

BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

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In the Matter of the Application of : Case No 12-426-EL-SSO
The Dayton Power and Light Company
For Approval of its Electric :
Security Plan

:
In the Matter of the Application of : Case No 12-427-EL-ATA
The Dayton Power and Light Company :
For Approval of Revised Tariffs

:
In the Matter of the Application of : Case No 12-428-EL-AAM
The Dayton Power and Light Company :
For Approval of Certain Accounting :
Authority

:
In the Matter of the Application of : Case No 12-429-3L-WVR
The Dayton Power and Light Company :
For the Waiver of Certain :
Commission Rules

:
In the Matter of the Application of : Case No 12-672-EL-RDR
The Dayton Power and Light Company :
To Establish Tariff Riders

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EXPERT DEPOSITION OF: KEVIN C. HIGGINS

Location: 215 South State Street, Suite 200

Date: March 8, 2013 - 11:37 a.m.

Reporter: Denise Kirk, CSR/RPR

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A P P E A R A N C E S

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I N D E X

Witness	Examination by	Page
KEVIN HIGGINS	Mr. Sharkey	3

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1 March 8, 2013 11:37 a.m.

2 P R O C E E D I N G S

3 KEVIN C. HIGGINS,

4 Called as a witness herein, being

5 First duly sworn was examined

6 And testified as follows:

7 EXAMINATION

8 BY MR. SHARKEY:

9 Q. Good afternoon, Mr. Higgins. I guess it
10 would still morning where you are. It's afternoon
11 here.

12 A. Just barely.

13 Q. As you know, my name is Jeff Sharkey and I
14 represent the Dayton Power and Light Company in this
15 proceeding.

16 If you would, first of all, please state
17 your name.

18 A. My name is Kevin C. Higgins.

19 Q. And you are a principal at Energy
20 Strategies, LLC?

21 A. Yes.

22 Q. Okay. Is a principal similar to what in a
23 law firm is called a partner?

24 A. Yes.

25 Q. Okay. How long have you been with Energy

1 Strategies?

2 A. Since 1995.

3 Q. Okay. What did you do before that?

4 A. Prior to joining Energy Strategies, I was
5 the Chief of Staff to the Chairman of the Salt Lake
6 County Commission. I had that position four years.

7 Prior to that, I was with the Utah Energy
8 Office in various capacities, ultimately becoming the
9 Assistant Director of the Utah Energy Office. I was
10 with the Utah Energy Office between 1983 and 1990.

11 Prior to that, I was with the Utah Power &
12 Light Company where I was a -- I worked in their
13 corporate modeling and operations research department.

14 Q. Okay. I just have a couple of basic
15 questions. Is there anybody in the room with you
16 besides yourself and our court reporter?

17 A. No.

18 Q. Can you describe for me the materials that
19 you've brought with you for the deposition today?

20 A. I brought my testimony, my exhibit, some
21 work papers that supported my testimony, and I also
22 have documents -- primarily documents that were Public
23 Utility Commission of Ohio documents that are
24 referenced in my testimony in case there are any
25 questions about those.

1 I have a couple of excerpts from Dayton
2 Power & Light's filing in case there are any
3 references to those. So I have them handy.

4 I also have a laptop at my disposal. The
5 screen is blank at the moment, but it would allow me
6 to call up electronically the company's filing, if you
7 have any questions that require referring to those
8 documents.

9 Q. Okay. Do you have available to you a copy
10 of Dr. Chamber's second revised testimony that you
11 referred to?

12 A. I do.

13 Q. We'll come back to that. I plan to ask
14 you some questions about that testimony.

15 If you would, please, in your prefiled
16 testimony turn to page seven.

17 A. (Witness complies.)

18 Q. Actually, if you'd turn to page eight.

19 A. Okay.

20 Q. You describe there what I would describe
21 as a balancing test; is that accurate?

22 A. Yes.

23 Q. Okay. And on one side of the balancing
24 test you refer to -- you say that the commission may
25 find that the DP&L's proposed SSR provides a type of

1 certainty for retail electric service; right?

2 A. Correct.

3 Q. And then the other side of the balance
4 that you describe are for customer specific items.
5 Let me strike that.

6 The other side of the balance are things
7 that you assert would reduce the amount of needed SSR
8 for the Dayton Power & Light Company?

9 A. Yes. I would more generally describe them
10 as other factors the Commission should take into
11 consideration, which would have the effect of reducing
12 the SSR compared to the company's request.

13 Q. Focusing on the initial part, do you
14 believe that the Commission could reasonably conclude
15 that DP&L was entitled to some level of an SSR?

16 A. I believe the Commission may reasonably
17 conclude that. I think that -- I will say that my
18 personal opinion is that I would give greater weight
19 personally to the fact that the transition adjustment
20 period has ended.

21 So I do think the Commission could
22 reasonably find that no SSR is warranted in that
23 light. However, you know, recognizing that the
24 Commission did make a finding in the AEP-Ohio case
25 that indicated that on the basis of there being

1 certainty for a retail electric service that some type
2 of continued charge for shopping customers was
3 warranted. I realize that the -- I recognize that the
4 Commission may make a finding of that nature.

5 Q. Then let me talk about the items that are
6 on the other side of the balance. It appears to me on
7 page eight you talk about the transition cost matter
8 that you just mentioned. Is that a fair
9 characterization, really, of the first item that you
10 say should be balanced against DP&L's request?

11 A. Yes.

12 Q. Then the second item it appears, you say,
13 should be balanced against DP&L's request starts at
14 the bottom of page eight, line 23, that paragraph,
15 which are the interests of long-term shoppers. Is
16 that a fair characterization of the second item?

17 A. Yes, Mr. Sharkey. And, I guess, just to
18 put a fine point on it, under the umbrella of the
19 first item, there are several components to that. So
20 the transition costs or transition charge item has a
21 few components to it that each warrant some weight.

22 But then, yes, given that, the second
23 category, you might say, of considerations would be
24 the implications for long-term shopping customers.

25 Q. Right now I'm trying to get a 50,000-oot

1 view, big picture list of your items. Then we'll come
2 back and discuss them in detail. I just want to make
3 sure I have a complete list first.

4 A. Fair enough.

5 Q. Then it looks to me from pages nine on to
6 ten, that you are critical of certain pricing
7 decisions that DP&L has made and suggest that those
8 pricing decisions have caused some of the problems and
9 should weigh against DP&L's SSR request?

10 A. That's generally fair.

11 Q. And then it looks like you then go on page
12 ten to your analysis of how the factors balance, but I
13 want to make sure that before we go any further that
14 I've got a complete list. Do those three items seem
15 like a fair list?

16 A. Yes.

17 Q. Okay. Let me talk to you then about the
18 transition costs item. First of all, were you
19 involved at all in the 1999 Ohio cases in which
20 transition costs issues were decided?

21 A. Yes.

22 Q. Who were you representing in those cases?

23 A. I did work on behalf of the Kroger Company
24 in those cases.

25 Q. And did you work on DP&L's request for

1 transition costs?

2 A. I believe I did, as I recall.

3 Q. I was on that case, but my memories are
4 blurry. It's been many years ago.

5 A. Well, I don't mean to interrupt you, Mr.
6 Sharkey, but, as I recall, a number of these cases
7 were settled prior to there being testimony filed by
8 intervenors.

9 So I believe, if my memory serves me
10 correctly, that that may have been the case for the
11 Dayton Power & Light case.

12 But I did advise the Kroger Company on
13 each of the major retail competition dockets that took
14 place in Ohio at that time for the four major utility
15 groups.

16 So I would have been involved in advising
17 Kroger on the Dayton Power & Light matter.

18 Q. Okay. And I will represent to you that
19 your memory is accurate, that DP&L did settle.

20 Do you recall that the calculation that
21 was used in those transition cost cases to determine
22 the amount of transition costs was the difference
23 between the book value and the fair market value of
24 the generation assets?

25 A. No, I do not recall that to be the

1 transition adjustment.

2 Q. Do you recall that -- do you believe that
3 some other formula was used or are you telling me you
4 don't remember?

5 A. I'm trying to recall for a moment. And,
6 perhaps, maybe I am going to agree with your
7 characterization.

8 As I recall, the pricing was based on the
9 difference between, you know, cost of service rates,
10 generation rates, and market projected rates, which
11 is, in some ways, comparable to the difference between
12 a net book value of generation and market value, as I
13 recall those being applied to the price of generation
14 for customers.

