

BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

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In the Matter of the :
Application of The Dayton :
Power and Light Company : Case No. 12-426-EL-SS0
for Approval of its :
Electric Security Plan. :

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

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

In the Matter of the :
Application of the Dayton :
Power and Light Company : Case No. 12-429-EL-WVR
for the Waiver of Certain :
Commission Rules. :

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

- - -

PROCEEDINGS

before Mr. Gregory A. Price and Mr. Bryce A.
McKenney, Hearing Examiners, at the Public Utilities
Commission of Ohio, 180 East Broad Street, Room 11-A,
Columbus, Ohio, called at 9:00 a.m. on Wednesday,
March 20, 2013.

VOLUME III

- - -

1 APPEARANCES:

2 Faruki, Ireland & Cox, PLL
3 By Mr. Charles J. Faruki
4 Mr. Jeffrey S. Sharkey
5 500 Courthouse Plaza, S.W.
6 10 North Ludlow Street
7 Dayton, Ohio 45402

8 The Dayton Power and Light Company
9 By Ms. Judi L. Sobecki
10 1065 Woodman Drive
11 Dayton, Ohio 45432

12 On behalf of The Dayton Power and Light
13 Company.

14 McNees, Wallace & Nurick, LLC
15 By Mr. Frank P. Darr
16 Mr. Joseph E. Olikier
17 Mr. Matthew R. Pritchard
18 Mr. Samuel C. Randazzo
19 Fifth Third Center, Suite 1700
20 21 East State Street
21 Columbus, Ohio 43215

22 On behalf of Industrial Energy Users of
23 Ohio.

24 Bruce J. Weston, Consumers' Counsel
25 Office of the Ohio Consumers' Counsel
By Ms. Maureen R. Grady
Mr. Edmund Berger
Ms. Melissa R. Yost
Assistant Consumers' Counsel
10 West Broad Street, Suite 1800
Columbus, Ohio 43215

On behalf of the Residential Customers of
The Dayton Power and Light Company.

Krieg DeVault, LLP
By Mr. Steven M. Sherman
Mr. Joshua D. Hague
One Indiana Square, Suite 2800
Indianapolis, Indiana 46204

On behalf of Wal-Mart Stores East, LP and
Sam's East, Inc.

1 APPEARANCES: (Continued)

2 Christensen Law Office, LLC
3 By Ms. Mary W. Christensen
4 8760 Orion Place, Suite 300
5 Columbus, Ohio 43240

6 On behalf of People Working
7 Cooperatively, Inc.

8 Boehm, Kurtz & Lowry
9 By Mr. David F. Boehm
10 Ms. Jody Kyler-Cohn
11 36 East Seventh Street, Suite 1510
12 Cincinnati, Ohio 45202

13 On behalf of Ohio Energy Group.

14 Carpenter, Lipps & Leland, LLP
15 By Ms. Kimberly W. Bojko
16 Ms. Mallory Mohler
17 Mr. Joel E. Sechler
18 280 Plaza, Suite 1300
19 280 North High Street
20 Columbus, Ohio 43215

21 On behalf of SolarVision, LLC.

22 Ice Miller, LLP
23 By Mr. Christopher L. Miller
24 Mr. Chris Michael
25 250 West Street, Suite 700
Columbus, Ohio 43215

On behalf of the City of Dayton, Ohio.

Ohio Environmental Council
By Mr. Trent A. Dougherty
Ms. Cathryn N. Loucas
1207 Grandview Avenue, Suite 201
Columbus, Ohio 43212

On behalf of the Ohio Environmental
Council.

23
24
25

1 APPEARANCES (Continued):

2 Whitt Sturtevant, LLP
3 By Mr. Mark A. Whitt
4 Mr. Andrew J. Campbell
5 Mr. Gregory L. Williams
6 The KeyBank Building
7 88 East Broad Street, Suite 1590
8 Columbus, Ohio 43215

9 On behalf of Interstate Gas Supply, Inc.

10 Duke Energy Ohio, Inc.
11 By Ms. Jeanne W. Kingery
12 155 East Broad Street, 21st Floor
13 Columbus, Ohio 43215

14 Thompson Hine, LLC
15 By Mr. Philip B. Sineneng
16 41 South High Street, Suite 1700
17 Columbus, Ohio 43215

18 On behalf of Duke Energy Sales, LLC and
19 Duke Energy Commercial Asset Management,
20 Inc.

21 Taft, Stettinius & Hollister, LLP
22 By Mr. Zachary D. Kravitz
23 Mr. Mark S. Yurick
24 65 East State Street, Suite 1000
25 Columbus, Ohio 43215

On behalf of the Kroger Company.

