

1       BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO  
2       IN THE MATTER OF THE  
3       APPLICATION OF THE DAYTON  
4       POWER AND LIGHT COMPANY       CASE NO. 12-426-EL-SSO  
5       FOR APPROVAL OF ITS  
6       MARKET RATE OFFER.

7       IN THE MATTER OF THE  
8       APPLICATION OF THE DAYTON  
9       POWER AND LIGHT COMPANY       CASE NO. 12-427-EL-ATA  
10      FOR APPROVAL OF REVISED  
11      TARIFFS.

12      IN THE MATTER OF THE  
13      APPLICATION OF THE DAYTON  
14      POWER AND LIGHT COMPANY       CASE NO. 12-428-EL-AAM  
15      FOR APPROVAL OF CERTAIN  
16      ACCOUNTING AUTHORITY.

17      IN THE MATTER OF THE  
18      APPLICATION OF THE DAYTON  
19      POWER AND LIGHT COMPANY       CASE NO. 12-429-EL-WVR  
20      FOR WAIVER OF CERTAIN  
21      COMMISSION RULES.

22      IN THE MATTER OF THE  
23      APPLICATION OF THE DAYTON  
24      POWER AND LIGHT COMPANY       CASE NO. 12-672-EL-RDR  
25      TO ESTABLISH TARIFF  
26      RIDERS.

27               Deposition of J. EDWARD HESS, Witness  
28      herein, called by The Dayton Power and Light  
29      Company for cross-examination pursuant to the  
30      Rules of Civil Procedure, taken before me,  
31      Beverly W. Dillman, a Notary Public in and for  
32      the State of Ohio, at the offices of McNees  
33      Wallace & Nurick LLC, 21 East State Street, 17th  
34      Floor, Columbus, Ohio, on Wednesday, March 6,  
35      2013, at 1:32 o'clock p.m.

1 EXAMINATION CONDUCTED Page

2 BY MR. SHARKEY:.....4

3 EXHIBITS MARKED

4 (Thereupon, Hess Exhibit 1, 4928.143

5 Competitive Retail Electric Service,

6 was marked for purposes of identification.)....12

7 (Thereupon, Hess Exhibit 2, Corporate

8 Separation Plan, 12-17-1999, as amended

9 2-28-2000, was marked for purposes of

10 identification.).....19

11 (Thereupon, Hess Exhibit 3, Second Amended

12 Corporate Separation Plan, 10-1-2008, was

13 marked for purposes of identification.).....30

14 (Thereupon, Hess Exhibit 4, Stipulation

15 and Recommendation, was marked for

16 purposes of identification.).....34

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1 APPEARANCES:

2 On behalf of The Dayton Power and  
3 Light Company:

4 Faruki, Ireland & Cox P.L.L.

5 By: Jeffrey S. Sharkey  
6 Attorney at Law  
7 500 Courthouse Plaza, S.W.  
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10 On behalf of the Industrial Energy Users-Ohio:

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15 17th Floor  
16 Columbus, Ohio 43215

17 On behalf of Federal Executive Agencies:

18 USAF Utility Law Field Support Center

19 By: Major Christopher C. Thompson  
20 Staff Attorney (via telephone)  
21 139 Barnes Drive  
22 Suite 1  
23 Tyndall Air Force Base, Florida 32403

24 On behalf of the Staff of the Public  
25 Utilities Commission of Ohio:

Doris McCarter (via telephone)  
David Lipthrapp (via telephone)  
Assistant Attorneys General  
180 East Broad Street  
Columbus, Ohio 43215

26 ALSO PRESENT:

27 Donna Seger-Lawson (via telephone)

28 \* \* \*

1 J. EDWARD HESS  
2 of lawful age, Witness herein, having been first  
3 duly cautioned and sworn, as hereinafter  
4 certified, was examined and said as follows:

5 CROSS-EXAMINATION

6 BY MR. SHARKEY:

7 Q. Afternoon, Mr. Hess. As you know,  
8 my name is Jeff Sharkey, and I represent The  
9 Dayton Power and Light Company in this matter.  
10 To start off with, can you state  
11 your full name for the record?

12 A. My name is John Edward Hess.

13 Q. And it's true, isn't it, Mr. Hess,  
14 that you, for approximately 30 years, were  
15 employed by the Public Utilities Commission of  
16 Ohio?

17 A. That's correct.

18 Q. What was the last position that you  
19 held at the PUCO?

20 A. As it states in my testimony, I  
21 believe I was chief of the electricity division  
22 of the utilities department.

23 Q. Can you describe generally the  
24 nature of your responsibilities in that position?

25 A. As I state in my testimony -- you

1 want me to read from it? My duties -- my duties  
2 included ensuring statutory compliance with state  
3 and federal laws, rules, regulations and  
4 procedures governing utility regulation, with the  
5 majority of that responsibility in the electric  
6 industry.

7 I was also responsible for the  
8 operating income and rate base portions of rate  
9 base and general accounting matters in all of the  
10 utility industries. It's on Page 2 of my  
11 testimony, between Lines 12 and 17.

12 Q. Now, it's true, isn't it, that you  
13 are not an economist?

14 A. I am not an economist.

15 Q. Not a lawyer?

16 A. I am not a lawyer.

17 Q. And do not have a Ph.D.?

18 A. I do not have a Ph.D.

19 Q. Okay. You have -- strike that.

20 Have you testified previously on the  
21 subject of whether utilities are entitled to  
22 recover stability charges?

23 A. Yes.

24 Q. In which matters would those be?

25 A. The last series of AEP ESP cases.

1 Q. Okay.

2 A. We had settled all the other  
3 stability charges cases when I was with the staff  
4 at Commission.

5 Q. And the AEP ESP cases you're  
6 referring to, that's the one that is still in  
7 progress, but the Commission issued a ruling in  
8 August of last year; is that right?

9 A. Yes, I believe that's correct, yes.  
10 I don't remember the date. It's the --

11 MR. OLIKER: Jeff, could you clarify  
12 what you mean by stability charge? Are you  
13 referring to 143(B)(2)(d) of the Electric  
14 Security Plan statute?

15 MR. SHARKEY: I was, Joe, yes.

16 THE WITNESS: Oh, I'm sorry.

17 Yes, sir, that's correct.

18 BY MR. SHARKEY:

19 Q. If you understood my question, Joe's  
20 clarification is a fair one, and if you need to  
21 change your answer, that's fine.

22 A. I'm sorry, I was actually thinking  
23 about transition costs. So stability charges,  
24 yeah, AEP had requested a retail stability rider,  
25 I think is what it was called, so I guess I would

1     assume that's what you're referring to.

2             Q.     You are correct, that is what I was  
3     referring to, so we are on the same page.

4             What did you do to prepare your  
5     testimony in this case?   Strike that.

6             What did you review to prepare your  
7     testimony in this case?

8             A.     I think it's in my testimony, again,  
9     on Page 3, Lines 5 through 13.

10            Q.     Did you review anything besides  
11     those items?

12            A.     Not to develop the opinions I needed  
13     for my testimonies.

14            Q.     You're familiar with the fact that  
15     DP&L had an ESP case in 2008?

16            A.     Yes.

17            Q.     I'll represent to you that was filed  
18     in October of 2008. Did you work on that case  
19     when you were at the staff?

20            A.     No.

21            Q.     Okay. And your testimony reflects  
22     that you were -- that you resigned in March of  
23     2009, so would have been gone from the staff by  
24     the time that 2008 ESP case was resolved; right?

25            A.     That's correct. That's why I

1 delayed in my response. I didn't remember that  
2 it was filed in 2008. I thought it was after I  
3 had retired.

4 Q. No --

5 A. Okay.

6 Q. No, it's 08-1094 is the case number.

7 A. That's right, so it was '08.

8 Q. Okay. At times during the  
9 deposition I'm going to refer to opinions that  
10 you sponsor, or that are contained in your  
11 testimony, and opinions that you have. So, for  
12 example, an opinion that you sponsor would be  
13 something that's written in your testimony; you  
14 certainly have plenty of opinions beyond what's  
15 there. But I may sometimes draw that  
16 distinction. Do you understand that distinction?

17 A. Yes.

18 Q. Okay. Your testimony, from a  
19 50,000-foot-view, sponsors an opinion that DP&L  
20 should not recover a service stability rider or a  
21 switching tracker; right?

22 A. That's correct.

23 Q. Okay. And you have that opinion,  
24 principally, based upon certain corporate  
25 separation and transition cost grounds that are



1 described in your testimony; right?

2 A. That's correct.

3 Q. For example, you don't sponsor any  
4 testimony on competitive bidding percentages or  
5 how quickly DP&L should get to a hundred percent  
6 competitive bidding?

7 A. I do not.

8 Q. Okay. You don't sponsor any  
9 opinions -- well, strike that.

10 You don't sponsor any opinions, for  
11 example, on ESP versus the MRO test?

12 A. That's correct.

13 Q. Okay. Other than the request in  
14 your testimony that the Commission denies DP&L's  
15 request for the SSR and the ST, does your  
16 testimony request any other relief from the  
17 Commission?

18 A. Could you explain to me what you  
19 mean by that, what other relief?

20 Q. Well, I know that you asked -- that  
21 your recommendation is that the Commission deny  
22 DP&L's request for the SSR and the ST.

23 A. That's correct.

24 Q. Is there anything else in your  
25 testimony, in your view, that you're asking the

1 Commission to do?

2 MR. OLIKER: Jeff, it's a little  
3 vague. Sorry to object on that basis. Can  
4 you -- there are many components to his  
5 testimony, and by clarifying relief, I think  
6 that's -- can you state that a little  
7 differently?