15 So it was based on the difference between
16 cost based rates as they were reflected in rates at
17 that time and projected market prices for generation.

18 Q. I want to make sure I understand what you
19 are telling me. I think I do. But it would be, as
20 you recall, the net present value of the difference
21 between the expected market rate and the then existing
22 regulated rates?

23 A. Yes, in that -- it was of that general
24 nature, uh-huh.

25 Q. Okay.

1 A. That's my recollection.

2 Q. And it's your view that the -- well, let
3 me step back.

4 The SSR that has been composed by DP&L is
5 calculated differently, isn't it?

6 A. I'm hearing some music in the background.
7 (Discussion off the record.)

8 Q. (By Mr. Sharkey) Let's go back on the
9 record.

10 A. The SSR proposed by DP&L is not calculated
11 in the same exact manner as the prior transition cost
12 recovery. However, it is, in my view, comprised
13 entirely of generation related costs which, of course,
14 is what the transition adjustment -- or transition
15 charge calculation was comprised of.

16 Q. At that's the reason that you believe that
17 DP&L's request for SSR is -- or at least past recovery
18 of transition costs should be weighed against its
19 current request for the SSR?

20 A. Well, there's a little bit more to it than
21 that. The past recovery of transition costs was an
22 attempt to allow customers to pay off, if you will, a
23 portion of what you might call the legacy costs of
24 generation that the utility had incurred on behalf of
25 serving all customers.

1 And, for that reason, it was a payment for
2 generation service, even for customers who had
3 continued on to shop from someone else.

4 The proposal for the SSR is very, very
5 similar in substance to that. It is, in fact, a
6 continued payment for generation service to help the
7 utility recover the costs of that legacy generation
8 even for customers who are shopping and purchasing
9 their power from somebody else.

10 So in its essential form, it is, in my
11 opinion, a form of transition cost recovery. Whether
12 the calculation of the charge is exactly the same as
13 it was previously, is not the essential point, in my
14 mind.

15 In my mind it's the fact that the
16 customers are -- shopping customers would be required
17 to continue to pay for recovery of the utility's
18 generation costs despite the fact that they are now
19 shopping.

20 Q. Let me go back to the prior topic that was
21 balancing. I want to ask you a followup question that
22 occurred to me.

23 You quote on page eight at lines three
24 through eight the statute that I believe you were
25 discussing the elements underneath that statute; is

1 that fair?

2 A. Well, somewhat. I'm referring to the
3 statute because the Commission referred to the
4 statute. So for purposes of complete presentation, it
5 was the Commission that referenced this statute. And
6 so that's why I cite to it. And the Commission
7 referenced it in its AEP-Ohio order.

8 Q. Do you see anything in that statutory
9 section that authorizes or requires the Commission to
10 perform a balancing test of the type you propose?

11 MR. YURICK: I'm sorry. This is Mark. I
12 guess I'm going to object to the form of the question
13 as being a little overbroad. And I would ask (you to
14 clarify. Do you mean in the text or anything just
15 generally?

16 MR. SHARKEY: I'm asking, Mark, just so
17 we're clear, regarding page eight, lines three through
18 eight, Mr. Higgins has quoted 4928.143(B)(2)(d), and
19 I'm asking about whether anything within that section
20 CC authorizes and requires the Commission to perform a
21 balancing test.

22 MR. YURICK: In the text?

23 MR. SHARKEY: Yeah, in that section.

24 MR. YURICK: I'm sorry. I appreciate the
25 clarification.

1 Q. (By Mr. Sharkey) Do you understand the
2 question that -- the conversation I just had with Mr.
3 Yurick, Mr. Higgins?

4 A. Yes, I do, Mr. Sharkey.

5 I would say that an inherent aspect of
6 this Section (d) that is quoted is that some type of
7 balancing would need to be conducted because it's not
8 a black-and-white prescription.

9 It indicates that there are, in essence,
10 various factors that can be considered. And the
11 Commission drew the conclusion that this supported,
12 you know, an allowance of some sort for providing
13 certainty for retail electric service.

14 So it seems to me that inherent in
15 attempting to apply this provision that something must
16 be taken into consideration and balanced in coming up
17 with the decision.

18 Q. Are you aware of any prior instances in
19 which the Commission engaged in a balancing test when
20 setting a rate underneath that subsection?

21 A. To my knowledge, this AEP decision, which
22 was fairly recent, may have been the first time the
23 Commission cited to this section in approving a
24 mechanism of this sort.

25 I don't know that for sure, but it seems

1 to me that when the commission referenced this
2 section, I don't recall them citing to any of the
3 previous decisions they had made that relied on this
4 section.

5 Q. Are you aware of anyplace in that AEP
6 decision that you are referring to where the
7 Commission endorses a balancing test like you
8 proposed?

9 A. Well, I don't recall the words "balancing
10 test", but I certainly believe that in reaching its
11 decision in the AEP-Ohio case, the Commission did, in
12 fact, balance various factors.

13 So I would say on the whole, yes, they did
14 conduct a balancing of interests in reaching the
15 decision that they reached.

16 Q. Can you point me to any specific words in
17 Subsection (d) quoted in your testimony that suggests
18 that the Commission should consider past recovery of
19 transition charges when setting a rate underneath that
20 charge?

21 A. Well, there's no specific reference to it
22 in this one section. I mean, it speaks for itself.

23 Q. Are you aware that the subsection that we
24 are looking at was enacted after the 1999 cases had
25 been completed?

1 A. Yes, I am.

2 Q. And was enacted as a part of the 2008
3 legislation; right?

4 A. Correct.

5 Q. If you'd turn to page seven of your
6 testimony, you say at the very top on line one that:
7 "I am not aware of any provision in amended substitute
8 Senate Bill 3 which began the restructuring of the
9 Ohio retail electric market over ten years ago, that
10 provide for a new round of transition cost recovery."
11 Do you see that?

12 A. Yes.

13 Q. But you are aware, I think, obviously you
14 cited the following pages, that DP&L's recovered -- is
15 entitled to certain charges under the newly enacted
16 4928.143 (B) (2) (d)?

17 A. Well, I think it remains to be seen
18 whether you are entitled to recovery of those costs or
19 not. I mean, I'll note that even though there's been
20 subsequent legislation passed in Ohio on this general
21 subject, that legislation did not repeal the
22 limitations on transition costs recovery that were
23 introduced with amended substitute Senate Bill 3.

24 So, to my knowledge, those limitations as
25 to the timing of transition costs recovery are still

1 in effect. And it seems to me that the extent to
2 which the Commission may rely on the subsection (d)
3 that we've been talking about, you know, I suppose
4 remains to be seen in the upcoming case -- in your
5 case.

6 Q. The next item that you identified in your
7 balancing act was the interest of long-term shoppers?

8 A. Yes.

9 Q. Did you define long-term shoppers as
10 persons who have been shopping for more than three
11 years?

12 A. Yes.

13 Q. How did you arrive at the three-year
14 figure?

15 A. It seemed to be a reasonable
16 representation of customers who began shopping within
17 one year of the approval of your last rate
18 stabilization charge.

19 So, in essence, I was looking for a way to
20 define customers who began shopping within that first
21 year which, let's say, approximately 2009, and were
22 already shopping prior to the very recent surge in
23 shopping that you've had in the last year.

24 Q. Why do you believe that long-term shoppers
25 have any different interests than short-term shoppers?

1 A. I believe that it's appropriate to
2 distinguish them if the Commission decides to pursue
3 these additional charges on customers for shopping;
4 that is, that certainly at a high level, if in fact
5 the Commission were to determine that transition costs
6 recovery has been completed per those sections of the
7 statute, then that would apply equally to all
8 customers whether they've been long-term customers or
9 near-term customers.

10 On the other hand, Dayton Power & Light
11 has made this case that it is at some financial risk
12 due to the -- in significant part -- due to the large
13 increase in shopping that has occurred recently and
14 may occur in the future.

15 I believe that if in response to that
16 argument the Commission is inclined to extend these
17 substantial rate stabilization charges or SSR and
18 continue to require shopping customers to subsidize
19 the cost of Dayton Power & Light's generation, then it
20 is fair to ask the question that perhaps a distinction
21 should be drawn between customers who have not been
22 relying on DP&L's generation service in the recent
23 past and, in fact, have been in the market for at
24 least three years, have been paying for their own
25 generation service for that period continuously.

