

BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the )  
Application of the )  
Dayton Power and Light )  
Company to Establish a )  
Standard Service Offer ) CASE NO. 12-426-EL-SSO  
in the Form of an )  
Electric Security )  
Plan, )

In the Matter of the )  
Application of the ) CASE NO. 12-427-EL-ATA  
Dayton Power and Light )  
company for Approval )  
of Revised Tariffs )

In the Matter of the )  
Application of the )  
Dayton Power and Light ) CASE NO. 12-428-EL-AAM  
Company for Approval )  
of Certain Accounting )  
Authority )

In the Matter of the )  
Application of the )  
Dayton Power and Light ) CASE NO. 12-429-EL-WVR  
Company for Waiver of )  
Certain Commission )  
Rules )

In the Matter of the )  
Application of the ) CASE NO. 12-672-EL-UNC  
Dayton Power and Light )  
Company to Establish )  
Tariff Riders )

x

TELEPHONIC DEPOSITION TESTIMONY OF

SCOTT J. RUBIN

TUESDAY, MARCH 5, 2013

OFFICES OF SCOTT RUBIN

333 OAK LANE

BLOOMSBURG, PENNSYLVANIA

KATHLEEN HUGHES  
COURT REPORTER

C O U N S E L P R E S E N T :

On behalf of Dayton Power and Light Company:  
FARUKI, IRELAND & COX  
BY: ADAM SADLOWSKI, ESQ.  
10 North Ludow street  
Dayton, Ohio 45402

On behalf of OHIO CONSUMERS COUNSEL:  
OFFICE OF CONSUMERS COUNSEL  
EDMUND BERGER, ESQ.  
10 West Broad Street  
Columbus, Ohio 43215

On behalf of Industrial Energy Users of Ohio:  
McNEES, WALLACE & NURICK  
BY: JOSEPH OLIKER, ESQ.  
21 East State Street  
Columbus, Ohio 43215

On behalf of Ohio Partners for Affordable Energy:  
COLLEEN MOONEY, ESQ.  
231 West Lima Street  
Lindlay, Ohio 45840

ALSO PRESENT: Melissa Yost, Daniel Duann, Mr. Gould.

INDEX OF WITNESSES

EXAMINATION	PAGE NUMBER
SCOTT RUBIN	
By Mr. Sadlowski . . . . .	3
By Mr. Oliker . . . . .	37
By Mr. Berger . . . . .	54

1 S C O T T J. R U B I N,  
2 WAS CALLED, AND HAVING BEEN DULY SWORN,  
3 WAS EXAMINED AND TESTIFIED AS FOLLOWS:

4  
5 COURT REPORTER: Stipulations?

6 MR. SADLOWSKI: The only thing  
7 that I would like to enter on the record  
8 before we get started, is that DP&Light  
9 may designate portions of this testimony  
10 as Confidential and we would provide the  
11 parties with our proposed designations  
12 within ten days of receiving the  
13 transcript of the deposition.

14 MR. BERGER: Mr. Rubin will read  
15 and sign the transcript. The  
16 stipulation here is that no objections  
17 are waived other than objections as to  
18 form.

19

20 EXAMINATION BY MR. SADLOWSKI:

21 Q. Good morning, Mr. Rubin, how are you?

22 A. Fine, thanks. How are you?

23 Q. Just for the record, could you please  
24 state your full name and where you currently reside?

25 A. Scott J. Rubin, R-u-b-i-n, 333 Oak

1 Lane, Bloomsburg, Pennsylvania.

2 Q. And just having reviewed your Resume,  
3 it appears you testified previously, is that correct?

4 A. Yes.

5 Q. So you have been deposed and you know  
6 how this goes, so I don't need to go over any sort of  
7 ground rules with you, is that right?

8 A. That's up to you. I have been through  
9 this before.

10 Q. If you don't understand the question,  
11 just let me know, I'll be happy to rephrase it or try  
12 to explain the question better.

13 What is your current employment, sir?

14 A. I am self-employed.

15 Q. And what does your self-employed  
16 involve?

17 A. I am a Consultant and an Attorney, all  
18 of that work involves the Public Utility Industries.

19 Q. And what is your prior employment,  
20 prior to your current consulting work?

21 A. Well, from --

22 Q. Why don't you start, what is your prior  
23 employment I'd say over the past five to ten years,  
24 if you can just give me a quick summary of that?

25 A. I have been self-employed for the past

1 roughly 19 years.

2 Q. And then prior to that 19 years what  
3 did you do, where did you work?

4 A. Prior to that I worked for the  
5 Pennsylvania Office of Consumer Advocate for a little  
6 more than 10 years.

7 Q. What did you do there?

8 A. I was an Attorney and also did some  
9 work as an Expert Witness. I started with that  
10 office as an Assistant Consumer Advocate. In roughly  
11 1990 I was promoted to a Senior Assistant Consumer  
12 Advocate, and I stayed in that position until I left  
13 the office in early 1994.

14 Q. So in the last 19 years that you have  
15 been consulting, has it been solely on the Consumer  
16 Advocate side of Utility Law?

17 A. No.

18 Q. What other work have you done other  
19 than consumer advocacy?

20 A. I'm sorry, we're limiting this to my  
21 consulting practice or also my legal practice?

22 Q. Your consulting practice. Just so the  
23 record is clear, within the past 19 years solely your  
24 consulting work.

25 A. Most of my consulting work as an Expert

1 Witness is for Public Advocates or Consumer Groups.  
2 I have also consulted and I served as an Expert  
3 Witness for Government Owned Utilities. Part of my  
4 consulting practice is more in the nature of research  
5 assignments and giving advice that does not involve  
6 testimony, and that work primarily involves the Water  
7 Utility Industry and Research Foundations funded by  
8 the Water Industry.

9 Q. So you never provided Expert Witness  
10 testimony on behalf of a Public Utility, is that  
11 correct?

12 A. That is correct. I have provided  
13 Expert Testimony on behalf of Government Owned  
14 Utilities but not Investor Owned Utilities.

15 Q. Mr. Rubin, in preparing for today's  
16 deposition, did you review any documents?

17 A. Yes.

18 Q. What did you review, sir?

19 A. I reviewed several pieces of testimony  
20 filed by witnesses for Dayton Power and Light, as  
21 well as responses from Dayton Power and Light to  
22 various Discovery Requests, and of course I read  
23 back through my own testimony and exhibits.

24 Q. With regard to the Dayton Power and  
25 Light testimony, whose testimony did you review?

1           A.       Just give me a moment, I'm going to  
2 leaf through my notebook here so I don't miss  
3 anybody. I briefly reviewed the testimony of  
4 -- I believe it's Dr. Chambers, and briefly reviewed  
5 Mr. Harrington's testimony, portions of the testimony  
6 of Ms. Hale (sic), portions of the testimony of  
7 Ms. Seger Lawson, L-a-w-s-o-n, the testimony of  
8 Mr. Parke, P-a-r-k-e, and I believe that covers it.

