BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

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IN THE MATTER OF THE APPLICATION OF : Case No.
THE DAYTON POWER AND LIGHT COMPANY : 16-395-EL-SSO
FOR APPROVAL OF ITS ELECTRIC :
SECURITY PLAN :

IN THE MATTER OF THE APPLICATION OF : Case No.
THE DAYTON POWER AND LIGHT COMPANY : 16-396-EL-ATA
FOR APPROVAL OF REVISED TARIFFS :

IN THE MATTER OF THE APPLICATION OF : Case No.
THE DAYTON POWER AND LIGHT COMPANY : 16-397-EL-AAM
FOR APPROVAL OF CERTAIN ACCOUNTING :
AUTHORITY PURSUANT TO OHIO REV. :
CODE § 4904.13 :

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PUBLIC SESSION

Deposition of R. JEFFREY MALINAK

Washington, DC

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Reported by: Janet A. Hamilton, RDR

Deposition of R. JEFFREY MALINAK, held at the offices of:

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Pursuant to Notice, before Janet A. Hamilton, Registered Diplomate Reporter and Notary Public in and for the District of Columbia.

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C O N T E N T S

E X H I B I T S

(Attached to the transcript)

P R O C E E D I N G S

R. JEFFREY MALINAK,

a witness herein, being duly sworn, testified as follows:

EXAMINATION BY COUNSEL FOR THE SIERRA CLUB

BY MR. BZDOK:

Q Good morning, Mr. Malinak.

A Good morning.

Q Can you hear me okay?

A I can.

Q Great. My name is Christopher Bzdok, and I represent the Sierra Club in this proceeding. I'm going to have questions for you in the public session, and then I will have some questions for you as well in the confidential session. If we -- if I ask you a question in a public session which requires a confidential content in your answer, you or counsel could just let us know that and we will bookmark that for later. I am endeavoring to steer clear of that, but I don't presume to know exactly what your response would be. So I'll sort of ask the two of you, you know, to provide a check and balance there. Is that okay?

A Yes.

Q Okay. And you've had your deposition taken before; correct?
A Yes, I have.
Q Have you had it taken before in a PUCO proceeding?
A Yes.
Q Was that the ESP II proceeding?
A Yes.
Q Any other PUCO proceeding?
A No. That's the only one.
Q What was the scope of your assignment in this case?
A Well, I was asked to do two things. I was asked to evaluate the financial condition and financial integrity of DPL and DP&L under two different sets of assumptions regarding the approval of the DMR, the distribution modernization rider, and also to evaluate whether the ESP with the proposed DMR is more favorable in the aggregate than an MRO, than the results that would prevail under an MRO.
Q Anything else?
A No. That's -- that's the assignment that I was given.
Q Who provided you with this assignment?

A Counsel for DPL, DP&L.

Q What generally -- what did you -- this is a general question. What did you do to undertake this assignment?

A I did a variety of things. I asked for information from the client about their financial position, their current financial position and their projected financial position. Client in that term was the DPL and DP&L. They provided extensive information in spreadsheet form. I also did my own research using publicly available information looking at rating agency and analyst reports but also at data sources, different publicly available data sources. I had a number of conversations with counsel and with personnel from DP&L and DPL, mainly the financial people and, you know, where we asked questions about the financial projections that they were providing and also reviewed some of the, you know, facts about what's going on with the operations of the company currently and going into the future and, you know, I used all of that information to prepare the analysis and related conclusions that are provided in my testimony.

Q Okay. I want to follow up on a little bit of what you said just now. So for convenience purposes and so the transcript is clear, are you okay with referring to the DPL holding company as DPL Inc.?

A Yes.

Q And the regulated utility as DP&L?

A Yes.

Q And the two together as the companies?

A Yes.

Q Okay. Who if you -- sorry. Did somebody say something? Who -- Mr. Malinak, who did you deal with in the procurement of information that you just described? Who did you deal with in terms of personnel from the companies?

A There were several. Craig Jackson, Jeff MacKay, Daniel Santa Cruz, Emily Rabb. Those are the primary people that I dealt with. I hope I'm not forgetting somebody significant there, but there were others I believe, but those are the ones that I remember.

Q Okay. When you -- you indicated that you reviewed information from the companies in spreadsheet form. Can you tell me a little more specifically what, what those spreadsheets were or what they entailed?

A Sure. They were balance sheet, income

statement and cash flow statement information for the various entities that make up DP&L and DPL Inc. and that roll up, if you will, to the higher level, you know, financial statements for DP&L and DPL Inc., and they -- and it involved, you know, current balance sheet information like are projected for year-end 2016 plus projections for the ESP term.

Q Okay. I'm just pausing because I'm opening a spreadsheet, and I want to see if there's an indicator here that I can -- so, so was that a -- was that a multi-tab spreadsheet beginning with a general assumption tab provided to you by Mr. Jackson or someone in his department?

A It was a multi-tab spreadsheet. I don't remember specifically seeing the general assumptions tab. It would not surprise me if there was one, but there were a number -- there were multiple tabs with the ones that we relied on primarily that were orange colored. I don't know if that's the case in the spreadsheet you're looking at or not.

Q You're saying that the tabs themselves were colored orange?

A Correct.

Q And included -- you don't have access -- you don't have in front of you or have access to it in front of you, do you?

A I'm afraid I don't.

Q Okay. Was it your general understanding that this was a financial model of the companies prepared by Mr. Jackson's group?

A Yes. That's generally the case, yes.

Q You also indicated that you reviewed -- this is close or close to it -- facts going on about operations of the company currently and into the future. Do you recall that a minute ago?

A Yes. I did say that.

Q What -- tell me more what you mean by that.

A Well, my focus with respect to that in particular was I use the term operations, but it was more in the nature of financial operations, and it was related to the, what their plans were with respect to their debt that was coming due over time. That was my primary focus, but there were some general conversations about the plans for the, you know, operation and maintenance of their transmission and distribution, you know, assets and capex plans and also for the coal generating assets as well. So, but they were at a very sort of general level talking about, you know, what, what the company's plans were for operating them and, you know, the result was they were planning to do, you know, to continue to operate those plants as they had in the past or at least the assets, they were expecting them to be operating them in a similar fashion.

Q So in terms of plans for transmission and distribution, O and M, capex plans and plans for the coal generation assets, am I understanding your testimony correctly that those were conversations only or did you also review written documents regarding those --

A Those were just conversations.

Q -- matters?

A Yeah. They were just conversations.

Q Any other inputs or data or documents that you received from the companies?

A I believe that we received rating agency reports from the company. We certainly asked for them. Some of the folks on my team were responsible for obtaining those. I believe all or most of them came from the company.

Q Anything else?

A There were, you know, discussions and we may have seen -- I think they were all -- all the projections of things like energy prices and so forth I think were all contained in the spreadsheets that we received, so I don't think there were separate documents related to that. So that's what I remember receiving from the company. I don't know that there were any other specific documents.

Q Do you have your testimony and exhibits with you today?

A I do.

Q I want to ask you some questions about, and this is foundational, like something -- and the same thing as some of these other questions, and so I want to ask you some questions about some of the notes in your exhibits which I believe that I can do without getting into any specific numbers. If your answer requires you to disclose numbers that are redacted, then I would ask you to let me know that, but this is mostly just foundational at this point. So if you could turn to Exhibit RJM1.

A Yes.

Q In RJM1 at the bottom you have a list of notes and sources; is that correct?

A Yes.

Q And in the notes and sources you have four -- so I'm looking at RJM1 at this point, and you've got line items there for, among other things, interest coverage, cash flow over debt, retained cash flow over debt and debt over capital. Do you see that?

A I do.

Q And you indicate in the notes and sources that, that those are coming from -- those are financial data of various kinds related to DPL; correct?

A That's correct, on this exhibit.

Q And are those data -- is the source of those data the financial forecast spreadsheet you were describing in general terms earlier?

A Well, the immediate source for these, these data, are, you know, the other spreadsheet, some intermediate spreadsheets that are other exhibits that I have.

Q Okay.

A Okay. So for example, if you -- you know, these are the financial ratio calculations that are described in these notes. So if you turn to Exhibits, you know, Exhibit RJM9.

Q Yep.

A Okay. These are where the data are that underlie the financial ratio calculations are in this exhibit, and --

Q Yeah.

A -- and then these data in turn are pulled from, you know, the financial statements for DPL Inc. which are later in the stack of exhibits, and then those ultimately were drawn from the spreadsheets that the client provided.

Q Okay. Do you have any understanding of -- well, let me start here. So in, in pulling data from those spreadsheets that the client provided as you say and then working them through to those early RJM exhibits, in pulling that initial data did you or your team make any adjustments to the data that you obtained from the companies' spreadsheets?

A To the extent that we did, it would have been of a calculational nature, and what I mean by that is, what I'm thinking of specifically, is for the first few years of the analysis the spreadsheets provided to us were, were done on a monthly basis. There were some data provided on a monthly basis, but we've done -- what I've done is just on an annual basis. So we may have made some adjustments in that regard, went, going from their spreadsheets, you know, to mine, but I would call that kind of as a calculational nature.

Q Any other adjustments that you or your team made to the data you obtained from the companies' spreadsheets?

A I am not aware of any.

Q Are you aware of any adjustments that the company made to data that you relied on in those spreadsheets in terms of the base financial metric?

A After they provided me the spreadsheets?

Q Before or after.

A Well, certainly beforehand they likely made, you know, adjustments over time, but I'm not aware of any specific adjustments myself that they made, but I would suspect that they, you know, they worked with those spreadsheets for a period of time to make them, to check them over and be comfortable that they were sound and so forth.

Q Other than the ESP II matter which we discussed earlier have you done any other expert or consulting or litigation support work for the companies, either or both?

A Other than ESP II it's only this matter that I've worked on for DPL and DPL Inc. and DP&L.

Q How about AES Corporation? Any prior work for them other than this case and ESP II?

A Not that I recall.

Q How about prior work for the, for counsel for DPL, DP&L?

A Other than ESP II and this matter, there has been nothing.

Q Your résumé or work history that's attached to your testimony on page 8 list as South Carolina Public Service Commission matter. Are you familiar with what I'm speaking of?

A Yes.

Q Other than that South Carolina matter and the DPL, DP&L matters have you been -- have you worked in an expert consulting or testifying capacity in any other public utility case in any other state or federal agency?

A Yes, numerous matters.

Q Can you give me a little more detail on that?

A Sure. In the first, I don't know, five to six years of my career, most of my time was spent on, at the time we called it utility matters or regulated industry matters and electric and gas utilities in particular, and that work included working on rate cases, a number of times working on appropriate regulated rate of return matters, and that's the same thing that I did in SCE&G.

I remember one case that sticks in my mind was a litigation matter involving Florida Power and Light and thermal electron which involved a co-generation facility in which we were -- I was modeling the power plant economics for that case.

I have worked on a major litigation involving coal contract litigation involving the Lower Colorado River Authority and Decker Coal Company. I have -- I developed revenue requirements models on several occasions in rate cases. I don't remember the case, the client in those matters, but, but I worked on several of those as well.

I worked on a matter involving San Diego Gas and Electric, and I can't remember the topic of it, but there were a large number of those matters that I worked on recently -- or I'm sorry -- in the first or early part of my career primarily.

Q Okay. Let's take a look at your direct testimony page 3, line 14.

A Yes.

Q There you have an answer in which -- and I'm not going to quote your, you know, testimony back to you, but just to sort of situate us, you have an answer which summarizes some of your main conclusions; correct?

A Yes.

Q And one of the conclusions you have relates to the financial condition and integrity of DPL Inc.; correct?

A Yes.

Q And then you make a statement that, paraphrasing again, that the condition of DPL Inc. would place a strain on the financial condition and integrity of DP&L; correct?

A I believe I say that, and vice versa.

Q Okay. And then you -- and then you go on to describe in the next several lines and carrying over on to page 4 the way that credit agencies consider the relationship between utility holding companies and regulated utilities and vice versa in terms of notching. Is that generally correct?

A Yes, it is generally correct.

Q And then turn to page 41 of your direct testimony, line 14.

A Yes.

Q At page 41, line 14, you have a question and answer that begins there concerning factors that credit agencies consider when it comes to utilities; right?

A Yes.

Q You indicate that you focused on the four financial metrics that you considered in your testimony; correct?

A Yeah, I did. I focused on the measurable sort of objective criteria that I could measure.

Q And then you indicated that you applied a -- in addition to those criteria you have a discussion carrying over on to page 42 about notching rules applied by Moody's; is that correct?

A Yes. That's generally correct.

Q So in determining these ratings, am I understanding correctly that you applied the four financial metrics that you describe in this testimony to both DPL Inc. and to DP&L, and then you made an adjustment based on notching rules?

A That is part of what I did, yes. That's a significant portion of what I did.

Q What am I missing in -- when you say it's a part or a portion of, what am I missing?

A Well, there's -- this is not something that I modeled specifically in my analysis, but Moody's and the other rating agencies, but in particular Moody's which is what my analysis is focused on, there is a, I'll call it a methodological approach that they use in which they look at the relationship between the ratings that their model produces for

DPL Inc. and DP&L and make a judgment which you can observe in their ratings that will be in addition to what I've actually calculated in my model, and so, for example --

Q But how did you apply -- go ahead. Sorry.

A Yeah. So the way that I applied that is -- an example of it would be in page -- give me a second. I want to find the portion in my report where I talk about this. It's in the section where I talk about what would happen to the rating of DP&L if they -- okay. This is on page 7, line, lines 11 and 12, where I conclude that the rating of DP&L would fall to at least Ba2, okay, and that at least includes, or the basis for saying "at least" is that Ba2 would be four notches below B -- I think about four but more than three notches below my predicted rating for DPL Inc. which is unlikely. If you read DPL -- if you read Moody's various reports, they put a cap of a three notch differential. So the actual rating probably would be lower than this, and so that's an example of me going beyond the description in the section that you just described.

Q Is that the only example or are there other examples?

A That is the primary example. I would say that in general in reaching my conclusions I considered the fact that the ratings of DPL and DPL Inc. and DP&L were related to one another. I considered that generally in reaching my conclusions.

Q What does that mean, you considered it generally?

A If the model would be producing, produces numbers that are, or I should say ratings that are, create a big gap between DPL Inc. and DP&L, I, you know, would discount the, you know, that finding. Even though the, you know, the model is sound and it's based on Moody's predictions, you know, one would not expect their ratings to be dramatically different.

Q So in terms of -- so your exhibits RJM, and again, I want to just keep this general without disclosing, you know, specific data points to the extent we can, and we can always circle back later, but in Exhibit RJM1 through RJM4 among the data that you present are implied and indicated Moody's ratings; correct?

A I would say that a little differently. I would say I calculate what's called a weighted average, a rating based on the weights that Moody's places on these, these different criteria and the criteria themselves, and then I calculated an indicated rating based on the sort of quantitative notching approach that I observed that Moody's uses. So I don't know what you mean by implied rating.

Q Okay. So the -- the notching adjustments, if any, occur in the presentation of data in these exhibits between the weighted average line and the indicated rating line?

A That's one aspect of the notching.

Q Where else in these exhibits is the application of the notching?

A Okay. Yeah. There's not another place in the exhibits themselves that I take into consideration what I would call notching methodologies used by Moody's.

Q Does it appear elsewhere then in your testimony or is it --

A Yes, yes, and that was what I was trying to describe earlier where, you know, these quantitative exhibits that I have are an input to my opinion, and then the final opinion on ratings I consider other criteria or other methodological elements that Moody's applies that I would also lump under the rubric of notching, and it's what I described earlier which is that, you know, even if your quantitative method is indicating a rating, that, you know, indicating a particular rating, in this case in particular DP&L, that I take into consideration what DPL Inc.'s rating is, and those two ratings should not be dramatically different.

Q Those ratings, just so the transcript is clear, means that the rating of DPL Inc. and DP&L under a particular scenario?

A Correct.

Q And the reason they should not be significantly different as you just described is what or the reasons?

A Well, DPL Inc. is approximately 95 percent DP&L in terms of their, you know, revenue or income statement. I can't remember exactly what the basis, I think it's 95 percent is revenue, and so the two entities are highly related, and Moody's methodology focused on utility families, is very explicit about, you know, the interactions between the two entities, the two types of entities: A holding company entity and a utility that's, that's owned by that holding company.

Q And so that relationship that you just described in which DPL Inc. is 95 percent comprised of DP&L was the primary consideration in terms of a basis for your opinion that financial strain on -- financial, negative financial conditions for DPL Inc. would place a financial strain on DP&L as well; correct?

