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February 5, 2009

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VIA FEDERAL EXPRESS

Public Utilities Commission of Ohio
Attention: Renee Jenkins
Docketing Division
180 E. Broad Street, 10th Floor
Columbus, OH 43215

RE: DP&L ESP Filing, Case No. 08-1094-EL-SSO

Dear Ms. Jenkins:

Enclosed are: (1) fourteen (14) copies of The Dayton Power and Light's Notice of Filing Depositions; and (2) deposition transcripts of:

a. Gonzalez, Wilson
b. Ibrahim, Amr A.
c. Duann, Daniel J.
d. Yankel, Anthony J. ✓
e. McClelland, Barry E.
f. Pullins, Steven W.
g. Fein, David I.
h. Woolridge, J. Randall
i. Bowser, Joseph G.
j. Sawmiller, Daniel J.
k. Murray, Kevin M.
l. Dickstein, Shelley J. (awaiting transcript)
m. Frye, Mark R. (awaiting transcript)
n. Higgins, Kevin C. (awaiting transcript)

Very truly yours,

R. Holtzman Hedrick

R. Holtzman Hedrick

RHH/tes
Enclosures

BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

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In the Matter of the Application of The Dayton Power and Light Company for Approval of Its Electric Security Plan. : Case No. 08-1094-EL-SSO

\- - -

In the Matter of the Application of The Dayton Power and Light Company for Approval of Revised Tariffs. : Case No. 08-1095-EL-ATA

\- - -

In the Matter of the Application of The Dayton Power and Light Company for Approval of Certain Accounting Authority Pursuant to Ohio Rev. Code §4905.13. : Case No. 08-1096-EL-AAM

\- - -

In the Matter of the Application of The Dayton Power and Light Company for Approval of Its Amended Corporate Separation Plan. : Case No. 08-1097-EL-UNC

\- - -

DEPOSITION

of Anthony J. Yankel, taken before me, Karen Sue Gibson, a Notary Public in and for the State of Ohio, at the offices of Janine L. Migden-Ostrander, Ohio Consumers' Counsel, 10 West Broad Street, Suite 1800, Columbus, Ohio, on Monday, February 2, 2009, at 1:30 p.m.

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APPEARANCES:
Faruki, Ireland & Cox, P.L.L.
By Mr. Jeffrey S. Sharkey
500 Courthouse Plaza, SW
10 North Ludlow Street
Dayton, Ohio 45402
On behalf of the Applicant.
Janine L. Migden-Ostrander,
Ohio Consumers' Counsel
By Ms. Jacqueline L. Roberts
and Mr. Chris Allwein
10 West Broad Street, Suite 1800
Columbus, Ohio 43215

On behalf of the Residential Consumers of The Dayton Power and Light.

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Monday Afternoon Session,
February 2, 2009.

- - -

STIPULATIONS

It is stipulated by and among counsel for the respective parties that the deposition of Anthony J. Yankel, a witness called by the Applicant under the applicable Rules of Civil Procedure, may be reduced to writing in stenotypy by the Notary, whose notes thereafter may be transcribed out of the presence of the witness; and that proof of the official character and qualification of the Notary is waived.

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ANTHONY J. YANKEL

being by me first duly sworn, as hereinafter certified, deposes and says as follows:

EXAMINATION

By Mr. Sharkey:

Q. Mr. Yankel, as you know, my name is Jeff Sharkey, and I represent the Dayton Power and Light Company in this matter. To begin with can you please state your full legal name for the record.

A. Anthony John Yankel, Y-A-N-K-E-L.

Q. I assume you have been deposed before, Mr. Yankel?

A. Yes, I have.

Q. So you know the drill.

A. Yes, I do.

Q. Okay. You currently operate your own business called Yankel & Associates?

A. Yes.

Q. And you have done that since about 1980?

A. Yes.

Q. And can you describe generally the nature of Yankel & Associates' business.

A. Generally deal with electric and gas, natural gas, regulatory issues, in the past a little

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bit of telephone, very little. I testify here in Ohio, out west, work mostly for consumer offices, occasionally work for industrial customers, schools, do a lot of work for farming customers.

Q. Okay. How many times have you testified before for OCC?

A. I don't know. I would venture I've filed testimony in 30 to 40 cases.

Q. Okay. And I believe you filed testimony in a number of ESP cases?

A. The most recent round of cases, yes, I believe, would have been the equivalent to four.

Q. And in terms of your prior testimony on behalf of OCC, can you describe generally the nature of the matters you have offered testimony for?

A. Probably easier to do what I have not done which would be I don't do rate of return, although I do some accounting, not generally an accounting-type witness, there may be one or two isolated issues, but I have done forecasting a long time ago. Rate design primarily -- is primarily what I have done for the OCC.

Q. And when you say you have done rate design, what does that mean?

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A. Generally would include two things, one would be cost of service, reviewing cost of service studies, how costs are assigned to customers -- excuse me, to customer groups and then rate design itself which would be the design of the tariff rate as to how rates would be collected from individual customers.

Q. Okay. Regarding the assignment of particular costs to retail customers or to other entities, can you describe in more detail what work you have done for OCC in that area?

