ESP, did you?

22 A. Let me ask a clarifying question. You  
23 mean with respect to the 2013 through '17 period --

24 Q. Yes, sir.

25 A. -- in this proceeding? No, I haven't

1987

1 performed an independent quantification or analysis.

2 Q. And a subset of that perhaps is this: Am  
3 I correct that you did not perform an independent  
4 quantification or analysis of DP&L's ROEs for each  
5 year of the ESP period?

6 A. And again, you're referring to the  
7 projected period.

8 Q. Yes, sir.

9 A. Not an independent analysis. I relied on  
10 Dr. Chambers' analysis as modified from Mr. Jackson's  
11 base case.

12 Q. You have a graph in your testimony, I  
13 think it's on page 15, where you are showing returns  
14 on common equity.

15 A. Yes, that's correct.

16 Q. Do you have that in front of you?

17 A. I do.

18 Q. You're aware that there has been recently  
19 a downward trend in DP&L's ROEs; is that right?

20 A. Yes, that's correct. You can see that on  
21 that chart.

22 Q. You agree with me that the cumulative  
23 effect on DP&L of customer switching is growing?

24 A. Yes, to the extent that customer  
25 switching rates are increasing, then the effect would

1988

1 grow.

2 Q. The start of the blending period, as DP&L  
3 proposes to use auction based rates if the Commission  
4 would approve its doing so, would also negatively  
5 effect DP&L's financial picture given the lower  
6 current market prices; is that right?

7 A. Temporarily, yes. Longer term, perhaps  
8 not. Depending upon what the RPM would be in the  
9 future.

10 Q. Depending on how prices go up or down in  
11 the future.

12 A. Correct.

13 Q. You also, and I think this is page 14 of  
14 your testimony, Mr. Kollen, tabulated DP&L's returns  
15 on common equity and made a comparison in the table  
16 on 14; is that right?

17 A. Yes.

18 Q. What you were doing was comparing DP&L's  
19 earned return on common equity to the average  
20 authorized return for electric utilities; is that  
21 correct?

22 A. Yes, that's correct. As reported by S&L  
23 Financial.

24 Q. You also understand that DP&L had  
25 different owners during the period of time that you

1989

1 examined its historic earned returns?

2 A. Yes, at least for part of the time. It  
3 had the same owner all the way through the date  
4 before the acquisition by AES.

5 Q. And that owner, DPL, Inc., was publicly  
6 held at that time?

7 A. Yes.

8 Q. Up until, that is, the AES acquisition.

9 A. Yes.

10 Q. Am I correct that you did not compare  
11 DP&L's actual returns to other utilities' actual  
12 returns for the 2001 to 2012 period?

13 A. That's correct.

14 Q. During the 2001 to 2012 period that you  
15 examined market prices were higher than they are now;  
16 is that right?

17 A. Yes. Except for the latter part of '12.  
18 2012, that is.

19 Q. Thank you, sir.

20 MR. FARUKI: Your Honors, that's all I  
21 have.

22 EXAMINER PRICE: Mr. Margard?

23 MR. MARGARD: No questions. Thank you,  
24 your Honor.

25 EXAMINER PRICE: Redirect?

1990

1 MR. BOEHM: If I could talk to the  
2 witness for a moment, your Honor.

3 EXAMINER PRICE: You may.

4 Let's go off the record.

5 (Off the record.)

6 EXAMINER PRICE: Go back on the record.

7 MR. BOEHM: Your Honor, we have no  
8 redirect.

9 - - -

10 EXAMINATION

11 By Examiner Price:

12 Q. I just have a couple follow-up questions.

13 A. Yes, your Honor.

14 Q. As I understand your testimony, then, you  
15 have two primary recommendations; one is to a revenue  
16 allocation in the event there is an SSR.

17 A. Yes.

18 Q. And it's to change it from the way the  
19 RSC is currently to one based solely on demand?

20 A. That's correct, for the interclass  
21 allocation and then demand only with within the  
22 demand related classes.

23 Q. Okay. And then the other one is, in the  
24 event the Commission decides to have an SSR, to limit  
25 it to \$73 million.

1991

1 A. Yes, that's right.

2 Q. All other things being equal, if the  
3 Commission were to adopt those two recommendations,  
4 the customers that you represent would see an actual  
5 rate decrease, wouldn't they?

6 A. No.

7 Q. They would not?

8 A. I don't believe so.

9 Q. Okay.

10 A. Oh, I'm sorry. You're asking with  
11 respect to the 73 million --

12 Q. Yes.

13 A. -- dollars. I believe that would be  
14 correct then. I'm sorry.

15 Q. Okay. All other things being equal.

16 A. Yes, all else being equal.

17 Q. At the RSC level --

18 A. Yes.

19 Q. -- the change to their rate allocation,  
20 your testimony is they would see a rate decrease.

21 A. Yes.

22 EXAMINER PRICE: Thank you. You're  
23 excused.

24 Mr. Boehm.

25 MR. BOEHM: Your Honor, I would move for

1992

1 the admission of OEG Exhibit No. 1.

2 EXAMINER PRICE: Any objection to the  
3 admission of OEG Exhibit No. 1?

4 MR. FARUKI: No, your Honor.

5 EXAMINER PRICE: Seeing none, it will be  
6 admitted.

7 (EXHIBIT ADMITTED INTO EVIDENCE.)

8 EXAMINER PRICE: At this time we will  
9 take a 12-minute break until 10:30.

10 (Recess taken.)

11 EXAMINER MCKENNEY: Let's go back on the  
12 record at this time.

13 Is OCC ready to call its next witness?

14 MS. GRADY: Yes, your Honor. Thank you.  
15 OCC would call Mr. Kenneth Rose.

16 EXAMINER MCKENNEY: Dr. Rose, would you  
17 please raise your right hand.

18 (Witness sworn.)

19 EXAMINER MCKENNEY: Thank you. Please  
20 state your name and business address for the record.

21 THE WITNESS: Kenneth Rose, in Upper  
22 Arlington, Ohio, it's a box number.

23 EXAMINER MCKENNEY: That's fine.

24 THE WITNESS: It's 12248 [verbatim],  
25 Columbus, Ohio, 43, I forgot the zip code, I'm sorry.

1993

1 EXAMINER PRICE: We can't send the  
2 sheriff to the post office box anyway.

3 THE WITNESS: I'm sorry, I don't use it  
4 very often.

5 - - -

6 KENNETH ROSE  
7 being first duly sworn, as prescribed by law, was  
8 examined and testified as follows:

9 DIRECT EXAMINATION

10 By Ms. Grady:

11 Q. Good morning, Mr. Rose.

12 A. Good morning.

13 THE WITNESS: Good morning, your Honors.

14 Q. Mr. Rose, for purposes of this  
15 proceeding, by whom are you employed and in what  
16 capacity?

17 A. I'm self-employed and I was under  
18 contract from the OCC to be a witness in this case.

19 MS. GRADY: Now, your Honor, at this time  
20 I would ask to be marked for identification purposes  
21 as OCC Exhibit No. 21 the direct testimony of Kenneth  
22 Rose, PhD.

23 EXAMINER McKENNEY: It will be so marked.

24 (EXHIBIT MARKED FOR IDENTIFICATION.)

25 Q. Mr. Rose, do you have in front of you



1994

1 what has been preliminarily marked as OCC Exhibit  
2 No. 21? That is your direct testimony.

3 A. Yes, I do. This is not marked, but --

4 Q. I have asked the court reporter to mark  
5 it as OCC Exhibit No. 21.

6 A. Okay.

7 Q. Can you identify that document for me,  
8 please?

9 A. Yes. That's the direct testimony filed  
10 on March 1st, 2013.

11 Q. Mr. Rose, was this document prepared by  
12 you or under your direct supervision?

13 A. Yes.

14 Q. Do you have any additions, corrections,  
15 or deletions to this testimony at this time?

16 A. There's one addition I would like to  
17 make.

18 Q. Go right ahead.

19 A. There was a -- it came up in the  
20 deposition and there was one -- a number that was not  
21 accounted for and I promised at the deposition that I  
22 would supply that. It's another table from the same  
23 DP&L testimony, from the 1999 testimony, and it  
24 supplies the number that was inadvertently -- if that  
25 was left off, that was my mistake.

1995

1 But I'd like to add a footnote at the  
2 end.

3 Q. Before you move on, Mr. Rose.

4 MS. GRADY: Can we have marked for  
5 identification purposes as OCC Exhibit 22 a  
6 single-page document entitled The Dayton Power &  
7 Light Company Case No. 99\_EL-ETP, Customer Transition  
8 Charge by Tariff.

9 EXAMINER MCKENNEY: It will be so marked.

10 (EXHIBIT MARKED FOR IDENTIFICATION.)

11 Q. Mr. Rose, is that the document that you  
12 were referring to?

13 A. Yes, it is.

14 Q. Okay. And that would then supplement  
15 your testimony; is that correct?

16 A. Yes.

17 Q. Okay. And do go on with your other  
18 corrections and deletions, please.

19 A. Well, the appropriate place to put that  
20 would be at the end of that first partial paragraph  
21 on page 7 of my testimony and then just identifying  
22 that as the source of the total number of  
23 \$441 million that the company had in their testimony.

24 Q. And, to be specific, that would be line 3  
25 of page 7 of OCC Exhibit No. 21?

1996

1 A. Correct.

2 Q. Do you have any other additions,  
3 corrections, or deletions, Mr. Rose?

4 A. No.

5 MS. GRADY: Your Honor, at this time I  
6 would move for the admission of OCC Exhibit No. 21  
7 and 22 subject to cross-examination.

8 EXAMINER McKENNEY: Thank you. At this  
9 time we'll move to cross-examination.

10 Mr. Rose, before we proceed I'm going to  
11 ask you to speak up a little louder for the court  
12 reporter.

13 Mr. Williams?

14 MR. OLIKER: Maureen, are you going to  
15 circulate Exhibit 22?

16 MS. GRADY: I'm sorry. Yes. I  
17 apologize.

18 EXAMINER McKENNEY: Mr. Williams,  
19 cross-examination?

20 MR. WILLIAMS: None, your Honor.

21 EXAMINER McKENNEY: Mr. Sherman?

22 MR. SHERMAN: No, your Honor.

23 EXAMINER McKENNEY: Mr. Hayden?

24 MR. HAYDEN: No, thank you.

25 EXAMINER McKENNEY: Mr. Olikier?

1997

1 MR. OLIKER: No, thank you, your Honor.

2 EXAMINER McKENNEY: Mr. Boehm?

3 MR. BOEHM: No.

4 EXAMINER McKENNEY: Mr. Yurick?

5 MR. YURICK: No questions, thank you.

6 EXAMINER McKENNEY: Major?

7 MAJOR THOMPSON: None, sir.

8 EXAMINER McKENNEY: Mr. Faruki?

9 MR. FARUKI: Thank you, your Honor.

10 - - -

11 CROSS-EXAMINATION

12 By Mr. Faruki:

13 Q. Good morning again, Dr. Rose.

14 A. Good morning.

15 Q. Good to see you again.

16 You understand that DP&L bases its  
17 proposal for an SSO on the company's need as a whole  
18 for financial integrity; is that correct?

19 A. Yes.

20 Q. You understand it's The Dayton Power &  
21 Light Company which is the applicant in the case?

22 A. Yes.

23 Q. In your testimony at pages 10 and 11 you  
24 have a summary of some of the risks facing DP&L in  
25 the future; is that right?

1998

1 A. Yes. Starting on line 19.

2 Q. Nineteen on page 10, right?

3 A. Yes.

4 Q. That's correct?

5 A. That's correct.

6 Q. Okay. I'm afraid some of the folks in  
7 the back won't be able to hear you unless you speak  
8 up a bit.

9 MS. GRADY: And, Charlie, could you speak  
10 up as well, I'm having a little trouble hearing you.

11 MR. FARUKI: I'd be glad to.

12 MS. GRADY: Thank you.

13 MR. FARUKI: I'll only drop my voice on  
14 the -- never mind.

15 Q. And you agree with me, sir, that DP&L  
16 faces the risk of transitioning to a hundred percent  
17 competitive bid plan in a relatively short period of  
18 time; is that right?

19 A. Yes, I do.

20 Q. But you have not examined as part of your  
21 work in this case the extent to which more  
22 accelerated or a more aggressive blending schedule  
23 would adversely affect DP&L's financial integrity,  
24 have you?

25 A. Only the things that were supplied by the

1999

1 company.

2 Q. That's what I mean. You haven't done an  
3 independent analysis, have you?

4 A. No, I have not.

5 Q. You do not try to estimate the potential  
6 impact or effects of any of these risks that the  
7 company faces; is that right?

8 A. No.

9 Q. I'm correct?

10 A. That's correct.

11 Q. Just so my record's plain, you have not  
12 evaluated quantitatively any of the risks that you  
13 are identifying here in your testimony.

14 A. That's correct. This is from the  
15 company's -- what the company identified as their  
16 risks.

17 Q. And do you disagree with any of them?

18 A. No.

19 Q. You have also looked, as part of your  
20 work in this case, at switching figures and you know  
21 that the general trend of customer switching has been  
22 increasing over time for DP&L; is that right?

23 A. Yes.

24 Q. A few words on your qualifications. Is  
25 it accurate that you have not testified before the

2000

1 Public Utilities Commission or other Ohio agencies or  
2 courts in Ohio?

3 A. That's correct, except for testimony  
4 before the legislature.

5 Q. You describe yourself as an independent  
6 consultant, correct?

7 A. That's correct.

8 Q. And other than, this is as to your  
9 writings, sir, other than an article comparing states  
10 that have gone to retail access versus states that  
11 have not, none of the articles that you have authored  
12 are ones that you consider pertinent to the issues in  
13 this case; is that right?

14 A. That's correct.

15 Q. You are neither a lawyer nor an  
16 accountant, correct?

17 A. Correct.

18 Q. You work with a consumer group in  
19 Michigan called Michigan CARE; is that right?

20 A. That's correct.

21 Q. And --

22 A. Under contract agreement, not an  
23 employee.

24 Q. Yes, sir. I wasn't suggesting you were  
25 employed by them.

2001

1           A.    You said "work with," that could be  
2   misinterpreted.

3           Q.    Fair enough.  You have had a contract and  
4   performed work pursuant to the contract with this  
5   group called Michigan CARE, and "CARE" is an acronym  
6   for Consumers Against Rate Excess; is that right?

7           A.    That's correct.

8           Q.    You understand from your reading in this  
9   case that the SSR was directed to DP&L's financial  
10   integrity and to maintaining financial integrity; is  
11   that right?

12          A.    Yes.

13          Q.    More specifically, you understand that  
14   DP&L in this case has presented its financial  
15   integrity as its rationale for the SSR?

16          A.    Yes.

17          Q.    You also saw and understand from  
18   Mr. Jackson's testimony, Jackson being DP&L's CFO,  
19   that what DP&L is seeking here is the opportunity to  
20   earn a return within a specified range.

21          A.    Yes.

22          Q.    But your testimony and your opinions and  
23   recommendations here do not include any opinion on  
24   whether the Craig Jackson or Bill Chambers analyses  
25   during the ESP period are correct; is that right?



2002

1           A.    In terms of the financial -- impact on  
2 financial integrity.

3           Q.    Yes, sir.

4           A.    That's correct.

5           Q.    In other words, you personally are not  
6 offering in this case opinions on DP&L's financial  
7 integrity.

8           A.    That's correct.

9           Q.    Indeed, as I understand your  
10 self-description, you describe yourself as an  
11 economist and not a financial analyst; is that right?

12          A.    That's right. I probably specialize -- I  
13 think it's fair to say that I specialize more in the  
14 market development, the wholesale retail markets, not  
15 the financial conditions of the participants in the  
16 market.

17               MR. FARUKI: Can you read that back to  
18 me?

19               (Record read.)

20               EXAMINER MCKENNEY: Dr. Rose, please try  
21 to --

22               THE WITNESS: I'm sorry.

23               EXAMINER MCKENNEY: -- try to speak up.  
24 Thank you.

25               MR. FARUKI: I think there's some chatter

2003

1 in the back that's making it harder for us to hear.

2 THE WITNESS: Charlie's three feet away  
3 from me, so --

4 MS. GRADY: He's got the best spot in the  
5 house.

6 MR. FARUKI: No one's criticizing you for  
7 being a soft-spoken man, sir.

8 Q. (By Mr. Faruki) It's also true that you  
9 do not offer an opinion on whether or not DP&L's  
10 transmission and distribution operations are part of  
11 the cause of DP&L's financial circumstances; is that  
12 right?

13 A. In my direct testimony I said that the  
14 company did not separate out transmission,  
15 distribution, or generation.

16 Q. Okay. That doesn't quite answer my  
17 question.

18 Isn't it true that you are not offering  
19 an opinion here on whether DP&L's T and D operations  
20 are part of the cause of its financial integrity  
21 claims?

22 A. That's correct.

23 Q. Let me ask you some questions about the  
24 legal opinions in your testimony. You told us you're  
25 not an attorney, right?

2004

1 A. That's right.

2 Q. And in the process of putting your  
3 testimony together, OCC's lawyer provided Ohio law to  
4 include in your testimony; is that right?

5 A. That was supplemented with things that I  
6 had, we worked together on that.

7 Q. Well, we'll get to that.

8 Isn't it true that in several cases in  
9 various parts of your testimony where you talk about  
10 advice of counsel, OCC's lawyers provided portions of  
11 Ohio law for use in your testimony?

12 A. That's correct.

13 Q. Correct?

14 A. Yes.

15 Q. Okay. So if we start to look at some of  
16 your opinions about that, look with me at your  
17 testimony starting on page 2 and we'll go through a  
18 number of these.

19 At the bottom of 2 you cite two sections  
20 of the Revised Code and say it's your understanding  
21 that the laws in Ohio limit an electric utility's  
22 right to collect generating costs. Do you see that  
23 reference?

24 A. Yes.

25 Q. That sentence.

2005

1                   And then over on page 12 in answer to  
2                   question 21 you say "It's my understanding, based on  
3                   advice of counsel, that a utility may only include a  
4                   provision in its ESP that is specifically listed in  
5                   Revised Code Section 4928.143(B) (2)." Right?