A I would say that the close relationship between the entities and, you know, in all of its kind of complexity in terms of, you know, where DPL Inc., if treating it as a separate entity would, you know, obtain the cash flows to service its debt, and then also, you know, DP&L's reliance on DPL Inc. for, for elements, too, sort of the relationship going back, back and forth between the two is, is what I'm relying on.

Q Let me -- let me try to come at this a little bit of a different way, and correct me if I'm misunderstanding something, but I generally without getting into specific ratings data points, I generally read your exhibits to indicate that without the DMR, DPL Inc. -- sorry -- without the DMR, DP&L continues to maintain an investment grade rating; correct?

A No.

Q Okay. We'll circle back on that. Give me a second.

Page 4, line 15 of your direct testimony, you described a transaction in which DP&L recently refinanced $445 million which included restrictions on its ability to issue new debt; correct?

A Yes.

Q What is the source of your knowledge about that transaction?

A Give me just -- okay. First of all, at least one of the sources was discussions with Craig Jackson and Jeff MacKay, and I am checking to see whether -- okay. I also -- there's also an 8-K filing that provided some background on that as well which I am looking at now. I have -- FYI, I have with me backup documents supporting, you know, my report, and one of these is an August 24th, 2016, credit agreement, and there's a highlighted portion that says negative covenants. Let me just see if that is it.

I'm sorry, I don't specifically see this language to the effect that they can't -- that they're limited to take on any additional indebtedness. I don't see it from this specific document, but I do recall being told that by the client and that we also attempted to verify it ourselves and we were able to, but this is several pages long. I'd have to spend some time reading it to find it.

Q Okay.

A It's a legal document.

Q To what, if anything, do you attribute those restrictions that you describe?

A My understanding of the restrictions was that the company was, is unable to issue new debt except under certain circumstances requiring the permission, and again, this is my recollection from a conversation. So it may not be 100 percent explicit or accurate, but that essentially the people who lent the $445 million had to approve of any new indebtedness, and the company was not in effect free to do it, you know, to incur that new indebtedness themselves after this refinance.

Q Okay. And then you indicate in that same, roughly that same area of testimony that in your opinion this is an unusual covenant for a regulated utility; is that correct?

A I understand that that is correct.

Q What do you mean -- why are you qualifying the answer like that?

A Because that is something that I learned or understood from the company. That is not something that I have a document to support.

Q So other than the things that company personnel told you in these discussions you've described, you don't have any independent opinion as to what the cause of that unusual covenant would be?

A Actually I think I --

Q Fair?

A No. I mean I think I do have an opinion on that, and that's that, you know, the current financial straits that the company is in, for me it's not surprising that they, that they were asked for a covenant like this.

Q Current financial straits the company is in, are you referring to DPL Inc., DP&L or both?

A I'm referring to both.

Q So just keeping this on general terms and not getting into data, would you agree or disagree that the financial condition of DP&L is stronger than the financial condition of DPL Inc.?

A It's -- it's hard to, you know, make a clean separation between the two, but generally speaking DP&L's, you know, credit rating will be slightly superior to DPL Inc. So the answer is that they do have a stronger financial position, you know, at any point in time.

Q And "they" in your answer is DP&L?
A Yes, it is.
Q So to the extent you have an opinion about the cause of the unusual covenant for DP&L, is it related to the financial condition of DP&L itself or is it related to the strain being put on DP&L by DPL Inc.?
A Well, I -- it's related to the financial condition of the companies or combined entities, because, as we talked about earlier and as I say in my testimony, that the two entities are joined at the hip, if you will, and so the lenders to DP&L will consider the relationship to DPL Inc. in their, in their determination, along with a variety of other factors related to the income and profits and cash flows of DP&L which includes the performance of their transmission and distribution assets, their generation assets, et cetera.
Q Have you endeavored to determine if there are any ways to mitigate the strain being placed on DP&L by DPL Inc. other than a request for rate payer financial support other than or in addition to?
A Well, first of all, I will say just in your question that you used the term "the strain" putting on DPL Inc., but there is, you know, like I said,

those two entities are highly related. So for example, if something negative happens at DP&L to their transmission and distribution business or their generation business, that will have -- that will put a strain on DPL Inc. So there's, there's strains and positive things going back and forth between the entities, but I'm sorry, I wanted to make that point clearly, but could you restate the final question? I wanted to make that clarification first. What was your --

Q Certainly you're entitled to do so. I was picking up on your testimony at the end of page 3 in which you're indicating that without DMR support DP&L's impaired condition would place a strain on the financial condition and integrity of DP&L --

A Right, right, and --

Q -- virtually --

A Go ahead. I'm sorry.

Q So my question was relating to that opinion that you've expressed in your written testimony. Have you endeavored to determine whether there are any measures that could be taken other than or in addition to rate payer financial support --

A Yes, that's right. I remember now.

Q -- to mitigate that financial strain you've described from DPL Inc. on to DP&L?

A Okay. I'm sorry. So your question is related specifically to the strain going, a strain going from DPL Inc. to DP&L. The answer is I have thought about that generally.

Q What are your thoughts?

A Well, one of the considerations was whether DPL Inc. was in a position to raise additional equity, for example, either from AES or from other, some other source.

Q Please elaborate.

A So I considered that in connection with the, that point being raised by several intervenor testimonies. So I should be clear that, you know, my focus on that topic or issue really only arose after my report was done, although I -- I thought about it generally, but I focused on it, you know, after others filed testimony talking about that and, you know, I concluded that it was not a realistic proposition.

Q Why not?

A Because there's a problem in finance called debt overhang, referred to as debt overhang, and, but which would make it so that it would not be economic for AES to do that or for another entity, but I also considered the fact that AES is in effect already making contributions to -- to the -- to DPL Inc. as well.

Q What kind of conditions are those?

A The tax forgiveness.

Q Anything else?

A I mean this is kind of indirect, and I don't know the magnitude of it, but AES Services is now providing services to DPL which I understand is providing services at lower cost, so there's some savings there, but the primary economic -- oh, the primary economic contribution is certainly the tax forgiveness, but there's also AES forgoing dividends in the past and in the future.

Q Is AES forgoing dividends or is there simply no money to pay AES dividends?

A Well, there's -- DP&L has paid fairly substantial dividends up to DPL Inc. over time; I think in the hundreds of millions. I haven't looked at that number specifically, and DPL Inc., rather than paying dividends to AES, has been using those funds to deleverage.

Q Just a quick cleanup. You used the term in describing AES Services providing services to DPL, you said it was lower cost. Lower cost than what?

A Than if the services were provided by employees of DPL or DP&L. So it would be a form of efficiencies enhancing sort of thing where, you know, again, I read this in a 10-K I think, so I haven't studied it carefully, but it sounded as if AES has a sort of centralized, you know, service operation where it realizes efficiencies that it effectively passes along to its affiliated entities.

Q Page 5 of your direct testimony, if you would turn there. You have a statement -- so you provide -- starting at line 4 you provide a projected ROE for DP&L which I don't want to name a specific number, and at least not in this portion, but then you say, However, this measure of ROE is overstated from an economic perspective because it does not consider the risk of future specific reductions to DP&L's income, including its distribution rates, or decline in the value of its assets. Do you see that?

A I do.

Q Can you expand on that? What is the scenario or scenarios in which you would anticipate a reduction to DP&L's distribution rates?

A Well, as I understand it, the projections provided by the company assume that their current rate case is, is approved and so a reduction would be well if it's not approved or if some other, some other lower rates were approved, than they've assumed. I think they've assumed that their rates are accepted, including their rate of return and everything else, so...

Q So they're you're referring to a reduction to the as-filed rate increase request, not a reduction for present rate?

A That -- yeah. I'm talking about a reduction from the rates assumed in my projections.

Q And what are you referring to where you talk about declines in the value of assets?

A I'm thinking most specifically of a further decline in the value of the coal generation assets.

Q Can you expand on that?

MR. OLIKER: Can I have that answer again, please, and the question?

(The reporter read from the record as requested.)

MR. OLIKER: Thank you.

Q Can you elaborate on that, Mr. Malinak, the further decline in value of the coal gen assets?

A Well, the firm recently recognized a large impairment charge on its coal generation assets, and the company I'm referring to is DP&L, although DPL Inc. had I think a good will writeoff which at the same time, but DP&L took a charge-off for that, and so I used the word "further" to refer to the possibility of additional declines beyond that recently, those that were recently recognized.

Q Is that something you're anticipating has a likelihood of happening?

A I would say that it's -- it's certainly possible. In, you know, the current economic and regulatory environment I would say that that has a relatively significant probability of happening; of course, could go the other way. They could become more valuable if energy prices and capacity prices rise, but it certainly is also highly likely in the current economic and regulatory environment that there would be further decline.

Q And when you say it has a relatively significant probability of happening, what is the basis for that prediction?

A It's, you know, forecasts of, you know, future natural gas prices, you know, with, with their attendant impact on the dark spread and the possibility of additional regulatory restrictions that could have a negative impact on the coal assets.

Q In offering those opinions about forecasts and future natural gas prices and attendant impact on dark spreads and also about the possibility of additional regulatory restrictions, are you relying on data provided by the companies? Are you relying on outside information or some combination of the two?

A Combination of the two.

Q What information are you relying on from the company?

A Well, you know, I think -- it's been a while since I've looked at his testimony, but I think Mr. Crusey may have natural gas price projections and energy price projections in his testimony. Again, I haven't looked at his testimony in a while, but certainly conversations, you know, with the client people have, you know, suggested that it's possible that, you know, that the markets will improve going forward, but those are the two sources that come to mind immediately from the company point of view. I believe -- yes. I believe that's it.

Q Is there any way for the company to mitigate that risk in terms of the risk to its ROE?

A I mean there's the typical things that one would do, you know, as an owner of coal generation or any other generation assets, you know, and attempting to procure coal at the cheapest possible price, you know, operating the plant, you know, to the extent that you have, you know, that you're the one operating the plant anyway. Certainly working with your partners, in this case DP&L, you know, owns just a portion of a number of these coal plants, I believe they operate one or two and have operating agreements with other partners for other of the plants, but just attempting to be as efficient as possible in the operation of the plant. There's also various hedging activities one can engage in to try to enhance ROE.

Certainly one can also make expenditures on, for lack of a better term, you know, lobbying but try to influence the regulatory process, especially the environmental regulatory process, to try to minimize the possibility of new costly environmental regulations. So those are the kind of activities that I can think of right now.

Q Let's look at page 10 of your direct testimony.

A Yes.

Q There's a question at the top and an answer in which you make a statement starting on line 4 that in a sample of 36 peer utility holding companies only three of them have credit ratings below investment grade, and one of those is DPL; correct?

A Correct.

Q And that's DPL Inc. we're referring to there?

A Correct.

Q And who are the other two?

A Okay. I'm going to have to look at my backup for that.

Q Okay. Just for the record can you -- whatever you look at can you describe it?

A Yeah. I'm looking at what I believe to be my, the list, and I say believe to be just because this is in my backup binder, and it's -- the page is not titled, but I believe that this is the list of companies in my sample. I could count them, but that would be NiSource would be one, and PSE, Public Service Enterprise Group, Inc. would be the other, and that's just based on my inspection right now.

Q You go on on page 10 to describe what you believe to be potential improvements in the credit ratings of DPL Inc. and DP&L from the proposed DMR.

Generally fair?

A Yes. That's one of the things I talk about in these paragraphs.

Q The -- in the work that you have -- in the work that you described earlier in your testimony today have you ever seen a request by a regulated utility for funds to be used in whole or in part to deleverage its holding company?

A I'm sorry. Could you repeat that or have that read back?

MR. BZDOK: Jan, could you read that back?

(Pending question read.)

A Yes. The ESP II proceeding.

Q Any others?

A Not that I can recall specifically.

Q Jan, let's go off the record for a second.

(A recess was taken.)

BY MR. BZDOK:

Q Mr. Malinak, let's look at page 17 of your testimony.

A Okay.

Q Beginning on page 16 but mostly carrying over on to page 17, you have a general discussion about the importance, I guess I'll call it, of an

investment grade credit rating. Do you see that?
    A Yes.
    Q You have a statement at page, page 17, line 5 through 8 about firms adjusting their behavior when they're near the cutoff for investment grade and firms near that cutoff having lower leverage than otherwise expected. Do you see that?
    A Yes.
    Q Just for clarification, that's a general statement about companies in general, not specific to utilities?
    A Yes. The literature that, articles that underlie these, these conclusions analyze, you know, a fairly large sample of firms. They may include utilities. I just -- I haven't gone back to -- or I don't remember if they do or they don't -- but, but this is generally true for any company.
    Q You mentioned further below on that page starting with line 14 that of the 45 rated integrated companies DP&L is one of just three firms with the lowest investment grade rating. Do you see that?
    A Yes, I see that.
    Q And who are the other two --
    A Okay.

Q -- companies?

A Yeah. Let's just hold on a sec. I have this backup. This is my figure 2 which is -- excuse me. I'm looking through my testimony.

Q Take your time.

A I forget exact. It's on page 19 is where figure 2 is, and these are the lowest levels, so this would be Baa3. It's Ipalco, I-P-A-L-C-O, Enterprises and Mississippi Power.

Q On page 22 of your direct testimony you have a discussion of DP&L's fractional ownership in six coal-fired power plants. Do you see that?

A I do.

Q The -- I just have a few similar questions for you about these as a whole. You're aware generally that -- let me back up.

Are you aware generally that the companies have filed an application with the FERC for approval of a separation plant for those assets?

A I am aware of the company filing plans. I had been more aware or more specifically aware of plans with, filed with PUCO. I would assume they're -- I have no reason to believe there isn't also one that was filed with FERC.

Q Sure. What are the plans you're referring to? Can you describe them generally?

A Only generally because they're not something that I have examined closely, but my understanding is that, that there is a separation plan in place or almost completely in place, I don't know which, that allows for a separation of the generating assets, the coal generating assets from DP&L to another part of DPL Inc. and that there are various provisions that have been I guess negotiated or agreed upon for that.

Q How, if at all, would -- and I'm -- I'm asking -- I'm asking these questions in a general qualitative and directional sense, not looking for specific numbers or anything like that, but how, if at all, would the outlook and opinion you've prepared for DP&L change if that plan you've just described was implemented?

A I would have to think hard about that because the, the cash flows to DPL Inc. wouldn't, wouldn't change as a result of that, of that separation plan; at least they wouldn't change in a material way I wouldn't think, and so you would still have the issue for DP&L and DPL Inc., the companies, in which there would be, you know, financial distress of the entities, so that DPL Inc.

would still need to be drawing cash flow from DP&L's T and D business to, in order to service the debt, and you would still have sort of the same risk of financial distress at the parent and at the combined entities.

Q Would carrying forward the plan that you just described be more protective, less protective or no change as far as DP&L's credit rating outlook?

A What exactly do you mean by "protective"?

Q Let me kind of -- let me try to rephrase. Would carrying forward the plan that you described for moving the generation assets have any positive impact, negative impact or no impact on the financial condition and integrity of DP&L?

MR. SHARKEY: Let me just object on the grounds of incomplete hypothetical, but you can answer, Mr. Malinak.

A And that's assuming no DMR? No ESP with DMR I assume?

Q Let's -- given your request for clarification, let's ask the question both ways. First way is without DMR.

A Okay. I don't think it would have a material impact on DP&L because, as I described earlier, the way that the rating agencies and also just sort of economically approach financial condition and financial integrity analysis for these related entities is that DP&L's debt rating can't be dramatically different from DPL Inc.'s because of their close relationship, and so DPL Inc. is still facing the same underlying cash flows, whether there's separation or not. So without the DMR DPL Inc. would be immediately downgraded to, you know, single B, and DP&L would be effectively dragged along with it, if you will, in the sense that, you know, the two ratings are related to one another and, you know, DPL -- or Moody's has a cap of like three notches difference between, you know, a holding company and, you know, a subsidiary like DP&L, so yet you still have the issues.

Q Same question with the DMR.

A Okay. With the DMR you would still have -- you'd have effectively the same set of results that I have in my testimony because the cash flows to the companies would be the same as in my, as in my scenario, but I wanted -- I asked you to clarify on the DMR just because I wanted to be thinking about it, but as I think about it you still have the same cash flows coming into the system that you have, you know, both ways, and so you will have DP&L's rating will be superior to DPL Inc.'s, but without the DMR both entities will have lower debt ratings.

Q Another hypothetical. Without the DMR, how, if at all, would the outlook for the companies change if those coal generation assets were transferred outside the DPL, DP&L family of companies?

A You mean -- do you mean sold?

Q Yes.