8 MR. SHARKEY: Sure, I can try.

9 BY MR. SHARKEY:

10 Q. Your testimony, for various reasons,  
11 suggests that the Commission should deny DP&L's  
12 request for the SSR and the ST. We already  
13 established that; right?

14 A. That's correct.

15 Q. Okay. So what I'm trying to figure  
16 out is whether there is anything else in your  
17 testimony that you think that the Commission  
18 should do or should order. I don't see it in  
19 your testimony, but that's why I'm asking the  
20 question.

21 A. Yes.

22 Q. What else do you think the  
23 Commission should do or should --

24 A. I believe the Commission needs to  
25 know whether or not the company is complying with

1 the corporate separation rules on accounting. At  
2 this point in time it is rather confusing to me.  
3 We tried for about two months to get details of  
4 distribution information, transmission  
5 information and generation information, and  
6 although we got parts of it, we have heard from  
7 company representatives that you do not account  
8 for distribution, transmission and generation  
9 separately.

10 Q. Okay.

11 A. I think without that information,  
12 the Commission is not going to be able to make a  
13 determination of what the SSR revenue is for.  
14 Without knowing what that's for, the Commission  
15 isn't going to be able to properly manage the  
16 regulated and -- portion of Dayton Power and  
17 Light's rates in the future.

18 Q. Okay. Anything else that you're  
19 asking the Commission to do in your testimony  
20 that you can think of? And I don't mean this to  
21 be a trap. If, at the end of the day, you say  
22 wait a minute, I forgot about A, B, C, we can  
23 come back to it.

24 A. Okay.

25 Q. But as we sit here now, can you

1 think of anything else?

2 A. Not off the top of my head.

3 Q. Okay. If at some point, as I said,  
4 as we go through the hours and something else  
5 pops to mind, as I said, I don't mean it to be a  
6 trap, I just want to make sure I'm exploring any  
7 area of relief that you're seeking.

8 All right. I'm going to hand to you  
9 as an exhibit, and this will be marked as Hess  
10 Exhibit 1, it's a copy of Ohio Revised Code  
11 4928.143.

12 (Thereupon, Hess Exhibit 1, 4928.143  
13 Competitive Retail Electric Service, was marked  
14 for purposes of identification.)

15 BY MR. SHARKEY:

16 Q. Have you read this statute before?

17 A. Yes.

18 Q. Okay. And if you would, take a  
19 moment and look at Subsection (B)(2)(d).

20 A. Starting out with terms, conditions,  
21 or charges relating to limitations?

22 Q. Yes.

23 A. Got it.

24 Q. You have read that section before as  
25 well, haven't you?

1           A.     Yes.

2           Q.     If you want to take a moment to read  
3     it again before I ask questions, that's fine.  If  
4     you feel ready to answer questions immediately  
5     about it, that's fine too.

6           A.     (Examining document.)  I see that.

7           Q.     Is it your understanding that that  
8     section requires DP&L to establish that certain  
9     things are true before DP&L could recover any  
10    moneys under that subsection?

11           MR. OLIKER:  Object, to the extent  
12    you're asking for a legal conclusion.

13                   But based upon your expertise, you  
14    can answer the question, to the extent you know.

15           THE WITNESS:  Could I have the  
16    question read, please?

17                   (Record read.)

18           THE WITNESS:  No, I don't see that  
19    in here.

20    BY MR. SHARKEY:

21           Q.     Let me ask it differently.  Have you  
22    read Joe Bowser's testimony?

23           A.     Yes.

24           Q.     Okay.  Do you understand that Mr.  
25    Bowser offers certain opinions about whether or

1 not the elements listed in that subsection are  
2 satisfied?

3 A. I have a vague memory of that.

4 Q. Okay. I know that your testimony  
5 addresses, as we just discussed, transition costs  
6 and corporate separation matters relating to  
7 DP&L's request for the SSR and the ST. My  
8 question to you is, does your testimony that you  
9 sponsor address any of the elements in this  
10 subsection?

11 A. No, I don't believe it does.

12 Q. Okay. Those are all my questions on  
13 that section.

14 You understand that DP&L's ESP  
15 filing is for SSO service?

16 A. Yes.

17 Q. And that's a generation service?

18 A. It's a -- standard service offer's  
19 for generation service, yes.

20 Q. Not trying to trick you here, just  
21 setting the stage so you understand where I'm  
22 going. Those are easy questions.

23 MR. OLIKER: Objection, to the  
24 extent it slightly mischaracterizes what an ESP  
25 is.

1 BY MR. SHARKEY:

2 Q. Do you agree with me that the  
3 principal purpose of an SSO is to address  
4 generation service, and not distribution and  
5 transmission services?

6 A. No, I think an SSO is a backup  
7 service for a customer that can't find a retail  
8 provider for generation.

9 Q. Okay. But -- I agree with that.

10 A. But --

11 Q. Sorry. I don't want to cut you off.

12 A. But in addition to that,  
13 transmission can be addressed in an SSO, and so  
14 can distribution charges --

15 Q. Okay.

16 A. -- according to the ESP.

17 Q. I agree with both of those things,  
18 but my question to you is a little different, is  
19 is it consistent with your understanding that the  
20 principal purpose of the SSO is to establish the  
21 default generation rates that a utility will  
22 charge?

23 MR. OLIKER: Object, to the extent  
24 it calls for a legal conclusion, whether he knew  
25 what the purpose of the legislature was in

1 establishing the statute.

2 THE WITNESS: Could I have the  
3 question reread, please?

4 (Record read.)

5 THE WITNESS: The principal purpose  
6 of an SSO is to provide the default generation  
7 service. That's a fair characterization, yes.

8 BY MR. SHARKEY:

9 Q. Okay.

10 A. Talking about just an SSO, okay?

11 Q. Yes, that was the question.

12 You -- I don't want to put words in  
13 your mouth, so if I mischaracterize this, let me  
14 know -- but you sponsor opinions that the  
15 Commission should not consider DP&L's generation  
16 costs, but should consider only its transmission  
17 and distribution costs in this proceeding.

18 First of all, is that a fair  
19 characterization of your testimony?

20 MR. OLIKER: Objection, because it  
21 mischaracterizes the testimony.

22 But you may answer.

23 MR. SHARKEY: I don't think that's a  
24 proper objection because I asked the question:  
25 Is it a fair characterization? You can disagree.



1 MR. OLIKER: Fair enough.

2 THE WITNESS: No, I disagree.

3 BY MR. SHARKEY:

4 Q. Okay. Well, then, put it -- why  
5 don't you put it in your words and I will ask  
6 follow-up questions.

7 A. What do you want me to put in my  
8 words?

9 Q. Well, you have testimony that the  
10 Commission should not consider DP&L's  
11 generation-related costs in setting -- or in  
12 considering DP&L's request, rather, for an SSR  
13 and ST; is that accurate?

14 A. My testimony states that the company  
15 is basing the request for SSR revenues on a  
16 vertically-integrated utility company, and I  
17 believe that that's improper.

18 Q. And why is that?

19 A. Because it includes generation and  
20 transmission revenues in it, and it should just  
21 be a distribution company providing a standard  
22 service offer.

23 Q. So here is the question, then: You  
24 have told me earlier that a fair characterization  
25 of the SSO is to principally deal with setting

1 generation default service rates. Why should the  
2 Commission ignore -- why should the Commission  
3 focus solely on distribution costs in that case?

4 A. It's a distribution company  
5 providing a standard service offer.

6 MR. OLIKER: Could I have the  
7 question read back, please?

8 THE WITNESS: Because it is the  
9 distribution --

10 MR. OLIKER: Hold on. Sorry.

11 (Record read.)

12 BY MR. SHARKEY:

13 Q. Had you finished your answer?

14 A. Yeah, but --

15 MR. OLIKER: I object. I think  
16 you're mischaracterizing two things, talking  
17 about distribution costs and generation service  
18 price, and those two things aren't necessarily  
19 tied together.

20 BY MR. SHARKEY:

21 Q. Had you finished your answer?

22 A. Yes.

23 Q. Let me ask you about DP&L's 1999  
24 corporate separation plan.

25 A. Okay.

1                   MR. SHARKEY: I have got a copy of  
2   it here (indicating).

3                   MR. OLIKER: Thank you.

4                   MR. SHARKEY: I'm going to mark that  
5   as Hess Exhibit Number 2.

6                   (Thereupon, Hess Exhibit 2,  
7   Corporate Separation Plan, 12-17-1999, as amended  
8   2-28-2000, was marked for purposes of  
9   identification.)

10   BY MR. SHARKEY:

11                 Q.   It's true, isn't it, that you, when  
12   you were with the Commission staff, worked on  
13   DP&L's 1999 electric transition plan case?

14                 A.   That's correct.

15                 Q.   Many long, hard hours on that case?

16                 A.   Yes, sir.

17                 Q.   And this corporate separation plan,  
18   I'll represent to you, I have printed off the  
19   Commission's website from that docket. Would you  
20   have read that plan at the time?

21                 A.   Yes.

22                 Q.   And did you read this plan in  
23   preparation of your testimony today?

24                 A.   Yes.

25                 Q.   Let me strike that because that's a

1 poorly worded question.

2 Did you read this plan in  
3 preparation of your testimony?

4 A. Yes.

5 Q. Okay.

6 A. I have read -- just so it's clear, I  
7 have read this in the last couple months, yes.

8 Q. Okay. If you would turn, please, to  
9 Page 14 of the document?

10 A. Yes, sir, I have that.

11 Q. Okay. Feel free to read that page  
12 if you want, but my question is going to be a  
13 pretty general one, is that is it your  
14 recollection that this page included a commitment  
15 by The Dayton Power and Light Company to transfer  
16 its transmission and distribution assets to an  
17 affiliate?

