

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

Tuesday, December 20, 2016 - 9:08 a.m.

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Pages: 1 - 168

Reported by: Janet A. Hamilton, RDR

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

3
4
5 Analysis Group, Inc.
6 800 17th Street, NW
7 Suite 400
8 Washington, DC 20005
9 (202) 785-6300

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14
15 Pursuant to Notice, before Janet A. Hamilton,
16 Registered Diplomate Reporter and Notary Public in
17 and for the District of Columbia.

1 A P P E A R A N C E S

2 ON BEHALF OF DAYTON POWER & LIGHT:

3 JEFFREY S. SHARKEY, ESQUIRE

4 FARUKI IRELAND & COX P.L.L.

5 201 East Fifth Street

6 Suite 1420

7 Cincinnati, Ohio 45202

8 (513) 632-0300

9

10 ON BEHALF OF THE SIERRA CLUB:

11 CHRIS BZDOK, ESQUIRE

12 OLSON, BZDOK & HOWARD, P.C.

13 420 E. Front Street

14 Traverse City, Michigan 49686

15 (231) 946-0044

16 (Present via telephone)

17

18 ON BEHALF OF INDUSTRIAL ENERGY USERS-OHIO:

19 FRANK P. DARR, ESQUIRE

20 MATTHEW R. PRITCHARD, ESQUIRE

21 McNEES WALLACE & NURICK, LLC

22 21 East State Street

23 17th Floor

24 Columbus, Ohio 43215

25 (Present via telephone)

A P P E A R A N C E S C O N T I N U E D

ON BEHALF OF HONDA AND CITY OF DAYTON:

N. TREVOR ALEXANDER, ESQUIRE
CALFEE, HALTER & GRISWOLD LLP
1200 Huntington Center
41 South High Street
Columbus, Ohio 43215-3465
(614) 621-7774
(Present via telephone)

ON BEHALF OF OHIO MANUFACTURERS ASSOCIATION
ENERGY GROUP:

JAMES D. PERKO, JR., ESQUIRE
KIMBERLY W. BOJKO, ESQUIRE

ON BEHALF OF THE KROGER COMPANY:

ANGELA PAUL WHITFIELD, ESQUIRE
CARPENTER LIPPS & LELAND LLP
280 North High Street
Suite 1300
Columbus, Ohio 43215
(614) 365-4100
(Present via telephone)

A P P E A R A N C E S C O N T I N U E D

ON BEHALF OF THE OHIO CONSUMERS' COUNSEL:

KEVIN F. MOORE, ESQUIRE

ASSISTANT CONSUMERS' COUNSEL

OFFICE OF THE OHIO CONSUMERS' COUNSEL

10 West Broad Street

Suite 1800

Columbus, Ohio 43215-3485

(614) 387-2965

(Present via telephone)

ON BEHALF OF IGS ENERGY:

JOSEPH OLIKER, ESQUIRE

SENIOR REGULATORY COUNSEL

IGS Energy

6100 Emerald Parkway

Dublin, Ohio 43016

(614) 659-5069

(Present via telephone)

ALSO PRESENT (via telephone):

KEVIN MURRAY

TAMMY TURKENTON, PUC of Ohio

HISHAM CHOUEIKI, PUC of Ohio

DON HOWARD, Commission staff

JOE BUCKLEY, Commission staff

C O N T E N T S

EXAMINATION OF R. JEFFREY MALINAK	PAGE
By Mr. Bzdok	7
By Mr. Darr	58
By Mr. Alexander	93
By Mr. Oliker	137
By Mr. Moore	152

E X H I B I T S

(Attached to the transcript)

MALINAK DEPOSITION

Exhibit 2 Credit Agreement dated as of
August 24, 2016, among The Dayton
Power and Light Company and
JPMorgan Chase Bank, N.A.

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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.

1 Q Okay. And you've had your deposition taken
2 before; correct?

3 A Yes, I have.

4 Q Have you had it taken before in a PUCO
5 proceeding?

6 A Yes.

7 Q Was that the ESP II proceeding?

8 A Yes.

9 Q Any other PUCO proceeding?

10 A No. That's the only one.

11 Q What was the scope of your assignment in
12 this case?

13 A Well, I was asked to do two things. I was
14 asked to evaluate the financial condition and
15 financial integrity of DPL and DP&L under two
16 different sets of assumptions regarding the approval
17 of the DMR, the distribution modernization rider,
18 and also to evaluate whether the ESP with the
19 proposed DMR is more favorable in the aggregate than
20 an MRO, than the results that would prevail under an
21 MRO.

22 Q Anything else?

23 A No. That's -- that's the assignment that I
24 was given.

25 Q Who provided you with this assignment?

1 A Counsel for DPL, DP&L.

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

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

24 Q Okay. I want to follow up on a little bit
25 of what you said just now. So for convenience

1 purposes and so the transcript is clear, are you
2 okay with referring to the DPL holding company as
3 DPL Inc.?

4 A Yes.

5 Q And the regulated utility as DP&L?

6 A Yes.

7 Q And the two together as the companies?

8 A Yes.

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

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

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

25 A Sure. They were balance sheet, income

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

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

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

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

23 A Correct.

24 Q And included -- you don't have access -- you
25 don't have in front of you or have access to it in

1 front of you, do you?

2 A I'm afraid I don't.

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

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

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

11 A Yes. I did say that.

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

13 A Well, my focus with respect to that in
14 particular was I use the term operations, but it was
15 more in the nature of financial operations, and it
16 was related to the, what their plans were with
17 respect to their debt that was coming due over time.
18 That was my primary focus, but there were some
19 general conversations about the plans for the, you
20 know, operation and maintenance of their
21 transmission and distribution, you know, assets and
22 capex plans and also for the coal generating assets
23 as well. So, but they were at a very sort of
24 general level talking about, you know, what, what
25 the company's plans were for operating them and, you

1 know, the result was they were planning to do, you
2 know, to continue to operate those plants as they
3 had in the past or at least the assets, they were
4 expecting them to be operating them in a similar
5 fashion.

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

12 A Those were just conversations.

13 Q -- matters?

14 A Yeah. They were just conversations.

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

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

22 Q Anything else?

23 A There were, you know, discussions and we may
24 have seen -- I think they were all -- all the
25 projections of things like energy prices and so

1 forth I think were all contained in the spreadsheets
2 that we received, so I don't think there were
3 separate documents related to that. So that's what
4 I remember receiving from the company. I don't know
5 that there were any other specific documents.

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

8 A I do.

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

19 A Yes.

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

22 A Yes.

23 Q And in the notes and sources you have
24 four -- so I'm looking at RJM1 at this point, and
25 you've got line items there for, among other things,

1 interest coverage, cash flow over debt, retained
2 cash flow over debt and debt over capital. Do you
3 see that?

4 A I do.

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

9 A That's correct, on this exhibit.

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

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

17 Q Okay.

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

22 Q Yep.

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

1 Q Yeah.

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

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

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

25 Q Any other adjustments that you or your team

1 made to the data you obtained from the companies'
2 spreadsheets?

3 A I am not aware of any.

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

7 A After they provided me the spreadsheets?

8 Q Before or after.

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

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

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

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

24 A Not that I recall.

25 Q How about prior work for the, for counsel

1 for DPL, DP&L?

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

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

8 A Yes.

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

14 A Yes, numerous matters.

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

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

25 I remember one case that sticks in my mind

1 was a litigation matter involving Florida Power and
2 Light and thermal electron which involved a
3 co-generation facility in which we were -- I was
4 modeling the power plant economics for that case.

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

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

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

19 A Yes.

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

25 A Yes.

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

4 A Yes.

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

9 A I believe I say that, and vice versa.

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

16 A Yes, it is generally correct.

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

19 A Yes.

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

24 A Yes.

25 Q You indicate that you focused on the four

1 financial metrics that you considered in your
2 testimony; correct?

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

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

9 A Yes. That's generally correct.

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

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

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

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

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

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

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

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

25 A That is the primary example. I would say

1 that in general in reaching my conclusions I
2 considered the fact that the ratings of DPL and DPL
3 Inc. and DP&L were related to one another. I
4 considered that generally in reaching my
5 conclusions.

6 Q What does that mean, you considered it
7 generally?

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

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

23 A I would say that a little differently. I
24 would say I calculate what's called a weighted
25 average, a rating based on the weights that Moody's

1 places on these, these different criteria and the
2 criteria themselves, and then I calculated an
3 indicated rating based on the sort of quantitative
4 notching approach that I observed that Moody's uses.
5 So I don't know what you mean by implied rating.

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

10 A That's one aspect of the notching.

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

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

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

19 A Yes, yes, and that was what I was trying to
20 describe earlier where, you know, these quantitative
21 exhibits that I have are an input to my opinion, and
22 then the final opinion on ratings I consider other
23 criteria or other methodological elements that
24 Moody's applies that I would also lump under the
25 rubric of notching, and it's what I described

1 earlier which is that, you know, even if your
2 quantitative method is indicating a rating, that,
3 you know, indicating a particular rating, in this
4 case in particular DP&L, that I take into
5 consideration what DPL Inc.'s rating is, and those
6 two ratings should not be dramatically different.

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

10 A Correct.

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

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

24 Q And so that relationship that you just
25 described in which DPL Inc. is 95 percent comprised

1 of DP&L was the primary consideration in terms of a
2 basis for your opinion that financial strain on --
3 financial, negative financial conditions for DPL
4 Inc. would place a financial strain on DP&L as well;
5 correct?

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

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

23 A No.

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

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

5 A Yes.

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

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

19 I'm sorry, I don't specifically see this
20 language to the effect that they can't -- that
21 they're limited to take on any additional
22 indebtedness. I don't see it from this specific
23 document, but I do recall being told that by the
24 client and that we also attempted to verify it
25 ourselves and we were able to, but this is several

1 pages long. I'd have to spend some time reading it
2 to find it.

3 Q Okay.

4 A It's a legal document.

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

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

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

21 A I understand that that is correct.

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

24 A Because that is something that I learned or
25 understood from the company. That is not something

1 that I have a document to support.

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

6 A Actually I think I --

7 Q Fair?

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

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

15 A I'm referring to both.

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

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

1 Q And "they" in your answer is DP&L?

2 A Yes, it is.

3 Q So to the extent you have an opinion about
4 the cause of the unusual covenant for DP&L, is it
5 related to the financial condition of DP&L itself or
6 is it related to the strain being put on DP&L by DPL
7 Inc.?

8 A Well, I -- it's related to the financial
9 condition of the companies or combined entities,
10 because, as we talked about earlier and as I say in
11 my testimony, that the two entities are joined at
12 the hip, if you will, and so the lenders to DP&L
13 will consider the relationship to DPL Inc. in their,
14 in their determination, along with a variety of
15 other factors related to the income and profits and
16 cash flows of DP&L which includes the performance of
17 their transmission and distribution assets, their
18 generation assets, et cetera.

19 Q Have you endeavored to determine if there
20 are any ways to mitigate the strain being placed on
21 DP&L by DPL Inc. other than a request for rate payer
22 financial support other than or in addition to?

23 A Well, first of all, I will say just in your
24 question that you used the term "the strain" putting
25 on DPL Inc., but there is, you know, like I said,

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

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

16 A Right, right, and --

17 Q -- virtually --

18 A Go ahead. I'm sorry.

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

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

25 Q -- to mitigate that financial strain you've

1 described from DPL Inc. on to DP&L?

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

6 Q What are your thoughts?

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

11 Q Please elaborate.

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

21 Q Why not?

22 A Because there's a problem in finance called
23 debt overhang, referred to as debt overhang, and,
24 but which would make it so that it would not be
25 economic for AES to do that or for another entity,

1 but I also considered the fact that AES is in effect
2 already making contributions to -- to the -- to DPL
3 Inc. as well.

4 Q What kind of conditions are those?

5 A The tax forgiveness.

6 Q Anything else?

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

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

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

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

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

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

20 A I do.

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

24 A Well, as I understand it, the projections
25 provided by the company assume that their current

1 rate case is, is approved and so a reduction would
2 be well if it's not approved or if some other, some
3 other lower rates were approved, than they've
4 assumed. I think they've assumed that their rates
5 are accepted, including their rate of return and
6 everything else, so...

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

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

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

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

16 Q Can you expand on that?

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

19 (The reporter read from the record as
20 requested.)

21 MR. OLIKER: Thank you.

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

24 A Well, the firm recently recognized a large
25 impairment charge on its coal generation assets, and

1 the company I'm referring to is DP&L, although DPL
2 Inc. had I think a good will writeoff which at the
3 same time, but DP&L took a charge-off for that, and
4 so I used the word "further" to refer to the
5 possibility of additional declines beyond that
6 recently, those that were recently recognized.

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

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

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

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

1 assets.

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

9 A Combination of the two.

10 Q What information are you relying on from the
11 company?

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

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

25 A I mean there's the typical things that one

1 would do, you know, as an owner of coal generation
2 or any other generation assets, you know, and
3 attempting to procure coal at the cheapest possible
4 price, you know, operating the plant, you know, to
5 the extent that you have, you know, that you're the
6 one operating the plant anyway. Certainly working
7 with your partners, in this case DP&L, you know,
8 owns just a portion of a number of these coal
9 plants, I believe they operate one or two and have
10 operating agreements with other partners for other
11 of the plants, but just attempting to be as
12 efficient as possible in the operation of the plant.
13 There's also various hedging activities one can
14 engage in to try to enhance ROE.

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

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

24 A Yes.

25 Q There's a question at the top and an answer

1 in which you make a statement starting on line 4
2 that in a sample of 36 peer utility holding
3 companies only three of them have credit ratings
4 below investment grade, and one of those is DPL;
5 correct?

6 A Correct.

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

9 A Correct.

10 Q And who are the other two?

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

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

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

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

1 Generally fair?

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

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

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

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

13 (Pending question read.)

14 A Yes. The ESP II proceeding.

15 Q Any others?

16 A Not that I can recall specifically.

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

18 (A recess was taken.)

19 BY MR. BZDOK:

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

22 A Okay.

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

1 investment grade credit rating. Do you see that?

2 A Yes.

3 Q You have a statement at page, page 17, line
4 5 through 8 about firms adjusting their behavior
5 when they're near the cutoff for investment grade
6 and firms near that cutoff having lower leverage
7 than otherwise expected. Do you see that?

8 A Yes.

9 Q Just for clarification, that's a general
10 statement about companies in general, not specific
11 to utilities?

12 A Yes. The literature that, articles that
13 underlie these, these conclusions analyze, you know,
14 a fairly large sample of firms. They may include
15 utilities. I just -- I haven't gone back to -- or I
16 don't remember if they do or they don't -- but, but
17 this is generally true for any company.

18 Q You mentioned further below on that page
19 starting with line 14 that of the 45 rated
20 integrated companies DP&L is one of just three firms
21 with the lowest investment grade rating. Do you see
22 that?

23 A Yes, I see that.

24 Q And who are the other two --

25 A Okay.

1 Q -- companies?

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

5 Q Take your time.

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

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

13 A I do.

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

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

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

25 Q Sure. What are the plans you're referring

1 to? Can you describe them generally?

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

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

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

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

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

9 A What exactly do you mean by "protective"?

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

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

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

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

23 A Okay. I don't think it would have a
24 material impact on DP&L because, as I described
25 earlier, the way that the rating agencies and also

1 just sort of economically approach financial
2 condition and financial integrity analysis for these
3 related entities is that DP&L's debt rating can't be
4 dramatically different from DPL Inc.'s because of
5 their close relationship, and so DPL Inc. is still
6 facing the same underlying cash flows, whether
7 there's separation or not. So without the DMR DPL
8 Inc. would be immediately downgraded to, you know,
9 single B, and DP&L would be effectively dragged
10 along with it, if you will, in the sense that, you
11 know, the two ratings are related to one another
12 and, you know, DPL -- or Moody's has a cap of like
13 three notches difference between, you know, a
14 holding company and, you know, a subsidiary like
15 DP&L, so yet you still have the issues.

16 Q Same question with the DMR.

17 A Okay. With the DMR you would still have --
18 you'd have effectively the same set of results that
19 I have in my testimony because the cash flows to the
20 companies would be the same as in my, as in my
21 scenario, but I wanted -- I asked you to clarify on
22 the DMR just because I wanted to be thinking about
23 it, but as I think about it you still have the same
24 cash flows coming into the system that you have, you
25 know, both ways, and so you will have DP&L's rating

1 will be superior to DPL Inc.'s, but without the DMR
2 both entities will have lower debt ratings.

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

8 A You mean -- do you mean sold?

9 Q Yes.

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

24 Q Page 25 of your direct testimony.

25 A Yes.

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

9 A DP&L or DPL?

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

17 A Yes, that's correct.

18 Q And then you indicate that the remaining --

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

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

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

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

24 Q Just so that I understand your answer just
25 now, are you indicating that the company would have

1 discretion to drop capital and O and M expenditures
2 below the point needed for safe and reliable service
3 in order to service debt that's DPL Inc.'s?

4 A Are you asking me as a legal matter?

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

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

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

1 and quality generally.

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

7 A I do.

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

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

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

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

11 A Yes.

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

16 A That is correct.

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

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

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

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

1 Q Figure 5?

2 A Pardon me?

3 Q Same question about figure 5.

4 A The same is true of both figures.

5 Q Have you made a calculation prediction or
6 evaluation of where DP&L would fall on either of
7 these metrics with the DMR?

8 A I have not made such a projection, but
9 there's implicitly, if they have the DMR, I would
10 expect their capex per customer megawatt hour to be
11 more likely to be higher. I would expect it to
12 potentially be lower without the DMR all else equal.

13 Q But understanding as -- go ahead.

14 A I just said all else equal.

15 Q It's hard over the phone sometimes to tell,
16 you know, when someone's done answering. It's a
17 little easier in person, so I apologize if I jump
18 the gun on occasion.

19 A You seem to be doing very well.

20 Q Do you have an understanding as to whether
21 or not the companies are proposing to use any DMR
22 funds for the purpose of making capital expenditures
23 on anything?

24 A Do I have -- my understanding is that the
25 DMR, the proceeds from the DMR will generally be set

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

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

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

23 A It's -- that's close to right. Okay. I
24 would say that the odds are that -- the odds are
25 better that there would be an improvement because if

1 they don't get the DMR, then there is a probability
2 that they will have to, you know, if they
3 encountered more significant financial distress that
4 they would need to reduce O and M and capex.

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

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

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

24 So, you know, there's just sort of a variety
25 of factors, the confluence of which has led to there

1 being this level of financial distress that they're
2 experiencing.

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

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

14 Q Let's break that down.

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

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

19 (The Reporter read from the record as
20 requested.)

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

23 A Yes.

24 Q One of the five is the debt that was pushed
25 down as a result of the transaction, the

1 acquisition; right?

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

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

6 A Correct.

7 Q What are the other two?

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

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

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

21 Q Got it. Okay.

22 A And then there is -- there are other
23 elements, too, that can come into play, and it's
24 basically the competitiveness and the competitive
25 dynamics of the generation market that have an

1 impact on capacity prices. So to the extent that
2 those aren't higher, that also has an impact on the
3 economics of DP&L and DPL Inc.

4 Q Any others?

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

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

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

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

25 A I haven't looked at -- I haven't done an

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

8 Q What do you mean by that?

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

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

16 A Not as I sit here today.

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

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

23 EXAMINATION BY COUNSEL FOR
24 INDUSTRIAL ENERGY USERS-OHIO
25 BY MR. DARR:

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

9 A Okay.

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

13 A Okay.

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

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

23 Q Line 13?

24 A Yes.

25 Q Yes what?

1 A Yes, both entities.

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

4 A Yes.

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

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

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

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

24 Q So in this regard exposure to cash flows is
25 different than what would typically be called a

1 wires company, one that has cash flows that are
2 exclusively related to transmission and
3 distribution?

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

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

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

17 Q What do you recall?

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

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

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

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

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

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

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

20 Q And what is your understanding of that
21 particular commitment?

22 A Without -- I don't have the language, exact
23 language in front of me, but the way I recall it
24 reading was that customers of DP&L would not be, and
25 again I could be getting the precise words wrong,

1 but required to pay any of the direct costs of the
2 merger or any -- I think it said any -- I don't
3 remember -- acquisition premium.

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

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

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

14 A Yes.

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

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

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

24 A Yeah. I had -- there was another version of
25 the model that was prepared for that matter that we

1 had, when I filed my testimony in that matter. So
2 that one for sure, and then in terms of a financial
3 model in this case we only got one model in this
4 case. There may have been -- there may have been
5 sort of corrections to, like, line items and that
6 kind of thing, but I frankly don't recall.

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

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

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

22 A Yeah, and the word "different," I would -- I
23 would say it's the same model, okay, and like the
24 lion's share of the inputs are exactly the same in
25 both of these, but there are differences with

1 respect to assumptions, underlying assumptions in
2 each one. So the model is very -- it's maybe 98
3 percent the same. I mean it's been largely the same
4 but with different inputs.

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

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

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

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

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

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

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

8 Q What was the purpose for your reviewing that
9 testimony?

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

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

15 A I'm --

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

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

20 Q Did you compare it to anything?

21 A I -- what Mr. Crusey's testimony, as I
22 recall, and it's actually been a bit since I've
23 looked at it, but I recall that he actually compared
24 his projections to some external sources of data,
25 other projections, if you will, and I came away

1 feeling that he had a sound basis for his opinions.

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

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

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

12 A I don't recall.

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

15 A Yes, I believe so.

16 Q Who was that?

17 A Michael Cliff.

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

20 A Not that I recall.

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

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

1 Q Yes.

2 A Not specifically.

3 Q Can you give me an idea how long before you
4 filed your testimony you received that information?

5 A I really -- I don't remember. It would have
6 been -- I don't remember specifically.

7 Q Going back to the testimony that you filed
8 in February, you relied on what you described a few
9 minutes ago as a model that was very similar to the
10 one that you relied upon when you filed your
11 testimony in October; correct?

12 A Correct.

13 Q And that prior model was substantially
14 similar with the exception of the generation-related
15 inputs; is that correct?

16 A I would say an exception that I recalled is
17 that was the generation, projected generation
18 revenues in particular.