6                   A.     That's right.

7                   Q.     And I won't read the whole thing, but you  
8                   have a similar statement that begins "Per my  
9                   understanding and advice of counsel" in answer 22  
10                  where most of that sentence is quoting a section of  
11                  the Revised Code, right?

12                  A.     That's correct.

13                  Q.     And then you go on in page 13 to opine,  
14                  beginning on line 4, what a particular provision of  
15                  the Revised Code was intended to allow. Is that  
16                  right? So you're offering testimony there on what a  
17                  Revised Code provision was or was not intended to  
18                  allow; is that right?

19                  A.     That's correct.

20                  Q.     And then you conclude that paragraph by  
21                  saying that you "conclude this because allowing the  
22                  SSR as a provision under an ESP would conflict with  
23                  other provisions of the law, including Revised  
24                  Code 4928.141." So that's another legal opinion,  
25                  isn't it?

2006

1           A.     That's my understanding from reading the  
2     Revised Code and the law.

3           Q.     Well, isn't it your testimony that these  
4     statements of the law are integral parts of your  
5     opinions?

6           A.     This is still my testimony and --

7           Q.     I want you to answer this question, not  
8     my previous question: Isn't it true that it's your  
9     testimony that these statements of the law are  
10    integral parts of your opinions?

11           MS. GRADY: Objection.

12           EXAMINER MCKENNEY: Grounds?

13           MS. GRADY: The question is confusing, it  
14    doesn't refer to what statements. There's different  
15    statements made about different portions of the law  
16    and I think we should be specific here.

17           MR. FARUKI: Talking about all of these  
18    statements.

19           EXAMINER MCKENNEY: Objection's  
20    overruled. The witness can answer generally.

21                   Can you rephrase or repeat that?

22           Q.     (By Mr. Faruki) Yes, what you are saying  
23    to us is that these statements of Ohio law that we've  
24    just reviewed are, in your mind, integral parts of  
25    your opinions; isn't that true?

2007

1 A. Yes.

2 Q. Let me go to my favorite one, page 9.  
3 You have a question "Is there any authority to  
4 support your opinion that DP&L's transition period  
5 has been long enough?" So that's --

6 A. Can I interrupt you? Where you are at?

7 Q. Sorry, page 9, line 7, question 16. "Is  
8 there any authority to support your opinion that  
9 DP&L's transition period has been long enough?"  
10 Do you remember, did you write that  
11 question or did counsel write that question?

12 A. Yes, that's a reference to -- what is  
13 cited later in the next question, 17.

14 Q. Right.

15 A. 4928.38.

16 Q. Right. So I'll get to 17, but this  
17 question is asking you if you have legal authority to  
18 support your opinion. And then you say, you begin  
19 "Yes. I understand that Ohio law prohibits...." So  
20 this is another legal opinion, isn't it?

21 MS. GRADY: Objection. The question does  
22 not ask if there's any legal authority. It says "is  
23 there any authority," Mr. Faruki. Let's not be  
24 misleading.

25 MR. FARUKI: Your Honor, we're all

2008

1 looking at it. It's hardly misleading. If I walk  
2 into an associate in my law firm and ask him is there  
3 any authority to support that, I'm asking if there's  
4 legal authority. The answer to the question is:  
5 "Yes, I understand Ohio law prohibits...."

6 EXAMINER MCKENNEY: Mr. Faruki, please  
7 rephrase the question.

8 MS. GRADY: Thank you.

9 Q. (By Mr. Faruki) Isn't it true that when  
10 you are asking here is there any authority to support  
11 your opinion, you're asking for what Ohio law says?

12 A. Yes, and then I show that.

13 Q. Okay. And then, "yes," and then in  
14 question 17 you are explaining what Section 4928.38  
15 provides; is that right?

16 A. That's correct.

17 Q. So then if we look at page 13 of your  
18 testimony, line 4, I don't think I asked you about  
19 that one, this passage from 4 to 8 is your testimony  
20 about what a provision of the Revised Code was  
21 intended to allow; is that right?

22 A. Yes.

23 Q. So here, as we discussed at your  
24 deposition, what you were doing is you're trying to  
25 offer an opinion about what a provision of the

2009

1 Revised Code was intended by the legislature, the  
2 General Assembly, to allow; is that right?

3 A. That's right.

4 Q. That's correct?

5 A. That's correct.

6 Q. You've not been a legislator, have you?

7 A. No.

8 Q. Do you remember, well, did you try to  
9 determine whether there was in existence any  
10 legislative history of this statute that you are  
11 explaining?

12 A. Not before 1999. In terms of laws that  
13 were passed. I do know a little bit about the  
14 history of how that passage came to be in the law.

15 Q. Well, if we continue our tour through the  
16 law here, on page 14 you have a question 24 that --  
17 in which the answer on line 14 is "No. In fact, any  
18 such charge is completely contrary to the law and the  
19 goals of creating a competitive market."

20 So that's another statement of yours as  
21 to what is completely contrary to the law; is that  
22 right?

23 A. That's a more general comment on the  
24 direction that the State of Ohio is headed, not just  
25 an interpretation of the law, but where the state is



2010

1 generally moving.

2 Q. Okay. Do you have your deposition handy?

3 A. Yes.

4 Q. Take a look at page 60 where I asked you  
5 that question. Page 60, and tell me when you are at  
6 line 11, please, sir.

7 A. Yes, I have it.

8 Q. "On page 14" -- I'm sorry, I'm reading at  
9 line 11 on page 14 -- "you have another legal opinion  
10 at line 14 when you say any such charge is completely  
11 contrary to the law." Do you see that?"

12 Answer: "Yes."

13 Question: "That's another legal  
14 opinion?"

15 Answer: "The first part of that sentence  
16 is my interpretation of the statute, the second part  
17 is on competitive markets."

18 Have I read that correctly?

19 MS. GRADY: Objection.

20 EXAMINER McKENNEY: Grounds?

21 MS. GRADY: Not proper impeachment. This  
22 is not inconsistent with what Mr. Rose just said. He  
23 said, his response was that answer is based upon  
24 his -- not only the law but his understanding of the  
25 competitive markets. It's not inconsistent.

2011

1 EXAMINER PRICE: That's not what he said.

2 MS. GRADY: We can have the answer  
3 reread, if that would help.

4 EXAMINER MCKENNEY: Let's have it reread.

5 EXAMINER PRICE: Let's have it reread but  
6 that wasn't what he said.

7 MR. FARUKI: Just to wind up on this line  
8 of questions --

9 MS. GRADY: Mr. Faruki, I'm waiting on a  
10 ruling here.

11 (Record read.)

12 MR. FARUKI: I think, your Honors, I  
13 think it was impeaching.

14 EXAMINER MCKENNEY: Objection's  
15 overruled.

16 Q. (By Mr. Faruki) Let me finish this line  
17 of questions this way; isn't it true, sir, that you  
18 do not consider yourself to be competent to testify  
19 on points of law exclusive of being advised on the  
20 law by OCC's lawyers?

21 MS. GRADY: May I have that question  
22 reread, please?

23 (Record read.)

24 Q. The answer is, sir?

25 A. I wouldn't say that I'm an attorney. I

2012

1 didn't present myself as an attorney.

2 Q. All right. Isn't it true that you do not  
3 consider that you are competent to testify on points  
4 of law outside of being advised on the law by OCC's  
5 lawyers?

6 A. As a person that specializes in electric  
7 restructuring I can read the law and make my own  
8 interpretations that are subject to the decisions by  
9 the Commission.

10 Q. Did you read your deposition before  
11 coming here today?

12 A. Yes.

13 Q. It wasn't very long ago, was it, that you  
14 and I met for your deposition?

15 A. Yes.

16 Q. Take a look at page 16.

17 A. I'm sorry, 16?

18 Q. Sixteen, sir. Page 16, line 12. Tell me  
19 when you're there. Do you have 12?

20 A. Yes.

21 Q. On page 16, line 12 I asked you: "Let me  
22 ask it this way: Do you consider yourself to be  
23 competent to testify on points of law exclusive of  
24 being advised by OCC on points of law?"

25 And your answer was: "No."

2013

1 Have I read that correctly?

2 A. I just said I'm not an attorney. I don't  
3 know how that's different.

4 Q. Well, it is different. I wasn't asking  
5 what you did for a living. I was asking whether you  
6 believe yourself to be competent, that is, able to  
7 testify on points of law --

8 MS. GRADY: Objection, asked and  
9 answered.

10 EXAMINER MCKENNEY: Overruled.

11 MR. FARUKI: I'm in the middle of my  
12 question.

13 Q. -- and you are telling me in your  
14 deposition, and I'm going to ask if you're still  
15 telling me that the answer to that question is "no."

16 A. It's "no."

17 Q. Okay.

18 MR. FARUKI: Your Honor, that being the  
19 case, and based on the fact that he said that these  
20 statements of law are integral parts of his opinions  
21 and he has now confessed himself to be incompetent to  
22 testify to the law, and with all respect to him, not  
23 very many people get to testify to the law but  
24 certainly economists do not, once a witness has said,  
25 has conceded that they are not competent to testify

2014

1 to something, that testimony should be stricken.

2 He has said that these opinions on the  
3 law are integral parts or foundation of his opinions  
4 and, therefore, I'm moving to strike his testimony.

5 MS. GRADY: Your Honor, if I may be  
6 heard.

7 EXAMINER MCKENNEY: You may.

8 MS. GRADY: I believe I made this very  
9 argument with respect to Mr. Chambers who said in  
10 deposition "I am not an expert on rate of return."  
11 This is the very same issue.

12 As well, your Honors, I would indicate,  
13 and intend to go there on redirect, that Mr. Rose has  
14 extensive experience with the law, having worked for  
15 the Legislative Services Commission in 1999 when SB 3  
16 was written. In fact, Mr. Rose was integral in  
17 drafting that legislation.

18 Had counsel inquired as to his  
19 Legislative Services Commission experience, he would  
20 have found that out.

21 EXAMINER MCKENNEY: Ms. Grady, you will  
22 have that opportunity on redirect if you so choose.

23 Consistent with our prior rulings in this  
24 case, we will overrule -- I'm sorry, deny the motion  
25 to strike his testimony; however, we will afford it

2015

1 the appropriate weight which is consistent with the  
2 prior rulings we've made in this case regarding legal  
3 opinions and opinions regarding legal matters in  
4 witness testimony.

5 Anything further, Mr. Faruki?

6 MR. FARUKI: Yes. Thank you, your Honor.

7 Q. (By Mr. Faruki) Let me ask you some  
8 questions, Dr. Rose, about transition costs. You  
9 understand that there was certain transition cost  
10 recovery provided for -- in a statute that was passed  
11 in 1999; is that right?

12 A. Yes.

13 Q. You also understand that in 2008 the  
14 General Assembly passed a new law which includes one  
15 of the sections that you talk about, Section  
16 4928.143, which allows an electric utility to apply  
17 for an electric security plan, right?

18 A. Yes.

19 Q. You further understand that DP&L's  
20 application in this matter was made under 4928.143,  
21 right?

22 A. That's correct.

23 Q. Further, you understand that this case  
24 was brought not under that 1999 law but, rather,  
25 under the subsequently passed statute, correct?

2016

1           A.   Well, it's all part of the same Revised  
2 Code and provisions that were put in in 1999 are  
3 still in there, still part of the Ohio code.

4           Q.   Isn't it true that you understand that  
5 this case is brought by DP&L not under the 1999 law,  
6 but on the subsequently passed statute that governs  
7 ESPs --

8           MS. GRADY:   Objection.

9           EXAMINER McKENNEY:   Grounds?

10          MS. GRADY:   Witness is not an attorney,  
11 he doesn't know what law this is brought under.

12          EXAMINER McKENNEY:   Overruled.

13          EXAMINER PRICE:   First of all, there  
14 wasn't even a question pending, he hadn't finished  
15 his question.

16          MS. GRADY:   I'm sorry.

17          EXAMINER PRICE:   If you could let him  
18 actually finish his questions before you make your  
19 objections.

20          MS. GRADY:   I'm sorry.   Go right ahead,  
21 Mr. Faruki.

22          Q.    (By Mr. Faruki) Just for clarity of the  
23 record, sir, let me do this briefly.  You understand  
24 that this case is brought by DP&L not under the 1999  
25 law, but on the subsequently passed statute that

2017

1 governs ESPs; isn't that correct?

2 MS. GRADY: Objection.

3 EXAMINER MCKENNEY: Objection's  
4 overruled. The witness can answer if he knows.

5 A. The provisions of the law that were  
6 passed in the '08 law are where the -- are the  
7 provisions that the company is citing in their  
8 filing, so I think the answer is yes.

9 Q. Okay.

10 A. If I understand you correctly.

11 Q. Thank you.

12 Now, the transition cost analysis under  
13 that 1999 law was one that compared book value of  
14 assets to market value of assets; is that right?

15 A. That's right.

16 Q. And you, as I understand it, you looked  
17 at only one piece of DP&L's transition case which was  
18 part of the testimony of Mr. Luciani; is that right?

19 A. That's correct.

20 Q. And from your limited reading in that  
21 case you did understand that the analysis undertaken  
22 in the case was a comparison of market value and book  
23 value of generation assets, right?

24 A. That's right. That's how they did the  
25 analysis.



2018

1 Q. Yes, sir.

2 A. Luciani's analysis.

3 Q. I'm sorry?

4 A. Mr. Luciani's analysis.

5 Q. Yes, sir. That was the part of that case  
6 that you looked at, right, Mr. Luciani's analysis?

7 A. That's right. There is this additional  
8 thing we added today which has the total number, but  
9 Mr. Luciani is the one who did the stranded cost  
10 calculation.

11 Q. Yes, that's what we're talking about now,  
12 and you know that with respect to the SSR in this  
13 case DP&L's analysis and presentation does not  
14 compare market value of generation assets to book  
15 value; isn't that right?

16 A. That's correct. But the company is  
17 talking about losses that they would lose, potential  
18 losses in a competitive market.

19 Q. Now, if we look at your Exhibit 1 -- do  
20 you have that with you?

21 A. Yes, sir.

22 Q. Exhibit 1 is a single page that is also  
23 labeled in the upper right corner "KR Exhibit 1.  
24 That's" you, right, Ken Rose?

25 A. That's correct.

2019

1 Q. And then under that, Exhibit RLL-6,  
2 meaning it was one of Ralph Luciani's exhibits in the  
3 case in 2000; is that right?

4 A. That's correct.

5 Q. Are you testifying that the Value column,  
6 the second column of figures, is a discounted cash  
7 flow analysis of the company's projections in the,  
8 well about 13 years ago?

9 A. That's my understanding of what  
10 Mr. Luciani did.

11 Q. And it's March of 2013 now, but you have  
12 not made any examination of capital investments that  
13 the company has made in any generation project since  
14 that case or since these projections that we're  
15 looking at, have you?

16 A. No.

17 Q. You don't even know if these plants are  
18 still operating, do you?

19 A. Actually, not related to this case but I  
20 do know that at least two of those are -- have been  
21 discussed as possibly closing I think in the next  
22 couple years.

23 Q. The question is: Do you know whether or  
24 not each of these generating stations is still  
25 operating?

2020

1           A.    As of right now? I don't -- I couldn't  
2 tell you all of them right now, but I do know there  
3 are two that are possible to be closed in the next  
4 couple years. PJM has identified -- they've been  
5 notified that they may close them.

6           Q.    Well, let's look -- I've asked you twice,  
7 let's look at page 71 of your deposition. On page 71  
8 I asked you at line 11: "Do you know whether or not  
9 each of these generation stations is still operating?

10                  Your answer: "Offhand, I don't."

11                  Have I read that correctly?

12           A.    I just answered that I don't know if  
13 they're operating today.

14           Q.    Okay.

15           A.    I just saw yesterday that -- something  
16 from PJM that two of those plants -- and I recognized  
17 the names, so I'm expanding.

18           Q.    Okay.

19           A.    It's probably a bad idea in this case.

20                  MR. FARUKI: I'll move to strike the  
21 volunteered remarks.

22                  EXAMINER MCKENNEY: Motion to strike is  
23 granted.

24           Q.    On the same chart, though, you don't know  
25 if DP&L has built or expanded generation sources in

2021

1 the years since 2000 that are not accounted for here,  
2 do you?

3 A. No.

4 Q. And you did not independently make an  
5 analysis of stranded costs, did you? That was not  
6 part of your work in this case.

7 A. In the present case?

8 Q. Yes, sir. Let me make my question a  
9 little more clear.

10 Isn't it accurate that you have not made  
11 an up-to-date analysis of stranded costs in this  
12 case?

13 A. Yes, that's true.

14 Q. And a little more broadly, your work on  
15 that was the extraction and review of materials from  
16 DP&L's case approximately 13 years ago; is that  
17 right?

18 A. Right.

19 Q. Let me change subjects, then.

20 Take a look at page 9 of your testimony  
21 with me for a minute. Let me ask you about the  
22 opinion that is on lines 3 to 5 of page 9 where you  
23 say "And now, DP&L is seeking to deny consumers the  
24 benefit of a market price, at a time when consumers  
25 could greatly benefit from a low market price."

2022

1 Do you see that reference?

2 A. Yes.

3 Q. Let's see if that is an exaggeration.  
4 You are aware that DP&L has proposed a blending  
5 schedule for rates that would include auction-based  
6 rates; is that right?

7 A. Yes.

8 Q. And you recall what the schedule was that  
9 DP&L proposed?

10 A. It was to begin at 10 percent this year.  
11 Since I don't trust my memory, I will look it up.

12 Q. I don't want to prevent you from  
13 consulting anything that you want but I can help on  
14 this if --

15 A. Yeah, 2014 goes to 40 percent, 2015 goes  
16 to 70 percent, and 2016 was 100 percent. I said  
17 10 percent in the first year, so.

18 Q. Yes, sir. But you characterize the  
19 auction blending schedule as a denial of consumers  
20 because it's your opinion that anything less than a  
21 hundred percent is a denial; is that right?