18 A. (Examining document.) No, I believe  
19 this plan states that it's going to change  
20 its -- or it's going to transfer its generating  
21 assets to an affiliate; isn't that correct? DP&L  
22 will transfer -- I'm looking at -- specifically,  
23 at Paragraph 2: Specifically, subject to the  
24 provisions of Section III.A.3 below, DP&L will  
25 transfer all of its current generating assets and

1 its retail generation service business, along  
2 with its businesses of supplying aggregation,  
3 power marketing or power brokerage service to  
4 consumers, to one or more fully separated  
5 affiliates.

6 Q. I apologize. Thanks for correcting  
7 me. And you recall that that was approved as  
8 part of DP&L's 1999 ETP case?

9 A. As corrected by Mr. Rice's  
10 testimony, which was filed on May 15th of 2000.

11 Q. You have got a good memory.

12 A. (Witness nodding head up and down.)

13 Q. Now, is it true that the Commission  
14 staff subsequently asked The Dayton Power and  
15 Light Company not to transfer its generation  
16 assets to an affiliate?

17 A. That's absolutely not correct.

18 MR. OLIKER: Objection.

19 I would advise you not to reveal any  
20 privileged communications. And it's not my  
21 privilege to protect.

22 BY MR. SHARKEY:

23 Q. So we are clear, I'm asking about  
24 communication between the Commission staff and  
25 The Dayton Power and Light Company.

1           A.    I can speak for myself as a staff,  
2    what I told Dayton Power and Light.

3           Q.    Okay.

4           A.    So if there was another staff person  
5    who maybe told them not to do that, I'm not aware  
6    of that. I did not tell Dayton Power and Light  
7    not to transfer its generating assets out of  
8    Dayton Power and Light. As a matter of fact, I  
9    probably told them the exact opposite.

10          Q.    So in -- just so we are clear, did  
11    you ever have any conversations with The Dayton  
12    Power and Light Company, subsequent to this  
13    corporate separation plan being approved from the  
14    '99 case, regarding its -- whether -- regarding  
15    whether DP&L should transfer its generation  
16    assets to an affiliate?

17          A.    Yes.

18          Q.    Who did you have those conversations  
19    with?

20          A.    I'm -- 90 to 95 percent of my  
21    conversations were with Dick Reid. Donna  
22    Seger-Lawson spoke -- I'm sorry, let me make that  
23    clear. 90 to 95 percent of my conversations were  
24    with Dick Reid. But I also would have talked to  
25    Donna Seger-Lawson, Allen Hill, Steve -- who was

1 the president of Dayton Power and Light, whose  
2 name I can't remember, his last name I can't  
3 remember -- I spoke to him.

4 Q. Okay.

5 A. So chances are it was Dick Reid.

6 Q. What do you recall of conversations  
7 you had with Mr. Reid, or anybody else from DP&L,  
8 regarding whether DP&L should transfer its  
9 generating assets to an affiliate?

10 A. In 2004, when FirstEnergy noticed  
11 publicly that they were going to transfer their  
12 assets to an affiliate, I called all the utility  
13 companies and suggested to them that they either  
14 needed to oppose FirstEnergy's move to move  
15 generating assets to an affiliate, or they needed  
16 to do the same thing FirstEnergy was doing. And  
17 I would have had that conversation with Mr. Reid.  
18 I had it with all the utility companies.

19 Q. Okay. Did DP&L, to your  
20 recollection, oppose FirstEnergy's request?

21 A. I don't believe anybody opposed  
22 their request. I'm sorry, that isn't correct.  
23 Somebody opposed, and then later withdrew their  
24 opposition.

25 Q. Okay. What other conversations do

1     you recall having with The Dayton Power and Light  
2     Company relating to whether it should or  
3     shouldn't transfer its generating assets?

4                 MR. OLIKER: I object to the time  
5     frame. Could you maybe narrow it a little bit,  
6     Jeff?

7     BY MR. SHARKEY:

8                 Q. At any time after 1999, when the  
9     Commission approved its CSB. It's a broad  
10    question. I don't expect you to remember every  
11    conversation, but I'm just asking for what you  
12    know.

13                A. Yeah, I don't remember.

14                Q. But just so my -- just so I'm clear,  
15    I think you were clear on this, but you  
16    personally never asked, suggested, implied that  
17    The Dayton Power and Light Company should not  
18    transfer its generation assets to an affiliate?

19                A. Well, I have stated what my  
20    conversation was with them: To either oppose  
21    FirstEnergy or to move their generating assets to  
22    an affiliate.

23                Q. Okay. So you told me --

24                A. So I don't really know how to  
25    respond to the question you just asked me.



1 That's the statement.

2 Q. Okay. You just told me DP&L did not  
3 oppose FirstEnergy's request; right?

4 A. That's my memory, yes.

5 Q. Did you subsequently tell DP&L that  
6 it had to transfer its generation assets?

7 MR. OLIKER: Objection, asked and  
8 answered.

9 You can answer it again, Ed.

10 THE WITNESS: I don't know how to  
11 answer it any better than I just did, you know.  
12 My suggestion to all utility companies was that  
13 if FirstEnergy was going to move their generating  
14 assets to an affiliate, that they should follow  
15 in suit. Keep in mind, though, Mr. -- that I had  
16 no authority. I mean, it was the Commission that  
17 would have had to have ordered it. I only made  
18 recommendations to the Commission and suggested  
19 things to utility companies.

20 BY MR. SHARKEY:

21 Q. I understand.

22 A. But if what you're asking is from a  
23 staff perspective, I can tell you that's what I  
24 did in around the 2004 time frame.

25 Q. In the early 2000s, were you

1 concerned, as a staff member, that competition  
2 was not developing in Ohio as expected?

3 A. Yes.

4 Q. Were you also concerned that market  
5 rates for generation may well turn out to be  
6 higher than the regulated traditional cost of  
7 service rates that the utilities had been  
8 charging?

9 A. I'm not sure -- it was always a  
10 concern. Absolutely, that was probably a  
11 concern. But I think that the biggest concern  
12 was the infrastructure of a market, you know,  
13 there was no PX, nobody was in an RTO. There  
14 were concerns well beyond price. I mean, there  
15 were companies that we were concerned about  
16 price, but the concern that you asked me about in  
17 2001-2002 went more to the infrastructure of this  
18 thing that everybody was calling a market. There  
19 was no transparency, there was no reliability  
20 without having -- without them being in either an  
21 ISO or an RTO.

22 So there was just a lot of  
23 uncertainty in the structure of electric retail  
24 market -- markets back then.

25 Q. Did that lack of structure have the

1 potential to cause prices, if they were set in a  
2 purely competitive environment, to be higher than  
3 traditional cost-based?

4 A. It was, if not impossible, extremely  
5 difficult to try to predict what a retail market  
6 price was from 2001 through 2005. As a matter of  
7 fact, I think the Commission, in FirstEnergy's  
8 RSP case, requested that marketers provide some  
9 kind of a structure, give us some kind of an idea  
10 of what a retail market rate would look like.  
11 And I don't think there were any responses to  
12 that.

13 Q. Okay. Did you believe at the time  
14 that utilities maintaining ownership of their  
15 generation assets provided protections to  
16 customers?

17 A. No.

18 Q. Did --

19 A. It was an unregulated service. I  
20 didn't think that the Commission had a whole lot  
21 of authority to do anything with the generation  
22 unit of any of the vertically-integrated utility  
23 companies.

24 Q. Okay. As of March of 2009, when you  
25 left the Commission, it's true, isn't it, that

1 the Commission had never ordered DP&L to transfer  
2 its generation assets?

3 A. From everything that I have  
4 reviewed, I think that that's correct.

5 Q. Okay.

6 A. That's because functional  
7 separation, if done properly, would -- would --  
8 would have worked fine. So I think the  
9 Commission was okay with functional separation.

10 Q. Did you ever recommend to the  
11 Commission that it should order DP&L to separate  
12 its generation assets?

13 MR. OLIKER: Jeff, can I have a  
14 clarification, when you use the term order,  
15 you're not talking about approving the separation  
16 of generation assets, you're talking about  
17 directing them that they must transfer; correct?

18 MR. SHARKEY: I'm asking about any  
19 order issued after the 1999 order.

20 MR. OLIKER: After, okay.

21 THE WITNESS: May I have the  
22 question reread, please?

23 (Record read.)

24 THE WITNESS: Publicly, no.

25 BY MR. SHARKEY:

1 Q. Privately?

2 A. Well, those are --

3 MR. OLIKER: Object, calling for  
4 conversations, potentially, with attorneys  
5 involved from staff, not knowing whether they  
6 would have been, so I would advise you not to  
7 answer those questions.

8 THE WITNESS: I don't remember.

9 BY MR. SHARKEY:

10 Q. You -- let me characterize this --  
11 are you an employee of the McNees firm or IEU?

12 A. I'm an employee of McNees Wallace,  
13 yes. I'm a consultant with IEU.

14 Q. Do you have a position with IEU?

15 A. Well -- no, no, no. We consult with  
16 IEU.

17 Q. So the law firm represents IEU, but  
18 you don't have a position at IEU?

19 A. Yeah, I don't -- I think there is  
20 only one position at IEU, and that's the  
21 executive director.

22 Q. In any event, the client of McNees,  
23 IEU, are you aware of any action taken by IEU,  
24 after 1999, and before this case, in which IEU  
25 sought to have DP&L compelled to transfer its

1 generation assets to an affiliate?