1 And it seems to me that for those
2 customers it may be reasonable to make a distinction
3 and indicate that because part of DP&L's case rests on
4 the impact of recent shopping, that these long-term
5 shopping customers have not been part of that
6 causation.

7 So for that reason I think that a
8 distinction can be drawn if the Commission is inclined
9 to respond to Dayton Power & Light's arguments about
10 the impacts on the company of recent shopping.

11 Q. Are you aware of any Commission orders or
12 promises made by DP&L to long-term shoppers that they
13 would no longer have to pay non-bypassable charges at
14 the expiration of DP&L's prior ESP?

15 A. Well, DP&L promised customers that they
16 would not have to pay transition charges after 2003.
17 DP&L promised that in the stipulation that was entered
18 into in the '99 docket and the Commission approved
19 that promise, if you will, and relied on it in
20 approving that stipulation.

21 So subsequent to that time, it is true
22 that additional -- extensions of the obligation of
23 shopping customers to pay for generation charges have
24 been adopted. And, you know, I'm not aware of
25 promises that DP&L may or may not have made subsequent

1 to that time about the cessation of charges. But
2 certainly a promise was made in the '99 docket.

3 Q. Let's go back to the topic of transition
4 costs in this statute. You understand that currently
5 in Ohio there's a statute that says that DP&L cannot
6 recover transition charges; correct?

7 A. That the period for recovering them has
8 expired.

9 Q. And you are aware that there's a statute
10 that's cited in your testimony that permits DP&L to
11 get stability charges; right?

12 A. I'm aware that the Commission has relied
13 upon that section in ordering stability charges in the
14 AEP-Ohio case.

15 Q. We already established that the second
16 statute, 4928.143(B)(2)(d) was enacted subsequently;
17 right?

18 A. Correct.

19 Q. But, nonetheless, it's your opinion that
20 stability charges are the same as transition charges?

21 A. In substance they are fundamentally the
22 same. With respect to shopping customers, they're a
23 continued charge to underwrite the cost of Dayton
24 Power & Light's generation service for customers who
25 are shopping, which is fundamentally stranded cost

1 recovery.

2 Q. Do you believe that the general assembly
3 by has misdefined these charges?

4 A. I'm not questioning the general assembly's
5 definition of charges.

6 Q. Well, you agree that the general assembly
7 has said no transition charges but yes to stability
8 charges; right?

9 A. The general assembly has allowed that
10 there may be an electric security plan that may
11 provide for the items in (d). And I don't see
12 stability charges listed in item (d).

13 Q. Fair enough. I'm talking about stability
14 charges in relation to the last phrase that it would
15 have the effect of stabilizing or providing certainty
16 regarding retail electric service.

17 A. Correct, but I don't see -- I do not see
18 any statement in (d) that explicitly states that the
19 general assembly was authorizing stability charges to
20 be charged to shopping customers.

21 Q. How would you define the charges that are
22 authorized in that subsection? I was using "stability
23 charges" just as a shorthand but if you'd prefer a
24 different term...

25 A. You know Section (d), again, I acknowledge

1 that the Commission interpreted that to allow for
2 these security related charges in the AEP-Ohio case,
3 but I don't see in Section (d), in my plain reading of
4 it, that it specifically states that shopping
5 customers would be subject to stabilization charges.

6 It refers to terms, conditions or charges
7 relating to limitations on customer shopping for
8 retail electric generation service.

9 So, to me, that phrasing requires quite a
10 bit of interpretation, if you are going to draw a
11 clear path to specifically authorizing stabilization
12 charges for shopping customers.

13 Now, I acknowledge the Commission did
14 that. But you are asking me about what the general
15 assembly said. And I'm not seeing, you know, a clear
16 statement in this statement language (d) that says,
17 you know, these kinds of stabilization charges can be
18 enacted for shopping customers.

19 Q. Well, actually, my last question to you,
20 Mr. Higgins, was a lot simpler. It was just what
21 phrase would you use to refer to the charges
22 authorized under that section?

23 A. Fair enough. I'm still thinking. I'm
24 trying to give you a good answer -- a fair answer to
25 that question.

1 Q. How about if we call it "stability
2 charges" and we'll stipulate that it's my term, not
3 yours?

4 A. Fair enough.

5 Q. Okay. So then my question is: You
6 understand that the general assembly has authorized --
7 strike that.

8 You understand that the general assembly,
9 as currently written, has barred the recovery of
10 transition charges but has authorized the recovery of
11 stability charges; right?

12 A. Per -- yes, per your definition relating
13 to Section (d) here.

14 Q. But it's nonetheless your opinion that
15 stability charges and transition charges are the same
16 thing?

17 A. That, in substance, they are the same
18 thing, uh-huh, substantively.

19 And I recognize you may give a different
20 legal interpretation of one in the code and the other
21 but, in substance, they're the same.

22 Q. Let's go back to then the distinction you
23 drew between long-term shoppers.

24 A. Yes.

25 Q. Would you agree that long-term shoppers

1 and short-term shoppers and non-shoppers all have a
2 common interest in paying as low a rate as reasonably
3 possible?

4 A. Yes.

5 Q. And they all have a common interest in
6 receiving reliable service?

7 A. Yes.

8 Q. They all have an interest in ensuring that
9 the Dayton Power & Light Company maintains its ability
10 to provide stable service?

11 A. Yes.

12 Q. They all have an interest in making sure
13 that Dayton Power & Light Company can maintain its
14 financial integrity?

15 A. Yes.

16 Q. Let me turn then to page nine of your
17 testimony, the paragraph that extends from line 14 on
18 to line ten of page ten.

19 A. Okay.

20 Q. And I am sort of focused on -- actually it
21 begins at the bottom of line 20. On line 20 on page
22 nine?

23 A. Yes.

24 Q. DP&L "faced the risk that pricing SSO
25 rates too aggressively would result in a loss of sales

1 to the market"; do you see that?

2 A. Yes.

3 Q. As I read this paragraph -- and tell me if
4 you disagree. You are suggesting that DP&L has priced
5 its power too high which has resulted in customers
6 switching, which has decreased DP&L's revenue and
7 caused DP&L's need for the SSR; is that a fair
8 characterization of what you are saying here?

9 A. That's a generally fair characterization.
10 I guess I would maybe qualify it by saying, you know,
11 that the SSO rates could have been set lower by DP&L
12 had you chosen to -- had DP&L chosen to offer a lower
13 price, and that may have had different implications
14 for the degree of switching that later occurred.

15 Q. So, basic economics, they set the price
16 too high, which caused a reduction in the quantity,
17 which has contributed to the financial integrity
18 Dayton Power & Light Company is having?

19 A. Yes.

20 Q. Then if you would turn to page four of
21 your testimony.

22 A. Okay.

23 Q. I'm on line eight.

24 A. Yes.

25 Q. You say in this sentence there: "In

1 effect, DP&L proposes to underwrite in significant
2 part the anticipated reduction in its SSO rates by
3 increasing the non-bypassable charge to customers by
4 88 percent. This proposition is fundamentally
5 unreasonable." Do you see that?

6 A. Yes.

7 Q. If I understand what you are saying there,
8 is that you are critical of DP&L's decision to reduce
9 its SSO prices because that's going to result in
10 reduced revenue for DP&L and increase DP&L's need for
11 an SSR; is that right?

12 A. Well, not exactly right. I'm critical of
13 DP&L proposing to underwrite the costs of its proposed
14 reduction going forward in SSO rates by increasing the
15 costs charged to shopping customers.

16 So I'm not critical of DP&L for lowering
17 its SSO rates or proposing to lower them at this time,
18 although in a way I would say that it's coming a bit
19 late to staunch the tide of customers who have left.

20 But I'm critical of the company's attempt
21 to underwrite that cost by charging an even greater
22 stability charge to shopping customers.

23 Q. But it does appear that what you are
24 suggesting is that DP&L's decision then to lower its
25 prices is contributing to DP&L's need for the SSR;

1 right?

2 A. Well, you know, this is DP&L's proposal,
3 right? So, in my view, what DP&L is doing is that it
4 is, you know, very late in the game proposing to
5 reduce its SSO rates; but, in reducing them, is
6 looking for someone else to pick up the tab, if you
7 will. And you are asking the shopping customers to
8 pick up the tab for that. So that's where my
9 criticism is.