Ms. Colleen L. Mooney
231 West Lima Street
Findlay, Ohio 45839-1793

On behalf of Ohio Partners for Affordable
Energy.

Honda of America Manufacturing, Inc.
By Mr. M. Anthony Long
Mr. Asim Z. Haque
24000 Honda Parkway
Marysville, Ohio 43040

On behalf of Honda of America
Manufacturing, Inc.

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APPEARANCES (Continued):

Major Christopher C. Thompson
USAF Utility Law Field Support Center
139 Barnes Drive, Suite 1
Tyndall Air Force Base, Florida 32403-5317

On behalf of Federal Executive Agencies.

Calfee, Halter & Griswold LLP
By Mr. James F. Lang
1400 KeyBank Center
800 Superior Avenue
Cleveland, Ohio 44114

Calfee, Halter & Griswold, LLP
By Mr. N. Trevor Alexander
1100 Fifth Third Center
21 East State Street
Columbus, Ohio 43215

FirstEnergy Service Company
By Mr. Mark A. Hayden
76 South Main Street
Akron, Ohio 44308
On behalf of the FirstEnergy Service Corporation.

Vorys, Sater, Seymour & Pease, LLP
By Mr. M. Howard Petricoff
Ms. Gretchen L. Petrucci
52 East Gay Street
P.O. Box 1008
Columbus, Ohio 43216-1008
On behalf of the Exelon Generation Company, LLC, Constellation NewEnergy, Inc., and Retail Energy Supply Association.

American Electric Power
By Mr. Matthew J. Satterwhite
Mr. Steven T. Nourse
One Riverside Plaza
Columbus, Ohio 43215-2373
On behalf of Ohio Power Company.

1 APPEARANCES (Continued):

2 Advocates for Basic Legal Equality
3 By Mr. Ellis Jacobs
4 333 West First Street, Suite 500
5 Dayton, Ohio 45402

6 On behalf of the Edgemont Neighborhood
7 Coalition of Dayton.

8 Mr. Richard L. Sites
9 155 East Broad Street, 15th Floor
10 Columbus, Ohio 43215

11 Bricker & Eckler, LLP
12 By Mr. Thomas J. O'Brien
13 100 South Third Street
14 Columbus, Ohio 43215-4291

15 On behalf of the Ohio Hospital
16 Association.

17 Bricker & Eckler, LLP
18 By Mr. J. Thomas Siwo
19 Mr. Matthew W. Warnock
20 100 South Third Street
21 Columbus, Ohio 43215-4291

22 On behalf of OMA Energy Group.

23 Eberly McMahon, LLC
24 Mr. Robert L. McMahon
25 2321 Kemper Lane, Suite 100
Cincinnati, Ohio 45206

On behalf of Duke Energy Ohio.

Thompson Hine, LLP
By Ms. Stephanie M. Chmiel
Mr. Michael L. Dillard, Jr.
41 South High Street, Suite 1700
Columbus, Ohio 43215

On behalf of Border Energy Electric
Services.

1 APPEARANCES (Continued):

2 EnerNOC, Inc.
3 By Mr. Gregory J. Poulos
4 471 East Broad Street
5 Columbus, Ohio 43215

6 On behalf of EnerNOC, Inc.

7 Direct Energy
8 By Mr. Joseph M. Clark
9 Ms. Jennifer Lause
10 Direct Energy
11 21 East State Street, Suite 1900
12 Columbus, Ohio 43215

13 On behalf of Direct Energy Services,
14 LLC and Direct Energy Business, LLC.

15 Mike DeWine, Ohio Attorney General
16 By William Wright, Section Chief
17 Public Utilities Section
18 Mr. Thomas W. McNamee
19 Mr. Werner L. Margard III
20 Mr. Devin D. Parram
21 Assistant Attorneys General
22 180 East Broad Street, 6th Floor
23 Columbus, Ohio 43215-3793

24 On behalf of the staff of the Public
25 Utilities Commission of Ohio.

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1 Wednesday Morning Session,
2 March 20, 2013.