2 A. I don't know the answer to that.

3 Q. You're not aware of any?

4 A. I'm not aware. Yeah, there was a  
5 couple of paragraphs in the settlements that IEU  
6 and the staff signed, in either the RSP or the  
7 RSS case, that dealt with corporate separation.  
8 But I don't remember, off the top of my head,  
9 whether that language explicitly requested, as  
10 you just stated, that they should legally  
11 separate.

12 MR. OLIKER: I would advise you not  
13 to speculate.

14 MR. SHARKEY: Can I hear that answer  
15 again? I'm sorry.

16 (Record read.)

17 MR. SHARKEY: Okay. Let me hand you  
18 a document that I am going to mark as Hess  
19 Exhibit 3.

20 (Thereupon, Hess Exhibit 3, Second  
21 Amended Corporate Separation Plan, 10-1-2008, was  
22 marked for purposes of identification.)

23 THE WITNESS: This was Hess Exhibit  
24 2 (indicating)?

25 BY MR. SHARKEY:

1 Q. Yes. Would you do me a favor and  
2 write "Hess 2" on there because we will  
3 eventually give it to the court reporter. I  
4 should have done it before I handed it to you.

5 A. (Witness complying.)

6 Q. There is Hess 3 (indicating).

7 Okay. Hess Exhibit 3 is the  
8 corporate separation plan, entitled Second  
9 Amended Corporate Separation Plan, from DP&L's  
10 2008 ESP case. Have you reviewed this document  
11 before?

12 A. Yes.

13 Q. You told me earlier you didn't work  
14 on this case. But you reviewed this -- is it  
15 true you reviewed this document in preparation  
16 for your testimony today?

17 A. Not my testimony today, the  
18 deposition today; I reviewed this document within  
19 the last few months.

20 Q. The second time I have misstated it.  
21 Thanks for correcting me.

22 Turn if you would, then, to Page 14.

23 A. Yes, sir.

24 Q. Okay. If you recall, from Hess  
25 Exhibit 2, Page -- do you recall, from Hess

1 Exhibit 2, Page 14, Subsection III.A.1 was the  
2 subsection that contained the commitment by The  
3 Dayton Power and Light Company to transfer its  
4 generation assets?

5 A. That's correct. But again, Mr.  
6 Sharkey, just so it's clear, this was updated by  
7 Mr. Rice, and I believe that it -- I believe that  
8 Mr. Rice corrected it to say that he was going to  
9 transfer the transmission and distribution assets  
10 out of Dayton Power and Light. So I remember it  
11 from this document, and I see it again -- I see  
12 that here, yes.

13 MR. OLIKER: Ed, I would instruct  
14 you to refer to the document by exhibit number,  
15 for clarity of the record, instead of "this  
16 document."

17 THE WITNESS: And what I referred to  
18 earlier, when I took my hand over, was Hess  
19 Exhibit 2, which was the first corporate  
20 separation plan, dated December 17th, 1999, as  
21 amended February 28th of 2000. But that was  
22 updated and corrected by Mr. Rice in testimony  
23 after that was filed.

24 BY MR. SHARKEY:

25 Q. Hess Exhibit 3, Subsection III.A.1,



1 on Page 14, does not contain any commitment by  
2 The Dayton Power and Light Company to transfer  
3 either its generation assets or its transmission  
4 and distribution assets; correct?

5 MR. SHARKEY: Can we go off the  
6 record for a moment?

7 (Thereupon, an off-the-record  
8 discussion was held.)

9 MR. SHARKEY: Go back on the record.

10 BY MR. SHARKEY:

11 Q. Do you need the question read back  
12 to you?

13 A. No, I think I understand it. No, I  
14 don't see a commitment to transfer either  
15 generation, transmission or distribution to an  
16 affiliate.

17 Q. Okay. You're welcome to read the  
18 whole document, if you like, but the question is  
19 a simple one: Are you aware of any commitment in  
20 Hess Exhibit 3, the 2008 Second Amended Corporate  
21 Separation Plan by The Dayton Power and Light  
22 Company, to transfer assets to either a --  
23 transfer either generation assets or transmission  
24 and distribution assets to an affiliate?

25 MR. OLIKER: I would just object in

1     that Mr. Sharkey mischaracterizes the law related  
2     to transfer of generating assets.  It's done  
3     through a formal application.

4                     But you may answer the question.

5                     THE WITNESS:  No, I -- I don't know  
6     the answer to the question.  I don't know of any  
7     commitment in here.

8     BY MR. SHARKEY:

9                     Q.   And consistent with your counsel's  
10    instructions, when you say in here, you're  
11    referring to Hess Exhibit 3?

12                    A.   Exhibit 3, I'm sorry.

13                    Q.   That's fine.

14                    A.   Good thing you're here to remind me.

15                    Q.   That's fine.

16                    Then I want to show you a document  
17    that I'm going to mark as Hess Exhibit 4.

18                    (Thereupon, Hess Exhibit 4,  
19    Stipulation and Recommendation, was marked for  
20    purposes of identification.)

21    BY MR. SHARKEY:

22                    Q.   It's the Stipulation and  
23    Recommendation from that 2008 case.  Did you read  
24    this document in the course of preparing your  
25    testimony?

1 A. I believe I did, yes.

2 Q. Okay. If you would turn, first of  
3 all, to Page 21, you will see there that the  
4 signature pages --

5 A. I have that.

6 Q. Okay. You agree with me that  
7 Industrial Energy Users, your current client,  
8 signed this stipulation?

9 A. Yes.

10 Q. Okay. And the Commission staff,  
11 your former employer, also signed this  
12 stipulation; correct? Right under DP&L's  
13 signature on Page 1.

14 A. Yes, I see it.

15 Q. And then if you turn to Page 34 --  
16 I'm sorry, Page 18, Paragraph 34 --

17 MR. OLIKER: Could I have that read  
18 again?

19 MR. SHARKEY: Page 18, Paragraph 34.

20 THE WITNESS: I have that.

21 BY MR. SHARKEY:

22 Q. Okay. The third sentence in that  
23 paragraph says: Except as modified by this  
24 Stipulation, DP&L's Application in these matters,  
25 including all supporting chapters, schedules,

1     workpapers, and testimony, is approved. Did I  
2     read that accurately?

3             A.     Yes.

4             Q.     And you understand, pursuant to that  
5     sentence, that DP&L's corporate separation plan,  
6     Hess Exhibit 3, was approved?

7             MR. OLIKER: Object, to the extent  
8     that there is no indication the witness approved  
9     the application, and that you limit your response  
10    to the Commission indicating its approval in a  
11    case that you didn't work on.

12            THE WITNESS: Yeah, I -- I mean,  
13    it's kind of -- you're asking me to speculate  
14    there, and I'm not sure of that.

15    BY MR. SHARKEY:

16            Q.     I'm just asking you for your  
17    understanding. You told me you read this  
18    document in preparation for your testimony -- for  
19    preparing your testimony. Let me step back.

20            You understand that the Commission  
21    subsequently approved this stipulation; right?

22            A.     I believe that's correct, yes.

23            Q.     Okay. Are you aware of anything in  
24    the Commission's order that altered this  
25    Paragraph Number 34?

1           A.    Off the top of my head, I don't  
2   remember.

3           Q.    Okay.  Is it your understanding that  
4   the Commission -- strike that.

5                    So you don't know whether or not  
6   DP&L's 2008 corporate separation plan is  
7   currently the governing corporate separation plan  
8   for DP&L?

9           A.    Like I said, that's not what I said  
10   earlier.  I wasn't aware whether or not the  
11   Commission order changed anything in this  
12   document.

13          Q.    Okay.  Is it your understanding that  
14   Hess Exhibit 3, DP&L's corporate separation plan  
15   from its 2008 case, is the currently controlling  
16   corporate separation plan for DP&L?

17          A.    I believe that's correct.  On Page  
18   14, though, the Ohio Consumers' Counsel did  
19   include, at 27c, some language on corporate  
20   separation.

21                   MR. OLIKER:  And which document are  
22   you referring to?

23                   THE WITNESS:  And I'm referring to  
24   Hess Exhibit 4.  I'm not sure how that would have  
25   impacted the corporate separation plan.  In my

1 review of it, I didn't see any updates or  
2 corrections that were in any dockets to this.

3 BY MR. SHARKEY:

4 Q. Okay. Are you aware of any  
5 commitment by The Dayton Power and Light Company,  
6 that you believe is currently controlling, in  
7 which it has stated it would transfer its  
8 generation assets or its transmission and  
9 distribution assets to an affiliate?

10 A. Well, yeah, the law, 4928.17,  
11 requires legal separation.

12 Q. Well, I'm going to -- the question  
13 is commitments by The Dayton Power and Light  
14 Company. I'm not asking about legal  
15 requirements, I'm talking about commitments made  
16 by DP&L, first of all.

17 A. Well, I assume Dayton Power and  
18 Light would follow the law, and the intent is to  
19 legally separate, with the ability to temporarily  
20 functionally separate.

21 Q. My question to you is -- I'm not  
22 asking about what's in the statute. I'm asking  
23 about commitments made by The Dayton Power and  
24 Light Company. Are you aware of any commitments  
25 made by The Dayton Power and Light Company, for

1 instance, like stipulations we have looked at, in  
2 which it has committed to transferring either its  
3 generation or its transmission and its  
4 distribution assets to an affiliate?

5 MR. OLIKER: Objection. To clarify,  
6 do you mean ever or after the ETP?

7 MR. SHARKEY: That are currently  
8 controlling commitments.

9 THE WITNESS: Well, and when you  
10 refer to currently controlling commitments,  
11 you're referring to Hess Exhibit 3, Second  
12 Amended Corporate Separation Plan, or any other  
13 thing that's been approved by the Commission?  
14 Because there is a commitment by Dayton Power and  
15 Light, I think, in the current ESP to separate in  
16 five years, six years, seven years, something  
17 like that.