A Well, it would depend significantly on the price that they obtained because when you take them out, you're going to take out their cash flows, which, you know, at least from a debt coverage point of view would make the results less profitable. It would reduce profits and cash flows at that level and, you know, if you, if you sold it for something, you know, for some sort of a fire sale price or a price that was below market or reflected, you know, what could be a poor time to sell the coal assets, you could be worse off as an entity going forward from a credit rating or financial integrity point of view. So it would kind of depend on the price, assuming you could sell the assets that is.

Q Page 25 of your direct testimony.

A Yes.

Q You know, I'm going to move on. Let's go down to -- no. Let's stay on page 25, lines 14 and 15. Here you're having a discussion about servicing DP -- well, let's talk about this page generally first. Here on this page generally you're describing the conditions for or the preconditions for timely and full service of the DPL Inc. debt in terms of other cash flow needs at DP&L. Fair?

A DP&L or DPL?

Q As I understand your testimony generally on page 25, you're indicating that DPL Inc. needs to service debt. It needs the cash flow from DP&L to do that, but DP&L needs to use its cash flow to pay its own debt, make capital and operating expenditures and pay for its share of obligations related to the coal generation; right?

A Yes, that's correct.

Q And then you indicate that the remaining --

A And I'm sorry, just to add very quickly -- I'm sorry to interrupt, but just to add quickly, you said "coal generation," but there's also, you know, transmission and distribution is what I specifically reference here, okay, and then I have the capex of coal plants, but there's two sides to DP&L. Yeah. I'm sorry. Go ahead.

Q No. You're -- generally I'm understanding you're saying that DP&L needs to take care of these obligations first before it can remit remaining free cash flow to DPL Inc. to service its debt. Is that fair?

A I wouldn't say -- I mean it -- you know, there are -- there's discretion. Okay. I say DP&L must make, you know, capital and O and M expenditures. It must pay their share of ongoing capex with the coal plants to ensure safe and reliable service with respect to transmission and distribution in particular.

So yeah, I mean it's -- I just want to make it clear that, generally speaking, that they want to make those expenditures first, and anything left over will go to debt service, but if, you know, if the debt were to be called, you know, so that there was more of a, you know, an imperative that the debt be paid, you know, to, for the organization not to enter some sort of severe financial distress, they may limit the amount they spend, to the extent they can, on capex and O and M and so forth in order to have the cash flows they need to service that debt.

Q Just so that I understand your answer just now, are you indicating that the company would have discretion to drop capital and O and M expenditures below the point needed for safe and reliable service in order to service debt that's DPL Inc.'s?

A Are you asking me as a legal matter?

Q I'm asking you your opinion based on your experience in utility matters in the context in which you're offering this testimony on page 25.

A I would say that if, if debt were -- if there were debt payments that needed to be made in order to avoid bankruptcy, it might actually be in the long run the best way to offer safe and reliable service to forgo capex and O and M expenditures to the extent that you need to, delay them, if you will, in order to make the debt payments in order to buy time, you know, to try to work out the debt problems. So that, you know, there's sort of -- that could affect, you know, reliability and safety in the short run but enhance it, you know, kind of in the longer run.

So, so I would say that, you know, that in order to stave off bankruptcy or some other form of severe financial distress one might need to take actions like that, and, you know, in the extreme if you can't stave off bankruptcy, then you could have longer running issues with safety and reliability and quality generally.

Q You state starting on line 14, carrying over to line 15 on page 25, that the concern about debt service for DPL Inc., paraphrasing, is especially strong during the next several years. Do you see that?

A I do.

Q Why is it especially strong during the next several years?

A Well, they have debt coming due. You know, if -- their most recent refinance, the 445 million, I believe the maturity of that, I've seen six years as the maturity, and then I have in one of my schedules something that shows like -- I'm turning to my schedule to make sure that I am looking at the right thing. I think it's RJM-18, but let me just check. Yeah. I'm on RJM-18, and, you know, they've got some bonds coming due in 2016. At DPL Inc. level they've got some more coming due in 2019, and then the four, 445 it says 2027, but I recall there being something sooner than that. I recall seeing a maturity or a, some sort of refinance obligation or something for those bonds that's six years out which would be 2022, and so six years, the next several years I'm really thinking of the debt at DPL Inc.

that's coming due, and that, and that means that they need -- that's going to need to be refinanced or, you know, preferably retired for the long-term financial health of the entity, and, you know, absent a DMR that's going to be difficult, just like the refinance was recently for the 445, which I, you know, I believe technically was in the high yield market which was otherwise known as junk.

Q Pages 28 and 29, figures 4 and 5, let's start with figure 4 on page 28.

A Yes.

Q Here you have plotted -- give me a second. Yes. This is -- here you've plotted capital expenditures per retail megawatt hour for electric transmission and distribution companies; correct?

A That is correct.

Q Where do -- what is the capital expenditures per megawatt hour for DP&L currently? Do you have access to that or a memory of it?

A I, you know, I haven't performed that calculation.

Q Do you have any sense of where DP&L falls on this chart?

A I don't as I sit here. It's something I could --

Q Figure 5?
A Pardon me?
Q Same question about figure 5.
A The same is true of both figures.
Q Have you made a calculation prediction or evaluation of where DP&L would fall on either of these metrics with the DMR?
A I have not made such a projection, but there's implicitly, if they have the DMR, I would expect their capex per customer megawatt hour to be more likely to be higher. I would expect it to potentially be lower without the DMR all else equal.
Q But understanding as -- go ahead.
A I just said all else equal.
Q It's hard over the phone sometimes to tell, you know, when someone's done answering. It's a little easier in person, so I apologize if I jump the gun on occasion.
A You seem to be doing very well.
Q Do you have an understanding as to whether or not the companies are proposing to use any DMR funds for the purpose of making capital expenditures on anything?
A Do I have -- my understanding is that the DMR, the proceeds from the DMR will generally be set

up as dividends to DPL Inc. which will allow DPL Inc. to reduce its indebtedness and improve the financial integrity of the whole of the combined companies which will take pressure, which would remove pressure from DP&L to limit capex and O and M.

So it's -- the thing about it is with financing is you can't -- there's the words that finance people use is that capital is fungible, you know. So using the DMR means you don't have to use other cash flows from DP&L or limit, say, like we were discussing capex or O and M in order to get the cash flows you need to service debt elsewhere in the enterprise, whether it be at DP&L or at DPL Inc.

Q Let me characterize your opinion a second. Tell me if you disagree with me. I'm understanding your opinion and your testimony combined with your answers just now to mean that if, that the DMR would be a condition precedent to improving DP&L's standing, if you will, on the metrics in figure 4 and 5 but would not necessarily mean that those metrics would improve. Is that fair?

A It's -- that's close to right. Okay. I would say that the odds are that -- the odds are better that there would be an improvement because if they don't get the DMR, then there is a probability that they will have to, you know, if they encountered more significant financial distress that they would need to reduce O and M and capex.

So what you've done with the DMR is reduce the probability of that happening which I would consider to be an improvement, and, you know, to the extent that DP&L -- so to the extent that DP&L will be, you know, constraining itself going forward to some degree, that constraint will be removed with the DMR. So you could very well see an improvement.

Q How in your opinion did DPL Inc. and DP&L get into the situation where they require this type of relief?

A Well, it's a variety of things. You know, based on my analysis and understanding, you know, they have -- there is debt at DP&L. There is -- there's debt at DPL Inc. There's the changes in the market, in market conditions over the last period of years including the decline in natural gas prices which have resulted in worse economics for the coal assets. There's slow load growth in Ohio that affects the transmission and distribution assets.

So, you know, there's just sort of a variety of factors, the confluence of which has led to there being this level of financial distress that they're experiencing.

Q Would you agree that, that a cause of the debt -- would you agree with this statement: A significant cause of the debt situation at DPL Inc. is the way the acquisition by AES was funded by it?

A I would say that the debt that was pushed out to DPL Inc. as part of the acquisition is part of the entire debt burden of the enterprise. You used the term "significant." It is a -- it is one of the -- it's sort of one of the material elements of which there are say five, including the preexisting debt at DPL Inc.

Q Let's break that down.

A I like the word "material" a little better. Okay. Go ahead.

MR. BZDOK: Jan, could you read his answer back.

(The Reporter read from the record as requested.)

Q So one of the five is preexisting debt at DPL Inc.?

A Yes.

Q One of the five is the debt that was pushed down as a result of the transaction, the acquisition; right?

A Yeah. That's one of the factors that has brought us to where we are now.

Q One of the factors is a change in market conditions?

A Correct.

Q What are the other two?

A There's the slow growth, slower load growth, sort of a slow recovery in Ohio from the, you know, the downturn from the recession which is driven by a couple of things based on the testimony of Mr. Jackson, you know, including just economic conditions but also improvements in efficiency, and then there are the declines in energy prices driven largely by declines in natural gas prices, and then --

Q How is that one different than the change in market conditions?

A Well, I'm sorry. I was including that as a subset of market conditions.

Q Got it. Okay.

A And then there is -- there are other elements, too, that can come into play, and it's basically the competitiveness and the competitive dynamics of the generation market that have an impact on capacity prices. So to the extent that those aren't higher, that also has an impact on the economics of DP&L and DPL Inc.

Q Any others?

A I think that those are the primary ones that I can think of right now.

Q Of these items you've just listed -- the preexisting debt of DPL Inc., the debt pushed down as part of the acquisition, the change in market conditions including slow recovery or load growth, declines in energy prices and the competitive dynamics of the generation market -- which, if any, are unique to DP&L and DPL Inc. compared with other utilities in the region?

A I would say that none of them are completely unique. I mean I see debt, a debt load, that's probably all of the utilities in the region, and their holding companies all have debt, and so, and they all are experiencing, you know, these market conditions.

Q Are you aware of any other utility in the region that, or really nationally that had proportionally as much debt pushed on to it as part of an acquisition?

A I haven't looked at -- I haven't done an analysis. I do -- I am aware of a utility, and I just -- I just don't know the details of what debt was pushed where or that kind of, that kind of thing, but I think there was a big bankruptcy in Texas that was related to this kind of a transaction; TXU maybe. So there would have been that one, and it did not end well.

Q What do you mean by that?

A I believe they declared bankruptcy. There may be others as well. I recall seeing in one of the rating agency reports -- no. Never mind. I don't have a clear memory of it, but that one I do remember.

Q Any other similar situations you can think of or remember?

A Not as I sit here today.

Q Mr. Malinak, that concludes my questions for you in the public session. I will have some questions for you when we get to the confidential session, and I will turn you over to other counsel.

MR. DARR: This is Frank Darr. I'm willing to go next.

EXAMINATION BY COUNSEL FOR
INDUSTRIAL ENERGY USERS-OHIO

BY MR. DARR:

Q Mr. Malinak, my name's Frank Darr. I'm with the law firm McNees, Wallace & Nurick, and I'm here on behalf of Industrial Energy Users-Ohio. If at any time you don't understand a question I ask, please ask me for clarification. If I don't receive that request, I'll assume that you understand the question and that your answer reflects your best understanding of that. Okay?

A Okay.

Q First some questions that I'd like to ask you about clarifying your testimony. Would you turn to page 4 of your testimony, please.

A Okay.

Q At lines 10, 12 and 13 there's a reference to company, and I am not understanding which company you're referring to with regard to each of these references. Could you, starting with line 10, identify the company that you're referring to?

A On line 10 I am -- I generally, when I use the term company, am referring to the combined entities, and the same is true here in line 12 as well, both lines 10 and 12.

Q Line 13?

A Yes.

Q Yes what?

A Yes, both entities.

Q Then I'd like you to take a look at page 17, lines 14 and 15.

A Yes.

Q There you reference in line 14 integrated utility companies. Could you define for us what you mean by integrated utility company?

A I believe this may have been in the source document itself, but what I think of integrated is having both generation and transmission and distribution assets but not -- but basically having generation in addition to T and/or D.

Q So for your purposes is ownership of generation assets sufficient for a company to be an integrated utility company?

A They have to have -- they would have to have exposure or I would expect them to have exposure to, you know, cash flows or risk, you know, from generation. I don't know if, you know, by ownership typically one is referring to control, but if you have exposure to the cash flows, then from an economic point of view you have both types of assets effectively.

Q So in this regard exposure to cash flows is different than what would typically be called a wires company, one that has cash flows that are exclusively related to transmission and distribution?

A Yeah. That would be -- that would be my intention here in developing this exhibit was to capture companies that had exposure to both generation and T and D. So if you had a wires-only firm, that would, without any exposure, you know, that would be a different type of firm.

Q Mr. Bzdok outlined some of the things that you looked at prior to or as part of your assignment for DP&L in this case. As part of that assignment did you review the documents related to the merger that was filed at the Ohio Commission?

A I reviewed at least one document and maybe more, but I can remember one.

Q What do you recall?

A Actually I just remembered another one. I remember one finding, I think it was the finding an order, and then I reviewed another document that I believe was a stipulation, and there may have been one or two additional that I can't remember.

Q Let me represent to you that there were several stipulations in that case. Did you review -- do you recall which one you reviewed?

A Not specifically, but I, I think I reviewed the final one but don't have a clear memory.

Q Do you recall any terms or conditions associated with the merger that were undertaken by DP&L, DPL or the other party to the merger?

A By terms and conditions are you referring to provisions of the merger agreement documents or to some other, some other document?

Q I'm speaking to any commitments that may have been made by the merging companies to the Ohio Commission.

A Well, I recall, you know, some of the -- I recall there's some terms in the stipulation, if those could be called terms. I'm not a lawyer, so I don't know exactly, you know, how that works, and then there was, in defining an order, you know, I recall seeing language about the acquisition premium and the direct costs of the merger, something like that.

Q And what is your understanding of that particular commitment?

A Without -- I don't have the language, exact language in front of me, but the way I recall it reading was that customers of DP&L would not be, and again I could be getting the precise words wrong, but required to pay any of the direct costs of the merger or any -- I think it said any -- I don't remember -- acquisition premium.

Q I don't see in your testimony any reference to the merger conditions. Could you describe for us how those merger conditions affected your analysis for this case?

A They did not affect my direct testimony. I believe -- yeah, that's right.

Q Also in answer to some questions from Mr. Bzdok you indicated that you looked at the financial model or a financial model provided by DP&L and DPL Inc. Do you recall that?

A Yes.

Q How many versions of the financial model did you review in the course of your preparing your testimony for this case?

A For this case, going back to the earlier version of this matter which may have been withdrawn? I guess I'm asking a question by "this case."

Q Yes. I'm defining it going back to the original filing in February of 2016.

A Yeah. I had -- there was another version of the model that was prepared for that matter that we had, when I filed my testimony in that matter. So that one for sure, and then in terms of a financial model in this case we only got one model in this case. There may have been -- there may have been sort of corrections to, like, line items and that kind of thing, but I frankly don't recall.

Q And when you refer to cases in your answer just now, are you dividing the testimony that you filed in October as one case and the testimony that you filed in February as a separate case?

A You sensed some of my confusion there. I had seen somewhere, and I'm sorry, I can't remember where, that the prior case had been withdrawn or the term withdrawn was used, and so I just was uncertain legally whether, like, we're in a new case now or it's the same case. So that was the source of my confusion there.

Q That's fair. Based on that answer is it fair to say that you've seen two different sets of financial information or two different financial models?

A Yeah, and the word "different," I would -- I would say it's the same model, okay, and like the lion's share of the inputs are exactly the same in both of these, but there are differences with respect to assumptions, underlying assumptions in each one. So the model is very -- it's maybe 98 percent the same. I mean it's been largely the same but with different inputs.

Q And could you outline for me what the significant changes were between the first model you saw and the second model you saw?

MR. SHARKEY: Object to form. You can answer.

A It depends how you define "significant." I will tell you the changes that I remember most clearly are in projections for the revenues from the coal assets was one change, and as I sit here right now that is the only change that I can think of. There may have been additional, you know, tweaks to assumptions, but as I sit here right now, I don't know what those are.

Q Did you discuss the basis of those changes with the management of Dayton Power and Light or DPL Inc.?

A We discussed the changes, and I don't know that we got into detail on the specific bases for those changes.

Q What questions did you ask about the nature of those changes?

A I didn't ask a lot of specific questions about them because we -- ultimately there was testimony filed about the primary changes which were derived from the changes in projected energy prices, and that was I think Mr. Crusey that filed testimony regarding those projections, and at some point I reviewed that testimony.

Q What was the purpose for your reviewing that testimony?

A To see the basis for his, for his forecast of energy prices that are, I understand incorporated into the model that I'm relying on right now.

Q Did you attempt to test the model in any way?