19 Q And can you recall any other differences at
20 this time?

21 A Not specifically.

22 Q Generally?

23 A Well, I have some --

24 Q Do you recall --

25 A Go ahead. I'm sorry.

1 Q Generally can you recall anything?

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

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

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

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

19 A That was my understanding, yes.

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

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

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

4 A I believe that I did.

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

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

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

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

1 Q Yes.

2 A I believe I --

3 Q That's a better way of -- my question.

4 A I believe he -- I believe he set those forth
5 in his testimony which I reviewed.

6 Q Did you test any of his assumptions?

7 A I wouldn't say that I tested them. I, you
8 know, I read them and evaluated them to make sure
9 that there was a reasonable and sound basis for him
10 to reach the conclusions that he did.

11 Q Did anyone on your team assessment to test
12 those assumptions?

13 A Beyond what I just said I don't recall
14 anyone on my team doing it.

15 By the way, Mr. Darr, when you get to a
16 point where you could have just a super short break,
17 I would appreciate it. I've been unfortunately
18 drinking a little bit of water here, so...

19 Q I understand. Why don't we take -- can we
20 take ten minutes? Come back at 11:30?

21 MR. SHARKEY: Yes. That works.

22 MR. DARR: Very good. And, Jeff, once
23 we're off the record let's talk briefly about when
24 you want to break for lunch.

25 MR. SHARKEY: Go off the record.

1 (A recess was taken.)

2 BY MR. DARR:

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

9 A As an input to my analysis?

10 Q Yes, sir.

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

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

24 A I don't know if I would put it that way. I
25 would say that they are, they are lower than, than

1 they have been in the past and during points of time
2 in the past. I just haven't, you know, gone back
3 more years than maybe 10 or 15 years back from now.
4 So they are low relative to certain rates in the
5 past, but they might not be low historically.

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

8 A Yes.

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

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

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

22 A I don't recall.

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

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

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

10 A I did not.

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

13 A I am there.

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

16 A Yep.

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

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

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

1 Bartlett; is that correct?

2 A Well, before that I had a short stint at
3 Peterson and Company, and then I moved within a
4 year, year and a half to Putnam Hayes.

5 Q In that work at Putnam Hayes you worked as
6 an analyst; is that correct?

7 A Among other things. I started out as an
8 associate, and then I was eventually promoted to a
9 partner, and then in their system I was partner
10 level 2 when I left.

11 Q So does Putnam, Hayes & Bartlett prepare
12 credit ratings?

13 A You mean in the context of say like a credit
14 rating agency like Moody's or Fitch?

15 Q Yes, sir.

16 A No.

17 Q In your work at Putnam Hayes did you prepare
18 any credit rating that would be similar to what is
19 prepared by Standard & Poors or Moody's or one of
20 the other agencies?

21 A I worked on models to predict and analyze
22 credit ratings, but they weren't published, if you
23 will. We weren't retained by a company to give them
24 a rating. It was in connection with litigation
25 matters.

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

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

13 Q That setting would be in context with
14 litigation?

15 A Correct.

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

19 A Oh, okay. You know, for example, one matter
20 I can remember was a firm that went bankrupt, and
21 there was an allegation that it, that it effectively
22 knew it was -- it didn't disclose its financial
23 condition timely enough, was an allegation, and so
24 the question that was being asked of the experts was
25 whether, was when its credit position, you know,

1 became dire, and so, you know, there were
2 disagreements between the sides as to when that
3 information, when that was known and knowable or
4 knowable, and so we were looking at, you know,
5 financial metrics for that entity. So that would be
6 an example, but that was obviously not -- yeah. Go
7 ahead.

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

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

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

24 A My past work on financial condition and
25 financial integrity is actually -- we've been asked

1 to do both of those things before.

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

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

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

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

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

23 A Again, this is abstracting from the work we
24 did on the prior, on the ESP II case which involved
25 a fair amount of this type of analysis. So other

1 than that, we did a case, the biggest case I
2 remember where we addressed these issues. There
3 were several, but the biggest one was actually not a
4 litigation matter. It was a white paper that we
5 prepared for, that was commissioned by Fannie Mae
6 back in 2003 before they took on all the sub prime
7 exposure, and that case the focus was primarily on
8 estimating the default probabilities and the loss
9 given defaults of various financial institutions.

10 Q Talking about banks?

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

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

15 A Not that I recall specifically.

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

19 A Again, not that I recall specifically.

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

23 A I don't specifically, no.

24 Q Do you know whether the timing of that case
25 was, the timing of the filing of that case was

1 discretionary with Dayton Power and Light or was it
2 mandatory?

3 A I don't actually know that.

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

6 A Okay. Got it.

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

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

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

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

18 A Yeah. DPL Inc. is a holding company.

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

22 A It owns some, an interest in some peaking
23 units through I think it's Ohio Generating, Ohio
24 Generation, and then there's a captive insurance
25 company MBIC, and then there's another small sub,

1 MVLT, Miami Valley Lighting. There may be a couple
2 of other pieces, small pieces, too.

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

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

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

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

13 A Yes, that's my understanding.

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

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

18 Q What is your understanding of the structure
19 of AES?

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

1 Q Do you have any understanding of the
2 relative proportion of the DPL component to the
3 total assets of AES?

4 A Just to ask, just ask to clarify, are you
5 asking how large DPL Inc. is or how large a part of
6 the assets of AES they are?

7 Q Go ahead and answer that question.

8 A Okay. I don't know.

9 Q Are you at all familiar with the
10 organizational structure of AES?

11 A I am not familiar with it.

12 Q Is it fair to say that you did not consider
13 AES's organizational structure in terms of your
14 analysis that you prepared for this case?

15 A Not specifically. I mean I did consider the
16 fact that DPL Inc. was owned by AES.

17 Q How did that factor into your analysis?

18 A It really didn't.

19 Q In your analysis of the revenue streams
20 available to DP&L and DPL Inc. did you consider what
21 the revenue streams of AES, Ohio Generation and
22 Miami Valley Lighting?

23 A Did you say AES?

24 Q No. AES, Ohio Generation is what I said.
25 Ohio Generation unit I think you referred to it as.

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

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

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

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

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

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

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

13 Q Okay. I just want to make sure that we're
14 all working from the same script. The Moody's
15 investors document that you relied on for regulated
16 utilities was the one that was published on
17 December, has a publication date of December 23rd,
18 2013; correct?

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

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

1 regulated. Okay. December 23rd, 2013? Yes.

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

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

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

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

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

17 A Yes, yes, I believe we did.

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

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

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

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

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

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

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

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

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

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

25 Q Well, maybe I could speed this up. This is

1 the page that refers to the rating of the various
2 factors.

3 A Oh, okay. Yep.

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

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

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

15 A We're talking about page 38 now?

16 Q Yes, sir.

17 A Yeah. So we -- yeah. We relied on the
18 ranges of -- yeah. There's two things on this page.
19 One is what's called the sub factor weighting, and
20 then we also then used the -- this is my
21 understanding of where we used, of where we got our
22 ranges of those ratios and where the different
23 ratings fall, you know, relative to those ranges. I
24 have an exhibit in my report which is I believe
25 RJM-13 -- okay, RJM-13 -- which the page number's

1 not in the notes, but I think this is where we got
2 it. There's a series -- this may -- it may not be,
3 but I think it is likely where we got some of these
4 ranges.

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

7 (A discussion was held off the record.)

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

10 BY MR. DARR:

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

13 A Okay.

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

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

22 Q And when you use the term financial
23 integrity in this context, that is in regards to an
24 MRO, are you applying to it the same two criteria
25 that you used in your analysis at pages 15 and 20,

1 that is that you refer to financial integrity as
2 measured by return on equity and maintenance of
3 investment grade credit rating?

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

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

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

15 Q Sure.

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

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

22 A Yes, that's correct.

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

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

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

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

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

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

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

24 A Yes, in this case.

25 Q You identified two of the several riders

1 that Dayton Power and Light has requested in this
2 case. Did you look at all of the requested riders
3 to determine what cost they were seeking to recover?

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

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

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

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

23 A So there's two parts to that question. One
24 is did I identify them, and another one is did I
25 quantify those impacts, and the answer is I

1 identified them in the form of the multiple
2 deleterious effects of a bankruptcy including, and
3 it's listed in different places in my testimony, but
4 it would be distraction of management time or the
5 spending of time by management on trying to come out
6 of bankruptcy rather than running the business.
7 There's lost regulator time. Regulators would also
8 be distracted from doing what they need to do.
9 There might be reduced O and M and capex at DP&L as
10 the parent company attempts to exit bankruptcy or
11 alleviate financial distress. You know, again these
12 are listed in my testimony. So I've identified
13 those, and in the case of my first scenario in which
14 there is a financial integrity charge under an MRO
15 and, you know, roughly equivalent to the DMR, I
16 don't -- I don't really need to quantify those
17 impacts because they are the risk and the possible
18 cost is the same under each of those scenarios. In
19 my second scenario I do not quantify those, but I do
20 identify them.

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

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

25 THE REPORTER: Can you speak up or turn

1 the volume up?

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

4 THE REPORTER: Yes.

5 MR. ALEXANDER: Okay great.

6 EXAMINATION BY COUNSEL FOR HONDA AND
7 CITY OF DAYTON

8 BY MR. ALEXANDER:

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

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

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

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

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

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

5 A That's also my understanding.

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

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

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

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

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

22 A It would depend on whether there are any
23 costs associated with those riders, what level they
24 were at, but if, if in fact these riders resulted in
25 incremental cash flow and incremental profit, there

1 would be some reduced impact of a downgrade, and it
2 would just depend on, you know, how much of a margin
3 there is, if any, on those riders.

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

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

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

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

18 A I have made an adjustment to DP&L's debt
19 costs without the DMR, and so as I sit here today, I
20 don't remember the exact instruments that we, that
21 we modified, but we did take into consideration that
22 if DP&L were downgraded, as my analysis shows it
23 would be and without the DMR, that they would have
24 higher interest costs which we've incorporated, but
25 again, I can't remember if those were long term, the

1 long-term facilities or if whether it was the 445
2 million. I just -- I can get back to you on that,
3 but I know that we did make that, make that kind of
4 an adjustment.

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

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

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

1 then.

2 A Yeah.

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

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

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

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

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

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

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

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

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

24 Q Okay. With that clarification, Mr. Malinak,
25 would you agree that the 445 million-dollar

1 refinancing is currently a six-year term note with
2 the variable rate set at 325 basis points over
3 libor?

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

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

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

14 Q Yes, and the \$445 million.

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

23 The pollution control bonds would be
24 included in that. Again, though, those are variable
25 rate instruments, so I would have to go back and

1 check to see what the terms of those are and whether
2 they would actually be modified, you know, in the
3 event of a downgrade.

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

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

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

15 A It would be those, those debt instruments
16 that would actually have to be revised or new debt
17 instruments that are issued at higher rates than
18 they would otherwise be issued, either existing debt
19 that would be, you know, where the spreads or the
20 rate would, you know, be changed or, you know, when
21 new debt is issued say by DPL Inc., you know, in
22 2019 when it has to refinance its 2019 bonds, it
23 would do so at a higher rate.

24 Q And if we assume that DPL Inc. is downgraded
25 as you project, have you projected the higher rate

1 which would apply in that refinancing scenario you
2 just described?

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

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

11 A Okay.

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

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

23 A Yes.

24 Q And let's first look at line 7.

25 MR. SHARKEY: Trevor, are you going to

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

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

5 MR. SHARKEY: Okay.

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

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

11 A Yes.

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

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

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

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

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

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

5 Now moving to line 13?

6 A On RJM-8.

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

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

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

15 A Correct.

16 Q By year?

17 A Correct.

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

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

24 Q Okay. And while you can't identify the rate
25 at which the new long-term debt would be issued at

1 this point, have you quantified the rate impact or
2 expense impact to DP&L if DPL Inc. were downgraded?

3 A I've not specifically quantified a rate
4 impact.

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

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

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

15 For the without DPL -- strike that again.

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

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

24 Q Well, so if I wanted to see the difference
25 between annual interest expense in the with and

1 without DMR scenarios, I would look at Exhibit
2 RJM-9, line 4, against Exhibit RJM-10, line 4?

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

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

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

25 A Okay.

1 Q So is it your understanding that DP&L
2 intends to use some of the DMR proceeds for debt
3 reduction?

4 A DP&L? Did you --

5 Q Yes.

6 A Yeah. I mean my understanding -- well, the
7 proceeds of the DMR, I think most of the DMR, again,
8 you know, cash flows to DP&L are, you know, come
9 from a variety of places, and under the DMR the DMR
10 would be one of them, and I do assume that with the
11 DMR DP&L will reduce some of its own debt, and, but
12 a lot of their cash flows will go through dividends
13 up to DPL Inc. which will reduce its debt as well.

14 Q Yes. And so when you say reduce debt, you
15 mean the total amount of long-term debt outstanding
16 at both companies will go down; correct?

17 A That's correct.

18 Q And that would have the effect of reducing
19 interest expense; correct?

20 A Correct, all else equal.

21 Q Correct. And so if I were to look at the
22 interest expense projections that you include in
23 your Exhibits 14 and 15, would those projections
24 include the projected retirement of certain debt?

25 A Yes, and if you look at, like, for example,

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

11 MR. SHARKEY: Jeff, those numbers are
12 confidential.

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

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

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

25 Q And do you know whether a DPL Inc. downgrade

1 would trigger any collateral obligations for DP&L
2 debt?

3 A I don't know that either.

4 Q Mr. Darr asked you some questions about AES
5 earlier today. Do you recall those?

6 A I do.

7 Q Have you attempted to quantify the
8 likelihood that AES would be downgraded if the DMR
9 is not approved?

10 A AES?

11 Q Yes.

12 A No.

13 Q If the total impact of increased financing
14 cost is less than \$145 million per year, would you
15 agree that customers will be better off paying
16 increased financing costs as opposed to the DMR?

17 A No.

18 Q Why not?

19 A Well, because, you know, I agree the net of
20 those two numbers, okay, which would be, you know,
21 one way to estimate the quantifiable costs of the,
22 of an ESP which, you know, under my main more
23 favorable in the aggregate analysis you would have a
24 similar sort of math on the, on an MRO as you would
25 on the ESP, but that's just the quantifiable side of

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

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

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

14 Q No.

15 A Oh.

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

18 A Yeah.

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

21 A You have a lower likelihood of financial
22 distress, or it reduces the probability way down.
23 It also produces, likely will produce by the end of
24 the ESP period an investment grade rating for DPL
25 Inc. as well as for DP&L which will lower debt costs

1 and improve, you know, reliability of service in
2 general, you know, and give the, as well as give the
3 wherewithal of the company to, to invest in grid
4 modernization, and so all of those -- those are a
5 couple of the major nonquantitative benefits. I
6 have a few others listed in my report, but those are
7 kind of the two primary nonquantitative benefits
8 from the DMR is the improvement of the financial
9 integrity of the enterprise as well as the increased
10 probability of grid modernization expenditures.

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

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

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

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

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

25 A Okay.

1 Q You have quantified those increased costs,
2 and they are reflected in your Exhibits RJM-9 and
3 10; correct?

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

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

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

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

25 Q Sure.

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

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

7 A Okay.

8 Q Instead I'm asking you to compare a change
9 in interest expense in the DMR and non-DMR scenarios
10 --

11 A Yes.

12 Q -- to 145 million per year.

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

17 Q Correct.

18 A Okay. Just looking --

19 Q What I'm asking is --

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

21 Q Other than the change in interest expense --

22 A Yeah.

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

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

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

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

8 Q 19.

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

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

14 A Okay. There's two parts to that. The first
15 is that there is a three-notch differential, and
16 there's the fact that it's a maximum, okay, and my
17 source for the maximum is that there's a couple of
18 different types of three-notch differentials. One
19 of them is structural subordination, okay, which is
20 a maximum three-notch differential, and that's
21 applied to DPL, and then there's another maximum
22 three-notch differential that reflects the
23 difference between DPL and DP&L, and that -- that
24 comes from a different source, but they're both --
25 they're both found in the document we were

1 discussing earlier which was the regulated Moody's
2 methodology document, and then they're also present
3 in the various Moody's credit rating reports that
4 address DPL and DP&L. So for example --

5 Q What's the structural --

6 A I'm sorry?

7 Q Was your answer complete?

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

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

16 (The Reporter read from the record as
17 requested.)

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

20 A No. That's an issuer rating.

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

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

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

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

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

9 A Yeah.

10 Q What does the phrase "structural
11 subordination" mean?

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

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

22 A Correct.

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

25 A I think I have that on my page -- on one

1 of -- in my report somewhere. The answer is they
2 should be exactly the same because S&P takes the
3 lesser of the two, of the two ratings that it gets
4 with its own methodology and applies it to both
5 entities.

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

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

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

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

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

21 A Yeah.

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

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

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

11 A I would say that's probably possible.

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

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

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

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

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

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

7 Q Okay.

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

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

15 (The reporter requested clarification.)

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

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

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

25 Q And are you also aware that DP&L has

1 proposed to exclude rider DMR revenues from the SEET
2 test?

3 A I am aware of that.

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

8 A Not explicitly.

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

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

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

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

1 to measure, you know, with an ROE, for example.

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

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

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

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

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

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

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

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

14 Q Sure. I just really need to --

15 A Yeah.

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

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

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

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

1 is that correct?

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

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

6 A Yeah, I see that.

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

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

13 A Yes.

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

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

1 this was done, if you will, in the high yield
2 market, and so that's a higher cost amount of debt
3 that in the way these sentences are set up is
4 unreasonably high compared to what it would be if
5 they had the DMR.

6 Q Did you have any role in DP&L's negotiation
7 of the 445 million-dollar debt facility?

8 A I did not.

9 Q Have you had any communications with banks
10 or other creditors regarding DP&L's ability to raise
11 that capital?

12 A I have not.

13 Q Have you had any communications with banks
14 or other potential equity investors regarding DP&L
15 or DPL Inc.'s ability to issue new equity?

16 A I have not.

17 Q Have you had any personal communications
18 with the creditors of the 445 million-dollar debt
19 facility regarding how the terms and conditions of
20 that facility were established?

21 A No.

22 Q Have you reviewed any written communications
23 between DP&L and potential or current creditors
24 regarding the issuance of new debt?

25 A No.

1 Q Earlier today I believe Mr. Bzdok asked you
2 about the explicit terms you referenced at line 15,
3 staying on page 4 here?

4 A Yes.

5 Q Do you recall that?

6 A Yeah. Line, lines 16 through 18 we talk
7 about the covenant -- oh, I'm sorry -- it's lines 15
8 through 19 we talked about the limits on DP&L's
9 ability to issue new debt.

10 Q Okay. Do you have any personal experience
11 in negotiating on behalf of a utility for new debt
12 instruments?

13 A No.

14 Q Do you have any personal experience in
15 negotiating on behalf of a utility for new equity
16 investment?

17 A No.

18 Q And with regard to the explicit terms we
19 were just discussing, I believe earlier today you
20 referenced an August 24th, 2016, credit agreement;
21 is that correct?

22 A Yeah.

23 Q And is that the agreement which you deemed
24 the explicit terms you referenced in this sentence?

25 A I mean the main basis for my, for this

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

7 Q Okay. But you relied on that August 24,
8 2015, credit agreement as well?

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

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

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

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

24 A This is an excerpt, okay, so it's not the
25 full document. It's the cover page, and then it

1 looks like pages 66, you know, forward. The
2 printout is a little funky, but okay.

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

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

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

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

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

16 THE WITNESS: Okay.

17 A Okay. I have Exhibit 2.

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

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

25 A I have -- I personally have not reviewed

1 this agreement except for this, this one excerpt.

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

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

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

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

23 A Right.

24 Q Was your understanding regarding the terms
25 and conditions related to that 445 million-dollar

1 debt facility, did those arise from communications
2 with counsel or communications with DP&L employees?

3 A The latter, DP&L employees.

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

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

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

12 A Yes.

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

17 A Yeah, and the term loan financing agreement.

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

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

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

25 A Yes. Hold on a second. Let me just check

1 something here. Yeah. I think footnote 6 is
2 just -- that's just referring to the term loan, not
3 to the revolver. Again, I just have an excerpt for
4 that.

5 Q And where would the person -- strike that.

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

8 A Analysis Group.

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

11 A What is it or where is it?

12 Q What is it?

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

17 Q And what is that certain level?

18 A Okay. This is elsewhere in my testimony.
19 Let's take a look at it. Okay. If you turn to page
20 47 and then pages 40, you know, 46 through 48
21 approximately, but on page 47 you have the debt to
22 EBITDA covenant that is analyzed, and then on page
23 48 you have the EBITDA to interest, and you were
24 just now talking about EBITDA to interest, and
25 that's discussed here. It says -- okay. Okay. It

1 just says debt covenants generally, and one of the
2 covenants was debt to EBITDA, and another one was
3 interest, EBITDA to interest, and the EBITDA to
4 interest, if you look at figure 7, the covenant is
5 at a range of just above two. That blue line is the
6 minimum. What this is showing is that without the
7 DMR DPL Inc. is at risk of violating that covenant
8 in 2019. It looks like both of these debt covenants
9 relate to the credit agreement that's cited in the
10 footnote.

11 MR. SHARKEY: Trevor, are you still
12 there?

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

16 MR. SHARKEY: Okay.

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

20 A I'm sorry. Which lines, sir?

21 Q Line 4 to 5.

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

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

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

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

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

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

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

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

24 A Yes.

25 Q Okay. And how did you compare the

1 projections to historic performance?

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

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

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

19 Q And how many -- strike that.

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

22 A Yes.

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

25 A Yes, somewhere in the projections.

1 Q Including -- I'm sorry?

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

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

11 A Yeah, right.

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

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

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

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

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

1 financial integrity?

2 A Yes.

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

6 A I do.

7 Q Was the source for that information footnote
8 57?

9 A Yes. That appears to be the case.

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

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

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

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

22 A I have confirmed it.

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

25 A I have in a sort of qualitative high level

1 sort of approach, yes.