3 - - -

4 EXAMINER MCKENNEY: At this time the
5 Public Utilities Commission of Ohio calls Case
6 No. 12-426-EL-SSO, being the application of The
7 Dayton Power & Light Company to Establish a Standard
8 Service Offer in the Form of an Electric Security
9 Plan.

10 My name is Bryce McKenney, with me is
11 Gregory Price, we're the Attorney Examiners assigned
12 by the Commission to hear this case.

13 At this time we will -- a moment ago we
14 had a discussion off the record regarding a
15 memorandum that was filed in this case regarding an
16 evidentiary matter.

17 Mr. Darr, would you care to address that
18 orally.

19 MR. DARR: Yes, your Honor. I would note
20 for the record that we received a memorandum from
21 Dayton Power & Light Company on the evidentiary
22 question, which is a nice way of saying that they're
23 responding to our motion to strike which was held
24 over from last night.

25 The gist of the response, as I understand

1 it from Dayton Power & Light, is the Commission has
2 wide discretion in terms of deciding what it includes
3 in its record and what it excludes from its record,
4 and specifically with regard to the question of what
5 an expert can rely upon, DP&L is relying on a case
6 called Pro Se Commercial Properties versus Cleveland
7 Electric Illuminating Company, Case
8 No. 07-1306-EL-CSS.

9 Thanks to those wonderful people in
10 Docketing, I was able to secure a copy of that
11 decision this morning after I received the memorandum
12 contra.

13 I would note for the Court that -- or,
14 for the Bench, excuse me, that the general statements
15 of law provided in the memorandum contra reflect our
16 common understanding of what the Commission's
17 authority is with regard to evidence presented to it,
18 however, it remains up to you as the decision-makers
19 in this case to decide whether or not that evidence
20 which was left out is an error that should be allowed
21 to infect this record in a way that would be
22 inappropriate.

23 I would also point out to you that in the
24 case that Dayton Power & Light cited to you some of
25 the evidence, which was complained of as not being in

1 the record, was, in fact, moved for admission on the
2 basis of administrative notice and, in fact, the
3 Bench administratively noticed the tariffs apparently
4 that were at issue and which had not been admitted as
5 part of the testimony of the expert in the CEI
6 complaint case.

7 On that basis, your Honor, I think our
8 motion to strike still remains on very strong
9 grounds. First, this was information in the control
10 of Dayton Power & Light. Second, Dayton Power &
11 Light clearly was relying on that information to
12 support its testimony. Third, it did not provide
13 that information to the record as part of its
14 prefiled testimony. And, three, the case they're
15 relying on actually seems to hold the exact opposite,
16 in fact, the record had been made complete by the
17 proffer of the -- or, the request to take
18 administrative notice of the data that was being
19 relied upon by the expert witness in that case.

20 Based on that I believe that we are on
21 strong grounds to seek and that the Bench should
22 grant the motion to strike.

23 Thank you.

24 EXAMINER PRICE: Mr. Darr, can you
25 confirm that the parties were provided that

1 spreadsheet in discovery?

2 MR. DARR: I can't personally confirm
3 that one way or the other, your Honor.

4 EXAMINER PRICE: That was Mr. Faruki's
5 representation. I was just looking --

6 MR. DARR: I don't know the answer to
7 that question. I will take his representation that
8 it was.

9 EXAMINER PRICE: I am actually very leery
10 about relying on pro se cases because I think this
11 Commission -- by counsel, because this Commission
12 bends over backwards when we have pro se complainants
13 to give them their fair day in court and tends to
14 create exceptions that we wouldn't necessarily create
15 in a hearing.

16 Nonetheless, in light of the fact that
17 this was provided to the parties in discovery, we're
18 going to deny the motion to strike subject to any
19 party that desires to call Mr. Jackson and
20 cross-examine Mr. Jackson on the contents of that
21 spreadsheet will be given that opportunity. So if
22 you care to notify the Bench, we will re-call
23 Mr. Jackson at a convenient time and any questions
24 you want to ask him about the spreadsheet will be
25 fair game.

1 EXAMINER McKENNEY: All right.

2 Mr. Sharkey, you may call your first witness.

3 MR. SHARKEY: Your Honors, The Dayton
4 Power & Light Company calls Jeff Malinak.

5 EXAMINER McKENNEY: Mr. Malinak, please
6 raise your right hand.

7 (Witness sworn.)