A I'm --

Q Let me rephrase that question to say did you attempt to test the conclusions reached by Mr. Crusey?

A And by "test" what do you mean specifically?

Q Did you compare it to anything?

A I -- what Mr. Crusey's testimony, as I recall, and it's actually been a bit since I've looked at it, but I recall that he actually compared his projections to some external sources of data, other projections, if you will, and I came away feeling that he had a sound basis for his opinions.

Q So you looked at the internal consistency in Mr. Crusey's testimony and reached a conclusion that you felt it was sound. Is that fair?

A I wouldn't use the term necessarily internal consistency, but the quality of what he had done and the strength of the bases for what, for his conclusions, I came away thinking that those were sound.

Q Did you ask anyone else to review Mr. Crusey's conclusions?

A I don't recall.

Q Did anyone else on your team review Mr. Crusey's conclusions?

A Yes, I believe so.

Q Who was that?

A Michael Cliff.

Q Did you and Mr. Cliff have any discussion with regard to Mr. Crusey's conclusions?

A Not that I recall.

Q Do you recall when you received the model based on Mr. Crusey's generation pricing assumption or conclusion?

A Not specific -- you mean when I first received it?

Q Yes.
A Not specifically.
Q Can you give me an idea how long before you filed your testimony you received that information?
A I really -- I don't remember. It would have been -- I don't remember specifically.
Q Going back to the testimony that you filed in February, you relied on what you described a few minutes ago as a model that was very similar to the one that you relied upon when you filed your testimony in October; correct?
A Correct.
Q And that prior model was substantially similar with the exception of the generation-related inputs; is that correct?
A I would say an exception that I recalled is that was the generation, projected generation revenues in particular.
Q And can you recall any other differences at this time?
A Not specifically.
Q Generally?
A Well, I have some --
Q Do you recall --
A Go ahead. I'm sorry.

Q Generally can you recall anything?

A I have a vague recollection that there were some tweaks to some of the assumptions about, you know, some O and M items or some debt items, again, that were not -- and again my memory is just not clear on it, but I don't believe they were material.

Q The material changes in your mind were limited to the generation revenues; is that correct?

A That's what I recall, okay, but my memory is not clear. There may also have been -- it's possible there was another sort of significant or material change related to assumptions about debt paydown, but I don't recall that.

Q Now with regard to the generation revenues that were inputted into the model that you received in February or that was related to your testimony in February 2016, if I understand, those were based on testimony provided by Mr. Meehan; is that correct?

A That was my understanding, yes.

Q And along the same lines that we discussed with regard to the testimony that was provided by Mr. Crusey, did you review Mr. Meehan's testimony at that time?

A At the time that I was reviewing Mr. Crusey's testimony?

Q No. I'm asking at the time that you prepared your testimony in February, did you review Mr. Meehan's testimony?

A I believe that I did.

Q And did you consider -- well, let me back up a step. What do you recall with regards to the pricing assumptions that were provided by Mr. Meehan?

A Well, I recall that he, you know, did his own analysis, you know, in a way similar to what Mr. Crusey did, and he looked at the various factors that one looks at when one is making projections and including economic factors primarily, plus also things that are going on in the industry and that, you know, he -- at the end of the day he had kind of a sound basis for his conclusions in his projections, and I felt the same way about Mr. Crusey.

Q Did you review or test any of the assumptions made by Mr. Meehan for the purpose of his projections?

A Are you -- just ask a clarifying question. Are you saying did I review the underlying assumptions and an analysis and a basis that he had for his conclusion?

Q Yes.
A I believe I --
Q That's a better way of -- my question.
A I believe he -- I believe he set those forth in his testimony which I reviewed.
Q Did you test any of his assumptions?
A I wouldn't say that I tested them. I, you know, I read them and evaluated them to make sure that there was a reasonable and sound basis for him to reach the conclusions that he did.
Q Did anyone on your team assessment to test those assumptions?
A Beyond what I just said I don't recall anyone on my team doing it.
By the way, Mr. Darr, when you get to a point where you could have just a super short break, I would appreciate it. I've been unfortunately drinking a little bit of water here, so...
Q I understand. Why don't we take -- can we take ten minutes? Come back at 11:30?
MR. SHARKEY: Yes. That works.
MR. DARR: Very good. And, Jeff, once we're off the record let's talk briefly about when you want to break for lunch.
MR. SHARKEY: Go off the record.

(A recess was taken.)

BY MR. DARR:

Q Mr. Malinak, I wanted to just finish up on the forecast that you reviewed. You indicated a minute ago that you had relied on materials provided to you by Mr. Jackson and Mr. Crusey. Was there any other forecast or modeling that you relied upon that you haven't mentioned previously?

A As an input to my analysis?

Q Yes, sir.

A I would say not specifically. I've relied sort of more generally on my, you know, review of public information regarding the economy and, you know, what future energy prices, those kinds of things that I just, you know, public information regarding those things when I, you know, I read that stuff as a matter of course. So it's nothing specific, but I do read articles on what's expected to happen to natural gas prices and those kinds of things.

Q And directionally is it fair to say that natural gas prices right now are low relative to historic prices?

A I don't know if I would put it that way. I would say that they are, they are lower than, than they have been in the past and during points of time in the past. I just haven't, you know, gone back more years than maybe 10 or 15 years back from now. So they are low relative to certain rates in the past, but they might not be low historically.

Q That's fair. Based on your experience over the last 15 years are they relatively low?

A Yes.

Q And what is your perception of the direction of natural gas prices in say the next five to seven years?

A You know, I haven't kind of made my own projection of that. I've relied on, you know, the underlying analysis of Mr. Crusey, and so I don't really have a specific opinion on that. I relied on him for that.

Q Did you look at any internal forecast prepared by DP&L from the period of the first of November 2015 through the end of the year 2015, December 31st, 2015? Do you recall looking at any forecasts that were prepared in that period?

A I don't recall.

Q Did you ask for any other forecasts of the two that were given to you by the company for your February and October testimony?

A First of all, just a quick clarification. I didn't specifically ask for one forecast or another. I -- I had asked for their, their financial model of their enterprise which incorporates those projections, and I only got two of those. I got the one for February, for my February testimony and then I got the model for, for my current testimony.

Q Did you ask for any other internal forecast from the company?

A I did not.

Q I'd like to go back to your testimony for a second. Turn to page 5, please.

A I am there.

Q Directing your attention to line 11, the sentence that begins "In both cases."

A Yep.

Q There is a reference to a return on equity of 10.5 percent sponsored by a company witness. Am I correct that the company witness that you're referring to here is Mr. Morin whose testimony is filed in the distribution rate case?

A It is either Mr. or Dr. Morin, whichever of those that he is.

Q I'd like now to turn a little bit to your background. You began your work at Putnam, Hayes &

Bartlett; is that correct?
A Well, before that I had a short stint at Peterson and Company, and then I moved within a year, year and a half to Putnam Hayes.
Q In that work at Putnam Hayes you worked as an analyst; is that correct?
A Among other things. I started out as an associate, and then I was eventually promoted to a partner, and then in their system I was partner level 2 when I left.
Q So does Putnam, Hayes & Bartlett prepare credit ratings?
A You mean in the context of say like a credit rating agency like Moody's or Fitch?
Q Yes, sir.
A No.
Q In your work at Putnam Hayes did you prepare any credit rating that would be similar to what is prepared by Standard & Poors or Moody's or one of the other agencies?
A I worked on models to predict and analyze credit ratings, but they weren't published, if you will. We weren't retained by a company to give them a rating. It was in connection with litigation matters.

Q I'm not seeing the connection. Can you explain it to me, please?

A Yes. My understanding is that Fitch and Moody's and S & P are retained by and paid by companies to provide ratings, credit ratings for the company and for particular issues of its debt. In my case my experience with credit ratings is working on matters in which credit ratings or financial integrity and condition are an issue and which have required me to, to analyze, to do the same underlying analysis that the credit rating agencies do but in a different setting.

Q That setting would be in context with litigation?

A Correct.

Q And how would the work that you were doing affect the litigation? I'm trying to understand the connection here.

A Oh, okay. You know, for example, one matter I can remember was a firm that went bankrupt, and there was an allegation that it, that it effectively knew it was -- it didn't disclose its financial condition timely enough, was an allegation, and so the question that was being asked of the experts was whether, was when its credit position, you know, became dire, and so, you know, there were disagreements between the sides as to when that information, when that was known and knowable or knowable, and so we were looking at, you know, financial metrics for that entity. So that would be an example, but that was obviously not -- yeah. Go ahead.

Q You're referring to financial metrics. Are you referring to, for example, something in particular, or are you referring to -- I'm trying to understand what financial metrics you're referring to.

A It would be the types of metrics that I use in my current report. Those are metrics that are relevant to credit ratings and financial integrity, so things like debt to EBITDA, debt to capital, EBITDA to interest, interest coverage, cash flow to debt, retained cash flow to debt. These are all things that are indicative of a company's ability to pay its debts, service its debt when it becomes due.

Q As part of this work were you attempting to replicate what the credit rating would be of Moody's or another one of the credit agencies?

A My past work on financial condition and financial integrity is actually -- we've been asked to do both of those things before.

Q Okay. Turning to your -- well, let's make sure I understand that answer correctly. When you say "both those things," you mean what?

A I mean both predicting what the credit rating agency would, would apply, or what a credit rating agency would reasonably come up with so that what the company's likely agency rating would be, okay, and, but also -- and that's one, one analysis. Another analysis is to do our own prediction of default probabilities and loss given default and, and effectively, you know, you're predicting the same underlying data that the agency is doing but you don't actually take it all the way to the point of determining a rating.

Q Did you perform any of this kind of analysis for the Analysis Group apart from what you've done in this case?

A I have performed that type of work for a client of Analysis Group.

Q A fair distinction. And how long ago was that?

A Again, this is abstracting from the work we did on the prior, on the ESP II case which involved a fair amount of this type of analysis. So other than that, we did a case, the biggest case I remember where we addressed these issues. There were several, but the biggest one was actually not a litigation matter. It was a white paper that we prepared for, that was commissioned by Fannie Mae back in 2003 before they took on all the sub prime exposure, and that case the focus was primarily on estimating the default probabilities and the loss given defaults of various financial institutions.

Q Talking about banks?

A Big banks, plus Fannie Mae which is not really a bank; Fannie Mae and Freddie Mac.

Q Have you performed this kind of analysis for a utility other than DP&L or DPL Inc.?

A Not that I recall specifically.

Q Have you ever been directly employed or contracted by one of the rating agencies such as Standard & Poors or Moody's?

A Again, not that I recall specifically.

Q You referenced in your testimony the pending rate case filed by Dayton Power and Light. Do you know when that case was filed?

A I don't specifically, no.

Q Do you know whether the timing of that case was, the timing of the filing of that case was discretionary with Dayton Power and Light or was it mandatory?

A I don't actually know that.

Q For purposes of reference I'm looking at page 22 of your testimony.

A Okay. Got it.

Q When we're looking at the utility -- I'm using air quotes around the next word "family," DPL Inc., DP&L is the operating company; is that correct?

MR. SHARKEY: I'm going to object to form. You can answer.

A I'm not sure exactly the significance of the word "operating," but it is an operating firm, and it is a subsidiary of DPL.

Q DPL would be a holding company; is that correct?

A Yeah. DPL Inc. is a holding company.

Q In your descriptions DPL Inc. also holds interests in generating units and insurance company and lighting company; correct?

A It owns some, an interest in some peaking units through I think it's Ohio Generating, Ohio Generation, and then there's a captive insurance company MBIC, and then there's another small sub, MVLT, Miami Valley Lighting. There may be a couple of other pieces, small pieces, too.

Q What is your understanding of the stock ownership of DP&L? And let me rephrase that. Strike that. Let me start again.

Is it your understanding that DP&L Inc. --

MR. SHARKEY: Which entity? You said DP -- Frank, can I interject? I think you said DP&L Inc., and so that makes it unclear which entity you're referring to.

Q Yeah. Thanks for the correction. Is it fair to say that DPL Inc. wholly owns DP&L?

A Yes, that's my understanding.

Q And in turn, AES is the parent of DPL Inc.; is that correct?

A Yes. DPL Inc. is an indirectly wholly owned sub of AES.

Q What is your understanding of the structure of AES?

A I haven't studied that carefully. I don't have a clear understanding of it. My -- I have a general understanding that they are a, you know, sort of a diversified, you know, power company, at least diversified geographically, but that's about it.

Q Do you have any understanding of the relative proportion of the DPL component to the total assets of AES?
A Just to ask, just ask to clarify, are you asking how large DPL Inc. is or how large a part of the assets of AES they are?
Q Go ahead and answer that question.
A Okay. I don't know.
Q Are you at all familiar with the organizational structure of AES?
A I am not familiar with it.
Q Is it fair to say that you did not consider AES's organizational structure in terms of your analysis that you prepared for this case?
A Not specifically. I mean I did consider the fact that DPL Inc. was owned by AES.
Q How did that factor into your analysis?
A It really didn't.
Q In your analysis of the revenue streams available to DP&L and DPL Inc. did you consider what the revenue streams of AES, Ohio Generation and Miami Valley Lighting?
A Did you say AES?
Q No. AES, Ohio Generation is what I said. Ohio Generation unit I think you referred to it as.

A Yeah. To the extent that the revenues and costs of those entities flowed into the model they would have been included in my analysis.

Q For purposes of your analysis of the credit levels of each, the credit rating levels of each company, you relied on documents provided by Moody's referred to as the rating methodologies for regulated electric and gas utilities and unregulated utilities; correct?

A I relied on a variety of documentation coming out of Moody's. There were a couple of sort of methodological documents, and then there were a number of actual ratings reports for DPL and DP&L.

Q Those rating levels that you used, your starting point -- is it fair to say that your starting point was the rating methodology for regulated electric and gas utilities?

A I -- I would say -- I guess there's a -- I have an issue with the question because you're saying the levels and the starting point is the methodology. The level of DPL and DP&L's ratings, okay, that one could call a starting point, their current ratings, are a function of Moody's, and the other rating agency's methodologies, and so are you -- yeah. Go ahead.

Q Let me ask the question this way then. For purposes of establishing the ratings levels on the projected data, the projections of revenues and expenses, is it fair to say that you used the rating methodology contained in the Moody's document for regulated electric and gas utilities?

A I actually used two. Okay. They have a different -- they have a methodology for regulated, I believe it's utilities, and unregulated; again, I believe it's utilities. I would have to double-check, but there's both a regulated and an unregulated model that I relied on.

Q Okay. I just want to make sure that we're all working from the same script. The Moody's investors document that you relied on for regulated utilities was the one that was published on December, has a publication date of December 23rd, 2013; correct?

A I'm going to check to be sure. I do remember it was dated 2013. That much I remember, but I am checking.

Sorry. Okay. I have -- okay. For unregulated -- I have found that -- and it appears to be October 31st, 2014. It's a rating methodology document that I relied on, but I'm looking for the regulated. Okay. December 23rd, 2013? Yes.

Q Great. We're on the same page then. Now if you turn to page 46 of that document, do you have what's called Appendix D?

A I don't actually -- yeah. I'm sorry. I don't actually have that whole document in front of me. I just have -- I just have a cover page and then single selected pages from it.

Q Okay. What pages do you have in front of you?

A Okay. I have page 38, and I have -- I have page 6. Anyway, those are the two that I'm seeing right away. Again I was just -- this is just selected pages. So I have 6 and I have 38.

Q Now, did you have access to the whole document when you prepared your analysis?

A Yes, yes, I believe we did.

Q Did you review the whole document when you prepared your analysis?

A I reviewed parts of it, but either people working under my directions certainly reviewed the whole thing.

Q Did you review the section identified as Appendix D which relates to the rating of utility family?

A I have in fact seen that before. I do recall reviewing at least parts of Appendix D.

Q Do you have any current recollection of what's contained in Appendix D?

A Not specifically. I do recall certain aspects of the Moody's methodology that's described in that document. That could very well be from Appendix D.

Q Very good. We may come back to this in a bit after lunch, but before we get to that, in terms of your use of the Moody's document that we've been referring to for regulated electric and gas utilities, am I correct that what you were attempting to do is use this document to anticipate or predict based on the rating analysis that you did what the credit rating would be?

A The analysis based on this document and methodology is one input to the determination, a major input to the determination of what the credit rating would be.

Q So, for example, you have in front of you page 6.

A Oh, sorry. These are in a binder, and I didn't save that tab. Sorry.

Q Well, maybe I could speed this up. This is the page that refers to the rating of the various factors.

A Oh, okay. Yep.