22 A. That's correct.

23 Q. You also are aware that there's no  
24 requirement that DP&L go to 100 percent all at once,  
25 right?

2023

1 A. There's no requirement, right.

2 Q. Take a look at page 12 of your testimony.  
3 This is on the SSR. You agree that the SSR is a  
4 charge, right?

5 A. Where are you at, sir?

6 Q. Actually, it's a combination of  
7 questions 21 and 22 where you are being asked about  
8 the SSR.

9 A. Okay.

10 Q. And you agree with me that the SSR is a  
11 charge; is that correct?

12 A. That's correct.

13 Q. You understand that as proposed by DP&L  
14 the SSR would be nonbypassable; is that right?

15 A. That's right.

16 Q. The SSR may affect customer shopping  
17 because, as a nonbypassable charge, it would raise  
18 prices for alternative suppliers to meet; is that  
19 right?

20 A. It would make it harder for alternative  
21 suppliers by reducing headroom.

22 Q. Okay. Page 15, the answer to  
23 question 25, you conclude that answer by saying that  
24 "...if the Company is able to earn a profit - even in  
25 excess of what it would have been allowed under

2024

1 regulation, the Company is able to retain that market  
2 gain." Is that right?

3 A. That's right.

4 Q. But you are aware that the statutes  
5 contain a provision commonly known as a significantly  
6 excessive earnings test?

7 A. Yes.

8 Q. So you're making this statement in  
9 answer 25 without reference to whether that statement  
10 is accurate under the law; is that right?

11 A. If I could be permitted to expand the  
12 answer from -- a little bit, I think the -- what this  
13 is saying is that in a competitive market the company  
14 is able to keep any earnings that they make that may  
15 have been higher than would have been permitted under  
16 regulation.

17 Q. Sorry, go ahead.

18 A. It's not a reference to the statutory  
19 language on excess earnings.

20 Q. But my question is: You're making this  
21 statement without reference to whether it's accurate  
22 under the law; isn't that true?

23 A. That's correct.

24 Q. On page 16 in the answer to question 27  
25 you are talking about the possibility of improper

2025

1 cross-subsidization of unregulated operations; is  
2 that right?

3 A. That's right.

4 Q. But here is it accurate that you are  
5 simply expressing a concern about a possibility of  
6 cross-subsidization?

7 A. That's correct.

8 Q. And it's also accurate on a different  
9 point that you have not made any financial analysis  
10 yourself of either DP&L's T and D business or,  
11 separately, its generation business; is that correct?

12 A. That's correct.

13 MR. FARUKI: Thank you, Dr. Rose.

14 Your Honors, that's all I have.

15 EXAMINER MCKENNEY: Staff?

16 MR. MARGARD: No questions. Thank you,  
17 your Honor.

18 EXAMINER MCKENNEY: Redirect, Ms. Grady?

19 MS. GRADY: Yes. I'd like a five-minute  
20 break, please.

21 EXAMINER MCKENNEY: Sure. We'll take a  
22 five-minute recess at this time. Let's go off the  
23 record.

24 (Recess taken.)

25 EXAMINER MCKENNEY: Let's go back on the



1 record.

2 Ms. Grady, redirect?

3 MS. GRADY: Yes, thank you, your Honor.

4 - - -

5 REDIRECT EXAMINATION

6 By Ms. Grady:

7 Q. Mr. Rose, do you recall a series of  
8 questions by Mr. Faruki with respect to your  
9 qualifications to present the transition cost  
10 recommendations that you have?

11 A. I do.

12 Q. And Mr. Faruki established that you are  
13 not an attorney, correct?

14 A. That's correct.

15 Q. Mr. Rose, if we go to your testimony  
16 where you discuss your qualifications, and I'm  
17 looking at specifically page 2, lines 6 through 7,  
18 you indicate there that you've worked with the PUCO  
19 staff on some topics, but I want to focus on the  
20 other piece of that in that you worked for the Ohio  
21 Legislative Services Commission when you were working  
22 at NRRI.

23 Can you tell me what that work consisted  
24 of and the timeframe that that work occurred in?

25 MR. FARUKI: I'm going to object. It's

2027

1 not rehabilitative. The admission that I used in the  
2 deposition, your Honor, where he said he does not  
3 consider himself to be competent to testify is not a  
4 rehabilitative admission.

5 Once a witness has said "I'm not  
6 competent to testify" on a subject matter, that's the  
7 end of the matter under Ohio law. So I object.

8 EXAMINER MCKENNEY: Objection's  
9 overruled. We'll allow Ms. Grady some leniency.

10 Q. Mr. Rose, do you want the question  
11 reread?

12 A. No, I understand the question.

13 Basic -- my involvement with the  
14 Legislative Service Commission was under contract at  
15 NRRI which, for purposes of record may not be clear,  
16 was an academic department at Ohio State University  
17 and I was an Ohio State employee working at NRRI at  
18 that time. I was hired by LSC, Legislative Service  
19 Commission, to assist the legislators -- the  
20 legislative task force that was created to write --  
21 eventually write legislation that eventually became  
22 SB 3.

23 If my memory serves, I think that started  
24 in 1997, in late-1997. I worked with them through  
25 '98. I think at some point we renewed the contract.

1 And then into 1999 up to just before the law was  
2 passed.

3 And during that time they hired -- LSC  
4 hired me because of my understanding of what other  
5 states were doing on restructuring at that time, in  
6 particular on questions of like stranded costs, how  
7 stranded costs are calculated, how is it defined, and  
8 this was working with the LSC people that were  
9 actually drafting the legislation.

10 And we also were working on standard  
11 offer, how do you set the standard offer rate, and in  
12 that time there were multiple presentations that were  
13 made to the legislature and answering questions, too,  
14 that the legislators had at that time about  
15 restructuring pretty early on, before most of the  
16 other parties were involved, and then later on as  
17 other parties started to become more involved in the  
18 process, including utilities, I continued on  
19 basically answering questions and helping to draft  
20 the legislation. So principally, the idea of the  
21 standard offer and the stranded cost calculations  
22 were the main thing that I was working on.

23 In particular, the -- probably one of the  
24 earliest proposals given to the legislators by me was  
25 there would be a five-year market development period,

1 and I think it went by various names, transition  
2 period or market development period, but it was  
3 always five years. It started probably '97, maybe  
4 '98, and ended up that way in the final legislation.

5 And I don't believe that the legislators  
6 at that time, well, they had that provision in the  
7 law that it would -- that the recovery of those costs  
8 would terminate, and I think the -- many of the  
9 market participants at that time understood what that  
10 meant to --

11 MR. FARUKI: I'll object. "Many of the  
12 market participants at that time understood"? He's  
13 not capable of expressing an opinion on that. And  
14 it's beyond the scope of the question.

15 EXAMINER MCKENNEY: Objection to that  
16 particular portion of his answer is sustained.

17 Q. Now, Mr. Rose, by virtue of your  
18 experience at the Legislative Service Commission  
19 working on Senate Bill 3, do you consider yourself to  
20 have more than a layman's person understanding of the  
21 provisions of that law and stranded investment cost  
22 recovery in Ohio?

23 MR. FARUKI: Objection.

24 EXAMINER PRICE: What do you mean by --  
25 is there somewhere between more than a layman and

1 less than a lawyer?

2 MS. GRADY: Let me rephrase that.

3 Q. Based on the work that you did for  
4 Legislative Services Commission, do you have a  
5 in-depth understanding of Senate Bill 3 and the  
6 provisions for transitions cost recovery?

7 MR. FARUKI: Objection. Still asking  
8 him, a nonlawyer, what kind of understanding he has  
9 of the law in the face of his admission that he's not  
10 competent to testify to the law.

11 EXAMINER MCKENNEY: Continuing objection  
12 is noted, remains overruled.

13 The witness may answer the question.

14 A. I directly worked with the legislators on  
15 those provisions and I understand what they started  
16 with, how it was amended, and what they ended up  
17 with.

18 EXAMINER PRICE: Let's just clarify this  
19 one issue for the record. Maybe this won't work.  
20 You are not rendering -- testifying as to any legal  
21 opinions in this proceeding, are you?

22 THE WITNESS: That's correct. I -- okay.

23 MS. GRADY: I didn't want to interrupt.

24 Q. (By Ms. Grady) Mr. Rose, do you remember  
25 a series of discussions with company counsel with

1 respect to how one would calculate stranded costs?

2 A. Yes.

3 Q. And do you recall that your response was  
4 that in the previous proceeding that the stranded  
5 cost was calculated by looking at the difference in  
6 market value and net book value? Do you recall that?

7 A. That's correct.

8 Q. Are there other ways to calculate  
9 stranded cost, if you know, other than just looking  
10 at the difference between market and net book value?

11 A. Yes. There were other methods that were  
12 being used in other cases and -- outside of Ohio for  
13 calculating stranded costs and there's other ways of  
14 estimating that. But the principle is basically the  
15 same. They're costs that are not recoverable in a  
16 competitive market, and that's consistent with the  
17 statutory language in Ohio.

18 Q. Now, Mr. Faruki had a series of questions  
19 asking you whether or not, with respect to -- he had  
20 that series of questions with respect to your Exhibit  
21 KR-1 where you have the DP&L stranded cost as of  
22 December 31st, 2000, and Mr. Faruki asked you  
23 whether you had done any analysis as to whether these  
24 units are still working. Do you recall that?

25 A. Yes.

1 Q. And there were also a series of questions  
2 as to whether or not you had done an analysis of the  
3 difference between the net book value and the market  
4 value of these units. Do you recall that --

5 A. Yes.

6 Q. Those questions?

7 A. Yes. I'm sorry.

8 Q. Do you believe it is necessary to make a  
9 recommendation on stranded cost recovery in this case  
10 without doing such analysis?

11 A. No, I don't believe it's necessary.

12 Q. And can you explain why?

13 A. Well, the purpose of putting this in the  
14 testimony was to show, using the company's numbers,  
15 what they were requesting an opportunity to recover,  
16 but -- and they were able to recover that during the  
17 market development period. And I testified and it's  
18 in my testimony that that market development period  
19 is now over and stranded cost is no longer  
20 recoverable.

21 Q. Now, Mr. Rose, if you could pull to your  
22 testimony at page --

23 MS. GRADY: If I can have a moment, your  
24 Honor.

25 EXAMINER McKENNEY: You may.

1           Q.    -- at page 15, and I'm going to focus  
2 your attention on lines 7 through 9. Do you recall  
3 questions by company counsel as to the statement you  
4 make there?

5           A.    Yes.

6           Q.    Can you tell me what you meant by the  
7 statement?

8           A.    Well, as I -- as I explained, the point  
9 was that in a competitive market, the company has an  
10 opportunity to earn something greater than what they  
11 might be able to recover in a -- under regulation.

12          Q.    And do you have an understanding of the  
13 SEET provisions in Ohio law?

14          A.    Yes, I do.

15          Q.    And can you explain what your  
16 understanding of the SEET provision is in terms of  
17 what the company has the ability to keep?

18               MR. FARUKI: I'll object.

19               EXAMINER McKENNEY: Grounds?

20               MR. FARUKI: When you ask a layperson to  
21 explain his understanding of a statutory provision  
22 and interpret it, you're asking for a legal  
23 conclusion or opinion.

24               EXAMINER McKENNEY: Objection's  
25 overruled.



1           If you have a lay opinion on the SEET  
2 provisions, you may answer the question.

3           A.   My understanding of that provision is  
4 that it is a test of whether or not the earnings of  
5 the company are significantly excessive, and not just  
6 excessive, but the Commission would have to find that  
7 it's over and above a certain level.

8           So I'm talking in this passage about  
9 what -- my economist term as a normal profit that you  
10 would earn operating a competitive market, that would  
11 be different from a statutory interpretation of  
12 "significantly excessive."

13          Q.   Now, on page 10 of your testimony I want  
14 to direct your attention to lines 17 through 18. And  
15 there you state "Yet transmission and distribution  
16 operations are not the cause of financial integrity  
17 claims."

18           Do you see that?

19          A.   Yes, I do.

20          Q.   And do you recall a question with respect  
21 to -- from company counsel with respect to whether or  
22 not you had an opinion on this subject?

23          A.   Yes, I do.

24          Q.   And can you tell me how this statement in  
25 your testimony is not inconsistent with your

1 testimony -- your statement this morning to counsel?

2 A. Well, my understanding was that I was  
3 not -- he was asking -- I was not saying that the  
4 transmission, distribution operations caused the  
5 problem. And the point of this sentence is to say  
6 that the financial integrity claims are really  
7 related to generation, which I think is consistent  
8 with the company's filing.

9 MS. GRADY: That's all the questions I  
10 have, Mr. Rose. Thank you.

11 EXAMINER MCKENNEY: Ms. Grady.

12 Recross?

13 MR. FARUKI: Briefly, your Honor. Thank  
14 you.

15 - - -

16 RECROSS-EXAMINATION

17 By Mr. Faruki:

18 Q. Sir, on the subject of transmission --  
19 transition costs, you agree that, as proposed by  
20 DP&L, the SSR was designed to allow DP&L to achieve a  
21 return on equity within a particular range; is that  
22 right?

23 A. That's right.

24 MR. FARUKI: Nothing further, your  
25 Honors. Thank you.

1 EXAMINER MCKENNEY: Thank you.

2 Mr. Rose, you are -- I'm sorry.

3 EXAMINER PRICE: Vern?

4 MR. MARGARD: No, thank you.

5 MS. GRADY: Your Honor, at this time I  
6 would --

7 EXAMINER PRICE: Whoa, whoa, whoa, I'm  
8 not done.

9 MS. GRADY: I'm sorry.

10 - - -

11 EXAMINATION

12 By Examiner Price:

13 Q. Dr. Rose, just so the record is clear, on  
14 page 13 line 10 you cite to 4928.141.

15 A. Yes.

16 Q. You were not working at the LSC at the  
17 time that particular provision was drafted, were you?

18 A. No, I was not.

19 Q. You were not working at the LSC any time  
20 Senate Bill 221 amendments to Chapter 4928 were  
21 prepared.

22 A. That's correct.

23 Q. The next page, 14, at question 23, can  
24 you point to the language in the Commission's  
25 decision in the AEP case that's your basis for your

1 conclusion that the decision was largely based on AEP  
2 being an FRR entity?

3 A. From my understanding of that case was  
4 that AEP was saying that as an FRR entity in PJM they  
5 had -- they were looking for a cost basis to recover  
6 their investment costs and not a market basis. And  
7 in this case the purpose of it being in this  
8 testimony was that DP&L is not an FRR and did not  
9 file to be one, as far as I know.

10 Q. I guess maybe I didn't phrase my question  
11 well.

12 Can you point to the language in the  
13 Commission decision that underlines your conclusion  
14 that the Commission's decision was based on AEP being  
15 an FRR entity?

16 A. I don't have that in front of me right  
17 now.

18 EXAMINER PRICE: Ms. Grady, do you have a  
19 copy of the AEP decision you can give the witness?

20 MS. GRADY: I do not, your Honor.

21 MR. SHARKEY: It's in our exhibits, your  
22 Honor.

23 EXAMINER PRICE: Excellent. Mr. Sharkey  
24 saves the day.

25 MR. FARUKI: I'll observe for the record

1 Mr. Sharkey is good at that.

2 EXAMINER MCKENNEY: Is it 107?

3 MR. SHARKEY: Yes, your Honor.

4 MS. GRADY: Your Honor, just for  
5 clarification purposes, this is the ESP decision and  
6 not the capacity case decision; is that right? Is  
7 that what -- which decision are we talking about?

8 EXAMINER PRICE: Well, he's referring to  
9 AEP's -- the PUCO's decision on AEP's electric  
10 security plan, so I assume he's talking about the  
11 AEP's decision on the electric security plan.

12 MS. GRADY: Thank you.

13 A. I don't see the exhibits here, but I do  
14 see AEP talking about their participation in the  
15 auction, the PJM base residual auction.

16 Q. (By Examiner Price) Can you give me the  
17 page, please?

18 A. I'm on page 25. My understanding was  
19 they were going to -- it was going to be cost based  
20 until 2015 and then they would participate in the  
21 auction later on which, essentially, means they would  
22 not be an FRR anymore.

23 Q. And this section is with reference to  
24 interruptible service rates?

25 A. Well, they mention here about the --

1       there's probably other places in here, right now --  
2       this isn't my copy of it, but there are other cases  
3       where they reference how they're participating in PJM  
4       right now meeting the requirements for capacity, the  
5       capacity requirements of PJM, and then how they plan  
6       to do so after 2015.

7               Q.     Okay.

8               MR. FARUKI:   Could I have a page  
9       reference of where we're supposed to see --

10              EXAMINER PRICE:   He's at 25.

11              MR. FARUKI:   But where on the page?

12              EXAMINER PRICE:   First paragraph.   First  
13       full paragraph.

14              A.     The point of this in the testimony was to  
15       say that DP&L is not a FRR, was not filing to be one,  
16       so it was differentiated from the --

17              Q.     Well, I understand that.   I guess that  
18       was -- the point of my question is if the Commission  
19       didn't rely on that fact, that would not be a basis  
20       to differentiate DP&L, would it?

21              A.     That's correct.   But I think that maybe  
22       it was probably more spelled out in the capacity  
23       language that what AEP is today or what they plan to  
24       do after this than what is in the ESP.

25              Q.     It could be.   Thank you.

1 EXAMINER PRICE: Thank you, you're  
2 excused.

3 THE WITNESS: Thank you, your Honor.

4 EXAMINER MCKENNEY: Ms. Grady?

5 MS. GRADY: Your Honor, at this time I'd  
6 move for the admission of OCC Exhibit 21 and 22.

7 MR. FARUKI: I'll object to both, given  
8 the admissions on cross to his lack of competence to  
9 testify on the law and, secondarily, that these legal  
10 opinions he said are integral to his opinions. I  
11 object.

12 EXAMINER MCKENNEY: The continuing  
13 objection is noted. OCC 21 and OCC 22 will be  
14 admitted.

15 MS. GRADY: Thank you, your Honor.

16 (EXHIBITS ADMITTED INTO EVIDENCE.)

17 EXAMINER PRICE: Let's go off the record.

18 (Discussion off the record.)

19 EXAMINER PRICE: Let's go back on the  
20 record.

21 Mr. Sherman.

22 MR. SHERMAN: Yes, your Honor, we'd like  
23 to call Mr. Steve W. Chriss.

24 EXAMINER PRICE: Mr. Chriss.

25 (Witness sworn.)