9           Q.       Okay. Thank you. And did you have any  
10 communications with anyone regarding your testimony  
11 today?

12          A.       No.

13                   MR. BERGER: Are you saying other  
14 than counsel?

15 BY MR. SADLOWSKI:

16          Q.       Other than counsel, have you conferred  
17 or discussed your testimony, your filed testimony for  
18 today's deposition, sir?

19          A.       No. I'm sorry. I had assumed you  
20 meant other than counsel when I answered.

21          Q.       Okay.

22          A.       Sorry. That was correct, I have not  
23 conferred with anyone other than counsel.

24          Q.       And I was hoping you could just provide  
25 me with a very high level general summary of your

1 filed testimony, basically if you could summarize  
2 what it is that you are testifying to?

3 A. Well, my testimony includes a summary,  
4 it begins at the bottom of page three and goes to the  
5 top of page five. And I don't think I could do any  
6 better than that. I could read it if you want me to  
7 but it is all there?

8 Q. Just so the record is clear, I'm  
9 looking at the bottom of page four of your testimony,  
10 starting lines 16?

11 A. Yes, I have that.

12 Q. Again, basically I was hoping you could  
13 just provide me in your own words what are your  
14 summaries and your conclusions and recommendations  
15 are?

16 A. Sure. Well, just to be clear, what's  
17 written here is in my own words. But just to very  
18 briefly summarize that. My recommendation is that if  
19 the Commission allows Dayton Power and Light to  
20 implement the proposed SSR, that it should be  
21 collected from customers on a per kilowatt hour basis  
22 only.

23 And if the Commission allows Dayton  
24 Power and Light to implement a switching tracker,  
25 that also should be collected from customers solely

1 on a per kilowatt hour basis.

2 MR. SADLOWSKI: And just for  
3 clarity and so that the record is clear,  
4 from here on out I'll be referring to  
5 the Service Stability Rider as the SSR.

6 BY MR. SADLOWSKI:

7 Q. And, Mr. Rubin, did anyone help you or  
8 assist you in preparing your testimony?

9 A. Other than counsel, no.

10 Q. But counsel did assist you in preparing  
11 your testimony.

12 Did counsel provide you with any data,  
13 facts or assumptions?

14 A. No.

15 Q. Did counsel provide you with the ESP  
16 filing for you to review?

17 A. I believe so. I know I downloaded some  
18 of the information directly from the Commission's  
19 website and I believe counsel provided other portions  
20 of the filing directly to me.

21 Q. And do you recall which portions you  
22 reviewed or relied upon in preparing your testimony?

23 MR. BERGER: Objection to the use  
24 of which portions of this filing.

25 Because of the extensive nature of this

1 filing it would be extremely difficult  
2 for Mr. Rubin to go through all of the  
3 filing and identify which portions, this  
4 is a three volume filing. So if you  
5 could be a little more specific.

6 MR. SADLOWSKI: Well, I guess I'm  
7 looking for specific papers or schedules  
8 that were relied upon by  
9 Mr. Rubin in preparing his testimony?

10 MR. BERGER: To the extent he can  
11 answer that.

12 MR. SADLOWSKI: To the extent he  
13 can answer it, that's fine.

14 THE WITNESS: And I can try to  
15 answer that for you. I've already  
16 identified for you the pre-filed  
17 testimony that I reviewed.

18 I reviewed the Electric Security  
19 Plan Application -- I'm sorry, the  
20 Second Revised Application. There's a  
21 document that frankly I'm not exactly  
22 sure what it was part of within the  
23 filing, but it has a heading on it ESP  
24 Rate Blending Plan that is, I guess,  
25 approximately 38 pages long, and again

1           that was part of the Second Revised  
2           Filing I believe.

3                     And I reviewed schedules --  
4           I should say, I reviewed to at least  
5           some extent Schedules 1 thru 10 that  
6           were part of the Second Revised Filing,  
7           I believe within those I focused  
8           primarily on Schedules 7 and 10.

9   BY MR. SADLOWSKI:

10           Q.       Schedules 7 and 10?

11           A.       Yes.

12           Q.       Okay.

13           A.       And from what I recall, that covers it.

14           Q.       Mr. Rubin, with regard to your filed  
15           testimony, could you please describe OCC's objectives  
16           as you understand them with regard to your testimony?

17                     MR. BERGER: I would object that  
18           you haven't laid a foundation as to the  
19           relevance as OCC's objectives to his  
20           testimony.

21                     MR. SADLOWSKI: Okay.

22   BY MR. SADLOWSKI:

23           Q.       Mr. Rubin?

24                     MR. BERGER: And to the extent  
25           those objectives aren't attorney/client

1           privileged information.

2       BY MR. SADLOWSKI:

3           Q.       Mr. Rubin, you can answer.

4           A.       I don't know what you mean by their  
5 objectives as it relates to my testimony.

6                    I know what my testimony discusses but  
7 I don't know what you mean by their objectives as it  
8 relates to my testimony.

9           Q.       Well, I guess, for example, are you  
10 aware of any objective of the OCC to minimize rate  
11 increases, that would be one example of an objective  
12 in filing your testimony.

13                    You're not aware of any specific  
14 objectives?

15                    MR. BERGER: I'd reiterate the  
16 same objection to the extent that this  
17 would reveal attorney/client privileged  
18 communication.

19                    I would direct Mr. Rubin not to  
20 answer that.

21                    To the extent that he's familiar  
22 with what the law provides with respect  
23 to OCC's statutory objectives, I have no  
24 problem with him providing his  
25 understanding of that.

1 BY MR. SADLOWSKI:

2 Q. Go ahead, Mr. Rubin.

3 A. Well, I'm sorry, I'm not sure what I'm  
4 allowed to respond to since I was directed not to  
5 answer.

6 MR. BERGER: Scott, you can  
7 provide your understanding of what OCC's  
8 statutory objectives are if you know the  
9 Statute under which OCC was authorized  
10 to represent residential consumers.

11 THE WITNESS: I'm not familiar  
12 with OCC's Statute.

13 BY MR. SADLOWSKI:

14 Q. Mr. Rubin, just a quick question, the  
15 opinions that are being offered in your testimony, is  
16 that all that's being offered in this case, are those  
17 all the opinions that are being offered in this case  
18 by you?

19 MR. BERGER: Objection. I think  
20 that the question is unclear in terms,  
21 is that all is being offered. I'm not  
22 sure if you're asking -- I'm not sure  
23 what you are asking, Adam.

24 BY MR. SADLOWSKI:

25 Q. Well, basically I just want to confirm

1 that the testimony that is his filed testimony  
2 incorporates all the opinions that he attempts to  
3 testify at the hearing and there are no additional  
4 opinions outside the scope his filed testimony?

5 MR. BERGER: Then I would object,  
6 that we haven't completed our review of  
7 other parties' testimony or of any  
8 potential rebuttal testimony of the  
9 company, so that he cannot comment in  
10 terms of his review of such testimony at  
11 this point whether he's submitting any  
12 supplement or surrebuttal testimony with  
13 respect to any of those topics.