Q And in your analysis you used, relatively speaking, with regard to the financial indicators the same weighting of the four ratios that is contained in the Moody's document; correct?

A That's correct. We followed their weighting conventions.

Q And similarly, if you go to page 36 -- excuse me -- 38 which is factors for financial strength, you used the same ratios or percentages to determine the rating levels that are used in the Moody's table on that page; correct?

A We're talking about page 38 now?

Q Yes, sir.

A Yeah. So we -- yeah. We relied on the ranges of -- yeah. There's two things on this page. One is what's called the sub factor weighting, and then we also then used the -- this is my understanding of where we used, of where we got our ranges of those ratios and where the different ratings fall, you know, relative to those ranges. I have an exhibit in my report which is I believe RJM-13 -- okay, RJM-13 -- which the page number's not in the notes, but I think this is where we got it. There's a series -- this may -- it may not be, but I think it is likely where we got some of these ranges.

MR. DARR: Let's go off the record for a second.

(A discussion was held off the record.)

(A lunch recess was taken from 12:03 p.m. until 1:00 p.m.)

BY MR. DARR:

Q Mr. Malinak, I want to turn your attention to page 57 of your testimony, please.

A Okay.

Q In this part of your testimony you indicate that the analysis that you do of the ESP versus MRO test assumes in one scenario that conditions would improve the rider to the DMR; is that correct, as part of an MRO?

A Similar in the sense that it would be designed to maintain financial integrity of DPL and, DP&L and DPL Inc.

Q And when you use the term financial integrity in this context, that is in regards to an MRO, are you applying to it the same two criteria that you used in your analysis at pages 15 and 20, that is that you refer to financial integrity as measured by return on equity and maintenance of investment grade credit rating?

MR. SHARKEY: Can I hear that question again, please?

Q Sure. For purposes of estimating whether or not the company is maintaining its financial integrity, are you using the same definition of financial integrity that you used at, for example, page 20, line 3 through 5, where you reference credit rating and return on equity? I think there's another reference at page 15, line 21.

A Yeah. I'm just checking that reference very quickly here.

Q Sure.

A Yes. Generally speaking, I apply the same, the same criteria.

Q At page 61 of your testimony you discuss the fact that you do not evaluate the effect of the other non-bypassable riders other than the DMR; is that correct?

A Yes, that's correct.

Q And as I understand it, you felt that that was appropriate because the margin and pass-through of various costs of DP&L. Is that also true?

A That is -- that is generally true, yes.

Q And is the working assumption you're making that if it's a cost pass-through, DP&L could collect those charges either through a market rate offer or through an electric security plan?

A Yeah. I assume they would be present -- if I understand your question, I assume they would be present in both the ESP and the hypothetical MRO.

Q And do you have any concerns or qualifications on that answer because of the way you phrased the response? Let me rephrase that. Is there something that I need to clarify in my question so that, to confirm that that's what you mean?

MR. SHARKEY: Let me object to that question as vague. I'm not sure what you're asking him.

Q Let me rephrase so it's clear. For purposes of your analysis of the ESP versus MRO, is it fair to say that if there was a pass, what you describe as a pass-through cost, do you assume that it could be charged to customers under either an MRO or an ESP; is that correct?

A Yes, in this case.

Q You identified two of the several riders that Dayton Power and Light has requested in this case. Did you look at all of the requested riders to determine what cost they were seeking to recover?

A I did not. These are the two that I listed, but I -- there's also -- actually there's the distribution investment -- we talked about the DIR and the CER. So I looked at those as well, but -- but if there are other riders not listed in my testimony, I didn't specifically look at those.

Q Just a couple more questions. Are you aware of any retail electric services that are provided by DPL Inc. to retail customers of Dayton Power and Light?

A Retail electric services that DPL Inc. provides to Dayton Power and Light's customers. I'm not aware of any specifically.

Q And did you do any analysis as to the effect of a bankruptcy by DPL Inc. on the customers, not speaking of the retail customers of DP&L? That is did you identify any rate impacts or other issues and quantify those for purposes of your analysis here today?

A So there's two parts to that question. One is did I identify them, and another one is did I quantify those impacts, and the answer is I identified them in the form of the multiple deleterious effects of a bankruptcy including, and it's listed in different places in my testimony, but it would be distraction of management time or the spending of time by management on trying to come out of bankruptcy rather than running the business. There's lost regulator time. Regulators would also be distracted from doing what they need to do. There might be reduced O and M and capex at DP&L as the parent company attempts to exit bankruptcy or alleviate financial distress. You know, again these are listed in my testimony. So I've identified those, and in the case of my first scenario in which there is a financial integrity charge under an MRO and, you know, roughly equivalent to the DMR, I don't -- I don't really need to quantify those impacts because they are the risk and the possible cost is the same under each of those scenarios. In my second scenario I do not quantify those, but I do identify them.

MR. DARR: That's all I've got. Thank you.

MR. ALEXANDER: Okay. This is Trevor Alexander. I could go next.

THE REPORTER: Can you speak up or turn

the volume up?

MR. ALEXANDER: I'm sorry. I hit the wrong button. Better?

THE REPORTER: Yes.

MR. ALEXANDER: Okay great.

EXAMINATION BY COUNSEL FOR HONDA AND CITY OF DAYTON

BY MR. ALEXANDER:

Q Good afternoon, Mr. Malinak. My name is Trevor Alexander. I am the lawyer representing the City of Dayton and Honda. Most of my questions have been covered already, so I'm going to be skipping around topics quite a bit. So if there's any confusion or questions, please just let me know.

First, and you talk about this in your testimony, is that with regard to the financial projections you relied on DP&L to perform the projections for the financial performance of the companies; is that correct?

A I relied on them for the specific projections, but I did my own sort of checking of on the reasonableness of those projections.

Q Sure. And based on your review you would agree DP&L's projections do not include the distribution investment rider?

A I would say -- not based on my review, but I understand that they don't include that.

Q Okay. And you also understand DP&L's projections do not include the clean energy rider?

A That's also my understanding.

Q And with regard to the distribution incorporation, you understand that DP&L included the projected results from its distribution rate case in its projection?

A Yes. My understanding is they assumed approval of the rates that they've requested.

Q Right. And you understand that the projected results from the distribution rate case do not include any revenue from the redundant service rider?

A I actually did, was unaware of that, that particular rider.

Q Okay. And to the extent that the DIR, the CER or the redundant service rider led to increased revenue to DP&L, that would lessen the likelihood of a credit downgrade for DP&L; correct?

A It would depend on whether there are any costs associated with those riders, what level they were at, but if, if in fact these riders resulted in incremental cash flow and incremental profit, there would be some reduced impact of a downgrade, and it would just depend on, you know, how much of a margin there is, if any, on those riders.

Q Throughout your testimony, and if you look at page 13, line 15 as an example, but I think this is throughout, you discuss the potential to customers to be impacted through increased financing cost if the DMR is not approved; is that correct?

A Yes. There is more than one place where I talk about that, yes.

Q Sure. So if we assume that DPL Inc. would be downgraded, what long-term debt rate -- strike that.

If we assume that DPL Inc. would be downgraded if the DMR's not approved, have you projected the long-term debt rate which would apply to DP&L?

A I have made an adjustment to DP&L's debt costs without the DMR, and so as I sit here today, I don't remember the exact instruments that we, that we modified, but we did take into consideration that if DP&L were downgraded, as my analysis shows it would be and without the DMR, that they would have higher interest costs which we've incorporated, but again, I can't remember if those were long term, the long-term facilities or if whether it was the 445 million. I just -- I can get back to you on that, but I know that we did make that, make that kind of an adjustment.

Q Well, when you said you made that kind of adjustment, do you mean you identified it would directionally be higher interest rates, or do you mean that you actually quantified a long-term debt rate which would apply?

A Well, that -- just to be clear, my issue is I'm not sure whether we affected a long-term instrument. DP&L has certain long-term instruments with fixed rates that wouldn't change, you know, if, if they were downgraded, and again, I apologize for not being able to be specific about it, but it may be also that what we adjusted was at DPL Inc., but it would have been those instruments that were subject to adjustment, you know, as opposed to -- and excuse me -- it may also be new issuances that were undertaken by the company which may or may not have been long term. So that's why I'm, you know, hedging this a little bit is because I don't remember exactly which, the way we implemented that change.

Q Sure. I guess let's drill down a little bit then.

A Yeah.

Q Have you reviewed witness Jackson's testimony on the current status of DP&L's long-term borrowings?

A I did review his testimony a while back, yes.

Q Okay. And so would you agree there are two pollution control bonds which DP&L currently has?

A They certainly have pollution control bonds. I don't remember specifically if it's two, but I'll accept your representation that it's two.

Q Sure. And then there are the 445 million-dollar refinancing which you addressed in your testimony; correct?

A Right. Yes, that's in there, yes.

Q In that $445 million, that refinancing, let me just stop there.

Mr. Sharkey, is the terms of that refinancing -- I believe those are not confidential; is that correct?

MR. SHARKEY: Yes, you are correct there, Mr. Alexander.

Q Okay. With that clarification, Mr. Malinak, would you agree that the 445 million-dollar refinancing is currently a six-year term note with the variable rate set at 325 basis points over libor?

A Those are my recollections of the term, of terms of, some of the major terms of that loan, yeah.

Q Okay. And so when you were discussing the long-term debt of the company which would not change even in the event the company was downgraded, are those the three long-term instruments you were referring to?

A By "those," what are you referring to? The pollution control bonds and the --

Q Yes, and the $445 million.

A Yeah. The 445 I frankly don't know whether its terms allow for an increase in the spread if the, if DP&L were to be downgraded. It's possible that it allows for that, and that's why I'm hesitant to say, but when I was referring to the long-term bonds whose rates would not change, it was these longer term facilities, these ones that are maturing, you know, later in time.

The pollution control bonds would be included in that. Again, though, those are variable rate instruments, so I would have to go back and check to see what the terms of those are and whether they would actually be modified, you know, in the event of a downgrade.

Q Okay. So would it be fair to say you don't know whether a downgrade would lead to an immediate increase in financing cost for DP&L?

A Actually my understanding is that it would lead to -- it would -- excuse me. An immediate is -- I guess the answer is yes; I don't know if it would lead to an immediate increase.

Q Okay. And so when you say that at page 13, line 16 DP&L customers would likely see rate increases due to increased financing cost, what are you referring to?

A It would be those, those debt instruments that would actually have to be revised or new debt instruments that are issued at higher rates than they would otherwise be issued, either existing debt that would be, you know, where the spreads or the rate would, you know, be changed or, you know, when new debt is issued say by DPL Inc., you know, in 2019 when it has to refinance its 2019 bonds, it would do so at a higher rate.

Q And if we assume that DPL Inc. is downgraded as you project, have you projected the higher rate which would apply in that refinancing scenario you just described?

A I have made an estimate of higher financing cost that would prevail under the without DMR scenario which is a downgrade scenario. As I sit here right now, I don't remember exactly how we implemented that, but I could probably figure it out if I had the time here to review my exhibits.

Q Okay. Go ahead and take a moment and see if you can locate that in your exhibits.

A Okay.

Okay. What I've done is I've tried to look at interest expense and without DMR and with DMR relative to long-term debt to see if the, you know, the percentage, the sort of implied interest rate has gone up, but I can't get a clear, a clear expression of what my assumptions were based on the summary level data that are in my exhibits. I'd have to go into the spreadsheets themselves to figure out exactly what we did.

Q Okay. Could you turn your attention to the Exhibit RJM-8.

A Yes.

Q And let's first look at line 7.

MR. SHARKEY: Trevor, are you going to

ask him about specific numbers? I believe this is confidential information.

MR. ALEXANDER: No. Right now I'm asking what the line shows.

MR. SHARKEY: Okay.

Q Did this line show what DP&L is projecting to issue -- strike that.

Does this line show the amount of new debt which DP&L projects to be issued in each of those years?

A Yes.

(The following portion was deemed "Confidential" and appears in the Confidential Session of the deposition of R. Jeffrey Malinak.)

Q Okay. And so when you say there would be increased financing cost, are you saying there would be an increased financing cost associated with any new debt identified in these line items?

A Yes. For example, in the without DMR which is RJM-7 there's also that 200 million-dollar refi in 2020, and --

Q I'm going to stop you, Mr. Malinak. I'm going to stop you because I don't want to venture into confidential --

A Oh, I'm sorry. Yeah, I'm sorry.

Q So I'll ask the reporter to move that last question and answer to the confidential version of the transcript, and then we'll come back to the exact numbers at that time.

Now moving to line 13?

A On RJM-8.

Q RJM-8. It will be -- actually, no, it would not. Okay. RJM-8, does line 13 show the new issuance at the DPL Inc. level?

A That's consolidated. So it's both, it's issued by both DP&L and DPL Inc.

Q Is that -- that's my next question. So if I looked at line 13, that would show me the consolidated debt for both entities?

A Correct.

Q By year?

A Correct.

Q The last series of questions has been targeted as a downgrade for DPL Inc. Would your answers be the same with regard to quantifying impact of downgrade if I were to ask you about DP&L?

A Yes. If DP&L were downgraded, its cost of debt would go up.

Q Okay. And while you can't identify the rate at which the new long-term debt would be issued at this point, have you quantified the rate impact or expense impact to DP&L if DPL Inc. were downgraded?

A I've not specifically quantified a rate impact.

Q Have you quantified a total amount of annual interest expense which would result if DPL Inc. were downgraded?

A In my without DMR scenario for DPL Inc. and DP&L I calculated an interest expense number. So, and without the DMR DPL Inc. would be downgraded, so yes, I have quantified, you know, their debt cost in that scenario.

Q Okay. And would -- for the with DMR scenario -- strike that.

For the without DPL -- strike that again.

For the without DMR scenario, could you identify where you identify the annual interest expense in the event of a DPL Inc. downgrade?

A It would be -- I mean the interest expense line for DPL Inc. without the DMR is in a, in different places, okay. RJM-9, line 4, is DPL Inc. gross interest expense without DMR. It also appears in RJM-11 and 12 for DP&L.

Q Well, so if I wanted to see the difference between annual interest expense in the with and without DMR scenarios, I would look at Exhibit RJM-9, line 4, against Exhibit RJM-10, line 4?

A Yeah. You know, I would go -- I would actually go to -- and I think they're the same numbers, but I haven't checked, but I think they're the same number -- but RJM-14A is the income statement without the DMR for DPL Inc., okay, and that's consolidated, so that would include DP&L interest, and then 15A is all, is the consolidated interest expense with the DMR, and you can see it's higher under the without DMR scenario, but the reason I wanted to go back to my spreadsheets is there's both a price effect and a quantity effect that's involved. So that what that means is that, you know, without the DMR that they have more debt, okay, a different amount of debt, and with the DMR of course they're paying off debt.

So there's both a -- there's a rate impact which went to your earlier question, and then there's also a quantity of debt impact that I'm not able to sort out with the summary level data in my report.

Q So let's talk about the interaction between the retirement of the debt and the interest expense.

A Okay.

Q So is it your understanding that DP&L intends to use some of the DMR proceeds for debt reduction?
A DP&L? Did you --
Q Yes.
A Yeah. I mean my understanding -- well, the proceeds of the DMR, I think most of the DMR, again, you know, cash flows to DP&L are, you know, come from a variety of places, and under the DMR the DMR would be one of them, and I do assume that with the DMR DP&L will reduce some of its own debt, and, but a lot of their cash flows will go through dividends up to DPL Inc. which will reduce its debt as well.
Q Yes. And so when you say reduce debt, you mean the total amount of long-term debt outstanding at both companies will go down; correct?
A That's correct.
Q And that would have the effect of reducing interest expense; correct?
A Correct, all else equal.
Q Correct. And so if I were to look at the interest expense projections that you include in your Exhibits 14 and 15, would those projections include the projected retirement of certain debt?
A Yes, and if you look at, like, for example,

again, these are multiple exhibits, some of which have some of the same information on them, but RJM-9 through 12, you know, long-term debt numbers, long and short-term debt numbers are pulled out, you know, and explicitly provided where you see DPL Inc., holdco debt, you see DP&L debt, like for example on RJM-9 without the DMR, and you can see, you know, in lines 12 through 23 you can kind of see a summary of what's going on. Consolidated date ends up at 2 million -- 2 billion of --

MR. SHARKEY: Jeff, those numbers are confidential.

A Oh, sorry, guys. There's a certain number for debt for consolidated, a certain number for Holdco and a certain number for DP&L. Then if you return to RJM-10 with the DMR, you can see the ending numbers are lower on a consolidated basis, and they're also lower at both the Holdco and at DP&L.