2 Q And where is that quantitative high level
3 approach located?

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

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

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

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

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

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

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

13 A It's a matter of degree.

14 Q But have you quantified the degree of that
15 change?

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

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

23 A Yes.

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

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

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

11 A I do.

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

15 A I have not.

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

20 A I have not.

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

25 A I'm sorry. Could you repeat that?

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

5 A I have not.

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

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

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

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

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

18 (A recess was taken.)

19 EXAMINATION BY COUNSEL FOR IGS ENERGY
20 BY MR. OLIKER:

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

1 A Okay. Thanks.

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

6 A I do.

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

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

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

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

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

21 A Well, I've read reports of related to, I
22 think I mentioned earlier, I think it was the TXU
23 bankruptcy; it was a holding company bankruptcy, and
24 I read some kind of press reports about the amount
25 of time that regulators were spending on that, on

1 the bankruptcy trying to make sure that, you know,
2 that customers were not affected to the extent they
3 could and that sort of thing. So it -- and the one
4 that sticks in my head is an article talking about a
5 regulator who had on a white board all of the debt
6 that was floating around, was the sense that I got
7 from it, and the difficulty in terms of trying to
8 figure out quick where that debt was going to land
9 and who was going to pay it and that sort of thing,
10 and that's kind of -- and that's kind of the extent
11 of my understanding is, like I said, public press
12 reports, you know, suggesting that those proceedings
13 are very complex and involved.

14 Q And did you say that example involved TXU?

15 A I think it was TXU, yeah.

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

18 A I don't know that kind of detail.

19 Q Would you agree there is a large
20 distinction?

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

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

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

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

5 A Non-recourse to AES?

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

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

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

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

22 Q Yes.

23 A I was actually not specifically aware of
24 that personally.

25 Q So when you drafted your testimony, you did

1 not consider that?

2 A Consider what?

3 Q How the \$125 million was secured?

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

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

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

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

19 A That's correct.

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

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

24 Q And maybe I can say that question
25 differently. Do you have an opinion as to what the

1 rights of DPL Inc.'s creditors would be if DPL Inc.
2 could not service the interest on all its funds?

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

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

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

10 A Yes.

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

13 (The reporter requested clarification.)

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

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

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

22 A I would say actually it serves a couple
23 purposes. I mean it's directly shoring up the
24 financial integrity of DPL, DPL Inc. and DP&L, but
25 it's indirectly also going to be supportive of a

1 grid modernization by DPL and DP&L. So it's a
2 little different.

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

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

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

17 A Page 6?

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

20 A I'm there.

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

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

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

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

22 A I probably could do that today.

23 MR. SHARKEY: It sounds like we'd need a
24 break and to let him go away from here and do it,
25 is what I, is the impression I have, Joe. He

1 doesn't have with him the ability to do it right
2 now, but within his office he may be able to get
3 that number.

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

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

8 MR. OLIKER: Is the number confidential?

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

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

13 A Okay. Just let me know.

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

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

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

23 A Which line? I'm sorry.

24 Q I'm on page 5. I think I see this
25 phraseology appears several times in your testimony

1 where you're referring to something called ROCI?

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

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

9 A Yes.

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

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

18 Q Okay. And --

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

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

1 being equal, the return equity could go up?

2 A Are you saying the future impairment and
3 then a charge that's taken for that?

4 Q A future impairment of the coal generation
5 assets -- okay. Let's first talk about that. If
6 there was a future impairment of coal generation
7 assets, you agree that ultimately DP&L would write
8 down its common equity balance?

9 A Under the accounting rules once it becomes
10 certain, if you will, that that, that there's been
11 an impairment then they will take a charge off.

12 Q Okay. There is an immediate hit to net
13 income; right?

14 A Yeah. I think that's run through the income
15 statement, yeah.

16 Q But then going forward, all else being
17 equal, the return on equity will be higher as a
18 result of the writedown to common equity; correct?

19 A Well, the ROE calculated, according to one
20 way of calculating an ROE which is just taking net
21 income and sort of, sort of blindly, you know,
22 dividing by the average equity or the book equity,
23 if you will. So the return on book equity by
24 definition, it could go up. I'm sorry. Was that
25 your question?

1 Q Yes.

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

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

8 A Yeah, sure.

9 Q -- in terms of your calculation?

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

20 So, for example, so you write -- when you
21 write it down, it doesn't -- it doesn't mean that
22 you didn't invest that capital to begin with. So,
23 you know, financial analysts look to return on
24 invested capital which is the sort of pre, the total
25 amount of money invested as another way to measure

1 in effect the return on equity, just another measure
2 of it, and it's a way that in some ways is
3 economically more sound than a return on equity
4 that's based on, you know, a book value, in this
5 case one that fluctuated dramatically due to a, due
6 to a charge-off.

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

12 MR. SHARKEY: Can I hear that question
13 back?

14 (Pending question read.)

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

18 A I am going to -- I think I can see a gist in
19 that question, and in effect it's what I'm kind
20 of -- it's exactly what I'm saying here which is
21 that, you know, by adding it back, you come up with
22 an ROE that's reflective of, you know, the fact;
23 it's one measure of the possibility of, you know,
24 future declines in income going forward, okay, and
25 that's what I say here, and what that means is of

1 course is that these projections that I'm relying
2 on, they're just one set of projections. They're
3 the most likely scenario, most supportable scenario
4 coming from the company, and they have a certain
5 level of income built in, but there is a -- there is
6 a real risk with respect to the coal assets in
7 particular, all assets, but the coal assets in
8 particular, what I call I think elsewhere in the
9 testimony asymmetric risk of future reductions in
10 income, and so the ROIC measure captures that
11 potential for a future decline in the income or the
12 value of those assets in particular, and so that's
13 why it needs to be considered along with, you know,
14 the post writedown ROE.

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

19 A Page 21, yes, line 11.

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

23 A I don't understand that question.

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

1 for the return calculation?

2 A Yeah, and sometimes preferred stock.

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

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

10 Q Yes.

11 A No.

12 Q Why not?

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

16 Q If DP&L's capital structure would arise to
17 70 percent equity and 30 percent debt, in that
18 instance would you still recommend using a 50-50
19 debt to equity ratio?

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

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

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

1 A Yes. I'm there.

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

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

10 Q Did you prepare this table?

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

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

18 THE WITNESS: You're welcome.

19 MR. MOORE: I believe I'm next.

20 EXAMINATION BY COUNSEL FOR THE

21 OHIO CONSUMERS' COUNSEL

22 BY MR. MOORE:

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

25 A I am.

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

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

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

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

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

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

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

21 Q Is it a chronological model?

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

25 Q Okay. Does the dispatching model have

1 hourly or sub hourly price and dispatch detail?

2 A I do not know that level of detail either.

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

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

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

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

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

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

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

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

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

1 explained, and I didn't see anything like that.

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

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

7 Q So anything outside of that you did not
8 consult?

9 A Not that I recall.

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

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

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

19 A The same answer.

20 Q Okay.

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

1 at some Value Line information.

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

4 A Not specifically, no.

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

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

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

13 A So energy price?

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

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

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

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

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

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

23 Q Okay. So for hypothetically if one
24 projection had the AD Hub power price at \$34 a
25 megawatt hour in 2023, another projection had that

1 price at \$55 a megawatt hour, can both of those
2 projections be reasonable in your opinion?

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

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

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

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

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

25 Q Is it a source that you use in your everyday

1 business to check for energy price projections?

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

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

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

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

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

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

1 A What type of security?

2 Q Would that change your answer?

3 A It could.

4 Q Why would it change your answer?

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

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

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

19 A I'm not sure I understand that question.

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

22 A Can you repeat the question?

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

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

4 Q Mm-hmm.

5 A So I don't know how to --

6 Q I'm just --

7 A Yeah. Go ahead.

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

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

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

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

16 A I have not, no.

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

20 A I have not done that specific calculation
21 either.

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

1 Are you familiar with that?

2 A I'm actually not familiar with that
3 particular application.

4 Q Are you aware that it is pending?

5 A I am aware as I sit here that there's
6 potentially an application pending. I'm not
7 actually specifically aware that it's pending, but I
8 am aware of a FERC application.

9 Q So you don't know what the application is
10 requesting?

11 A I do not know what it is --

12 Q Is that correct?

13 A I do not know what it is specifically
14 requesting.

15 Q Okay. So then you haven't quantified the
16 impact to a residential consumer's typical utility
17 bill of that, that specific application being
18 approved; is that correct?

19 A That is correct.

20 Q I think you testified or testified, you said
21 earlier that, that the DIR revenues were not
22 included in your projections; is that correct?

23 A That's my understanding, yes.

24 Q And also that if the DIR revenues were
25 included in your projections, that could impact

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

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

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

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

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

18 A Not necessarily.

19 Q Why not?

20 A Well, it would depend on how profitable
21 those revenues were and, you know, how it impacted
22 things like, you know, EBITDA and, you know, debt to
23 EBITDA ratios, and I don't know what sort of capital
24 expenditures might be required under that rider or
25 any of those other sort of important factors that

1 would kind of flow through the whole analysis. So
2 without knowing that it's hard to say what the
3 impact would be.

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

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

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

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

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

22 A Beyond -- well, I mean if there were actions
23 that DP&L is not currently taking that, you know,
24 could enhance efficiency, you know, in a manner that
25 could increase their income maybe in the short term

1 that they're not doing, and I have no reason to
2 believe that they're not already doing everything
3 they can to increase their income, then, you know,
4 they could try those different things. I don't have
5 any specific ideas for anything they can be doing
6 because I haven't seen any evidence that they aren't
7 already trying to, you know, maximize their income.

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

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

25 MR. MOORE: Okay. I have no further

1 questions. Thank you, Mr. Malinak.

2 THE WITNESS: You're welcome.

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

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

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1 CERTIFICATE OF SHORTHAND REPORTER-NOTARY PUBLIC

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

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

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21 
22 _____

23 Registered Diplomat Reporter

24 My commission expires

25 March 14, 2018.

A			
a.m 1:22	adjustments 16:12	68:25 77:7 82:7	19:20,23 20:21
ability 27:4 77:19	16:21,25 17:4,10,11	83:25 100:9 117:24	28:23 29:23 30:1
120:19,22,24	24:6	162:7	32:4 35:17 38:25
122:10,15 123:9	Administration's	air 80:8	44:17 48:24 55:18
126:11 145:1	159:10,17	akin 146:5	59:7 63:10 64:7,18
able 27:25 96:15	AES 17:22 32:9,25	Alexander 4:4 6:5	65:9 78:3 80:12
104:21 116:20	33:1,8,13,15,16,21	92:23,24 93:2,5,8	82:7 90:10 91:25
144:20 145:2	33:24 34:6 55:6	93:10 97:23 101:3	99:9 102:2 109:19
166:15	81:14,17,19 82:3,6	113:13 129:13	111:2 113:7,15
absence 144:11	82:10,16,21,23,24	137:6 138:3	114:6 115:1 133:13
absent 51:5	107:4,8,10 140:5,6	allegation 76:21,23	133:15,20 134:11
abstracting 78:23	162:23	alleviate 92:11	142:4 145:9 149:16
accept 97:12	AES's 82:13	allow 53:1 98:16	153:23 156:19
accepted 35:5	affect 49:17 63:8	136:5	161:2,4
access 11:24,25 51:19	76:17 160:25	allows 43:6 98:18	answered 138:2
85:15 120:25	affiliated 34:8	amount 48:21 78:25	answering 52:16
121:16,18	afraid 12:2	101:8 103:5 104:16	answers 53:18 102:20
accounting 1:15	afternoon 93:9	105:15 122:2	anticipate 34:22
147:9 148:12,18	137:23	138:24 144:7,7	86:14
accurate 28:12	agencies 20:12,22	148:25 150:21	anticipating 36:7
159:18	21:21 44:25 75:20	160:4	anybody 167:4
acquisition 55:6,8	76:11 77:23 79:17	amounts 119:12	anyway 38:6 85:12
56:1 57:9,24 62:17	agency 9:12 13:17	140:2	apart 78:17
63:3	18:13 58:11 75:14	analysis 2:5 9:22	apologize 52:17
actions 49:23 165:22	78:6,7,8,13 112:5	16:17 21:20,22 45:2	96:14
activities 38:13,20	118:15	54:16 58:1 63:6	appear 24:17
actual 22:19 83:13	agency's 83:24	70:10,24 72:9 73:14	appears 84:23 101:13
129:23	aggregate 8:19	76:11 78:9,10,16,17	103:22 124:4 133:9
AD 158:24	107:23	78:20,25 79:13	145:25
add 47:19,20 113:8	ago 12:10 68:9 72:5	82:14,17,19 83:3,4	Appendix 85:4,24
149:7	78:21 156:25	85:16,19 86:15,17	86:2,4,8
added 145:21	agree 29:17 55:3,4	87:4 88:15,25 90:19	apples 111:4
adding 149:21 165:8	93:24 97:8,25	91:17,21 95:22	application 1:4,9,13
addition 21:6 22:2	107:15,19 108:5	107:23 114:4 128:8	24:12 42:18 162:23
30:22 31:23 60:12	110:8 115:22	164:7,8 165:1	163:3,6,8,9,17
109:20	139:19 140:3	166:14,23	applied 21:5,8,11
additional 27:21 32:8	142:11 146:24	analyst 9:12 75:6	22:6 112:21
36:5,24 37:5 61:22	147:7 149:7 150:20	159:23	applies 24:24 112:9
65:15 136:6 166:15	151:3 152:3 160:23	analysts 148:23	115:4
address 113:4	agreed 43:9	analyze 41:13 75:21	apply 22:5 78:6 89:16
addressed 79:2 97:14	agreement 6:14	76:10	95:16 96:9 100:1
129:15	27:16 62:7 123:20	analyzed 128:22	applying 88:24
adjusted 96:16	123:23 124:2,3,8,10	164:12 166:10	appreciate 71:17
adjusting 41:4	124:12,15 126:1,4	and/or 60:12	approach 21:23 24:4
adjustment 21:14	127:6,17,20 129:9	ANGELA 4:17	45:1 134:1,3,18
95:18 96:4,6,18	agreements 38:10	annual 16:21 103:5	155:7 158:1
145:17	ahead 22:5 31:18	103:17,25 133:18	appropriate 18:23
	47:25 52:13 55:16	answer 7:18 14:15	89:24

approval 1:6,11,15 8:16 42:18 94:11	associated 62:4 94:23 101:17 119:16 127:15 131:24 132:24 135:2 144:8	aware 17:3,4,10 42:15,17,20,21,21 57:21 58:1 91:10,16 117:25 118:3 138:14 140:23 163:4,5,7,8	54:16 56:11 64:18 67:22 69:17 73:6 86:15,17 93:23 94:1 100:17 117:4 126:5 129:18 149:4 153:6 154:5
approve 28:13	ASSOCIATION 4:12	<hr/> B <hr/>	bases 65:22 67:7 159:4
approved 35:1,2,3 95:8,15 107:9 151:15,15 162:15 163:18 164:4	assume 34:25 42:22 44:19 59:6 90:6,7 90:21 95:11,14 99:24 105:10 108:13	B 6:11 22:15 45:9 133:19	basically 56:24 60:11
approximately 25:14 128:21	assumed 35:4,4,11 94:10 130:8 144:12	Ba 133:18	basis 16:18,19,21 22:14 25:16 26:2 36:20 65:18 66:10 67:1 70:16,24 71:9 98:2 106:17 108:7 123:25 126:9 158:7 158:19,21
area 28:18 153:18,19 158:9	assumes 88:16	Ba2 22:13,15	began 74:25
arose 32:15	assuming 44:18 46:23 108:10,11 116:6 164:4	Ba3 113:10,11	beginning 11:11 40:23
art 117:19	assumption 11:12 67:22 90:2	Baa2 113:21	begins 20:21 74:15
article 139:4	assumptions 8:16 11:15 65:1,1,16 69:3,12 70:7,20,24 71:6,12 100:17 130:1 154:5 158:2 159:20	Baa3 42:8 113:11,18	behalf 3:2,10,18 4:3 4:12,16 5:3,12 59:3 123:11,15
articles 41:12 72:18	asymmetric 150:9	back 19:21 23:19 26:13,13,24 31:6 40:10,12 41:15 42:16 55:18 63:18 63:22 68:7 70:5 71:20 73:2,3 74:11 79:6 86:9 96:2 97:6 98:25 102:3 104:12 108:17 113:14 121:9 145:11 149:8 149:13,21 166:17	behavior 41:4
as-filed 35:8	at-risk 150:21	background 27:12 74:25	believe 10:18 13:17 13:20 14:13 20:9 37:22,22 38:9 39:15 39:16,18,24 42:23 50:12 51:7 58:9 60:8 61:21 63:9 67:15 69:6 70:4 71:2,4,4 84:9,10 85:17 87:24 97:20 101:1 109:14 111:24 119:7 120:1 121:10 123:1,19 125:7 128:13 130:5 130:7 132:16,22 137:2 138:3 146:11 152:14,19 154:10 159:23 160:7,8 166:2,9
asked 8:13,14 9:5,16 13:18 29:11 45:21 74:3 76:24 77:25 107:4 123:1	attached 6:12 18:4 125:19	backup 27:14 39:12 39:17 42:3 133:16	believing 160:17
asking 43:12,12 49:4 49:5 63:20 70:1 82:5 90:16 101:3 108:13 111:5,8,19 132:9 153:23 161:13	attempt 66:13,17 attempted 27:24 107:7 134:22	balance 7:24 10:25 11:6 145:21 147:8 149:8	beneficial 120:8,11
aspect 24:10	attempting 38:3,11 77:21 86:14	bank 6:17 79:12	benefits 108:1,20 109:5,7 111:15 119:3,3 135:21 136:8
aspects 86:6	attempts 92:10	bankrupt 76:20	
assessing 132:16	attendant 36:23 37:3	bankruptcy 49:10,21 49:24 58:4,9 91:18 92:2,6,10 133:24 134:6,15 135:5,6,7 135:12,19 138:4,7 138:13,14,20,23,23 139:1	
assessment 71:11 166:14	attention 74:14 88:11 100:21	banks 79:10,11 122:9 122:13	
asset 145:20 146:21	attribute 28:5	Bartlett 75:1,11	
assets 12:21,22 13:3 13:8 30:17,18 34:19 35:13,15,23,25 37:1 38:2 42:19 43:6,7 44:12 46:5,19,23 54:22,23 60:11,14 60:22 65:13 82:3,6 116:21 119:14 138:15 141:14 146:8,13,14,16,17 146:20,25 147:5,7 150:6,7,7,12 162:25	August 6:15 27:15 123:20 124:7	base 17:6	
assignment 8:11,23 8:25 9:4 61:11,12	Authority 1:16 19:7	based 21:14 23:13,25 24:3 39:22 49:5	
ASSISTANT 5:5	available 9:11,13 82:20 108:12		
associate 75:8	availing 166:10		
	average 23:25 24:8 147:22 151:4		
	avoid 49:10		

best 49:11 59:7	129:18 160:1	151:4,5,8,14,16,21	105:24 106:13,14
better 38:16 53:25	button 93:3	164:23 165:14	106:15 128:14,17
55:15 71:3 93:3	buy 49:15	captive 80:24	135:18 147:10
107:15 108:3,8	Bzdok 3:11,12 6:3	capture 61:6	150:4 165:4
110:8,13,19,23	7:7,12 40:11,19	captures 150:10	certainly 13:18 17:9
119:11 137:25	55:17 61:10 63:11	care 48:2	31:11 33:12 36:9,15
beyond 22:21 36:5	120:18 123:1	career 18:18 19:16	37:17 38:6,15 85:21
71:13 165:22	146:11	carefully 34:5 81:20	97:10 132:5
big 23:10 58:4 79:11	Bzdok's 124:16	Carolina 18:5,9	CERTIFICATE
148:11		CARPENTER 4:18	168:1
biggest 79:1,3	C	carrying 20:11 21:7	certify 168:4
bill 162:14,18 163:17	C 3:1 4:1,1 5:1,1 6:1	40:23 44:6,11 50:2	cetera 30:18 111:16
billion 106:10	7:1	case 1:4,9,13 8:12	change 43:16,20,21
binder 39:17 86:23	calculate 23:24	11:19 12:6 17:23	44:8 46:5 56:4,17
bit 9:24 26:16 66:22	calculated 22:3 24:2	18:12,25 19:4,10	57:9 65:13,14 69:12
71:18 74:24 86:10	103:9 147:19	25:4 35:1 38:7	96:13,24 98:8,20
93:13 96:22,25	calculating 147:20	61:12,24 63:7,17,18	111:8,21 116:3
150:15 160:21	calculation 51:21	63:21 64:3,4,9,10	135:15 161:2,4
blindly 147:21	52:5 148:9 151:1	64:13,15,16 74:21	164:5
blue 129:5	162:20	76:7 78:18,24 79:1	changed 99:20
board 139:5	calculational 16:15	79:1,7,21,22,24,25	changes 54:18 65:6
BOJKO 4:15	16:24	82:14 90:24 91:2	65:11,18,21,23,25
bond 113:19,21	calculations 15:19,24	92:13 94:8,13 133:9	66:3,4 69:7
bonds 50:18,23 97:9	117:3,5,13 118:6	142:9,14,20 149:5	characterize 53:15
97:10 98:13,20,23	145:7	150:18,22,25	characterizes 143:12
99:22	CALFEE 4:5	166:17 168:11	charge 35:25 92:14
book 147:22,23	call 16:23 21:23	cases 18:22 19:9 64:7	108:12 110:18
148:11,16 149:4	24:15 40:25 83:22	74:15	118:20,22 119:6,8
152:8	115:10 150:8	cash 11:1 15:1,2	136:4 142:12,15,18
bookmark 7:20	called 18:19 23:24	26:10 30:16 43:19	142:21 147:3,11
borrow 116:20	32:22 48:17 60:25	44:1 45:6,19,24	148:12
borrowing 109:14,22	62:14 85:4 87:19	46:12,15 47:8,12,13	charge-off 36:3 149:6
116:21 134:17	124:3 146:1	48:4,23 53:11,13	charged 90:22
borrowings 97:5	calls 142:3	60:18,21,24 61:1	charges 90:4
bottom 14:20	cap 22:19 45:12	77:17,18 94:25	chart 51:23
break 55:14 71:16,24	capacity 18:12 36:14	105:8,12 114:13	Chase 6:17
124:21 125:15	57:1 119:12 155:20	120:5 140:10	cheapest 38:3
137:11,13 144:24	capex 12:22 13:7	141:11,16 164:14	check 7:23 17:14
briefly 71:23	47:23 48:10,22	165:13,15	50:17 84:11,19 99:1
Broad 5:7	49:12 52:10 53:5,12	cause 29:5 30:4 55:3	124:11 127:25
broadly 154:24	54:4 92:9 131:5	55:5 134:7 149:10	133:14 140:16
155:13	capital 15:2 47:14	155:5	159:23 160:1
brought 56:3	48:8 49:1 51:13,17	cement 152:4	166:24
BUCKLEY 5:25	52:22 53:9 77:16	Center 4:6	checked 104:5 131:7
built 150:5	120:4,25 121:16	centralized 34:6	checking 27:10 84:21
burden 55:9	122:11 136:6,9,22	CER 91:7 94:19	89:13 93:21
business 31:3,4 44:2	137:2 146:2,6	certain 1:15 28:9	CHOUEIKI 5:23
92:6 118:25 119:17	148:13,15,22,24	73:4 86:5 96:12	CHRIS 3:11

