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BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

- - -

In the Matter of the :  
 Application of The Dayton :  
 Power and Light Company : Case No. 16-395-EL-SSO  
 for Approval of its :  
 Electric Security Plan. :

:

In the Matter of the :  
 Application of The Dayton :  
 Power and Light Company : Case No. 16-396-EL-ATA  
 for Approval of Revised :  
 Tariffs. :

:

In the Matter of the :  
 Application of The Dayton :  
 Power and Light Company :  
 for Approval of Certain : Case No. 16-397-EL-AAM  
 Accounting Authority :  
 Pursuant to Ohio Rev. Code:  
 §4904.13. :

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PROCEEDINGS

before Mr. Gregory Price and Ms. Patricia Schabo,  
 Attorney Examiners, at the Public Utilities  
 Commission of Ohio, 180 East Broad Street, Room 11-C,  
 Columbus, Ohio, called at 10:00 a.m. on Monday,  
 April 15, 2019.

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VOLUME IX

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On behalf of the Murray Energy  
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1 APPEARANCES: (Continued)

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5 West Union, Ohio 45693

6 On behalf of Sprigg Township, Adams  
7 County; Monroe Township, Adams County;  
8 Manchester Local School District; and  
9 Adams County Ohio Valley School District.

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IDENTIFIED ADMITTED

1000 - Rebuttal Testimony of 1523 1576  
Wm. Ross Willis

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Monday Morning Session,  
April 15, 2019.

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EXAMINER PRICE: Let's go on the record.  
Good morning. The Public Utilities Commission has  
set for hearing at this time and place Case No.  
16-395-EL-SSO, being In the Matter of the Application  
of The Dayton Power and Light Company for Approval of  
its Electric Security Plan.

My name is Gregory Price. With me is  
Trish Schabo. We're the Attorney Examiners assigned  
to preside over this hearing. This is our final day  
of hearing in this matter. Let's begin by taking  
appearances, starting with the company.

MR. SHARKEY: Jeff Sharkey from the law  
firm of Faruki, PLL. I have with me Chris Hollon,  
also with the Faruki firm, and Mike Schuler, he is  
Regulatory Counsel for the Dayton Power and Light  
Company.

MR. SETTINERI: Good morning, your  
Honors. Mike Settineri on behalf the Retail Energy  
Supply Association, 52 East Gay Street, Columbus,  
Ohio 43215, with the law firm of Vorys, Sater,  
Seymour & Pease.

MR. OLIKER: Good morning, your Honor.

1 On behalf of IGS Energy, Joe Olikier, also Mike  
2 Nugent, 6100 Emerald Parkway, Dublin, Ohio 43016.

3 MS. KYLER COHN: Good morning. On  
4 behalf of Ohio Energy Group, Jody Kyler Cohn, Mike  
5 Kurtz, and Kurt Boehm, 36 East Seventh Street,  
6 Cincinnati, Ohio 45202.

7 MR. MICHAEL: Good morning. On behalf  
8 of Dayton Power and Light residential consumers, the  
9 Office of the Ohio Consumers' Counsel, by Bill  
10 Michael.

11 MR. DRESSEL: Good morning. On behalf  
12 of the Ohio Manufacturers' Association Energy Group,  
13 Brian W. Dressel, Kimberly Bojko, with the law firm  
14 Carpenter, Lipps & Leland, 280 North High Street,  
15 Columbus, Ohio 43215.

16 MS. WHITFIELD: Good morning. On behalf  
17 of the Kroger Company, Angela Paul Whitfield and  
18 Steven W. Dutton, with the law firm of Carpenter,  
19 Lipps & Leland.

20 MR. MC NAMEE: On behalf of the Staff of  
21 the Public Utilities of Ohio, I'm Thomas McNamee, the  
22 address is 30 East Broad Street, 16th floor,  
23 Columbus, Ohio 43215.

24 EXAMINER PRICE: Thank you.

25 The purpose of today's hearing is to

1 hear rebuttal testimony filed by the Office of  
2 Consumers' Counsel.

3 Mr. Michael, will you call your witness?

4 MR. MICHAEL: Your Honor, we call Ross  
5 Willis.

6 EXAMINER PRICE: Mr. Willis, please  
7 raise your right hand. Do you swear the testimony  
8 you're about to give is the truth, the whole truth,  
9 and nothing but the truth?

10 MR. WILLIS: I do.

11 EXAMINER PRICE: Please be seated, and  
12 state your name and business address for the record.

13 THE WITNESS: My name is William Ross  
14 Willis, business address is 65 East State Street, 7th  
15 Floor, Columbus, Ohio 43215.

16 EXAMINER PRICE: Thank you. Please  
17 proceed, Mr. Michael.

18 (EXHIBIT MARKED FOR IDENTIFICATION.)

19 - - -

20 William Ross Willis,  
21 being first duly sworn, as prescribed by law, was  
22 examined and testified as follows:

23 DIRECT EXAMINATION

24 By Mr. Michael:

25 Q. Mr. Willis, do you have before you what

1 was previously marked as OCC Exhibit 1000?

2 A. I do.

3 Q. Can you identify that document, please?

4 A. Yes. That is my rebuttal testimony.

5 Q. And was that prepared by you or at your  
6 direction?

7 A. Yes.

8 Q. And, Mr. Willis, do you have any  
9 corrections to that testimony, or additions?

10 A. I do; I have two. First one is on  
11 page 9, Footnote 9. I have a couple sentences I'd  
12 like to add.

13 "The loss for the four investor-owned  
14 utilities under the jurisdiction of the PUCO would be  
15 38.68 percent, or 2,137,369,072. DP&L's share is 4.9  
16 percent, or 271 million. Duke's share is 9 percent,  
17 or 497 million, FES' share is 4.85 percent, or 268  
18 million, and Ohio Power's share is 19.93 percent, or  
19 1.101 billion."

20 I have one more correction, and that is  
21 on page 12, line 16. "(P)", I'd like to strike that  
22 so the sentence would end with "last resort." And  
23 that's all.

24 Q. Mr. Willis, were you deposed in  
25 connection with this testimony?

1           A. I was, on Friday.

2           Q. And did you make those corrections or  
3 additions at that time?

4           A. I did.

5           Q. And, Mr. Willis, with those additions,  
6 were I to ask you the same questions that appear in  
7 your rebuttal testimony, would your answers be the  
8 same?

9           A. They would.

10           MR. MICHAEL: Your Honor, I move for the  
11 admission of OCC Exhibit 1000, subject to  
12 cross-examination.

13           EXAMINER PRICE: Thank you.

14           Mr. Sharkey.

15           MR. SHARKEY: Yes, your Honor. As I  
16 mentioned to you off the record, the Dayton Power and  
17 Light Company has a motion to strike portions of  
18 Mr. Willis' testimony. It would start on page 8,  
19 line 7. It would start with the word, "But".

20           So I'm not moving to strike the  
21 question -- or the answer to the word "No", but I  
22 move to strike the remainder of that answer.

23           I move to strike everything on the next  
24 page, page 9, including the new portions of  
25 Footnote 9 that Mr. Willis just read into the record.

1 And then I'd also move to strike, on page 10, lines 1  
2 and 2, and then on -- also on page 10, move to  
3 line -- I would move to strike the second clause  
4 after the word "No".

5 So I would move to strike the phrase,  
6 "While there should be no OVEC coal subsidy charge to  
7 be paid by consumers..." That phrase I'm moving to  
8 strike.

9 If this motion to strike were to be  
10 denied, your Honor, I have a second motion to strike,  
11 a narrower piece of the same testimony on a different  
12 ground, but the argument as to that piece of  
13 testimony is that it's not rebuttal testimony at all,  
14 your Honor, it's, in fact, testimony that is  
15 supportive of the position that OCC took in its  
16 original testimony. It's simply an effort to  
17 supplement the record.

18 I have brought with me, if you'd like to  
19 see it, a copy of the Supplemental Direct Testimony  
20 of Matthew Kahal, which was admitted in the main  
21 portion of the hearing previously, in which he also  
22 asserts that the OVEC charges should not be  
23 recovered.

24 And if you look at page 8, your Honor,  
25 the question starts out, in my view appropriately,

1 "Do you agree with Mr. White that the Reconciliation  
2 Rider should not be charged to customers or  
3 marketers?"

4 That's a new issue that Mr. Willis is  
5 rebutting Matt White on. And the answer, "No", I  
6 believe that's appropriately within the scope.