2041

1 EXAMINER PRICE: Please be seated and  
2 state your name and business address for the record.

3 THE WITNESS: My name is Steve W. Chriss.  
4 My business address is 2001 Southeast 10th Street,  
5 Bentonville, Arkansas, 72716-0550.

6 EXAMINER PRICE: And we will ask you to  
7 please project your voice as best you can.

8 THE WITNESS: Will do.

9 EXAMINER PRICE: Thank you.

10 Mr. Sherman, please proceed.

11 - - -

12 STEVE W. CHRISS

13 being first duly sworn, as prescribed by law, was  
14 examined and testified as follows:

15 DIRECT EXAMINATION

16 By Mr. Sherman:

17 Q. Mr. Chriss, do you have in front of you  
18 what we have marked as Wal-Mart Exhibit SWC-1?

19 A. I do.

20 Q. And was that testimony prepared by you or  
21 under your direction and supervision?

22 A. Yes.

23 Q. Mr. Chriss, do you have any additions or  
24 corrections to that testimony?

25 A. I have two corrections.



1 MR. SHERMAN: Your Honor, I've got a  
2 premarked version for you on those.

3 EXAMINER PRICE: Thank you.

4 (EXHIBIT MARKED FOR IDENTIFICATION.)

5 Q. Mr. Chriss, will you please explain what  
6 those corrections or changes are?

7 A. Sure. The first correction on Page 14,  
8 line 12, at the end of line 12 after the word "who,"  
9 there should be the word "have." So it should read  
10 "customers who have taken."

11 And on page 15, line 12, the word  
12 "possible" should be "possibly."

13 Q. Do you have any more changes or  
14 corrections?

15 A. That's all.

16 Q. Mr. Chriss, if I was to ask you the same  
17 questions today, would your answers be the same?

18 A. Yes.

19 MR. SHERMAN: Your Honor, we would offer  
20 Mr. Chriss and his testimony subject to  
21 cross-examination.

22 EXAMINER PRICE: Thank you.

23 Consumers' Counsel?

24 MR. BERGER: Just a couple questions.

25 - - -

## CROSS-EXAMINATION

By Mr. Berger:

Q. Good morning, Mr. Chriss. My name is Tad Berger, I'm with the Office of the Ohio Consumers' Counsel.

On pages 8 to 9 of your testimony you talk about the fact that you disagree with having the reconciliation rider including a nonbypassable charge other than for -- I think it's other than for competitive enhancement costs; is that right?

A. Generally, that's correct, yes.

Q. Do you believe that customers who are switching should be responsible for any over- or undercollection of fuel costs related to their service as SSO customers or should those costs be imposed on the remaining SSO customers in your view?

A. As I state in my testimony toward the bottom of page 9 --

Q. Yes.

A. -- if the Commission so determines it to be appropriate to make the RR rider nonbypassable for the first, basically three billing periods so it would line up with the true-up period for those riders that are included in the SSO charge such that customers who leave would at least pay through the

1 true-up for the time in which they took service.

2 Q. And do you know the length of time that  
3 the over -- or, the undercollections are currently  
4 being recovered?

5 A. My understanding is that the process is  
6 quarterly.

7 Q. Are you -- so you're not aware that  
8 they're actually, although they're adjusted  
9 quarterly, they're calculated to be recovered over a  
10 longer period of time?

11 A. I do not know that.

12 Q. Would you agree that they should -- that  
13 for any particular customer switching, that customer  
14 should pay for the undercollections that are  
15 associated with their prior service as an SSO  
16 customer?

17 A. To the extent that those costs were  
18 incurred while they were taking service as an SSO,  
19 that would be appropriate. There's a cost basis for  
20 that.

21 Q. And with respect to the costs that were  
22 caused by customers who have up to this point in  
23 time -- or have already switched, okay, prior to this  
24 ESP being implemented, do you think those customers  
25 who impose such costs should not have to bear such

1 costs?

2 A. If a customer has switched, you know, I'm  
3 not an attorney and so I don't know whether or not  
4 Ohio has provisions related to retroactive ratemaking  
5 and the extent to which that would apply to customers  
6 who switched prior to this ESP going into effect, so  
7 I -- if a customer has switched prior to the new  
8 rates from this ESP, I would certainly have  
9 retroactive ratemaking concerns.

10 Q. Other than the concerns about retroactive  
11 ratemaking, you generally agree with the principle  
12 that if a customer caused those costs to be incurred,  
13 then they should pay for those costs; is that right?

14 A. As a general principle, yeah, there's  
15 a -- customers should pay for the costs for which  
16 they impose the utility -- they should pay the costs  
17 the utility incurs on their behalf.

18 Q. And are you aware that most of the  
19 switched load at this point in time is commercial and  
20 industrial and so that most of the remaining  
21 customers who haven't switched are residential?

22 A. That's my very general understanding.

23 Q. Would you agree with me that the  
24 reconciliation rider is not -- is primarily designed  
25 to protect SSO customers who would otherwise be left

1 holding the bag for customers who have switched or  
2 customers who will switch in the future?

3 A. Well, my understanding is that all  
4 customers in Ohio can shop, so to the extent that it  
5 becomes too much of a burden, they too can shop.

6 Q. Right. But would you agree with me that  
7 generally the company's proposal with having a  
8 nonbypassable reconciliation rider is to protect  
9 those customers who have not yet switched or who may  
10 not switch in the future? And it's not designed to  
11 protect the company, it's more designed to protect  
12 those customers.

13 A. That's my understanding of why they  
14 proposed it; however, if a customer has the  
15 opportunity to shop, they too can protect themselves  
16 from those costs.

17 Q. Are you aware that customers who are on  
18 payment plans, who are on PIPP, are prohibited from  
19 shopping?

20 A. I do not know that.

21 Q. You just talked about customers who were  
22 shopping, they can avoid these charges if they  
23 shopped. Was that your suggestion?

24 A. Well, essentially, to the extent that  
25 Dayton's pricing is impacted by whatever is going on

1 behind the scenes on their SSO pricing, they can  
2 choose to shop and that's the whole fundamental of  
3 what competition is, as a customer, you go and find  
4 the best price.

5 Q. But you agree with me it would be  
6 inappropriate for them not to be responsible for the  
7 costs that they imposed while they were SSO  
8 customers.

9 A. And that is why I proposed the  
10 alternative such that there would be some period  
11 after which they switched where that rider would  
12 apply to them such that those costs would be  
13 collected.

14 Q. And if that period is longer than the  
15 three months or quarterly period that you estimate it  
16 to be, you wouldn't have a problem with a -- if the  
17 company collected those costs during the entire  
18 period necessary for them to recover those costs from  
19 those customers.

20 A. To the extent that the period differs  
21 from three months, it would be appropriate.

22 MR. BERGER: Thank you.

23 That's all I have.

24 EXAMINER PRICE: Thank you.

25 Mr. Williams?

1 MR. WILLIAMS: No questions, your Honor.

2 EXAMINER PRICE: Mr. Hayden.

3 MR. HAYDEN: No, thank you.

4 EXAMINER PRICE: Mr. Olikar?

5 MR. OLICKER: No questions, your Honor.

6 EXAMINER PRICE: Mr. Yurick?

7 MR. YURICK: No questions, thanks.

8 EXAMINER PRICE: Major?

9 MAJOR THOMPSON: No, your Honor.

10 EXAMINER PRICE: Mr. Sharkey?

11 MR. SHARKEY: Yes, thank you, your Honor.

12 - - -

13 CROSS-EXAMINATION

14 By Mr. Sharkey:

15 Q. Mr. Chriss, my name is Jeff Sharkey, I  
16 represent The Dayton Power & Light Company, as you  
17 know, we met over the phone before.

18 A. We have.

19 Q. I'm going to ask you to begin with some  
20 questions regarding the reconciliation rider that  
21 Mr. Berger was asking you about. There's been a lot  
22 of testimony on that subject already, so I'll be  
23 brief, but as an initial matter you, while you don't  
24 have personal knowledge, it would be your expectation  
25 that there would be periods where DP&L's revenues and

1 costs would be particular -- underlying bypassable  
2 riders wouldn't be a perfect match.

3 A. That's my understanding.

4 Q. And you would agree it's highly likely  
5 that's untrue, wouldn't you?

6 A. I agree it's highly unlikely.

7 Q. And you understand that DP&L, when that  
8 happens, seeks to recover in period two unrecovered  
9 costs from period one.

10 A. That's my understanding.

11 Q. And that DP&L's concerned that a  
12 substantial deferral balance may grow in those riders  
13 and may lead to the situation where DP&L is  
14 recovering a very large deferral balance from a very  
15 small group of customers.

16 A. My understanding is that is DP&L's  
17 concern, yes.

18 Q. Okay. And, in fact, the deferral balance  
19 could grow to such a size as to be a material  
20 incentive that would motivate customers to switch  
21 would even -- it would exacerbate the problem even  
22 further, right?

23 A. You could take it to a conclusion where  
24 all customers end up shopping, yes.

25 Q. You agree with me that DP&L has a



1 legitimate reason to be concerned about the phenomena  
2 that we've been discussing.

3 A. I would agree that DPL's concern is  
4 legitimate.

5 EXAMINER PRICE: I have to interrupt  
6 here, I'm sorry, Mr. Sharkey.

7 In many other witnesses we have the  
8 parent company DPL and the utility DP&L, and it's  
9 relevant for a lot of other witnesses to distinguish  
10 between the two, so if you could try to make sure you  
11 say "DP&L" or "the company" and not "DPL" because I  
12 think otherwise it runs the risk of confusing the  
13 record.

14 THE WITNESS: Okay. My apologies.

15 MR. SHARKEY: Thank you, your Honor.

16 Q. You propose that the Commission -- that  
17 if the Commission were to determine that DP&L was  
18 entitled to recover nonbypassable charge associated  
19 with the deferral balance, then DP&L should recover  
20 those costs from customers that had switched and only  
21 for three months?

22 A. Yes. As we discussed previously, my  
23 recommendation was to condition the rider such that  
24 it is nonbypassable for the first three months. My  
25 understanding is that there may be costs that are

1 recovered over a longer period, so to the extent that  
2 that is done, then it would be appropriate to  
3 synchronize the collection period with that -- the  
4 condition.

5 Q. So you're not wedded to the three-month  
6 period in your testimony if the cost recovery would  
7 merely be longer than three months.

8 A. I'm not wedded to the time period.

9 Q. But the idea is that with customers that  
10 switch, there would be some type of tracking to  
11 determine who had switched and which costs were  
12 fairly attributable to those customers so that those  
13 customers could pay those costs as time goes on?

14 A. Generally, yes; however, I don't know if  
15 it would be necessary to track the specific cost to  
16 the specific customer or just apply the rider as  
17 those -- as the riders within the SSO service would  
18 apply.

19 Q. Would the charge to customers that had  
20 switched take into account how long the customer had  
21 been on SSO service?

22 For example, if the customer had moved  
23 into DP&L's service territory, been an SSO customer  
24 for a couple of months and then switched, would that  
25 customer be charged the same amount as a customer who

1 had lived in DP&L's service territory for a series of  
2 years?

3 A. My recommendation doesn't address that.

4 Q. Okay. In any event, do you know whether  
5 DP&L's billing system is currently capable of  
6 tracking customers who had switched in the manner  
7 that you've described?

8 A. I do not.

9 Q. To the extent it would cost some amount  
10 of money to reprogram DP&L's billing system to  
11 perform that function, you don't know what that cost  
12 would be, do you?

13 A. I do not know.

14 Q. And you don't make the proposal regarding  
15 who would pay those costs, do you?

16 A. I think we discussed this in the  
17 deposition; having not been involved in a DPL base  
18 rate case, I'm not really knowledgeable about DP&L's  
19 billing systems, practices, processes, et cetera.

20 Q. Let me ask you about DP&L's request for  
21 an SSR and switching tracker. You recommend that the  
22 Commission reject those requests, don't you?

23 MR. SHERMAN: Your Honor, if I could  
24 interrupt one second.

25 Mr. Sharkey, I can't hear you. If you

1 could just speak up a little bit.

2 MR. SHARKEY: Sorry, Mr. Sherman, I'll be  
3 happy to.

4 Q. Let me ask you about DP&L's request for  
5 an SSR and a switching tracker. It's true, isn't it,  
6 that you recommended the Commission reject DP&L's  
7 request?

8 A. My recommendations on the SSR and  
9 switching tracker begin towards the bottom of  
10 page 16; for the purposes of this docket we have  
11 proposed that the Commission reject the switching  
12 tracker and that if the Commission approves the SSR,  
13 it should limit the revenue requirement to no more  
14 than 72.5 million, which is the revenue requirement  
15 of the current rate stabilization charge.

16 Q. Do you have before you a copy of DP&L's  
17 exhibits, I believe they're in the binder?

18 A. I have a copy of something.

19 Q. If you would turn to Exhibit No. 103.

20 A. I'm there.

21 Q. That's a copy of Ohio Revised  
22 Code 4928.143, and what I'd like you to do is turn to  
23 page 2, subsection (d). Are you there?

24 A. Yes.

25 Q. Okay. You would agree with me that the

1 SSR and the switching tracker constitute a term,  
2 condition, or charge, right?

3 A. My understanding is that would be a term,  
4 condition, or charge.

5 Q. It's true, isn't it, that you don't  
6 sponsor any opinions regarding whether the switching  
7 tracker or the SSR relate to limitations on customer  
8 shopping for retail electric generation service,  
9 bypassability, the standby, back-up, or supplemental  
10 power service, default service, carrying costs,  
11 amortization periods, and accounting or deferrals  
12 including future recovery of such deferrals?

13 Just so you have my question in mind, my  
14 question is you don't sponsor any testimony regarding  
15 whether the SSR or the ST meet those criteria.

16 A. I do not.

17 Q. Okay. And you also don't sponsor any  
18 testimony regarding whether the SSR or the switching  
19 tracker would have the effect of stabilizing or  
20 providing certainty regarding retail electric  
21 service.

22 A. Defining "stabilizing or providing" --  
23 pardon me. Please define "stabilizing or providing  
24 certainty regarding electric service."

25 Q. Under any definition it's true, isn't it,

1       that your testimony does not address whether the SSR  
2       or the ST would relate to or have the effect of  
3       stabilizing or providing certainty regarding retail  
4       electric service?

5               A.     Other than my testimony where -- on page  
6       10 where I say what my understanding of the SSR is, I  
7       don't discuss that further.

8               Q.     Do you have a copy of your deposition  
9       available, Mr. Chriss?

10              A.     I do.

11              Q.     If you would turn, please, to page 21,  
12       line 4, I asked you the question: "So it's your  
13       understanding that the proposed SSR would have the  
14       effect of stabilizing or providing certainty  
15       regarding retail electric service?"

16                     Answer: "I don't say whether it does,  
17       that is my understanding of the proposal."

18                     Question: "Got it. Your testimony  
19       doesn't address whether it does that or not."

20                     Answer: "Correct."

21                     Did I read that accurately, sir?

22               A.     You did. And I don't believe I've  
23       changed my answer, I just said it in a different  
24       order this time.

25               Q.     You agree with me that it's important to

1 DP&L's customers that DP&L be able to provide  
2 reliable service.

3 A. Could you define "reliable service"?

4 Q. Sure. It would be regular distribution  
5 service so that the power lines are up and power  
6 could flow.

7 A. Could you repeat your question?

8 Q. Sure. Would you agree that it's in  
9 DP&L's customers' best interest that DP&L be able to  
10 provide reliable and stable service as I've just  
11 defined it?

12 A. I would agree that's important and I  
13 would also state that we pay for that reliable  
14 service through our distribution rates, and to the  
15 extent that DP&L has a need there, that it could file  
16 a base rate case.

17 Q. Do you also agree with me that it's  
18 important to DP&L's customers that DP&L be able to  
19 maintain its financial integrity?

20 A. I do. And to the extent that that  
21 relates to their distribution service, again, that  
22 would be taken care of through a base rate case. Or  
23 should be taken care of through a base rate case.

24 Q. It's true, isn't it, though, that you  
25 don't address whether or not DP&L could maintain its

1 financial integrity without an SSR?

2 A. That is true.

3 Q. And you don't address in your testimony  
4 any financial analysis that shows that DP&L would  
5 have sufficient money to pay its bills and provide  
6 reliable distribution, transmission, and generation  
7 service without an SSR.

8 A. That's true.

9 Q. Could you turn to page 16, line 18 of  
10 your testimony. You say that "If the Commission  
11 approves the SSR, it should limit the revenue  
12 requirement to no more than \$72.5 million..." right?

13 A. I do.

14 Q. Okay. It's true, isn't it, that you  
15 haven't done any mathematical calculations or  
16 computations to arrive at that \$72.5 million number?

17 A. That's true; I took the revenue  
18 requirement from the current rate stabilization  
19 charge.

20 Q. You don't know whether DP&L could  
21 maintain its financial integrity with an SSR of that  
22 amount, do you?

23 A. I do not.

24 Q. Let me ask you about your testimony  
25 regarding the transmission cost recovery rider. Do



1       you understand that DP&L has proposed that certain  
2       cost items that are in the currently bypassable  
3       transmission cost recovery rider should be converted  
4       into a nonbypassable charge that would be charged by  
5       DP&L?

6             A.     That is my understanding.

7             Q.     Okay. And you recommend that the  
8       Commission reject that proposal?

9             A.     Yes.

10            Q.     Okay. You're concerned that if  
11       transmission costs that are currently bypassable were  
12       to become nonbypassable, then Wal-Mart may end up  
13       paying the same charge twice; once to their present  
14       provider and once to DP&L?

15            A.     Yes, to the extent that -- not just  
16       Wal-Mart, but for any shopping customer whose  
17       contract would span the new rate period who is paying  
18       their CRES provider for that service, there is the  
19       potential to be double charged.

20            Q.     It's true, isn't it, that you don't know  
21       whether other Ohio utilities have had similar TCRR  
22       proposals that they've made and that have been  
23       granted by the Commission?