A. I've done -- I am assuming I have done some jurisdictional work, and when I say I assume, I can't think of any case where I have had to do that. I do that elsewhere, but the OCC probably not too much just because there aren't a lot of nonjurisdictional issues. There are nonjurisdictional issues. There are usually not that many. And then I look at rate design either on the gas side or electric side, looking at cost of service studies, looking at demand allocation factors, usage, energy allocation factors, customer costs allocation factors, going through the uniform system of accounts trying to determine who should pay what portion of

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each one of those.

Q. Okay. Can you identify any specific cases in Ohio in which you have testified regarding allocation of costs among customer groups of a utility?

A. I can't specifically remember, but I think in some of the ESP cases I have done a little bit of that, but prior to that the most recent case I was involved in which would have been the Duke gas case of about a year ago. I certainly did that. Prior to that I have not worked for the OCC I am going to guess for eight years.

Q. Okay.

A. So there is a large gap there but there were certainly -- FirstEnergy, may have been called Cinergy at the time, I get the name changes confused, but the people didn't too much, cases that I have been involved in, probably the last AEP case which I think may have been '92, '94 time frame. A lot of Columbia Gas cases, there are a series of Columbia Gas cases which I was involved up until they kind of stopped doing Columbia Gas cases so.

Q. And all of those cases addressed allocation of costs to retail customers?

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A. Yes.
Q. And you specifically did.
A. Yes.
Q. And I believe you may have mentioned you did work on that topic outside of Ohio.
A. Yes.
Q. Can you explain to me instances in which you have done that?
A. Same work out in Idaho, I do that for farming customers. That's on the electric side. On the -- also in Utah for the Consumers' Counsel in Utah. I do it on the electric side and on the gas side. I have done that again slightly different on the gas side sometimes just because it's -- as opposed to a category meaning residential versus commercial or something of that nature. There is usually like a small gas user which would include residential/commercial as one but still looking at different rate schedules in doing allocation between rate schedules.
Q. Okay. What did you review to prepare your testimony in this matter?
A. To one degree or another I read the entire filing of the company. Obviously some stuff I

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read a little quicker than others. I probably read everyone's testimony in both what was called Book I and Book II and Book III. The exhibits again was probably a little more hit and miss as far as what I had done so that's a pile about 6 inches thick. Reviewed just some other things hit and miss and when I say hit and miss, I can't think of exactly what they are. I know I certainly reviewed some stuff from AEP that I brought in in the AEP case I was involved in but primarily the company's filing.
Q. Did you review any prior stipulations that the company had entered?
A. Unless they were contained in the filing I don't recall.
Q. Do you recall reviewing any PUCO orders from past company cases?
A. Yes. And I can't say specifically but they were in the last several years during the -- probably around something from 2000 on. I can't say every order that came out but there were certain ones I did review.
Q. Okay.
A. It was more like I was led back to them reading the file. I was led back to certain areas

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that I wanted to look into.
Q. Okay. Did you review any of the testimony of any of OCC's other witnesses?
A. Yes. I read some draft testimony. I didn't read the final testimony.
Q. What draft testimony do you recall reading?
A. I don't recall. I don't recall whose it was.
Q. Okay. Do you recall the subject matters it was on?
A. It had to do with as I recall purchased power costs and/or fuel costs. And basically I was just looking to see if it was consistent with what I had.
Q. Might that have been Dr. Dan Duann's testimony?
A. I just don't recall. I just don't recall.
Q. Okay. And anything else that you can recall that you reviewed?
A. Data responses.
Q. From the Dayton Power and Light Company?
A. Yes. And those were both for the OCC and

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it seemed like there was some from the industrial consumers' requests, from the industrial consumers' responses, all of the company.
Q. Okay. Do you remember any specific ones that you reviewed? I am not asking by number but by topic.
A. Actually I know number a little bit better, but it seemed like in the late 200 series for the OCC. It was the area that I seemed to look at the most.
Q. Okay.
A. Don't ask me why I remember the number versus but it sort of had to do with the topic too.
Q. Do you remember what the topic was of those?
A. Stuff dealing with my issues and I think they were questions I may have sent in.
Q. Okay. Anything else?
A. Not that I can think of at this time.
Q. Okay. You understand that DP&L Witness Marrinan proposes that DP&L be permitted to defer fuel, fuel-related, and purchased power costs that are identified in seven FERC accounts?
A. Generally speaking, yes.