14 So if it's limited to what his  
15 review of the company's application and  
16 it's Direct Testimony, I have no problem  
17 with him answering that question, but if  
18 it's directed to testimony that was just  
19 filed by other parties or rebuttal  
20 testimony that may be filed in the  
21 future by the company, I would indicate  
22 that he's not in a position to answer  
23 that as this time.

24 MR. SADLOWSKI: I would limit it  
25 only to Direct Testimony that was filed.

1 MR. BERGER: By the company?

2 MR. SADLOWSKI: By the OCC.

3 MR. BERGER: In terms of what his  
4 response is to the company's application  
5 and to the company's direct testimony,  
6 I would permit him to answer that  
7 question.

8 Scott, you can answer with respect  
9 to the company's application in Direct  
10 Testimony whether you have anything  
11 additional to testify about.

12 THE WITNESS: The testimony is  
13 dated March 1, 2013, and what appears in  
14 the pre-filed Direct Testimony is a  
15 complete representation of my opinions  
16 as of that date.

17 MR. SADLOWSKI: Thank you,  
18 Mr. Rubin.

19 BY MR. SADLOWSKI:

20 Q. Now, I want to move to specific  
21 portions of your pre-hearing testimony, specifically  
22 turning to page seven.

23 A. Yes, I have that.

24 Q. Lines 15 and 16, and on those lines you  
25 state that, quote, "DP&L would effectively double the

1 customer charge that is currently in effect."

2 Did I read that correctly?

3 A. Yes.

4 Q. What is your basis for this statement?

5 A. Give me a moment to find the specific  
6 reference.

7 Q. Take your time.

8 A. The proposal is for a customer charge  
9 of four dollars and twenty-five cents per month for  
10 residential customers. And I'm not locating the  
11 specific reference I had, but I believe that is the  
12 same as the existing residential customer charge.

13 Q. Is that included on one of the  
14 attachments to your testimony, sir?

15 A. No. Schedule 7-D of the Second Revised  
16 Filing shows Dayton Power and Light's proposed  
17 charges for the Service Stability Rider and that  
18 includes a residential customer charge of four  
19 dollars and twenty-five cents.

20 Q. Thank you, Mr. Rubin. In your own  
21 words, Mr. Rubin, could you please explain to me the  
22 Dayton Power and Light's stated purpose for seeking  
23 the SSR in this case?

24 A. As I understand it, Dayton Power and  
25 Light is seeking the Service Stability Rider as --

1 again, these are my words, as a method to increase  
2 rates to customers without going through a full base  
3 rate proceeding. The company claims that such an  
4 increase is required because it is losing revenues as  
5 a result of customers purchasing electricity supply  
6 from entities other than the Utility itself.

7 Q. So is it your testimony that the  
8 financial integrity of DP&L is not the basis for the  
9 SSR?

10 A. Well, again, I'm not trying to speak  
11 for the company. You asked me my understanding. My  
12 understanding is, the company claims that it needs to  
13 increase its rates. It has put forth information  
14 about its financial condition and it is using that to  
15 try to justify the hundred thirty-seven point five  
16 million dollar rate increase without an examination  
17 of all of its revenues, expenses and planned  
18 investment.

19 MR. OLIKER: Could I have that answer  
20 read back?

21 COURT REPORTER: "ANSWER: As I  
22 understand it, Dayton Power and Light is  
23 seeking the Service Stability Rider as --  
24 again, these are my words, as a method to  
25 increase rates to customers without going

1 through a full base rate proceeding. The  
2 company claims that such an increase is  
3 required because it is losing revenues as a  
4 result of customers purchasing electricity  
5 supply from entities other than the Utility  
6 itself.

7 BY MR. SADLOWSKI:

8 Q. Is it correct that your testimony does  
9 not address the financial integrity of DP&L?

10 A. That is correct, my testimony is  
11 limited to the design of the rates if the Commission  
12 approves any recovery of revenues.

13 Q. And is it also correct then that you  
14 have not performed any sort of analysis or study of  
15 DP&L's financial integrity?

16 A. That is correct.

17 Q. Mr. Rubin, would you agree that  
18 consumers within DP&L's service area have economic  
19 benefit as a result of stable service?

20 A. I'm sorry, I don't know what you mean  
21 by stable service?

22 Q. Well, for example, if -- again, I'll  
23 throw out a hypothetical to you. If Dayton Power and  
24 Light's financial integrity is threatened and that  
25 could impair DP&L's ability to provide service to its

1 customers, with that hypothetical in mind, would you  
2 agree that DP&L's consumers have an economic benefit  
3 in receiving stable service?

4 MR. BERGER: I would object that,  
5 Adam, you haven't laid a foundation for  
6 where Mr. Rubin addresses in any way  
7 whether there is economic benefit to  
8 stable service or even that he testifies  
9 regarding whether -- regarding whether  
10 stability is or is not an issue, driving  
11 any rate in this case. And I don't  
12 believe he testifies on those issues.

13 MR. SADLOWSKI: That's where I was  
14 going next.

15 MR. BERGER: So I don't know how  
16 he can testify. He can testify if he  
17 has assessed those issues.

18 MR. SADLOWSKI: Right.

19 BY MR. SADLOWSKI:

20 Q. Just so the record is clear, Mr. Rubin,  
21 isn't it correct that you do not discuss in your  
22 testimony any economic benefit of stable service to  
23 customers?

24 A. I do not discuss that issue one way or  
25 the another, correct.

1 Q. And in preparing your testimony, you  
2 have not analyzed the economic benefit to consumers  
3 of stable service, correct?

4 A. Again, I have not looked at that issue  
5 one way or another. I don't know if there is such a  
6 benefit or if any information has been provided to  
7 show whether there is one or not.

8 Q. Okay. Thank you. Now, moving on in  
9 your testimony to page nine, specifically I'm looking  
10 at lines 16 through 18.

11 A. Yes, I have that.

12 Q. And on those lines, it states, quote,  
13 "There is no justification for allocating any SSR  
14 revenues based on the number of customers in a  
15 class." Did I read that correctly?

16 A. Yes.

17 Q. And what is your justification for that  
18 statement?

19 A. Well, that is discussed earlier in the  
20 written testimony where I explain that the -- again,  
21 to my understanding, Dayton Power and Light's  
22 justification for the SSR is related to customers who  
23 purchase their electricity from someone other than  
24 the Utility. So that all of the alleged costs  
25 involved are solely related to the generation side of

1 Dayton Power and Light's business, so that there is  
2 no customer-related component of that. For example,  
3 if a customer were to start -- were to sign up to  
4 purchase electricity from a third party supplier but  
5 the customer's building is vacant so it purchased no  
6 electricity, there would be no impact whatsoever on  
7 Dayton Power and Light, so, again, in my opinion  
8 there is no customer related cost component to the  
9 proposed SSR.