24            A.     I'm unaware of those.

25            Q.     It's also true, isn't it, that you have

1 not made any effort to contact Wal-Mart's CRES  
2 provider to ask whether they would remove the charges  
3 from Wal-Mart's bill if they were to become  
4 nonbypassable?

5 A. I don't work in contracting with our CRES  
6 providers so I don't have contact with them regarding  
7 these issues.

8 Q. So the answer to my question is it's true  
9 that you have not made such contacts.

10 A. It is true that I, Steve Chriss, have not  
11 made such contact.

12 Q. And you don't know whether anybody from  
13 Wal-Mart has had such contacts with Wal-Mart's CRES  
14 provider, do you?

15 A. I have not discussed that with them.

16 Q. You don't know when Wal-Mart's existing  
17 contracts expire, do you?

18 A. I do not.

19 Q. Do you know that DP&L's request to change  
20 its TCRR has been pending for almost a year now?

21 A. This case has been going on for a while,  
22 yes.

23 Q. Okay. You don't know when Wal-Mart  
24 entered new contracts -- strike that.

25 You don't know whether or not Wal-Mart

1 has entered new contracts while that request was  
2 pending, do you?

3 A. I do not.

4 Q. Okay. You did not personally become  
5 aware of this issue until around November or December  
6 of last year.

7 A. That is when it was brought to my  
8 attention, yes.

9 Q. Okay.

10 A. Or came to my attention.

11 Q. And you then alerted the persons at  
12 Wal-Mart that are responsible for its negotiations  
13 with CRES providers, correct?

14 A. Yes, I let them know what had been  
15 proposed.

16 Q. And you do not recall them telling you  
17 anything specific in response, do you?

18 A. That's correct.

19 Q. Okay. And in particular they did not  
20 tell you that Wal-Mart was, in fact, at risk of  
21 having to pay those costs twice, right?

22 A. That was not part of our discussion that  
23 I can recall.

24 MR. SHARKEY: Thank you, Mr. Chriss.

25 Your Honors, in under time, as promised.

1 EXAMINER PRICE: I told you I would not  
2 hold you to it.

3 Mr. Margard?

4 MR. MARGARD: No questions. Thank you,  
5 your Honor.

6 EXAMINER PRICE: Redirect?

7 MR. SHERMAN: Your Honor, could I have  
8 two minutes?

9 EXAMINER PRICE: You may.

10 Let's go off the record.

11 (Recess taken.)

12 EXAMINER PRICE: Go back on the record.

13 Mr. Sherman.

14 MR. SHERMAN: Your Honor, after  
15 conferring with my witness, I have no redirect.

16 EXAMINER PRICE: Mr. McKenny, any  
17 questions?

18 EXAMINER McKENNEY: No questions.

19 EXAMINER PRICE: Thank you, you're  
20 excused.

21 THE WITNESS: Thank you.

22 MR. SHERMAN: Your Honor, at this time  
23 I'd like to move for the admission of the exhibit  
24 which has been marked -- if I can put my hands on  
25 it -- SWC-1.

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1 EXAMINER PRICE: Any objections to the  
2 admission of Exhibit SWC-1?

3 (No response.)

4 EXAMINER PRICE: Seeing none, it will be  
5 admitted.

6 (EXHIBIT ADMITTED INTO EVIDENCE.)

7 MR. SHERMAN: Thank you.

8 EXAMINER PRICE: Thank you.

9 At this time we will take somewhat of an  
10 extended break until 2 o'clock. Thank you all.

11 Let's go off the record.

12 (Lunch recess taken.)

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1 Wednesday Afternoon Session,  
2 March 27, 2013.

3 - - -

4 EXAMINER PRICE: Let's go on the record.  
5 Ms. Yost.

6 MS. YOST: Thank you, your Honor. OCC  
7 served a notice of deposition upon Dayton Power &  
8 Light, and I have a copy for the Bench if I could  
9 provide that.

10 EXAMINER PRICE: Please.

11 MS. YOST: Your Honors, OCC filed a  
12 notice to take depositions and requests for  
13 production of documents served upon the company and  
14 filed in the docket on January 3rd, 2013, and in  
15 that notice pursuant to Commission Rule  
16 4901-1-2-1(B), as in boy, OCC indicated that they  
17 would like to take the deposition of all persons who  
18 will be called by Dayton Power & Light Company to  
19 present testimony including direct, rebuttal,  
20 surrebuttal, and any other form of testimony filed or  
21 to be filed in this proceeding.

22 In addition to that, OCC served discovery  
23 responses upon the company. May I approach, your  
24 Honor?

25 EXAMINER PRICE: You may.

1 MS. YOST: Your Honors, OCC served its  
2 30th set on March 1st, 2013, and in that set OCC  
3 interrogatory No. 493, which is found on page 6,  
4 requested that pursuant to the Commission Rule  
5 4901-1-16(C), as in cat, that the company identify  
6 each expert witness that they expect to testify.

7 The responses indicated in regards to  
8 rebuttal, that last sentence of the response  
9 indicates: Mr. Chambers or Mr. Malinak may file  
10 rebuttal testimony relating to their initial prefiled  
11 testimony, but DP&L has not yet determined whether  
12 such rebuttal testimony will be filed.

13 OCC has not received a supplement in  
14 regards to the responses to our interrogatory that we  
15 just discussed. In addition to that, the OCC points  
16 out the Commission's rules, specifically the general  
17 rules on discovery, 4901-1-16(B), as in boy, indicate  
18 that the frequency of using these discovery methods  
19 is not limited, unless Commission orders otherwise,  
20 under Rule 4901-1-24 of the Administrative Code.

21 As the Bench knows, Rule 24 is the rule  
22 regarding motions for protection.

23 Pursuant to OCC's notice, the companies  
24 never requested nor received a motion to protect the  
25 types of discovery that OCC was requesting from it.

1           In addition to that rule, rule 16(C), as  
2     in cat, indicates that a party may, through  
3     interrogatories, require any other party to identify  
4     each expert witness expected to testify at the  
5     hearing and to state the subject matter on which the  
6     expert is expected to testify.

7           As we just indicated, OCC has done that  
8     and has also indicated the company's response.

9           Rule 16(C) says that, thereafter, any  
10    party may discover from the expert or other party  
11    facts or data known, or opinions held, by the expert  
12    which are relevant to the stated subject matter.

13          And, your Honor, the Commission's rules  
14    do not limit the taking of depositions. The  
15    Commission's rules do not limit the taking of  
16    depositions only in regard to the filing of direct  
17    testimony.

18          OCC's notice is in accordance with the  
19    Commission's rules. There's been no motion for  
20    protection sought or received and, I don't want to  
21    misstate, but I believe late last week or earlier  
22    this week was when we were first notified that  
23    Ms. Seger-Lawson would be testifying, we received her  
24    testimony yesterday, and in accordance with  
25    Commission's rules, and I will also point out not



1       only the Commission's rules, but the Revised Code  
2       permits ample discovery for the parties.

3               And in accordance with the rules, OCC's  
4       notice, I think it's only fair that OCC get to take  
5       the deposition of Ms. Seger-Lawson.

6               The company has indicated that they are  
7       willing to let us depose Ms. Seger-Lawson but has  
8       imposed a two-hour limitation which, you know, per  
9       the Commission rules depositions are not limited  
10      unless otherwise established by a hearing examiner.

11              In addition to that, it's kind of  
12      premature, but OCC would request that we be permitted  
13      to take the depositions of Mr. Jackson and  
14      Mr. Malinak. We, of course, would review the  
15      testimony but, in accordance with OCC's notice and  
16      Commission's rules, we would be entitled to take that  
17      deposition before they were permitted to testify.

18              EXAMINER PRICE: Just to sum up, are you  
19      making a motion to compel?

20              MS. YOST: It's hard to say, your Honor,  
21      because to the extent that we don't feel it would be  
22      necessary to take a deposition, we would not want to  
23      do that. But I have no reason to think that we would  
24      not want to take their depositions.

25              To the extent they just rehash their

1 direct testimony, that would not be proper rebuttal  
2 and we would move to strike that. So I'm not  
3 anticipating that it will just be a rehashing of  
4 their direct testimony, but, again, that's just an  
5 anticipation that I have.

6 But in regards to the testimony of Dona  
7 Seger-Lawson, excuse me, not the testimony, but the  
8 deposition, in essence I just want a determination  
9 from the Commission that the deposition would not be  
10 limited to two hours, as the company has so  
11 indicated.

12 EXAMINER PRICE: When you first had your  
13 deposition of Ms. Seger-Lawson, was there any time  
14 limit imposed on the deposition?

15 MS. YOST: No, your Honor. I think you  
16 made that very clear that depositions were not going  
17 to be limited.

18 EXAMINER PRICE: And when you made --  
19 when you had your first deposition of  
20 Ms. Seger-Lawson, beyond the privileged issues the  
21 Bench is aware about, you had the opportunity to ask  
22 her any questions you wanted to ask her.

23 MS. YOST: To some extent, yes, your  
24 Honor.

25 EXAMINER PRICE: Okay. A qualified

1 answer is fine.

2 Okay, Mr. Sharkey -- and just to be  
3 clear, I guess for the record, we are at 30 sets of  
4 written discovery, interrogatories, 493 plus?

5 MS. YOST: Possibly plus.

6 EXAMINER PRICE: And requests for  
7 production of documents, 120, plus?

8 MS. YOST: Possibly plus.

9 EXAMINER PRICE: Is there a 31st set  
10 that I am not aware of?

11 MS. YOST: I'm thinking there is.

12 EXAMINER PRICE: There may be a  
13 31st set?

14 MS. YOST: There may be.

15 EXAMINER PRICE: Mr. Sharkey.

16 MR. SHARKEY: I'll start by saying I  
17 don't remember if there's a 31st set or not, we're  
18 at least toward the end with this set, your Honor.

19 Yes, your Honor, several responses.  
20 First of all, it's my understanding that ordinarily  
21 rebuttal witnesses aren't subject to discovery. And  
22 in particular, as you've correctly noted,  
23 Ms. Seger-Lawson has already been subject to a  
24 deposition. OCC had the opportunity to depose her  
25 for as long as it wished.

1           In addition, Mr. Jackson and Mr. Malinak  
2       who we are expecting to serve rebuttal testimony from  
3       still today, towards the end of the day,  
4       Mr. Jackson's already been deposed for three days,  
5       your Honor, and Mr. Malinak was deposed for a day,  
6       and they had as long as they wanted with him. It was  
7       without limitation.

8           So we would submit that there's been  
9       ample opportunity to conduct discovery, and in  
10      addition, your Honor, all three of those persons will  
11      be called live as witnesses here so there will be no  
12      limitation when they arrive here as to the scope and  
13      number of questions that could be asked of them.

14           EXAMINER PRICE: Let's not jump to that  
15      conclusion.

16           MR. SHARKEY: Well, okay. But as you  
17      know, your Honors, the questioning, the scope of the  
18      questioning that you have allowed has been fairly  
19      broad and you've certainly allowed attorneys to ask  
20      questions, as many as they've had. I haven't seen  
21      you place any limits on the amount of time or number  
22      of questions on hardly -- hardly any attorney, so  
23      there's no prejudice through a denial.

24           We did agree to let Ms. Seger-Lawson go  
25      for two hours which, frankly, we don't believe OCC

1 was entitled to in any event, but we agreed to that  
2 as a courtesy. But in light of the tightness of time  
3 as to Mr. Jackson and Mr. Malinak when their  
4 testimony will be served and, you know, the  
5 anticipation of getting them on next week, we did not  
6 agree to allow them to be deposed.

7 EXAMINER PRICE: Are you making a motion  
8 for protective order?

9 MR. SHARKEY: Yes, your Honor, I'll make  
10 an oral motion for protective order so the motion is  
11 live and in front of you.

12 EXAMINER PRICE: Okay. Are you aware of  
13 any -- I agree that general Commission practice has  
14 been rebuttal witnesses are not another opportunity  
15 for discovery. Are you aware of any Commission  
16 precedence or rulings along those lines?

17 MR. SHARKEY: Your Honor, I am not aware  
18 one way or the other as I stand here what  
19 Commission's rulings are, so no.

20 EXAMINER PRICE: Ms. Yost, are you aware  
21 of any precedence on this issue?

22 MS. YOST: Your Honor, I'm aware that  
23 I've been able to depose rebuttal witnesses in the  
24 past and that's why I didn't think there would be  
25 much of an issue.

1           Precedent right on point other than the  
2 rules? We didn't find any. We did look. Either  
3 way.

4           EXAMINER PRICE: When did you depose  
5 rebuttal witnesses?

6           MS. YOST: Mr. Hamrock AEP.

7           EXAMINER PRICE: AEP, all right.  
8 Generous attorney examiners.

9           MR. SHARKEY: May I inquire, your Honor,  
10 as to whether that was agreed to by AEP or ordered by  
11 the attorney examiners?

12          EXAMINER PRICE: You can inquire. I  
13 don't know off the top of my head.

14          Is this something AEP agreed to or was  
15 this something the examiners ordered?

16          MS. YOST: Your Honor, I can't speak to  
17 that. I can't recall.

18          EXAMINER PRICE: Okay. Fair enough.

19          Anything else you wish to consider before  
20 we rule on this?

21          MR. OLIKER: Your Honor, can I have a  
22 moment, please?

23          EXAMINER PRICE: Yes, Mr. Olikier.

24          MR. OLIKER: I'm sorry to trouble you  
25 with this, but as you know from Mr. Jackson, he has

1 done some, what may be viewed as unusual calculations  
2 by some parties that have been very difficult to  
3 follow.

4 I believe that, for the sake of  
5 administrative economy and for not keeping everyone  
6 in this room too long, it may be more helpful for us  
7 to be able to explore some of his calculations in the  
8 event that is what his testimony would contain in a  
9 deposition so that we can save everybody the time and  
10 effort in this room as we go forward with this  
11 hearing.

12 EXAMINER PRICE: That's a good point.

13 Mr. Alexander?

14 MR. ALEXANDER: Your Honor, I agree with  
15 OCC and with IEU.

16 One additional point with regard to the  
17 two-hour limitation proposed by DP&L, there is a  
18 pending motion to strike, I understand there's going  
19 to be argument on that tomorrow, but for tonight's  
20 purposes we may spend time talking about an issue  
21 that isn't ultimately in the testimony. So this  
22 two-hour limitation is really very, very tight.

23 I know there's at least three parties who  
24 plan to have questions for Ms. Seger-Lawson,  
25 particularly when there's some testimony that's in

1 doubt that we still need to ask questions about  
2 tonight in the event our motion to strike is denied  
3 tomorrow.

4 MS. YOST: Your Honor, if I may add.

5 EXAMINER PRICE: Yes.

6 MS. YOST: I agree with Mr. Olier that  
7 to the extent that we are permitted to do a  
8 deposition of the witnesses, it will expedite the  
9 amount of cross-examination that we have before the  
10 Bench.

11 In addition to that, I will just point  
12 out the only piece of rebuttal testimony we have in  
13 front of us is that of Witness Seger-Lawson and there  
14 was some question about what questions we could have  
15 asked them during the deposition, but as the company  
16 has pointed out, the staff presented a new piece of  
17 testimony in regard to the storm rider, I believe  
18 they moved to strike it, said they only had a week to  
19 take a look at it.

20 They have since addressed it in their  
21 rebuttal testimony and so this is kind of a new area  
22 for OCC to take a position, I'm sure we're probably  
23 in support of the staff but, nonetheless, we would  
24 like to talk to Ms. Seger-Lawson about her position.  
25 So it is a new area that was not in the application.



1 EXAMINER PRICE: But that's not fair to  
2 the company because staff introduced a new topic to  
3 say the company's burden is now greater because some  
4 other party, well within their rights I may point  
5 out, has proposed a new provision. I think that's  
6 pushing the envelope a little bit.

7 Okay. At this time, we're going to grant  
8 Dayton's motion for protective order.

9 MR. SHARKEY: Thank you, your Honor.

10 EXAMINER PRICE: We are going to find  
11 that additional depositions beyond the two hours that  
12 you've already agreed to for Ms. Seger-Lawson would  
13 impose an undue burden upon the company. You  
14 certainly cannot say in this proceeding the parties  
15 have not had ample discovery, we're at 30 sets of  
16 interrogatories just from one party, 30 sets of  
17 written discovery just from one party, and over 400  
18 interrogatories.

19 The whole point of discovery is to  
20 prevent gamesmanship at trial and trial by surprise,  
21 but in Commission proceedings all of the testimony is  
22 prefiled. You have Ms. Seger-Lawson's testimony at  
23 this point, if the company -- actually I'm going to  
24 take the "if" away.

25 What date did you say you would have

1 Jackson and --

2 MR. FARUKI: It will be either tonight or  
3 tomorrow, your Honor. I'm hoping for tonight. Maybe  
4 tomorrow morning.

5 EXAMINER PRICE: It will be filed by  
6 tomorrow.

7 MR. FARUKI: Yes.

8 EXAMINER PRICE: Close of business.

9 MR. FARUKI: Yes, sir.

10 EXAMINER PRICE: So the parties will have  
11 at least Friday, Saturday, Sunday, and Monday to  
12 review that prefiled testimony.

13 MR. FARUKI: Correct, your Honor.

14 EXAMINER PRICE: And that's pretty much  
15 time to prepare for hearing. I certainly understand  
16 and accept that depositions make the hearing go a  
17 little bit more quickly, but if you need additional  
18 time to cross-examine these witnesses, you'll have  
19 time to cross-examine the witness.

20 There shouldn't be anything in the  
21 rebuttal testimony that's beyond the facts that  
22 were -- the issues that were raised in the intervenor  
23 testimony or in staff's testimony so all these topics  
24 have been thoroughly covered.

25 To the extent that there's something

1 beyond, then we'll rule appropriately. Okay.

2 MR. SHARKEY: Thank you, your Honor.

3 MS. YOST: Just for clarification.

4 EXAMINER PRICE: Yes.

5 MS. YOST: So the motion for protection  
6 is in regard to limiting the deposition of  
7 Ms. Seger-Lawson to two hours and at this time the  
8 motion for protection is in regards to any deposition  
9 for Chambers and Malinak?