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Q. And on your testimony page 4, line 10 -- actually it starts on the prior page.
A. Okay.
Q. Where you are quoting DP&L Witness Marrinan and then after the end of the quote, you say you agree with the premise as outlined. Just make sure I understand.
A. Yes.
Q. I want to make sure I understand what you are agreeing to there. Is it fair to say you agree that if a deferral is granted, those are the costs that should -- cost category, the deferral should be granted?
A. No. I am just saying the general premise that these costs are generally related to fuel and assuming that these costs are allowed by the Commission, to me they are generally fuel related.
Q. Okay.
A. You know, I am not saying one way or the other on the merits. I am just saying they could be contributed on a kilowatt-hour basis to these customers, and purchased power costs, again, could fit in under that category. And that looking at that category in total and try to do some kind of economic

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dispatch on that category, at least that's my understanding what she was doing. My understanding is she was not personally -- my understanding is that she was not recommending those seven FERC accounts. I thought that was another witness that was doing that, and I wasn't addressing the other witnesses. I was more addressing her picking up from assuming that this was moved forward, here is what we are going to do with them, this is how we are going to allocate those.
Q. Okay. I understand the basic point of your testimony to be that in calculating costs to be assigned to DP&L retail customers the Commission should assign higher costs to nonjurisdictional opportunity sales and DPLER sales is a basic description; is that correct?
A. The category -- let me just rephrase it my way. The categories of opportunity sales and sales to its affiliate DP&L -- DPL Energy Resources should receive the higher cost resources and lower cost resources should then be assigned to the what I would call the more retail customers, the standard service offer customers.
Q. Okay. I want to focus on the comparison

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between DP&L retail customers and the DPLER transactions. Can you tell me why it is that you believe lower cost resources should be assigned to the DP&L retail customers?
A. A couple of reasons, why historically it's been done that way, since the beginning of utilities as far as I'm concerned. And the other is that ER, DPLER, is not a regulated entity and that should get the same treatment as other -- I misspoke. It's a nonjurisdictional entity, and it should get the same treatment as other nonjurisdictional entities such as the opportunity sales.
Q. Does that complete your answer, those two reasons?
A. Yes.
Q. Okay. You said historically it was done that way. Do you know why it was historically -- first, let me start back.
You would agree that there has been a separation of transmission and distribution asset, the electric distribution utility from the competitive generation supplier's business of utility only starting in 2000 in Ohio?
A. Yes.

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Q. Okay. So any such allocations would not have been made before 2000, correct?
A. I'm not sure what you mean by that and let me just clarify at least what I thought I was hearing. There wouldn't have been any "allocations" because that wouldn't have existed. That part is true because those energy -- that separation would not have existed but prior to that time, prior to 2000, there certainly was treatments like that ever since I have been in the business of jurisdictional/nonjurisdictional sales.
There have been opportunity sales always in the electric utility industry, and those sales have always been treated as benefits to the retail customers given the fact that it's a utility. It's operating for the purpose of the customers. And, therefore, any excess sales that can be made would not be made at a price that would cause the customers to incur more costs. They would only be made to the benefit of the customers who are supposed to be served by that plan.
Q. You referred to the historical practice even before 2000. And I understand that there were sales and have long been sales by utilities that were

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what Ms. Marrinan describes as nonjurisdictional opportunity sales meaning sales to unaffiliated entities in the market, correct?
A. Correct. I was just having a little problem with your affiliated versus nonaffiliated. Yes, certainly to nonjurisdictional entities there has been sales for, again, as long as I can remember from long before that.
Q. Are you familiar with any historical case process that allocated these -- strike these. Strike the whole question.
Are you familiar with any historical case process that allocated costs among an electric distribution utility and its affiliates?
A. There certainly are procedures which I am familiar with where they do that. They do it today. I mean, they do it today and they did it prior to 2000 and at least where I am thinking things like, for example, AEP which straddles multiple jurisdictions there is certainly, you know, distribution costs that are belonging to the Ohio area. But there is also costs that are allocated between, you know, the Ohio jurisdiction, other jurisdictions between the Ohio distribution company

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and the generating resources. There are just common costs and whatnot so those are constantly allocated and again that was done -- I don't think there is a whole lot of difference between now and what it was 10, 15 years ago as far as the general procedures go.
Q. Is your question is it limited to allocation of costs between EDU affiliates? Because you mentioned distribution of costs between EDU affiliates. If you have electric distribution to affiliates and you do allocated costs but what I am trying to figure out if you were also touching upon an instance where an EDU had a non-EDU affiliate and costs were calculated between those two.
A. The EDU itself would have an affiliate or just --
Q. Let's just strike the whole question. Maybe I will go at this a different way. It has been common historically for EDUs to have affiliated businesses who may be involved in nonutility businesses, correct?
A. I just have a little problem with the way you said the EDU has -- has businesses. I mean, there are affiliates of EDUs, yes.
Q. Okay. And those -- those businesses, for

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example, may share a common corporate headquarters.
A. Yes.
Q. Okay. There may be other costs -- strike that.
Are there besides the corporate headquarters' costs that the business would incur that would support both the EDU and any non-EDU affiliates?
A. Depending on what you want to call corporate costs but I think there is more than "corporate center." There are certain costs, the cost of paper, the cost -- I mean, literally materials and supplies, there is the cost of maybe -- I have not looked in this too much but the cost of money, the cost of money for, you know, going out and borrowing, you know, for essentially for the entire company but, you know, who pays for it, how much, that type of thing so there are more costs in what I would consider just headquarters' cost is really what I am trying to say.
Q. Okay. Amongst -- let's talk about headquarters' costs and I am including not just the building but the people who support.
A. Right.