7 But he then proceeds to argue in that  
8 answer that no customers should be paying the  
9 Reconciliation Rider. You can see that on line 9.

10 "It is an anti-competitive subsidy for  
11 any consumers," and then again, on the lines 16  
12 and 17, OVEC -- "OCC does not support imposing the  
13 Reconciliation Rider on any customers."

14 If there's any doubt, your Honor, as to  
15 whether this is rebuttal testimony, or an effort to  
16 supplement the record, it's made pretty clear on the  
17 following page where the question is, "Do you agree  
18 with Mr. White...", and it goes on, and the answer is  
19 "Yes."

20 Pretty clear, your Honor, that this  
21 testimony is not rebutting Mr. White's recommendation  
22 that the Reconciliation Rider be made bypassable, but  
23 it is arguing an issue that OCC has already had a  
24 chance to litigate, and it's not rebuttal testimony.

25 As I mentioned, I'd be happy to provide

1 to you the prior testimony of Matt Kahal on this  
2 issue, if you'd like to see it.

3 EXAMINER PRICE: I recall the testimony.  
4 Mr. Michael, response?

5 MR. MICHAEL: Thank you. I'd like to  
6 begin with the motion to strike on page 8. And, your  
7 Honor, I think it's pretty clear, as Mr. Sharkey  
8 concedes, that Mr. Willis is in fact rebutting  
9 Mr. White's testimony.

10 He certainly gives an explanation that  
11 addresses the Reconciliation Rider not only as  
12 proposed to be charged to all customers, but  
13 marketers as well.

14 So I think if past is prologue, your  
15 Honor has given witnesses the opportunity to explain  
16 themselves and give the answers subject to  
17 cross-examination.

18 And as I first mentioned, Mr. Willis  
19 takes on, as Mr. Sharkey concedes, Mr. White's point  
20 head on by answering no, and then he gives an  
21 explanation for why not only does he not believe that  
22 Mr. White -- that he does believe that Mr. White is  
23 wrong, but goes on to expound upon that. And if  
24 Mr. Shark wants cross-examination on that, it's fine.

25 EXAMINER PRICE: But his explanation



1 begins with the term but -- "No. But," and then goes  
2 on to agree with Mr. White.

3 MR. MICHAEL: I guess I don't read that  
4 similarly, your Honor. I'm obviously open to having  
5 my main -- my mind changed.

6 EXAMINER PRICE: There's nothing on page  
7 8 that talks about bypassability versus  
8 non-bypassability. It simply says we don't like the  
9 Reconciliation Rider.

10 MR. MICHAEL: And I also would add if I  
11 might, your Honor, very quickly, this case is kind of  
12 a unique circumstance.

13 As we recognized before, we have the  
14 case currently on appeal before the Ohio Supreme  
15 Court, and the Consumers' Counsel would just like to  
16 make it abundantly clear that just because we are  
17 disagreeing with Mr. White that the Reconciliation  
18 Rider should be made bypassable, we certainly don't  
19 want to leave any impression whatsoever that we in  
20 any way, shape, or form, support the Reconciliation  
21 Rider.

22 So I think the public interest would be  
23 served, just for the clarification and protecting of  
24 residential consumers, that the Consumers' Counsel  
25 does not support the Reconciliation Rider at all.

1           And given the unique procedural  
2     circumstance of this case, I think having that  
3     testimony in there would be beneficial, and simply  
4     clarify and not leave the door open for any sort of  
5     misunderstanding about what the Consumers' Counsel's  
6     position is.

7           EXAMINER PRICE: Anybody else care to  
8     weigh in on this?

9           Mr. Sharkey, final word?

10          MR. SHARKEY: Sure, your Honor. Two  
11     points; one just to clarify for certainty, the scope  
12     of the motion.

13          It does not include Footnote 6 on  
14     page 8, but does include Footnote 7, 8, 9 and 10. I  
15     should have said that originally. So just to  
16     clarify.

17          And very briefly, to respond to  
18     Mr. Michael's argument. First of all, Mr. Michael  
19     did not address the Q and A on page 9. It says, "Do  
20     you agree with Mr. White," and the answer was, "Yes."

21          MR. MICHAEL: I was going to get to that  
22     part. I wanted to address this one first. I  
23     apologize for interrupting.

24          EXAMINER PRICE: Why don't I let -- why  
25     don't you finish your response, then Mr. Sharkey can

1 respond wholistically to your arguments?

2 MR. MICHAEL: So page 9, entirety of  
3 that track, Mr. Sharkey?

4 MR. SHARKEY: Everything on that page,  
5 including the addition that was read in orally from  
6 the stand.

7 MR. MICHAEL: Okay. Well, again, your  
8 Honor, I would say regarding this particular aspect  
9 of Mr. Willis' testimony, I would rely on the fact of  
10 the unique procedural aspect of this case and the  
11 Consumers' Counsel's desire to make it abundantly  
12 clear that the Consumers' Counsel opposes the  
13 Reconciliation Rider in its entirety.

14 And to the extent Mr. Willis is  
15 describing in his testimony that to the extent the  
16 PUCO maintains its current position that the  
17 Reconciliation Rider should be in effect, it should  
18 be paid by all consumers, and this portion of  
19 Mr. Willis' testimony, I think, just makes the record  
20 clear.

21 I think it's in the public interest to  
22 have the record clear that Mr. Willis' testimony on  
23 the bypassability issue in no way, shape, or form  
24 means that the Consumers' Counsel supports the  
25 Reconciliation Rider in any way, shape, or form.

1           So for those reasons, I would request  
2           that your Honor subject the testimony by Mr. Willis  
3           to cross-examination, but not strike it from his  
4           testimony.

5           EXAMINER PRICE: And you would agree,  
6           Mr. Michael, that the testimony part begins  
7           at 10, where he references testimony by Kevin  
8           Warvell, is an out-of-court statement made for the  
9           purpose of proving the truth of the matter asserted?

10          MR. MICHAEL: Yes, I would.

11          EXAMINER PRICE: So it's hearsay, it  
12          should come out, which will be Mr. Sharkey's followup  
13          motion in the event he does not win this one.

14          MR. MICHAEL: And, your Honor, I would  
15          like to be heard, if for no other reason than record  
16          purposes, in response to such a motion.

17          EXAMINER PRICE: This is your chance.

18          MR. MICHAEL: This is my chance, okay.  
19          Good one.

20                 So I would assert, your Honor, that  
21                 exception to the hearsay rule, it's a market report  
22                 by a gentleman intimately involved in that market,  
23                 which is an exception to hearsay.

24                 I would also argue that it could  
25                 potentially be a public record that's kept in the

1 normal course of the bankruptcy proceeding, and  
2 therefore also is an exception to the hearsay rule.

3 EXAMINER PRICE: And your last -- you  
4 care to address the clause on page 10?

5 MR. MICHAEL: Yes, your Honor, I would.  
6 And I would -- my comments would be consistent with  
7 my previous comments.

8 Once again, right there, the Consumers'  
9 Counsel, who is the statutory representative of  
10 Ohio's residential utility consumers, would like to  
11 make it abundantly clear, and have in the record,  
12 that it is not supportive of the Reconciliation Rider  
13 in any way, shape, or form.

14 But to the extent we are addressing  
15 Mr. White's suggestion on bypassability, we don't  
16 want that to be misinterpreted as supportive of the  
17 Reconciliation Rider in any way.

18 EXAMINER PRICE: Thank you.  
19 Mr. Sharkey, final word.

20 MR. SHARKEY: Sure, your Honor. I'll be  
21 relatively quick.

22 The Q and A on page 8, your Honor,  
23 already asked the question, so just by argument, it  
24 will be short.

25 The question and the additional word

1 "No", I believe, is appropriate, but then he  
2 immediately puts in the word "But" and goes on to an  
3 issue where he's arguing that the Reconciliation  
4 Rider should not be paid by any consumers. So it  
5 rapidly shifts after the word "No" into, I think, an  
6 impermissible area. Everything on page -- the next  
7 page, page 9, is plainly not rebuttal testimony.

8 And as to the argument by OCC's counsel,  
9 that if they want to make the record clear they don't  
10 support the Reconciliation Rider in any way, shape,  
11 or form, that's already done in the testimony of  
12 Mr. "Kahal" or "Kahal" -- I forget how it's  
13 pronounced -- and can be handled on brief. There's  
14 nothing in this testimony that required that to be  
15 done.