10 EXAMINER PRICE: Jackson and Malinak,  
11 Chambers is not being re-called.

12 MR. FARUKI: That's correct, your Honor.

13 MR. SHARKEY: That's correct.

14 MS. YOST: Thank you, your Honor.

15 EXAMINER PRICE: Thank you.

16 EXAMINER MCKENNEY: Is OCC ready to call  
17 its witness?

18 MS. YOST: Yes, your Honor. At this time  
19 OCC calls Ms. Beth Hixon to the stand and request  
20 that her testimony be marked as OCC Exhibit 23.

21 EXAMINER MCKENNEY: Ms. Hixon, please  
22 raise your right hand.

23 (Witness sworn.)

24 EXAMINER MCKENNEY: Thank you, you may be  
25 seated. Please state your name and address for the

1 record.

2 MS. YOST: Your Honors, do you have a  
3 copy?

4 EXAMINER MCKENNEY: I do.

5 You can state your name and business  
6 address for the record.

7 THE WITNESS: My name is Beth E. Hixon,  
8 my address is 10 West Broad Street, Columbus, Ohio.

9 EXAMINER MCKENNEY: The testimony of  
10 Ms. Hixon will be marked OCC 23.

11 (EXHIBIT MARKED FOR IDENTIFICATION.)

12 MS. YOST: Thank you.

13 - - -

14 BETH E. HIXON

15 being first duly sworn, as prescribed by law, was  
16 examined and testified as follows:

17 DIRECT EXAMINATION

18 By Ms. Yost:

19 Q. Ms. Hixon, you have a copy of OCC Exhibit  
20 23 in front of you, correct?

21 A. Yes.

22 Q. And are you the same Beth Hixon whose  
23 direct testimony was filed in this proceeding?

24 A. Yes.

25 Q. And on whose behalf do you appear today?

1           A.    The Office of the Ohio Consumers'  
2 Counsel.

3           Q.    And your testimony which has been marked  
4 as OCC Exhibit 23, did you prepare the testimony or  
5 have it prepared at your direction?

6           A.    Yes.

7           Q.    And do you have any changes or  
8 corrections to your direct testimony?

9           A.    No, I do not.

10          Q.    If I asked you the same questions found  
11 in your direct testimony marked as OCC Exhibit 23  
12 today, would your answers be the same?

13          A.    Yes.

14               MS. YOST:  The OCC moves for the  
15 admission of OCC Exhibit 23 and tenders the witness  
16 for cross-examination at this time.

17               EXAMINER McKENNEY:  Thank you.  We'll  
18 reserve a determination on admission till after  
19 cross-examination.

20               Mr. Williams?

21               MR. WILLIAMS:  No questions, your Honor.

22               EXAMINER McKENNEY:  Mr. Sherman?

23               MR. SHERMAN:  No questions, your Honor.

24               EXAMINER McKENNEY:  FES?

25               MR. HAYDEN:  No, thank you.

1 EXAMINER MCKENNEY: Mr. Oliker?

2 MR. OLIKER: No questions, your Honor.

3 EXAMINER MCKENNEY: Mr. Yurick?

4 MR. YURICK: No questions, your Honor.

5 EXAMINER MCKENNEY: Major?

6 MAJOR THOMPSON: Nothing, sir.

7 EXAMINER MCKENNEY: Mr. Sharkey?

8 - - -

9 CROSS-EXAMINATION

10 By Mr. Sharkey:

11 Q. Ms. Hixon, as you know, my name is Jeff  
12 Sharkey and I represent The Dayton Power & Light  
13 Company in this matter.

14 It's true, isn't it, that the purpose of  
15 your testimony is to address whether DP&L's proposed  
16 ESP passes the ESP versus MRO test in the ESP  
17 statute?

18 A. Yes, as it says on page 3, it's to  
19 present a comparison between the ESP and the expected  
20 results of the MRO.

21 Q. You understand that DP&L Witness Malinak  
22 addresses that same topic?

23 A. Yes.

24 Q. And you also understand that he reaches a  
25 conclusion that DP&L's ESP is more favorable in the

1 aggregate by approximately \$120 million under the  
2 aggregate price test?

3 A. Under Mr. Malinak's aggregate price test,  
4 yes, his result is \$120 million.

5 Q. And you make a number of those changes to  
6 Mr. Malinak's results, correct?

7 A. Correct.

8 Q. You understand that DP&L's ESP filing  
9 proposes to achieve 100 percent competitive bidding  
10 at a rate that is faster than the percentages  
11 contained in the MRO statute.

12 A. I believe that the end result is faster,  
13 but it is not faster in every period that DP&L  
14 proposes.

15 Q. You agree with me that DP&L's ESP will  
16 get to a hundred percent competition faster than an  
17 MRO, right?

18 A. Yes.

19 Q. And you agree with me that DP&L's  
20 proposal to move to competition faster under its  
21 ESP -- strike that.

22 You agree that DP&L's proposal to move to  
23 100 percent competitive bidding in its ESP at a rate  
24 that's faster than under the MRO statute is a benefit  
25 of DP&L's ESP plan.

1           A.    To the extent that it achieves  
2    100 percent competitive bid under the market rates  
3    that DP&L has put forth, it provided a benefit  
4    related to generation rates.

5           Q.    You reach a conclusion, ultimately,  
6    though, that other aspects of DP&L's ESP proposal  
7    exceed the net benefits of the faster move to  
8    competitive bidding, right?

9           A.    Can define what you mean by "net  
10   benefits"?

11          Q.    Well, you just told me that the move to  
12   competitive bidding at a faster rate than is  
13   available under the MRO statute results in benefits  
14   under the aggregate price test, right?

15          A.    Under Mr. Malinak's aggregate price test,  
16   yes.

17          Q.    Well, under any version there's benefits  
18   associated with it, under your version as well  
19   there's benefits associated with the faster move to a  
20   hundred percent competition.

21          A.    In regards to generation rates, yes.

22          Q.    But you conclude that there are other  
23   aspects of DP&L's ESP plan that exceed those benefits  
24   and that are, in fact, detriments of DP&L's ESP plan.

25          A.    Yes.



1           Q.    Turn to page 4 of your testimony, please.  
2    You identify there a three-step test that you believe  
3    that the Commission should use to determine whether  
4    an ESP is more favorable than an MRO, right?

5           A.    On page 4 I identify the three parts the  
6    Commission has evaluated under the statutory test.

7           Q.    Part one is to compare the SSO rates  
8    under the two separate ESP -- under the separate ESP  
9    and separate MRO?

10          A.    Could you please restate the question?

11          Q.    Sure. Step one of the test you have  
12    listed there is to compare the SSO price that's  
13    available under an ESP to the SSO price that's  
14    available under an MRO.

15          A.    Yes.

16          Q.    And step two is to compare other ESP  
17    rates that are available under an ESP and an MRO?

18          A.    Yes.

19          Q.    And step three is to identify and  
20    evaluate nonquantifiable elements that are available  
21    under the ESP and an MRO.

22          A.    Yes, that's the third part that the  
23    Commission has evaluated.

24          Q.    And in that third step you agree that the  
25    Commission should consider both nonquantifiable

1 benefits and nonquantifiable costs?

2 THE WITNESS: Could I have the question  
3 reread, please?

4 (Record read.)

5 A. The elements that are nonquantifiable may  
6 be a benefit or may be of detriment. To the extent  
7 that you're using the term "cost" to mean detriment,  
8 I would agree.

9 Q. Turn, if you would, to the first exhibit  
10 to your testimony, BEH-1. And I'm focused on the top  
11 half of the page that's captioned "Statutory Price  
12 Test." Okay?

13 It's true, isn't it, in the top half of  
14 the page that you make certain adjustments to the  
15 start and the end dates that Mr. Malinak uses for his  
16 ESP and MRO periods?

17 A. Yes.

18 Q. Okay. For example, Mr. Malinak, at the  
19 time he filed his testimony, assumed that DP&L's ESP  
20 would go into effect on January 1, 2013, right?

21 A. Yes.

22 Q. And you agree with me that that's not  
23 likely to happen, right?

24 A. I would agree that that is not likely to  
25 happen.

1           Q.    Okay.  You make an adjustment to both his  
2           start and end date here and reach the conclusion on  
3           line 17 that after your adjustments, the ESP is still  
4           \$112.5 million more favorable than an MRO after that  
5           adjustment -- those adjustments, rather, correct?

6           A.    In regards to the statutory price test  
7           for the test of generation rates, yes.

8           Q.    Okay.  Then, if you would turn to BEH-2,  
9           on the top half of the page you make certain changes  
10          to Mr. Malinak's switching assumptions, correct?

11          A.    Correct.

12          Q.    You recall that Mr. Malinak had sponsored  
13          an opinion that switching beyond the 62 percent rate  
14          that was applicable or used in his testimony wouldn't  
15          affect the results of his conclusions because the  
16          switching tracker would make DP&L whole under either  
17          an ESP or an MRO.

18          A.    Can you give me a reference to where  
19          Mr. Malinak opined that?

20          Q.    I can't.  Do you know whether he did or  
21          not?

22          A.    I would say generally, but I don't have  
23          his specific language here in front of me.

24          Q.    Is that consistent with your  
25          understanding that that's what he did?

1 A. Yes.

2 Q. You conclude that -- you at least assume,  
3 rather, that the switching tracker would not be  
4 available under an MRO, correct?

5 A. Correct.

6 Q. And when you make that assumption, the  
7 fact that there will be incremental switching most  
8 likely beyond the 62 percent historic levels has an  
9 effect on the ESP versus MRO test?

10 A. I would -- I believe that, as shown on  
11 BEH-2, if switching is greater than the 62 percent  
12 assumed by DP&L, it does have an impact, yes.

13 Q. You assumed a 70 percent switching rate  
14 for the purposes of conducting this analysis, right?

15 A. That's the illustration that I show in  
16 BEH-2.

17 Q. That's not a figure that you either  
18 calculated or sponsor, is it?

19 A. No; that's DP&L's number.

20 Q. Seventy percent switching figure is?

21 A. Yes.

22 Q. Where did that number come from?

23 A. As you look on BEH-2, the 70 percent load  
24 switching, and I refer to it in my testimony, give me  
25 a moment.

1 EXAMINER PRICE: Excuse me, can we go off  
2 the record?

3 (Discussion off the record.)

4 EXAMINER PRICE: Go back on the record.

5 A. It's on page 19 of my testimony. I note  
6 that, "For example, DP&L witness Jackson's  
7 calculation show an 8 percent increase in switching,  
8 above August 2012 levels, would cost all customers an  
9 additional 66 million plus carrying costs." And I  
10 believe that that was provided by DP&L in a  
11 supplement to testimony or their application.

12 Q. You understand that DP&L Witness Hoekstra  
13 sponsors switching projections on behalf of The  
14 Dayton Power & Light Company, right?

15 A. Yes, at page 18 of my testimony I note  
16 that his second revised testimony has switching  
17 numbers in it. Yes.

18 Q. And I believe you told me that  
19 the 70 percent number you used for Mr. Jackson was  
20 merely a figure he selected as an example so that he  
21 could illustrate how the switching tracker would work  
22 if there was switching above the 62 percent level?

23 A. Yes. It's an illustrative example.

24 Q. So that's the source of the 70 percent  
25 that you're relying on.

1 A. Yes, it is.

2 Q. In any event, looking back to BEH-2,  
3 after your adjustments for incremental switching,  
4 line 17 reflects that on an aggregate price basis  
5 DP&L's ESP is still \$88.8 million more favorable than  
6 an MRO, correct?

7 A. I would just differ with your  
8 terminology. I think you said "aggregate price test"  
9 and I call it a statutory price test. It's only the  
10 generation piece.

11 Q. But otherwise --

12 A. That's what the number is.

13 Q. Then I want to look at the bottom half of  
14 BEH-2, and actually I want to start by asking you  
15 your understanding of Mr. Malinak's testimony again.  
16 You understand that he assumed that the SSR and ST  
17 would be available under either an ESP or an MRO.

18 A. Yes.

19 Q. Okay. And you thus assumed that they  
20 cancel each other out and didn't make a difference in  
21 the ESP versus MRO test.

22 A. Yes.

23 Q. Okay. Looking, then, at BEH-2, you have,  
24 at the bottom of the page, four items that you have  
25 included as a negative towards DP&L's ESP, meaning

1 they would be in DP&L's ESP in your assumptions not  
2 available under an MRO, correct?

3 A. I show those four items as costs under  
4 the ESP that would not be available under the MRO.

5 Q. Okay. And those items are the service  
6 stability rider, the switching tracker, the  
7 alternative energy rider N, and competitive retail  
8 enhancements, correct?

9 A. Correct.

10 Q. And those three items sum to \$758.7  
11 million?

12 A. Yes.

13 Q. And you compare that \$758 million figure  
14 to the \$88.8 million figure and in essence subtract  
15 88.8 million from 758.7 million?

16 A. I don't mathematically do that on BEH-2,  
17 but yes, that is the items that are compared  
18 together.

19 Q. Okay. And you then reach the conclusion  
20 that a -- that DP&L's ESP is less favorable under the  
21 statutory price test, as you call it, than an MRO.

22 A. Again, I don't mean to quibble with  
23 terminology, but in my mind and in my testimony and  
24 on BEH-2, the top half is the statutory price test  
25 and the bottom half is the other quantifiable, but

1 other than terminology, it is correct.

2 Q. It's true, isn't it, that you don't  
3 sponsor testimony regarding whether DP&L would be  
4 able to recover the SSR as a financial integrity  
5 charge?

6 A. No, I do not.

7 Q. You don't sponsor testimony regarding  
8 whether DP&L would be entitled to recover the SSR  
9 under the MRO statute to prevent a taking, do you?

10 A. No, my testimony is that it would not be  
11 available under the MRO so I have no testimony on  
12 that.

13 MR. SHARKEY: Can I hear that answer  
14 back?

15 (Record read.)

16 Q. Well, I want to be sure I understand. It  
17 appears to me, and I believe you told me at your  
18 deposition, that you assumed that the SSR would not  
19 be available under the MRO statute but that you don't  
20 sponsor any analysis in that regard; is that true?

21 A. Yes, that is true.

22 Q. Okay. If the Commission were to disagree  
23 with you and were to conclude that the service  
24 stability rider would be equally available under  
25 either the ESP or the MRO, then the \$687.5 million



1 figure that you have on line 28 of BEH-2 would be  
2 removed, right?

3 A. I believe that if your assumption is that  
4 the Commission disagreed with me and it was equally  
5 available under the MRO, that is the SSR, that there  
6 would be some number under the MRO to reflect a  
7 service stability rider at line 22.

8 Q. I don't understand that question so --  
9 that answer, rather, so. I did understand the  
10 question.

11 We discussed earlier that Mr. Malinak had  
12 assumed that the service stability rider would be  
13 equally available and in the same amount under either  
14 an ESP or an MRO. Do you recall staying --  
15 discussing that assumption by Mr. Malinak?

16 A. Yes, we discussed that.

17 Q. And the question I have for you is do you  
18 agree that if the Commission assumes that the SSR  
19 would be available under an ESP and an MRO and that  
20 it would be in an equal amount, then the SSR amounts  
21 would be irrelevant for the purposes of conducting  
22 the ESP versus MRO test?

23 A. If the Commission determined that an SSR  
24 was available under the ESP and the MRO, and that the  
25 amounts would be equal, then they would cancel out,

1 yes.

2 Q. Okay. So in that event you could remove  
3 the \$687.5 million figure from your line No. 29.

4 A. Again, I'm not going to quibble about  
5 presentation here. That's not what I would do  
6 mathematically on the schedule, but the end result  
7 would be the same.

8 Q. Okay.

9 MS. YOST: Jeff, I think you misspoke.  
10 Did you say "line 29"?

11 MR. SHARKEY: I did, thank you, Melissa,  
12 I meant line 28.

13 Q. And with merely that one adjustment to  
14 your schedules, the ESP proposed by DP&L would pass  
15 the first two steps in your test, whatever it is that  
16 you called them.

17 A. I would agree that if that adjustment did  
18 occur, then the benefits from generation rates would  
19 exceed the costs that are listed that remain.

20 Q. Now We can do this probably a lot  
21 quicker. There's also a switching tracker figure for  
22 which you show a \$65.7 million cost as to the ESP,  
23 correct?

24 A. Correct.

25 Q. And, again, you understand that

1 Mr. Malinak had assumed that the switching tracker  
2 would be equally available under either a ESP or an  
3 MRO, correct?

4 A. Correct.

5 Q. And you would agree that if the  
6 Commission were to conclude that the switching  
7 tracker was equally available under an ESP or an MRO,  
8 that figure would drop out of your analysis as well.

9 A. If by the term "equally available" refers  
10 not only to the availability but the dollar amount,  
11 then the dollar amounts would be the same and it  
12 would cancel each other out mathematically.

13 Q. Let me ask you about the third step of  
14 your test. The third step in your test you  
15 described, as we discussed earlier, was  
16 nonquantifiable elements, right?

17 A. Yes.

18 Q. You, in preparing your testimony,  
19 reviewed the Commission's decision in the AEP ESP  
20 case, right?

21 A. If by "AEP ESP" you mean the  
22 11-346-EL-SSO case, yes.

23 Q. That is what I meant.

24 You were aware that in that order the  
25 Commission concluded on a quantifiable basis that the

1 benefits of AEP's ESP were \$386 million worse than  
2 under an MRO?

3 If it would help you I have in the binder  
4 in front of you a copy of that decision.

5 A. May I take a moment?

6 Q. Please do.

7 MS. YOST: Jeff, what exhibit number?

8 MR. SHARKEY: I will get you that.

9 It is Exhibit No. 107 and I point you to  
10 page 75, I believe.

11 Q. Seventy-five, the second full paragraph  
12 that begins with "Our analysis," focusing on the last  
13 sentence there.

14 A. And if I could please have the question  
15 reread.

16 Q. Sure. The question was that you'll  
17 recall that the Commission concluded that the -- that  
18 AEP's ESP was \$386 million worse than a hypothetical  
19 MRO purely on a quantifiable basis.

20 A. Yes, now that I've read the order, it  
21 refreshes my memory. As you noted, it says they find  
22 the MRO more favorable by approximately 386 million.