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Q. How have those costs traditionally been allocated?
A. There has been arguments a number of different ways and different commissions seem to do things differently. There is an attempt by most people to at least try to define more of a generation function/distribution function if they can within those people, if they can. Oftentimes if it's more distribution related, if they can do that, there's a push to either do it on number of customers in the given jurisdiction or in general a lot of that is done by rate base, just overall amount of dollars associated with the given entity where if, for example, one jurisdiction had $100 million worth of rate base and another one had 2 million, the ratio would probably be 2 percent to 98 percent, that type of thing.
Q. Okay. I want to focus on an instance not where you are allocating between jurisdictions in separate states or even among two EDUs like AEP may have that are in the same state but more in a situation where you are allocating costs between an EDU -- those corporate costs between an EDU and an affiliated business that was not an EDU. For

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example, the Dayton Power and Light Company has an affiliate that does street lighting. It has another affiliate as do other, I know, Ohio utilities. How historically have costs been allocated between an EDU and non-EDU affiliates?
A. At the corporate level basically in the corporate building, for example?
Q. I am talking about the corporate costs that we have talked about.
A. The corporate costs, again, it seems very varied and given the utility will make a proposal on something like that because, again, it varies from utility to utility as to what other affiliates are out there so, therefore, it is highly dependent upon where the utility starts and then the Commission, other intervenor parties will comment on that or think it's generally reasonable, not necessarily saying that, for example, total labor costs that are done elsewhere, you know, measure versus rate base costs versus some other types of costs may not be used. But ultimately it is a question of do people feel like the allocation is reasonable, for example, if I was to propose -- if the company was to propose a 98/2 percent split on a particular item, they may

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propose that on the basis of as I was suggesting rate base. I may not agree with rate base allocation but still feel the 98/2 percent is appropriate for whatever reason. And, therefore, this usually gets approved by the Commission assuming that there are no major objections and the Commission itself feels generally speaking that seems like about the right ratio.
Corporate costs are much more difficult to allocate. They are not as straightforward as normal costs of service-type things where you could go out and measure peak demands of customers, energy demands of customers and whatnot, and divide things up very cleanly. Corporate costs are again a very common cost. It's hard to say what one person is doing, you know, all week long versus another person who they are working for.
Q. Okay. Are you aware of any instance in which corporate costs are allocated so that higher cost resources were assigned to a non-EDU affiliate?
A. Nothing specific but I think there's -- in the times where I have seen things like this, and again I think this was probably the last 15 years, when utilities have been allowed to go out and

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broaden their horizons and pick up real estate companies and just different things that they have, I think there was a concern on everyone's part that those costs weren't pushed off to the retail customers so there was a concern that if nothing else, the nonaffiliate, the nonregulated affiliate, would get at least as much as people thought they should have gotten, if not more of the costs assigned to them.
Q. And those costs might be assigned on assets, revenue, employees, something like that?
A. Right, right, and again probably a lot of looking at the records and what does the president do and how much time did he spend on various activities within that and they may just work off again the top three people or something and try to at least get a feel for where the company is going but this is just more of my sense I don't believe that there is anything in concrete out there but my sense would be that there was a -- always has been a very strong push to make sure that those costs, the unregulated costs, were not getting pushed off onto retail customers.
Q. Another common cost that you had

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mentioned that might support an EDU and a nonregulated affiliate were the cost of capital costs. How are those costs typically allocated between the EDU and the nonregulated affiliate?
A. I can't give you precise examples since I don't do rate of return, but my understanding is from sitting in the hearing room a lot is that where there is a question where the capital structure is based upon the overall corporate umbrella that there will be proxies developed for what the capital structure should be for the utility in isolation, looking again at the utilities in isolation, and trying to get sort of comparables. I don't know of any time when those would have been any less favorable than the overall capital structure that was there, obviously always more favorable to the regulated customers than the capital structure that the utility had.
Q. You are not familiar with any principle that allocates to the nonregulated affiliate the more expensive capital first reserving to the EDU the less expensive capital only?
A. I can't give you a specific example but what I think I just said was essentially that the unregulated utility -- unregulated entity is always

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assigned a higher cost of capital, overall cost of capital.
Q. Well, let me ask you you would agree with me, wouldn't you, that equity is ordinarily a more expensive source of capital than debt?
A. Yes.
Q. Okay. And you would agree with me that in assigning the costs of equity and the costs of debt of the overall business, the EDU would get its fair share, however that was determined of both, and it would not be allocated so that the EDU gets assigned all of the debt first and only equity second?
A. What usually happens is something similar to that and what usually happens is that the EDU will be assigned a percentage of debt and percentage of equity and the equity -- the debt assigned would tend to be higher percentagewise, and the equity assigned would tend to be less than the overall corporate structure, thus, reducing the cost of capital to the EDU versus the overall company of the cost to capital.
Q. But both the EDU and the nonregulated affiliate would have assigned to them debt and

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equity, correct?
A. Not in the ratio that the overall company has, yes.
Q. The answer to my question though is, yes, they would both have some assigned to them?
A. Yes.
Q. All the debt wouldn't be assigned first to the utility. Some would be assigned to the nonregulated affiliate.
A. Under that -- the way things are done, yes. It's not at an all or nothing given the fact that what you are doing is mimicking a -- a stand-alone utility, and the stand-alone utility would have some of both so because a stand-alone utility has some of both you -- you would give some of each.
Q. Do you believe -- strike that.
Page 2, line 17, of your testimony says -- actually it starts at the end of line 16. "I recommend that it be made clear that the company's resources are first to serve jurisdictional customers and that these resources are only to serve nonjurisdictional customers on a secondary basis." Why do you believe that to be true?