10 Q. Here's the simple cause/effect question.
11 I'm not asking whether you are critical of DP&L or
12 not. But you are opining here that DP&L's decision to
13 lower its prices is causing DP&L to have lower profit
14 and is, thus, contributing to DP&L's need for an SSR,
15 which you say shouldn't be funded by shopping
16 customers; is that right?

17 A. Yeah. Well, I agree that in proposing to
18 reduce the SSO rate, that DP&L is looking for a
19 funding source to make up for those reduced revenues.
20 That funding source is the SSR, and that falls not
21 just on SSO customers, but on shopping customers as
22 well.

23 Q. Here's then what I'm trying to figure out
24 how they're consistent.

25 A. Okay.

1 Q. You told me in your testimony on pages
2 nine and ten that DP&L's decision to charge too high
3 of an SSR -- I'm sorry -- let me start over.

4 You say that DP&L's decision to charge too
5 high an SSO rate has contributed to DP&L's need for
6 the SSR; but then appears here on page four where you
7 are claiming that DP&L's decision to lower its SSO
8 rates are causing DP&L's need for an SSR.

9 MR. YURICK: I'm sorry. There would be an
10 objection to the form of the question at this point,
11 Jeff. I just wanted to interject it.

12 A. And, Mr. Sharkey, do you have a question
13 for me about that?

14 Q. Yeah. Can you explain to me whether or
15 not those two pieces of testimony are consistent with
16 each other?

17 A. Yes, they're perfectly consistent with one
18 another. First of all, we have to account for the
19 passage of time here.

20 In the references on pages nine and ten,
21 I'm discussing the company's prior decisions in
22 setting the SSO.

23 As part of those prior decisions, Dayton
24 Power & Light entered a settlement agreement in which
25 the company would be not subject to the significantly

1 excessive earnings test as a consequence of entering
2 into that settlement agreement, not subject to it for
3 a three-year period.

4 It appears to me that the company had
5 hoped, by entering into that agreement and by being
6 excluded from that test, that the company had hoped to
7 earn significant profits from its pricing arrangement
8 that was put in effect at that time.

9 Let's face it, we don't know what the
10 future is going to bring with respect to market
11 prices.

12 So my point here -- and the reason my
13 point is not contradictory -- is that if in
14 negotiating the current level of SSO rates and in
15 setting up a situation in which the company may have
16 hoped to achieve significantly excessive earnings or
17 earnings that would -- that might have otherwise been
18 capped due to that test, had the company instead
19 chosen a more modest goal, and had set the SSO lower,
20 it would not have required an increase in the rate
21 stabilization charge because it would have been
22 setting a goal for a lower profitability.

23 So the company had the opportunity to
24 propose a lower SSO rate. That would have provided
25 some risk protection against losing load if market

1 prices fell and -- but would have provided a more
2 modest profitability target at the time. But,
3 nevertheless, it may have been a profitability target
4 that would have been reasonable.

5 The company didn't choose to do that. The
6 company chose a pricing strategy that, in hindsight,
7 produced SSO rates that turned out to be not
8 competitive.

9 And now, after the fact, after a
10 significant portion of load has been lost in response
11 to that pricing, the company is now looking to reduce
12 the SSO rate and fund it by now increasing the rate
13 stabilization charge or calling it a new name and
14 increasing it substantially.

15 So those aren't contradictory situations
16 at all. I think that the company could have proposed
17 a lower SSO rate back in 2009 without having to have a
18 higher rate stabilization charge at that time if it
19 had set a more modest profitability target.

20 Q. That's not what my question is about, Mr.
21 Higgins. My question is: It's really a pricing
22 compared to profit decision question is what it is.
23 And here it is. You have an economist background;
24 right?

25 A. I am an economist.

1 Q. You are, of course, familiar with basic
2 supply and demand curves; right?

3 A. Yes.

4 Q. Now, here's the question: On pages nine
5 and ten, you've told me that DP&L had set its price
6 too high, which had caused customers switching, i.e.
7 quantity to decline, and thus has caused its
8 profitability to decline, and thus caused its need to
9 lead to the SSR. So it's basically price too high
10 equals declining profits.

11 Then on page four, you have told me that
12 DP&L's decision to lower its price is also going to be
13 lowering its profits and causing its need for the SSR.
14 So lowering price also equals less profit.

15 What I'm trying to figure out is why those
16 two comparisons as to pricing, too high a price and
17 lowering the price, in your view, both lead to lower
18 profit?

19 A. Well, again, I'll go back to the fact that
20 the proposal in this case by Dayton Power & Light to
21 reduce its SSO and have that accompanied by an
22 increase in the rate stabilization charge or SSR,
23 that's the company's proposal, that's not my proposal.
24 That's the company's proposal.

25 So, apparently, Dayton Power & Light

1 believes it's necessary to have the proposal for a
2 lower SSO be accompanied by this increase in
3 non-bypassable charge. I do believe I've explained to
4 you that my point on page four and on nine and ten are
5 consistent.

6 What occurred in the past when the company
7 set its SSO where it did, in the short-term I would
8 have expected that that would have led to higher
9 profits. In fact, I think that's what Dayton Power &
10 Light anticipated.

11 But we live in a dynamic world. So had
12 things remained static and had market prices been high
13 or increased, then in fact by setting a high SSO rate
14 that would have increased the company's profits. And
15 I think the company intended it to do so.

16 So the missing ingredient and, I guess,
17 the thing you are looking for in terms of explanation
18 is that the world does change. And market prices did
19 not remain high, as is pointed out in the company's
20 own testimony. They came down.

21 So it's because of the reduction in price
22 that later occurred, that is what made the initial SSO
23 pricing turn out to be a cause for lower profits.

24 It would not have been a cause for lower
25 profits in and of itself, but it was because other

1 prices changed, and that made the decision in
2 hindsight to have been one that caused a reduction in
3 profit. So I hope that helps clear it up.

4 Q. Well, then explain to me how DP&L's
5 decision on a going-forward basis to reduce its price
6 reduces its profit, as described on page four of your
7 testimony?

8 A. Well, again, that's DP&L's proposal. I
9 haven't proposed that.

10 Q. I'm not asking about what the proposal is.
11 You've told me that the results of their proposal is
12 that it will have reduced profits and increased need
13 for an SSR. And I want to understand why DP&L's
14 proposal to reduce its prices resulted in lower
15 profit.

16 A. What I've said is that -- let's be clear
17 about what I've said. I believe what I've said is
18 that it is the company's case that by reducing the SSO
19 that it believes it needs to increase the SSR to make
20 up for the revenues that are eroded from that, okay?

21 So what you are asking me then is: Is
22 there an inconsistency in what I've testified here?

23 Q. Yes.

24 A. No, I don't believe so. The lowering of
25 the SSO rate by itself will allow the company to

1 retain more load, and in so doing, in fact could allow
2 the company to retain some margin by retaining load,
3 but it might also cause an overall reduction in
4 profits as a result of the lower price the company
5 receives.

6 But, again, let me go back. There's
7 nothing contradictory about that. Like I said before,
8 three years ago when the company opted to keep the SSO
9 as high as it did, in and of itself, assuming no other
10 price changes, that would have been an action that was
11 likely to increase its profitability, okay? So higher
12 SSO rate, higher profits, all other things being
13 equal, but not all things remained equal. But all of
14 the things being equal, the higher SSO rate would have
15 been expected to lead to higher profits for the
16 company. It did not turn out that way because not all
17 things remained equal.

18 Now, today, 2013, the company is proposing
19 to lower its SSO rates. All things remaining equal,
20 that would likely reduce the profitability of the
21 company or reduce its margins, although it might also
22 mitigate some of the revenue erosion from customers
23 leaving.

24 But, nevertheless, those are perfectly
25 consistent observations on my part, all other things

1 remaining equal higher SSO rates, higher profits;
2 lower SSO rates, lower profits. But in between, as
3 time actually occurs, things don't always remain
4 equal.

5 So there are other factors that might
6 occur that, in hindsight, would tell us that actually
7 a decision to have kept prices high might have, in
8 fact, caused in the long run revenue erosion. So I
9 hope that's clear.

10 Q. Let me ask you some questions about the
11 law of supply and demand. I'm not talking about DP&L,
12 just basic Economics 101.