Christopher 7:12 chronological 153:21 Cincinnati 3:7 circle 23:19 26:24 circumstances 28:9 121:22 cited 129:9 133:21 City 3:14 4:3 93:7,11 clarification 31:9 41:9 44:21 59:5 74:1 97:24 117:15 142:13 clarify 45:21 82:4 90:12 126:13,17 clarifying 59:11 70:22 clean 29:20 94:4 cleanup 33:23 clear 7:21 10:1 25:8 32:14 48:14 58:12 62:2 69:6,10 81:21 90:18 96:10 100:16 100:16 130:9 135:1 152:12 166:20 clearer 161:21 clearly 31:8 65:12 166:21 client 9:6,8 16:6,9 19:10 27:24 37:18 78:20 Cliff 67:17,18 close 12:8,8 26:6 45:5 53:23 150:16 closely 43:3 Club 3:10 7:6,13 co-generation 19:3 coal 12:22 13:8 19:6 19:7 35:15,23,25 36:25 38:1,3,8 43:7 46:5,19 47:16,21,24 48:10 54:21 65:13 119:14 131:24 132:4,7,13,23,24 146:16 147:4,6 150:6,7 154:6 156:10 160:19 coal-fired 42:12 160:5	CODE 1:17 collateral 106:21 107:1 116:12 collect 90:3 Colorado 19:7 colored 11:19,22 Columbia 2:17 Columbus 3:24 4:8 4:21 5:9 combination 37:7,9 combined 30:9 44:4 53:3,17 59:20 come 26:15 37:21 56:23 71:20 78:7 86:9 92:5 102:3 105:8 145:11 149:21 158:16 comes 20:22 112:24 comfortable 17:14 coming 12:17 15:6 45:24 50:10,18,19 51:1 83:11 114:13 132:7 150:4 commensurately 146:23 commission 1:2 5:24 5:25 18:6 61:14 62:11 162:24 168:24 commissioned 79:5 commitment 62:21 commitments 62:9 common 145:21 147:8,18 148:7 communications 122:9,13,17,22 126:5 127:1,2 companies 10:7,13 10:21 12:4 13:16 17:19 20:13 30:9 37:6 39:3,19 41:10 41:20 42:1,17 43:24 45:20 46:4,7 51:15 52:21 53:4 57:18 60:6 61:6 62:10 76:5 93:19 105:16 116:19 138:9 166:19,22	companies' 16:13 17:1 company 1:5,10,14 4:16 6:16 9:20 10:2 12:9 13:18,21 14:4 17:5 19:8 25:21,23 28:8,14,25 29:2,10 29:13 34:25 36:1 37:11,21,23 40:8 41:17 42:20 45:14 48:25 59:15,15,18 59:20 60:7,14,15 61:1 73:24 74:9,18 74:19 75:3,23 76:6 80:9,16,18,20,21,25 81:23 83:6 89:7 92:10 96:20 98:8,9 109:3 114:18 116:8 118:24 119:13,20 119:22 120:6 121:11,25 124:6,10 124:12 126:16 130:22,22 138:15 138:23 143:8 150:4 155:15,23 161:12 162:2,3 164:15 165:9 company's 12:25 77:19 78:8 124:14 157:5 compare 66:20 110:15,17 111:8 130:25 131:15 155:17 158:3,4 159:21 compared 57:13 66:23 122:4 131:13 154:11 155:22 157:5 159:13 comparing 110:14 154:20 comparison 110:18 111:6,25 comparisons 157:19 competitive 56:24 57:11 competitiveness 56:24	complete 109:19 113:7 completely 43:5 57:15 complex 139:13 complexity 26:8 component 82:2 150:18,20 components 150:25 comprised 25:25 concern 50:3 concerning 20:21 concerns 90:9 conclude 22:12 concluded 32:19 167:7 concludes 58:17 conclusion 67:3,23 70:25 142:4 conclusions 9:23 19:24 20:1 23:1,5 41:13 66:17 67:8,11 67:14,19 70:16 71:10 condition 8:14 20:2,6 20:7 29:18,19 30:5 30:9 31:14,15 44:14 45:2 53:19 76:9,23 77:24 164:2,17 165:6,11 conditions 26:3 33:4 47:6 54:19 56:5,13 56:18,20 57:10,20 62:3,6 63:5,6 88:16 119:22 122:19 125:23 126:25 127:19 confidential 7:16,18 58:19 97:20 101:2 101:13,13,24 102:2 106:12 137:16 144:20 145:8 152:16 confirm 90:13 confirmed 133:22 confirming 134:18 confluence 54:25 confusion 64:11,17
---	--	--	---

93:14	control 60:20 97:9,10 98:13,23	corroboration 124:11	Craig 10:14 27:9 126:9 143:8
connection 32:12	convenience 9:25	cost 33:10,25,25 90:3 90:21 91:3 92:18	create 23:10
75:24 76:1,18	conventions 87:9	95:8 99:6,13 100:4	credit 6:14 20:12,22 27:16 29:22 39:3,24
117:13 118:7	conversation 28:11 120:17 126:11	101:16,17 102:22	41:1 44:8 46:21
124:15 125:3	conversations 9:14 12:19 13:9,12,14	103:11 107:14	75:12,13,18,22 76:5
130:12	37:17 126:14	109:22 116:22	76:7,8,11,25 77:15
consider 20:12,22	copy 124:22 125:13 125:15	121:24,25 122:2	77:22,23 78:5,6
24:22 30:13 34:16	Corporation 17:22	132:14 134:17	83:4,5 86:16,19
54:7 70:5 82:12,15	correct 8:2 11:23 14:21 15:8,9 19:24	135:11,12 143:22	89:3,11 94:21
82:20 141:1,2,4,7	20:3,8,15,16 21:2,8	144:12 145:15	109:13 113:3
144:10 159:9,16	21:9 23:22 25:10	151:5	123:20 124:8 127:6
161:17,24	26:5,16,22 27:4	costly 38:19	127:15,19 129:9
consideration 24:15	28:20,21 39:5,6,9	costs 62:18 63:1 83:2 89:25 94:23 95:19	160:22,23 161:7,14
25:5 26:1 95:21	47:17 51:15,16 56:6	95:24 107:16,21	161:17,23 162:1
considerations 32:7	68:11,12,15 69:8,18	108:6,25 109:14,21	creditors 122:10,18 122:23 142:1
considered 21:1 23:2	74:19 75:1,6 76:15	110:1,10 111:23	criteria 21:4,6 24:1,2 24:23 88:24 89:17
23:4,6 32:12 33:1	80:10,17,21 81:15	112:2 119:16	critical 165:18
132:18 141:9	83:9 84:18 86:13	134:23,24 135:18	Cruisey 37:14 66:5,18 69:22 70:11,18 72:6
150:13	87:7,8,14 88:17	160:19,19 166:15	73:14 154:11
consistency 67:2,6	89:21,22 90:23	counsel 5:3,5,6,14 7:6 7:19 9:1,15 17:25	157:18 159:12
consistent 124:13	93:19 94:21 95:8	58:20,23 93:6 124:1	Cruisey's 66:21 67:3 67:11,14,19,22
consolidated 102:10	97:15,21,22 102:15	125:24 126:6,7,14	69:25 130:5,15 156:5,15
102:14 104:8,9	102:17 105:16,17	127:2 137:19	Cruz 10:15
106:9,14,17	105:19,20,21	152:20,21 153:2	current 9:7 11:5 29:9 29:13 34:25 36:10
constraining 54:9	109:15 110:3,11	168:10	36:16 74:7 77:14
constraint 54:10	111:17 112:5	count 39:19	83:23 86:3 97:4
consult 156:8,17	113:19 114:21,22	couple 56:11 81:1 83:11 91:10 109:5	113:9 122:23
consulting 17:18	115:19,25 116:25	112:17 138:11	130:13,14 155:7,12
18:11	120:2,9 121:1,12	142:22 156:24	155:19 156:2,10,17 157:2
consumer's 162:14	123:21 125:8	course 36:13 63:16 72:17 104:17 150:1	currently 9:20 12:9 51:18 97:9 98:1
162:18 163:16	126:22 127:7,16,18	166:16	112:9 114:23 121:7
consumers 153:3	131:17 135:3	court 124:23	121:15 135:25
Consumers' 5:3,5,6	141:18,19 142:9,16	covenant 28:19 29:5 29:12 30:4 123:7	165:23
152:21 153:2	142:17 143:6	124:3 128:13,16,22	curves 130:10,12,14 130:17
contained 14:1 84:5	145:14,22 146:8,14	129:4,7	customer 52:10
86:4 87:7	147:18 153:8	covenants 27:17 127:5,15 129:1,2,8	customers 62:24 90:22 91:12,15,18
content 7:18	163:12,18,19,22	cover 85:7 124:25	
context 49:6 75:13	164:10 168:5	coverage 15:1 46:13 77:17	
76:13 88:23 114:12	correction 81:11	covered 93:12	
118:10 160:10	corrections 64:5	COX 3:4	
continue 13:2 132:20	correctly 13:9 21:11 78:3 131:16		
132:23	corroborating 124:6		
continues 26:21			
contract 19:6			
contracted 79:17			
contracts 154:6			
contribution 33:12			
contributions 33:2			

91:19 95:7 99:12 107:15 108:3,7 110:8,13,19,22 134:10 139:2 cutoff 41:5,6	54:17,18 55:4,5,7,9 55:13,21,24 57:8,8 57:16,16,18,23 58:2 69:4,12 76:6 77:16 77:16,18,18,20 95:12,16,18 96:8 98:8 99:15,16,18,21 100:14 101:8,18 102:14,23,25 103:11 104:15,16 104:17,20,24 105:2 105:11,13,14,15,24 106:3,4,6,6,14,22 107:2 108:25 114:14,15,15 115:9 115:16,24 116:7,7,9 116:17 118:23 119:4 120:7,19,22 120:25 121:16,21 121:22 122:2,7,18 122:24 123:9,11 124:5 125:23 126:8 126:11,22 127:1,10 128:15,21 129:1,2,8 139:5,8,16,16,17,21 139:25 140:2,4,4,10 140:14,17 141:7,10 141:16 144:7,7,14 144:16 150:17,25 151:17,19 161:6 164:22 165:15	define 60:6 65:10 defining 62:16 63:22 definitely 130:15 definition 89:8 147:24 degree 54:10 135:13 135:14 delay 49:13 deleterious 92:2 deleverage 33:22 40:8 denied 162:19 denominator 148:3 department 11:13 departures 131:10 depend 46:10,22 94:22 95:2 164:20 depends 65:10 deposition 1:20 2:1 6:13 8:1 101:14 125:5,18 167:6 168:4 derived 66:4 describe 20:11 21:12 24:20 28:6 39:14,23 43:1 63:5 90:20 115:11 described 10:12 15:20 22:22 24:25 25:12,25 27:2 29:4 32:1 40:5 43:17 44:7,11,24 68:8 86:6 100:2 describing 15:12 33:24 47:6 description 22:21 descriptions 80:19 designed 88:20 detail 18:15 65:22 132:5 138:18 139:18 154:1,2 160:15 details 58:2 117:22 144:16 determination 30:14 86:18,19 118:19 158:6 determine 30:19	31:21 87:13 91:3 115:23 119:18 131:9 157:24 determining 21:10 78:15 developed 19:8 developing 61:5 development 136:8 136:12 Diego 19:12 difference 45:13 103:24 112:4,23 113:12 135:10,17 135:20 differences 64:25 68:19 157:20,21 different 8:16 9:13 23:15 24:1 25:6,12 26:16 45:4 56:17 60:25 61:9 64:19,20 64:22 65:4 76:12 84:8 87:22 92:3 103:21 104:16 112:18,24 115:17 131:5 140:1,13 143:2,3 155:19 157:7,17,24 158:16 158:16 166:4,11 differential 22:19 112:10,13,15,20,22 114:2 differentials 112:18 differently 23:23 141:25 difficult 51:5 134:25 difficulty 139:7 Diplomate 2:16 168:2 168:23 DIR 91:6 94:18 163:21,24 dire 77:1 direct 19:17 20:17 27:1 34:9 38:22 42:10 46:24 62:18 63:1,8 119:3 Directing 74:14 direction 73:9 127:22 128:7 152:11 168:8
D			
D 4:1,14 5:1 7:1 44:2 60:12 61:7 85:4,24 86:2,4,8 Daniel 10:15 dark 36:23 37:4 Darr 3:19 6:4 58:21 58:21,25 59:1 71:15 71:22 72:2 88:5,10 92:21 107:4 121:11 data 9:13,14 13:15 15:7,10,11,14,23 16:2,8,11,12,19 17:1,5 23:18,20 24:7 26:18 29:17 37:6 66:24 78:13 84:3 100:18 104:21 131:2,4,5 151:20 152:13 154:5,15,17 154:22 155:8,9,12 155:15,16,18,19 156:2,10,22 158:4 date 84:17 106:9 152:12 dated 6:14 84:20 day 70:15 168:14 days 155:1 Dayton 1:5,10,14 3:2 4:3 6:15 65:19 79:21 80:1 91:1,12 91:15 93:7,11 153:4 164:9 DC 1:21 2:8 deal 10:10,12 dealt 10:16 debt 12:17 15:1,2,2 26:10 27:4 28:8 32:23,23 44:2 45:3 46:2,13 47:7,12,14 48:4,16,17,18,23 49:3,8,9,14,15 50:3 50:10,25 53:13	debts 77:20 December 1:22 73:20 84:17,17 85:1 Decker 19:7 declared 58:9 decline 34:18 35:15 35:23 36:17 54:20 146:22,23 150:11 declines 35:13 36:5 56:14,15 57:11 146:7,12 149:24 decrease 155:5 deemed 101:12 123:23 default 78:11,11 79:8 133:4,18 defaults 79:9		

directional 43:13	31:3 34:18,23 47:22	14:3,5 27:14 61:13	94:7,20,21 95:17,22
directionally 72:21	48:12 51:15 54:23	62:7 83:6,12 132:2	96:12 97:9 98:17
96:7	60:11 61:3 74:21	133:17	99:6,12 101:6,9
directions 85:21	91:6 93:25 94:6,8	doing 52:19 71:14	102:11,21,22 103:2
directly 79:16 111:3	94:13 143:6 150:18	76:16 78:13 92:8	103:9,23 104:8
142:23	District 2:17	118:12 119:17	105:1,4,8,11 106:6
disagree 29:17 53:16	diversified 81:23,24	166:1,2,5	106:15,19,23 107:1
disagreements 77:2	divest 162:24	dollar 97:14 126:22	108:25 112:11,23
disclose 14:15 76:22	dividends 33:13,15	dollars 120:5 150:21	113:4,10,11,18
disclosing 23:18	33:16,18,21 53:1	DON 5:24	114:14,16,24
discount 23:11	105:12 141:17	double- 84:10	116:24 117:25
discretion 48:7 49:1	dividing 64:8 147:22	downgrade 94:21	120:9,12,24 121:12
discretionary 80:1	DMR 8:17,19 26:20	95:1 99:3,5 100:5	121:15 122:14,23
discuss 65:18 89:18	26:21 31:13 39:25	102:19,21 103:18	127:2,3 130:2,12,23
95:6 114:20 116:23	44:18,18,22 45:7,16	106:20,23,25	131:8,21,23 132:6
126:3 127:5,14	45:17,22 46:1,3	109:13 116:3 135:3	133:24 134:8,10,11
129:17 135:21	51:5 52:7,9,12,21	135:4,7,8,11,18	134:15,19,19,21
136:7	52:25,25 53:10,18	144:11,15	135:3 136:4 140:11
discussed 17:17	54:1,5,11 88:17	downgraded 45:8	141:11 142:15,24
65:21 69:20 120:18	89:20 92:15 95:8,19	95:12,15,22 96:14	143:1,5 147:7
126:7 127:11	95:23 100:4,13,13	98:9,17 99:24	150:21 155:1
128:25 134:5	101:19 103:8,10,13	102:22 103:2,7,10	162:22 165:10,20
136:13,18,23 137:3	103:16,20,22 104:1	107:8 134:19	165:23 166:10
discussing 53:12 98:7	104:7,10,11,15,16	downturn 56:10	DP&L's 26:11 29:22
113:1 118:5,7,10	105:2,7,7,9,9,11	downward 155:25	31:14 34:17,23
123:19 126:21	106:7,16 107:8,16	DP 47:4 81:7 114:12	42:11 44:1,8 45:3
discussion 21:6 40:24	108:8,11,20 109:8	DP&L 8:15 9:1,9,15	45:25 53:19 83:21
42:11 47:3 67:18	110:15,16,17 111:9	10:5 11:2,4 17:21	93:24 94:3 95:18
88:7 132:3 146:4	111:25 116:24	18:1,10 20:8 21:13	97:4 114:14 120:19
discussions 13:23	117:12 118:1,5,14	22:1,10,12 23:3,10	122:6,10 123:8
27:9 29:3 120:21	118:17,20 119:6,21	25:4,8,15 26:1,4,21	126:10 129:18,23
124:1	120:7 122:5 129:7	27:2 29:14,18 30:1	130:11,14 131:3
dispatch 154:1 160:6	134:20 135:24	30:4,5,6,12,16,21	132:25 134:10
160:11	136:2 142:19	31:2,15 32:1,4	142:14 145:20,21
dispatching 153:6,16	144:11 162:15,19	33:17 34:2,12 36:1	146:8,12 151:16
153:25	165:21 166:12	36:3 38:7 39:25	153:6 160:5 164:1
distinction 78:21	DMR's 95:15	41:20 43:7,16,23	164:16 165:6
139:20	docket 162:25	44:14,24 45:9,15	DPL 8:15 9:1,9,15
distort 148:12	document 27:23 28:4	46:6 47:8,9,12,13	10:2,3 11:2,4 15:7
distracted 92:8	29:1 60:9 61:15,20	47:24 48:2,7 51:18	16:3 17:21,21 18:1
distraction 92:4	62:8 84:5,15,25	51:22 52:6 53:5,11	18:10 20:2,6 21:13
distress 43:25 44:4	85:3,6,16,18 86:7	53:14 54:8,8,12,17	22:1,17,18 23:2,2
48:20 49:22 54:3	86:11,14,17 87:7	57:3,13 61:12 62:5	23:10 25:5,8,14,25
55:1 92:11 108:22	112:25 113:2,24	62:24 63:13 73:18	26:3,8,11,20 29:14
109:12 134:24	124:23,25 125:6,21	79:14 80:9 81:4,6,8	29:19,23 30:6,13,21
135:19	127:23 133:14,21	81:12 82:20 83:13	30:25 31:5 32:1,4,8
distribution 8:17	documentation 83:10	88:21 89:25 90:3	33:2,9,18,20,24
12:21 13:7 30:17	documents 13:10,15	91:19 92:9 93:17	34:2 36:1 39:4,7,25