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A. Well, these resources are assigned to jurisdictional customers, jurisdictional customers are part of the regulatory compact that the jurisdictional customers will be paying for that plant. They are paying for the plant; they should get the benefit of the plant and not giving it away. You know, why would they want to buy something for a dollar and then sell it to somebody else for 80 cents? So if they bought it for a dollar, they would be happy to sell it for a dollar five. Just simple economics if you are paying for it.
Q. Okay. Anything else?
A. That's good for now.
Q. Let's go back to the topic we were talking about earlier, your experience. You mentioned there was about an eight-year gap in which you hadn't done any work for OCC.
A. Approximately, yes.
Q. I don't mean to be exact, close enough.
A. Yeah.
Q. When did that gap occur roughly?
A. Well, it occurred, let's say, starting 8 years prior to 2 years ago, whatever that would have been, so let's say starting 10 years ago so I would

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say it was 1999 just for a guess.
Q. Okay. So from 1999 up until --
A. Right. So I did not do -- and that does fit in with at least one part the original House -- Senate Bill 3 work.
Q. So you did not work on any of the ETP cases of the numerous Ohio utilities.
A. Yes, that's correct.
Q. And are you familiar with the fact that each of the Ohio electric utilities has had at least one, DP&L two RSP cases?
A. Yes.
Q. And did you work on any of those cases?
A. No.
Q. Okay. And in terms of your recent work we've discussed the fact that you have been working on these ESP cases for each of the utilities.
A. Yes.
Q. Has your work encompassed anything other than these ESP cases?
A. For the OCC?
Q. Yeah, within the last two-year period where you said you started working for OCC again.
A. I did tell you I worked on the Duke

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Energy case.
Q. You did.
A. And I was on the gas side.
Q. Right.
A. And I think that's it. I don't remember the case very well any more, but I think that was the last case I worked on. I think that was the only one. That was the first. I don't think I worked on anything else.
Q. Can you describe what led to your beginning to work with OCC again approximately two years ago?
A. I simply got an RFP in the mail and responded to it, put in a proposal, and got the contract.
Q. And that was the RFP on the Duke piece?
A. Yes. I don't recall getting an RFP for many years prior to that.
Q. Okay. Your work in this case, is that pursuant to an RFP response?
A. Yes.
MR. SHARKEY: Okay. I think we will make a request for that document, the RFP and his response.

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Q. I assume you don't have those documents here with you today?
A. No, I do not.
Q. Are you aware of the fact that the Senate Bill 2 includes corporate separation requirements?
A. Senate Bill 3?
Q. I apologize, yes.
A. We could be off on one thing. Yes.
Q. Are you aware that the Dayton Power and Light Company's -- the Dayton Power and Light Company is operating pursuant to a Commission-approved corporate separation plan?
A. I assume that. I don't know that for a fact, but I assume that.
Q. Are you aware of the fact that DP&L's generation assets are operated in a manner functionally separate from DP&L's transmission and distribution assets?
A. Generally speaking but not specifically, yes. Generally speaking I'm aware of them or believe that to be the case.
Q. Okay. Are you aware of the jurisdiction -- strike that.
Do you know whether the customers of

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DPLER are located within the DP&L service territory?
A. Not specifically, my assumption is that most, not all are.
Q. And you would -- is it your understanding that those DPLER customers like the DP&L customers have paid money associated with the construction financing of the generation assets?
A. Those that would have been part of the jurisdiction prior to, yes.
Q. Okay.
A. Again, I just don't know if they are all -- all those customers are within the original service territory or not but for those that are in the original service territory, yes.
Q. And it would be your assumption that those DPLER customers within the service territory of DP&L have paid their fair share of the costs associated with those generation assets?
A. As long as the company has paid their fair share, yes.
Q. And do you know whether DPLER has a contract -- a term contract to provide service to those customers? By term contract I mean something other than a spot market sale.

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A. I do not specifically know. I am assuming there are one-year contracts or more.
Q. Can you tell me -- step back. In light of the fact that the generation assets have been structurally separated from the DP&L distribution and transmission assets, can you tell me why retail customers should be entitled to lower costs allocation of generation costs?
A. Because the Commission has jurisdiction over those customers vis-a-vis the rates being proposed here plus the proposal by the company to defer some of those costs to be collected later. It's Commission jurisdiction.
Q. That's the only reason that you can think of?
A. Yeah. I thought it was a good reason.
Q. Are you aware of any instance in the United States in which costs have been allocated between an EDU and a non-EDU affiliate in the manner you are describing? And let me say specifically fuel costs, fuel-related costs.
A. I am unaware of any general situations that are similar to what we are looking at here in Ohio so, therefore, I don't know given the fact that