Q Do you know whether a DPL Inc. downgrade would trigger any collateral obligations for the DPL Inc. debt?

A A DP&L downgrade. I don't know that -- I don't know that specifically.

Q And do you know whether a DPL Inc. downgrade

would trigger any collateral obligations for DP&L debt?
A I don't know that either.
Q Mr. Darr asked you some questions about AES earlier today. Do you recall those?
A I do.
Q Have you attempted to quantify the likelihood that AES would be downgraded if the DMR is not approved?
A AES?
Q Yes.
A No.
Q If the total impact of increased financing cost is less than $145 million per year, would you agree that customers will be better off paying increased financing costs as opposed to the DMR?
A No.
Q Why not?
A Well, because, you know, I agree the net of those two numbers, okay, which would be, you know, one way to estimate the quantifiable costs of the, of an ESP which, you know, under my main more favorable in the aggregate analysis you would have a similar sort of math on the, on an MRO as you would on the ESP, but that's just the quantifiable side of

it, but then there's the nonquantifiable benefits of an ESP, you know, versus an MRO, and that would be what drives whether customers are better off or not.

Q Sure. And I want to focus on the quantifiable right now. Would you agree that if the increased financing costs are less than $145 million per year that on a quantitative basis customers would be better off than paying a DMR?

A I would say strictly, strictly on the quantitative side and assuming that, that if you're assuming the DMR is not or a financial integrity charge is not available under an MRO, is that what you're -- are you asking me to assume that?

Q No.

A Oh.

Q No, I'm not -- I guess let's take a step back.

A Yeah.

Q What do you feel are the qualitative benefits of the DMR?

A You have a lower likelihood of financial distress, or it reduces the probability way down. It also produces, likely will produce by the end of the ESP period an investment grade rating for DPL Inc. as well as for DP&L which will lower debt costs and improve, you know, reliability of service in general, you know, and give the, as well as give the wherewithal of the company to, to invest in grid modernization, and so all of those -- those are a couple of the major nonquantitative benefits. I have a few others listed in my report, but those are kind of the two primary nonquantitative benefits from the DMR is the improvement of the financial integrity of the enterprise as well as the increased probability of grid modernization expenditures.

Q Okay. And your first point with regard to the likelihood of financial distress and the potential credit downgrade to the entity, those you believe can both result in higher borrowing costs for the entity; is that correct?

A Among other things, yes. I mean other non -- sorry.

Q Yeah. I didn't mean to interrupt. Was your answer complete?

A I was just going to say, yeah, in addition to some of the nonquantifiable costs you would also have increased borrowing cost.

Q Sure. And I want to focus on the quantifiable issues for the moment.

A Okay.

Q You have quantified those increased costs, and they are reflected in your Exhibits RJM-9 and 10; correct?

A Yeah, in one of the lines of those, but you know, they're more, kind of more explicitly in the income statements in RJM, I think it's 14A and 15A.

Q Okay. And staying on that quantitative issue, you would agree that customers will be better off paying the higher financing if the higher financing costs are less than 145 million per year; correct?

A The reason -- in order to say whether customers would be better off you have to have something that you're comparing it to. Okay. In my testimony I compare the world with the DMR to the world without the DMR. Well, not exactly. I compare an ESP with a DMR to an MRO with a financial integrity charge, and when you make that comparison, your customers are better off under the ESP due to qualitative.

The quantitative test under that scenario results in a watt. So customers are not quantitatively better off in that situation because you have effectively the same --

Q Sure.

A -- same level of financial integrity on both sides. That's why I'm struggling to answer your question directly.

Q Yeah. I think we're talking about apples and oranges. I am not asking you about your comparison between an ESP and an MRO at this point.

A Okay.

Q Instead I'm asking you to compare a change in interest expense in the DMR and non-DMR scenarios --

A Yes.

Q -- to 145 million per year.

A And we're just talking about the quantitative piece. We're ignoring all of the nonquantified benefits of higher financial integrity, et cetera.

Q Correct.

A Okay. Just looking --

Q What I'm asking is --

A Yep. I'm sorry. Just looking -- I'm sorry.

Q Other than the change in interest expense --

A Yeah.

Q -- are there any other quantifiable costs which you believe should be included in the comparison to the DMR?

A Not quantifiably. There are no other quantifiable costs that I can think of.

Q New topic. Page 3, line 19, you say there's a maximum three notch difference to the Moody's ratings that Moody's rating agency; is that correct [sic]?

A Line -- I'm sorry. Which line?

Q 19.

A Yeah, that Moody's currently applies its maximum three-notch differential to the indicated grid-based ratings for DPL and DP&L.

Q What is your source for the proposition that Moody's has a maximum three-notch differential?

A Okay. There's two parts to that. The first is that there is a three-notch differential, and there's the fact that it's a maximum, okay, and my source for the maximum is that there's a couple of different types of three-notch differentials. One of them is structural subordination, okay, which is a maximum three-notch differential, and that's applied to DPL, and then there's another maximum three-notch differential that reflects the difference between DPL and DP&L, and that -- that comes from a different source, but they're both -- they're both found in the document we were discussing earlier which was the regulated Moody's methodology document, and then they're also present in the various Moody's credit rating reports that address DPL and DP&L. So for example --

Q What's the structural --

A I'm sorry?

Q Was your answer complete?

A I was about to add a for example. So for example, if you look at the current ratings for the two entities, DPL is at Ba3 and DP&L -- I'm sorry. Yeah. DPL is at Ba3, and DP&L is at Baa3. It's a three-notch difference.

MR. ALEXANDER: Can I have the reporter read back just the "for example" portion of that answer which I think is the last paragraph?

(The Reporter read from the record as requested.)

Q When you give the DP&L rating as Baa3, that's not the secured bond rating; correct?

A No. That's an issuer rating.

Q Okay. The secured bond rating is Baa2; is that right?

A It's higher. I would have to look at a document to see where it is right now, but yeah, it's higher than the issuer rating.

Q Okay. And so when you said there's a maximum three-notch differential, you're referring just to issuer rating?

A Yeah. My analysis is all focused on the issuer ratings.

Q Okay. And what does -- in your prior answer you referenced the phrase "structural subordination."

A Yeah.

Q What does the phrase "structural subordination" mean?

A Okay. In this context it means that DP -- DPL Inc.'s cash flows are coming primarily from DP&L, okay, but DP&L's debt has to be paid before DPL Inc.'s debt has to be paid. So DPL Inc.'s debt is structurally subordinated to DP&L, and that's a situation that one finds frequently in utility holdco, opco, operating company families.

Q Now, turning to S&P ratings, at page 7 you discuss that S&P does not notch rating; is that correct?

A Correct.

Q So does S&P currently have the same issuer ratings for DP&L and DPL Inc.?

A I think I have that on my page -- on one of -- in my report somewhere. The answer is they should be exactly the same because S&P takes the lesser of the two, of the two ratings that it gets with its own methodology and applies it to both entities.

Q But when we're trying to figure out the potential impact to interest expense, the -- Mr. Malinak, I'm trying to think of the phrase for the rating of the specific debt instrument versus the issuer. What would you call that?

A The way one would describe the issuer rating versus the issuer, the rating of a particular issue?

Q Yes. How would you refer to the rating of a particular issue?

A I would say that that's, that's the rating for that particular debt issue which can be different from the issuer rating.

Q Sure. And that's actually the point I was trying to go to. I just wanted to use the correct terminology.

A Yeah.

Q You would agree that when trying to determine the interest impact that one should look at the rating of the particular debt instrument versus the issuer rating; correct?

A I think one would need to look at either what are the terms of a given issue that might, you know, that might change if there's a downgrade, or you know, if you're refinancing it at a higher rate, you would have to specify the terms of it. So if you were assuming that they were issuing new secured debt, you would have to use a secured debt rating.

Q Let me ask this. Could a company which has a junk issuer rating have an investment grade debt issuance?

A I would say that's probably possible.

Q And that would be because of the collateral for the loan could be sufficient to qualify that specific loan for investment grade treatment; is that right?

A Yeah. If there's sufficient security for the, you know, for the secured debt say and it was, you know, well legally ironclad and so forth and so on, you know, companies with lower issuer ratings are able to borrow, but they have to secure the borrowing with particular assets which has an economic cost.

Q Okay. Page 8 of your testimony you discuss projected ROEs for DP&L with and without the DMR; is that correct?

A Page 8 -- excuse me -- get to it. Yes.

Q And here you're referencing Mr. Jackson's projections and ROE calculations; is that right?

A I don't think so. I think these are based on my own calculations of ROE which may or may not be the same as his. They may be the same.

Q Okay.

A I mean I can point you to the exhibits where I do that.

Q Sure. No. It's actually not to the sort of anything I want to go to. When you talk about excluding the DMR from the return on equity calculations, are you talking about in connection with its impact on the SEET test?

(The reporter requested clarification.)

Q Significantly excessive earnings test. And I'll rephrase the question.

Mr. Malinak, are you familiar with an Ohio term of art known as the significantly excessive earnings test or SEET test?

A I do know what that is. I would not say I'm, like, familiar with a lot of the details of it, but I am familiar with it and I know what it is. I mean I am not -- yeah. Go ahead.

Q And are you also aware that DP&L has

proposed to exclude rider DMR revenues from the SEET test?

A I am aware of that.

Q Okay. So at page 8 of your testimony when you were discussing the propriety of excluding DMR revenues from return on equity calculations, are you discussing that in connection with the SEET test?

A Not explicitly.

Q Okay. Were you intending to reference the SEET test, or were you discussing ROE in the context of financial integrity in this section?

A Yeah. No. I'm doing it in terms of financial integrity.

Q Okay. Why would rider DMR revenues be excluded when a rating agency was evaluating the financial integrity of these two entities?

A Because the DMR is, and we're talking about financial integrity specifically with respect to using the ROE as an input to that determination. The DMR is not an operating charge. It's not related to operations. It's strictly a non-bypassable fixed charge that's going to be used for debt reduction, so it doesn't really, doesn't go up or down with respect to how well the company is running its business or anything that you're trying to measure, you know, with an ROE, for example.

So it's not -- it's not producing economic benefits, direct economic benefits to an entity like an ROE is. It's just going to debt reduction.

Q Could you explain what you mean when you say the DMR is not an operations charge? Could you give me an example of what you believe an operations charge would be?

A Well, it would be like -- it would be like, you know, your normal, your normal electricity rates -- or no. It would be like -- a better example would be the amounts, the capacity and energy rates that the company is getting for its generation from its coal assets would be an operating revenue item, and then there would be operating costs associated with that, and how well you manage those and how well the business is doing would determine what kind of ROE you have on those, and so those are related to the operations of the company.

The DMR is invariant to, you know, market conditions, how well the company is managed, the various things that you might want to measure or that relate to normally you would think of as relating to an ROE.

Q And I believe you said this earlier today, but money is fungible; correct?

A From a finance point of view -- I can't remember exactly what I said. Capital is fungible. Dollars is fungible. Cash is fungible for a company, yeah.

Q And so DMR revenues, whether used for debt relief or other purposes, would have the beneficial impact on the financial integrity of DP&L; correct?

A It would actually have a, you know, beneficial impact on the financial integrity of both entities, DP&L and DPL Inc., and the both of them together.

Q Sure. I just really need to --

A Yeah.

Q Right. And so -- well, strike that.

Earlier today in your conversation with Mr. Bzdok you discussed your testimony at page 7 about DP&L's ability to issue debt. Do you recall that?

A I recall some discussions with -- about both entities' ability to issue debt.

Q Sure. And in fact at page 4, line 13 of your testimony you say that DP&L may have no ability to access reasonably-priced debt or equity capital;

is that correct?

A I'm sorry. What line are you focused on?

Q Page 4. It actually starts at line 12 where you say, and "just as importantly." Do you see that?

A Yeah, I see that.

Q So in this sentence are you currently providing the opinion that -- strike that. Let me take a step back.

I believe you testified in response to Mr. Darr that by the company there you're referring to both DPL Inc. and DP&L; is that correct?

A Yes.

Q Okay. So are you providing the opinion that DPL Inc. and DP&L currently have limited or no access to reasonably priced debt or equity capital?

A I think that -- yeah, there's two parts to that. There's limited or no access to reasonably priced. So this is specifically -- this sentence is modified by the next one, next sentence, which is the 445 million debt facility which was not issued at -- under the normal circumstances that debt would be issued by a utility with long-term relatively low cost. It was shorter term and relatively higher cost, and I understand that the company felt that

this was done, if you will, in the high yield market, and so that's a higher cost amount of debt that in the way these sentences are set up is unreasonably high compared to what it would be if they had the DMR.
Q Did you have any role in DP&L's negotiation of the 445 million-dollar debt facility?
A I did not.
Q Have you had any communications with banks or other creditors regarding DP&L's ability to rate that capital?
A I have not.
Q Have you had any communications with banks or other potential equity investors regarding DP&L or DPL Inc.'s ability to issue new equity?
A I have not.
Q Have you had any personal communications with the creditors of the 445 million-dollar debt facility regarding how the terms and conditions of that facility were established?
A No.
Q Have you reviewed any written communications between DP&L and potential or current creditors regarding the issuance of new debt?
A No.

Q Earlier today I believe Mr. Bzdok asked you about the explicit terms you referenced at line 15, staying on page 4 here?
A Yes.
Q Do you recall that?
A Yeah. Line, lines 16 through 18 we talk about the covenant -- oh, I'm sorry -- it's lines 15 through 19 we talked about the limits on DP&L's ability to issue new debt.
Q Okay. Do you have any personal experience in negotiating on behalf of a utility for new debt instruments?
A No.
Q Do you have any personal experience in negotiating on behalf of a utility for new equity investment?
A No.
Q And with regard to the explicit terms we were just discussing, I believe earlier today you referenced an August 24th, 2016, credit agreement; is that correct?
A Yeah.
Q And is that the agreement which you deemed the explicit terms you referenced in this sentence?
A I mean the main basis for my, for this

sentence was discussions with counsel, but we also looked at the agreement, and there is a, something called a negative covenant in that agreement which says, which appears to limit, place limitations on the raising of new debt, but it's really just corroborating the statements from the company.

Q Okay. But you relied on that August 24, 2015, credit agreement as well?

A I relied primarily on the representations from the company, and I relied on the agreement as a check or corroboration, and it looked as if the two, the statements of the company and this agreement were consistent, but the main thing I relied on was the company's representations.

Q Did you review the agreement in connection with Mr. Bzdok's questions on this issue earlier today?

A I did. I started looking at it, and, you know, didn't -- it was taking me a little long to find the right language, and then I found it at a break.

Q Okay. And could you give a copy of that document to the court reporter, please?

A This is an excerpt, okay, so it's not the full document. It's the cover page, and then it looks like pages 66, you know, forward. The printout is a little funky, but okay.

Q Okay. You relied on this in connection with your earlier testimony, and so I'd like to make it an official part of the deposition.

So, Jan, could you please mark that document as -- I believe we're on Exhibit 2. Is that correct?

MR. SHARKEY: I don't know what number we're at, but yeah, we can have that marked as an exhibit.

A Yes. It's an excerpt, as I noted, okay. I only have one copy of it in here.

MR. SHARKEY: You can hold on to it for now, Jeff, and we'll copy it at a break.

THE WITNESS: Okay.

A Okay. I have Exhibit 2.

(Malinak Deposition Exhibit 2 was marked for identification and is attached to the transcript.)

Q Okay. You mentioned that that document is an excerpt. Have you personally reviewed all of the terms and conditions of that debt facility, or did you rely on counsel?

A I have -- I personally have not reviewed this agreement except for this, this one excerpt.

Q Okay. And when you say -- at page 7 when you discuss potential impact of a violation of that agreement, page 7, lines 1 to 3, is that understanding also based on your communications with counsel?

A Well, not with counsel so much. I discussed the debt with, this new issue with Jeff MacKay and -- Jeff and Craig Jackson. That's the basis for my statement about there being limitations on DP&L's ability to issue new debt was that conversation.

MR. SHARKEY: Trevor, this is Jeff. You might want to clarify because Jeff Malinak did earlier refer to conversations with counsel. I don't know whether he was, whether that was a misstatement or he meant to refer to the company, but I'd like to suggest you clarify that with him because I think there could have been a miscommunication here.

Q I'm happy to. Mr. Malinak, at page 4 we were discussing limitations on the 445 million-dollar debt facility; is that correct?

A Right.

Q Was your understanding regarding the terms and conditions related to that 445 million-dollar debt facility, did those arise from communications with counsel or communications with DP&L employees?

A The latter, DP&L employees.