10 Q. Could an argument be made that the  
11 allocation of the SSR should be made across all  
12 customers because all customers have an equal  
13 interest in stable service?

14 MR. BERGER: Objection. Is this a  
15 hypothetical, Adam?

16 MR. SADLOWSKI: Yes --  
17 (At this time everyone is talking  
18 over each other and not able to  
19 hear and understand counsel.)

20 MR. BERGER: Well, could you  
21 restate the question, I didn't  
22 understand it?

23 MR. SADLOWSKI: Could the court  
24 reporter read it back please?

25 COURT REPORTER: ANSWER: Could an

1 argument be made that the allocation of  
2 the SSR should be made across all  
3 customers because all customers have an  
4 equal interest in stable service?

5 MR. BERGER: And I would object to  
6 that, this is asking him to speculate as  
7 to whether anybody could make such an  
8 argument and not whether he in  
9 particular thinks such an argument has  
10 any validity. But you can answer.

11 THE WITNESS: Well, honestly,  
12 I don't know how to answer that  
13 question. It started, I think, could an  
14 argument be made.

15 And obviously people can make  
16 whatever arguments they would like to  
17 make. That is not -- so I don't know  
18 how to answer it, I'm sorry.

19 BY MR. SADLOWSKI:

20 Q. Well, let me rephrase the question  
21 then. Is there -- would there be a policy  
22 justification based on all customers having an equal  
23 interest in stable service?

24 A. In my opinion, no. Again, as I  
25 explained, the reasons that the company has given for

1 this portion of itself filing relate to competitive  
2 pressures that the company is facing on the  
3 generation side of its business, that's my  
4 understanding of the testimony from several witnesses  
5 of the company. And I did not see anything in the  
6 company's case that claimed that , you know, a small  
7 residential customer buying, you know, two hundred  
8 kilowatt hours a month from Dayton Power and Light  
9 was causing any of these problems or any -- I'm  
10 sorry, any of these alleged problems in the company's  
11 financial position.

12 My understanding is that the  
13 key factors that the company and its witnesses have  
14 identified are related to risks associated with  
15 customers buying their electricity supplied from  
16 non utility sources.

17 Q. Mr. Rubin, if you would please turn to  
18 page 12 of your testimony.

19 A. I have it.

20 Q. And I'm looking at lines 9 through 11.

21 A. Yes.

22 Q. And specifically at line 9, you discuss  
23 the principle of cost causation, could you please  
24 explain to me what is meant in your own words by the  
25 term, cost causation?

1           A.       Yes. Cost causation is a regulatory  
2 principle, a rate making principle, if you will, that  
3 says that to the extent possible and to the extent  
4 consistent with other principles, that costs incurred  
5 by a Utility should be recovered from those customers  
6 who cause the cost to be incurred.

7           Q.       Is there a basis for that doctrine or  
8 principle in Ohio Law or Regulatory Law, in Ohio  
9 Regulatory Law to your knowledge?

10          A.       I am not intimately familiar with Ohio  
11 Statutes and Court Decisions on these issues. I have  
12 reviewed some portions of the Statute and some  
13 Judicial Decisions and obviously some opinions of the  
14 Commission. I did not research that question for the  
15 preparation of this testimony, so I do not have --  
16 I'm sorry, I do not have a good answer to that,  
17 I just don't know.

18          Q.       Just so the record is clear, you have  
19 no knowledge of whether Ohio Law requires cost  
20 causation?

21          A.       I do not know one way or the other.  
22 Frankly, I would be surprised if any states' statutes  
23 specifically talk about cost causation. Typically  
24 the terms used are just and reasonable rates and  
25 avoiding undo discrimination and phrases of that

1 nature. And over the years, one of the ways in which  
2 those phrases have been interpreted, is to say that  
3 utility rates should try to recover costs from those  
4 customers who cause them to be incurred by the  
5 Utility, and that is the underlying principle of cost  
6 causation.

7 Q. So is it accurate to say then that you  
8 have not performed any sort of cost causation  
9 analysis in preparing your testimony with regard to  
10 the Dayton Power and Light filing?

11 A. That is not correct.

12 Q. Please tell me how it is incorrect?

13 A. Well, as we have discussed today and as  
14 I set out in the written testimony, I looked at the  
15 reasons that Dayton Power and Light gave for making  
16 this portion of the filing. I looked at the  
17 testimony that the company put forth to support this  
18 portion of the filing. And based on that  
19 information, I concluded that this portion of the  
20 filing was necessary in the company's opinion because  
21 of competitive pressures it faces on the generation  
22 side of its business.

23 I then looked at how the company was  
24 proposing to recover revenues from customers,  
25 compared that to the reasons the company gave for

1 needing this rate increase, which again are solely  
2 generation related. So I have schedules attached to  
3 my testimony that compare the revenue recovery to the  
4 underlying cost rationale which is the amount of  
5 electricity sold, and based on that I make a  
6 recommendation about how the rates should be  
7 increased if any such increase is authorized by the  
8 Commission.

9 Q. Mr. Rubin, if you look at page 10 of  
10 your testimony please, specifically lines 9  
11 through 16.

12 A. Yes, I have that.

13 Q. I'm just going to paraphrase that  
14 paragraph, lines 9 through 16, but is it correct that  
15 it is your opinion that fairness and balance should  
16 be tied to consumption in justifying a kilowatt per  
17 hour allocation of the SSR?

18 MR. BERGER: I object that this is  
19 Mr. Rubin's summary of what DP&L's  
20 witnesses are saying. And the  
21 suggestion that this is Mr. Rubin's  
22 testimony in any way or his position is  
23 inappropriate.

24 If you want to ask him what his  
25 summary of what Mr. Parke has said in

1 his testimony is accurate, you can ask  
2 him that.

3 BY MR. SADLOWSKI:

4 Q. Well, Mr. Rubin, then explain to me why  
5 quote "fairness" and balance or as you claim, absent  
6 from Mr. Park's testimony?

7 A. Well, I don't --

8 MR. BERGER: I object again that  
9 Mr. -- would you point Mr. Rubin to  
10 where --

11 BY MR. SADLOWSKI:

12 Q. I am looking at lines 9 and 10, his  
13 reference to any objective measure of fairness and  
14 then I am also looking at lines 13 and 14.

15 MR. BERGER: You mean 8 and 9?

16 MR. SADLOWSKI: I'm looking at 9  
17 and 10, at least on my printout.

18 MR. BERGER: My printout says,  
19 I disagree on line 8.

20 MR. SADLOWSKI: Mine says on line  
21 9, so starting that sentence and ending  
22 with fairness.

23 MR. BERGER: Okay. Mr. Rubin, you  
24 can answer about why you say that about  
25 Mr. Parke.

1                   THE WITNESS: In this paragraph,  
2                   I explained that I do not find any  
3                   support for Mr. Parke's statements. He  
4                   claims that one of his objectives is to  
5                   promote fairness, but he does not  
6                   provide any analysis or demonstration  
7                   that his proposal is any more or less  
8                   fair than any other method of recovering  
9                   the proposed rate increase.