43:8,19,23,25 45:4 45:5,7,12 46:1,6 47:7,9,11 48:4 49:3 50:4,18,25 53:1,1 53:14 54:12,18 55:5 55:8,13,22 57:3,8 57:13 62:5 63:13 65:19 79:14 80:8,15 80:16,18,19 81:12 81:14,16 82:2,5,16 82:20 83:13,21 88:20,21 91:12,14 91:18 95:11,14 96:16 99:21,24 102:9,11,19 103:2,6 103:8,10,15,18,20 103:21 104:7 105:13 106:5,20,21 106:25 108:24 112:11,21,23 113:4 113:10,11 114:13 114:15,15,24 120:12 121:12,15 122:15 129:7 130:23 131:2,3,8,20 131:23 132:6 133:24 134:6,15 136:4 138:3 139:25 140:7,14 141:7,11 141:16,17,21 142:1 142:1,24,24 143:1,4 154:25 DPL's 142:9 Dr 74:22 drafted 140:25 141:6 dragged 45:9 dramatic 131:10 155:4 dramatically 23:14 25:6 45:4 149:5 drawing 44:1 drawn 16:5 drill 96:25 drinking 71:18 driven 56:10,14 drives 108:3 drop 49:1 Dublin 5:17	due 12:17 50:10,18 50:19 51:1 77:20 99:13 110:19 149:5 149:5 duly 7:4 dynamics 56:25 57:12 <hr/> E E 3:1,1,13 4:1,1,1 5:1 5:1,1 6:1,11 7:1,1 earlier 15:12 17:17 24:20 25:1 30:10 40:5 44:25 63:18 104:19 107:5 113:1 120:1,17 123:1,19 124:16 125:4 126:14 127:11 138:22 144:1 146:4 146:10 152:2 162:22 163:21 early 16:10 19:16 earmarked 135:25 136:3 earning 155:1 earnings 117:16,20 easier 52:17 East 3:5,22 EBITDA 77:16,17 128:9,15,22,23,24 129:2,3,3 164:22,23 165:13 economic 32:25 33:11,12 34:15 36:10,16 56:12 60:22 70:13 116:22 119:2,3 136:8,12 148:13 economically 45:1 141:13 149:3 economics 19:4 54:21 57:3 132:3 economist 158:9 economy 72:13 ED 162:25 effect 27:20 28:15 33:1 89:19 91:17 104:13,13 105:18	149:1,19 effectively 34:8 45:9 45:18 60:23 76:21 78:12 110:24 effects 92:2 144:5 efficiencies 34:3,7 efficiency 56:13 165:24 efficient 38:12 either 17:19 32:9 52:6 74:22 85:20 90:4,22 99:18 107:3 116:1 146:19 154:2 155:5 162:21 elaborate 32:11 35:22 electric 1:6 18:20 19:13 51:14 83:8,17 84:6 86:12 90:5 91:11,14 138:8 electricity 119:10 electron 19:2 elements 24:23 26:12 55:11 56:23 Emerald 5:16 Emily 10:15 emissions 157:3,3 employed 79:16 128:7 168:10 employees 34:2 127:2 127:3 encountered 54:3 endeavored 30:19 31:21 endeavoring 7:20 ends 106:10 energy 3:18 4:13 5:12 5:15 13:25 36:14 37:15 56:14 57:11 58:24 59:3 66:4,11 72:14 94:4 119:13 137:19,22 153:3 154:7,8 155:20 157:6,13,16 159:9 159:10,16 160:1 162:24 engage 38:14 136:6 enhance 38:14 49:18	165:24 enhancing 34:3 ensure 48:10 entailed 10:24 enter 48:20 138:4 enterprise 39:21 53:14 55:9 74:4 109:9 Enterprises 42:9 entire 55:9 entities 11:2 25:18,20 25:21 26:7 30:9,11 31:1,7 34:8 43:25 44:5 45:3 46:2 59:21 60:1 83:2 102:14 113:10 115:5 118:16 120:12 131:7 141:14 156:23 entities' 120:22 entitled 31:11 entity 25:21 26:9 32:25 46:20 51:4 77:5 81:7,9 109:13 109:15 119:3 140:6 environment 36:11 36:16 environmental 38:18 38:19 equal 52:12,14 105:20 147:1,17 148:2,2 equity 32:9 74:17 89:2,11 117:12 118:6 120:25 121:16 122:14,15 123:15 145:21 147:1,8,17,18,22,22 147:23 148:7,11,11 148:14,16 149:1,3,8 150:17,25 151:17 151:19 161:11 equivalent 92:15 ESP 8:7,18 11:7 17:16,20,23 18:2 40:14 44:18 78:24 88:15 90:8,19,23 107:22,25 108:2,24
--	--	---	---

110:17,19 111:6 142:9,14 especially 38:17 50:4 50:8 ESQUIRE 3:3,11,19 3:20 4:4,14,15,17 5:4,13 essentially 28:12 established 122:20 establishing 84:2 estimate 100:3 107:21 estimating 79:8 89:6 et 30:18 111:16 evaluate 8:14,18 89:19 133:10 evaluated 71:8 133:23 evaluating 118:15 evaluation 52:6 132:25 134:14 135:11,12 event 98:9 99:3 103:18 eventually 75:8 everyday 159:25 evidence 166:6 exact 42:6 62:22 95:20 102:4 134:18 154:20 exactly 7:21 25:16 44:9 62:15 64:24 80:13 96:23 100:6 100:20 110:16 115:2 120:4 130:18 144:13,17 149:20 EXAMINATION 6:2 7:6 58:23 93:6 137:19 152:20 examined 43:3 example 15:18 22:4,7 22:21,23,25 31:2 32:9 76:19 77:6,9 86:21 89:9 95:5 101:19 105:25 106:7 113:4,8,9,14 119:1,7,12 139:14 139:24 148:20	161:12 166:21 examples 22:24 exception 68:14,16 excerpt 124:24 125:12,22 126:1 128:3 excessive 117:16,19 exclude 118:1 excluded 118:15 excluding 117:12 118:5 exclusively 61:2 excuse 42:3 87:11 96:19 99:8 117:1 141:23 157:14 164:2 exhibit 6:14 14:18 15:9,21,25 23:20 61:5 87:24 100:22 104:1,2 125:7,11,17 125:18 127:24 exhibits 14:6,13 15:15,21 16:4,11 23:16 24:8,11,14,21 26:19 100:8,10,18 105:23 106:1 110:2 117:8 144:2,6 existing 99:18 exit 92:10 expand 34:21 35:16 expect 23:14 52:10 52:11 60:17 132:20 expected 41:7 72:18 132:23 expecting 13:4 expenditures 38:15 47:15 48:9,15 49:1 49:12 51:14,17 52:22 109:10 164:24 expense 100:13 103:2 103:6,9,18,19,22,25 104:10,24 105:19 105:22 111:9,21 115:7 144:4,5,6 expenses 84:4 experience 49:6 73:6 76:7 123:10,14	experiences 134:23 experiencing 55:2 57:19 expert 17:17 18:11 experts 76:24 expires 168:24 explain 76:2 119:5 148:6 explained 156:1 explicit 25:19 28:12 123:2,18,24 explicitly 106:5 110:5 118:8 144:2 exposure 60:17,17,21 60:24 61:6,8 79:7 expressed 31:20 expression 100:17 extensive 9:9 extent 16:14 23:19 30:3 38:5 48:21 49:13 54:8,8 57:1 83:1 94:18 132:22 138:17 139:2,10 141:9 156:4,14 164:3 external 66:24 extreme 49:23	164:25 facts 9:19 12:8 fair 29:7 40:1 47:8 48:5 53:22 64:18,19 67:4 72:21 73:6 78:21,25 81:12 82:12 83:15 84:4 90:19 99:4 fairly 33:17 41:14 160:12 fall 22:13 52:6 87:23 falls 51:22 familiar 18:6 82:9,11 117:18,22,23 138:10 139:24 140:1,13 163:1,2 familiarity 138:7,19 families 25:19 114:18 family 46:6 80:8 85:25 Fannie 79:5,11,12 far 44:8 FARUKI 3:4 fashion 13:5 favor 142:15 favorable 8:19 107:23 February 63:23 64:10 68:8 69:16,17 70:2 73:25 74:6,6 130:13 166:17 federal 18:13 162:24 feel 108:19 feeling 67:1 felt 67:4 70:17 89:23 121:25 FERC 42:18,24 162:25 163:8 Fifth 3:5 figure 42:3,7 51:10 52:1,3 53:20 100:7 100:20 115:6 129:4 139:8 figured 143:23,25 figures 51:9 52:4 filed 32:18 42:18,22 42:24 61:14 64:1,9 64:10 66:3,5 68:4,7
---	--	---	---

68:10 74:21 79:21 79:22 filing 27:12 42:20 63:23 79:25 filings 131:18 156:6 156:15 final 24:22 31:9 62:2 finance 32:22 53:9 120:3 158:8 financial 8:14,15 9:6 9:7,8,16,17 11:4 12:4,15 15:7,11,19 15:24 16:3 17:6 20:2,7 21:1,12 26:2 26:3,3,4 29:10,13 29:18,19,24 30:5,8 30:22 31:15,23,25 43:25 44:4,14 45:1 45:2 46:21 48:20 49:22 51:4 53:3 54:3 55:1 63:12,12 63:15 64:2,20,20 74:3 76:8,22 77:5,8 77:11,15,24,25 79:9 87:5,11 88:20,22 89:1,7,9 92:11,14 93:16,18 108:11,21 109:8,12 110:17 111:1,15 118:11,13 118:16,18 120:9,11 128:13 131:15 132:17 133:1 134:24 135:18 136:5 142:15,20,24 143:4 148:23 152:9 153:5 155:17 164:1 164:2,6,17 165:6,11 165:18,19 168:12 financially 165:9 financials 132:12 financing 53:8 95:7 99:6,13 100:3 101:16,17 107:13 107:16 108:6 110:9 110:10 127:6,9,17 127:20 143:22 144:12 145:15 find 22:8 28:2 124:20	131:11 finding 23:11 61:19 61:19 finds 114:17 finish 72:3 fire 46:17 firm 35:24 59:2 61:8 61:9 76:20 80:14 firms 41:4,6,14,20 first 16:17 18:17 19:15 27:8 30:23 31:10 44:22 47:5 48:3,15 59:10 65:6 67:24 73:18 74:1 92:13 93:15 100:24 109:11 112:14 130:9,11 138:2 140:13 147:5 149:11 162:1 fit 153:20 Fitch 75:14 76:3 five 18:17 55:12,21 55:24 73:10 five-minute 137:13 fixed 96:13 118:22 floating 139:6 Floor 3:23 Florida 19:1 flow 11:1 15:1,2 44:1 47:8,12,13 48:4 77:17,18 94:25 165:1,14,15 flowed 83:2 flows 26:10 30:16 43:19 45:6,19,24 46:12,15 48:23 53:11,13 60:18,21 60:24 61:1 105:8,12 114:13 140:11 141:11,16 164:14 fluctuated 149:5 focus 12:13,18 32:15 79:7 108:4 109:23 focused 20:25 21:3 21:22 25:19 32:17 114:4 121:2 134:10 165:7 folks 13:19	follow 9:24 followed 87:8 following 101:12 follows 7:5 footnote 128:1 129:10 133:7,21 forecast 15:11 66:10 72:4,7 73:17 74:2,8 154:12 158:14,19 forecasts 36:21 37:2 73:21,23 158:13 foregoing 168:4,5 forget 42:6 forgetting 10:17 forgiveness 33:5,13 forgo 49:12 forgoing 33:13,15 form 9:10 10:22 34:2 49:21 65:8 80:12 92:1 149:16 forth 14:1 17:15 26:13 31:6 48:22 71:4 116:18 140:2 148:19 164:14 165:16 forward 37:20 44:6 44:11 46:20 54:9 125:1 129:14 130:3 130:4,7,10,12,13,17 133:3 147:16 149:24 found 84:23 112:25 124:20 foundational 14:10 14:17 four 14:24 20:25 21:11 22:15,16 50:20 87:6 fractional 42:11 Frank 3:19 58:21 59:1 81:8 frankly 64:6 98:15 Freddie 79:12 free 28:15 48:3 frequently 114:17 front 3:13 11:25 12:1 62:23 85:6,9 86:21 full 47:7 124:25	function 83:23 funded 55:6 funds 33:22 40:7 52:22 142:2 fungible 53:9 120:2,4 120:5,5 funky 125:2 further 35:14,23 36:4 36:17 41:18 137:7 166:25 future 9:21 12:10 33:14 34:16 36:22 37:3 72:14 132:21 132:24 146:7,11,25 147:2,4,6 149:24 150:9,11 158:17 159:24 futures 154:6 FYI 27:13 146:19
G			
G 7:1			
gap 23:10			
gas 18:20 19:12 36:22 37:3,14 54:20 56:15 72:19,22 73:10 83:8 83:17 84:6 86:12 155:12,13 156:18 156:21,23,23,25			
gears 150:15 160:21			
gen 35:23			
general 9:3 11:12,15 12:3,19,24 15:12 23:1,17 29:16 40:24 41:9,10 43:12 81:22 109:2			
generally 9:2 12:6 20:15,16 21:9 23:4 23:7 26:17,19 29:21 32:5,17 40:1 41:17 42:16,17 43:1,2 47:4,5,10 48:1,14 50:1 52:25 59:19 68:22 69:1 72:12 89:16 90:1 129:1 140:1			
generating 12:22 43:6,7 80:20,23			

generation 13:8 30:18 31:4 35:15,25 38:1,2 44:12 46:5 47:16,21 56:25 57:12 60:10,12,14 60:19 61:7 67:22 68:17,17 69:8,14 80:24 82:21,24,25 119:14 146:14,25 147:4,6 160:5,8 162:25 Generation's 162:23 generation-related 68:14 geographically 81:24 getting 14:14 26:18 29:17 62:25 119:13 gist 149:18 give 18:15 22:7 26:24 27:8 51:12 68:3 75:23 109:2,2 113:18 119:6 124:22 134:8 140:16 given 8:24 44:20 73:24 78:11 79:9 116:2 148:5 157:23 160:17 168:6 go 20:10 22:5 31:18 36:13 39:23 40:17 47:1,25 48:16 52:13 55:16 58:22 68:25 71:25 74:11 77:6 82:7 83:25 87:10 88:5 92:24 98:25 100:9,19 102:23 104:3,4,12 105:12 105:16 115:19 117:11,24 118:23 137:17 144:5,16,24 147:1,24 148:4 162:7 167:5 goal 143:10 goal's 143:10 goes 148:3 going 7:14 9:19,20 12:8 16:22 19:21 22:21 26:13 31:6	32:3,4 37:20 39:11 46:12,20 47:1 51:2 51:5 54:9 63:18,22 68:7 70:14 80:11 84:19 93:12 100:25 101:22,23 106:9 109:20 118:22 119:4 134:13 137:12 139:8,9 142:25 147:16 149:15,18,24 161:7 161:9 166:17 good 7:8,9 36:2 71:22 86:9 93:9 Gosh 152:6 153:11 grade 26:21 39:4 41:1,5,21 89:3 108:24 116:9,14 great 7:12 85:2 93:5 133:23 grid 109:3,10 135:21 135:25 136:3,6,13 136:17,22 137:3 143:1 grid-based 112:11 GRISWOLD 4:5 gross 103:22 grounds 44:16 group 2:5 4:13 12:5 39:21 78:17,20 128:8 growth 54:22 56:8,8 57:10 guess 40:25 43:9 63:20 83:18 96:25 99:9 108:16 133:20 140:12 157:11 gun 52:18 guys 106:13	141:21 happening 36:8,12 36:19 54:6 happens 31:2 happy 126:20 hard 29:20 43:18 52:15 164:11 165:2 Hayes 74:25 75:4,5 75:11,17 head 139:4 health 51:4 hear 7:10 89:4 131:16 137:23 146:4 149:12 Hearing 167:4 heat 160:19 hedging 38:13 96:22 held 2:1 88:7 help 164:16 165:6,9 165:11 hereunto 168:13 hesitant 98:18 Hi 137:9 high 4:7,19 51:7 122:1,4 133:25 134:2 138:10 160:12 higher 11:3 52:11 57:2 95:24 96:7 99:17,23,25 100:3 104:11 109:14 110:9,9 111:15 113:23,25 116:4 121:24 122:2 143:22 147:17 166:22 highlighted 27:16 highly 25:18 31:1 36:15 hip 30:12 HISHAM 5:23 historic 72:23 130:21 131:1,14 historical 131:7 155:16 158:4 historically 73:5 history 18:4 131:10 hit 93:2 147:12	hold 42:2 125:14 127:25 133:12 162:11 holdco 106:6,15,18 114:18 holding 10:2 20:13 25:21,22 39:2 40:8 45:14 57:18 80:16 80:18 138:8,15,23 holds 80:19 Honda 4:3 93:6,11 hope 10:16 hour 51:14,18 52:10 158:25 159:1 hourly 154:1,1 HOWARD 3:12 5:24 Hub 158:24 human 136:9,21 137:1 hundreds 33:19 Huntington 4:6 hypothetical 44:16 46:3 90:8 hypothetically 158:23 162:8
I			
I-P-A-L-C-O 42:8 idea 68:3 ideas 166:5 identification 125:19 identified 85:23 90:25 92:1,12 96:6 101:18 127:23 145:16 identify 59:18 91:20 91:24 92:20 102:24 103:17,17 ignoring 111:14 IGS 5:12,15 137:19 137:22 II 8:7 17:16,20,23 18:2 40:14 78:24 immediate 15:13 99:5,8,10 147:12 immediately 37:21 45:8 impact 36:23,25 37:3			

44:13,13,13,24 57:1 57:2 95:1 102:21 103:1,2,4 104:18,20 107:13 115:7,23 117:14 120:9,11 126:3 133:11,24 134:15 136:13 162:13,17 163:16 163:25 164:7,8,13 165:3 impacted 95:7 134:19 164:21 impacts 91:20,25 92:17 134:21 135:2 impaired 31:14 impairment 35:25 145:21 146:13,15 146:25 147:2,4,6,11 imperative 48:18 implemented 43:17 96:23 100:7 144:17 implicitly 52:9 141:12 161:16 implied 23:21 24:5 100:15 importance 40:25 important 131:5 164:6,25 importantly 121:4 impression 144:25 improve 37:20 53:2 53:22 88:17 109:1 165:19 improved 165:17 improvement 53:25 54:7,11 109:8 improvements 39:24 56:13 improving 53:19 Inc.'s 25:5 45:4 46:1 49:3 114:13,15,15 122:15 131:3 142:1 include 41:14 93:24 94:2,4,14 104:8 105:22,24 131:24 132:6 135:5 included 11:24 18:21 27:3 83:3 94:7	98:24 111:24 131:11 132:15,21 132:25 160:7 163:22,25 includes 22:14 30:16 132:12 155:18 including 34:17 35:5 54:20 55:12 56:12 56:19 57:10 70:13 92:2 132:1 154:6 155:19 164:3,5 166:17 income 10:25 25:15 30:15 34:17 104:6 110:6 132:10 146:8 146:12,20,22 147:13,14,21 148:3 149:24 150:5,10,11 165:5,7,8,11,21,25 166:3,7,11 incomplete 44:16 incorporate 161:15 incorporated 66:11 95:24 incorporates 74:4 incorporation 94:7 increase 35:8 98:16 99:6,10 155:5 164:9 164:16 165:21,25 166:3,11 increased 94:19 95:7 99:13 101:16,17 107:13,16 108:6 109:9,22 110:1 134:17 144:12 165:10,13 increases 99:13 incremental 94:25,25 incur 28:15 indebtedness 27:22 28:14,16 53:2 independent 29:4 indicate 15:5 20:25 26:19 28:17 47:18 88:14 145:19 indicated 10:20 12:7 21:5 23:21 24:3,9 63:11 72:4 112:10	146:11 indicating 25:2,3 31:13 47:11 48:25 indicative 77:19 indicator 11:10 indicators 87:5 indirect 33:7 indirectly 81:16 142:25 individual 151:6,8 Industrial 3:18 58:24 59:3 industry 18:20 70:14 influence 38:17 information 9:6,10 9:11,22 10:11,21 11:1,6 37:7,10 64:20 68:4 72:13,15 77:3 101:2 106:2 131:14 133:7 157:1 159:9,16 initial 16:11 input 24:21 72:9 86:18,19 118:19 inputs 13:15 64:24 65:4 68:15 153:17 inputted 69:15 inspection 39:22 instance 149:11 151:18 institutions 79:9 instrument 96:12 115:9,24 127:10 instruments 95:20 96:12,17 98:10,25 99:15,17 123:12 insurance 80:20,24 integrated 41:20 60:5 60:7,9,15 integrity 8:15 20:2,8 31:15 44:14 45:2 46:21 53:3 76:9 77:15,25 88:20,23 89:1,8,9 92:14 108:11 109:9 110:18 111:1,16 118:11,13,16,18 120:9,11 132:17	133:1 136:5 142:15 142:21,24 143:4 165:18,19 intending 118:9 intends 105:2 intent 143:5,8,13 intention 61:5 interaction 104:23 interactions 25:20 interest 15:1 77:17 77:17 80:22 95:24 96:7 100:13,15 103:6,9,17,19,22,25 104:9,10,24 105:19 105:22 111:9,21 115:7,23 128:10,15 128:23,24 129:3,3,4 141:21 142:2 144:4 144:5,6,8 168:11 interested 161:10 interests 80:20 interject 81:8 intermediate 15:15 internal 67:2,5 73:17 74:8 interrupt 47:20 109:18 159:15 162:8 intervenor 32:13 invariant 119:21 invest 109:3 143:6 148:22 invested 146:2,6 148:15,24,25 investment 26:21 39:4 41:1,5,21 89:3 91:6 93:25 108:24 116:9,14 123:16 136:9,21 137:1 investor 161:18,24 investors 84:15 122:14 involved 11:5 19:2 78:24 104:14 139:13,14 involving 19:1,6,6,12 136:22 Ipalco 42:8
--	---	--	--