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Ohio is somewhat unique in where it's at in the dereg regulatory process, there's nothing similar to compare it to.
Q. Are you aware of any other states that permit a nonregulated affiliate to make sales of generation?
A. I may have misunderstood the question, but I don't know -- in my opinion if you have a nonregulated entity, it's allowed to do pretty much whatever it wants to do. I may have missed the question but.
Q. Okay. I think your answer is the question I intended to ask. Okay. Do you know of any other jurisdictions it, in fact, occurs where a nonregulated entity -- nonregulated affiliate of an EDU is, in fact, making sales of generation asset -- of generation?
A. Could you ask it again?
Q. You just told me you thought it would be permissible for a nonregulated entity to make generation sales in other jurisdictions. My question is are you aware of any other jurisdictions in which unregulated affiliates of an EDU are, in fact, making sales of generation?

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A. I was just involved in the Pacific Corp. case and, again, I didn't get into the same detail but they have a -- an affiliate market arm and they certainly make sales.
Q. Okay.
A. Don't necessarily make sales out of the regulated pool, shall we say, but they are certainly making sales. Ohio Power used to have an arm like that. I don't know if they still do, but 5, 10 years ago they certainly did and, you know, same answer, they did make sales but not out of the -- out of the pool, out of the company's pool.
Q. When you say not out of the company's pool, what do you mean?
A. Out of the -- at least that I am aware of out of the jurisdictional generation. And if they would have, it would have been at a higher price than that and, again, I just don't know. I don't recall -- I know Ohio Power did have an affiliate at one time that was selling. I think they are no longer selling so.
Q. Are you aware -- let me step back. Would you expect it -- strike that again.
Do you know if it's fairly common for

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nonregulated affiliates of an EDU to be selling generation in the same manner that DPLER is doing?
A. I don't know.
Q. Do you know if other Ohio electric utilities have an affiliate that is selling generation?
A. Certainly FirstEnergy is. I mean, FirstEnergy is selling generation back to FirstEnergy. FirstEnergy is an affiliate, but it's a separate company. It's not -- FirstEnergy Solutions is not regulated by the Commission.
Q. And it's selling energy to FirstEnergy?
A. Yes. Well, it's selling energy to -- I probably have the names mixed up because it probably isn't FirstEnergy Solutions. I am not sure what the name of the company is at the moment but there is a generating arm that I think actually sells to FirstEnergy Solutions who then sells to CEI, Toledo Edison, and to the distribution companies themselves.
Q. Okay. Whatever the FirstEnergy arm that you are discussing, the generation entity, I thought it was FirstEnergy Solutions as well but.
A. I am not sure. It could be FirstEnergy Generation or Genco or something of that nature

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which, again, it doesn't make a lot of difference. It's one affiliate selling to another affiliate.
Q. Whatever it is do you know if that entity is also selling to -- making nonaffiliated sales?
A. Yes.
Q. And do you know if those sales include sales to retail customers within the FirstEnergy EDU's service territories?
A. It depends on what you classify as retail but certainly historic retail customers within the FirstEnergy service territory they do sell to as well as other entities. I am assuming Dayton Power and Light -- I know Detroit Edison and whatnot so they are selling to other utilities, but they are selling to residential homes in Cleveland as far as that goes as well.
Q. On page 8, line 5, of your testimony you refer to the marginal costs paid by DPL Energy Resources. "It appears DPLER is not paying the marginal costs of energy." Do you see that?
A. I said may not but, yes.
Q. And if I understand your proposal correctly, it's essentially a marginal cost proposal meaning the lower cost generating asset generating

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resources would be assigned to DP&L and the wholesale term customers and then only after those costs were assigned, the higher costs items would be assigned to DPLER and nonjurisdictional opportunity sales?
A. Yes.
Q. And the costs you are talking about here relate to fuel and the fuel-related costs that are described in Teresa Marrinan's testimony?
A. I don't think so. I am not sure the way you said that. What I have got here at least on this particular page is actually rate surcharge, not costs so there is a -- to me a large difference. I don't know how much "fuel" is in here versus how much other things are built into this so that part I don't know but these are not costs. These are rates that are being charged.
Q. I actually meant my question to be separate from the sheet.
A. Oh.
Q. I could see why you were focused on that because I had asked you the prior question about that. So let me go back. The costs that you are recommending an allocation basis in your testimony in general are the fuel costs, in particular being cost

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of coal, related costs of disposal of chemicals, and purchased power costs, correct?
A. And natural gas, yes, yes.
Q. And you are recommending that those costs be allocated on a marginal cost basis. Are you aware -- would it be possible to allocate the cost of the generating assets themselves on the marginal cost basis? For example, could you say blank DP&L's -- strike that.
Could you say the generating assets have over the course of a given year a peak usage by DP&L customers of such and such, allocate those costs to DP&L, and only costs above that to DPLER? Beyond -- not above that, beyond that.
A. We are not doing that here so I don't know. I would assume that a proposal like that could be possible but, I mean, again, we are looking at fuel costs in this case. I never looked at that or never thought about that.
Q. Would you support an allocation of the investment costs on a marginal basis?
A. I would have to look at it. I don't know.
Q. Do you know whether it would be in the