Q Okay. And then at page 7 of your testimony you discuss the covenants relating to the revolving credit and term loan financing agreement; is that correct?

A Yes. I do refer to those. Yes, I see that.

Q Okay. Is that a separate financing instrument from the 445 million-dollar debt facility we discussed earlier?

A Yes.

Q And at pages -- at line -- page 7, lines 1 to 7 you discuss the potential violation of the covenants associated with the revolving credit facility; correct?

A Yeah, and the term loan financing agreement.

Q Correct. Have you reviewed the terms and conditions of the revolving credit facility and term loan financing agreement?

A I have not personally done it, but someone has done that under my direction.

Q Okay. And is that the document identified as Exhibit 6 of your testimony?

A Yes. Hold on a second. Let me just check something here. Yeah. I think footnote 6 is just -- that's just referring to the term loan, not to the revolver. Again, I just have an excerpt for that.

Q And where would the person -- strike that.

Where is the person who reviewed this under your direction employed?

A Analysis Group.

Q And what is the limitation on EBITDA to interest referenced at page 7, line 2?

A What is it or where is it?

Q What is it?

A It's a financial covenant I believe in the revolver, but I'm not sure, that requires a certain level of EBITDA to interest as a, as a debt covenant.

Q And what is that certain level?

A Okay. This is elsewhere in my testimony. Let's take a look at it. Okay. If you turn to page 47 and then pages 40, you know, 46 through 48 approximately, but on page 47 you have the debt to EBITDA covenant that is analyzed, and then on page 48 you have the EBITDA to interest, and you were just now talking about EBITDA to interest, and that's discussed here. It says -- okay. Okay. It just says debt covenants generally, and one of the covenants was debt to EBITDA, and another one was interest, EBITDA to interest, and the EBITDA to interest, if you look at figure 7, the covenant is at a range of just above two. That blue line is the minimum. What this is showing is that without the DMR DPL Inc. is at risk of violating that covenant in 2019. It looks like both of these debt covenants relate to the credit agreement that's cited in the footnote.

MR. SHARKEY: Trevor, are you still there?

MR. ALEXANDER: Yeah. I'm here. I'm moving forward in my outline. There are some issues already addressed by others.

MR. SHARKEY: Okay.

Q So at page 43, lines 4 or 5, you discuss your reliance on modeling based on DP&L's business model; is that right?

A I'm sorry. Which lines, sir?

Q Line 4 to 5.

A Yeah, uh-huh. I see it now.

Q Have you reviewed DP&L's actual model runs?

A I have -- I have -- I have not for this set of projections.

Q And have you reviewed the assumptions used by DP&L in that set of model runs for things like forward prices?

A I have looked at the forward prices that I believe are in Mr. Crusey's testimony, but it's -- again, it's been a while since I looked at that testimony, but I believe he had forward prices in there that I assumed were being used in the model.

Q I should have been more clear in my first question. When you reviewed the forward curves used in DP&L's modeling, did you review the first set of forward curves used by DP&L in connection with the February testimony or the current set of forward curves used in DP&L's current testimony?

A I've definitely reviewed Mr. Crusey's testimony in this matter, and in terms of the forward curves in the previous matter I don't recall exactly, but I did, you know, review at some point Mr. Meehan's testimony.

Q And page 43, line 13, you say you tested the projections against historic performance of the company. Again, when you use the phrase "company" here, are you referring to both DP&L and DPL Inc.?

A Yes.

Q Okay. And how did you compare the

projections to historic performance?

A So I just looked at -- there's data in DPL Inc. and DPL Inc.'s 10-K and DP&L's 10-Ks and 10-Qs. You know, you've got data on O and M. You've got data on revenues, capex, different important variables to the model, and so what I did was I checked those historical values for those entities, DP&L and DPL, against the projections that were in the model to see what, to determine whether there were any dramatic departures from history that were included, and I didn't find any, so that was what I did.

Q Okay. So you compared -- one of the things you did is used the historic 10-K information to compare it against the projected financial performance. Did I hear that correctly?

A Correct, 10-Ks and 10-Qs, so the SEC filings.

Q And how many -- strike that.

Did you review the 2015 10-K for DPL Inc. and DP&L?

A Yes.

Q Does the 2015 10-K for DPL Inc. and DP&L include revenue associated with the coal plants?

A Yes, somewhere in the projections.

Q Including -- I'm sorry?

A I'm sorry. Somewhere in those documents there's discussion of, you know, the economics of the coal plants. I can't remember the level of detail that's provided, but there's certainly the total revenue line for DP&L, DPL Inc. would include, you know, any revenues that are coming from the coal plants.

Q Right. That's what I was asking about. The net income line for --

A Yeah, right.

Q -- for the financials includes revenues from the coal plants?

A Right, right, and the cost lines like O and M for the plants should be included as well.

Q And do you believe when assessing the financial integrity of the utility that all sources of revenue should be considered?

A Yes. I think that if you're -- yes. All sources of revenue that you expect to continue into the future should be included.

Q And so do you believe that to the extent the coal plants are expected to continue to operate in the future the revenue associated with those coal plants should be included in an evaluation of DP&L's

financial integrity?

A Yes.

Q I'm just moving forward here. At page 46 you provide the probabilities for default, particularly lines 14 to 17. Do you see that?

A I do.

Q Was the source for that information footnote 57?

A Yes. That appears to be the case.

Q Moving on to a new topic, did you evaluate the impact --

MR. SHARKEY: Hold on, Trevor. I'm not sure he was done with his answer. Mr. Malinak was starting to check a document, so I'm not sure that he was done with his answer there.

A Yeah, I'm sorry. I have a set of backup documents here, and it is the March 4th, or it says March 4th, 2015, annual default study for Ba versus B, okay, and the numbers match.

Q Okay. So I guess the answer is, yes, it's the document cited in footnote 57?

A I have confirmed it.

Q Okay. Okay. Great. Have you evaluated the impact to DP&L of a DPL Inc. bankruptcy?

A I have in a sort of qualitative high level sort of approach, yes.

Q And where is that quantitative high level approach located?

A I actually said qualitative, but it's discussed in various places in my testimony where I talk about the fact that a DPL Inc. bankruptcy would have a number of potential, cause a number of potential problems at DP&L, and if you'll give me a second, if you look on page, page 50, okay, this is focused on DP&L's customers as opposed to DP&L -- did you want me to limit my answer to DP&L?

Q I think I may have misspoke in my question, Mr. Malinak, so I'm going to rephrase that.

Have you done a quantitative evaluation of the impact to DP&L of a DPL Inc. bankruptcy?

A Other than what I've done to quantify increased borrowing cost which again subject to confirming the exact approach we took, that could have impacted DP&L because DP&L would be downgraded, too, without a DMR, so there's some quantification there, but much of the negative impacts on DP&L I have not attempted to quantify. I have simply noted them as various costs that one experiences in financial distress which are very significant costs but difficult to quantify.

Q Sure. To be clear, there are, in your testimony, potential impacts associated with the downgrade of DP&L Inc.; correct?

A Yes. There's both a downgrade, and then I also talk about -- I include kind of bankruptcy, a potential bankruptcy as part of that, yeah. There's downgrade and then there's bankruptcy which is kind of the ultimate downgrade.

Q Right, and that's what I was trying to understand. Is there any difference between your evaluation of the cost of the downgrade and your evaluation of the cost of the bankruptcy?

A It's a matter of degree.

Q But have you quantified the degree of that change?

A Other than to -- no, I haven't. I haven't actually quantified the difference between a downgrade which produces certain costs of financial distress and a bankruptcy. I haven't quantified that difference.

Q At page 64 you discuss the benefits of grid modernization?

A Yes.

Q Do you know what portion of DMR revenue is currently earmarked for grid modernization?

A You know, my understanding is that there's no specific portion of the DMR that's, that's, quote-unquote, earmarked for grid modernization. Rather it's a charge that restores DPL to DP&L financial integrity to allow them to then raise additional capital to engage in grid modernization.

Q And at page 64, line 4, you discuss the potential benefits of economic development, new jobs and investment in human and physical capital. Do you see that?

A I do.

Q Have you quantified the economic development impact of the grid modernization programs discussed in this portion of your testimony?

A I have not.

Q Have you quantified the number of new jobs projected to arise from the grid modernization programs discussed in this portion of your testimony?

A I have not.

Q Have you quantified the investment in human and physical capital involving grid modernization programs discussed in this portion of your testimony?

A I'm sorry. Could you repeat that?

Q Have you quantified the investment in human physical capital which you believe would result from the grid modernization programs discussed in this portion of your testimony?

A I have not.

MR. ALEXANDER: I don't have anything further on the public session. Thank you, Mr. Malinak.

MR. OLIKER: Hi. This is Joe Oliker. I'm next. I don't have a whole lot of questions, but does the witness need a break?

MR. SHARKEY: Yeah. We're going to take a five-minute break.

MR. OLIKER: Okay, and then if I'm the last one, parties should start thinking about confidential.

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

(A recess was taken.)

EXAMINATION BY COUNSEL FOR IGS ENERGY

BY MR. OLIKER:

Q Mr. Malinak, my name is Joe Oliker. I represent IGS Energy. Just a few questions for you this afternoon. If you can't hear me or are unable to understand my question, please let me know and I'll try to do better.

A Okay. Thanks.

Q First you mentioned or answered a question I believe to Mr. Alexander about the potential for DPL Inc. to enter bankruptcy. Do you remember that question?

A I do.

Q What is your familiarity with bankruptcy proceedings for electric utilities or holding companies?

A I'm familiar at a very high level from having read kind of public press reports in a couple of matters, but I have not actually worked on a utility bankruptcy that I can recall.

Q And are you aware of the bankruptcy process for a holding company that has assets, or would you be speculating?

A I would be speculating to the extent that we got into any significant level of detail.

Q And what is your familiarity of the bankruptcy process without speculating?

A Well, I've read reports of related to, I think I mentioned earlier, I think it was the TXU bankruptcy; it was a holding company bankruptcy, and I read some kind of press reports about the amount of time that regulators were spending on that, on the bankruptcy trying to make sure that, you know, that customers were not affected to the extent they could and that sort of thing. So it -- and the one that sticks in my head is an article talking about a regulator who had on a white board all of the debt that was floating around, was the sense that I got from it, and the difficulty in terms of trying to figure out quick where that debt was going to land and who was going to pay it and that sort of thing, and that's kind of -- and that's kind of the extent of my understanding is, like I said, public press reports, you know, suggesting that those proceedings are very complex and involved.

Q And did you say that example involved TXU?

A I think it was TXU, yeah.

Q Do you know if that debt was recourse debt or non-recourse debt?

A I don't know that kind of detail.

Q Would you agree there is a large distinction?

A When you say "recourse debt," what specifically are you referring to? Recourse from who to who?

Q Yes. For example, are you familiar with the debt that resides at DPL Inc.?

A I am generally familiar with the different types of debt and the amounts and so forth.

Q Would you agree that over 90 percent of that debt is non-recourse debt or --

A Non-recourse to AES?

Q Non-recourse to AES or any other entity besides DPL Inc.?

A I am not -- that would -- are you -- you mean, when you say non-recourse, I mean non-recourse meaning that the debt can't be serviced from cash flows from DP&L?

Q No. I guess my question is a little different. Do you know -- first are you familiar with the $125 million of debt at DPL Inc. that are securitized by the peakers?

A If you give me just a second to check my debt schedule, I think it's RJM-18, but let me just -- okay. Yeah. I know, yeah, there's 125 million still outstanding. I did -- I was unaware that it was -- what was the term you used? Secured by the peakers?

Q Yes.

A I was actually not specifically aware of that personally.

Q So when you drafted your testimony, you did not consider that?

A Consider what?

Q How the $125 million was secured?

A I did not consider the specific security for that loan.

Q And when you drafted your testimony, did you consider how the remaining debt at the DPL Inc. level was secured?

A I -- I considered it to the extent that, you know, I treated all of the debt as needing to be serviced by the cash flows from DPL Inc. and DP&L both. So, you know, implicitly that's suggesting that they were being secured at least economically by, you know, by all of the assets of both entities.

Q And in that statement you meant that the debt at DPL Inc. has to be paid by cash flows provided by DPL and subsidiaries through dividends; correct?

A That's correct.

Q And do you have an opinion as to what would happen if DPL Inc. could not service the interest on all of its loans?

A Well, if it -- if it doesn't -- excuse me?

Q And maybe I can say that question differently. Do you have an opinion as to what the rights of DPL Inc.'s creditors would be if DPL Inc. could not service the interest on all its funds?

MR. SHARKEY: Objection; calls for a legal conclusion, but you can answer if you know.

A I don't know what their legal obligations or the legal rights and obligations of the parties are specifically.

Q Okay. And there were some questions, you testified in DPL's last ESP case; is that correct?

A Yes.

Q And would you agree that the -- that you referred to the charge, the --

(The reporter requested clarification.)

Q In DP&L's last ESP case you testified in favor of a financial integrity charge for DP&L; correct?

A That's correct. The SSR, yeah, was a non-bypassable charge for that purpose.

Q And the DMR that you're testifying in support of in this case is a similar financial integrity charge?

A I would say actually it serves a couple purposes. I mean it's directly shoring up the financial integrity of DPL, DPL Inc. and DP&L, but it's indirectly also going to be supportive of a grid modernization by DPL and DP&L. So it's a little different.

Q And it's a little different only in the respect that after the financial integrity of DPL and DP&L is shored up, then there is an intent to invest in distribution; correct?

A There's -- yeah. There's at least an intent. You know, the company, and Craig Jackson's testimony is specifically stating that that is, that's a goal, or I don't know if "goal's" the right word, but we'd have to look at his testimony to how he characterizes it, but it strikes me as it's more than, somewhat more than an intent but maybe not, so I don't know what the right word is.

Q Okay. And turning to page 6 of your testimony.

A Page 6?

Q You state -- yes, and I'm trying to keep this public.

A I'm there.

Q And I think this is public, but you state, the cost of the financing which would be higher which I figured into my projections, and regarding that statement can you show me where in your projections you figured that in?

A That was what I was trying to do earlier but was unable to do explicitly because the exhibits in my report are at a summary level, and so I just see interest expense, you know, each year, but there's two effects that go into those interest expense, the interest expense lines and my exhibits. One of them is the amount of debt, amount and type of debt, and the other is the interest rates that are associated with them. Okay.

So I did consider the fact that there would be a downgrade in the absence of a DMR, and I assumed an increased financing cost, but I don't remember exactly how I did that. Okay. It would have been with respect to debt that would have been affected by a downgrade, and that might not be all the debt, and so I would need to go into the details of my spreadsheets to see exactly how I implemented that.

Q Okay. And I take it you can do that in the confidential session, or you're not able to do that today?

A I probably could do that today.

MR. SHARKEY: It sounds like we'd need a break and to let him go away from here and do it, is what I, is the impression I have, Joe. He doesn't have with him the ability to do it right now, but within his office he may be able to get that number.

A I mean we turned over the spreadsheets, so it's in there.

MR. SHARKEY: Yeah. You have the spreadsheets to make those calculations yourself.

MR. OLIKER: Is the number confidential?

MR. SHARKEY: I think the answer to that is yes.

MR. OLIKER: Okay. Maybe we'll come back to that. We'll see.

A Okay. Just let me know.

Q And now am I correct you have actually quantified the cost of new financing that you identified on page 6?

A We did make an adjustment to the model for that.

Q Okay. On page 5 you indicate that you provided a measure of DP&L's ROE if the asset impairment is added to DP&L's common equity balance; correct?

A Which line? I'm sorry.

Q I'm on page 5. I think I see this phraseology appears several times in your testimony where you're referring to something called ROCI?

A Yeah, ROIC, yes, return on invested capital.

Q Right. And I don't want to be repetitive because I did hear some of this discussion earlier, but you state that the second ROE measure is akin to return on invested capital, and it's a measure that recognizes the risk of future declines of the value of DP&L's income or assets; correct?

A Yes.

Q And earlier when you were speaking to Mr. Bzdok, I believe you indicated that the future risk of declines of the value of DP&L's income and assets relates to the potential impairment of generation assets; correct?

A It really relates to impairment of any of the assets but in particular, in particular the coal assets.

Q Okay. And --

A And just FYI, I mean the statement is either the income or the value of the assets. I mean those two are related obviously, but, you know, an asset can decline in value, but sometimes its income, it doesn't decline commensurately.