IRELAND 3:4	Joe 5:25 137:9,21 144:25	48:6,8,16,17,18,19 49:15,16,17,18,20 49:23 50:10,17 51:3 51:4,7,20 52:16 53:10 54:2,7,9,15 54:16,24 56:9,12 57:19 58:2 60:18,18 60:19,19 61:8 62:12 62:15,15,16 65:15 65:17,21 69:4 70:9 70:10,15 71:8 72:12 72:14,15,16,24 73:2 73:12,13 76:19,25 77:1,4 78:12 79:22 79:24 80:3 81:22,23 82:8 87:23 92:11,15 93:14 95:2 96:3,13 96:18,21 98:15,22 99:2,5,9,19,20,20 99:21 100:14 103:11 104:3,15 105:8,8 106:3,5,8 106:20,23,24,25 107:3,19,20,22 108:2 109:1,2 110:5 116:3,4,17,18,19 117:21,23 119:1,10 119:21 120:10 124:19 125:1,9 126:15 128:20 130:18 131:4 132:3 132:7 135:24 136:1 137:24 139:1,12,16 139:18 140:13,18 141:10,12,14 142:4 142:5 143:8,10,14 144:4 145:13 146:21 147:21 148:12,17,23 149:4 149:21,22,23 150:13 153:11,11 153:13,16,17,19,22 153:23,24 154:2,17 154:22 155:1,2,3,4 155:11,14,16,22,24 156:14 158:6,8,15 158:18,20,20,21 159:3,4,19,20,21,22	160:11,14 161:7,14 161:14,15 162:5 163:9,11,13 164:13 164:14,15,21,22,22 164:23 165:14,15 165:16,17,23,24 166:3,7,13,16,20 knowable 77:3,4 knowing 165:2 knowledge 27:6 known 51:8 77:3 117:19 KROGER 4:16
ironclad 116:18	joined 30:11		
issuance 102:9 116:10 122:24	JOSEPH 5:13		
issuances 96:19	JPMorgan 6:17		
issue 27:4 28:8 32:15 43:23 76:9 83:19 96:10 101:7 110:8 115:12,14,16 116:2 120:19,22 122:15 123:9 124:16 126:8 126:11 155:6 161:6	JR 4:14		
issued 99:17,18,21 101:9 102:11,25 121:21,23	judgment 22:1		
issuer 113:20,25 114:3,5,23 115:10 115:11,12,17,25 116:9,19 161:11	jump 52:17		
issues 45:15 49:25 76:6 79:2 91:20 109:24 129:15	junk 51:8 116:9		
issuing 116:6			
item 119:15	K		
items 14:25 57:7 64:5 69:4,4 101:18 155:21	keep 23:17 143:18 keeping 29:16 Kevin 5:4,21 152:23 153:1 KIMBERLY 4:15 kind 16:23 26:8 33:4 33:7 38:20 44:10 46:22 49:18 58:3,3 58:5 64:6 70:15 73:12 78:16 79:13 96:3,5 106:8 109:7 110:5 119:18 135:5 135:7 138:11,24 139:10,10,18 148:12 149:19 152:7 155:3 165:1 kinds 15:7 72:14,19 knew 76:22 know 7:19,21,23 9:16 9:19,21 11:4,5,19 12:20,21,24 13:1,2 13:23 14:4,16 15:14 15:18,21 16:3,23 17:10,12 18:17 19:21 23:11,11,12 23:13,18 24:5,20 25:1,3,15,20 26:7,8 26:10,11 27:14 28:15 29:9,20,22,24 30:25 32:14,17,19 33:8 34:4,6 36:10 36:21,21,22 37:12 37:17,18,19 38:1,2 38:4,4,5,7,16 41:13 43:5,24 45:8,11,12 45:13,14,25 46:13 46:16,17,18 47:1,21		
J			
Jackson 10:14 11:13 27:10 56:12 72:6 126:9			
Jackson's 12:5 97:3 117:2 143:8			
JAMES 4:14			
Jan 40:11,17 55:17 125:6			
Janet 1:25 2:15 168:2			
January 168:14			
Jeff 10:14 27:10 71:22 106:11 125:15 126:8,9,12 126:13			
Jeffrey 1:20 2:1 3:3 6:2 7:3 101:14 167:7			
Job 1:23			
jobs 136:8,16			
			lack 38:16 land 139:8 language 27:20 62:17 62:22,23 124:20 large 19:14 35:24 41:14 82:5,5 139:19 148:10 157:21 largely 56:15 65:3 149:9 law 59:2 lawyer 62:14 93:10 lead 99:5,8,10 learned 28:24 led 54:25 94:19 left 48:15 75:10 legal 28:4 49:4 142:4 142:5,6 legally 64:15 116:18 LELAND 4:18 lenders 30:12 lent 28:13 lessen 94:20 lesser 115:3 let's 19:17 38:22 40:17,20 42:2 44:20 44:21 47:1,2,4 51:9 55:14 71:23 78:2 88:5 96:25 100:24 104:23 108:16 128:19 137:17 147:5 167:4 level 11:3 12:24 46:15 50:19 55:1

75:10 83:21 94:23 100:18 102:9 104:21 111:1 128:15,17 132:4 133:25 134:2 138:10,18 141:8 144:3 150:5 154:2 160:15 levels 42:7 83:5,5,14 83:20 84:2 87:13 166:21 leverage 41:6 libor 98:3 Light 1:5,10,14 3:2 6:16 19:2 65:19 79:21 80:1 91:1,13 153:4 164:10 Light's 91:15 lighting 80:21 81:1 82:22 likelihood 36:8 94:20 107:8 108:21 109:12 limit 48:21 53:5,11 124:4 134:11 limitation 128:9 limitations 124:4 126:10,21 limited 27:21 69:8 121:15,18 limits 123:8 line 14:25 19:18 20:18,20 22:11 24:8 24:9 27:1 34:11 39:1 41:3,19 50:2,3 59:17,19,21,23 60:5 64:5 74:14 89:10,12 95:5 99:12 100:24 101:4,6,8,18 102:5 102:8,13 103:20,21 104:2,2 112:3,7,7 120:23 121:2,3 123:2,6 127:13 128:10 129:5,21 130:20 132:6,10 136:7 145:23 150:19 156:22 157:1	lines 20:11 22:11 47:2 59:14,22 60:3 69:20 106:8 110:4 123:6,7 126:4 127:13 129:17,20 132:14 133:5 144:6 lion's 64:24 LIPPS 4:18 liquidity 160:24 161:16 list 14:20 18:5 39:16 39:18 listed 57:7 91:4,8 92:3,12 109:6 literature 41:12 litigation 17:18 19:1 19:5,6 75:24 76:14 76:17 79:4 little 9:24 10:22 18:15 23:23 26:16 52:17 55:15 71:18 74:24 96:22,25 124:19 125:2 140:12 143:2,3 150:15 160:21 LLC 3:21 LLP 4:5,18 load 54:22 56:8 57:10 57:16 160:12 loan 98:5 116:13,14 127:6,17,20 128:2 141:5 loans 141:22 lobbying 38:16 locate 100:10 located 134:3 logical 159:14 long 28:1 49:11 68:3 78:21 95:25 96:21 106:3 124:19 151:14 154:13 158:19 159:11 long- 151:20 long-term 51:3 95:12 95:16 96:1,8,11,12 97:4 98:8,10,19 100:14 102:25 105:15 106:3	121:23 longer 49:19,25 98:21 look 19:17 21:24 38:22 39:11,14 40:20 60:2 73:17 91:2,9 95:4 100:12 100:24 104:1 105:21,25 113:9,23 115:23 116:1 128:19 129:4 134:9 143:11 148:23 155:16 156:2,10,22 157:2 158:1,4,15 159:3 166:18 looked 33:19 37:13 37:16 57:25 61:11 63:11 66:23 67:2 70:11 91:7 102:13 124:2,11 130:4,6 131:2 154:13,25 155:1,11,11 156:25 157:22 159:12 160:15 166:18 looking 9:12 11:20 14:24 27:13 39:15 42:4 43:13 50:15 73:20 77:4 80:4,7 84:25 111:18,20 124:18 154:24 161:11 162:11 looks 70:12 125:1 129:8 loss 78:11 79:8 lost 92:7 lot 66:1 105:12 117:22 137:10 155:19 low 72:22 73:4,5,7 121:23 160:12 lower 19:7 22:20 33:10,25,25 35:3 41:6 46:2 52:12 72:25 106:17,18 108:21,25 116:19 lowest 41:21 42:7 lump 24:24 lunch 71:24 86:10	88:8 <hr/> M M 13:7 48:8,22 49:1 49:12 53:6,12 54:4 69:4 92:9 131:4 132:15 166:18,21 Mac 79:12 MacKay 10:15 27:10 126:8 Mae 79:5,11,12 magnitude 33:8 main 19:23 107:22 123:25 124:13 155:14,14 maintain 26:21 88:20 maintaining 89:7 maintenance 12:20 89:2 major 19:5 86:19 98:5 109:5 making 33:2 52:22 70:12 90:2 Malinak 1:20 2:1 6:2 6:13 7:3,8 10:10 35:22 40:20 44:17 58:17 59:1 72:3 88:11 93:9 97:24 101:14,22 115:8 117:18 125:18 126:13,20 133:13 134:13 137:8,21 151:25 152:17,24 162:13 167:1,7 manage 119:17 managed 119:22 management 65:19 92:4,5 mandatory 80:2 manner 165:24 MANUFACTURE... 4:12 March 133:17,18 168:25 margin 89:24 95:2 mark 125:6 marked 125:10,18 market 46:18 51:8
--	---	---	--

54:19,19 56:4,18,20 56:25 57:9,12,19 90:4 119:21 122:2 154:5,22 155:7,9,12 155:20,21 156:2,10 156:17 157:2 160:24 161:15 markets 37:19 match 133:19 matched 155:3 material 43:22 44:24 55:11,15 69:6,7,12 materials 72:5 math 107:24 matter 1:4,9,13 17:16 17:20 18:2,6,9 19:1 19:12 49:4 63:19,25 64:1 72:17 76:19 79:4 130:16,17 135:13 matters 13:13 18:10 18:14,19,20,23 19:10,14 49:6 75:25 76:8 138:12 MATTHEW 3:20 maturing 98:22 maturity 50:12,13,22 maximize 166:7 maximum 112:4,10 112:13,16,17,20,21 114:2 MBIC 80:25 McNEES 3:21 59:2 mean 12:12 16:15 23:6 24:5 28:22 29:8 33:7 37:25 44:9 46:8,8 48:6,13 53:18,21 57:16 58:8 60:7 65:3 66:19 67:24 75:13 78:4,5 82:15 90:14 96:6,8 103:19 105:6,15 109:16,18 114:11 117:8,24 119:5 123:25 140:9,9 142:23 145:4 146:19,20 148:2,14 148:21 153:15	158:12 164:11 165:8,22 166:9,15 meaning 140:10 means 25:8 51:1 53:10 104:14 114:12 149:25 meant 126:16 141:15 measurable 21:3 measure 21:4 34:14 119:1,23 145:20 146:5,6 148:13,14 148:15,25 149:1,23 150:10,21 152:7 measured 89:2 measures 31:22 mechanically 148:4 mechanics 148:5 Meehan 69:18 70:8 70:20 Meehan's 69:22 70:3 130:19 megawatt 51:14,18 52:10 158:25 159:1 memory 51:19 58:12 62:2 69:5,9 mentioned 41:18 72:8 125:21 138:2 138:22 merger 61:13 62:4,5 62:7,18 63:2,5,6 merging 62:10 method 25:2 methodological 21:23 24:23 83:12 methodologies 24:16 83:7,24 methodology 25:18 83:16,21 84:5,8,24 86:6,18 113:2 115:4 metric 17:6 metrics 21:1,12 52:7 53:20,22 77:5,8,11 77:13,14 164:6 Miami 81:1 82:22 Michael 67:17 Michigan 3:14 million 27:3 28:13 50:11 96:2 97:17	98:14 106:10 107:14 108:6 110:10 111:12 121:21 140:14,18 141:3 million- 97:13 126:21 million-dollar 97:25 101:20 122:7,18 126:25 127:10 millions 33:19 152:4 mind 18:25 37:21 58:11 69:7 mine 16:23 minimize 38:19 minimum 129:6 minute 12:10 72:5 151:22 162:12 minutes 68:9 71:20 miscommunication 126:19 missed 152:2 missing 21:17,18 Mississippi 42:9 misspoke 134:12 misstatement 126:16 misunderstanding 26:17 mitigate 30:20 31:25 37:23 Mm-hmm 162:4 model 12:4 21:25 22:3 23:8,12 63:12 63:12,15,25 64:3,3 64:23 65:2,6,7 66:12,13 67:21 68:9 68:13 69:15 74:3,7 83:2 84:12 129:19 129:23 130:2,8 131:6,9 145:17 153:6,9,13,16,19,21 153:25 160:6,7,11 160:16 modeled 21:20 modeling 19:4 72:7 129:18 130:11 models 19:9 64:21 75:21 modernization 8:17	109:4,10 135:22,25 136:3,6,13,17,22 137:3 143:1 modified 95:21 99:2 121:20 moment 100:9 109:24 167:5 money 33:16 120:2 148:25 monthly 16:18,19 months 156:24,25 Moody's 21:8,20,22 22:18 23:13,21,25 24:4,16,24 25:18 45:12 75:14,19 76:4 77:22 79:18 83:6,11 83:23 84:5,14 86:6 86:11 87:7,14 112:4 112:5,9,13 113:1,3 Moore 5:4 6:7 152:19 152:22,23 153:1 166:25 Morin 74:20,22 morning 7:8,9 move 47:1 102:1 moved 75:3 moving 44:12 102:5 129:14 133:3,10 MRO 8:20,21 88:15 88:18,24 90:8,19,22 92:14 107:24 108:2 108:12 110:17 111:6 multi-tab 11:11,14 multiple 11:17 92:1 106:1 MURRAY 5:21 MVLT 81:1
N			
N 3:1 4:1,1,1,4 5:1,1 5:1 6:1,1 7:1 N.A 6:17 name 7:12 34:12 93:9 137:21 153:1,9 name's 59:1 nationally 57:22 natural 36:22 37:3,14			

54:20 56:15 72:19 72:22 73:10 155:12 155:13 156:18,21 156:23,23,25 nature 12:15 16:15 16:24 65:24 near 41:5,6 necessarily 53:21 67:5 164:18 165:9 need 44:1 48:23 49:13,22 51:2,2 53:13 54:4 90:12 92:8,16 116:1 120:14 137:11 144:16,23 165:5 needed 49:2,9 needing 141:10 needs 47:8,11,12,13 48:2 150:13 negative 26:3 27:17 31:2 36:25 44:13 124:3 134:21 negotiated 43:9 negotiating 123:11 123:15 negotiation 122:6 neither 168:9 net 107:19 132:10 147:12,20 152:3,6,8 164:13 Never 58:11 new 27:4 28:8,14,15 38:19 64:15 96:19 99:16,21 101:8,18 102:8,25 112:3 116:6 122:15,24 123:9,11,15 124:5 126:8,11 133:10 136:8,16 145:15 NiSource 39:20 non 109:17 non-bypassable 89:20 118:22 142:18 non-DMR 111:9 non-recourse 139:17 140:4,5,6,9,9 nonquantifiable	108:1 109:21 nonquantified 111:15 nonquantitative 109:5,7 normal 119:10,10 121:22 normally 119:24 North 4:19 Notary 2:16 168:3 notch 22:19 112:4 114:20 notches 22:15,16 45:13 notching 20:15 21:7 21:14 24:4,6,10,12 24:15,25 note 98:1 noted 125:12 134:22 notes 14:13,21,23 15:5,20 88:1 162:11 notice 2:15 155:4 November 73:19 number 9:14 11:17 18:22 19:14 33:20 34:13 38:8 83:13 103:9 104:6 106:13 106:14,15 125:9 134:7,7 136:16 145:3,8 162:25 number's 87:25 numbers 14:14,15 23:9 43:14 101:1 102:4 104:5 106:3,4 106:11,17 107:20 133:19 164:5 numerous 18:14 Nurick 3:21 59:2 NW 2:6	Objection 142:3 objective 21:4 obligation 50:22 obligations 47:15 48:3 106:21 107:1 142:5,6 observe 22:2 observed 24:4 obtain 26:10 obtained 16:13 17:1 46:11 obtaining 13:20 obviously 77:6 146:21 OCC 152:23 occasion 52:18 occasions 19:9 occur 24:7 October 64:9 68:11 73:25 84:24 odds 53:24,24 offer 49:11 90:4 offering 37:2 49:7 office 5:6 145:2 offices 2:2 official 125:5 oh 33:11 76:19 86:23 87:3 101:25 106:13 108:15 123:7 Ohio 1:2,16 3:7,24 4:8,12,21 5:3,6,9,17 5:22,23 54:22 56:9 61:14 62:10 80:23 80:23 82:21,24,25 117:18 152:21 153:2 162:23 okay 7:10,24 8:1 9:24 10:2,9,20 11:8 12:3 15:17,18,23 16:7 19:17 20:10 22:11 22:13 24:6,13 26:24 27:8,11 28:3,17 32:2 39:11,13 40:22 41:25 44:23 45:17 47:23 48:7 53:23 55:16 56:21 59:8,9 59:13 64:23 69:9 76:19 78:2,9 80:6	82:8 83:22 84:7,13 84:22,22 85:1,9,11 87:3,25 88:13 92:23 93:5 94:3,18 97:8 97:24 98:7 99:4,11 100:9,11,12,21 101:5,15 102:8,24 103:13,21 104:7,16 104:25 107:20 109:11,25 110:7,14 111:7,18 112:14,16 112:19 113:21 114:1,6,12,14 116:23 117:7 118:4 118:9,14 121:14 123:10 124:7,22,24 125:2,3,12,16,17,21 126:2 127:4,9,23 128:18,19,25,25 129:16 130:25 131:13 133:19,20 133:23,23 134:9 137:14 138:1 140:18 142:8 143:15 144:9,13,19 145:11,13,19 146:18,24 147:5,12 148:5,15 149:7,24 150:15 151:22 153:1,13,25 154:3 155:9 156:20 158:10,23 159:8,11 160:4,21 161:17 162:1 163:15 166:8 166:25 Oliker 5:13 6:6 35:17 35:21 137:9,9,14,20 137:21 145:8,11 152:14 OLSON 3:12 once 71:22 147:9 one's 159:22 ones 10:18 11:18 57:5 98:21 ongoing 48:9 opco 114:18 opening 11:8 operate 13:2 38:9
--	---	--	---

132:23	owns 38:8 80:22	Pardon 52:2	people 9:16 10:16
operating 12:25 13:4	81:12	parent 44:4 81:14	28:13 37:18 53:9
38:4,6,10 47:14		92:10	85:20 158:15
80:9,14,14 114:18	P	Parkway 5:16	percent 25:14,17,25
118:20 119:15,16	P 3:1,1,19 4:1,1 5:1,1	part 19:16 21:15,18	28:11 65:3 74:18
operation 12:20 34:7	7:1 76:4	40:7 43:7 55:8,8	140:3 151:17,17
38:12	P.C 3:12	57:9,23 61:11,12	percentage 100:15
operations 9:20 12:9	P.L.L 3:4	77:21 82:5 88:14,18	percentages 87:12
12:14,15 118:21	p.m 88:8,9 167:7	125:5 135:6	perception 73:9
119:6,7,19	page 6:2 18:5 19:18	particular 12:14	perform 78:16 93:17
opinion 24:21,22	20:12,17,20 21:7	18:21 21:21 25:3,4	performance 30:16
26:2 28:19 29:4,8	22:7,11 27:1 31:12	25:9 48:12 62:21	93:18 130:21 131:1
30:3 31:19 43:15	34:9 38:22 39:17,23	68:18 76:6 77:10	131:16
49:5 53:15,17 54:12	40:20,23,24 41:3,3	94:17 115:12,14,16	performed 51:20
73:15 121:8,14	41:18 42:6,10 46:24	115:24 116:21	78:19 79:13
141:20,25 158:8	47:2,4,5,11 49:7	146:16,16 150:7,8	period 17:13 54:19
159:2	50:3 51:10 59:12	150:12 158:22	73:18,21 108:24
opinions 37:2 67:1	60:2 74:12 80:5	163:3	153:7
158:16	85:2,3,7,11,12	particularly 133:5	PERKO 4:14
opposed 96:18	86:22 87:1,10,14,15	parties 137:15 142:6	permission 28:10
107:16 134:10	87:18,25 88:12	168:11	person 52:17 128:5,6
optimal 151:14,21	89:10,12,18 95:5	partner 75:9,9	158:8
orange 11:19,22	99:11 112:3 114:19	partners 38:7,10	personal 122:17
oranges 111:5	114:25 116:23	parts 85:20 86:2	123:10,14
order 44:2 48:22 49:3	117:1 118:4 120:18	91:23 112:14	personally 125:22,25
49:10,14,14,21	120:23 121:3 123:3	121:17	127:21 140:24
53:12 61:20 62:16	124:25 126:2,4,20	party 62:5	personnel 9:15 10:13
110:12 155:15	127:4,13 128:10,19	pass 90:20	29:3
organization 48:19	128:21,22 129:17	pass-through 89:24	perspective 34:15
organizational 82:10	130:20 133:3 134:9	90:3,21	Peterson 75:3
82:13	134:9 135:21 136:7	passes 34:8	phone 52:15
original 63:23	143:15,17 145:16	path 158:17	phrase 114:7,10
outcome 168:12	145:19,24 150:16	PAUL 4:17	115:8 130:22
outline 65:5 129:14	150:19 151:24	pausing 11:8	phrased 90:11
outlined 61:10	153:5 154:3,23	pay 33:16 47:13,15	phraseology 145:25
outlook 43:15 44:8	157:11	48:9 63:1 77:20	physical 136:9,22
46:4 164:1	pages 1:24 28:1 51:9	139:9	137:2
outside 37:7 46:6	85:8,9,14 88:25	paydown 69:13	picking 31:12
156:7	125:1 127:13	payer 30:21 31:23	piece 111:14
outstanding 105:15	128:20	paying 33:21 104:17	pieces 81:2,2
140:19	paid 33:17 48:19	107:15 108:8 110:9	place 20:7 24:13 26:4
overhang 32:23,23	76:4 114:14,15	payments 49:9,14	31:14 43:4,5 95:9
overstated 34:15	141:16	peakers 140:15,21	124:4
owned 25:22 81:16	paper 79:4	peaking 80:22	placed 30:20
82:16	paragraph 113:15	peer 39:2	places 24:1 92:3
owner 38:1	paragraphs 40:3	pending 40:13 79:20	103:21 105:9 134:5
ownership 42:11	paraphrasing 20:6	149:14 162:10,23	plan 1:7 43:4,16,21
60:13,19 81:4	50:4	163:4,6,7	44:6,11 90:5