13 A. Okay.

14 Q. It's true, isn't it, that if you draw a
15 firm supply curve that -- in the demand curves,
16 there's a profit maximizing point at some point, I
17 guess, along the supply curve for the particular
18 company; correct? And, by the way, I'm assuming not
19 perfect competition. So some market other than
20 perfect competition.

21 A. Right. When marginal cost equals marginal
22 revenue, that will be the profit maximizing point of
23 level of output for the firm.

24 Q. And if you have those drawn on a piece of
25 paper, it's easy to see where the point is, right,

1 where the marginal cost and marginal revenue curves
2 intersect?

3 A. Correct.

4 Q. If you are doing business in the real
5 world, you don't have the benefit of having those
6 curves to know where it is that your profit maximizing
7 price is; right?

8 A. I don't know necessarily. But for
9 purposes of -- when you say doing business in the real
10 world, you don't know what your marginal cost is or
11 your marginal revenue is, I don't necessarily agree
12 with that. Firms may have different degrees of
13 information about what those things are.

14 Q. Well, the marginal revenue curve is
15 derived from the demand curve; right?

16 A. Correct.

17 Q. Would you have agree with me it's
18 difficult for a firm to determine what the demand
19 curve is?

20 A. Firms do not have perfect knowledge of
21 what the demand curve is. Again, different firms may
22 have different degrees of information about what that
23 looks like.

24 Q. Okay. So an individual firm who is making
25 a pricing decision, it's true, isn't it, that that

1 firm may be able to increase its profits by increasing
2 the price a little bit and getting more revenue on
3 fewer sales?

4 A. Right. It becomes a function of price
5 elasticity.

6 Q. But, similarly, depending upon where the
7 firm is on its curve, it may be that increasing the
8 price causes such a -- causes more customers to leave
9 than the extra price gained so that they lose profit?

10 A. Correct.

11 Q. So one can't determine the reasonableness
12 of pricing decisions without having the marginal costs
13 and marginal revenue curves available to them?

14 A. Well, I think you can make inferences
15 about reasonableness. But I think that -- but I
16 believe your question is one doesn't have per
17 knowledge of what the marginal costs or let's say what
18 the marginal revenue is.

19 So, without perfect knowledge, it may be
20 that by increasing prices, a firm might lose
21 profitability; similarly increasing profits could
22 cause a firm to gain profitability.

23 The firm doesn't have perfect knowledge in
24 advance of which of those things will occur. I will
25 agree to that.

1 Q. For the Dayton Power & Light Company, have
2 you -- it's true, isn't it, that in the Dayton Power &
3 Light Company, you haven't sponsored any marginal
4 costs or marginal revenue curves?

5 A. Correct.

6 Q. And you don't know whether DP&L's pricing
7 decisions that you discuss in your testimony would
8 have caused increased profits or decreased profits for
9 the Dayton Power & Light Company?

10 A. No. What I know is that DP&L included a
11 provision in the stipulation that set the SSO rates
12 that would have exempted the company from the scrutiny
13 of a significantly excessive earnings test.

14 So I draw the inference from that
15 provision of the settlement agreement, which I believe
16 is paragraph 20, that it was the hope of the Dayton
17 Power & Light Company to be able to achieve
18 significant profitability from the pricing terms of
19 that arrangement.

20 So it's information that I am using to
21 draw that inference, although I do not have a -- I
22 have not conducted a marginal cost or a marginal
23 revenue study for Dayton Power & Light.

24 Q. Is it your expectation that all businesses
25 have the hopes of earning significant profits?

1 A. Certainly.

2 Q. So the fact that the Dayton Power & Light
3 Company, when it negotiated the 2008 stipulation, may
4 have hoped to earn significant profits is neither
5 surprising nor unusual?

6 A. Agreed.

7 Q. Okay. And just so I'm sure I have a clear
8 record, it is true that you don't know whether the
9 Dayton Power & Light Company's historic pricing
10 decisions have caused increase or decreased profits
11 for it; right?

12 A. Well, I am aware based on the information
13 filed in this case by Mr. Chambers that for -- I
14 believe it was for 2011, the return in equity was
15 robust, at least based on the representations I've
16 seen in his exhibits.

17 But, you know, whether -- but barring
18 that, I don't know whether the immediate result of the
19 company's pricing decisions caused an increase or a
20 decrease in the company's profits at that time.

21 Q. Okay. I'm still not sure I've got a clean
22 answer. You don't know whether pricing decisions by
23 the company have increased or decreased its
24 profitability; right?

25 A. Well I would say, to be complete, I do

1 believe that the company's pricing decisions have
2 ultimately caused a reduction in its profitability
3 because the company locked in SSO rates that turned
4 out to be high relative to market options.

5 So, certainly, over a period of time, I do
6 believe that those pricing decisions have eroded the
7 company's profitability by pricing the SSO product too
8 high.

9 Now, in the short-term, it's possible that
10 those pricing decisions may have increased
11 profitability, I don't know.

12 Q. Well, how could you know even over the
13 long-term whether or not those pricing decisions were
14 profit maximizing?

15 A. Because I've read the company's testimony.
16 And the company's testimony indicates that because the
17 company has lost substantial load shopping, it has
18 caused a financial hardship for the company. That's
19 the thrust of the company's testimony, at least in
20 part.

21 So I am drawing that inference from the
22 company's case.

23 Q. Well, then, so is it your view that the
24 company would have been more profitable if it had
25 lowered its prices to market rate so there was no

1 switching?

2 A. I believe the company may have been more
3 profitable had it set an SSO rate at the outset of the
4 current, you know, pricing period, 2009.

5 Had it set its SSO rate lower at that
6 time, by doing so, it may have reduced the company's
7 short-term profitability, but may have resulted in
8 less shopping, less load lost as a result of that and
9 less margin erosion as a result of that.

10 So, therefore, today the company may have
11 made a more -- may have been more profitable had it
12 set lower prices at that time and with those prices
13 remaining in effect, yes.

14 Q. But it's the same business who is facing a
15 decision to raise or lower its price; raising your
16 price may increase your profits or it may decrease
17 your profits; right?

18 A. Correct.

19 Q. So the Dayton Power & Light Company -- it
20 works the same way, decreasing your price may increase
21 your profitability because you get more customers, or
22 it may harm your profitability because you lose
23 revenue on the price reduction; right?

24 A. Yes.

25 Q. So you don't know whether the Dayton Power

1 & Light Company would have been more profitable
2 historically had it lowered its price; all you know is
3 it would have had a higher quantity?

4 A. It is true that, perhaps, by having a high
5 price such as it has had or the price that it's had,
6 that the short-term profits that the company may have
7 earned from that higher price might have outweighed
8 the lower profitability the company is now
9 experiencing. That is possible.

10 Although, of course, my related question
11 is: Who should bear the consequences of those
12 decisions?

13 So it's certainly the case that perhaps
14 the company's pricing decisions over the long-term put
15 more money in its pocket than not, but with respect to
16 the going-forward period with respect to where we are
17 today, I do believe it's reasonable to believe that
18 the higher SSO price that was selected rather than a
19 lower price is contributing to the company's reduction
20 in profitability today and as evidenced in the
21 company's case.

22 But, perhaps, if you looked over a period
23 of time, maybe those higher prices maybe in fact
24 measured over a three-year period, maybe those higher
25 prices in fact were in total the cause of greater

1 profitability than less.

2 Q. So you don't know whether or not DP&L's
3 pricing decisions on a historic basis were profit
4 maximizing or not; right?

5 A. I don't know if they were profit
6 maximizing or not over the full period of time. You
7 know, again, I do believe that having prices that are
8 not competitive with the market has contributed to at
9 least the reduction in the company's profitability.

10 Q. You don't know whether DP&L's plan to
11 reduce prices in the future is profit maximizing or
12 not either, do you?

13 A. I don't know whether it's plan to reduce
14 prices in the future is profit maximizing.

15 Q. To determine whether the historic
16 decisions were profit maximizing, you would need to
17 derive marginal costs and marginal revenue curves,
18 wouldn't you?

19 A. Well, you'd have to -- yes, you'd have to
20 do that, and you'd have to conduct some -- you know, a
21 fair amount of analysis as to what might have happened
22 under different pricing proposals.

23 Q. You have not done that analysis, have you?

24 A. No.

25 Q. And on a going-forward basis, the same is

1 true; right? You would need a lot of analysis to
2 determine whether that decision was profit maximizing
3 and you have not done that analysis?