8 EXAMINER McKENNEY: Thank you. Please
9 state your name and business address for the record.

10 THE WITNESS: My name is R. Jeffrey
11 Malinak, my business address is 1899 Pennsylvania
12 Avenue Northwest, Washington, DC 20006.

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14 R. JEFFREY MALINAK
15 being first duly sworn, as prescribed by law, was
16 examined and testified as follows.

17 DIRECT EXAMINATION

18 By Mr. Sharkey:

19 Q. Good morning, Mr. Malinak. My name is
20 Jeff Sharkey, as you know.

21 Do you have before you a copy of your
22 second revised direct testimony?

23 A. I do.

24 MR. SHARKEY: And, your Honors, for the
25 record we would designate his testimony as DP&L

1 Exhibit 5.

2 (EXHIBIT MARKED FOR IDENTIFICATION.)

3 Q. If I asked you the questions that were
4 contained in your testimony before you, would those
5 answers be true?

6 A. Yes.

7 Q. Do you have any changes, revisions, or
8 updates to your testimony?

9 A. I do not.

10 Q. Okay.

11 MR. SHARKEY: Your Honor, I would have no
12 further questions for Mr. Malinak and would tender
13 him for cross-examination, and I'd move for the
14 admission of DP&L Exhibit 5.

15 EXAMINER MCKENNEY: Thank you,
16 Mr. Sharkey.

17 At this time we'll proceed with
18 cross-examination. Mr. Alexander.

19 MR. ALEXANDER: Thank you, your Honor.

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21 CROSS-EXAMINATION

22 By Mr. Alexander:

23 Q. Good morning, Mr. Malinak.

24 A. Good morning.

25 Q. My name is Trevor Alexander. I'm one of

1 the lawyers for FirstEnergy Solutions.

2 In your testimony at pages 3 to 4 you
3 provide background discussion of Ohio law as it
4 relates to the ESP versus MRO test; is that correct?

5 A. Yes.

6 Q. In your deposition we defined the term
7 "ESP versus MRO test" as the test in 4928.143 that
8 you reference in your testimony, and can we use that
9 same definition again today?

10 A. Yes.

11 Q. You have read the statutes referenced in
12 your testimony; is that correct?

13 A. I have.

14 Q. And you relied on your understanding of
15 those statutes when drafting your testimony.

16 A. In part. I relied on counsel's
17 instructions regarding those statutes and also on my
18 own reading secondarily.

19 Q. And you read the Commission orders cited
20 in your testimony.

21 A. Are you talking about in footnote 1?

22 Q. Specifically, yes, but the question was
23 broader, it included all Commission orders cited in
24 your testimony.

25 A. Yes.

1 Q. And I would like to define the August of
2 2012 decision in Case No. 11-346 that you cite in
3 your testimony as the AEP ESP order. Is that
4 acceptable to you?

5 A. Yes.

6 Q. You did not review the ESP versus MRO
7 test testimony which was filed in the AEP ESP case;
8 is that correct?

9 A. I did review the AEP ESP decision. The
10 August 2012 decision?

11 Q. I don't believe --

12 A. Maybe I misunderstood your question. I'm
13 sorry.

14 Q. Sure. You did not review the ESP versus
15 MRO test testimony which was filed in the AEP ESP
16 case; is that correct?

17 A. I do not recall reviewing that testimony,
18 right.

19 Q. So you did not review the testimony of
20 Staff Witness Fortney from that case?

21 A. That's correct.

22 Q. And you did not review the testimony of
23 AEP Witness Thomas from that case.

24 A. That's correct.

25 Q. To obtain your understanding of Ohio law

1 as it relates to the ESP versus MRO test you relied
2 solely on the two statutes and two Commission
3 decisions cited in your testimony.

4 A. Well, I relied on counsel's
5 interpretation and instruction as to the legal
6 interpretation of those two statutes because I'm not
7 an attorney. I had my own layman's reading as well
8 on top of that, as I testified earlier, secondarily I
9 relied on that.

10 Q. In addition to the two statutes and two
11 Commission orders?

12 A. Well, as a general matter I relied on
13 counsel's interpretation for legal issues. My own
14 reading of those things, though, secondarily informed
15 my opinion and understanding.