16 I'd also add, your Honor correctly  
17 guessed that the second motion to strike I would  
18 have, if my initial motion to strike is denied, the  
19 testimony of Mr. Warvell is purely being introduced  
20 for out-of-court statements that he made, and it's  
21 just blatantly hearsay, your Honor. It doesn't  
22 follow to any of the exceptions.

23 EXAMINER PRICE: You would agree,  
24 Mr. Sharkey, that the clause on page 10 is harmless  
25 and does simply signify that OCC generally opposes

1 the Reconciliation Rider, wouldn't you?

2 MR. SHARKEY: I wouldn't fight hard on  
3 that one, your Honor.

4 EXAMINER PRICE: Good. So we'll take  
5 that last one first.

6 We're going to deny the motion to strike  
7 on page 10, lines 7 through 8. It's harmless, and I  
8 think it just does allow OCC the opportunity to  
9 clarify their position on the Reconciliation Rider.

10 We'll grant the motion to strike as to  
11 page 8, lines 7 through 8, with the exception of the  
12 word "No", and page -- on line 7, as Mr. Sharkey  
13 indicates, it is not rebutting Mr. White's testimony,  
14 it's simply supplementing OCC's previous opposition  
15 to the Reconciliation Rider.

16 For the same reason, we'll strike OCC's  
17 testimony beginning on the page 1 -- line 1, page 9,  
18 through line 2 on page 10, including the footnotes,  
19 both for the reasons that it is clearly not rebuttal  
20 testimony, it's simply OCC supplementing the record,  
21 and because the record -- and because the language  
22 includes impermissible hearsay.

23 This is clearly an out-of-court  
24 statement made for the purpose of -- made to assert  
25 the -- made for the truth of the matter asserted, and

1 it is not, by any stretch, a market report or a  
2 public record; therefore, it is hearsay and will be  
3 stricken on that grounds, as well as not  
4 impermissible rebuttal testimony.

5 MR. SETTINERI: Your Honor, could you  
6 please repeat what was stricken on page 8, please?

7 EXAMINER PRICE: Sure. Page 8, after  
8 the -- line 7, after the word "No", through line 17.  
9 And if I indicated earlier, on page 10 the motion to  
10 strike will be denied as to line 7  
11 through 9.

12 MR. SETTINERI: And on page 9, did you  
13 strike the entirety of the answer in 15?

14 EXAMINER PRICE: Yes.

15 MR. SHARKEY: And just so our record is  
16 clear, your Honor, you're also striking the new  
17 portion of Footnote 9 Mr. Willis read into the record  
18 earlier?

19 EXAMINER PRICE: All of Footnotes 7, 8,  
20 and 9 and 10.

21 MR. SHARKEY: Thank you, your Honor.

22 MR. SETTINERI: Your Honor, just bear  
23 with me. Sorry. On page 10 it was only lines 1  
24 and 2 that were stricken, the footnote, but the  
25 motion is denied as to the answer in 16, correct?



1 EXAMINER PRICE: That is correct.

2 MR. SETTINERI: Thank you.

3 MR. OLIKER: Is that all your --

4 MR. SHARKEY: That's all of my motion.

5 MR. OLIKER: I have a motion as well,  
6 your Honor.

7 EXAMINER PRICE: Please proceed.

8 MR. OLIKER: Sorry I didn't disclose  
9 this one before we started, but it will start on  
10 page 3, lines 18 through 20 -- and this will all be  
11 for the same reasons. Also on page 4, I believe it  
12 is 18 through 20 as well, on page 5, lines 12  
13 through 20, and page 6, lines 1 through 7, page 11, 9  
14 through 20, all the way to the end of page 14,  
15 line 2.

16 These statements in the testimony relate  
17 to the unbundling and allocation of costs to the  
18 Standard Service Offer. This is not a new issue.

19 If you even go back to the Stipulation,  
20 itself, on page 9, under bullet D, it says, "There  
21 will be an evaluation of costs contained in  
22 distribution rates that may be necessary to provide a  
23 Standard Service Offer service. Any reallocation of  
24 costs to the Standard Service Offer as a result of  
25 this evaluation will be revenue neutral to DP&L."

1 Mr. White --

2 EXAMINER PRICE: Is that the full  
3 footnote?

4 MR. OLIKER: That is in the body of the  
5 Stipulation.

6 EXAMINER PRICE: Is that the full  
7 sentence?

8 MR. OLIKER: I can read it again, if you  
9 want.

10 EXAMINER PRICE: I thought there was a  
11 specific reference in that sentence to the AIR case.  
12 I feel like you're leaving that out.

13 MR. OLIKER: I did not mean to. It  
14 says -- but it does say when DP&L filed its  
15 distribution rate case, identifies the case number  
16 15-1830-EL-AIR, there will be an evaluation of costs  
17 contained in distribution rates. It may be necessary  
18 to provide Standard Service Offer service.

19 And then it says, "Any reallocation of  
20 costs to the Standard Service Offer as a result of  
21 this evaluation will be revenue neutral for DP&L."

22 Mr. White submitted testimony in an  
23 earlier phase of this proceeding supporting that  
24 evaluation, and giving testimony on the  
25 appropriateness of unbundling costs, allocating them

1 to the Standard Service Offer, and the only  
2 additional matter that has been added to this case is  
3 the proposal to have a rider to make that possible.

4 And OCC reviewed the testimony of  
5 Mr. White earlier in the phase regarding the  
6 Stipulation, the reasons for the unbundling of the  
7 costs and the allocation of the Standard Service  
8 Offer.

9 What we're seeing now is an opportunity  
10 to rebut the testimony that he submitted in the  
11 earlier phase that they simply did not do.

12 There's nothing in here that is germane  
13 necessarily to the creation of a rider, to take --  
14 about that process, it's simply policy testimony and  
15 why they don't agree with it in content.

16 EXAMINER PRICE: Maybe OCC wisely  
17 understood that a rider couldn't be created in the  
18 AIR case, so there was no need to rebut his  
19 testimony, because the Stipulation proposed to do  
20 something that couldn't be done. It's only because  
21 he's proposing the rider now is their testimony  
22 relevant.

23 MR. OLIKER: That would be a legal  
24 matter, I believe, your Honor, and not appropriate  
25 for testimony.

1 EXAMINER PRICE: That's not a legal  
2 matter, it's a strategic matter. They had no need to  
3 raise this because the Stipulation couldn't  
4 accomplish what you wanted it to accomplish.

5 MR. OLIKER: That's the OCC's position.

6 EXAMINER PRICE: I'm asking you.  
7 Hypothetically, what is the position?

8 MR. OLIKER: I would not believe that  
9 would be their position, your Honor. I would never  
10 do that.

11 EXAMINER PRICE: Mr. Michael.

12 MR. MICHAEL: I think that's an  
13 excellent summary, your Honor, and I think the motion  
14 to strike should be rejected.

15 I may have additional reasons; however,  
16 I don't know that they are necessary, and I think it  
17 would be appropriate to proceed with Mr. Willis'  
18 cross.

19 EXAMINER PRICE: Anybody else care to  
20 weigh in on this?

21 Mr. Oliker, you may have the final word.

22 MR. OLIKER: Your Honor, OCC simply had  
23 an opportunity to present this testimony in an  
24 earlier phase; they didn't do it.

25 This isn't rebutting anything. Similar

1 to the testimony that was stricken to bolster their  
2 case on the Reconciliation Rider, that's what they  
3 are trying to do here.

4 And it's clear, Mr. White submitted  
5 several pages of testimony regarding the imposition  
6 of additional costs on the Standard Service Offer, on  
7 a policy basis, and OCC simply did not address that  
8 testimony, and now they are trying to get a second  
9 bite of the apple.

10 EXAMINER PRICE: Well, since the  
11 creation of the rider is simply a legal question, are  
12 you saying we should disregard all of Mr. White's  
13 testimony beginning on page 9, line 21, through  
14 page 10, Line 21? After all, it's not proper to  
15 testify as to a legal matter.

16 MR. OLIKER: I think there's a  
17 difference that Mr. White is a lawyer and he's  
18 licensed in Ohio.

19 EXAMINER PRICE: What you're saying,  
20 though, it's a matter for briefs, not a matter for  
21 testimony?

22 MR. OLIKER: And it is also already in  
23 the record, and they did not move to strike it.

24 EXAMINER PRICE: He opened the door,  
25 then. Your motion to strike is denied in all

1 respects.