planning 13:1	109:13 115:7	previously 72:8	105:7
plans 12:16,19,22,25 13:6,7,7 42:20,22 42:25	122:14,23 126:3 127:14 134:7,8 135:2,6 136:8 138:3 146:13 150:11	price 37:14,15 38:4 46:11,17,18,22 104:13 154:1,7,8 156:18 157:2,5,6,9 157:9,13,16,17,23 158:11,13,24 159:1 160:1,18 161:18,24	process 38:17,18 138:14,20
plant 19:4 38:4,6,12 42:19 152:3,6	potentially 52:12 158:13 163:6	priced 121:16,19	procure 38:3
plants 13:2 38:9,11 42:12 47:24 48:10 131:24 132:4,8,13 132:15,23,25 152:5 153:20 160:5	power 1:5,10,14 3:2 6:16 19:1,4 42:9,12 65:19 79:21 80:1 81:23 91:1,12,15 153:4,18 156:3 158:24 160:5 164:9	prices 13:25 36:14,14 36:22 37:3 54:20 56:14,15 57:1,11 66:4,11 72:14,19,22 72:23 73:10 130:3,4 130:7 155:12,13,20 155:21 156:3,11 157:3 158:17 159:10,24	procurement 10:11
play 56:23	pre 148:24	pricing 67:22 70:7 161:8,10	produce 108:23
please 32:11 35:18 59:5,12 74:12 76:2 88:12 89:5 93:14 124:23 125:6 137:24 151:23	pre-impairment 148:6	primarily 11:18 19:16 70:13 79:7 114:13 124:9	produces 21:25 23:8 108:23 135:18
plotted 51:12,13	precedent 53:19	primary 10:16 12:18 22:25 26:1 33:11,12 57:5 66:3 109:7	producing 23:8 119:2
plus 11:7 70:13 79:11	precise 62:25	prime 79:6	production 156:23
point 14:17,24 29:25 31:8 32:13 37:21 46:13,21 49:2 60:22 66:6 71:16 78:14 83:15,16,20,22 103:1 109:11 111:6 115:18 117:8 120:3 130:18 151:9	preconditions 47:6 predict 75:21 86:15 predicted 22:16 predicting 78:5,12 prediction 36:20 52:5 78:10 predictions 23:13 preexisting 55:13,21 57:8	printout 125:2	profit 94:25
points 23:18 26:18 73:1 98:2	preferably 51:3	prior 17:22,25 61:11 64:13 68:13 78:24 114:6	profitable 46:14 164:20
pollution 97:9,10 98:13,23	preferred 151:2	probabilities 78:11 79:8 133:4	profits 30:15 46:15 164:13
poor 46:19	premium 62:17 63:3	probability 36:12,19 54:1,6 108:22 109:10	programs 136:13,18 136:23 137:3
Poors 75:19 79:18	prepare 9:22 75:11 75:17 152:10	PRITCHARD 3:20	project 99:25 158:2
portion 21:16,18 22:8 27:16 34:13 38:8 101:12 113:14 135:24 136:2,14,18 136:23 137:4	prepared 12:5 43:16 63:25 70:2 73:18,21 75:19 79:5 82:14 85:16,19 152:11	probably 22:20 57:17 100:7 116:11 144:22	projected 9:8 11:6 34:12 66:4 68:17 84:3 94:8,13 95:16 99:25 105:24 116:24 131:15 136:17 155:22
position 9:7,7,8 29:24 32:8 76:25	preparing 63:16	problem 32:22	projecting 101:6 155:18
positive 31:6 44:12	present 3:16,25 4:10 4:23 5:11,19,20 23:21 35:9 90:6,8 113:2	problems 49:16 134:8 148:17	projection 52:8 73:13 94:9 157:6,6 158:2 158:7,11,22,24,25 159:10
possibility 36:5,24 37:4 38:19 149:23	presentation 24:7	proceeding 7:13 8:5 8:7,9 40:14 153:4	projections 9:17 11:7 13:25 34:24 35:11 37:14,15 65:12 66:6 66:24,25 70:12,17 70:21 74:5 84:3 93:17,18,21,22,24 94:4 105:22,23 117:3 129:25 130:21 131:1,8,25 143:23,25 150:1,2 153:6 154:4,7,8,11 154:14,20,21 155:2 155:8 156:12 157:7 157:12,15,16,17,23 158:5 159:2,13,13 159:17 160:1,18 163:22,25
possible 36:10 37:19 38:3,12 69:11 92:17 98:17 116:11	press 138:11,24 139:11	proceedings 138:8 139:12	projector 158:3
post 150:14	pressure 53:4,5	proceeds 52:25 105:2	
potential 39:24 95:6	presume 7:21		
	prevail 8:20 100:4		
	previous 130:17		

projects 101:9 PROMOD 153:16 promoted 75:8 proportion 82:2 proportionally 57:23 proposed 8:19 39:25 118:1 162:15 proposing 52:21 proposition 32:20 112:12 propriety 118:5 protective 44:7,7,9 provide 7:23 34:11 34:11 76:5 133:4 159:22 provided 8:25 9:9,23 11:12 16:6,9,18,19 17:7 27:12 34:1,25 37:6 63:12 69:18,21 70:7 72:5 83:6 91:11 106:5 132:5 141:17 145:20 155:15 provides 91:15 providing 9:18 33:9 33:10,24 121:8,14 provisions 43:8 62:7 PSE 39:20 public 1:2,19 2:16 7:14,17 18:6,12 39:20 58:18 72:13 72:15 137:7 138:11 139:11 143:19,21 152:15 154:15,17 167:4,6 168:1,3 publication 84:17 publicly 9:11,13 published 75:22 84:16 154:6,8 157:6 157:15 PUC 5:22,23 PUCO 8:4,9 42:22 pulled 16:2 106:4 pulling 16:8,11 purchased 161:18,25 purpose 52:22 66:8 70:20 142:18 154:9 purposes 10:1 60:13	80:4 83:4 84:2 89:6 90:18 91:21 120:8 142:23 Pursuant 1:16 2:15 pushed 55:7,24 57:8 57:23 58:3 put 22:18 30:6 31:5 72:24 Putnam 74:25 75:4,5 75:11,17 putting 30:24	52:3 59:4,7 63:20 66:16 70:22 71:3 76:24 82:7 83:19 84:1 89:4 90:7,13 90:16 91:23 102:2 102:12 104:19 111:3 117:17 130:10 134:12 137:24 138:2,5 140:12 141:24 147:25 149:12,14 149:16,19 150:23 151:7 153:23 154:7 161:19,22,23 162:10 questions 7:14,15 9:17 14:9,11,12 42:14 43:12 58:17 58:19 59:10 63:10 65:24 66:1 91:10 93:11,14 102:18 107:4 124:16 137:10,22 142:8 152:15,16 167:1,3 quick 33:23 74:1 139:8 quickly 47:19,20 89:14 151:24 quite 93:13 152:12 quote 19:21 quote-unquote 136:3 quotes 80:8	90:4 91:20 94:8,13 95:12,16 96:9 98:2 98:25 99:12,20,23 99:25 100:15 102:24 103:1,3 104:18 116:4 122:10 150:18,22 150:24 rate-based 152:7 rated 41:19 rates 34:18,23 35:3,4 35:11 73:4 94:11 96:7,13 98:20 99:17 119:11,13 144:8 160:19 rating 9:12 13:17 21:21 22:10,12,17 22:20 23:25 24:3,5 24:9 25:2,3,5,8 26:22 29:22 41:1,21 44:8,25 45:3,25 46:21 58:11 75:14 75:18,24 76:11 77:22 78:6,7,8,15 79:17 83:5,7,14,16 83:24 84:4,24 85:24 86:15,16,20 87:1,13 89:3,11 108:24 112:5 113:3,18,19 113:20,21,25 114:3 114:20 115:9,11,12 115:13,15,17,24,25 116:7,9 118:15 160:23 161:7,12,17 161:24 162:1 ratings 21:10,25 22:2 23:2,9,14,22 24:22 25:6,7 26:18 39:3 39:25 45:11 46:2 75:12,22 76:5,5,7,8 77:15 83:13,21,23 84:2 87:23 112:5,11 113:9 114:5,19,24 115:3 116:19 160:22 161:14 ratio 15:19,24 150:17 151:19 ratios 87:6,12,22
--	--	--	---

Q

qualifications 90:10
qualify 116:13
qualifying 28:22
qualitative 43:13
108:19 110:20
133:25 134:4
quality 50:1 67:6
quantifiable 107:21
107:25 108:5
109:24 111:23
112:2
quantifiably 112:1
quantification
134:20
quantified 96:8 103:1
103:3,5,11 110:1
135:14,17,19
136:12,16,21 137:1
145:15 162:13,17
163:15
quantify 91:21,25
92:16,19 107:7
134:16,22,25
quantifying 102:20
quantitative 24:3,20
25:2 108:7,10 110:7
110:21 111:14
134:2,14
quantitatively 110:23
quantity 104:13,20
160:8
question 7:17 9:3
20:20 30:24 31:9,19
32:2 35:18 38:25
40:13 44:21 45:16

R

R 1:20 2:1 3:1,20 4:1
5:1 6:2 7:1,3 101:14
167:7
Rabb 10:15
raise 32:8 136:5
raised 32:13
raising 124:5
range 129:5 158:10
158:13,18 159:7
ranges 87:18,22,23
88:4
rate 18:22,23 19:9
30:21 31:23 35:1,5
35:8,9 74:21 79:21

164:23 165:17,17 RDR 1:25 reach 71:10 reached 66:17 67:3 165:5 reaching 23:1,4 read 22:17,18 26:19 34:4 35:19 40:10,11 40:13 55:17,19 71:8 72:16,18 113:14,16 138:11,21,24 149:14 reading 28:1 62:24 ready 152:23 real 150:6 realistic 32:19 realizes 34:7 really 32:15 50:25 57:22 68:5 73:15 79:12 82:18 92:16 118:23 120:14 124:5 146:15 reason 25:11 42:23 104:12 110:12 166:1,8 reasonable 71:9 157:25 158:13,15 158:18 159:2,17 160:17 reasonableness 93:22 154:4 156:11 157:12,15 158:11 159:7,8 reasonably 78:7 121:16,18 159:18 reasonably-priced 120:25 reasons 25:13 recall 12:10 17:24 27:23 40:16 50:20 50:21 58:10 61:17 61:25 62:3,12,13,17 62:23 63:13 64:6 66:22,23 67:12,20 67:21 68:19,24 69:1 69:9,13 70:6,9 71:13 73:20,22 79:15,19 86:2,5	107:5 120:19,21 123:5 130:17 138:13 152:6,8,9 154:14 156:9,13 159:14 160:16,16 recalled 68:16 receive 59:5 received 13:16,17 14:2 67:21,25 68:4 69:15 receiving 14:4 recess 40:18 72:1 88:8 137:18 recession 56:10 recognized 35:24 36:6 recognizes 146:7 recollection 28:10 69:2 86:3 166:24 recollections 98:4 recommend 151:18 record 35:19 39:13 40:17 55:19 71:23 71:25 88:5,7 113:16 137:17 167:4,5 168:6 recourse 139:16,21 139:22 recover 91:3 recovery 56:9 57:10 redacted 14:16 reduce 46:15 53:2 54:4,5 105:11,13,14 reduced 92:9 95:1 168:8 reduces 108:22 reducing 105:18 reduction 34:23 35:1 35:7,9,10 105:3 118:23 119:4 reductions 34:17 150:9 redundant 94:14,19 refer 36:4 64:7 89:1 115:13 126:14,16 127:8 reference 47:23 59:14 60:5 63:4 74:17	80:4 89:10,12,13 118:9 referenced 79:20 114:7 123:2,20,24 128:10 references 59:17 referencing 117:2 referred 32:23 82:25 83:7 142:12 154:23 referring 10:2 29:14 29:15 35:7,12 36:1 39:7 42:25 59:16,18 59:20 60:20 62:6 74:20 77:8,9,10,11 81:10 86:12 98:11 98:12,19 99:14 114:2 121:11 128:2 130:23 139:22 146:1 154:15,18 155:10 157:10 refers 87:1 refi 101:20 refinance 28:16 50:11,22 51:6 99:22 refinanced 27:3 51:2 refinancing 97:14,17 97:20 98:1 100:1 116:4 reflect 151:3,6,7,13 160:23 reflected 46:18 110:2 reflective 149:10,22 reflects 59:7 112:22 regard 16:22 59:16 60:24 67:19 69:14 69:21 87:5 93:16 94:6 102:20 109:11 123:18 regarding 8:16 13:11 66:6 72:13,16 122:10,14,19,24 126:24 143:23 regards 70:6 88:23 region 57:14,17,22 Registered 2:16 168:2,23 regulated 10:5 18:20 18:23 20:14 28:19	40:6 83:8,17 84:6,8 84:11,15 85:1 86:12 113:1 regulations 38:20 regulator 92:7 139:5 regulators 92:7 138:25 151:15 regulatory 5:14 36:11,16,24 37:5 38:17,18 162:24 relate 119:24 129:9 related 9:22 12:16 14:3 15:7 23:3 25:18 30:5,6,8,15 31:1 32:3 45:3,11 47:16 58:5 61:2,13 69:12,16 118:21 119:19 126:25 138:21 146:21 162:2,3 168:10 relates 20:1 85:24 146:13,15 relating 31:19 119:25 127:5 relationship 20:13 21:24 25:24 26:6,12 30:13 45:5 relative 72:22 73:4 82:2 87:23 100:14 relatively 36:12,18 73:7 87:4 121:23,24 relevant 77:15 153:18 reliability 49:17,25 109:1 reliable 48:11 49:2,11 reliance 26:11 129:18 relied 11:18 17:5 68:8,10 72:5,7,11 73:13,15 83:6,10 84:12,15,25 87:17 93:17,20 124:7,9,10 124:13 125:3 160:8 160:9 relief 54:14 120:8 rely 125:24 164:6 relying 26:14 37:5,6 37:10 66:12 150:1
--	--	--	--

158:3 160:18	representing 93:10	74:17 89:2,11	95:3
remaining 47:18 48:3	153:3	106:16 117:12	right 20:23 31:16,16
141:7	request 30:21 35:8	118:6 146:2,6 147:1	31:24 38:21 39:22
remember 10:19	40:6 44:20 59:6	147:17,23 148:13	47:16 50:16 53:23
11:15 14:4 18:25	requested 35:20	148:14,14,16,23	56:1 57:6 63:9
19:10,13 25:16	55:20 91:1,2 94:11	149:1,3 151:1	65:13,16 66:12
31:24 41:16 58:13	113:17 117:15	REV 1:16	72:22 85:13 94:12
58:15 61:16,19,22	142:13 168:9	revenue 19:8 25:15	97:16 100:6 101:3
63:3 64:12 65:11	requesting 163:10,14	25:17 82:19,21	108:5 113:22,24
68:5,6 76:20 79:2	require 54:13 148:18	94:14,20 119:15	116:15 117:3
84:20,20 95:20,25	required 63:1 76:10	131:24 132:6,18,20	120:16 124:20
96:23 97:11 100:6	164:24	132:24 135:24	126:23 129:19
120:4 132:4 138:4	requirements 19:8	165:4,8	132:9,11,14,14
144:13 154:19	requires 7:18 14:15	revenues 65:12 68:18	135:9 143:10,14
remembered 61:18	128:14	69:8,14 83:1 84:3	145:1 146:3 147:13
remit 48:3	requiring 28:9	118:1,6,14 120:7	150:25 153:7
remove 53:5	research 9:11	131:5 132:7,12	154:19 156:17
removed 54:10	residential 153:3	154:25 163:21,24	164:1 165:10,12
repeat 40:9 136:25	162:14,18 163:16	164:9,16,21	rights 142:1,6
161:22	resides 139:25	review 13:10 61:13	rise 36:15
repetitive 146:3	respect 12:13,17	61:25 63:16 67:10	risk 34:16 37:24,24
rephrase 44:10 66:16	48:11 65:1 118:18	67:13 69:22 70:2,19	44:3 60:18 92:17
81:4 90:11,18	118:24 143:4	70:23 72:12 85:18	129:7 146:7,12
117:17 134:13	144:14 150:6	85:23 93:23 94:1	150:6,9 160:24
150:24 165:10	156:25 159:24	97:6 100:8 124:15	risks 160:24
replicate 77:22	response 7:22 90:11	130:11,18 131:20	River 19:7
report 22:8 27:15	121:10	154:5 159:19 160:4	RJM 16:11 23:16
32:16 77:14 87:24	responsible 13:19	168:9	110:6
104:22 109:6 115:1	restate 31:8	reviewed 9:18 10:21	RJM-10 104:2
144:3	restores 136:4	12:7 61:15,20,25	106:16
reported 1:25 156:5	restrictions 27:3 28:6	62:1 66:7 71:5 72:4	RJM-11 103:23
156:15	28:7 36:24 37:5	85:20,21 97:3	RJM-13 87:25,25
reporter 2:16 35:19	result 13:1 43:20	122:22 125:22,25	RJM-14A 104:6
55:19 92:25 93:4	55:25 103:6 109:14	127:18 128:6	RJM-18 50:16,17
102:1 113:13,16	137:2 147:18	129:23 130:1,10,15	140:17
117:15 124:23	resulted 54:21 94:24	160:9	RJM-7 101:20
142:13 168:3,23	results 8:20 45:18	reviewing 66:8 69:24	RJM-8 100:22 102:6
REPORTER-NOT...	46:14 94:8,13	86:2	102:7,8
168:1	110:22	revised 1:11 99:16	RJM-9 103:21 104:2
reports 9:12 13:18	résumé 18:4	revolver 128:3,14	106:2,7 110:2
22:18 58:11 83:13	retail 51:14 91:11,12	revolving 127:5,15	RJM1 14:18,20,24
113:3 138:11,21,24	91:14,19	127:19	23:20
139:12	retained 15:1 75:23	rider 8:17 88:17	RJM4 23:20
represent 7:13 61:23	76:4 77:18 165:14	93:25 94:4,15,17,19	RJM9 15:21
137:22 153:2	retired 51:3	118:1,14 164:3,12	ROCI 146:1
representation 97:12	retirement 104:24	164:24	ROE 34:12,14 37:24
representations	105:24	riders 89:20 90:25	38:14 117:3,5
124:9,14	return 18:23 35:5	91:2,8 94:23,24	118:10,19 119:1,4

119:18,25 145:20 146:5 147:19,20 148:4 149:22 150:14,17,20 ROEs 116:24 ROIC 146:2 149:9 150:10 role 122:6 roll 11:3 roughly 28:18 92:15 rubric 24:25 rules 21:7,14 147:9 148:18 run 49:11,18,19 147:14 151:14 153:20 running 49:25 92:6 118:25 160:12 runs 129:23 130:2	scenarios 34:22 92:18 104:1 111:9 schedule 50:15 140:17 schedules 50:14 scope 8:11 script 84:14 sec 42:2 131:17 156:6 156:15 second 22:8 26:25 40:17 51:12 53:15 65:7 74:12 88:6 92:19 127:25 134:9 140:16 146:5 section 22:9,22 85:23 118:11 secure 116:20 secured 113:19,21 116:6,7,17 140:20 141:3,8,13 securitized 140:15 security 1:7 90:5 116:16 141:4 160:25 161:1,6,6,8 161:11,18,25 162:3 see 11:9 15:3 27:10 27:17,19,22 34:19 41:1,7,21,23 42:12 50:5 54:11 57:16 63:4 66:10 99:1,12 100:9,14 103:24 104:10 106:5,6,7,8 106:16 113:24 121:4,6 127:8 129:22 131:9 133:5 136:10 144:3,17 145:12,24 149:18 155:24 156:1 seeing 11:15 50:21 58:10 62:17 76:1 85:12 seeking 91:3 seen 13:24 40:6 50:12 64:12,19 86:1 166:6 SEET 117:14,20 118:1,7,10 selected 85:8,14 sell 46:19,23	SENIOR 5:14 sense 43:13 45:10 51:22 88:19 139:6 157:21 sensed 64:11 sensible 158:15 sentence 74:15 121:7 121:19,20 123:24 124:1 sentences 122:3 separate 14:3 26:9 64:10 127:9 separation 29:21 42:19 43:4,6,21 45:7 series 88:2 102:18 serves 142:22 service 18:6 26:10 34:6 39:21 44:2 47:7,12 48:4,11,16 48:23 49:2,3,12 50:4 53:13 77:20 94:14,19 109:1 141:21 142:2 152:3 152:6 serviced 140:10 141:11 services 33:8,9,10,24 33:24 34:1 91:11,14 servicing 47:3 session 1:19 7:15,16 7:17 58:18,20 101:14 137:7 144:20 152:15 167:6 set 45:18 52:25 71:4 98:2 122:3 129:24 130:2,11,13 133:16 150:2 168:13 sets 8:16 64:19 setting 76:12,13 seven 73:10 159:5 seven-year 158:14 severe 48:20 49:22 share 47:15 48:9 64:24 Sharkey 3:3 44:15 65:8 71:21,25 80:11	81:7 89:4 90:15 97:19,22 100:25 101:5 106:11 125:9 125:14 126:12 129:11,16 133:12 137:12,17 142:3 144:23 145:6,9 149:12,15 167:3 sheet 10:25 11:6 149:8 shored 143:5 shoring 142:23 short 49:18 71:16 75:2 165:25 short-term 106:4 shorter 121:24 SHORTHAND 168:1 show 101:6,8 102:8 102:13 143:24 showed 151:20 showing 129:6 shows 50:14 95:22 101:4 sic 112:6 side 107:25 108:10 sides 47:24 77:2 111:2 Sierra 3:10 7:6,13 significance 80:13 significant 10:17 21:16 36:12,19 54:3 55:5,10 65:6,10 69:11 134:24 138:18 161:8,9 significantly 25:12 46:10 117:16,19 similar 13:4 42:14 58:14 68:9,14 70:10 75:18 88:19 107:24 142:20 similarly 87:10 simply 33:15 134:22 single 45:9 85:8 sir 72:10 75:15 87:16 129:20 sit 51:24 58:16 65:13 65:16 95:19 100:5 154:19 163:5
<hr/> S <hr/> S 3:1,3 4:1 5:1 6:1,11 7:1 76:4 S&P 114:19,20,23 115:2 safe 48:10 49:2,11 safety 49:17,25 sale 46:17 sample 39:2,19 41:14 San 19:12 Santa 10:15 save 86:24 166:15 savings 33:11 saw 65:7,7 saying 11:21 22:14 48:2 70:23 83:20 101:16 147:2 149:20 161:5 says 27:17 50:20 124:4 128:25 129:1 133:17 SCE&G 18:24 scenario 25:9 34:22 45:21 88:16 92:13 92:19 100:1,5,5 103:8,12,14,16 104:11 110:21 150:3,3			