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interest of residential customers to have costs allocated on that basis?
A. I have no idea.
Q. You understand in a traditional ratemaking formula that the cost of the assets would be allocated based on some form of jurisdictional allocator?
A. I'm assuming that that may have been the case, but the opportunity sales given the fact these are 20-year contracts I am assuming they are FERC-approved contracts. The DPL Energy Resources is really a different animal. It's not regulated by FERC either. FERC would have looked at it for opportunity sales. They would have looked at probably 12 CP method and an energy allocated to come up with "what's a reasonable price for those sales" to -- excuse me. I may have misspoke. I am talking about opportunity. I meant the 20-year contracts with the cities, that FERC probably would have looked again at the 12 CP allocation factor, some energy allocators and allocating plant and whatnot, but again the DPL Energy Resources is much more of an open market type entity and although there is some FERC approved on that I don't think it's nearly the

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same type of entity, so I don't think things would be allocated that way at all.
Q. Well, let me ask you this, suppose the relative percentages of business for DP&L, DPLER, and nonjurisdictional opportunity sales and wholesale term customers were as follows: We'll put 60 percent in the DP&L and wholesale term customer bucket, 20 percent in the DPLER bucket, and 20 percent in the D -- in the nonjurisdictional opportunity sale bucket. In that instance if there was to be an allocation of the assets meaning the costs of the assets and the return on -- rate of return to be approved for those assets, 60 percent of that cost would be assigned to DP&L and wholesale term customers; is that correct?
A. If there was to be an allocation and I am assuming that's "the number," then it would be. Again it's a question is there that allocation, yes.
Q. A question of whether -- I am talking in a rate case for the Dayton Power and Light Company as you were assigning costs, is that how they would be allocated in your opinion?
A. Yes.
Q. In this hypothetical I have given you

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let's suppose the DPLER customers left DPLER and were doing business with an affiliated CRES provider, okay? And DPLER was able to make up only a small portion of those sales in market sales just say so that the new allocations were 75 percent to DP&L and the wholesale term, 5 percent DPLER, and 20 percent nonjurisdictional opportunity sales. Would you agree that all else being equal as a result of that, costs -- strike that, rates would go up to retail customers because they would be paying a higher percentage of the share of the assets?
A. Well, it just depends on which bucket you are putting things in. Again, the share would have gone up -- I guess it would have gone up from 60 percent to 75 percent. I can see where the percentage share would go up, but the question is how are you treating the asset in the sale. That last 20 percent, the opportunity sales, we're saying is basically fixed, you know, we are getting in this particular case off my page 8 getting $113 a megawatt hour for. We are doing very well that from a regulated standpoint, from a regulated customer standpoint, assuming that money was coming back to the regulated customers under, you know, the old

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scheme, it's costing them whatever it may be costing them, $10, $20 a megawatt hour to produce the stuff, and they are getting 120 back. The Dayton Power and Light Energy Resources sale would have been priced closer to the opportunity sale number. They would have -- because that's what they were or would be so would they be better off? Chances are if those sales went away, the retail customers would be not as well off because the sales weren't being made but, again, it depends on the entire scheme of, you know, it has to be a -- it has to be whole cloth what I am saying.
Q. The question was intended to be using the economist terms all else being equal so the question --
A. But I wasn't sure again even the basis. I mean, which costs are we talking about? How are these sales being handled. All else being equal I think the retail customers would be not as well off having -- not having those sales made.
Q. We've touched on a number of these points, but I want to make sure that we are in agreement, or at least I understand your position if we are not. Would you agree that to the best of your knowledge, the generating assets are currently

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separated from DP&L pursuant to a PUCO order?
A. That would be my assumption.
Q. Okay. And that DP&L and DPLER customers are both receiving generation from those assets?
A. Yes.
Q. Okay. And to the best of your knowledge, DP&L and DPLER customers have both been receiving generation from those assets for many years?
A. Generally speaking possibly all of them.
Q. Both DP&L and DPLER customers paid rates associated with the construction and operation of those assets for many years?
A. Yes, generally speaking.
Q. And to the best of your knowledge, DP&L and DPLER customers are both being served under agreements for a term meaning not spot market conditions?
A. Could you ask that one again.
Q. DP&L and DPLER customers are both being served under agreements for a term as opposed to under spot market transactions to the best of your knowledge?
A. Yes, I would call it that way. There's certainly -- I mean, I guess I consider retail

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customers certainly not being spot. By the same token it's not a term. They are just there. As long as they want service, they get service. I'm assuming that, and again I have not seen any contracts, but the DPLER customers would be on like a one-year contract and would be continuing from month to month. I have no idea what the terms of those contracts are, but I would assume it is a contract.
Q. Let me rephrase the question because you point out a valid problem of DP&L customers. How about we say this, would you agree DP&L and DPLER customers have either a statutory or contractual right to receive generation for a term meaning some period of time beyond just the applicable hour which this spot market transaction occurs?
A. Yes.
Q. Okay. And you would agree that neither the DP&L customers nor the DPLER customers have any legal ownership interest in the generating assets?
A. You would have to ask my attorney. I don't know.
Q. Are you aware of any legal ownership rights that the DP&L customers or the DPLER customers have?