4 A. No, I have not attempted to measure what
5 the profit maximizing outcome for the Dayton Power &
6 Light Company is.

7 Q. Back in your testimony, page ten.

8 A. Yes.

9 Q. You state that as a result of the -- you
10 say that taking into account all of the factors, I
11 recommend that if the Commission determines that a
12 rate stability charge is warranted that the charge be
13 no greater than the current rate stabilization charge;
14 do you see that?

15 A. Yes.

16 Q. I note that you and I both used the phrase
17 "stability charge". You called it a "rate stability
18 charge: Didn't you?

19 A. Correct. Yes, again, if the Commission --
20 look, I acknowledge that the Commission has determined
21 that rate stability charges may be warranted. They
22 did so in the AEP-Ohio case.

23 Q. It's true, isn't it, that you don't
24 sponsor any arithmetic calculations that you've used
25 to arrive at this conclusion that the -- any rate

1 stability charge should be no greater than the current
2 rate stabilization charge?

3 A. Can you please just qualify for me the
4 first part of your question, Mr. Sharkey?

5 Q. Sure. I'll ask it differently.

6 I've looked at your charts that are
7 attached to your testimony, and there's nothing there
8 that I can look at to say: These are the numbers he's
9 added up to determine the proposed amount of the rate
10 stability charge; right?

11 A. Well, the proposed amount of the rate
12 stability charge would be approximately \$73 million
13 per year at your current rates based on the billing
14 determinants that the company has provided in this
15 case.

16 Q. And it's true, isn't it, that I can't look
17 at -- first of all, at any of the charts that are
18 attached to your testimony and see any mathematical
19 calculations that you've used to arrive at the \$73
20 million?

21 A. I do refer to the \$73 million in my
22 testimony and I didn't attach an exhibit showing the
23 calculation but --

24 Q. No --

25 A. Yes.

1 Q. I'm not talking about historic cost. I'm
2 talking about a going-forward cost. I can't look at
3 your charts and say: Here's how he has determined
4 that for the years 2013 and the years 2014 based on
5 these numbers, that \$73 million is a reasonable
6 number, can I?

7 A. When you say "reasonable number", are you
8 asking whether \$73 million is an accurate number?

9 Q. No. What I'm saying is I understand that
10 \$73 million is the historic number. So what I'm
11 asking you is -- well, let's ask it differently.

12 That's a number that you have selected
13 based on historic numbers, not a number that you've
14 calculated by some arithmetic means to be appropriate
15 into the rest of 2013 and into 2014; is that right?

16 A. Well, I do quibble a bit with your
17 question but, hopefully, I can answer it.

18 My proposal that in balancing these
19 factors that the charge be no greater than the current
20 rate stabilization charge is a policy-based
21 recommendation taking into account the fact that
22 shopping customers who would have to pay this charge
23 have not been shown to be causing anymore costs on the
24 DP&L system than they are causing today.

25 So, in that sense, it is mathematical in

1 that we recognize that there's a charge today to these
2 customers. There's no evidence that these customers
3 are causing any greater cost to be incurred.

4 So, given that piece of math, it does not
5 seem reasonable to me for these charges to be
6 increased beyond what they are today, after taking
7 into account all of these factors.

8 Q. I don't think that's exactly what I've
9 asked. What I've asked is -- well, let me ask it
10 differently.

11 There's no calculation that you've done
12 that shows DP&L's projected revenues, expenses and
13 profitability in 2013 and 2014 that have led you to
14 your proposed \$73 million cap on the rate stability
15 charge; correct?

16 A. That's not exactly correct, because I have
17 tested the general results of that proposal against
18 the exhibits that Mr. Chambers had developed.

19 So there's a discussion a little bit later
20 in my testimony about that, specifically on page two.

21 Q. I'm familiar with that.

22 A. So if I can just finish, sir, so I would
23 say that my proposal has a couple of prongs to it. On
24 the one hand, I have made a recommendation that the
25 going-forward charges be no greater than the current

1 charges for the reasons I've given, and I have
2 subjected that recommendation to a high level return
3 on equity assessment based on the company's filed
4 case, which provides some basic parameters in that
5 regard.

6 So it does have a -- it is tied in or
7 there is a reference to the projected returns on
8 equity that Mr. Chambers makes.

9 Q. Well, let's see if that's what you are
10 telling me. You are telling me that you determined
11 the \$73 million amount and then checked it for
12 reasonableness against Mr. Chambers' chart; is that
13 fair?

14 A. That's fair. I checked it for -- and I
15 believe it's inherently reasonable -- but I subjected
16 it to an additional check, if you will, against the
17 return on equities proposed by Mr. Chambers. So I've
18 provided additional information in that regard.

19 So you asked me whether I considered these
20 other -- this other information. And I'm telling you
21 that the recommendation for a charge that's no greater
22 than the current charge does stand on its own, but was
23 subjected to a check or a benchmarking against Mr.
24 Chambers' calculations.

25 Q. Mr. Higgins, it's a simple question that I

1 think I asked you a little bit ago, and I don't think
2 I've gotten an answer. It's true, isn't it, that the
3 \$73 million figure is a figure that you selected based
4 upon policy consideration, not based upon a
5 mathematical calculation; right?

6 A. I will agree to that -- I will agree, yes,
7 to that, subject to the qualification that, you know,
8 part of the math in my recommendation is that I see no
9 evidence of additional costs being incurred or caused
10 by these customers.

11 So, you know, if you don't consider that
12 to be math, then I would say I would agree, yes.

13 Q. Are you aware of any other customers who
14 have caused those costs to be incurred?

15 A. SSO customers caused these costs to be
16 incurred because they're purchasing from the company.
17 So SSO customers are getting their generation service
18 from the company and so, presumably, these are costs
19 associated with the company's generation service.

20 Q. Which costs are you referring to?

21 A. I am referring to the costs of the
22 company's generation service, which is what this SSR
23 is. This SSR is a portion of the company's generation
24 costs.

25 You asked me whether other customers are

1 causing these costs to be incurred. And I'm saying
2 yes, customers who take generation service from Dayton
3 Power & Light are the customers who cause the
4 generation costs to be incurred, unless it's
5 imprudent, in which case they're not.

6 Q. Let me ask you about that. You understand
7 that one of the reasons that the Dayton Power & Light
8 Company is experiencing potential financial integrity
9 issues is the declining wholesale price for
10 generation; right?

11 A. I understand that is one of the reasons
12 that's been provided, yes.

13 Q. Are you aware of anything that SSO
14 customers have done to cause that?

15 A. No, they haven't caused that.

16 Q. You are aware another one of the reasons
17 the Dayton Power & Light Company may be having
18 financial integrity issues in the future is that
19 existing customers have switched to competitive
20 providers?

21 A. Yes.

22 Q. And existing SSO customers didn't do
23 anything to cause that either, did they?

24 A. No, they didn't do anything to cause that,
25 and I'm not fault finding them, by any means.

1 However, to the extent that your generation costs were
2 prudently incurred, then if it's the company's
3 intention to recover those costs, then it would seem
4 to me that if there is a question as to whether or not
5 you are entitled to full recovery on a per unit basis
6 of those costs, it would appear to me that the
7 customers who utilized that service are the ones who
8 are causing it to be incurred, as a whole.

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

10 (Brief recess.)

11 Q. (By Mr. Sharkey) Mr. Higgins, we've been
12 discussing through the day some economic principles
13 like supply and demand curves, the marginal cost and
14 marginal revenue curves. My question to you then is:
15 Can you cite to me any economic principle that you
16 used to arrive at your recommendation that the amount
17 of the rate stability charge be set at \$73 million on
18 a going-forward basis?

19 A. Well, it's what I would call an
20 economic/regulatory principle, and that is that since
21 I see no evidence that the shopping customers who see
22 their costs increased as a result of the company's
23 proposal are causing any additional costs, that as a
24 matter of economic and regulatory principle, they
25 shouldn't pay any higher charges.

1 So that's the fundamental principle that
2 I'm relying upon.

3 Q. It's true, isn't it, that you don't
4 sponsor any study that shows whether DP&L could
5 provide stable service with a \$73 million SSR?

6 A. A study that would demonstrate that DP&L
7 could provide stable service?

8 Q. Correct.

9 A. No, I did not sponsor a study with respect
10 to whether the company would or could provide stable
11 service.

12 Q. I want to turn you then to pages 12 and 13
13 of your testimony.

14 A. Yes.

15 Q. You there refer to some analysis that we
16 discussed earlier where you compared your \$73 million
17 proposal to Dr. Chambers' exhibits?