18 BY MR. SHARKEY:

19 Q. Fair enough. Anything else?

20 A. No.

21 Q. You understand that The Dayton Power  
22 and Light Company currently owns transmission,  
23 distribution and generation assets, among others?

24 A. Dayton Power and Light Company, yes.

25 Q. Okay. And, again, I don't want to

1 mischaracterize your testimony, but as I  
2 understood it, it was your opinion that the  
3 company -- the Commission should not consider any  
4 costs or inability of DP&L's generation assets to  
5 recover adequate revenue in considering DP&L's  
6 request for an SSR; is that right?

7 THE WITNESS: Could I have the  
8 question reread, please?

9 (Record read.)

10 THE WITNESS: I don't understand the  
11 question.

12 BY MR. SHARKEY:

13 Q. Okay. Is it your view -- let me  
14 step back.

15 You understand that Dayton Power and  
16 Light Company has requested the SSR and the ST  
17 because it says it needs those riders to maintain  
18 its financial integrity?

19 A. Of the vertically-integrated utility  
20 company, yes.

21 Q. Okay. And it is your view that the  
22 Commission should reject that request; right?

23 A. Yes.

24 Q. And the reason is -- strike that.

25 One of the reasons that you identify



1 in your testimony that the Commission should  
2 reject that is that DP&L is a distribution  
3 business, and the Commission should not consider  
4 the revenues or costs associated with DP&L's  
5 generation assets when considering DP&L's request  
6 for the service stability rider; is that fair?

7 A. No. I believe that it is a  
8 distribution company providing a standard service  
9 offer. I don't believe it should misuse its  
10 requirement to provide that standard service  
11 offer to supplement its affiliated generation  
12 business. That's my testimony.

13 Q. Do you know -- strike that.

14 Do you sponsor any opinions as to  
15 whether The Dayton Power and Light Company, as a  
16 whole, could maintain its financial integrity if  
17 the Commission agreed with your recommendation  
18 that the SSR and the ST be rejected?

19 A. And you're referring to it as Dayton  
20 Power and Light as a whole, you're talking about  
21 the vertically-integrated utility company?

22 Q. As it exists today.

23 MR. OLICKER: Object, because it  
24 calls for a legal conclusion.

25 But you should answer.

1 BY MR. SHARKEY:

2 Q. Just so we are clear, let me restate  
3 the question. The question simply is: Do you  
4 sponsor in your testimony that you intend to  
5 submit to the Commission any opinions regarding  
6 whether DP&L could or couldn't maintain its  
7 financial integrity under any sets of facts?

8 MR. OLIKER: Objection, it's vague.  
9 Financial integrity is not defined. Also calls  
10 for a legal conclusion.

11 Do you understand his question, Ed?

12 THE WITNESS: Could I have it  
13 reread?

14 (Record read.)

15 THE WITNESS: I believe the  
16 jurisdiction within the Commission's -- the  
17 business within the Commission's jurisdiction is  
18 a distribution company providing a standard  
19 service offer. I'm not expressing an opinion on  
20 the generation side of it or the transmission  
21 side of it.

22 BY MR. SHARKEY:

23 Q. That's not my question.

24 A. Okay.

25 Q. My question is: Is there anything

1 in your testimony that addresses whether DP&L  
2 would earn sufficient revenue to earn a  
3 reasonable rate of return, as a vertically-  
4 integrated business that it currently sits, if  
5 the Commission were to adopt your proposal?

6 A. There is nothing in my testimony on  
7 that, Mr. Sharkey, because I don't believe it's  
8 the subject of what a standard service offer case  
9 is about.

10 Q. I understand your view, but -- let  
11 me strike that.

12 So you have done no analysis --  
13 strike that again.

14 Do you have a proposal as to how The  
15 Dayton Power and Light Company should -- strike  
16 that again.

17 Do you know whether DP&L, as a  
18 whole, could earn a reasonable return on equity  
19 if the Commission adopted your approach?

20 A. The vertically-integrated utility  
21 company?

22 Q. Yes.

23 MR. OLIKER: Objection, calls for  
24 speculation.

25 THE WITNESS: I don't know the

1 answer to the question.

2 BY MR. SHARKEY:

3 Q. You understand that DP&L Witness  
4 Chambers sponsors opinions -- let me strike that.

5 Did you read DP&L Witness Chambers'  
6 testimony?

7 A. Yes.

8 Q. You understand he sponsors opinions  
9 that DP&L, as a whole, as it exists today, could  
10 not maintain its financial integrity without the  
11 SSR and the ST?

12 A. I think that's what he testifies to,  
13 yes.

14 Q. Okay. And it's your opinion, I  
15 think you have made that clear, that you think  
16 that that's the wrong test to be applied?

17 A. The wrong baseline, that's correct.

18 Q. But if the Commission were to reject  
19 your view, and agree with Mr. Chambers' view that  
20 that's the correct baseline, it's true, isn't it,  
21 that there is nothing in your testimony that  
22 addresses -- I'm sorry -- that contradicts Mr.  
23 Chambers' view that DP&L could not maintain its  
24 financial integrity without those charges?

25 MR. OLIKER: Jeff, are you just

1 talking about his calculations, or do you -- I  
2 think that's a little vague.

3 MR. SHARKEY: Yeah, I'm talking  
4 about his calculations.

5 THE WITNESS: Yeah. Yeah. Mr.  
6 Sharkey, I don't address the vertically-  
7 integrated utility company's financial integrity  
8 in my testimony, if that's what you're asking. I  
9 believe that, again, if -- I state in my  
10 testimony, if the SSR and the ST are approved,  
11 that it is a misuse of the distribution company's  
12 requirement, as a standard service offer  
13 provider, in supplementing its -- its affiliated  
14 generation business, and I also believe it would  
15 be a double recovery of transition costs.

16 BY MR. SHARKEY:

17 Q. We will come to transition costs. I  
18 understand those are opinions that you sponsor.

19 A. Yeah.

20 Q. Let me ask you some questions about  
21 your testimony, I believe it starts on Page 13,  
22 dealing with whether or not DP&L needs to  
23 maintain separate books and records for its  
24 transmission, distribution and generation assets.

25 MR. OLIKER: If you don't mind?

1 MR. SHARKEY: It starts on Page 13  
2 and goes on to subsequent pages.

3 MR. OLIKER: Oh, okay.

4 THE WITNESS: I would argue that  
5 that actually starts on 12 -- Page 11, yes.

6 BY MR. SHARKEY:

7 Q. Okay. It's true, isn't it, that you  
8 opine that DP&L should be -- well, I think you  
9 just told me that. You told me at the beginning  
10 of the day that DP&L, in your view, should  
11 maintain separate books and records for its  
12 transmission, generation and distribution assets?

13 A. Yes.

14 Q. And you opine that DP&L's required  
15 to do so because it committed to maintain  
16 separate books and records for its business  
17 units; is that true?

18 A. No, because the rules require it.

19 Q. Because --

20 A. And -- and it did state that it  
21 would keep separate accounting financial  
22 statements for its business units --

23 Q. Okay.

24 A. -- yes.

25 Q. Set aside the rules for now. I want

1 to focus on the purported commitment by DP&L.

2 MR. OLIKER: Objection to purported.

3 BY MR. SHARKEY:

4 Q. The -- if you would, please, turn  
5 back to Hess Exhibit 2.

6 A. That was the corporate separation  
7 plan --

8 Q. The '99 case.

9 A. -- from the '99 case, as amended on  
10 February 28th?

11 Q. Exactly. Turn, if you would, to  
12 Page 7 of that document.

13 A. I have that.

14 Q. Okay. There is a Subparagraph C on  
15 that page, and I'd ask you to read it. But I'll  
16 tell you my question before you do, is it's true,  
17 isn't it, that that paragraph does not refer to  
18 business units?

19 MR. OLIKER: Take some time to read  
20 it first.

21 BY MR. SHARKEY:

22 Q. Absolutely. Take as much time as  
23 you need to read it. I'm just asking about that  
24 paragraph.

25 A. It doesn't refer to units, it refers

1 to affiliates, which is defined in the rules.

2 Q. Turn then, if you would, to Hess  
3 Exhibit 3, which was the 2008 Second Amended  
4 Corporate Separation Plan of DP&L.

5 MR. OLIKER: Which page?

6 MR. SHARKEY: Page 7.

7 BY MR. SHARKEY:

8 Q. And take a moment to read, again,  
9 Subparagraph C, the corresponding paragraph that  
10 we just looked at. My question to you is going  
11 to be: References to business units have been  
12 added to that paragraph; right?

13 A. Yes.

14 Q. And in that paragraph, DP&L commits,  
15 among other things, that DP&L and each affiliate  
16 or business unit in the DP&L group will maintain,  
17 in accordance with generally accepted accounting  
18 principles, an applicable uniform system of  
19 accounts, et cetera; right?

20 A. Yes.

21 Q. You told me earlier that you were  
22 not involved in this --

23 A. Could we finish that sentence,  
24 though? I'm sorry. I would like to finish the  
25 statement, though. You read a portion of it in.



1 Q. Sure. Go ahead.

2 A. There is also a section in there  
3 says that the applicable uniform system of  
4 accounts, books, records and accounts that are  
5 separate from the books, records and accounts of  
6 each other affiliate or business unit.

7 Q. And my question to you, my next  
8 question to you, is that you have already told me  
9 you were not involved in working on this 2008  
10 case that this plan was included in; correct?