2 MR. OLIKER: Okay.

3 EXAMINER PRICE:

4 Cross-examination, Kroger?

5 MS. WHITFIELD: No, your Honor.

6 EXAMINER PRICE: OMAEG?

7 MR. DRESSEL: No, your Honor.

8 EXAMINER PRICE: OEG?

9 MS. KYLER COHN: No, your Honor.

10 EXAMINER PRICE: Mr. Settineri?

11 MR. SETTINERI: Your Honor, given that  
12 the testimony contains some general statements, with  
13 your discretion I would appreciate going after  
14 Mr. Oliker, as he may answer some of the questions I  
15 may have.

16 EXAMINER PRICE: No, you're friendly to  
17 the Dayton Power and Light, you need to go before Mr.  
18 Oliker. And you need to make sure you're not asking  
19 Mr. Willis -- I'm sorry, no, you are friendly to --  
20 you're in opposition to Mr. Oliker, you should go  
21 before him. I understand we have three sides.

22 MR. SETTINERI: Yeah, I just understand  
23 this is an OCC witness on rebuttal, which I didn't  
24 know if the rules apply to that.

25 EXAMINER PRICE: I would like the

1 signatory parties to go as a group, and then the  
2 nonsignatory party. To put it more clearly, I'd like  
3 the signatory parties to go as a group, and then the  
4 nonsignatory party, even though OCC is adverse to  
5 everybody.

6 MR. SETTINERI: Can we go off the record  
7 briefly?

8 EXAMINER PRICE: You may.

9 (Discussion off the record.)

10 EXAMINER PRICE: Let's go back on the  
11 record. Mr. Settineri.

12 MR. SETTINERI: Yes, your Honor, just a  
13 short -- a few short questions for the witness, if I  
14 may.

15 - - -

16 CROSS-EXAMINATION

17 By Mr. Settineri:

18 Q. Mr. Willis, at page 6 of your testimony  
19 you state, at lines 2 and 3, that, "Currently, DP&L's  
20 standard offer is generally among the lowest  
21 generation rates available for customers." Do you  
22 see that?

23 A. I do.

24 Q. And as to that statement, you're not  
25 aware of all rates that customers pay the CRES

1 suppliers; is that correct?

2 A. No.

3 Q. And you're also not aware of all rates  
4 that residential customers pay to their CRES  
5 suppliers for generation, correct?

6 A. Correct.

7 MR. SETTINERI: No further questions,  
8 your Honor.

9 EXAMINER PRICE: Thank you.

10 Mr. Sharkey?

11 MR. SHARKEY: No questions, your Honor.

12 EXAMINER PRICE: Mr. Olikar?

13 - - -

14 CROSS-EXAMINATION

15 By Mr. Olikar:

16 Q. Mr. Willis, just a few questions for you  
17 this morning. Your testimony covers two subjects,  
18 correct; the Reconciliation Rider, and Mr. White's  
19 proposal for unbundling rates?

20 A. Yes.

21 Q. You are not taking a position on whether  
22 a switching fee should be imposed when a customer  
23 returns to the SSO, correct?

24 A. I am not taking a position.

25 Q. And you are not taking a position on



1 whether it is appropriate for DP&L to assess a \$150  
2 historical usage fee to CRES providers?

3 A. I am not taking a position.

4 Q. And you oppose the Reconciliation Rider  
5 in any form regardless of whether it's bypassable or  
6 nonbypassable, correct?

7 A. That is correct.

8 Q. Am I correct that you generally oppose  
9 the bypassable Reconciliation Rider because you  
10 believe it can cause rate shock?

11 A. We oppose the Reconciliation Rider  
12 because we believe it's a -- a subsidy to subsidize  
13 uneconomic 1950s coal plants, and it's not in the  
14 best interest of consumers.

15 MR. SHARKEY: Your Honor, I'd move to  
16 strike on the same grounds, it's not rebuttal  
17 testimony. It's just the same grounds I just argued  
18 and you just granted on portions of his testimony.

19 EXAMINER PRICE: Certainly was friendly,  
20 wasn't it, Mr. Olikier, on this issue? We'll grant  
21 it.

22 MR. OLIKER: I would ask that the  
23 witness answer my question, though. He did provide  
24 an answer, but I asked him about rate shock, and he  
25 talked about the uneconomics of coal plants, which is

1 really irrelevant to that question. So I'll ask it  
2 again.

3 EXAMINER PRICE: If you're limiting your  
4 question as to the issue of bypassability versus  
5 non-bypassability, then I'll allow it, yes. If  
6 you're just asking generally about the Reconciliation  
7 Rider, then it's to be stricken.

8 MR. OLIKER: I'll ask it, and you can  
9 judge for yourself.

10 By Mr. Olikar:

11 Q. Now, am I correct, Mr. Willis, that you  
12 oppose a bypassable Reconciliation Rider because you  
13 believe that it could cause rate shock to the full  
14 service customers?

15 MR. MICHAEL: Object to form, your  
16 Honor. I'd like Mr. Olikar to provide a description  
17 of rate shock. I'm not clear what he means by that.

18 EXAMINER PRICE: Mr. Willis is a  
19 regulatory expert and is very familiar with the art  
20 term rate shock. He can answer accordingly.  
21 Overruled.

22 MR. MICHAEL: Thank you, your Honor.

23 THE WITNESS: It could be rate shock, as  
24 if -- if it was bypassable and the Reconciliation  
25 Rider was only placed on the Standard Service Offer,

1 then those customers would likely leave to a  
2 marketer, and the fewer people that are left to pay  
3 that bill, it could potentially cause rate shock.

4 By Mr. Oliker:

5 Q. Mr. Willis, you have not made any  
6 projections of the level of charge that would be  
7 needed for a bypassable Reconciliation Rider,  
8 correct?

9 A. No.

10 Q. And, in fact, you cannot think of any  
11 level of a Reconciliation Rider that would cause rate  
12 shock?

13 A. That's not the purpose of my testimony.

14 Q. But the answer is no, correct?

15 MR. MICHAEL: Object, beyond the scope.

16 EXAMINER PRICE: I think it's a fair  
17 question for him to ask him. He should answer the  
18 question directly.

19 Let's have the question back, and please  
20 give a direct answer to the question.

21 (Question read back.)

22 THE WITNESS: No.

23 By Mr. Oliker:

24 Q. And you have not done any analysis to  
25 determine whether \$1 a month, \$3 a month, or \$5 a

1 month would cause rate shock for a customer, correct?

2 A. Correct.

3 Q. You agree, though, that making the  
4 Reconciliation Rider bypassable would be a benefit  
5 for shopping customers?

6 A. It would be a benefit for shopping  
7 customers, and a detriment to the SSO customer.

8 EXAMINER PRICE: You mean benefit for  
9 shopping customers, or it would be a benefit for the  
10 marketer community?

11 THE WITNESS: For the marketers, for the  
12 CRES providers.

13 By Mr. Olier:

14 Q. And when asked that same question in  
15 your deposition, you did not indicate that it would  
16 be a benefit for CRES providers, did you?

17 MR. MICHAEL: Objection. If he wants to  
18 show him his testimony, he's free to do so, if he's  
19 trying to impeach. But to ask him about what the  
20 transcript shows, I think is an inappropriate  
21 question.

22 EXAMINER PRICE: I find it highly  
23 unlikely that you phrased the question exactly the  
24 way the Bench did, but if you can prove that up with  
25 his deposition, that would be fine.

1                   MR. OLIKER: We'll hold off for a  
2 second, your Honor.

3 By Mr. Oliker:

4           Q. When you say on page 6 that DP&L's SSO  
5 is among the lowest generation rates available to  
6 customers, in this statement you're saying that in  
7 comparison to the SSO rate of other utilities, DP&L's  
8 SSO rate is among the lowest, correct?

9           A. It's among the lowest rates for the  
10 major cities that -- that's recorded in the Utility  
11 Rate Survey.

12          Q. Mr. Willis, I'm just trying to  
13 understand, on page 6 of your testimony, is the  
14 comparison that you performed a comparison of utility  
15 SSO rates?

16          A. I referenced the -- what I'm referencing  
17 is the Utility Rate Survey that's published by the  
18 Public Utilities Commission, and it's for nonshopping  
19 rates, and it lists the cities which would encompass  
20 all of the different utilities.

21          Q. And because you look at nonshopping  
22 rates in comparison to Standard Service Offer rates  
23 of utilities, correct?