16 Q. You believe that the ESP proposed by
17 Dayton Power & Light includes both quantifiable and
18 nonquantifiable benefits; is that correct?

19 A. Yes, I believe that the ESP includes both
20 quantifiable and nonquantifiable benefits to various
21 stakeholders relative to an MRO.

22 Q. And at this point I'd like to focus our
23 discussion on the aggregate price test portion of
24 your testimony. Do you understand that?

25 A. Is that as defined in my deposition?

1 Q. Yes.

2 A. Okay, where it includes both the
3 statutory price test and then other quantifiable
4 differences.

5 Q. That's correct. We're going to discuss
6 nonquantifiable benefits of the ESP that may or may
7 not exist after we finish with the price test.

8 A. Sure.

9 Q. A hundred percent of the aggregate price
10 test benefit that you identified results from the
11 faster transition to market as compared to an MRO; is
12 that correct?

13 A. Yes, that's right. The SSO, the blended
14 SSO rate is lower under the ESP because of the faster
15 transition to market and, based on my calculations,
16 it produces a quantifiable benefit to the ESP.

17 Q. And when you calculated the purported
18 quantifiable benefit of the ESP, you held --

19 (Off the record.)

20 Q. Would it be helpful for me to restate the
21 question?

22 A. Please.

23 Q. When you calculated the aggregate price
24 test benefit of the ESP, you held switching constant;
25 is that correct?

1 A. Yes, I did. However, if the switching
2 tracker is available in both the -- under both the
3 MRO and the ESP, then you get the same result, so.

4 Q. And you held switching constant as of
5 August 30th, 2012?

6 A. Yeah. Except, as I just described,
7 implicitly I didn't really have to because I made the
8 assumptions that the switching tracker would be
9 available under both the MRO and the ESP and in that
10 case additional switching wouldn't have changed my
11 answer. So it implicitly incorporates additional
12 switching.

13 Q. Holding all else constant, if switching
14 increases over the ESP term, then your calculation of
15 the ESP benefit would decrease, correct?

16 A. Not if the switching tracker is approved
17 and included in both the MRO and the ESP, then
18 additional switching would not make a difference. To
19 the quantifiable part of things. I think that's what
20 we're talking about, right, the quantifiable benefits
21 at this point? Okay.

22 Q. We are talking about the quantifiable
23 benefits but I'd just like to leave the switching
24 tracker to the side for a minute.

25 If switching increases over the ESP term,

1 then your calculation of the ESP benefit would
2 decrease.

3 A. By leaving it aside do you mean that it
4 would not be there in the MRO and the ESP?

5 Q. That's correct.

6 A. If it's not -- if it is not in either one
7 of those, then yes, with increased switching the
8 quantifiable portion of the aggregate price test
9 would go down.

10 Q. Could you turn your attention to page 5
11 of your testimony, specifically lines 3 to 5.

12 A. I'm there.

13 Q. You believe that the ESP versus MRO test
14 should compare the as-filed ESP with any hypothetical
15 MRO that the EDU could file at the same time; is that
16 correct?

17 A. I believe that the MRO -- that the
18 comparison should be between the ESP and a
19 hypothetical MRO that they would file on the same
20 day.

21 Q. And the only limitation that you believe
22 applies to the hypothetical MRO is whether the
23 charges to be included in the hypothetical MRO are
24 appropriate under Ohio law?

25 A. I'm not an expert on Ohio law, so I don't

1 know, you know, I'm not an expert on where there are
2 limits and where there are not limits, but it would
3 seem logical to me that an MRO that was filed on the
4 same day should be in compliance with the appropriate
5 rules and regulations.

6 Does that answer your question?

7 Q. I don't think it does.

8 A. Okay.

9 Q. What limitations are there on the
10 hypothetical MRO that you create in your testimony?

11 A. I guess I'm having a little bit of a
12 problem with "limitations," but I define the MRO in
13 my testimony, I define the important terms of it from
14 a quantifiable and nonquantifiable basis, you know,
15 the key assumptions are for the quantifiable side are
16 the blending percentages over time and whether or not
17 there would be an SSR or other nonbypassable charge
18 in the MRO.

19 Q. Sure. Mr. Malinak, I'm trying to
20 understand the legal standard that you applied rather
21 than the specifics of Dayton Power & Light's
22 proposal. You believe that the ESP test should
23 compare the as-filed ESP with a hypothetical MRO that
24 the EDU would file on the same day; is that correct?