10                  And the same is true when he talks  
11                  about his proposal being balanced. He  
12                  does not provide any objective measure  
13                  of what he means by that or any  
14                  supporting analysis to show that his  
15                  proposal is any more or less balanced  
16                  than alternative methods of recovering  
17                  the proposed rate increase.

18 BY MR. SADLOWSKI:

19                  Q.           So is it correct then that in your  
20                  testimony you are not arguing that the services  
21                  provided by DB&L should be tied to usage or  
22                  consumption, is that correct?

23                  A.           I'm sorry, I don't understand your  
24                  question.

25                  Q.           Well, basically, as the Utility, DP&L

1 has to provide certain services to provide electric  
2 service to its customers, correct?

3 A. Yes.

4 Q. I just want to make sure that the  
5 record is clear, that it's not your testimony that  
6 those services should be tied to consumption or  
7 usage?

8 MR. BERGER: I object, in that the  
9 question is not clear.

10 What services, Adam, are you  
11 talking about?

12 MR. SADLOWSKI: I'm referring to  
13 services generally. I'm not referring  
14 to any specific service.

15 MR. BERGER: Then I object, it's  
16 too ambiguous for him to even answer  
17 this question. Every service is  
18 different. Companies provide many  
19 services.

20 Can you be more specific?

21 MR. SADLOWSKI: Sure, I'll give  
22 you a hypothetical.

23 BY MR. SADLOWSKI:

24 Q. So say there's a storm, severe storm  
25 and there are severe outages, should DP&L restore

1 service to Customer A who is a large user of kilowatt  
2 hours before Customer B who is a low income smaller  
3 user of kilowatt hours?

4 A. I cannot respond to that hypothetical.

5 Q. Why is that, Mr. Rubin?

6 A. You're hypothetical concerns storm  
7 restoration, and from my general understanding, there  
8 are certain protocols and procedures that are  
9 followed to prioritize the restoration of service.  
10 I do not know specifically what those are for Dayton  
11 Power and Light.

12 For example, I would expect large users  
13 that are providing central services, like hospitals  
14 and nursing homes, to have priority for restoration.  
15 So I just don't have enough information to respond  
16 fully to your hypothetical.

17 Q. Let's move on then to page 15 of your  
18 testimony, specifically I'm looking at lines 16  
19 through 18.

20 A. Yes, I have that. I would just note  
21 before you go any further, that there is one number  
22 on line 16 that is marked confidential.

23 Q. Correct. And I did not intend on  
24 reading that into the record. However, I will read a  
25 portion that I want to question you on. The portion

1 that states, quote, "Residential non heating  
2 customers (those with consumption of 200 kilowatt  
3 hours per month or less) would receive increases of  
4 12 percent to 37 percent."

5 Did I read that correctly?"

6 A. Yes.

7 Q. And then looking on page 16, lines 8  
8 through 10, you make a similar claim, is that  
9 correct?

10 A. Well, yes, on page 16, lines 8 through  
11 10, it's related to heating customers. And on page  
12 15 it's related to non heating customers.

13 Q. Going back to page 15, will you please  
14 explain how you calculated the percentages on line  
15 18?

16 A. Yes. Those are shown in attachment  
17 SJR-4, the percentage on page 15 is calculated on  
18 page one. And if you look at the confidential  
19 version of that attachment, line three is the  
20 line for 200 kilowatt hours. This part of --  
21 everything I'm saying so far is part of the public  
22 portion of that page.

23 Q. Okay.

24 A. So line three is the usage -- excuse,  
25 is the bill calculation at 200 kilowatt hours. And

1 if you read across to the very last column, which is  
2 confidential, that's the cumulative percentage of  
3 customers, and the percentage on that line is the  
4 percentage that appears on the page 15, line 16 of my  
5 testimony.

6 Q. Okay.

7 A. Excuse me. And just to be clear, as a  
8 cumulative percentage that is the -- excuse me,  
9 adding up the cumulative number of customers --  
10 excuse me, it is the cumulative number of customers  
11 in the next to last column, divided by the total  
12 number of customers.

13 Q. And so you show -- I'm looking at line  
14 one of your attachment SJR-4, page one of three,  
15 line one, you have a percentage increase for level of  
16 usage 50 or below per kilowatt hours of 37.38  
17 percent, is that correct?

18 A. Yes, that is correct. By that -- I'm  
19 sorry, yes, that is correct.

20 Q. And what is the actual dollar amount  
21 that would increase for that line or that line of  
22 customers?

23 A. That's in the column just to the left  
24 of the figure you read, it is four dollars and  
25 sixteen cents.

1 Q. So that is the only amount that it  
2 would increase per month, is that correct?

3 A. Well, you say the only amount, that's  
4 starting with a current bill of eleven dollars and  
5 thirteen cents per month.

6 Q. Correct. But the amount of the  
7 increase would be four dollars and sixteen cents?

8 A. Correct.

9 MS. YOST: Off the record.

10 (At this time there was a brief  
11 discussion held off the record.)

12 BY MR. SADLOWSKI:

13 Q. And then, Mr. Rubin, I'm looking at  
14 line two, level of usage, 100 kilowatt hours, and  
15 based on your calculations there would be a four  
16 dollar and seven cent monthly increase?

17 A. Yes. Just to be clear, the figures on  
18 this page up until -- well, sorry. The figures on  
19 this page up until the column, cumulative number of  
20 customers were all provided by Dayton Power and  
21 Light. They were not calculated by me.

22 I did calculate the last two  
23 columns on the page, which is simply adding up the  
24 number of customers and dividing it by the total  
25 number of customers. So I did not calculate the

1 figures on line two that you're asking me about, they  
2 were calculated by the company.

3 Q. Mr. Rubin, are you familiar with the  
4 term rate shock?

5 A. Yes, I am.

6 Q. In your own words, what does that term  
7 mean to you?

8 A. I'm not sure I can give a very good  
9 definition of that. It's -- I mean, the basic  
10 concept is that you should try to avoid very large  
11 rate increases to customers, it may quote, unquote  
12 shock them. And one of the consequences of that  
13 could be that customers could not afford to pay their  
14 bill or that they might try to decrease their  
15 consumption in order to avoid the large rate  
16 increase.

17 Q. So then you would agree that rate shock  
18 is an undesirable effect for any consumer, including  
19 large usage customers?

20 A. As a very general proposition, yes, but  
21 it has to be examined on a case by case basis.

22 Q. I have just a few more questions for  
23 you, Mr. Rubin. Just so the record clear, your  
24 testimony does not address the impact of your  
25 proposal regarding the SSR on small businesses, is

1 that correct?