24          A. Correct.

25          Q. Okay. And on page 10 you state that,

1 "Denying IGS's proposal to spare only Marketer  
2 customers from paying the charge would allow for a  
3 competitively neutral non-discriminatory outcome."

4 Regarding this conclusion, am I correct  
5 that you believe a bypassable Reconciliation Rider  
6 would distort competition by requiring SSO customers  
7 to pay for a category of costs that shopping  
8 customers are permitted to avoid?

9 A. Yes.

10 Q. And generally, from a competitive  
11 standpoint, you agree that shopping customers' and  
12 SSO customers' rates should be comprised of  
13 comparable cost components?

14 A. With respect to the Reconciliation  
15 Rider.

16 MR. OLIKER: May I approach?

17 EXAMINER PRICE: You may.

18 By Mr. Olikar:

19 Q. Mr. Willis, did I take your deposition  
20 in this case?

21 A. You did.

22 Q. And was that deposition in the presence  
23 of a Court Reporter?

24 A. It was.

25 Q. And were you under oath?

1 A. I was.

2 Q. And did you have an opportunity to  
3 review your deposition transcript?

4 A. I did.

5 Q. And has that document been placed before  
6 you?

7 A. It appears to be.

8 Q. And can you turn to page 21? And let me  
9 know when you're there.

10 A. Okay.

11 Q. Let me know if I read this correctly on  
12 line 6.

13 "Okay. And generally, from a  
14 competitive standpoint, you would agree that shopping  
15 customers' and SSO customers' rates should be  
16 comprised of comparable cost components?" "Yes."  
17 Did I read that correctly?

18 A. Yes.

19 Q. Thank you. And on page 10 you say that,  
20 "Under a bypassable rider, the subsidy charge will  
21 increase for the remaining customers as more  
22 customers leave to avoid it."

23 You have not done any calculations of  
24 the size of the Reconciliation Rider based upon any  
25 particular level of shopping; is that correct?

1           A. That is correct.

2           Q. But you would agree that when a customer  
3 does in fact shop, it's safe to assume that they  
4 expect their generation rate will be established by  
5 the agreement between them and their supplier?

6           A. That is correct.

7           Q. Would you agree that the Reconciliation  
8 Rider relates to generation?

9           A. Yes.

10          Q. Would you agree that if the  
11 Reconciliation Rider is nonbypassable, a shopping  
12 customer will always have an unpredictable and  
13 unknowable generation component in their bill  
14 unrelated to their contract with their supplier?

15          A. So will the SSO customer. It will be  
16 neutral.

17          Q. But the answer is yes, they will have an  
18 unpredictable component if they shop?

19          A. Yes, as will the -- as will the SSO  
20 customer. It will be neutral.

21          Q. Now, switching gears to unbundling. You  
22 oppose the proposal to create a rider that would  
23 unbundle and allocate additional costs that are  
24 necessary to support the Standard Service Offer,  
25 correct?



1 A. Yes.

2 Q. Okay. And on page 3 you state that,  
3 "IGS's proposal is just another way to make SSO  
4 customers pay more."

5 Do you agree that Mr. White's unbundling  
6 proposal would increase the SSO rate potentially, but  
7 also decrease the distribution rates that SSO  
8 customers pay?

9 A. Well, it wouldn't lower the distribution  
10 rate, it would credit all customers, and then charge  
11 the SSO customers for what all customers were paying  
12 through the distribution rate.

13 Q. So then -- thank you for that  
14 clarification.

15 Would you agree that Mr. White's  
16 proposal would potentially decrease the amount that  
17 SSO customers and shopping customers pay for  
18 distribution service?

19 A. Yes.

20 Q. Thank you.

21 EXAMINER PRICE: Could I have that  
22 question and answer back, please?

23 (Question and answer read back.)

24 EXAMINER PRICE: How?

25 THE WITNESS: Well, there would be a

1 credit, but then that credit that was given to all  
2 distribution customers would then be charged just to  
3 the Standard Service Offer customers.

4 EXAMINER PRICE: So how would both  
5 shopping and nonshopping customers pay less for  
6 distribution service?

7 THE WITNESS: There would be a credit,  
8 but then there would be a charge. So at the end of  
9 the day the SSO customer would be paying a lot more.

10 EXAMINER PRICE: Is there any  
11 circumstance under which the net effect of the two  
12 credits would have the SSO customers paying less?

13 THE WITNESS: No.

14 MR. OLIKER: For what, though? I'm not  
15 sure.

16 EXAMINER PRICE: For distribution  
17 service.

18 Now, Mr. Willis, if the Commission did a  
19 study -- did the evaluation to the Cost-of-Service  
20 Study, and it turned out that the costs of supporting  
21 shopping customers was greater than the cost of  
22 supporting SSO customers, such that the shopping  
23 customers would receive a charge on the second rider,  
24 and the nonshopping customers receive a credit, in  
25 that instance SSO customers could in fact pay less

1 for distribution service?

2 THE WITNESS: Well, right now all -- all  
3 costs to administer and support Choice is being  
4 recovered through the distribution rate.

5 EXAMINER PRICE: And if those costs were  
6 solely allocated to shopping customers, cost of  
7 billing changes, costs of receiving phone calls, and  
8 the customer service center for data related to  
9 shopping, if those costs were solely allocated to the  
10 shopping customers, it's at least hypothetically  
11 possible that SSO customers would receive a net  
12 credit?

13 THE WITNESS: Yes.

14 EXAMINER PRICE: Thank you.

15 By Mr. Olikar:

16 Q. Mr. Willis, would you agree that  
17 reducing the amount that shopping customers pay for  
18 distribution service would be a benefit to shopping  
19 customers?

20 THE WITNESS: Could I have the question  
21 reread, please?

22 (Question read back.)

23 THE WITNESS: No.

24 By Mr. Olikar:

25 Q. Could you turn to page 25 of your

1 deposition? And let me know if I read this  
2 correctly.

3 On line 7, "Would you agree that  
4 reducing the price that shopping customers pay for  
5 distribution service would be a benefit to those  
6 customers?" Answer: "To shopping customers."

7 Did I read that correctly?

8 A. Yes. But I thought your question was to  
9 all customers.

10 Q. No, I don't believe I said that. But if  
11 that's what the record reflects, then I think we're  
12 on the same page now, anyway.

13 On page 4 you state that, "Mr. White's  
14 proposal violates cost causation principles."

15 Under principles of cost causation, the  
16 goal is to assign costs to the individuals that cause  
17 such costs, correct?

18 A. Yes.

19 Q. And that is a principle -- that is, cost  
20 causation -- that has been developed by the National  
21 Association of Regulatory and Utility Commissioners,  
22 correct?

23 A. Yes.

24 Q. And it goes back even as far as  
25 Bonbright's Principles, correct?

1 A. Yes.

2 Q. And it is typical in ratemaking that we  
3 seek to assign costs to the cost causers, correct?

4 A. Correct.

5 Q. And on page 5, line 12, you say that,  
6 "DP&L's SSO should not be unbundled from one charge  
7 into two charges to customers."

8 When you say one charge in this  
9 statement, you're referring to the bare bones energy  
10 and capacity rate for the SSO, correct?

11 A. Yes.

12 Q. And when you say two charges in that  
13 statement, you're referring to the bare bones  
14 capacity and energy rate, and adding another charge  
15 that allocates costs associated with providing the  
16 SSO as recommended by Mr. White, correct?

17 A. Correct.

18 Q. Okay. And sticking with the statement  
19 on page 5, lines 12 and 13, when you say DP&L's  
20 Standard Service Offer should not be unbundled, you  
21 understand that Mr. White is talking about unbundling  
22 costs from distribution rates, not necessarily costs  
23 that are already in the Standard Service Offer,  
24 correct?

25 A. Correct.

1           Q.   Okay.  And can you turn to page 13 of  
2   your testimony?  You indicate that the -- that the  
3   basis for Standard Service Offer customers not paying  
4   for the overhead associated with the Standard Service  
5   Offer, you say that the Standard Service Offer is a  
6   safety net, and that customers can receive the  
7   Standard Service Offer if their supplier defaults.

8                     Do you know of any supplier ever  
9   defaulting?

10           A.  Well, FirstEnergy Solutions has filed  
11   for bankruptcy.

12                     MR. OLIKER:  Your Honor, I would move to  
13   strike his response.  I asked him if a supplier has  
14   ever defaulted, not --

15                     EXAMINER PRICE:  He gave his  
16   understanding that filing for bankruptcy is  
17   technically a default under the Ohio law.  
18   By Mr. Oliker:

19           Q.  Mr. Willis, when you're referring to a  
20   supplier defaulting, you're referring to the supplier  
21   sending their customers to the SSO, correct?