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MS. ROBERTS: I object. He answered the question. He said he doesn't know. You are asking him to speculate.
MR. SHARKEY: I am asking if he is aware.
MS. ROBERTS: He said he doesn't know.
Q. You are not aware of any such rights?
A. I don't know one way or the other.
Q. You would also agree with me, wouldn't you, DP&L and DPLER customers are both being served in a market-based rate?
MS. ROBERTS: If you know.
A. I really don't know what I would call the DP&L rate. I personally don't call it market-based rate.
Q. Do you know whether -- let's focus on DPLER. Do you agree they are being served on a market-based rate, their customers?
MS. ROBERTS: If you know.
A. I assume because they are market customers, so I am assuming it's a market-based rate of some sort.
Q. And let me show you a copy of the 2005 RSP stipulation. I am going to focus your attention on page 4 of the document.

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A. Yes.
Q. Okay. Page 4, paragraph D1.
A. I'm sorry, D1?
Q. I apologize, page 4, paragraph IB1.
A. Okay.
Q. Says "During the RSP, DP&L shall provide a market-based standard service offer pursuant to Ohio Revised Code §4928 -- 4928.14(A)." Do you see that?
A. Yes.
Q. Okay. And then --
MS. ROBERTS: I'm sorry. Was there a question pending?
MR. SHARKEY: I just asked him --
MS. ROBERTS: You are asking him if he actually saw that sentence?
MR. SHARKEY: That was the question. There's another question to follow.
MS. ROBERTS: Okay.
Q. And I am going to show you the Commission order approving that stipulation and recommendation in the -- again I am looking both at the stipulation I showed you and here at the 05-276-EL-AIR case.
MR. SHARKEY: And I apologize, Jackie. I only had one copy of this document, so I am going to be showing him --

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MS. ROBERTS: Which paragraph?
MR. SHARKEY: Paragraph 2, page 3, paragraph 2.
Q. I will represent to you the document I am handing to you is the PUCO order approving the stipulation we just looked at, and I want to focus you on page 3. Towards the bottom there is a paragraph No. 2. Do you see that?
A. Yes, I do.
Q. Okay. Since you are looking at it right side up and I am reading it upside-down do you want to read it?
MS. ROBERTS: Is there a question about this other than you want him to read it?
MR. SHARKEY: There will.
MS. ROBERTS: Okay.
A. "DP&L will provide a market-based standard service offer (MBSSO) at rates fixed in the stipulation throughout the extended rate stabilization period."
Q. Okay. Pursuant to -- I believe you told me previously that that was an order that you had read; is that correct?

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A. I can't say for sure. I assume I've read a number of these. I am just not sure.
Q. Okay. Pursuant to those documents we just reviewed, is it your understanding that DP&L is providing service to retail customers at a market-based rate?
MS. ROBERTS: I object. You are assuming facts not in evidence. You are assuming the Commission uses those terms to mean a market-based rate in an economic or sales sense as opposed to an administrative sense that we don't know what -- the way they are using this term. You have to answer.
THE WITNESS: You cut me off, that's all.
A. I mean, it does -- the words there say market-based rate, but it also says it's a stipulated rate. As far as I'm concerned, it's a stipulated rate. You can call it whatever you want to call it, but it's a stipulated rate.
MR. SHARKEY: Let's go off the record for a minute.
(Discussion off the record.)
(Thereupon, the deposition was concluded at 3:10 p.m.)

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State of Ohio :
: SS:
County of ________________ :

I, Anthony J. Yankel, do hereby certify that I have read the foregoing transcript of my deposition given on Monday, February 2, 2009; that together with the correction page attached hereto noting changes in form or substance, if any, it is true and correct.

____
Anthony J. Yankel

I do hereby certify that the foregoing transcript of the deposition of Anthony J. Yankel was submitted to the witness for reading and signing; that after he had stated to the undersigned Notary Public that he had read and examined his deposition, he signed the same in my presence on the ________ day of ____________________, 2008.

____
Notary Public

My commission expires ______________, ________.

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CERTIFICATE

State of Ohio :
: SS:
County of Franklin :

I, Karen Sue Gibson, Notary Public in and for the State of Ohio, duly commissioned and qualified, certify that the within named Anthony J. Yankel was by me duly sworn to testify to the whole truth in the cause aforesaid; that the testimony was taken down by me in stenotypy in the presence of said witness, afterwards transcribed upon a computer; that the foregoing is a true and correct transcript of the testimony given by said witness taken at the time and place in the foregoing caption specified and completed without adjournment.

I certify that I am not a relative, employee, or attorney of any of the parties hereto, or of any attorney or counsel employed by the parties, or financially interested in the action.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal of office at Columbus, Ohio, on this 4th day of February, 2009.

____
Karen Sue Gibson, Registered
Merit Reporter and Notary Public
in and for the State of Ohio.

My commission expires August 14, 2010.

(KSG-5041)

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