23 Q. Okay. And are you aware that the  
24 Commission eventually concluded in this decision that  
25 the nonquantifiable benefits of AEP's ESP outweighed

1       that \$386 million in costs?

2             A.     Generally, yes.

3             Q.     Okay.  It's true, isn't it, that your  
4       testimony does not address whether or not DP&L's ESP  
5       has nonquantifiable benefits?

6             A.     I present Mr. Malinak's statements of  
7       what those qualitative benefits are but I have no  
8       further testimony on that.

9             Q.     You don't sponsor an opinion as to the  
10      extent or amount of those nonquantifiable benefits?

11            A.     No, I do not.

12            Q.     You don't disagree with Mr. Malinak's  
13      testimony that a more rapid move to competition would  
14      constitute a nonquantifiable benefit in DP&L's  
15      service territory, do you?

16                    THE WITNESS:  Could I have the question  
17      reread?

18                    (Record read.)

19            A.     I don't disagree with his general  
20      understanding that a more rapid move to market rates  
21      is a nonquantifiable element that needs to be  
22      considered.

23            Q.     And it's a benefit, right?

24            A.     Yes.

25            Q.     Then I want to ask you about

1 nonquantifiable costs of a hypothetical MRO. And if  
2 you would turn back to BEH-2, please. Your  
3 hypothetical MRO to which you compared DP&L's ESP  
4 would result in DP&L earning \$758.7 million less than  
5 it would earn under DP&L's ESP proposal, correct?

6 THE WITNESS: Could I have the question  
7 reread, please?

8 (Record read.)

9 A. No. I think that this shows the  
10 difference in revenues, not earnings.

11 Q. Fair enough. With that correction my  
12 statement's true?

13 A. The difference in revenues is as you  
14 stated.

15 EXAMINER PRICE: Excuse me. So the  
16 answer to his question would be "yes"?

17 THE WITNESS: I'm sorry, your Honor, I'm  
18 confused and I --

19 EXAMINER PRICE: I know, that's why I --

20 THE WITNESS: I must have confused you.

21 EXAMINER PRICE: You certainly confused  
22 me.

23 Can we have the previous question and  
24 answer back, please?

25 (Record read.)

1 EXAMINER PRICE: So when you said  
2 "correct," the answer to his question would be he's  
3 correct, yes?

4 THE WITNESS: May I explain?

5 EXAMINER PRICE: First you have to answer  
6 my question, then I'll give you a chance to explain.

7 THE WITNESS: The answer to his  
8 question -- the answer to his question is yes, it's  
9 correct, but the term should be revenues, not  
10 earnings.

11 EXAMINER PRICE: I understand.

12 THE WITNESS: That's what I was trying to  
13 make the difference between.

14 EXAMINER PRICE: So if he had rephrased  
15 it with "revenues," you would have said "yes."

16 THE WITNESS: Yes, sir.

17 EXAMINER PRICE: Thank you.

18 Q. (By Mr. Sharkey) With that clarification,  
19 do you understand that it's DP&L's position that its  
20 financial integrity is currently threatened?

21 A. I'm generally aware of that, yes.

22 Q. Okay. And do you understand that DP&L  
23 has contemplated making cost cuts that may make --  
24 I'm sorry, that may create certain reliability risks  
25 as to its ability to operate its system?

1 A. No, I'm not specifically aware of that.

2 Q. Okay. It's true, isn't it, that you  
3 don't sponsor any opinions showing that DP&L could  
4 provide reliable service over the term of its ESP if  
5 it had \$758.7 million less in revenue?

6 A. No, I do not.

7 Q. Do you agree that it's important to  
8 residential customers that The Dayton Power & Light  
9 Company be able to provide reliable service?

10 A. Yes.

11 MR. SHARKEY: Thank you, Ms. Hixon.

12 Your Honors, I have no further questions.

13 EXAMINER PRICE: I have a couple  
14 questions just to follow up on BEH-2.

15 - - -

16 EXAMINATION

17 By Examiner Price:

18 Q. On line 30, I think it's line 30, we have  
19 the alternative energy rider N. And that's a  
20 \$3 million quantifiable cost on the ESP side but not  
21 on the MRO side; is that correct?

22 A. Yes.

23 Q. Now, are you familiar with Dayton Power &  
24 Light's, the way they're complying with the renewable  
25 energy resource requirement?



1           A.    No, sir.

2           Q.    You are not familiar.

3           A.    No.

4           Q.    And so you've simply carried over line 30  
5 from Malinak, you did not analyze whether you agreed  
6 with that assumption, you did not analyze whether you  
7 thought there would be other costs related to the MRO  
8 that he was just wrong, you just simply carried it  
9 over.

10          A.    I don't think I would use the term  
11 "simply carried it over." I didn't just pick up the  
12 number and say, hey, I'm going to put this in here.

13                In my testimony at page 20 I talk about  
14 the costs associated with that and the alternative  
15 energy rider and, to the extent that Mr. Malinak said  
16 they wouldn't be recoverable through an MRO, I come  
17 to the same conclusion.

18          Q.    Okay. But if Dayton Power & Light is not  
19 using the output from Yankee to comply with the RPS,  
20 the renewable portfolio standard, they would need to  
21 purchase solar RECs from somewhere else, wouldn't  
22 they? From Ms. Bojko's client, from the open market,  
23 from somewhere.

24          A.    I have to say that I'm not that familiar  
25 with meeting the requirements of the renewable, but

1 generally if there's a standard that has to be met, I  
2 would expect that they would have to meet that  
3 standard in some manner.

4 Q. So assuming for the sake of argument all  
5 other things being equal that they would have to  
6 purchase solar RECs from some other facility, they  
7 could no longer use the Yankee solar generation for  
8 RPS compliance, there should be some offsetting of  
9 that cost against the \$3.3 million for Yankee; isn't  
10 that right?

11 A. I'm not sure what you mean by "some  
12 offset."

13 Q. Well, if instead of using the Yankee  
14 output which comes at a cost of \$3.3 million under  
15 rider AERN they simply recovered it from their rider  
16 AER, they would have to recover some costs. There  
17 would be some solar costs in the event of an MRO,  
18 right?

19 MS. BOJKO: Your Honor, if I may help  
20 clarify your question, do you mean --

21 EXAMINER PRICE: No. No. I'm doing  
22 badly enough on my own, thank you.

23 MS. BOJKO: Do you mean the SRECs as the  
24 output and not the power that's generated?

25 EXAMINER PRICE: I don't have any idea

1 whether they're using the power generated from  
2 Yankee, I know they're using the SRECs for their  
3 compliance purposes.

4 Q. So with that clarification from  
5 Ms. Bojko.

6 A. I am sorry, you're taking me someplace  
7 where I do not understand the answer.

8 Q. Okay.

9 A. I just don't know and --

10 Q. You don't know.

11 A. -- I don't want to guess at it.

12 Q. Okay. That's fair enough.

13 On the competitive -- understand,  
14 Mr. Sharkey pointed out, neither of these things are  
15 going to turn out to be decisive on the test, but on  
16 the competitive retail enhancements that Mr. Malinak  
17 has said only go on the ESP side, if they are a good  
18 idea and if the costs are prudently incurred, Dayton  
19 would get recovery from them eventually, wouldn't  
20 they?

21 A. Well, I think the recoverability and who  
22 they should be recovered from --

23 Q. I'm not asking that. I'm not asking who  
24 they should be recovered from. That's a live issue.

25 I'm just saying hypothetically if they're

1 a good idea and if these are reasonable steps to take  
2 and if the costs are prudently incurred, Dayton would  
3 ultimately get recovery of them. Maybe through a  
4 base distribution rate case, maybe through some other  
5 mechanism.

6 A. Somebody would pay for them, yes.

7 Q. Somebody would pay for them.

8 A. Yes.

9 Q. So there should be some offset to  
10 the 2.5.

11 A. Again, I'm -- the "offset" word confuses  
12 me, but I'm assuming that you mean reflecting that  
13 the ESP -- that there should be some recognition that  
14 under an MRO that those costs would somehow be there.

15 Q. Yes. You said it much better than I  
16 tried.

17 A. There might be some costs there, I'm just  
18 struggling with understanding how it fits into the  
19 MRO provision. It wouldn't be the MRO that would be  
20 causing it and so I'm not thinking that it would be a  
21 term or a condition of the MRO in the same manner  
22 that it's a term and condition of the ESP.

23 Q. But it's what would otherwise apply under  
24 Section 4928.142. It's not under an MRO, so it would  
25 otherwise apply.

1           A.    As would otherwise apply under an MRO is  
2   the way I understood it -- understand it.  So it's,  
3   as you said, a good idea and there's no MRO, they  
4   might go ahead and do it and there might be costs  
5   associated with it.  So it's not the MRO and the  
6   company's proposal of an MRO and the Commission's  
7   approval of an MRO that causes those costs.  I think  
8   that's the only thing I'm struggling with in your  
9   example.

10           EXAMINER PRICE:  Okay.  That's fair  
11   enough.  Thank you.

12           EXAMINER MCKENNEY:  Staff?

13           MR. MARGARD:  No questions, thank you.

14           EXAMINER MCKENNEY:  Ms. Yost?

15           MS. YOST:  Five minutes with the witness,  
16   your Honor?

17           EXAMINER MCKENNEY:  Sure.  Let's take a  
18   five-minute recess.  Let's go off the record.

19           MS. YOST:  Thank you.

20           (Recess taken.)

21           EXAMINER PRICE:  Go back on the record.

22           EXAMINER MCKENNEY:  Ms. Yost, are you  
23   prepared?

24           MS. YOST:  Yes.  One question, your  
25   Honor.

REDIRECT EXAMINATION

By Ms. Yost:

Q. Ms. Hixon, you received some questions about the nonbypassable rider AER, correct?

A. The Bench I think had questions on rider AERN, yes.

Q. And your testimony specifically just addressed the AERN, correct?

A. Correct.

MS. YOST: Thank you, your Honor. No further questions.

- - -

EXAMINATION

By Examiner McKenney:

Q. I have a couple of questions.

A. Yes.

Q. Did you review the witness testimony of the other OCC witnesses that testified in this proceeding?

A. My hesitation is I just know that at different points I may have reviewed them but not recently.

Q. Do you know if any of them provided switching estimates?

A. I don't remember specifically. My

1 recollection is that there may be -- I do not  
2 remember.

3 Q. And for BEH-1 and BEH-2 you just used  
4 the 62 and the 70 percent switching rates?

5 A. Yes, your Honor. The 62 percent that was  
6 in DP&L's assumed and the 70 percent which they  
7 presented to the Commission as an illustrative  
8 example.

9 EXAMINER MCKENNEY: Thank you, Ms. Hixon.  
10 You were on recross; are we not?  
11 Mr. Sharkey?

12 MR. SHARKEY: No furthers questions, your  
13 Honor.

14 MS. BOJKO: Your Honor.

15 EXAMINER MCKENNEY: Ms. Bojko.

16 MS. BOJKO: Yes, I have some recross,  
17 your Honor.

18 - - -

19 RECROSS-EXAMINATION

20 By Ms. Bojko:

21 Q. Ms. Hixon, in response to the Bench's  
22 question about the AERN rider, the nonbypassable  
23 rider, can you explain what those costs include?  
24 It's on page 20 of your testimony.

25 A. It's my understanding, as I do state on

1 page 20, that DP&L's seeking to charge customers  
2 through rider AERN the capital costs associated with  
3 the Yankee Solar Facility.

4 Q. The capital costs, is that correct, of  
5 building the generating facility?

6 A. That's my understanding based on DP&L's  
7 testimony.

8 Q. And is it your understanding, would --  
9 under a competitive market under the MRO, would a  
10 CRES provider be able to pass on to customers the  
11 capital costs of building a generating facility  
12 through a nonbypassable rider?

13 A. I'm thrown a little bit by your term  
14 "under an MRO" in regards to what a CRES provider  
15 could pass through in terms of costs. I would say  
16 that generally my understanding is that CRESs can  
17 sell electric generation at whatever price they can  
18 sell it at, but there's not any specific  
19 pass-through, they are not cost-based rates.

20 Q. So a CRES provider would not be able to  
21 come to the Commission to seek recovery for a rider  
22 such as the AERN.

23 A. Based on my general understanding as the  
24 Commission does not regulate CRES prices, no.

25 Q. And is it your understanding of the RPS



1 requirements that were being discussed earlier with  
2 regard to the CRES provider's ability to meet those,  
3 would they still have to meet those requirements even  
4 if the Dayton company was allowed to have an AERN  
5 rider?

6 A. Again, as I said to the Examiners,  
7 renewables is not my area of expertise. My general  
8 understanding is that there are standards that have  
9 to be met by both utilities and other generation  
10 suppliers. That's the extent of my knowledge.

11 Q. Do you know of another rider in this  
12 proceeding where those costs would be collected?

13 A. I'm not sure what you mean by "those  
14 costs."

15 EXAMINER PRICE: Which costs?

16 Q. I'm sorry, the renewable portfolio  
17 standards. If the company was going to pass on REC  
18 costs, as we discussed, as the Bench discussed with  
19 you, those REC costs, are those passed through a  
20 different rider in the company's application such as  
21 the AER rider?

22 A. I do not specifically know the details.  
23 I know that there is an alternative energy rider. I  
24 know that -- I know generally that alternative energy  
25 includes renewables. That's all that I know.

1 MS. BOJKO: Thank you.

2 Your Honor, I have no further questions.

3 EXAMINER McKENNEY: Thank you.

4 - - -

5 FURTHER EXAMINATION

6 By Examiner Price:

7 Q. If a CRES provider, just based upon your  
8 knowledge of the industry, wasn't recovering any of  
9 their capital costs from their sales of SRECs, they  
10 would not be in business very long, would they?

11 MS. BOJKO: I'm sorry, could I have that  
12 question reread?

13 EXAMINER PRICE: Sure.

14 (Record read.)

15 MS. BOJKO: For clarity, your Honor, can  
16 you define "capital" --

17 EXAMINER PRICE: No.

18 MS. BOJKO: -- "costs" associated with  
19 SRECs?

20 EXAMINER PRICE: No, it's my  
21 hypothetical.

22 A. From my general understanding of the  
23 industry and from ratemaking and regulation, I'm not  
24 familiar with the sale of SRECs in terms of capital  
25 costs, I understand what that concept is. If a

1 supplier is not recovering capital costs of something  
2 particular, I can't speak to what else is happening  
3 that they're selling elsewhere.

4 Q. Fair enough.

5 A. I just don't know.

6 EXAMINER PRICE: That's fair. Thank you.

7 THE WITNESS: Thank you.

8 EXAMINER MCKENNEY: Is there other  
9 recross for this witness?

10 (No response.)

11 EXAMINER MCKENNEY: No?

12 Thank you, Ms. Hixon. You're excused.

13 EXAMINER MCKENNEY: Ms. Yost.

14 MS. YOST: Yes, at this time OCC moves to  
15 have OCC Exhibit 23, which is the direct testimony of  
16 Beth Hixon, moved into evidence.

17 EXAMINER MCKENNEY: Any objection?

18 (No response.)

19 EXAMINER MCKENNEY: It will be so  
20 admitted.

21 (EXHIBIT ADMITTED INTO EVIDENCE.)

22 EXAMINER PRICE: Mr. Slone.

23 (Witness sworn.)

24 EXAMINER PRICE: Please be seated and  
25 state your name and business address for the record.

1 THE WITNESS: My name is Gregory Slone,  
2 my business address is 10 West Broad Street,  
3 Columbus, Ohio, 43215.

4 MS. YOST: Thank you, your Honors. At  
5 this time OCC requests that the direct testimony of  
6 Gregory Slone, public version, be marked as OCC  
7 Exhibit 24.

8 EXAMINER PRICE: So marked.

9 (EXHIBIT MARKED FOR IDENTIFICATION.)

10 MS. YOST: And the OCC requests that the  
11 direct testimony of Gregory Slone, confidential  
12 version, be marked as OCC Exhibit 24A.

13 EXAMINER PRICE: Also will be so marked.

14 (EXHIBIT MARKED FOR IDENTIFICATION.)

15 MS. YOST: Your Honors, you have a copy  
16 of both?

17 EXAMINER PRICE: I need a copy of the  
18 confidential one.

19 EXAMINER McKENNEY: Do you have two  
20 copies of it?

21 MS. YOST: Sure.

22 - - -

23 GREGORY SLONE

24 being first duly sworn, as prescribed by law, was  
25 examined and testified as follows:

DIRECT EXAMINATION

By Ms. Yost:

Q. Mr. Slone, are you the same Gregory Slone whose direct testimony was filed in this proceeding?

A. I am.

Q. And on whose behalf do you appear?

A. The Office of the Ohio Consumers' Counsel.

Q. And you have a copy of OCC Exhibit No. 24 and 24A with you on the stand?

A. I have my confidential version. I don't believe I have a copy of the public version.

Thank you.

Q. And, Mr. Slone, did you prepare your testimony which is marked as OCC Exhibit Nos. 24 and 24A or have it prepared at your direction?

A. I did.

Q. Do you have any changes or corrections to either 24 or 24A?

A. I do not.

Q. If I asked you the same questions found in your direct testimony, OCC Exhibits 24 and 24A, would your answers be the same today?

A. They would.

MS. YOST: Your Honor, at this time the

2111

1 OCC moves for the admission of OCC Exhibits 24  
2 and 24A, and tenders the witness for  
3 cross-examination at this time.

4 EXAMINER PRICE: Thank you.

5 Ms. Bojko?

6 MS. BOJKO: No questions, your Honor.

7 EXAMINER PRICE: Mr. Williams.

8 MR. WILLIAMS: No questions, your Honor.

9 EXAMINER PRICE: Mr. Sherman?

10 MR. SHERMAN: No questions, your Honor.

11 EXAMINER PRICE: Mr. Alexander?

12 MR. ALEXANDER: No questions, your Honor.

13 EXAMINER PRICE: Mr. Oliker?

14 MR. OLIKER: No, thank you, your Honor.

15 EXAMINER PRICE: Mr. Yurick?

16 MR. YURICK: No questions. Thank you.

17 EXAMINER PRICE: Major?

18 MAJOR THOMPSON: Nothing, sir.

19 EXAMINER PRICE: Mr. Sharkey?

20 MR. SHARKEY: Yes, thank you, your Honor.

21 - - -

22 CROSS-EXAMINATION

23 By Mr. Sharkey:

24 Q. Mr. Slone, as you know, my name is Jeff  
25 Sharkey. I represent The Dayton Power & Light

1 Company in this matter.

2 It's true, isn't it, the subject of your  
3 testimony is DP&L's recovery of fuel cost through its  
4 standard service offer rates?