situate 19:22	166:14,23	speed 86:25	stay 47:2
situation 54:13 55:5 110:23 114:17	sorts 157:18	spend 28:1 48:21	stayed 165:16
situations 58:14	sound 17:15 23:12 67:1,4,9 70:16 71:9	spending 92:5 138:25	staying 110:7 123:3
six 18:18 42:11 50:12 50:23,24 159:5	149:3 158:7,19	spent 18:18	stays 148:3
six-year 98:1	sounded 34:5	spike 155:24,25	steer 7:20
skipping 93:12	sounds 144:23	sponsored 74:18	stenographically 168:7
slightly 29:22	source 15:10,13 27:6 32:10 60:8 64:16	spread 36:23 98:16	step 70:6 108:16 121:9
slow 54:22 56:8,9 57:10	112:12,17,24 133:7 159:21,25	spreads 37:4 99:19	sticks 18:25 139:4
slower 56:8	sources 9:13,14 14:21 14:23 15:5 27:9	spreadsheet 9:10 10:22 11:9,11,14,20 15:11,14	stint 75:2
small 80:25 81:2	37:20 66:24 132:17 132:20 153:17	spreadsheets 10:23 14:1 15:15 16:6,9 16:13,17,22 17:2,6 17:7,13 100:19 104:12 144:17 145:4,7	stipulation 61:21 62:13
software 153:9	160:2	SSR 142:17	stipulations 61:24
sold 46:8,16	South 4:7 18:5,9	stack 16:4	stock 81:3 151:2
somebody 10:9,17	speak 92:25	staff 5:24,25	stop 97:18 101:22,23
someone's 52:16	speaking 18:7 29:21 48:14 62:9 87:5 89:16 91:19 146:10 154:24 155:13 162:9	Standard 75:19 79:18	strain 20:7 26:2,4 30:6,20,24 31:5,14 31:25 32:3,3
somewhat 143:13	specific 14:5,14 17:11 23:18 26:18 27:22 34:13,16 41:10 43:14 65:22 66:1 67:24 72:18 73:15 93:20 96:15 101:1 115:9 116:14 136:2 141:4 162:20 163:17 166:5,13	standing 53:20	strains 31:6
sooner 50:21	specifically 10:23 11:15 16:16 21:20 27:19 32:3 33:20 35:14 40:16 42:21 47:22 62:1 66:19 68:2,6,21 72:11 74:2 79:15,19,23 82:15 86:5 91:9,16 97:11 103:3 106:24 118:18 121:19 139:22 140:23 142:7 143:9 156:13 157:4,10 163:7,13	start 16:8 51:10 81:5 137:15	straits 29:10,13
sorry 10:9 19:15 22:5 26:20 27:19 31:7,18 32:2 40:9 47:19,20 47:25 56:19 64:12 68:25 84:22 85:5 86:23,24 93:2 101:25,25 106:13 109:17 111:20,20 112:7 113:6,10 121:2 123:7 129:20 132:1,2 133:16 136:25 145:23 147:24 152:2 159:15 162:8,10	specify 116:5	started 75:7 124:18	streams 82:19,21
sort 7:22 12:23 19:22 21:4 24:3 26:12 34:3,6 44:3 45:1 46:17 48:20 49:16 50:22 54:24 55:11 56:9 64:5 69:11 72:12 81:23 83:11 93:21 100:15 104:21 107:24 117:10 133:25 134:1 139:3,9 147:21,21 148:13 148:24 151:13,21 155:6 158:5,7,20 160:20 164:23,25	speculating 138:16 138:17,20	starting 34:11 39:1 41:19 50:2 59:17 83:15,16,20,22 133:14	Street 2:6 3:5,13,22 4:7,19 5:7
		starts 121:3	strength 67:7 87:12
		state 3:22 18:13 50:2 143:18,21 146:5 153:5	strictly 108:9,9 118:21
		stated 157:11	strike 81:5 95:12 101:7 103:14,15 120:16 121:8 128:5 131:19
		statement 11:1,1 20:5 25:16 34:10 39:1 41:3,10 55:4 104:7 126:10 141:15 143:24 146:19 147:15	strikes 143:12
		statements 11:4 16:3 110:6 124:6,12 152:9 155:17	strong 50:5,8
		states 154:3	stronger 29:18,24
		stating 143:9	structural 112:19 113:5 114:7,10
		status 97:4	structurally 114:16
		stave 49:21,24	structure 81:18 82:10 82:13 151:4,8,14,16 151:21
			struggling 111:2
			studied 34:5 81:20
			study 133:18
			stuff 72:17
			sub 79:6 80:25 81:17 87:19 154:1
			subject 96:18 134:17
			subordinated 114:16

	T		
subordination		30:24 33:23 38:16	71:5 73:25 74:6,7
112:19 114:8,11	T 4:1 5:1 6:1,1,11	55:10 59:20 64:14	74:11,20 79:20 80:5
subset 56:20	44:2 60:12 61:7	67:5 88:22 95:25	88:12,14 89:18 91:9
subsidiaries 141:17	tab 11:12,16 86:24	96:21 98:1,4,21	92:3,12 93:16 95:4
subsidiary 45:14	table 87:14 152:4,10	117:19 121:24	97:4,6,15 110:15
80:15	tabs 11:17,21	127:6,17,19 128:2	116:23 118:4
substantial 33:18	take 19:17 24:14 25:4	140:20 151:21	120:18,24 125:4
substantially 68:13	27:21 42:5 46:11,12	165:25	127:4,24 128:18
sufficient 60:14	48:2 49:22 53:4	terminology 115:20	130:5,7,13,14,16,19
116:13,16	60:2 71:19,20 78:14	terms 10:12 13:6	134:5 135:2 136:14
suggest 126:17	95:21 100:9 108:16	15:12 17:6 20:14	136:19,24 137:4
suggested 37:18	121:9 128:19	23:16 25:15 26:1,8	140:25 141:6 143:9
suggesting 139:12	137:12 144:19	29:16 37:24 47:8	143:11,16 145:25
141:12	147:11 156:22	62:3,6,13,14 64:2	150:9 154:12,13
Suite 2:7 3:6 4:20 5:8	159:3	82:13 86:10 97:19	156:5,16 157:19
summarizes 19:23	taken 8:1,4 31:22	98:5,5,16 99:1	168:6,6
summary 100:18	40:18 72:1 88:8	116:2,5 118:12	testing 159:8
104:21 106:9 144:3	137:18 147:3 168:4	122:19 123:2,18,24	Texas 58:5
super 71:16	168:7	125:23 126:24	text 152:12
superior 29:23 46:1	takes 115:2	127:18 130:16	Thank 35:21 92:21
support 17:18 29:1	talk 22:9,10 35:12	139:7 148:9	137:7 152:16 167:1
30:22 31:13,23	40:2 47:4 71:23	test 66:13,17,19	Thanks 81:11 138:1
142:20	93:15 95:10 104:23	70:19 71:6,11 88:16	thermal 19:2
supportable 150:3	117:11 123:6 134:6	110:21 117:14,16	thesis 158:5
supporting 27:14	135:5 147:5 150:17	117:20,20 118:2,7	thing 14:11 18:24
supportive 142:25	160:22	118:10 155:15,23	34:3 50:16 53:7
sure 10:25 18:17	talked 30:10 91:6	tested 71:7 130:20	58:4 64:6 85:22
42:25 50:15 64:2	123:8 162:22	154:3,14 156:11	124:13 139:3,9
71:8 78:3 80:13	talking 12:24 32:18	157:12,14	155:14 160:20
84:13,19 89:6,15	35:10 79:10 87:15	testified 7:4 121:10	things 8:13 9:5 13:25
90:16 93:23 95:11	111:4,13 117:13	142:9,14 163:20,20	14:25 29:2 31:6
96:11,25 97:13	118:17 128:24	testifying 18:11	37:25 40:2 54:15
108:4 109:23	139:4 158:14 159:5	142:19	56:11 61:10 70:14
110:25 115:18	162:2	testimonies 32:14	72:15,16,20 75:7
117:10 120:14,23	TAMMY 5:22	testimony 9:23 13:9	77:16,19 78:1,4
128:14 133:13,14	target 151:14	14:6 18:5 19:18,21	87:18 109:16
135:1 139:1 148:8	targeted 102:19	20:18 21:2,13 24:18	119:23 130:2
148:10,10 153:22	TARIFFS 1:11	27:1 28:18 30:11	131:13 148:18
161:19,23	tax 33:5,12	31:12,20 32:18 34:9	155:3,19 164:22
surprise 11:16	team 13:19 16:12,25	37:13,15,16 38:23	166:4,19
surprising 29:11	67:13 71:11,14	40:5,21 42:4,10	think 13:24 14:1,2
suspect 17:12	technically 51:7	45:19 46:24 47:10	22:15 25:17 29:6,8
switching 150:15	telephone 3:16,25	49:7 53:17 56:11	33:19 34:4 35:4
160:21	4:10,23 5:11,19,20	59:11,12 63:4,8,17	36:2 37:12,13 38:21
sworn 7:4	tell 10:22 12:12 52:15	64:1,8,9 66:3,5,7,9	43:18,22 44:23
system 45:24 75:9	53:16 65:11 161:10	66:21 67:3 68:4,7	45:23 50:16 57:5,6
systematic 166:23	ten 71:20	68:11 69:16,18,21	58:4,14 60:9 61:19
	term 9:8 11:7 12:14	69:22,25 70:2,3	62:1 63:2 65:14

66:5 80:23 81:8 82:25 88:1,3 89:11 95:5 104:4,5 105:7 110:6 111:4 112:2 113:15 114:25 115:8 116:1 117:4,4 119:24 121:17 126:18 128:1 132:19 134:12 138:22,22 139:15 140:17 143:21 145:9,24 147:14 149:18 150:8,16 153:22 155:6 156:21 157:18 160:14 161:14 162:22 163:20 165:20 thinking 16:16 35:14 45:22 50:25 67:8 137:15 166:20 thought 32:5,16 thoughts 32:6 159:22 three 22:16,19 39:3 41:20 45:13 98:10 112:4 156:24 three-notch 112:10 112:13,15,18,20,22 113:12 114:2 threshold 165:4 time 12:17 17:10,13 18:18,19 28:1 29:25 33:18 36:3 42:5 46:19 49:15 59:4 68:20 69:23,24 70:1 73:1 92:4,5,7 98:22 100:8 102:4 138:25 151:9 154:13 159:11 timely 47:7 76:23 times 18:22 145:25 timing 79:24,25 titled 39:18 today 14:7 40:6 58:16 91:22 95:19 107:5 120:1,17 123:1,19 124:17 144:21,22 154:19	told 27:23 29:3 top 38:25 topic 19:13 32:15 112:3 133:10 topics 93:13 total 82:3 103:5 105:15 107:13 132:6 148:24 transaction 27:2,7 55:25 58:6 transcript 6:12 10:1 25:7 102:3 125:20 168:5 transferred 46:6 transmission 12:21 13:6 30:17 31:3 47:22 48:11 51:15 54:23 60:10 61:2 Traverse 3:14 treated 141:10 treating 26:9 treatment 116:14 Trevor 4:4 92:23 93:10 100:25 126:12 129:11 133:12 tried 100:12 trigger 106:21 107:1 true 41:17 52:4 59:21 89:25 90:1 168:5 try 26:15 38:14,17,18 44:10 49:15 137:25 150:24 159:22 166:4 trying 24:19 76:17 77:10 92:5 115:6,8 115:19,22 118:25 135:9 139:1,7 143:18 144:1 166:7 Tuesday 1:22 TURKENTON 5:22 turn 14:18 15:20 16:2 20:17 34:10 58:20 59:11 74:12,24 81:14 85:3 88:11 92:25 100:21 128:19 151:24 turned 145:4	turning 50:14 78:2 114:19 143:15 tweaks 65:15 69:3 two 7:23 8:13,15 10:7 25:6,17,20,21 26:13 29:21 30:11 31:1 37:8,9,20 38:9 39:10 41:24 45:11 47:24 56:7 61:22 64:19,20 73:24 74:5 84:7 85:12 87:18 88:24 90:25 91:4,23 97:8,11,12 107:20 109:7 112:14 113:10 115:3,3 118:16 121:17 124:11 129:5 144:5 146:21 150:25 155:2 157:23 TXU 58:6 138:22 139:14,15 type 54:13 61:9 78:19 78:25 144:7 153:13 153:16 161:1 types 25:21 60:22 77:13 112:18 140:2 160:24 typewriting 168:8 typical 37:25 162:14 162:18 163:16 typically 60:20,25 <hr/> U <hr/> U 4:1 5:1 uh-huh 129:22 ultimate 135:8 ultimately 16:5 66:2 147:7 unable 28:8 137:23 144:2 unaware 94:16 140:19 uncertain 64:14 unclear 81:9 underlie 15:24 41:13 underlying 45:6 65:1 70:23 73:14 76:11 78:13 154:4 155:7	158:1,5 159:4,20 understand 28:21 33:9 34:24 47:10 48:24 59:4,6 66:11 69:17 71:19 76:17 77:11 78:3 89:23 90:7 94:2,3,7,12 121:25 135:10 137:24 149:17 150:23 161:19,20 164:12 understanding 12:3 13:8 16:7 21:11 28:7 43:3 48:1 52:13,20,24 53:16 54:16 59:8,15 62:20 69:19 76:3 81:3,6 81:13,18,21,22 82:1 87:21 94:5,10 99:7 105:1,6 126:5,24 136:1 139:11 153:15 163:23 understood 28:25 undertake 9:3 undertaken 62:4 96:20 unexplained 158:21 unfortunately 71:17 unique 57:13,16 unit 82:25 units 80:20,23 unreasonably 122:4 unregulated 83:8 84:9,12,23 unusual 28:19 29:5 30:4 155:24,25 158:21 use 12:14 21:24 47:13 52:21 53:9,10 59:19 67:5 77:13 86:11,14 88:22 105:2 115:19 116:7 130:22 154:8 159:25 Users-Ohio 3:18 58:24 59:3 uses 24:4 usually 151:15 utilities 1:2 18:21
---	--	--	--

20:14,22 41:11,15 57:14,17 83:8,9,17 84:6,9,10,16 86:13 138:8 utility 10:5 18:12,19 20:13 25:19,22 28:20 39:2 40:7 49:6 57:21 58:1 60:6,7,15 79:14 80:7 85:24 114:17 121:23 123:11,15 132:17 138:13 162:14,18 163:16 utility's 151:4,7,8	violating 129:7 violation 126:3 127:14 virtually 31:17 volume 93:1	86:11 95:24 166:18 weighted 23:24 24:8 151:4 weighting 87:6,8,19 weights 23:25 welcome 152:18 167:2 well-known 159:21 went 16:22 76:20 104:19 165:15 weren't 75:22,23 West 5:7 WHEREOF 168:13 wherewithal 109:3 whichever 74:22 white 79:4 139:5 WHITFIELD 4:17 wholly 81:12,16 willing 58:22 wires 61:1 wires-only 61:7 withdrawn 63:20 64:13,14 witness 7:4 74:18,19 97:3 125:16 137:11 152:18 167:2 168:13 wondering 157:16 word 36:4 55:15 64:22 80:8,14 143:11,14 words 53:8 62:25 work 17:18,22,25 18:4,21 40:4,5 49:15 74:25 75:5,17 76:16 77:21,24 78:19,23 166:17 worked 17:12,21 18:11 19:5,11,12,15 75:5,21 138:12 working 16:10 18:22 18:22 38:6 76:7 84:14 85:21 90:2 165:14 works 62:15 71:21 world 110:15,16 worse 46:20 54:21 wouldn't 43:19,20,21	43:22 48:6 67:5 71:7 96:13 write 147:7 148:18 148:20,21 writedown 147:18 148:11 149:11 150:14 writeoff 36:2 written 13:10 31:20 122:22 written-down 149:8 wrong 62:25 93:3
V	W	X	
vague 69:2 90:16 Valley 81:1 82:22 valuable 36:14 value 34:18 35:13,15 35:23 146:7,12,20 146:22 149:4 150:12 152:5,9 156:22 157:1 160:25 values 131:7 149:9 variable 98:2,24 variables 131:6 variety 9:5 30:14 54:15,24 83:10 105:9 160:2 various 11:2 15:7 22:18 38:13 43:8 70:11 79:9 87:1 89:25 113:3 119:23 134:5,23 153:17 venture 101:23 verify 27:24 versa 20:9,14 version 63:19,24 102:2 versions 63:15 versus 88:15 90:19 108:2 115:9,12,25 133:18 155:8 vice 20:9,14 view 37:22 46:14,22 60:22 120:3	wanted 31:7,9 45:21 45:22 72:3 103:24 104:12 115:19 Washington 1:21 2:8 wasn't 155:4 166:20 166:23 water 71:18 watt 110:22 way 20:12 22:6 26:16 36:13 37:23 43:22 44:22,25 49:11 55:6 62:23 66:14 70:10 70:17 71:3,15 72:24 78:14 84:1 90:10 96:23 107:21 108:22 115:11 122:3 147:20 148:17,25 149:2 ways 30:20 44:21 45:25 149:2 165:20 166:11 we'll 26:24 102:3 125:15 145:11,12 we're 39:7 64:15 71:23 80:7 84:13 85:2 87:15 111:4,13 111:14 115:6 118:17 125:7,10 137:12 153:2 162:2 we've 16:20 77:25	x 1:3,18 6:11	
		Y	
		yeah 13:14 16:1 21:3 22:6 24:13 35:10 39:15 42:2 47:24 48:13 50:17 56:2 61:4 63:9,24 64:22 77:6 80:18 81:11 83:1,25 85:5 87:17 87:17,18 89:13 90:6 97:2 98:6,15 101:25 104:3 105:6 108:18 109:18,20 110:4 111:4,22 112:9 113:11,24 114:4,9 115:21 116:16 117:24 118:12 120:6,15 121:6,17 123:6,22 125:10 127:17 128:1 129:13,22 132:11 133:16 135:6 137:12 139:15 140:18,18 142:17 143:7 145:6 146:2 147:14,15 148:8,10 150:24 151:2 153:15 154:24 158:12 159:5 162:7 162:11 165:7,13 166:13 year 73:19 75:4,4 102:16 107:14	

108:7 110:10 111:12 144:4 year-end 11:7 years 16:17 18:18 50:5,9,12,23,24,25 54:20 73:3,3,7,11 101:10 159:5 Yep 15:22 74:16 87:3 111:20 yield 51:7 122:1	14A 110:6 15 27:1 47:3 50:3 60:3 73:3,7 88:25 89:12 95:5 105:23 123:2,7 152 6:7 152611 1:23 15A 104:9 110:6 16 40:23 99:12 123:6 16-173 162:25 16-395-EL-SSO 1:5 16-396-EL-ATA 1:10 16-397-EL-AAM 1:14 168 1:24 17 40:20,24 41:3 60:2 133:5 17th 2:6 3:23 18 123:6 1800 5:8 19 42:6 112:3,8 123:8	2023 153:7 158:25 2027 50:20 21 3:22 89:12 150:16 150:19 22 42:10 80:5 23 106:8 231 3:15 23rd 84:17 85:1 24 6:15 124:7 24th 27:15 123:20 25 46:24 47:2,11 49:7 50:3 28 51:9,10 280 4:19 29 51:9	445 27:3 28:13 50:11 50:20 51:6 96:1 97:13,17,25 98:14 98:15 121:21 122:7 122:18 126:21,25 127:10 45 41:19 45202 3:7 46 85:3 128:20 133:3 47 128:20,21 48 128:20,23 4904.13 1:17 49686 3:14 4th 133:17,18 168:14
Z			
0			
1			
1 1:24 126:4 127:13 1:00 88:9 10 5:7 38:22 39:23 59:14,17,19,22 73:3 110:3 156:5 10-K 34:4 131:3,14 131:20,23 10-Ks 131:3,17 10-Qs 131:3,17 10.5 74:18 100 28:11 11 22:11 74:14 150:19 11:30 71:20 12 22:12 59:14,21,22 103:23 106:3,8 121:3 12:03 88:8 1200 4:6 125 140:14,18 141:3 13 59:14,23 95:5 99:11 102:5,8,13 120:23 130:20 1300 4:20 137 6:6 14 19:18 20:18,20 41:19 47:2 50:2 60:3,5 105:23 133:5 168:25 1420 3:6 145 107:14 108:6 110:10 111:12	2 2 6:14 42:3,7 75:10 106:10,10 125:7,17 125:18 128:10 151:24 20 1:22 88:25 89:10 200 101:20 20005 2:8 2003 79:6 201 3:5 2013 84:18,20 85:1 2014 84:24 2015 73:19,19,20 124:8 131:20,23 133:18 2016 1:22 6:15 11:7 27:15 50:18 63:23 69:17 123:20 168:14 2017 153:7 2018 168:25 2019 50:19 99:22,22 129:8 202 2:9 2020 101:21 2022 50:24	3 3 19:18 31:12 89:10 112:3 126:4 3:27 167:7 30 151:17 31st 73:20 84:24 325 98:2 34 158:24 36 39:2 87:10 365-4100 4:22 38 85:11,14 87:11,15 387-2965 5:10	5 5 34:9 41:4 51:9 52:1 52:3 53:21 74:12 89:10 129:17,21 145:19,24 50 134:9 50-50 150:17 151:18 151:21 513 3:8 55 159:1 57 88:12 133:8,21 58 6:4
		4	6
		4 20:12 27:1 34:11 39:1 51:9,10 53:20 59:12 103:21 104:2 104:2 120:23 121:3 123:3 126:20 129:17,21 136:7 40 128:20 400 2:7 41 4:7 20:17,20 42 21:7 420 3:13 43 129:17 130:20 153:5 43016 5:17 43215 3:24 4:21 43215-3465 4:8 43215-3485 5:9 44 154:3,23 157:11	6 85:12,14 86:22 127:24 128:1 143:15,17 145:16 61 89:18 6100 5:16 614 4:9,22 5:10,18 621-7774 4:9 632-0300 3:8 64 135:21 136:7 659-5069 5:18 66 125:1
			7
			7 6:3 22:11 100:24 114:19 120:18 126:2,4 127:4,13,14 128:10 129:4 70 151:17 785-6300 2:9

<div>8</div> <div>8 18:5 41:4 116:23 117:1 118:4 8-K 27:11 800 2:6</div>			
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<div>9</div> <div>9:08 1:22 90 140:3 93 6:5 946-0044 3:15 95 25:14,17,25 98 65:2</div>			
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Summary: Deposition of R. Jeffrey Malinak (Public) electronically filed by Mr. Tony G. Mendoza on behalf of Sierra Club