18 A. Yes.

19 Q. Right?

20 A. Yes.

21 Q. It looks to me like you have attempted to
22 avoid having to deal with any confidentiality
23 obligations under the Commission's rules by not citing
24 specific numbers in Dr. Chambers' exhibits; is that
25 right?

1 A. That's correct.

2 Q. Which is fine, by the way. I'm not being
3 critical, I'm just inquiring. And I'm going to stick
4 with the same convention and ask some questions
5 without citations to the numbers and see if we can
6 keep from having to deal with putting this deposition,
7 in part, under seal.

8 A. Okay.

9 Q. Do you have Dr. Chambers' testimony
10 available to you?

11 A. I do.

12 Q. If you would turn to WJC-1?

13 A. Yes.

14 Q. Do you see if Dr. Chambers has projected
15 ROE figures in column L for the years 2013 through
16 2017?

17 A. Yes.

18 Q. As an initial matter, you don't sponsor
19 any testimony that suggests that his calculation of
20 those projected ROE numbers is unreasonable, do you?

21 A. Correct.

22 Q. And then you compare in your testimony the
23 ROE numbers from WJC-1 to WJC-3; correct?

24 A. No. I believe I compare the numbers from
25 WJC-2 to WJC-4.

1 Q. I apologize. WJC-2 and WJC-4. You in
2 particular -- well, let me step back.

3 It's true, isn't it, that at no point in
4 your testimony do you suggest that any of Dr.
5 Chambers' calculations or projections or numbers were
6 unreasonable or seemed incorrect?

7 A. That is true.

8 Q. You compare on line WJC-2 the ROEs that
9 are shown in column K, lines two and three --

10 A. Yes.

11 Q. -- to WJC-4, the ROEs in column K in lines
12 two and three; right?

13 A. Yes.

14 Q. And you conclude that your projected --
15 that under your recommendation that the SSR be set at
16 \$73 million, DP&L would earn an ROE somewhere between
17 those two figures; right?

18 A. Yes, based on the assumptions used in Dr.
19 Chambers' exhibits.

20 Q. Okay. As an initial matter, you haven't
21 identified where between those figures the ROE would
22 fall, do you?

23 A. Well, I didn't, because I wanted to not
24 refer to confidential information. So for my own
25 purposes, I did calculate where they would fall, and I

1 did point out in my testimony that the revenues that
2 would be produced under my proposal would be somewhere
3 in the range of 47 to 52 percent of the company's
4 proposed SSR in those two years, which is
5 approximately midway. It's not exactly midway. And
6 that would allow the reader who has access to Dr.
7 Chambers's confidential exhibits to see for themselves
8 what is about midway.

9 But, I mean, I did calculate it for my own
10 benefit.

11 Q. Well, I understand that your proposed SSR
12 is, ballpark, half of DP&L's proposed SSR; right?

13 A. Correct.

14 Q. And that means that the resulting ROE
15 would be ballparked in the middle of the two ROEs on
16 WJC-2 and WJC-4 that we were comparing?

17 A. I think at a high level, yes, because of
18 the following reason. I mean, Dr. Chambers's
19 calculations showed what the return in equity would be
20 under the company's proposal, that was in Exhibit 2,
21 and in Exhibit 4 showed what it would be if there were
22 no recovery. So we have a couple of end points
23 available to us from Dr. Chambers's calculations.

24 So with my proposal being about midway
25 between those, I think it's reasonable to infer that

1 the ROE would be about midway between them, at a high
2 level.

3 Q. Are you familiar with processes commonly
4 used in utility rate making cases to derive a return
5 on equity?

6 A. Yes.

7 Q. The common methodologies would be using a
8 discounted cash flow methodology and a comparables
9 methodology?

10 A. Well, you are talking now about trying to
11 set a return equity in a rate case?

12 Q. Yes. My question to you is: When utility
13 commissions attempt to -- utility commissions do set a
14 return on equity, is it common that they would
15 consider both a discounted cash flow and a comparables
16 methodology?

17 A. Yes.

18 Q. And you are aware that Dr. Chambers has at
19 least done a comparables methodology?

20 A. Well, my understanding is that Dr.
21 Chambers has made a projection of what the return in
22 equity would be.

23 But, you know, in other words, one can use
24 these methodologies you refer to for purposes of
25 recommending a return in equity, and then one can also

1 attempt to project an actual return on equity based on
2 the projected cash flow of the firm.

3 Q. Let me ask you this -- I mean, if you
4 would turn within his testimony to page 58.

5 A. Okay. I don't have his entire testimony
6 in front of me, Mr. Sharkey.

7 Q. I don't know that you'll need to look at
8 it. I'll read you a piece of it. He said, starting
9 on line three to line four, that a range for ROE of
10 7.7 percent and 10.4 percent reflects a rate of return
11 that investors could reasonably expect to receive from
12 similarly situated utility companies.

13 A. Okay.

14 Q. My question to you is simply this:
15 There's nothing in your testimony that criticizes or
16 disagrees with Dr. Chambers's conclusions I just read
17 to you; correct?

18 A. I don't address his conclusion in that
19 regard.

20 Q. Okay. That's all I wanted on that
21 subject.

22 Turning back then still in Dr. Chambers'
23 exhibit --

24 MR. YURICK: Jeff, this is Mark. Can I
25 have like five minutes?

1 MR. SHARKEY: Do you need a break, you're
2 saying?

3 MR. YURICK: I need a five-minute break
4 here real quick.

5 MR. SHARKEY: Sure. Let's go off the
6 record.

7 (Brief recess.)

8 Q. (By Mr. Sharkey) Mr. Higgins, is it your
9 proposal that the \$73 million charge last for the full
10 five years that DP&L proposes for its ESP?

11 A. That would be up to the Commission. I
12 really don't have a specific period of time for which
13 I propose it as a alternative to what the company has
14 recommended.

15 And, as I'm sure you are aware, I
16 recommend a specific sunset provision for shopping
17 customers that would be five years from the date that
18 they started shopping.

19 So I don't have a specific time horizon at
20 which I recommend the charge continue.

21 Q. Okay. Do you see that the projected ROEs
22 that Dr. Chambers proposes in 2015, 2016 and 2017
23 decline over time?

24 A. Yes.

25 Q. And you don't have any reason to disagree

1 with the reasonableness of those projections?

2 A. I don't have reason to disagree with the
3 reasonableness of the projections, but they are
4 projections. And I do comment that the further you go
5 into the future, attempting to project returns on
6 equity, the less reliable they become.

7 But, you know, given that that's the
8 exercise that Dr. Chambers was engaged in, I don't
9 have a criticism per se of how he did it.

10 Q. Let me ask you some questions about the
11 sunset date that you just mentioned. Can you describe
12 your sunset proposal to me, how that would work?
13 Because I'm not sure I understand it because I haven't
14 reviewed your testimony.

15 A. Certainly. The intent of the proposal
16 would be that for a customer -- or that a customer who
17 has been continuously shopping, the SSR charge would
18 cease after five years, so that it would be applied at
19 the individual shopping customer level, that one would
20 identify the initiation of the shopping date, confirm
21 that the customer has been continuously shopping since
22 that date, and then once five years has been reached,
23 the customer would no longer be subject to the charge.

24 Q. Okay. Now, you have told me just a moment
25 ago that we don't know what the future will hold in

1 terms of market prices for generation; right?

2 A. Correct.

3 Q. You don't know if five years from now that
4 Dayton Power & Light Company will have ongoing needs
5 for a stability charge of some sort?

6 A. Correct; we don't know what those
7 requirements or interests or desires will be.

8 Q. If in five years DP&L can satisfy the same
9 statutory elements that we discussed earlier in
10 4928.143(B)(2)(d), are you aware of any reason that
11 the Commission should deny DP&L ongoing recovery of
12 charges that would be permissible under that statute?

13 A. Yes.

14 Q. What would those be?

15 A. Well, if I understand the company's
16 intentions correctly, the company intends to file a
17 plan to divest its generation. And if I understand
18 correctly that according to that plan, the company
19 would be fully divested within the next five years.

20 So I would not understand what the basis
21 would be for a utility which no longer owned
22 generation to continue to receive generation subsidies
23 from shopping customers.