22           A.  That's -- I believe that's what the  
23   statute requires.

24           Q.  And FirstEnergy Solutions has not sent  
25   its customers to the SSO, correct?

1 A. I don't believe it has.

2 Q. And in fact, you don't know of any  
3 supplier ever defaulting, correct?

4 MR. MICHAEL: Objection, asked and  
5 answered.

6 EXAMINER PRICE: He hasn't answered yet.  
7 Overruled.

8 THE WITNESS: Again, FirstEnergy has --  
9 FirstEnergy Solutions has filed for bankruptcy.  
10 By Mr. Olier:

11 Q. Could you turn to page 29 of your  
12 deposition? Let me know when you're there. And on  
13 line 14, let me know if I read this correct -- maybe  
14 I can ask the question this way. And I'm referring  
15 to your testimony.

16 It's on page 13 where you say, "And  
17 marketer customers benefit from the Standard Service  
18 Offer because they have a safety net in case the  
19 supplier they have chosen defaults."

20 "Do you know whether a supplier has  
21 defaulted as you describe on page 13 in your  
22 testimony?" Answer: "No."

23 Did I read that correctly?

24 A. Well, again, if you go on page 28, I  
25 think my answer was, "Well, FirstEnergy is in

1 bankruptcy."

2 MR. OLIKER: Move to strike.

3 HEARING EXAMINER PRICE: Strike that  
4 last comment. If you need additional clarification  
5 or context, Mr. Michael will ask you that on  
6 redirect.

7 By Mr. Olikar:

8 Q. But I did read the question correctly,  
9 and the answer?

10 A. You did.

11 Q. Thank you. And to close the loop on  
12 some of that, you agree that FirstEnergy Solutions  
13 has not sent all its customers back to default  
14 service, correct?

15 A. Yes.

16 Q. And you would agree that competitive  
17 retail electric service providers must incur their  
18 own overhead costs to serve their customers?

19 A. Yes.

20 Q. And on page 13 you make the statement on  
21 line 6, "All costs that DP&L incurs to provide  
22 services to or on behalf of Marketer customers and  
23 DP&L standard service customers are appropriately  
24 assigned to the distribution function of DP&L."

25 And you believe that distribution rates



1 should recover the costs of any services that are  
2 necessary to facilitate a customer's decision to  
3 shop, correct?

4 A. Yes.

5 Q. You don't know whether DP&L recovers all  
6 of the costs associated with the shopping through its  
7 distribution rates?

8 A. No.

9 Q. But you have participated in  
10 distribution rate cases in the past on behalf of the  
11 Commission Staff, correct?

12 A. Yes.

13 Q. And in fact, you've signed off on Staff  
14 Reports?

15 A. Yes.

16 Q. And you recognize that distribution  
17 rates are comprised of a revenue requirement?

18 A. Yes.

19 Q. And as a part of that revenue  
20 requirement, there's an allowance for operation of  
21 maintenance expense?

22 A. Yes.

23 Q. And the total authorized revenue  
24 requirement may be offset by other revenues collected  
25 by the distribution utility?

1 A. Yes.

2 Q. And one of the revenue streams that may  
3 offset the revenue requirement may be the fees that  
4 CRES providers pay.

5 EXAMINER PRICE: I'm sorry, that's  
6 vague. Can you restate it? Are you saying all  
7 costs, some costs? You just said costs. I'm not  
8 sure whether you're saying all the costs are being  
9 offset by fees, some of the costs. Could you be more  
10 clear?

11 By Mr. Oliker:

12 Q. Mr. Willis, if there's a revenue stream  
13 provided by CRES providers to DP&L, whatever amount  
14 of revenues that are paid will offset the revenue  
15 requirement, correct?

16 MR. MICHAEL: I'm going to object, your  
17 Honor. I'm not sure that talking about ratemaking in  
18 an ESP case on rebuttal testimony is germane to this.

19 EXAMINER PRICE: I'm going to ask you to  
20 rephrase the question, I still don't understand. I  
21 still think your question is vague.

22 You say the revenue -- are you saying  
23 that marketer -- are you asking whether marketer fees  
24 offset the entire distribution revenue requirement?

25 MR. OLIKER: I'm not making that -- I'm

1 not asking that question, I'm simply asking how  
2 whatever fees are paid are treated in the ratemaking  
3 process.

4 EXAMINER PRICE: So you're asking him if  
5 they are offsetting, in some small part, the  
6 distribution revenue requirement?

7 MR. OLIKER: I don't know if we're  
8 talking about a small part or a large part here, your  
9 Honor.

10 EXAMINER PRICE: Neither do I, that's  
11 why I'm asking if you'd be more clear.

12 MR. OLIKER: And I don't think it  
13 matters for purposes of this line of questioning,  
14 whether it's small --

15 EXAMINER PRICE: I think it's misleading  
16 if you don't make it matter.

17 MR. MICHAEL: And I think it's  
18 irrelevant because it's not a rate case.

19 EXAMINER PRICE: It's certainly  
20 relevant. He's talking here about distribution  
21 costs. The question is relevant, it's just the way  
22 he's phrasing it is misleading the record.

23 MR. MICHAEL: I agree with that, too.

24 By Mr. Oliker:

25 Q. Without getting into the question of how

1 much of the revenue requirement is offset by fees, to  
2 the extent that suppliers are paying switching fees  
3 and historical usage fees to DP&L, would you agree  
4 that all of the costs that DP&L incurs to provide  
5 services to or on behalf of CRES provider customers,  
6 are not currently being recovered through  
7 distribution rates?

8 MR. SHARKEY: And I'm going to object,  
9 your Honor. I refrained from objecting earlier  
10 because you jumped in, but --

11 EXAMINER PRICE: Sorry.

12 MR. SHARKEY: I was happy to sit  
13 quietly.

14 But we're getting into issues regarding  
15 whether or not DP&L's charges to CRES providers are  
16 lawful or permissible. That's beyond the scope of  
17 this rebuttal testimony.

18 I think he's trying to put into the  
19 record, through an OCC witness, testimony that's  
20 certainly beyond the scope, and irrelevant here.

21 EXAMINER PRICE: Mr. Olier.

22 MR. OLIER: Your Honor, I'm sticking  
23 with lines 6 through 8 of his testimony where there's  
24 a statement about how costs are recovered, which is  
25 clearly contrary to fact, when he's saying that all

1 the costs associated with utility shopping should be  
2 recovered through distribution rates, and I don't  
3 think that's true.

4 I think that there's actually some  
5 points of contention about a \$150 historical usage  
6 fee, a switching fee, and I think it's helpful for  
7 development of the record.

8 EXAMINER PRICE: Which tariff, their  
9 generation -- their supplier tariff, or their  
10 distribution tariff, are the fees you're referencing?

11 MR. OLIKER: The switching fee is  
12 actually mentioned in D34, but it's also talked about  
13 in G8. The historical usage fee is in Tariff G8.  
14 They are both in contention in this case, your Honor.  
15 I mean, there's questions of whether you're talking  
16 about the fee level, how it's applied, but --

17 EXAMINER PRICE: I'll allow the  
18 question.

19 MR. MICHAEL: Could you repeat it,  
20 please?

21 (Question read back.)

22 THE WITNESS: Yes.

23 By Mr. Olikar:

24 Q. And to be clear, that's because those  
25 fees are a credit to -- not getting into the question

1 of how much of the cost it covers is, but because  
2 those fees are reducing the otherwise applicable  
3 revenue requirement?

4 A. To the extent that the switching fees  
5 are a distribution -- is a distribution tariff, and  
6 there's other fees that DP&L incurs that's not being  
7 recovered through the distribution rate, it's --  
8 there are -- there's costs to administer the auction,  
9 itself. Those aren't recovered through the  
10 distribution rate.

11 MR. OLIKER: Your Honor, I move to  
12 strike his response about the auction and the  
13 distribution rate. I simply asked him about -- a  
14 followup question about the fees suppliers are  
15 paying, and those fees reducing the otherwise  
16 applicable revenue requirement.

17 EXAMINER PRICE: We'll allow it. Can I  
18 have the answer back, please?

19 (Answer read back.)