2 A. Not for any specific business.

3 Attachment Three shows how much of the revenues would  
4 be collected from the GS Secondary Class which is  
5 where many small businesses would be. In Schedule  
6 Two shows the same information under the company's  
7 proposal. Under the company's proposal it would be  
8 forty million approximately two hundred thirty-six  
9 thousand dollars from that class. Under my proposal  
10 it would be forty million one hundred sixty-two  
11 thousand dollars from that class.

12 Nearly the identical percentage --  
13 excuse me, nearly the identical amount of revenues  
14 recovered from that class under either the company's  
15 proposed allocation or my proposed allocation.

16 Q. So if the Commission were to adopt your  
17 proposal with regard to the SSR, do you know whether  
18 rate shock would occur in small businesses in DP&L's  
19 service area?

20 A. I have not evaluated that. If it were  
21 to be something that someone calls rate shock to  
22 small business customers under my proposal, the same  
23 effect would exist under the company's proposal  
24 because the company would recover approximately  
25 seventy thousand dollars more revenues from the

1 GS Secondary Class than my proposal would recover  
2 from that class.

3 MR. SADLOWSKI: Give me one  
4 second, I want to go through my notes  
5 just to make sure I have no further  
6 questions.

7 Could we go off the record just  
8 for a minute.

9 (At this time there was a brief  
10 recess taken.)

11 BY MR. SADLOWSKI:

12 Q. Mr. Rubin, I have just one more  
13 question. Just so that the record is clear, it is  
14 your testimony that you have not analyzed the impact  
15 your proposal would have on small businesses,  
16 correct?

17 A. Other than what I just stated, that is  
18 correct.

19 MR. SADLOWSKI: I have no further  
20 questions.

21 Joe, I don't know whether you want  
22 to ask any questions?

23 MR. OLIKER: I have just a few.  
24 Does anybody else have questions or  
25 would they like me to proceed?

1 MR. BERGER: Go ahead, Joe.

2

3 EXAMINATION BY MR. OLIKER:

4 Q. Good morning, Mr. Rublin.

5 A. Good morning.

6 Q. This is Joe Olikier, I represent the  
7 Industrial Energy Users of Ohio. I just have a few  
8 questions for you this morning.

9 Earlier you were talking about  
10 your prior testimony, have you ever testified on  
11 behalf of Industrial Energy Consumer in a rate  
12 proceeding?

13 A. Yes, I have.

14 Q. Could you point me to your testimony,  
15 what case that would be?

16 A. Just give me a minute to pull up that  
17 list. It was a case involving the manufacturer's  
18 water company. It's going to take me a minute to  
19 find that case on the list since I'm looking at  
20 paper, I don't have a searchable copy in front of me.

21 Q. Do you remember the case number?

22 A. On my list of cases it's attachment  
23 SJR-1, page 12, case number 34. I testified on  
24 behalf of the manufacturer's water industrial users.  
25 That's the one that comes to mind, I think that was

1 the only case where I testified on behalf of  
2 industrial users.

3 Q. And I'm looking at that page that said  
4 you testified concerning rate design on behalf of the  
5 manufacturer's water industrial users, correct?

6 A. Yes.

7 Q. Okay. We may come back to that.  
8 Is that case in Pennsylvania? I believe it says  
9 that, yes. You don't have to answer that, Mr. Rubin.

10 Regarding the Service Stability  
11 Rider, did you testify earlier that the Service  
12 Stability Rider is related to the recovery of  
13 generation costs?

14 A. I believe I said generation related  
15 costs.

16 Q. Would you characterize the SSR as being  
17 associated with the recovery of fixed or variable  
18 costs?

19 A. I would not characterize it either way.

20 Q. How would you characterize it then,  
21 Mr. Rubin?

22 A. I would characterize it as Dayton Power  
23 and Light claiming that its financial condition has  
24 suffered because of a competitive market for electric  
25 generation. The capacity related costs that Dayton

1 Power and Light incurs already are recovered from  
2 customers through an automatic rate adjustment  
3 mechanism, so I do not believe that the changes in  
4 the capacity market are creating financial issues for  
5 Dayton Power and Light. I believe that the changes  
6 would be related to non capacity related costs.

7 Q. Have you reviewed Dayton Power and  
8 Light's imbedded cost for capacity?

9 A. No, I have not.

10 Q. So to take that a step further, have  
11 you compared Dayton Power and Light's imbedded cost  
12 for capacity to the compensation that DP&L receives  
13 through the PJM capacity market?

14 I'll restate the question.

15 Mr. Rubin, have you compared Dayton  
16 Power and Lights's imbedded cost of capacity to the  
17 capacity compensation that DP&L receives through  
18 the PJM interconnection capacity market?

19 A. No, I have not done that specific  
20 analysis.

21 Q. Is the SSR designed to ensure that DP&L  
22 receives a specific return on investment including  
23 generation investment?

24 MR. BERGER: Mr. Rubin, I caution  
25 you to answer only what you know about

1           it. If that's beyond what you assessed  
2           here, then you should indicate that.

3                   THE WITNESS: Yeah, that's easy  
4           because I only testify about what I know  
5           about.

6                   I do not know how Dayton Power and  
7           Light determined that it needed a  
8           hundred thirty-seven point five million  
9           dollars in additional revenues from its  
10          customers.

11 BY MR. OLIKER:

12           Q.       So are you saying you don't know the  
13          answer to my question?

14           A.       Yes, I do not know exactly how the  
15          company came up with that number. I don't know what  
16          the components of it would be.

17           Q.       At page nine, you state on line 19:  
18          All the reasons identified by DP&L to alledgedly  
19          justify the SSR are related to the generation --  
20          parentheses (electricity supply portion of DP&L's  
21          business.

22                   So would you agree that the SSR is  
23          designed to cover generation related costs?

24                   MR. BERGER: Objection. You're  
25          not -- Mr. Rubin's doesn't reference in

1           that statement anything about costs.  
2           He's talking about the generation side  
3           of the business but not necessarily  
4           about costs, so I just ask you to  
5           rephrase it in terms of the actual words  
6           he uses.

7                       MR. OLIKER: I am trying to ask  
8           him what the statement means. He can  
9           answer the question.

10                      MR. BERGER: If he can answer?

11                      MR. OLIKER: Could you please read  
12           back --

13                      THE WITNESS: I mean, I can answer  
14           it if you don't need it read back.

15                      MR. OLIKER: Go ahead then please.

16                      THE WITNESS: Again, my  
17           understanding from reviewing the filing  
18           and Dayton Power and Light's testimony,  
19           is that the company's claimed need for  
20           the Service Stability Rider is related  
21           to the difference in revenues it  
22           receives from the competitive generation  
23           market and the revenues it would receive  
24           if it were able to sell that generation  
25           to its retail customers.

1                   Again, I have not reviewed every  
2                   piece of paper that the company provided  
3                   about this portion of its filing. But  
4                   that's my understanding from its  
5                   application, it's description of the  
6                   specific rates my testimony talks about,  
7                   and the testimony of the witnesses who  
8                   support that rate.