5 A. Yes, it is.

6 Q. You understand that in this case The  
7 Dayton Power & Light Company has proposed that it  
8 would recover its fuel costs through its SSO rates on  
9 a system average cost basis?

10 A. That's my understanding.

11 Q. Under that basis -- strike that.

12 Under that method The Dayton Power &  
13 Light Company would determine how much fuel it used  
14 to serve all customers, including retail customers,  
15 DPLER, and other wholesale customers, determine an  
16 average and charge to retail customers who are on SSO  
17 rates that average fuel rate.

18 A. That's my understanding.

19 Q. You propose a least cost methodology,  
20 right?

21 A. I do.

22 Q. Under your methodology DP&L would  
23 determine in a given period, say an hour, how much  
24 fuel it used and how many customers it served both,  
25 again, retail and wholesale customers, and assign the

1 least cost fuel to the retail customers.

2 A. That is my proposal.

3 Q. Okay. And there's currently a  
4 stipulation in place from DP&L's 2008 case that is a  
5 variant of the least cost methodology that you  
6 propose that includes DPLER load in the least cost  
7 stack.

8 A. That's correct.

9 Q. Turn, if you would, to page 9 of your  
10 testimony. There's a couple of clauses in there, I'm  
11 going read them to you, I'm going to insert the word  
12 "are" because I think just for my purposes it works  
13 better, but tell me if you think the way I have read  
14 them is unfair.

15 Starting on line 8 you say "...higher  
16 cost fuel and emission allowances are used to  
17 generate wholesale market sales..."; is that right?

18 A. Yes.

19 Q. And then starting on line 9, page -- I'm  
20 sorry, page 9 again, line 10, you say "...the higher  
21 fuel and emission costs are associated with providing  
22 wholesale electric sales to the market." Right?

23 A. Yes.

24 Q. I inserted the word "are" into both of  
25 those quotes, it didn't change their meaning, did it?



1           A.    Not to me.

2           Q.    It's true, isn't it, that you're not  
3 aware of any statutory obligation that DP&L has to  
4 allocate least cost fuel and emission allowances to  
5 retail customers?

6           A.    The only -- I don't believe this is  
7 statutory, but simply the ESP stipulation in 08-1094  
8 is where I brought this from.

9           Q.    We'll come to that.

10           Now, my question to you is simply that  
11 it's true, isn't it, that you're not aware of any  
12 statutory obligation that DP&L has to allocate least  
13 cost fuel and emission allowances to retail  
14 customers?

15           A.    That's true.

16           Q.    Okay. And you're not aware of any  
17 Commission rule that requires DP&L to allocate least  
18 cost fuel and emission allowances to retail  
19 customers, correct?

20           A.    Correct.

21           Q.    You're not aware of any Commission  
22 decision that requires DP&L to allocate least cost  
23 fuel and emission allowances to retail customers,  
24 correct?

25           A.    Well, by "Commission decision," I was

1 assuming that the decision in the 08-1094 case  
2 required the least cost.

3 Q. Well, let's talk about that. That  
4 decision approved the 2008 stipulation that we  
5 mentioned earlier, right?

6 A. That's correct.

7 Q. And that stipulation had DPLER in the  
8 least cost stack, right?

9 A. It did.

10 Q. And you understand that the Commission's  
11 going to be issuing a new order in this case, right?

12 A. Yes.

13 Q. So setting aside that order, you're not  
14 aware of any other Commission decision or precedent  
15 that requires DP&L to allocate least cost fuel and  
16 emission allowances to retail customers, correct?

17 A. I am not.

18 Q. You're not aware of any agreement that  
19 DP&L has entered into that would require, after this  
20 case is over, that DP&L would allocate least cost  
21 fuel and emission allowances to retail customers.

22 A. After this case is over?

23 Q. Right.

24 A. No.

25 Q. Okay. You're not aware of any facts that

1 suggest that DP&L buys lower cost fuel for the  
2 purposes of serving retail customers and buys higher  
3 cost fuel for the purpose of serving wholesale  
4 customers.

5 A. I believe DP&L's goal is to acquire the  
6 lowest cost fuel and emission allowances for all  
7 their load. That's my assumption.

8 Q. That would be my assumption too. But  
9 that's not my question.

10 A. I'm sorry.

11 Q. My question to you was that you're not  
12 aware of any facts that suggest that the people who  
13 are in the business of buying the coal for The Dayton  
14 Power & Light Company made conscious decisions to buy  
15 the lower-cost -- conscious decisions to allocate  
16 lower-cost fuel to retail customers and conscious  
17 decisions to allocate higher cost fuel to wholesale  
18 customers.

19 MS. YOST: Objection, your Honor. The  
20 witness can't testify to the facts that others know  
21 in making their decision on whether to purchase fuel.  
22 This is not his area. He has no knowledge of that.  
23 If he wants to bring in one of the DP&L people, we  
24 can depose them and then he can put them on the  
25 stand.

1 MR. SHARKEY: That was exactly my point,  
2 your Honor. I said you're not aware of any facts  
3 that suggest that's true.

4 EXAMINER PRICE: Could I have the  
5 question back again?

6 (Record read.)

7 EXAMINER PRICE: Overruled.

8 A. I'm not aware of any facts.

9 Q. It's your understanding that if DP&L  
10 sells power in the wholesale at market rates, then  
11 DP&L would be able to recover all of its fuel costs,  
12 right?

13 MS. YOST: May I have the question read  
14 back, please?

15 EXAMINER PRICE: Please.

16 (Record read.)

17 A. I'm not sure that's my understanding. My  
18 understanding would be that to the extent DP&L sells  
19 power into the market for their SSO customers, they  
20 would be able to recoup those costs through their  
21 fuel rider.

22 MR. SHARKEY: Can I hear that answer  
23 back, please? I'm sorry.

24 EXAMINER PRICE: Please.

25 (Record read.)

1           Q.    Let's talk about retail versus wholesale  
2 customers, then. You agree with me that the purpose  
3 of the fuel rider is to allow DP&L to recover its  
4 fuel costs from the SSO load, right?

5           A.    Right.

6           Q.    And when DP&L sells power into the  
7 market, it does so at a market price, right?

8           A.    If they sell power into the market on a  
9 daily basis, it would be at market prices.

10          Q.    Okay. And those market prices would  
11 presumably allow DP&L to recover its operating costs  
12 and, hopefully, earn a margin on the sale of the  
13 generation, right?

14          A.    I would assume that would be their goal,  
15 yes.

16          Q.    Okay. So DP&L would, thus, be able to  
17 recover all of its fuel costs if fuel costs were  
18 allocated on a system average basis, right?

19          A.    To the extent -- I'm hesitating on my  
20 answer because to the extent that DP&L has a  
21 contract, a bilateral contract with another party and  
22 that contract were currently less expensive --  
23 depending on the length of the contract, and that  
24 contract were currently less expensive for lower  
25 priced power than what DP&L's costs were, then in

1       that particular instance there's a potential they  
2       don't recover all of their costs associated with  
3       their system average cost.

4             Q.    Okay.  Excluding that exception you would  
5       agree with my statement?

6             A.    I can't think of another reason, so yes.

7             Q.    And as to your exception, the idea could  
8       be that market prices on either the costs of fuel or  
9       the costs of generation might move sometime after the  
10      contract was signed to put DP&L into the position  
11      that you've described --

12            A.    Yes.

13            Q.    -- correct?

14            A.    Yes.

15            Q.    But if the contract was signed at market  
16      rates and there weren't adverse changes to market  
17      rates, the exception that you have identified would  
18      not occur, right?

19            A.    Well, there are always changes in the  
20      market.  But if -- assuming that there are no changes  
21      at all once the contract was signed and everything  
22      was status quo, then I would agree.

23            Q.    And, in fact, you've posited adverse  
24      changes to the Dayton Power & Light Company but there  
25      could be positive changes just as likely as there

1 could be negative changes.

2 A. Yes.

3 Q. Okay. So then with that assumption, or  
4 with that agreement in place that we have, I want to  
5 discuss your proposal. Under your proposal DP&L's  
6 charges to retail customers would be lower, as you  
7 understand it, than the system average methodology  
8 that's proposed by The Dayton Power & Light Company?

9 A. That's correct.

10 Q. Okay. So that would mean that DP&L's  
11 revenues from retail customers are lower.

12 A. All things being equal, that would be --  
13 that would be correct.

14 Q. Okay. You're not aware of any way the  
15 Dayton Power & Light Company could charge wholesale  
16 customers market rates plus some additional amount to  
17 account for the fact that it allocates least cost  
18 fuel and emission allowances to retail customers?

19 A. No.

20 Q. You're aware that DP&L has filed  
21 testimony in this case regarding whether it will be  
22 able to maintain its financial integrity into the  
23 future.

24 A. Yes, I'm aware of that.

25 Q. Okay. And you're aware that DP&L filed

1 this case and conducted its analysis under the  
2 assumption it would be implementing a fuel  
3 methodology based on system average costs?

4 A. Yes. That's my understanding.

5 Q. And your proposal would result in The  
6 Dayton Power & Light Company earning less revenue  
7 than in DP&L's filing.

8 A. From the SSO customers, yes.

9 Q. You have not done any analysis to  
10 determine the effect that your proposal would have on  
11 The Dayton Power & Light Company's financial  
12 integrity, have you?

13 A. I have not.

14 MR. SHARKEY: Thank you, Mr. Slone.

15 Your Honors, I have no further questions.

16 EXAMINER PRICE: Thank you.

17 Staff?

18 MR. MARGARD: No questions. Thank you,  
19 your Honor.

20 EXAMINER PRICE: Redirect?

21 MS. YOST: Two minutes.

22 EXAMINER PRICE: Let's go off the record.

23 (Recess taken.)

24 EXAMINER PRICE: Let's go back on the  
25 record.



1 Ms. Yost.

2 MS. YOST: Thank you, your Honor.

3 - - -

4 REDIRECT EXAMINATION

5 By Ms. Yost:

6 Q. Mr. Slone, are you -- you had some  
7 questions about statutes, laws, and orders of the  
8 Commission, and my question to you is: Are you aware  
9 of any Commission action that suggests that a utility  
10 utilize the least-cost methodology in regards to a  
11 fuel rate rider in an ESP?

12 A. Yes, I am. At this point there are -- of  
13 the four utilities, FE and Duke are using the  
14 auction, but AEP still has a fuel rider in place, and  
15 in the most recent AEP fuel audit, which would be  
16 Case No. 09-872, the request for proposal that was in  
17 the entry has a number of cites in that request for  
18 proposal that talks about lowest cost for fuel and  
19 purchased power.

20 Q. Thank you.

21 And through your testimony in your  
22 cross-examination you've established that the current  
23 use of the least-cost methodology for the fuel rate  
24 rider is a product of a stipulation, correct?

25 A. Correct.

1           Q.    Has DP&L ever proposed in its own  
2 application the use of a least-cost methodology for  
3 the fuel rate rider?

4           A.    In DP&L's first application in this case  
5 they applied for an MRO, and in that MRO their  
6 request related to the fuel rider was that it remain  
7 the same as it had been. So it had been least cost  
8 and that's what they were proposing to get in the  
9 MRO.

10           MS. YOST: Thank you, Mr. Slone.

11           No further questions, your Honor. Thank  
12 you.

13           EXAMINER PRICE: But you're not relying  
14 upon the stipulation as precedent for least costs,  
15 are you, because that would be totally improper as we  
16 talked about over and over and over in this hearing?  
17 Right?

18           THE WITNESS: Evidently I'm not.

19           EXAMINER PRICE: Excellent. Thank you.

20           THE WITNESS: Thank you, your Honor.

21           EXAMINER PRICE: Redirect, Ms. Bojko?

22           MS. BOJKO: No, thank you, your Honor.

23           EXAMINER PRICE: Recross, you're right.

24           That was redirect.

25           Recross, Ms. Bojko?

1 MS. BOJKO: No.

2 EXAMINER PRICE: Mr. Williams?

3 MR. WILLIAMS: None, your Honor.

4 EXAMINER PRICE: Mr. Sherman?

5 MR. SHERMAN: None, your Honor.

6 EXAMINER PRICE: FES?

7 MR. ALEXANDER: No, your Honor.

8 EXAMINER PRICE: IEU Ohio?

9 MR. OLIKER: None, your Honors.

10 EXAMINER PRICE: Mr. Yurick?

11 MR. YURICK: No, your Honor.

12 EXAMINER PRICE: Major?

13 MAJOR THOMPSON: No, sir.

14 EXAMINER PRICE: Mr. Sharkey?

15 MR. SHARKEY: Yes, your Honor, briefly.

16 - - -

17 RECROSS-EXAMINATION

18 By Mr. Sharkey:

19 Q. You referred to an RFP that was an in AEP  
20 case.

21 A. It was an entry in the most recent --  
22 believe it's called Matter of the Application of  
23 Columbus Southern Power Company and Ohio Power  
24 Company for Approval of Their Fuel Adjustment  
25 Clauses.

1           Q.    Do you have a copy of that document that  
2 I could review?

3           A.    I do.

4           MR. SHARKEY:   Your Honors, may I?

5           EXAMINER PRICE:   You may approach.

6           MR. SHARKEY:   If I can have a minute with  
7 the document.

8           EXAMINER PRICE:   You may.

9           Let's go off the record.

10          (Off the record.)

11          EXAMINER PRICE:   Let's go back on the  
12 record.

13          Q.    (By Mr. Sharkey) Mr. Slone, you handed to  
14 me and we had a moment to look at the entry that you  
15 described in 09-872. Let me ask you some questions.

16          MR. SHARKEY:   Your Honor, if I may  
17 approach and --

18          EXAMINER PRICE:   You may.

19          MR. SHARKEY:   -- ask him over his  
20 shoulder because we only have one copy of the  
21 document.

22          MS. YOST:   May I approach also?

23          EXAMINER PRICE:   You may approach also.

24          Q.    Can you identify for me, please,  
25 Mr. Slone, the pages of the entry that we're looking

1 at upon which you rely.

2 A. Page 15 of Attachment 1 which I believe  
3 is the RFP; page 16 and 17; page 19. I think those  
4 are the only ones.

5 Q. While this may not reflect in the record,  
6 there's highlighting on the pages that you have  
7 pointed me to. Is it the highlighted portions of  
8 those pages that you believe support your position  
9 which you described to your counsel?

10 A. Yes.

11 Q. Okay. As an initial matter, that  
12 decision is citing to rules of the Ohio  
13 Administrative Code that have been repealed; isn't  
14 that true?

15 A. I believe the -- all the rules in the  
16 Ohio Administrative Code regarding the electric fuel  
17 clause have been repealed.

18 Q. Okay.

19 A. Yes.

20 Q. Turn back to, if you would, page 15.  
21 Page 15 toward the bottom under subparagraph B,  
22 paragraph No. 2, you have highlighted a phrase that  
23 says "Ascertain the procedures utilized by the  
24 company to assure that lowest reasonable prices at  
25 the time of purchase are paid for fuel and purchased

1 power, emission allowances, and environmental  
2 regents."

3 Did I read that accurately?

4 A. I believe you did.

5 Q. That does not reflect a statement that  
6 the least-cost fuel would be allocated to any  
7 particular group of customers, does it?

8 A. No. To me it speaks to trying to get by  
9 the lowest cost power and for fuel and emission  
10 allowances.

11 Q. If you would turn to the next page, you  
12 have highlighted, again, a phrase at the top that  
13 says "Identify specific areas for improvement of  
14 organizational and management practices to ensure  
15 operation of the company at the lowest reasonable  
16 overall cost."

17 Again, that's lowest overall cost of fuel  
18 purchases, correct?

19 A. Correct.

20 Q. Okay. And as I've read to myself the  
21 other pieces that you've highlighted on the following  
22 pages, if I read you those portions, you would,  
23 again, find that none of them reflect a decision or  
24 recommendation by the Commission that least-cost fuel  
25 be allocated to any particular group of customers.

1           A.     That's correct.

2           MR. SHARKEY:   Thank you.

3           Your Honors, no further questions.

4           EXAMINER PRICE:   Mr. Margard?

5           MR. MARGARD:   No, thank you.

6           EXAMINER PRICE:   Thank you.   You're  
7     excused.

8                     At this time we will adjourn until  
9     9:00 o'clock tomorrow.   Let's go off the record and  
10    talk about witness --

11           MS. YOST:   Move my exhibits in.

12           EXAMINER PRICE:   Oh, good point.   Let's  
13    not adjourn until after OCC moves its exhibits in.

14           MS. YOST:   At this time, OCC moves OCC  
15    Exhibit 24 and Exhibit 24A, which is the direct  
16    testimony of Gregory Slone, into evidence.

17           EXAMINER PRICE:   Any objections to their  
18    admission?

19                     (No response.)

20           EXAMINER PRICE:   Seeing none, they'll be  
21    admitted.

22                     (EXHIBITS ADMITTED INTO EVIDENCE.)

23           EXAMINER PRICE:   Now we will adjourn and  
24    go off the record.

25                     (Hearing adjourned at 3:50 p.m.)

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CERTIFICATE

I do hereby certify that the foregoing is a true and correct transcript of the proceedings taken by me in this matter on Wednesday, March 27, 2013, and carefully compared with my original stenographic notes.

Maria DiPaolo Jones, Registered  
Diplomate Reporter and CRR and  
Notary Public in and for the  
State of Ohio.

My commission expires June 19, 2016.

(71891-MDJ)

- - -



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Summary: Transcript in the matter of The Dayton Power and Light Company hearing held on 03/27/13 - Volume VIII electronically filed by Mrs. Jennifer Duffer on behalf of Armstrong & Okey, Inc. and Jones, Maria DiPaolo Mrs.