11 A. That's correct.

12 Q. Okay. You understand that Mr. Tim  
13 Rice was the sponsor of this corporate separation  
14 plan in that case; right?

15 A. That's correct.

16 Q. Were you on the phone for Mr. Rice's  
17 deposition in this case?

18 A. I was.

19 Q. Okay. Did you hear Mr. Rice testify  
20 that the reason DP&L added the reference to  
21 business units into this paragraph was to address  
22 DP&L's plans to provide certain behind-the-meter  
23 services?

24 A. Mr. Sharkey, I'm not sure I remember  
25 that from his testimony. However, that's how he

1     responded to an interrogatory that I have  
2     attached to my testimony.

3             Q.     Yes, you do.

4             A.     Which seems to conflict with other  
5     terms that we have seen elsewhere and, quite  
6     honestly, documents that we have got from Dayton  
7     Power and Light.

8             Q.     Well, my question to you is a simple  
9     one. Are you aware -- strike that.

10            You weren't -- since you weren't  
11   involved in the 2008 case, you don't have any  
12   personal knowledge of any facts that would  
13   contradict Mr. Rice's testimony as to what was  
14   intended by the addition of business units to  
15   that paragraph, do you?

16            A.     Well, I would argue that I would. I  
17   mean, to the extent that you refer to business  
18   units in your CAM as generation and transmission  
19   and distribution, and then we have also received  
20   documents from you that do separate units, you  
21   used the term unit for generation, Unit Number 2,  
22   and Unit Number 6 is transmission and  
23   distribution -- I may have those reversed.

24            But the term unit is clearly used to  
25   describe those two functional operations, those

1 three big segments of the company.

2 Q. That's not my question. My question  
3 to you is what was intended in 2008 by this  
4 language.

5 MR. OLIKER: Objection, asked and  
6 answer.

7 BY MR. SHARKEY:

8 Q. Do you have any knowledge of any  
9 specific facts as to what was intended by DP&L in  
10 2008 when it added this language?

11 MR. OLIKER: Objection, again, asked  
12 and answered.

13 But you may answer again.

14 THE WITNESS: Do I have any  
15 personal -- I didn't -- did not work on the DP&L  
16 ESP case, if that's what you're asking me.

17 BY MR. SHARKEY:

18 Q. Okay. Turn, if you would, to Page  
19 14 of your testimony.

20 A. I have that.

21 Q. Okay. I'm interested in your answer  
22 that goes from Line 8 to Line 15, if you want to  
23 take a moment to reread that.

24 A. I see that.

25 Q. I'm not sure I understand the point

1     you're making, so let me ask this: Is the point  
2     you're making there a claim that DP&L's  
3     generation function constitutes a separate  
4     affiliate, as that term is defined?

5             A.     By this definition, yes.

6             MR. OLIKER: Objection, to the  
7     extent it calls for a legal conclusion.

8             But you may answer.

9     BY MR. SHARKEY:

10            Q.     Okay. Explain to me how you reached  
11     that conclusion, please.

12            A.     It states that the affiliate  
13     standards shall also apply to any internal  
14     merchant function -- I'm interpreting as  
15     generation -- of an electric utility, whereby the  
16     electric utility provides a competitive service.

17            MR. OLIKER: Do you have a copy of  
18     the rule, Jeff, he cited?

19            MR. SHARKEY: I may.

20     BY MR. SHARKEY:

21            Q.     Do you know of any Commission  
22     decision where it's held that a generation  
23     function of a utility should be treated as a  
24     separate affiliate?

25            A.     An affiliate using this definition;

1 is that correct?

2 Q. Any definition.

3 A. I'm not sure that they use the term  
4 affiliate, no. I'm not aware of a Commission  
5 decision on that.

6 MR. OLIKER: Jeff, just to clarify,  
7 you're referring to all decisions, complaint  
8 decisions, rule-making decisions?

9 MR. SHARKEY: I'm asking him if he  
10 is aware of any such decisions.

11 BY MR. SHARKEY:

12 Q. And just so we are clear, the answer  
13 to that question was no?

14 A. That's correct.

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

17 (Recess taken.)

18 BY MR. SHARKEY:

19 Q. Let me go back to one of the topics  
20 we were talking about, and you told me earlier  
21 that you never asked DP&L to refrain from  
22 transferring its generation assets.

23 A. I never told DP&L to refrain from  
24 transferring its assets, okay?

25 Q. Yes. Are you aware of whether

1 anybody on the Commission asked DP&L to refrain  
2 from transferring its generation assets?

3 MR. OLIKER: Objection, calls for  
4 speculation.

5 But you can answer if you know.

6 THE WITNESS: Yeah, I don't know.

7 BY MR. SHARKEY:

8 Q. Have you ever been told at any time  
9 by anybody that either members of the Commission  
10 or the members of its staff asked DP&L to refrain  
11 from transferring its generation assets after the  
12 1999 ETP stipulation was approved?

13 MR. OLIKER: Objection, to the  
14 extent it calls for hearsay.

15 THE WITNESS: I don't know, yes.

16 BY MR. SHARKEY:

17 Q. Just so we are clear, the question  
18 is: Has anybody ever told you that? And you say  
19 I don't know. Do you mean not to your  
20 recollection?

21 A. Yeah, nobody ever told me.

22 Q. You offer opinions that The Dayton  
23 Power and Light Company's request for the SSR and  
24 the ST should be denied because they are requests  
25 for transition costs; correct?

1           A.    To the extent they are requests for  
2   lost generation revenues, yes.

3           Q.    Define what you mean by lost  
4   generation revenues for me, please.

5           A.    Revenues that would be less --  
6   revenue recovery would be less under a market, as  
7   compared to a vertically-integrated utility  
8   company whose rates are based upon a cost-based  
9   allocation -- cost-based calculation.

10           MR. SHARKEY: Can you reread that  
11   answer to me, and read it slowly?

12                   (Record read.)

13           THE WITNESS: Let me see if your  
14   witness had even possibly a better definition for  
15   that.

16           MR. OLIKER: By your witness?

17           THE WITNESS: Your witness in the  
18   ETP case, and I believe he pronounced his name --

19   BY MR. SHARKEY:

20           Q.    Luciani?

21           A.    Luciani, thank you.

22                   Yeah, he -- his lost revenue under  
23   continued ownership methodology --

24           Q.    Let me interrupt you. What page are  
25   you on of his testimony, please?

1           A.    Page 11.  And I'm actually looking  
2   at my Attachment J -- I'm sorry -- my Attachment  
3   K, Page 11 to Mr. Luciani's testimony.

4           Q.    Okay.  And which line are you on?

5           A.    His pretax --

6           Q.    There is lines on the left-hand  
7   side.

8           A.    Yeah, I see those.  Present value of  
9   required revenue, present value of market  
10  revenue.  It starts at about Line 13.

11          Q.    Okay.

12          A.    Actually, it probably goes all the  
13  way up to Line 4.

14          Q.    Okay.  And then that is -- I'm  
15  sorry, I have lost the train of what it is that  
16  your testimony is that that is.  What is your  
17  claim that his testimony is?

18          A.    Well, it's very similar to how he  
19  defines lost revenues under continued ownership.

20          Q.    There are a couple of formulas on  
21  this page here.  Are those the formulas, as you  
22  understand them, that Mr. Luciani used to  
23  calculate transition costs?

24          A.    He used the formula at the top of  
25  Page 11, Line 3.  I believe he used lost -- the



1 lost book value under continued ownership  
2 methodology, and the formula he would have used  
3 is on Line 3.

4 Q. Okay. Lines 2 and 3 actually; is  
5 that right?

6 A. Yeah, that's correct.

7 Q. Okay. You agree with me that there  
8 is no DP&L witness in this case who sponsors a  
9 calculation using that formula?

10 A. No, I would disagree with that.  
11 I -- that formula, no. Formula 3. But the  
12 formula on 13, which Mr. Luciani says is a -- is  
13 the same kind of a calculation -- well, hold on.  
14 Let me -- let me correct that.

15 Well, Mr. Sharkey, I -- again, I  
16 might disagree with you. If I go down to Line  
17 13, the present value of the revenue requirement,  
18 your Witness --

19 Q. Chambers?

20 A. No.

21 Q. Jackson?

22 A. -- Jackson uses a revenue  
23 requirement calculation for the vertically-  
24 integrated utility company. So I would argue  
25 that he does use a revenue requirement, the

1 portion of that calculation.

2 Q. Okay. Does he use this formula,  
3 pretax stranded costs equals present value of  
4 required revenue, less present value of market  
5 revenue?

6 A. No. He -- he takes a nominal value  
7 of the revenue requirement calculation.

8 Q. Can you explain to me what you mean  
9 by that?

10 A. A nominal value isn't -- doesn't  
11 have the -- time value built into it. I mean, he  
12 uses a nominal value of a revenue requirement  
13 calculation for the vertically-integrated utility  
14 company to justify both the SSR and the ST  
15 recovery mechanisms.

16 Q. Is there anyplace in Mr. Luciani's  
17 testimony where he addresses whether The Dayton  
18 Power and Light Company would be able to maintain  
19 its financial integrity during the period  
20 2013-2018?

21 A. Well, from --

22 MR. OLIVER: I'm sorry, objection,  
23 based on the question is vague; based on what?  
24 What do you mean by would it be able to maintain  
25 financial integrity to 2018? In what respect?

1 MR. SHARKEY: In any respect.

2 BY MR. SHARKEY:

3 Q. The question is: Does Mr. Luciani  
4 address whether The Dayton Power and Light  
5 Company would be able to maintain its financial  
6 integrity in the years 2013 through 2018 in his  
7 testimony?