9                   BY MR. OLIKER:

10                  Q.           Mr. Rubin, maybe I can try this a  
11                  different way. Would you agree that DP&L has  
12                  requested the SSR because its generating assets  
13                  aren't performing as efficiently as DP&L would like  
14                  them to?

15                  MR. BERGER:   Objection, if there  
16                  is somewhere in his testimony that he  
17                  suggests that in any way, would you  
18                  point him to it, otherwise --

19                  MR. OLIKER:   He can answer --

20                  MR. BERGER:   I think he states in  
21                  his testimony already what his  
22                  understanding of the reasons that DP&L  
23                  has requested the SSR.

24                  MR. OLIKER:   He can answer my  
25                  question.

1                   THE WITNESS: My understanding --  
2                   well, I'm sorry. In your question you  
3                   use the phrase, performing as  
4                   efficiently, I don't recall seeing that  
5                   phrase in the testimony that support --  
6                   excuse me, the testimony that the  
7                   company filed to allegedly support the  
8                   SSR.

9                   I'm thinking specifically of the  
10                  testimony of Dr. Chambers where he talks  
11                  at some length about the need to  
12                  compensate DP&L for lost revenues  
13                  related to additional customer switching  
14                  and how, you know, switching, you know,  
15                  reduces the company's revenues because  
16                  it needs -- it would then need to sell  
17                  power in the wholesale market at lower  
18                  rates than it would sell the generation  
19                  to its retail customers. And there are  
20                  other witnesses who say something very  
21                  similar.

22                  But that's my understanding, that  
23                  it doesn't have do with efficiency, it  
24                  has to do with the difference between  
25                  selling at wholesale and selling at

1 retail.

2 BY MR. OLIKER:

3 Q. Are you aware of whether there is  
4 Commission precedent or Regulatory Practices in Ohio  
5 concerning the recovery of generation related costs?

6 A. I do not know.

7 Q. Are you aware where there is Commission  
8 precedent or Regulatory Practices in Pennsylvania  
9 concerning the recovery of generation related costs?

10 MR. BERGER: I would object that  
11 the recovery of generation related costs  
12 is too vague a term of him to comment  
13 about.

14 Are you talking about specific  
15 aspects of the recovery of generation  
16 related costs?

17 BY MR. OLIKER:

18 Q. Do you understand the question,  
19 Mr. Rubin?

20 A. I think I do, yes.

21 Q. Noting Mr. Berger's objection, you can  
22 answer and I can probably follow up with another  
23 question.

24 A. I am generally familiar with the  
25 recovery of generation related costs by electric

1 utilities in Pennsylvania.

2 Q. And are you aware of whether the  
3 Commission in Pennsylvania has historically required  
4 Utilities to recover generation related costs through  
5 demand charges?

6 A. My understanding of how generation  
7 related costs are recovered in Pennsylvania, is that  
8 it's a combination of demand and energy charges, and  
9 this is going back before deregulation of generation  
10 in Pennsylvania.

11 Q. And do you know whether there is  
12 Commission precedent or Regulatory Practices in Ohio  
13 that require Utilities to recover generation related  
14 charges through demand charges?

15 A. I do not know that specifically.  
16 I think I have seen some very general references but  
17 I don't know how accurate those references are.

18 Q. Earlier you mentioned to Mr. Sadlowski  
19 that you reviewed some Ohio Commission precedent in  
20 Supreme Court cases, do you remember that discussion?

21 A. Yes, and I believe I said I did not do  
22 that specifically for this case. I have been  
23 involved in other proceedings in Ohio.

24 Q. Which decisions did you review?

25 A. I have no idea, it was many years ago

1 and it was not something I did for this case.

2 Q. Would you agree that recovering the  
3 Service Stability Rider through a kilowatt hour  
4 charge has the tendency to shift revenue  
5 responsibility to customers that have a higher load  
6 factor?

7 A. Not necessarily, no.

8 Q. Would you agree that customers with  
9 higher load factor are using energy more often?

10 A. I don't know what you mean by using  
11 energy more often, I don't think I've ever heard that  
12 phrase used before.

13 Q. What does load factor mean?

14 A. Load factor is a measure of the --  
15 well, in simple terms, the customer's average use of  
16 electricity as compared to its peak demand for  
17 electricity or its peak use.

18 Q. Do you know what coincident peak means?

19 A. Yes, I do.

20 Q. Could you tell me what that is?

21 A. The coincident peak for a Utility,  
22 for example, would be the hour of the year when the  
23 Utility's customers use the most electricity on a  
24 combined basis.

25 Q. Why is the coincident peak important?

1 MR. BERGER: Objection.

2 Important to what?

3 MR. OLIKER: To balancing the  
4 transmission system and ensuring there  
5 is sufficient generation supply.

6 THE WITNESS: I'm sorry, I don't  
7 know what you're asking me.

8 BY MR. OLIKER:

9 Q. Mr. Rubin, why does PJM interconnection  
10 consider the coincident peak an important number for  
11 ensuring that the lights stay on?

12 A. Well, an electric -- I'll use the term  
13 electric utility, I think from PJM's perspective it's  
14 a load serving entity, needs to ensure that it has  
15 adequate capacity available to meet the coincident  
16 peak, and typically that means to meet something more  
17 than its coincident peak.

18 And by the way, just to be clear,  
19 when you asked me to define coincident peak, I gave  
20 the example of an individual Utility. We can also  
21 measure individual -- excuse me, measure coincident  
22 peaks at different levels of aggregation. You can  
23 calculate a coincident peak for a customer class, you  
24 can also calculate the coincident peak for PJM in its  
25 entirety and for different levels of aggregation

1 between those two.

2 Q. Thank you. Would you agree that  
3 recovering the Service Stability Rider through a  
4 kilowatt hour charge will have the tendency to shift  
5 revenue responsibility to customers that use higher  
6 volumes of electricity?

7 A. Yes.

8 Q. Have you done any calculations to  
9 determine the rate impact of your kilowatt proposal  
10 on customers taking service under GS Secondary,  
11 GS Primary, GS Primary Substation or GS High Voltage?

12 A. I have not done any customer specific  
13 calculation. The calculations I performed are done  
14 on a customer class basis in attachments SJR-2 and  
15 SJR-3.

16 Q. I think you said this, but you haven't  
17 done any rate impacts for any particular customer?

18 A. Not in those customer classes, no.  
19 I mean, the impact generally would be approximately  
20 the same increase per kilowatt hour for all customers  
21 regardless of the class that they are in or the  
22 number of kilowatt hours that they use.

23 Q. But clearly the dollar amount will not  
24 be the same, correct?

25 A. Correct. The more electricity a

1 customer uses, the more they would pay toward the  
2 Service Stability Rider which in my opinion is a fair  
3 way to recover those costs because my understanding  
4 is that they are all generation related costs.

5 Q. Mr. Rubin, earlier you talked about the  
6 impact of Dayton Power and Light's SSR proposal on  
7 customers using two hundred kilowatt hours a month.