Q Okay. And would you agree that there's a future impairment of generation assets, all else

being equal, the return equity could go up?
A Are you saying the future impairment and then a charge that's taken for that?
Q A future impairment of the coal generation assets -- okay. Let's first talk about that. If there was a future impairment of coal generation assets, you agree that ultimately DP&L would write down its common equity balance?
A Under the accounting rules once it becomes certain, if you will, that that, that there's been an impairment then they will take a charge off.
Q Okay. There is an immediate hit to net income; right?
A Yeah. I think that's run through the income statement, yeah.
Q But then going forward, all else being equal, the return on equity will be higher as a result of the writedown to common equity; correct?
A Well, the ROE calculated, according to one way of calculating an ROE which is just taking net income and sort of, sort of blindly, you know, dividing by the average equity or the book equity, if you will. So the return on book equity by definition, it could go up. I'm sorry. Was that your question?

Q Yes.

A I mean all else equal, all else equal, if income stays the same and the denominator goes down, then the ROE will mechanically go up.

Q Okay. And given those mechanics can you explain to me why you're using the pre-impairment common equity --

A Yeah, sure.

Q -- in terms of your calculation?

A Yeah, sure, sure. So taking a large writedown like this to equity, to book equity, a big accounting charge, you know, can kind of distort the sort of economic measure of a return on capital. I mean return on equity is a measure of return on capital invested, okay, and it's a measure, but when you do a return on book equity, you have some problems with, you know, with the way that the accounting rules require you to write things down and so forth.

So, for example, so you write -- when you write it down, it doesn't -- it doesn't mean that you didn't invest that capital to begin with. So, you know, financial analysts look to return on invested capital which is the sort of pre, the total amount of money invested as another way to measure in effect the return on equity, just another measure of it, and it's a way that in some ways is economically more sound than a return on equity that's based on, you know, a book value, in this case one that fluctuated dramatically due to a, due to a charge-off.

Q Okay. And would you agree that when you add the written-down equity back to the balance sheet that the ROIC values that you have are largely reflective of the same factors that cause the writedown in the first instance?

MR. SHARKEY: Can I hear that question back?

(Pending question read.)

MR. SHARKEY: I'm going to object to form. You can answer the question if you understand it.

A I am going to -- I think I can see a gist in that question, and in effect it's what I'm kind of -- it's exactly what I'm saying here which is that, you know, by adding it back, you come up with an ROE that's reflective of, you know, the fact; it's one measure of the possibility of, you know, future declines in income going forward, okay, and that's what I say here, and what that means is of course is that these projections that I'm relying on, they're just one set of projections. They're the most likely scenario, most supportable scenario coming from the company, and they have a certain level of income built in, but there is a -- there is a real risk with respect to the coal assets in particular, all assets, but the coal assets in particular, what I call I think elsewhere in the testimony asymmetric risk of future reductions in income, and so the ROIC measure captures that potential for a future decline in the income or the value of those assets in particular, and so that's why it needs to be considered along with, you know, the post writedown ROE.

Q Okay. And switching gears a little bit, and very close to being done I think, to page 21. You talk about a 50-50 debt to equity ratio for the ROE component in the distribution rate case.

A Page 21, yes, line 11.

Q Now, do you agree that the ROE component is a measure of the amount of at-risk dollars DP&L has in a rate case?

A I don't understand that question.

Q Yeah. Let me try to rephrase it. In a rate case there's two components; right? Debt and equity for the return calculation?

A Yeah, and sometimes preferred stock.

Q And would you agree that it should reflect a utility's capital structure, the weighted average cost of capital?

A It should reflect the individual utility's -- is your question that should it reflect the individual utility's capital structure at a point in time?

Q Yes.

A No.

Q Why not?

A Because it should reflect the, sort of the optimal or long run target capital structure which is approved, usually approved by the regulators.

Q If DP&L's capital structure would arise to 70 percent equity and 30 percent debt, in that instance would you still recommend using a 50-50 debt to equity ratio?

A I would if the data showed that the long-term sort of optimal capital structure was 50-50.

Q Okay. If I could just have one minute, please.

Could you quickly turn to page 2, Mr. Malinak.

A Yes. I'm there.

Q And I'm sorry if I missed this earlier, but would you agree that the net plant in service in millions on the table here should not cement those value of these plants?

A Gosh, I don't recall. Net plant in service might be a rate-based measure of some kind. I don't actually recall whether this is also the net book value on the financial statements. I don't recall.

Q Did you prepare this table?

A I did. It was prepared under my direction. It's not quite clear from the text what the date of those data is.

MR. OLIKER: And I believe that's all the questions I have for the public session. I may have questions that are confidential. Thank you, Mr. Malinak.

THE WITNESS: You're welcome.

MR. MOORE: I believe I'm next.

EXAMINATION BY COUNSEL FOR THE
OHIO CONSUMERS' COUNSEL

BY MR. MOORE:

Q Kevin Moore from the OCC. Are you ready, Mr. Malinak?

A I am.

Q Okay. As I said, my name is Kevin Moore. I represent the Ohio Consumers' Counsel. We're representing the residential energy consumers of Dayton Power and Light in this proceeding.

On page 43 you state that your financial projections are based on DP&L's dispatching model for the period of 2017 to 2023; right?

A That's what -- yes, that's correct.

Q What was the name and the model or software that was used?

A Gosh, I don't know. I don't know which one it was.

Q Okay. And do you know what type of model it was?

A I mean, yeah. My understanding is it's A PROMOD type, you know, dispatching model that, you know, that has as inputs all of the various sources of power that are in the area or in the relevant area and that they, they model, you know, where their plants fit in and how much they would run.

Q Is it a chronological model?

A I don't know for sure, but I -- I think I know the question that you're asking, and the answer is I don't know.

Q Okay. Does the dispatching model have

hourly or sub hourly price and dispatch detail?

A I do not know that level of detail either.

Q Okay. On page 44 states that you tested the reasonableness of the projections and the underlying assumptions based on a review of market data including coal futures contracts and published energy price projections. My question is, what published energy price projections did you use for this purpose?

A I believe these were -- they were some projections that were, Mr. Crusey compared his forecast to in his testimony. Again I haven't looked at that testimony in a long time, but I recall that he tested his projections against some public data, and that's -- that's what I'm referring to here.

Q But you don't know what public data he's referring to?

A As I sit here right today, I don't remember the exact projections that he was comparing his projections to.

Q Do you know what the market data is that you referred to on page 44?

A Yeah. Just broadly speaking, looking at -- I've looked at the, the revenues that DPL and, or

DP&L is earning these days and, you know, looked at the projections and, you know, the two of those things kind of matched up. You know, there wasn't -- I didn't notice a, you know, dramatic either increase or decrease that would cause me to, to think there was some sort of an issue with the underlying approach. So it would be current market data versus the projections.

Q Okay. Was there any other market data that you're referring to?

A Well, I've looked at, you know, I've looked at natural gas prices, current market data on natural gas prices and as well, broadly speaking, and, you know, but the main, the main thing I did in order to test the data that the company provided me was to, you know, look at the historical data in their financial statements and compare it to the data that they were projecting, and that includes a lot of different things, including data on current market prices for capacity and energy and the most recent market prices for those, for those items and then, you know, compared to what was being projected by the company, and so that was the test that I did. You know, I didn't want to see an unusual spike or an unusual downward spike that couldn't be explained, and I didn't see anything like that.

Q Did you look at the current market data for power prices?

A I did to the extent that it was in Mr. Crusey's testimony or in their reported 10, their SEC filings.

Q So anything outside of that you did not consult?

A Not that I recall.

Q Did you look at current market data for coal prices when you tested the reasonableness of the projections?

A Not that I recall specifically except to the extent that it was, again, in the, you know, reported in their SEC filings or in Mr. Crusey's testimony.

Q Right. Did you consult the current market price for natural gas?

A The same answer.

Q Okay.

A Although I think for natural gas I did, I did take a look at some Value Line data on, on natural gas and natural gas production entities, but again, that was actually a couple months, three months ago. So with respect to natural gas I looked at some Value Line information.

Q Did you look at the current market price for emissions, emissions prices?

A Not specifically, no.

Q When you compared the company's price projection to a published energy price projection, were any of these projections different from each other?

A And by "price" there, which price are you referring to specifically?

Q I guess I'm -- you stated on page 44 you tested the reasonableness of the projections.

A So energy price?

Q -- against -- excuse me. You tested the reasonableness of the projections against published energy price projections. I'm wondering, were any of those price projections different?

A I think Mr. Crusey had some of these sorts of comparisons in his testimony, and there had to be at least some differences, but I didn't get the sense that they were large differences. Again, it's been a while since I looked at that.

Q Given two price projections that are different, how do you determine that one or the other is reasonable?

A You look at the underlying approach and assumptions that the project, projection or the projector is relying on. You compare -- you can compare it to historical data. You can look at the underlying sort of thesis for the projections, and, and, you know, make a determination as to whether there is sort of a sound basis for the projection, and, you know, in your opinion as a finance person or an economist in this area.

Q Okay. Would you say that that's a range of reasonableness from one price projection to another?

A Yeah. I mean I would say that there is a range of potentially reasonable price forecasts. We are talking about a seven-year forecast and, you know, reasonable and sensible people could look at different factors and come to different opinions about the future path of prices, and both of those could be, you know, within the range of a reasonable forecast, and as long as there's a sound basis and, you know, there's not some sort of, you know, unusual and unexplained, you know, basis for a particular projection.

Q Okay. So for hypothetically if one projection had the AD Hub power price at $34 a megawatt hour in 2023, another projection had that price at $55 a megawatt hour, can both of those projections be reasonable in your opinion?

A I'd have to take a look at, you know, the underlying bases for each of those, but, you know, you're talking, what, six, seven years out? Yeah. Both of those, both of those could be within the range of reasonableness.

Q Okay. And testing for reasonableness did you consider the US Energy Information Administration's projection of energy prices?

A Okay. Again, it's been a long time since I looked at Mr. Crusey. That may have been one of the projections that he compared his projections to. It would be a logical one, but I just don't recall.

Q So you -- I'm sorry. To interrupt you there. So you would consider the Energy Information Administration's projections to be reasonable or reasonably accurate?

A You know, I'd have to review their underlying assumptions, but they are a, you know, a well-known source that, you know, one could compare one's own thoughts to and, you know, try to provide a check on whatever it is you believe as an analyst with respect to future prices.

Q Is it a source that you use in your everyday business to check for energy price projections?

A I've used a variety of sources, and that's one of them.

Q Okay. Did you review the amount of generation by DP&L's coal-fired power plants according to the dispatch model?

A I believe that's included in the model that I relied on. I believe that quantity of generation is relied on, so I would have reviewed it in that context.

Q Do you know if the dispatch model had been running at fairly high load factors or low or in between?

A You know, I think it's -- again, it's been a while since I looked at that level of detail in my model. I don't actually recall. What I do recall is believing that what they did was reasonable given the price projections that they were relying on and the costs of, and the coal costs and heat rates and that sort of thing.

Q Okay. Switching gears a little bit. I'd like to talk to you about credit ratings. Would you agree that a credit rating does not reflect other types of risk such as market or liquidity risks which also may affect the value of a security?

A What type of security?

Q Would that change your answer?

A It could.

Q Why would it change your answer?

A Well, if you -- if you were saying that, that the security at issue is a debt security, the credit rating is going to be, you know, a significant factor in the pricing of that security. It's going to be a more significant factor than if you would tell me you were interested in pricing an equity security and you were looking at the issuer rating of that company, for example.

So, so that's why I was asking about it, but I think that, you know, credit ratings, you know, will, you know incorporate some of, some market and liquidity factors, implicitly at least.

Q Okay. Does a credit rating consider the price at which an investor purchased a security?

A I'm not sure I understand that question.

Q What about it don't you understand? How can I make it clearer?

A Can you repeat the question?

Q Sure. The question was, does a credit rating consider the price at which an investor purchased a security?

A Okay. First of all, the credit rating that we're talking about in this company is not related to a security. It's related to a company.

Q Mm-hmm.

A So I don't know how to --

Q I'm just --

A Yeah. Go ahead.

Q I'm sorry to interrupt you. Hypothetically speaking --

A I'm sorry. Is there a question pending?

Q Yeah. I'm looking through my notes. Hold on a minute.

Mr. Malinak, have you quantified the impact to a residential consumer's typical utility bill of the DMR being approved as proposed?

A I have not, no.

Q Have you quantified the impact to a residential consumer's typical utility bill of the DMR being denied?

A I have not done that specific calculation either.

Q I think we talked earlier about DP&L and AES, Ohio Generation's pending application at the Federal Energy Regulatory Commission to divest its generation assets, and FERC docket number ED 16-173.

Are you familiar with that?
A I'm actually not familiar with that particular application.
Q Are you aware that it is pending?
A I am aware as I sit here that there's potentially an application pending. I'm not actually specifically aware that it's pending, but I am aware of a FERC application.
Q So you don't know what the application is requesting?
A I do not know what it is --
Q Is that correct?
A I do not know what it is specifically requesting.
Q Okay. So then you haven't quantified the impact to a residential consumer's typical utility bill of that, that specific application being approved; is that correct?
A That is correct.
Q I think you testified or testified, you said earlier that, that the DIR revenues were not included in your projections; is that correct?
A That's my understanding, yes.
Q And also that if the DIR revenues were included in your projections, that could impact

DP&L's financial outlook; is that right? Or financial condition, excuse me.

A To the extent that including the rider and if it were, and assuming it were approved and including it in the numbers would change the important financial metrics that I rely on, it could impact my analysis, yes.

Q And that would impact your analysis because it would increase revenues to Dayton Power and Light; is that correct?

A Well, it's hard to say. I mean, I haven't analyzed that rider, and I don't understand, I don't know what the net impact would be on the profits and on the, you know, the cash flows and so forth of the company. I just don't know what it would be.

Q Would an increase to DP&L's revenues help its financial condition?

A Not necessarily.

Q Why not?

A Well, it would depend on how profitable those revenues were and, you know, how it impacted things like, you know, EBITDA and, you know, debt to EBITDA ratios, and I don't know what sort of capital expenditures might be required under that rider or any of those other sort of important factors that would kind of flow through the whole analysis. So without knowing that it's hard to say what the impact would be.

Q So is there a certain threshold of revenue or income that would need to be reached before it would help DP&L's financial condition?

A Yeah. More income. It would be focused in on income. I mean it's not -- just adding revenue doesn't necessarily help the company financially.

Q Right. Let me rephrase. If DP&L increased its income, that would help its financial condition; is that right?

A Yeah. If it increased its EBITDA or cash flow before working capital or, you know, retained cash flow, if all those went up and debt, you know, stayed the same and so forth, if those, you know, ratios improved, you know, then, and those ratios were critical for financial integrity, then their financial integrity would improve as well.

Q Can you think of any ways that DP&L could increase its income other than the DMR?

A Beyond -- well, I mean if there were actions that DP&L is not currently taking that, you know, could enhance efficiency, you know, in a manner that could increase their income maybe in the short term that they're not doing, and I have no reason to believe that they're not already doing everything they can to increase their income, then, you know, they could try those different things. I don't have any specific ideas for anything they can be doing because I haven't seen any evidence that they aren't already trying to, you know, maximize their income.

Q Okay. You say you don't have any reason to believe that they're not. Does that mean that you have not analyzed whether DP&L is or is not availing itself of different ways to increase its income other than the DMR?

A Yeah. I've not made, you know, a specific analysis sort of assessment of where they might be able to save additional costs or something. I mean what I have done is, you know, in the course of my work on this case including going back to February, we've looked at -- I took a look at O and M at other companies as well and things like that and came away thinking that there wasn't a clear, you know, that their O and M levels, for example, are not clearly higher than you would, than other companies. So I did a -- it wasn't sort of a systematic analysis. It was just a check, and that was my recollection.

MR. MOORE: Okay. I have no further

questions. Thank you, Mr. Malinak.

THE WITNESS: You're welcome.

MR. SHARKEY: Any other questions from anybody on the public record? Hearing none, let's go off the record for just a moment.

(The public session of the deposition of R. JEFFREY MALINAK was concluded at 3:27 p.m.)

CERTIFICATE OF SHORTHAND REPORTER-NOTARY PUBLIC

I, Janet A. Hamilton, Registered Diplomate Reporter and Notary Public before whom the foregoing deposition was taken, do hereby certify that the foregoing transcript is a true and correct record of the testimony given; that said testimony was taken by me stenographically and thereafter reduced to typewriting under my direction; that review was not requested; and that I am neither counsel for, related to, nor employed by any of the parties to this case and have no interest, financial or otherwise, in its outcome.

IN WITNESS WHEREOF, I have hereunto set my hand this 4th day of January, 2016.

Janet A. Hamilton

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Registered Diplomate Reporter

My commission expires

March 14, 2018.

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