8 A. Yes.

9 MR. OLIKER: The --

10 BY MR. SHARKEY:

11 Q. Where?

12 A. He covers, somewhere in his  
13 testimony, that if the utility company isn't  
14 allowed to recover its stranded costs, that it  
15 will have a financial impact -- a negative  
16 financial impact on the company -- in his general  
17 discussion of what stranded costs are. And if I  
18 could direct you to his attachment --

19 Q. Well, let's start with the first  
20 one. Can you direct me to a specific spot as to  
21 your first point, and then we will go on?

22 A. Well, you asked me about two parts  
23 of it. And, yes, he does address the need to  
24 recover stranded costs, and he does cover the  
25 period 2013 through 2017. Again, if I can

1 address -- if I can direct you to his Attachment  
2 1, it covers the period --

3 Q. Hold on. You're looking at a  
4 different one than me, because RLL-1 is a --

5 A. That's an exhibit. This is  
6 confusing. That's an exhibit. His calculation  
7 for stranded costs is on his Attachment 1.

8 Q. He has attachments and exhibits.

9 A. I'm not sure what the difference is,  
10 but he did call them two different things. He  
11 covers the period 2001 through -- and you have to  
12 go through several pages here, 2001 through 2031.

13 Q. I see that he goes through --

14 A. So in responding to your question,  
15 does he address the need for stranded cost  
16 recovery and its impact, yes. And I'm going to  
17 have to find that. And does he cover the period?  
18 Yes.

19 Q. Okay. Well, why don't you address  
20 the first -- you told me that he addresses the  
21 first one. If you want to take some time to  
22 identify the points in his testimony, I would  
23 like to see them.

24 A. (Examining document.)

25 MR. OLIKER: Jeff, do you want to do

1 this on the record? Do you want to go off the  
2 record so he can identify them all?

3 MR. SHARKEY: I say we stay on the  
4 record and he can review the testimony.

5 MR. OLIKER: Okay. That's fine.  
6 Take your time, Ed.

7 THE WITNESS: (Examining document.)  
8 Well, it actually begins at Page 4,  
9 economic and public policy reasons for recovery  
10 of transition costs by DP&L.

11 (Thereupon, Kevin Murray entered the  
12 deposition conference room.)

13 THE WITNESS: And, specifically, I  
14 think it's -- the financial impact is on Page 6  
15 of his testimony, starting at Line 12, and also  
16 on Page 8, Line 1, that question, from an  
17 economic standpoint, transition cost recovery  
18 serves the goal of fairness to the utility that  
19 was required under a regulatory regime to incur  
20 costs. It assures that it's not disadvantaged --  
21 so it's that discussion.

22 BY MR. SHARKEY:

23 Q. Those are the points that you  
24 referred to?

25 A. And, again, very generally, his

1 general discussion about why it's necessary to  
2 recover stranded costs determines whether or not  
3 there would be an economic impact if a utility  
4 company were not allowed to recover stranded  
5 costs.

6 Q. Is it true that the basic formula  
7 for determining whether a utility had stranded  
8 costs was to take the book value of its assets,  
9 and subtract from that amount the present market  
10 value of the assets?

11 A. That was the methodology he used,  
12 yeah. He is -- he described three different  
13 methodologies, and I believe that's the one that  
14 Mr. Luciani --

15 Q. Luciani?

16 A. Luciani, thank you -- used.

17 Q. The -- first of all, you -- strike  
18 that.

19 Is -- strike that again.

20 Do you recall the 1999 legislation  
21 capped DP&L and all utilities' rates at their  
22 then existing rates?

23 A. We are referring to Senate Bill 3?

24 Q. Yes.

25 A. No. We were allowed to adjust for

1 changes in taxes, USF, and I don't remember the  
2 other recovery mechanism; it was a \$60 million  
3 collection mechanism over a five-year period.

4 Q. What were the items that utility  
5 rates could increase for?

6 A. Taxes.

7 Q. Taxes?

8 A. We had a material change in taxes  
9 from the assessment valuation in property taxes,  
10 and the elimination of the 4.75-percent gross  
11 receipts tax, to a kilowatt-hour tax, and we were  
12 allow to build the impact of those tax changes  
13 into the company's rates.

14 Q. Okay. So that's one, taxes.

15 A. USF, the Universal Service Fund,  
16 which was the collection mechanism that was  
17 created to recover PIPP costs, when the Ohio  
18 Department of Development took it over; and the  
19 other one in the statute that followed the change  
20 in USF, it was the next section -- I don't  
21 remember, there was an acronym that described  
22 this mechanism. It was a mechanism that allowed  
23 the utility companies to bill the customers for  
24 approximately \$60 million over the five-year  
25 market development period, and that money was to

1 be turned over to the Ohio Department of  
2 Development for, I think, low-income customer  
3 benefits.

4 Q. Okay. Other than -- let me step  
5 back.

6 There was also a 5-percent  
7 residential discount on generation, wasn't there?

8 A. That's correct. That's correct. I  
9 had forgotten about that one.

10 Q. Okay.

11 A. 5 percent of the Big G, I think, is  
12 what we ended up interpreting it correctly.

13 Q. If I recall correctly, there were  
14 disputes about whether it was Big G or little g?

15 A. There were a lot of disputes about  
16 that, yes. And I don't remember what we ended up  
17 doing with Dayton Power and Light.

18 Q. I don't either. And I'm sad to say  
19 that I remember what Big G and little g referred  
20 to, actually.

21 A. Those were very helpful terms that  
22 got us through an awful lot of discussions.

23 Q. Okay. So other than those four  
24 items, do you recall any other items that would  
25 permit DP&L to change its generation rates from



1 Senate Bill 3?

2 A. No.

3 MR. OLIKER: Object, to the extent  
4 that Mr. Hess is not offering a legal conclusion,  
5 but he can answer based on his personal  
6 experience. I'm sure that's clear, but I want to  
7 make sure it's on the record.

8 BY MR. SHARKEY:

9 Q. You would agree with me that none of  
10 those items addressed the recovery of transition  
11 costs; correct?

12 MR. OLIKER: Which -- none of these  
13 items means which items, Jeff?

14 MR. SHARKEY: Items 1 through 4 we  
15 just went through.

16 THE WITNESS: That's correct.

17 BY MR. SHARKEY:

18 Q. The Dayton Power and Light Company  
19 was not permitted, in the 1999 case, to increase  
20 its generation rates to recover the transition  
21 costs that it was determined that DP&L had?

22 A. No, transition costs were recovered  
23 within the current recovery mechanisms, that's  
24 correct.

25 Q. Current recovery mechanisms, it was

1 the then-existing rates less the 5-percent  
2 residential discount?

3 A. Plus the other adjustments we  
4 referred to.

5 Q. Okay. And the one adjustment, the  
6 first one was taxes, which was a net neutral to  
7 the company; is that right?

8 A. No. I don't know the answer to  
9 that. It had an impact. It was net neutral to  
10 the State of Ohio.

11 Q. Okay. The USF, PIPP dollars --

12 A. Can we go back? What do you mean by  
13 net neutral?

14 Q. Well, okay. That's fair enough.  
15 That's a poorly worded phrase.

16 What I was asking is were -- was  
17 DP&L permitted, in its rates, simply to recover  
18 increases in taxes so that Dayton Power and Light  
19 Company didn't have any additional profits, as a  
20 result of any changes to its rates associated  
21 with taxes?

22 A. Additional or reduction in profits,  
23 yes. It was -- it was a change in the tax  
24 structure.

25 Q. Okay. Sometimes I think I have

1 heard the phrase flow-through, the increase or  
2 decrease in taxes simply flowed through rates and  
3 DP&L didn't recover any additional or fewer  
4 profits as a result?

5 MR. OLIKER: Is that a question?

6 BY MR. SHARKEY:

7 Q. Is that right?

8 A. Didn't recover any additional  
9 profits, yeah, there was no profit mechanism, no  
10 earnings mechanism built into the recovery of  
11 those taxes, if that's what you're asking.

12 Q. That's what I'm asking. Is the same  
13 true for the USF and PIPP -- I'm sorry, the USF  
14 and the \$60 million Ohio Department of  
15 Development items that you have mentioned?

16 A. Yeah, that was not intended to be a  
17 profit mechanism for the company, it was a  
18 flow-through recovery mechanism.

19 Q. Okay. And the 5-percent discount  
20 on -- whether it was Big G or little g, that was  
21 offered to residential customers, in fact was a  
22 reduction to the profitability of the utility;  
23 right?

24 A. That would have had an impact on the  
25 bottom line, yes.

1 Q. Okay. And I believe, in your  
2 testimony, Page 22, you state that -- I'm looking  
3 starting on Line 14, that DP&L's request -- I  
4 believe this is referring to CTC, DP&L's request,  
5 including the carrying cost of \$210 million,  
6 totaled \$441 million; right?

7 A. Yes.

8 Q. And CTC was the product of Mr.  
9 Luciani's calculation, being the difference in  
10 the book value to the market value of the  
11 generation assets; right?

12 A. Well, the CTC would have been that  
13 calculation plus the carrying costs on that value  
14 for the five-year period.

15 Q. Okay. And then on the next page of  
16 your testimony, Page 23, you identify the fact  
17 that Dick Reid had identified \$171 million of  
18 regulatory assets that The Dayton Power and Light  
19 Company had; correct?

20 A. Yes.

21 Q. And if I recall, actually, it looks  
22 like you call it RTC here; right?

23 A. Correct.

24 Q. Okay. And those -- let me ask you,  
25 what were those regulatory assets, if you recall?

1           A.    Well, they are listed right there,  
2   include a deferral of regulatory assets for  
3   demand-side management; percentage of income  
4   payment plan; station emission fees; phase-in  
5   deferral cost; deferred interest-Zimmer; Killen  
6   post in service accounting for funds used during  
7   construction; unamortized debt discount and SA --  
8   FAS 109 net assets.