8 Do you know how many customers there  
9 are that use two hundred kilowatt hours a month?

10 A. Yes, I do. The Dayton Power and Light  
11 claims that that number is confidential. It's shown  
12 on the confidential version of my attachment SJR-4.

13 MR. OLIKER: Off of the record.

14 (At this time there was a brief  
15 discussion held off the record.)

16 BY MR. OLIKER:

17 Q. Mr. Rubin, just a few more questions.  
18 Do you know what percentage of shopping existed for  
19 each customer class in DP&L's service territory as of  
20 the end of 2009?

21 A. No, I do not.

22 Q. Do you know what level of shopping  
23 existed for each customer class in DP&L's service  
24 territory as of the end of 2010?

25 A. No.

1 Q. And what about 2011?

2 A. No.

3 Q. And what about 2012?

4 A. I believe the numbers in the record are  
5 as of August 2012. I don't believe I have seen  
6 numbers as of the end of 2012.

7 MR. OLIKER: If I could just have one  
8 minute.

9 (At this time there was a brief  
10 recess taken.)

11 BY MR. OLIKER:

12 Q. Mr. Rubin, just a few more questions  
13 I'd like to follow up on.

14 You earlier mentioned that the SSR is  
15 not designed to recover fixed or variable costs,  
16 correct?

17 A. Well, I think I said I wouldn't  
18 characterize it in that way. My understanding is,  
19 the SSR is a calculation of some amount of revenue  
20 that Dayton Power and Light would like to recover  
21 from its customers without having to file a full rate  
22 case. And as we've discussed, that those alleged  
23 costs are related to competition in the generation  
24 market.

25 Q. Please tell me if you agree with this

1 statement: Because of competition the revenues that  
2 DP&L receives for the production of its generating  
3 assets have a smaller return related to the cost of  
4 producing that electricity than DP&L would receive  
5 without competition?

6 A. I do not know. If there were no  
7 competition --

8 MR. BERGER: I'm making objection  
9 here.

10 THE WITNESS: Sorry, go ahead.

11 MR. BERGER: I object and ask for  
12 clarification. Are you saying that that  
13 -- are you saying that that is what the  
14 company's position is, Joe, or are you  
15 saying that's -- or are you asking  
16 Mr. Rubin as to his understanding of the  
17 reason for the claim?

18 MR. OLIKER: I am asking him of  
19 his understanding of what he thinks  
20 the SSR is designed to do.

21 THE WITNESS: Again, my -- well, I  
22 cannot answer that question the way you  
23 asked it.

24 If there were no competition in  
25 the generation market, many things would

1           be different. And I do not know what --  
2           I do not know how rates would be set or  
3           generation prices would be set if there  
4           were no competition in that market.

5       BY MR. OLIKER:

6           Q.       Let's state that a little differently.  
7                    Would you agree that due to  
8           shopping in DP&L service territory, DP&L is  
9           experiencing a lower margin of return for its  
10          generating assets?

11                  MR. BERGER: Objection. Again,  
12           ask for clarification. Are you saying  
13           it's his understanding that that's the  
14           company's claim or is it his  
15           understanding that's the reality of the  
16           way the market is?

17                  MR. OLIKER: I'm not asking him  
18           what the company thinks. I'm asking him  
19           what he understands the SSR is designed  
20           to do?

21                  MR. BERGER: Then you're asking  
22           him his understanding of the company's  
23           claim.

24                  MR. OLIKER: I still don't think  
25           that's the way I'm asking him what his

1 understanding is.

2 THE WITNESS: Sorry. Could I ask  
3 you to restate the question because I'm  
4 just unclear at this point whether --  
5 exactly what you're asking me, whether  
6 you want my opinion of the market or my  
7 opinion of DP&L's claims?

8 BY MR. OLIKER:

9 Q. Let's answer both questions. What do  
10 you believe the SSR is designed to recover, is it  
11 designed to recover lost generation margins?

12 A. My understanding of the SSR, is that  
13 DP&L is asking for a rate increase of  
14 one hundred thirty-seven point five million dollars  
15 to -- I think its words are something like,  
16 enhance the stability of its revenues.

17 DP&L calculates or estimates that  
18 number in a certain way. My reading of their filing  
19 and testimony, is that it's related to changes  
20 occurring on the generation side of the business,  
21 but if generation prices were to change, my  
22 understanding is the SSR would not change, that this  
23 is a fixed number being determined today and rates  
24 would be established based on that. The switching  
25 tracker is a separate mechanism and is calculated

1 differently. But the SSR itself, I believe,  
2 once it's established, it would remain at that level.

3 Q. Mr. Rubin, do you believe the SSR is  
4 designed to recover anything other than generation  
5 related items?

6 A. To my understanding, no. Again, my  
7 understanding is that the SSR is related to revenues  
8 or net revenues the company alleges it is losing  
9 because so many of its customers have switched to a  
10 different supplier and it's required now to sell much  
11 of its energy in the wholesale market instead of at  
12 retail.

13 MR. OLIKER: I have no more questions,  
14 Mr. Rubin, thank you.

15 MR. SADLOWSKI: I have nothing  
16 further.

17 MR. BERGER: Colleen, are you the  
18 only other person?

19 MS. MOONEY: I have no questions.  
20

21 EXAMINATION BY MR. BERGER:

22 Q. Scott, did you indicate you had  
23 reviewed Mr. Jackson's testimony as part of your  
24 preparations here? I don't recall if you said that?

25 A. I don't know if that's one that I

1 listed when I went through the list. I believe I did  
2 when I was preparing my testimony. I did not go back  
3 and review that for today's deposition.

4 MR. BERGER: Just one minute,  
5 off the record.

6 MR. OLIKER: I apologize, I have  
7 to jump on to another deposition now.  
8 I'm going to sign off.

9 MR. BERGER: I have no further  
10 questions.

11 MR. SADLOWSKI: I have nothing  
12 further.

13  
14 (At this time the deposition.  
15 in the above-captioned matter  
16 was concluded.)

17  
18  
19  
20  
21  
22  
23  
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25

C E R T I F I C A T E

I, Kathleen Hughes, a Notary Public in and for Luzerne County, Pennsylvania, do hereby certify that The deposition was reported in machine shorthand by me, that the said witness was duly sworn/affirmed by me, that the transcript was prepared by me or under my supervision and constitutes a complete and accurate record of same.

I further certify that I am not an attorney or counsel of any parties, nor a relative or employee of any attorney or counsel connected with the action, nor financially interested in the action.

  
KATHLEEN HUGHES  
KEYSTONE COURT REPORTING AGENCY, INC.  
4099 Birney Avenue, Suite 9  
Moosic, PA 18507

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**Case No(s). 12-0426-EL-SSO, 12-0427-EL-ATA, 12-0428-EL-AAM, 12-0429-EL-WVR, 12-0672-EL-RDR**

Summary: Deposition of Scott Rubin electronically filed by Mr. Jeffrey S Sharkey on behalf of The Dayton Power and Light Company