20 EXAMINER PRICE: Motion to strike will  
21 be granted. If you can answer the question more  
22 directly.

23 By Mr. Olikar:

24 Q. I think you said this in your earlier  
25 answer, Mr. Willis, I'm simply trying to synthesize

1 it down so the record is clear.

2 But to the extent the fees for switching  
3 are coming in, fees for historical usage fees, those  
4 fees, because they are a credit in the ratemaking  
5 process, they would reduce the otherwise needed  
6 amount of revenues that have to be recovered through  
7 distribution rates from all customers?

8 A. I'm not sure that the historical usage  
9 fee is a distribution tariff. I don't know that it  
10 is. I know that the switching fee is. But when you  
11 say historical data collection, I don't know that  
12 that's a distribution tariff.

13 EXAMINER PRICE: You don't know that the  
14 \$150 historical usage fees are being used to reduce  
15 the distribution revenue --

16 THE WITNESS: I don't know that. It may  
17 be, I don't know.

18 By Mr. Olier:

19 Q. You don't think DP&L is just keeping the  
20 money, do you?

21 A. Well, you're -- if you're asking me if  
22 it's -- if it reduces the revenue requirement, that  
23 is a distribution -- the revenue requirement in the  
24 rate case is for all distribution customers.

25 I don't know that these historical usage

1 fees -- I don't know if that's a distribution tariff.

2 I don't know. It may be, I don't know.

3 Q. So you just -- you haven't looked at it?

4 MR. MICHAEL: Objection, asked and  
5 answered, argumentative.

6 EXAMINER PRICE: I'm sorry, asked and  
7 answered, sustained.

8 By Mr. Olier:

9 Q. And just to follow up on what you said a  
10 minute ago, the fact that the usage fee is considered  
11 a generation tariff versus a distribution tariff,  
12 that may not be the deciding factor on whether or not  
13 a request for operation and maintenance expenses  
14 includes -- in the distribution case, includes the  
15 back office costs to provide those services?

16 EXAMINER PRICE: Can I have that  
17 question back again?

18 (Question read back.)

19 MR. MICHAEL: Object to form.

20 EXAMINER PRICE: Sustained.

21 By Mr. Olier:

22 Q. Mr. Willis, if DP&L classified the  
23 historical usage as a generation tariff, it still may  
24 be collecting an allowance for operation and  
25 maintenance expenses through their distribution



1 rates, correct?

2 A. I don't know.

3 Q. Okay. And your definition of a subsidy  
4 is forcing customers to pay for something that they  
5 wouldn't otherwise be responsible for, correct?

6 A. Yes.

7 Q. And if CRES offerings must include  
8 categories of costs that the SSO is permitted to  
9 avoid, you would agree that the SSO could have a  
10 competitive advantage?

11 EXAMINER PRICE: Can I have that  
12 question back again?

13 (Question read back.)

14 EXAMINER PRICE: Aren't you assuming a  
15 fact not in evidence here, Mr. Olikar? There's no  
16 evidence that CRES providers have -- in this record,  
17 that CRES provider's costs have to include costs that  
18 are not recovered from SSO customers.

19 MR. OLIKER: I think he earlier stated  
20 that CRES providers do have overhead costs. Matt  
21 White also testified to this in his own testimony,  
22 and he's testified that he doesn't believe the  
23 overhead costs for the SSO should be recovered  
24 through the SSO rate.

25 EXAMINER PRICE: Thank you.

1 THE WITNESS: May I have the question  
2 again?

3 (Question read back.)

4 MR. MICHAEL: I want to object to form,  
5 your Honor, and I also want to object that it's  
6 misleading the record.

7 I mean, IGS's business and its overhead  
8 is what it is. They are not required by anybody  
9 other than their own economics and dollars and cents  
10 to include whatever it is that they include in their  
11 price. So I think it's a misleading question.

12 EXAMINER PRICE: I'm going to sustain  
13 the objection. The difficulty I'm having is you say  
14 the CRES provider offer must include costs. There's  
15 no requirement that they include anything. They set  
16 the price according to the market. Sustained.  
17 By Mr. Olier:

18 Q. Mr. Willis, if IGS doesn't recover its  
19 overhead cost, it will go out of business, correct?

20 A. Likely.

21 Q. Okay. And therefore, it is likely that  
22 CRES provider has to include its overhead costs on  
23 top of the market price for energy and capacity?

24 MR. MICHAEL: I'm going to object, your  
25 Honor, it's beyond the scope. And I'm not sure it's

1 anywhere tangentially related to Mr. Willis'  
2 testimony.

3 But Mr. Oliker's client and the  
4 marketers are unregulated. They price it based on  
5 the market and what their own economics are.

6 MR. OLIKER: And part of the economics  
7 are overhead costs. It's simply going from policy  
8 determination, the impacts of what Mr. Willis is  
9 recommending.

10 EXAMINER PRICE: I don't agree, because  
11 there's always a concept of lost leaders. It's not  
12 necessarily the case that you are recovering --  
13 you're not recovering anything.

14 You may have overhead costs that are not  
15 in your commodity price, but you're more than making  
16 up by selling other ancillary product to that  
17 customer.

18 Wal-Mart does not necessarily cover  
19 their overhead on every single item they sell,  
20 sometimes they have items on sale to bring people  
21 into the store.

22 You may have a low energy price that  
23 doesn't cover your overhead, it doesn't mean you're  
24 not selling the customers a lot more.

25 MR. OLIKER: Your Honor, that -- that

1 assumes that we're not allowed to compete on a  
2 straight commodity basis.

3 EXAMINER PRICE: That doesn't assume  
4 that at all. Objection sustained.  
5 By Mr. Olikar:

6 Q. And, Mr. Willis, you agree that there  
7 are, in fact, costs that are necessary to support the  
8 Standard Service Offer, you just believe that they  
9 should be recovered through distribution rates from  
10 all customers, correct?

11 A. All costs to support Choice should be  
12 recovered through the distribution rate.

13 MR. OLICKER: Your Honor, I would move to  
14 strike. I asked him about costs to support the  
15 Standard Service Offer, and he talked about costs to  
16 support Choice.

17 EXAMINER PRICE: Standard Service Offer  
18 is a Choice, is it not?

19 MR. OLICKER: Then I'll have to impeach.  
20 By Mr. Olikar:

21 Q. Can you turn to page 42 of your  
22 deposition transcript, line 13?

23 "So maybe just to circle back on the  
24 unbundling, you agree that there are costs that are  
25 necessary to support the Standard Service Offer, you

1 just believe that they should be recovered through  
2 distribution rates from all customers, correct?"

3 Answer: "Yes." Did I read that correctly?

4 MR. MICHAEL: Your Honor, I generally  
5 don't like to object to an attempt at impeachment  
6 because I think the record speaks for itself and the  
7 Commission is capable of determining whether a  
8 witness was impeached, but I am going to object to  
9 this one.

10 Mr. Oliker is asking the PUCO to draw a  
11 conclusion that simply isn't there. As your Honor  
12 pointed out, Standard Service Offer is a Choice, and  
13 Mr. Willis' testimony is perfectly consistent with  
14 what he says here, and there's no conclusion that can  
15 be drawn otherwise, this is a different question.

16 EXAMINER PRICE: The record speaks for  
17 itself, and the Commission is perfectly capable of  
18 deciding whether the witness has been impeached.  
19 Overruled.

20 MR. OLIKER: If I could have one minute,  
21 your Honor.

22 (Pause.)

23 MR. MICHAEL: Are we going off the  
24 record, Joe?

25 MR. OLIKER: I just asked for one

1 minute.

2 EXAMINER PRICE: Let's go off the  
3 record.

4 (Discussion off the record.)

5 EXAMINER PRICE: Let's go back on the  
6 record.

7 MR. OLIKER: I have no more questions,  
8 your Honor.

9 EXAMINER PRICE: Thank you.  
10 Mr. Michael, redirect?

11 MR. MICHAEL: We have no redirect, your  
12 Honor.

13 - - -

14 EXAMINATION

15 By Examiner Price:

16 Q. Mr. Willis, I wanted to clear this up in  
17 my mind at least. Historically the Commission has  
18 collected the majority, if not all, of the costs of  
19 Choice from all ratepayers. Do you believe that's  
20 because all ratepayers benefit from the Choice  
21 Program?