9           Q.    Those were various items that the  
10   company had been authorized to defer for a later  
11   recovery; is that right?

12           MR. OLIKER:   Could you clarify that?  
13   Are you speaking in that case they were  
14   authorized to defer, or previously authorized to  
15   defer?

16           MR. SHARKEY:   Previously, before  
17   this case, before the '99 case.

18           MR. OLIKER:   All right.

19           THE WITNESS:   Yeah, there would have  
20   been some kind of a regulatory order that would  
21   have allowed the company to account for these as  
22   regulatory assets.

23   BY MR. SHARKEY:

24           Q.    Okay.   And those were amounts  
25   separate and apart from Mr. Luciani's calculation

1 of the transition costs comparing market value to  
2 book value of generation assets; right?

3 A. Yes.

4 Q. Okay. And the \$171 million figure  
5 that you have there, does that include carrying  
6 costs or exclude carrying costs; do you know?

7 A. I don't remember.

8 Q. Okay. So we don't know -- if I want  
9 to determine the total amount of transition cost  
10 recovery, would I add the \$441 million figure  
11 from Page 22 to the \$171 million figure from Page  
12 23?

13 A. Yeah. Again, I don't know if the  
14 171 included -- I don't know if we are adding  
15 apples to oranges here. I don't know if the 171  
16 includes the carrying costs on it; I don't  
17 remember that.

18 Q. So we would be adding either 441 to  
19 171, or 231 to 171?

20 A. The 231; and if the 171 -- oh, I'm  
21 sorry. I do actually state it there. The  
22 12-31-00 value would be 171. It didn't have  
23 carrying costs on it. And that would be added to  
24 the 210.

25 Q. That would be added to the 231, I

1 believe, Page 22? The 210 was carrying costs?

2 A. Oh, 231, yes, I'm sorry. Thank you.

3 Q. Okay. So that would have been  
4 roughly \$400 million of stranded costs; right?

5 A. Yes.

6 Q. And it's your view that The Dayton  
7 Power and Light Company recovered that \$400  
8 million in stranded costs without raising rates,  
9 and while offering residential customers a  
10 5-percent discount on Big G or little g?

11 A. No, that was the company's request.  
12 We resolved the issue of stranded costs through a  
13 series of settlements. It's an important  
14 distinction, I think.

15 Q. What's an important distinction?

16 A. That this was the company's request,  
17 and that we settled the issue of transition  
18 costs, let me use that word, transition costs,  
19 through a series of settlements, the ETP as well  
20 as the RSP, the '02 settlement.

21 Q. It's much easier to refer to them by  
22 years.

23 A. Okay. The '99 settlement and the  
24 '02 settlement. And I don't remember that the  
25 '04 settlement had resolved any issue on

1 transition costs.

2 Q. I think it's an '05 case.

3 A. '05, okay.

4 Q. I don't remember many numbers, but I  
5 think that's 05-2776.

6 A. I can remember the first case I  
7 testified in, but I can't remember that case  
8 number, so --

9 Q. Your --

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

12 (Recess taken.)

13 MR. SHARKEY: Back on the record.

14 BY MR. SHARKEY:

15 Q. Mr. Hess, at the very beginning of  
16 your testimony we had discussed the topic of what  
17 relief your testimony sought. Do you remember  
18 you told me that you sought a denial of the SSR  
19 and the ST; and certain orders by the Commission  
20 DP&L maintain certain books and records relating  
21 to its transmission, distribution and generation  
22 functions; do you remember that topic?

23 A. Yes. Yes.

24 Q. Okay. We have now been going at it  
25 for a couple hours or so, and I think you had



1 told me when I asked you those questions that you  
2 weren't completely sure that was the entire scope  
3 of the relief you were seeking. So I'm going to  
4 ask you the questions again, now having gone  
5 through your testimony and spent some time again  
6 with it, is there any other relief that you're  
7 seeking in your testimony, other than those two  
8 items?

9 A. Well, I have put minimal thought  
10 into it since you asked the questions, but, no, I  
11 haven't thought of any, no.

12 Q. You told me earlier that you read  
13 Dr. Chambers' prefiled testimony; correct?

14 A. Yes.

15 Q. And Mr. Chambers, as you recall, is  
16 the witness who concludes that DP&L needs the SSR  
17 and ST to maintain its financial integrity?

18 A. Yes.

19 Q. I'm not saying you agree with it,  
20 but you understand that's the scope of his  
21 testimony?

22 A. Correct.

23 Q. And do you understand that the  
24 methodology Mr. Chambers used to reach that  
25 conclusion was to determine how much revenue The

1 Dayton Power and Light Company, as an integrated  
2 utility who owns transmission, distribution and  
3 generation assets, would need to pay its expenses  
4 and earn a reasonable return on its assets for  
5 the period 2013 through, roughly, 2018?

6 MR. OLIKER: I object to the  
7 characterization, use of assets.

8 Could you answer? Do you understand  
9 what he is saying?

10 THE WITNESS: Yeah, I'm sorry, I  
11 don't remember all the reasons that he had for  
12 justifying the SSR and the ST.

13 BY MR. SHARKEY:

14 Q. Okay.

15 A. Generally, I do remember him stating  
16 that, you know, they needed a reasonable return  
17 of 7 percent, I believe, and needed to pay their  
18 bills.

19 Q. Okay. So the basic formula would be  
20 that DP&L needed sufficient revenue to pay its  
21 bills -- this isn't a formula, so let me start  
22 over.

23 The -- is it consistent with your  
24 recollection that his request was that DP&L earn  
25 sufficient revenue to allow DP&L, as it exists

1 today, to pay its bills and earn a reasonable  
2 return?

3 A. Yeah. And let me go back too. I  
4 don't remember the part about paying its bills.  
5 I think it was based upon a reasonable return of  
6 7 percent. I remember language in there about  
7 that. I know there was a cash flow statement  
8 attached, and there was questions as to whether  
9 or not they would be paying a dividend, but it  
10 looked to me like a vertically-integrated utility  
11 company calculation, revenue requirement  
12 calculation, based upon a 7-percent return.

13 Q. And I want to go back to another  
14 topic, and I think your prior answers to this  
15 topic were clear, but I want to make sure I have  
16 got a very clear record. It's true, isn't it,  
17 that you don't sponsor any testimony regarding  
18 whether DP&L, as it exists today as a combined  
19 company, could maintain its financial integrity  
20 if it was denied recovery of the SSR and the ST?

21 MR. OLIKER: Just to clarify, you're  
22 asking about his testimony that was filed with  
23 the Commission?

24 BY MR. SHARKEY:

25 Q. You do not sponsor any testimony on

1     that subject?

2             A.     I don't address the issue of  
3     financial integrity, that's correct.

4             MR. SHARKEY:   I have no further  
5     questions.

6             Anybody on the phone intend to ask  
7     Mr. Hess any questions?

8             (No response.)

9             MR. OLIKER:   Going once?   Going  
10    twice?

11            Okay.   I think that's it.   Thanks  
12    everyone for dialing in.   We are gonna close the  
13    line now.

14            He will read and sign.

15            (Thereupon, the deposition was  
16    concluded at 3:45 o'clock p.m.)

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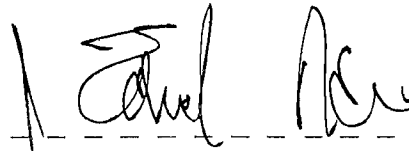
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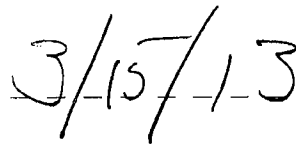
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1 I, J. EDWARD HESS, do hereby certify  
2 that the foregoing is a true and accurate  
3 transcription of my testimony.

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8 Dated

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1     STATE OF OHIO                     )

2     COUNTY OF MONTGOMERY     )     SS: CERTIFICATE

3             I, Beverly W. Dillman, a Notary Public  
4     within and for the State of Ohio, duly  
5     commissioned and qualified,

6             DO HEREBY CERTIFY that the above-named  
7     J. EDWARD HESS, was by me first duly sworn to  
8     testify the truth, the whole truth and nothing  
9     but the truth.

10            Said testimony was reduced to writing by  
11     me stenographically in the presence of the  
12     witness and thereafter reduced to typewriting.

13            I FURTHER CERTIFY that I am not a  
14     relative or Attorney of either party, in any  
15     manner interested in the event of this action,  
16     nor am I, or the court reporting firm with which  
17     I am affiliated, under a contract as defined in  
18     Civil Rule 28(D).

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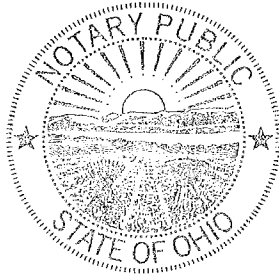
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1                   IN WITNESS WHEREOF, I have hereunto  
2 set my hand and seal of office at Dayton, Ohio,  
3 on this    12th    day of    March                   , 2013.

4                   *Beverly W. Dillman*



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BEVERLY W. DILLMAN, RPR, CRR  
NOTARY PUBLIC, STATE OF OHIO  
My commission expires 3-6-2017

**This foregoing document was electronically filed with the Public Utilities**

**Commission of Ohio Docketing Information System on**

**3/20/2013 2:41:17 PM**

**in**

**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 J. Edward Hess electronically filed by Mr. Jeffrey S Sharkey on behalf of The Dayton Power and Light Company