24 So as a threshold matter, I guess I don't
25 understand what the basis would be for a charge after

1 that time.

2 Q. Well, I'm just asking you to assume that
3 Dayton Power & Light Company, for whatever reason, is
4 able to satisfy the statutory elements that we looked
5 at earlier. With that assumption in mind, are you
6 aware of any reason that it should not be entitled to
7 have ongoing benefits of the provisions of the
8 statute?

9 A. Not to be argumentative, Mr. Sharkey, but
10 I think I answered the question. The predicate of the
11 question is that you are saying assume they continue
12 to satisfy the requirements of the section.

13 And I'm saying, well, as I understand your
14 filing, you are not even going to own generation. So
15 I don't understand the premise under which a charge
16 would continue to apply.

17 So, I mean, if we want to reduce it to
18 tautologically and say, well, if tautologically
19 somehow Dayton Power & Light is in a similar set of
20 circumstances five years from now, to the extent that
21 this section applies today, will it apply five years
22 from now? I guess I would say tautologically perhaps
23 it would. But I would also qualify that by saying I
24 don't understand why it would.

25 Q. Let me ask you about your recommendation

1 relating go to the Switching Tracker?

2 A. Sure.

3 Q. Do you reject -- you recommend that the
4 Commission reject DP&L's request for that Switching
5 Tracker?

6 A. Yes.

7 Q. Okay. Do you understand that rejection of
8 that Switching Tracker would result in further
9 reductions to the projected ROEs from Dr. Chambers
10 that we looked at earlier; right?

11 A. Correct, assuming increased switching
12 which, I think, you know, would be a matter of some
13 speculation, because with the SSO rate expected to
14 come down, one would think that that would put a
15 dampener on the amount of switching that it does in
16 the future.

17 Q. Regardless, you haven't performed any
18 analysis to determine what effect the Commission's
19 accepting of your recommendation would have on DP&L's
20 financial integrity, have you?

21 A. With respect to the Switching Tracker? Is
22 that what you are asking, sir?

23 Q. Correct.

24 A. With respect to the Switching Tracker,
25 that is correct.

1 Q. Turn, if you would, to page ten of your
2 testimony.

3 A. Sure.

4 Q. Starting on line eight there's a clause
5 that says: "The majority of the shopping load
6 assigned to an affiliate, DP&L Energy Resources, and
7 thus has remained within DP&L's corporate family."

8 Why did you put that clause in your
9 testimony?

10 A. Because I think that in the balancing
11 factors, it's probably useful for the Commission to
12 take into consideration that the loss of load to
13 shopping that the company has experienced has gone to
14 an affiliate rather than to a completely separate
15 third party because, to a certain extent, that
16 affiliate is able to continue to earn margins from
17 sales that that would actually supplement the
18 company's overall financial stability more than had
19 those sales gone to a third party.

20 Q. Are you familiar with the corporate
21 separation rules that are in force in Ohio?

22 A. Generally, yes.

23 Q. Are you aware of any ability of the Dayton
24 Power & Light Company to subsidize its DPLER?

25 A. I'm not aware of anything subsidizing for

1 it. My intent here is not based on subsidization --
2 or referenced to subsidization.

3 Q. I understand, so let's move on.

4 Are you aware of any ability of DPLER to
5 subsidize the Dayton Power & Light Company?

6 A. No.

7 Q. Let me ask you about the reconciliation
8 rider that Dayton Power & Light Company proposes.

9 A. Yes.

10 Q. You recommend that the Commission reject
11 that proposal, don't you?

12 A. I recommend that the Commission rejects
13 the part of the proposal that suggests that this be a
14 non-bypassable charge.

15 Q. It's true, isn't it, that you don't
16 sponsor any analysis of what effects rejecting the
17 bypassable nature of the charge would have upon DP&L's
18 financial integrity?

19 A. Correct, because I think it should be
20 rejected as a matter of principle.

21 Q. But you don't know what effect that will
22 have on DP&L financially; right?

23 A. Correct.

24 Q. Would you support increasing the SSR to
25 account for any money that might be lost if your

1 proposal regarding the reconciliation rider was
2 adopted?

3 A. Not for shopping customers, no.

4 Q. Do you have an understanding of why DP&L
5 has proposed that amounts in the fuel rider, RPM
6 rider, PCRB and VAR and proposed CBP should be shifted
7 from those riders into the reconciliation rider?

8 A. Yes, I've read Emily Robb's testimony on
9 the subject.

10 Q. Okay. So you have an understanding that
11 the concept is that there's deferrals in those
12 existing bypassable riders; right?

13 A. Yes.

14 Q. And DP&L sets its rates at the beginning
15 of a period to collect the amounts of the deferrals
16 over the existing group of customers; right?

17 A. Yes.

18 Q. And the fact is if they're switching, DP&L
19 won't recover all the entire amount of the deferrals;
20 right?

21 A. Correct.

22 Q. So that then it will have still more
23 deferrals to recover over a smaller group of
24 customers?

25 A. Correct. But I will point out, Mr.

1 Sharkey, that the company's proposal fails to take
2 into account the treatment of customers who were
3 shopping prior to these deferrals.

4 And, you know, I believe it's the
5 company's burden to put together a coherent proposal
6 that treats the various sectors of customers fairly.

7 So I think had the company proposed
8 something that was more tailored to assign costs
9 directly to the customers for whom these costs were
10 incurred, then that might have, you know, caused me to
11 have a different assessment of it. But the company
12 made no such attempt and, in fact, simply wishes or
13 proposes to charge customers who have been shopping
14 since 2009 for these deferral costs, which they have
15 absolutely no role in causing to be incurred.

16 I think the company has gotten an
17 affirmative burden to put something forward that is
18 essentially fair.

19 Barring that, I think the Commission
20 should reject it, the non-bypassable component of
21 this.

22 Q. My question had nothing to do with your
23 answer. The question was: Do you understand that
24 those events are, in fact, occurring?

25 MR. SHARKEY: And can I have my question

1 reread, please, and then have you respond.

2 (Previous question so read by the
3 Reporter.)

4 A. Yes.

5 Q. Do you understand that as the amount of
6 deferrals continues to grow, that will continue to
7 increase the size of the bypassable charge?

8 A. Yes.

9 Q. And it's true that the end result of
10 maintaining the existing process in place could result
11 in a very large deferral balance being collected from
12 a very small group of customers?

13 A. Given the options that the company has put
14 out there to address this issue, yes.

15 Q. And you understand that the reason the
16 company has proposed its proposal to put a certain
17 portion of the deferral balances into the
18 reconciliation rider was to avoid the problems that
19 I've just discussed?

20 A. I think the company did not take the
21 analysis far enough and made no attempt to assign the
22 costs to the customers who may have incurred them;
23 that is, made no attempt to perhaps roll them off to
24 the cohorts of customers as they may have left and
25 shopped.

1 Deponent's Certificate.

2
3 I, KEVIN HIGGINS, deponent herein, do
4 hereby certify and declare the within and foregoing
5 transcription to be my deposition in said action taken
6 on March 8, 2013; that I have read, corrected, and do
7 hereby affix my signature to said deposition.

8
9 DATED this _____ day of _____,
10 2013.

11
12 _____
13 Deponent

14 STATE OF UTAH)
15) ss.
16)

17 SUBSCRIBED AND SWORN to before me this
18 _____ day of _____, 2013.

19
20 _____
21 Notary Public residing in
22 _____

23 My Commission Expires:

24 _____
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Reporter's Certificate

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State of Utah)
County of Salt Lake)

I, Denise Kirk, Certified Shorthand Reporter and Registered Professional Reporter for the State of Utah, do hereby certify:

THAT the foregoing proceedings were taken before me at the time and place set forth herein; that the witness was duly sworn to tell the truth, the whole truth, and nothing but the truth; and that the proceedings were taken down by me in shorthand and thereafter transcribed into typewriting under my direction and supervision;

THAT the foregoing pages contain a true and correct transcription of my said shorthand notes so taken.

IN WITNESS WHEREOF, I have subscribed my name this 13th day of March, 2013.


Denise Kirk, CSR/RPR

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Reporter's Certificate

State of Utah)
County of Salt Lake)

I, Denise Kirk, Certified
Shorthand Reporter and Registered Professional

Reporter for the State of Utah, do hereby certify:

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before me at the time and place set forth herein; that
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Denise Kirk, CSR/RPR

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