22 A. They do benefit.

23 Q. And do you believe that all ratepayers  
24 benefit from the Standard Service Offer?

25 A. Yes.

1 Q. And do you believe the costs of -- other  
2 than the ones directly that support the Standard  
3 Service Offer, such as the occupants and the  
4 consultants, you believe the other costs should be  
5 collected from all ratepayers because everybody  
6 benefits?

7 A. Yes.

8 EXAMINER PRICE: Thank you. You may  
9 step down.

10 (Witness excused.)

11 EXAMINER PRICE: Mr. Olikier -- Not Mr.  
12 Olikier. Mr. Michael?

13 MR. MICHAEL: We renew our motion for  
14 the admission of OCC Exhibit 1000.

15 EXAMINER PRICE: Any objections?

16 MR. OLIER: Subject to the prior motion  
17 to strike IGS made.

18 EXAMINER PRICE: It will be admitted  
19 subject to the motions to strike.

20 (EXHIBIT ADMITTED INTO EVIDENCE.)

21 EXAMINER PRICE: Mr. Olikier, you had  
22 a --

23 MR. OLIER: I had an evidentiary  
24 matter. I wanted to bring up IGS Exhibits 3, 4,  
25 and 5 regarding credit ratings from Moody's Investor

1 Service that were initially marked as exhibits, and  
 2 then request for administrative notice was taken.  
 3 And I wanted to make sure that I've properly  
 4 preserved that, given some issues that have come up  
 5 in another case.

6 But simply wanted to succinctly state  
 7 that it's important to recognize that Mr. Malinak, in  
 8 his direct testimony, references Oncor Electric  
 9 Delivery on pages 34 and 35 of his testimony, in the  
 10 tables themselves.

11 He clearly states under "Notes and  
 12 Sources" that he derived that information from credit  
 13 ratings from Moody's. It says it right there in the  
 14 Notes and Sources.

15 He did not change this reference when he  
 16 took the stand, or indicate in his direct testimony  
 17 that he got the information from anywhere else other  
 18 than Moody's, therefore he's represented that he  
 19 relied on Moody's credit ratings for 2014 and 2015.

20 Given that representation, it would be  
 21 appropriate to either admit the three exhibits  
 22 containing Oncor's credit rating in 2014 and 2015, or  
 23 take administrative notice of the document.

24 Mr. Malinak also relies upon statements  
 25 from Moody's throughout his testimony. It would be



1 prejudicial to selectively permit the introduction  
2 into evidence of Moody's credit rating reports in the  
3 record when DP&L believes it suits its need, but to  
4 exclude Moody's credit ratings when it hurts DP&L's  
5 case.

6 EXAMINER PRICE: Mr. Sharkey, care to  
7 respond?

8 MR. SHARKEY: First, your Honor, it  
9 wasn't clear to me if this was part of an offer of  
10 proof, or a request for reconsideration. I wasn't  
11 clear what it was.

12 EXAMINER PRICE: Me neither, but --  
13 let's assume, first, it's a reconsideration, second,  
14 it's an offer of proof.

15 MR. OLIKER: And I would request also  
16 that the exhibits be moved in, and I think I said in  
17 the beginning that if the exhibit will not be moved  
18 into the record, I would -- or take administrative  
19 notice, I would offer them as a proffer.

20 MR. SHARKEY: Well, to the extent it's a  
21 proffer, your Honor, we have no response. The -- but  
22 to the extent it's a request for a reconsideration,  
23 your Honor, all the arguments I guess -- first of  
24 all, I can't recall from the hearing whether  
25 Mr. Malinak was asked about these specific documents

1 or not. My recollection is that he wasn't, but I  
2 just don't recall.

3 MR. OLIKER: I will represent to you  
4 that he was asked, and I think one of the issues was  
5 although he could talk about them a little bit, he  
6 said he hadn't seen the specific documents before,  
7 which came as quite a surprise given that he cited  
8 Moody's as the source, which is what he was shown --

9 EXAMINER PRICE: I believe, didn't he --  
10 it was Moody's secondhand through Bloomberg, or  
11 another market compilation.

12 MR. OLIKER: He had said that, but that  
13 wasn't what his testimony said. His testimony in  
14 writing said the source was Moody's.

15 EXAMINER PRICE: That's not my  
16 recollection, but the record will be what the record  
17 will be. Go ahead, Mr. Sharkey.

18 MR. SHARKEY: Sure, your Honor. I  
19 believe that these documents are still outside the  
20 scope. They weren't cited to or relied upon by  
21 Mr. Malinak.

22 It's prejudicial, and it would be too  
23 late now for Mr. Olier to have new arguments and  
24 grounds that he should have been -- those arguments  
25 should have been made at the time when Mr. Malinak

1 was on the stand.

2 EXAMINER PRICE: Oh, he did make them.

3 MR. SHARKEY: He made argument; I don't  
4 recall him making these arguments, your Honor, I  
5 believe these arguments are new.

6 And if they were to be admitted into the  
7 record we, the company, would be deprived of our  
8 opportunity to do any further examinations of  
9 witnesses as to the materiality of these documents.

10 And, you know, in addition, Mr. Malinak,  
11 as I understand it, had said that he had never seen  
12 these documents, hadn't relied on them specifically.  
13 So I believe the original rulings were correct,  
14 anyways.

15 EXAMINER PRICE: My concern,  
16 Mr. Olier -- I'm willing to take administrative  
17 notice as to what the actual credit ratings were at  
18 the time those were issued.

19 My concern is that you're trying to  
20 bring in, to the company's prejudice, a lot of the  
21 other textual analysis that is prejudicial to the  
22 company as limited probative value in this case.

23 So if you can accept simply the actual  
24 credit rating, and not the textual analysis  
25 accompanied in those notices, I will take

1 administrative notice of that.

2 MR. OLIKER: Your Honor, I think the  
3 difficulty I have with that is you have, several  
4 times in this hearing, in both the direct testimony  
5 and in the actual statements made by witnesses from  
6 DP&L -- they have said what Moody's will do and why  
7 they would do it.

8 I think in their direct testimony, even  
9 in Mr. Malinak's testimony, you got direct quotations  
10 from Moody's and their reasoning for taking certain  
11 actions.

12 EXAMINER PRICE: You had every  
13 opportunity to cross-examine them on documents that  
14 you could properly bring in. There was no foundation  
15 for these particular documents.

16 So does it mean you're rejecting my kind  
17 offer to take administrative notice of those?

18 MR. OLIKER: Your Honor, unless it is --

19 EXAMINER PRICE: Don't worry about it.  
20 I will take administrative notice of the actual  
21 credit ratings of those documents, the rest of the  
22 documents are out.

23 MR. OLIKER: Will you accept my proffer  
24 for the reasons previously stated?

25 EXAMINER PRICE: Your proffer is noted.

1 MR. OLIKER: Thank you.

2 EXAMINER PRICE: Thank you. Let's go  
3 off the record and talk about briefing schedule.

4 (Discussion off the record.)

5 EXAMINER PRICE: Let's go back on the  
6 record.

7 After discussion off the record, we will  
8 have initial briefs filed on May 15th, and reply  
9 briefs filed on May 30th.

10 As we, I believe, noted at our  
11 prehearing for the second phase of this case,  
12 anything that -- any matter in the briefs that  
13 duplicates or goes beyond the actual second phase of  
14 this case, it will be disregarded by the Commission.

15 With that, we are adjourned. This case  
16 will be submitted on the record.

17 (Thereupon, the hearing was  
18 adjourned at 11:34 a.m.)

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CERTIFICATE

I do hereby certify that the foregoing  
is a true and correct transcript of the proceedings  
taken by me in this matter on Monday, April 15, 2019,  
and carefully compared with my original stenographic  
notes.

*Valerie J. Grubaugh*  
Valerie J. Grubaugh,  
Court Reporter and Notary  
Public in and for the State  
of Ohio.

My Commission expires August 11, 2021.



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**Case No(s). 16-0395-EL-SSO, 16-0396-EL-ATA, 16-0397-EL-AAM**

Summary: Transcript Volume IX - In the Matter of the Application of The Dayton Power and Light Company for Approval of its Electric Security Plan; In the Matter of the Application of the Dayton Power and Light Company for Approval of Revised Tariffs and In the Matter of the Application of The Dayton Power and Light Company for Approval of Certain Accounting Authority Pursuant to Ohio Rev. Code Section 4904.13, hearing held on April 15, 2019. electronically filed by Mr. Ken Spencer on behalf of Armstrong & Okey, Inc. and Grubaugh, Valerie