25 A. That is.

1 Q. And when creating the hypothetical MRO,
2 you believe that only charges which are appropriate
3 under Ohio law should be included in that
4 hypothetical MRO.

5 A. Again, I'm not an expert on Ohio law, but
6 it seems logical to me that the MRO that would need
7 to be filed or would be filed on the same day would
8 need to be in compliance with applicable rules and
9 regulations.

10 Q. Are there any other limitations on the
11 hypothetical MRO other than compliance with
12 applicable rules and limitations?

13 MR. SHARKEY: I'm going to object. It's
14 a question of law.

15 EXAMINER MCKENNEY: Overruled.

16 A. You know, I just don't know what the
17 limits are. I mean, it would seem to me that -- it
18 would seem logical to me that the limitations, if
19 any, would come from legal issues. You know, when
20 you use the word "limitations," I'm not sure exactly
21 what it means, but it would seem to me that the
22 parameters would be defined primarily by the rules
23 and regulations, but to some extent it's also defined
24 by what the company -- the company's situation is and
25 what they would like to file, so.

1 Q. DP&L instructed you to assume that the
2 SSR proposed by DP&L should be included on the MRO
3 side of your test, correct?

4 A. Counsel -- my discussions with counsel
5 and DP&L led to an instruction to include or a
6 statement that if they were to file a hypothetical
7 MRO at the same time as the ESP, that they would
8 propose an SSR that was of the same magnitude as
9 under the ESP.

10 Q. So DP&L instructed you to assume that the
11 SSR should be included on the MRO side of the test.

12 A. They asked me to make that assumption,
13 yes.

14 Q. And you are not offering a legal opinion
15 in this case as to whether the SSR can be imposed in
16 an MRO; is that correct?

17 A. Yes, I'm not offering a legal opinion,
18 but I should also add that when I was asked to make
19 the assumption that the SSR would be of the same
20 magnitude under the MRO, I also, you know, tested
21 that assumption, as I say in my direct testimony. I
22 tested the reasonableness of it myself by looking at
23 financial integrity metrics under the MRO.

24 MR. ALEXANDER: Your Honor, motion to
25 strike everything after the word "but."

1 EXAMINER MCKENNEY: Mr. Sharkey.

2 MR. SHARKEY: Your Honor, it was
3 responsive to his question he asked. The question is
4 what was he instructed to assume, and he explained
5 what he assumed and his own reasonable test of it and
6 so I think it was directly responsive to the
7 question.

8 EXAMINER MCKENNEY: Could we have the
9 answer read back to us.

10 MR. ALEXANDER: The question as well,
11 please.

12 EXAMINER MCKENNEY: The question as well,
13 please.

14 (Record read.)

15 EXAMINER MCKENNEY: The motion to strike
16 is denied.

17 EXAMINER PRICE: When you say you tested
18 the reasonableness of the assumption, you're saying
19 that you did an economics analysis.

20 THE WITNESS: That's correct.

21 EXAMINER PRICE: Not a legal -- you
22 didn't research legal questions as to whether that
23 assumption is correct, you just thought, okay, that
24 makes sense, let's look at whether the underlying
25 economics metrics --

1 THE WITNESS: That's correct, and that's
2 why I was drawing his distinction because his
3 question was about the legal.

4 EXAMINER PRICE: Okay.

5 Q. (By Mr. Alexander) And you relied on your
6 view of Professor Chambers' analysis for your
7 economics review.

8 A. In part, yes, but I also relied on my own
9 knowledge and experience in making that analysis.

10 Q. You relied on your knowledge and
11 experience in reviewing Witness Jackson and Witness
12 Chambers' materials.

13 A. No, not exactly. I mean, I reviewed
14 their materials and that informed my own judgment and
15 my own analysis, but I applied my own independent
16 analysis of the data.

17 Q. And by "the data," you're referring to
18 Witness Jackson and Witness Chambers' testimony.

19 A. I'm referring to the, yes, the various
20 financial projections that Dr. Chambers developed and
21 also the underlying pro formas from Mr. Jackson and
22 my review of other financial information regarding
23 DP&L.

24 Q. And you relied on DP&L's counsel for the
25 determination that the SSR was permissible in an MRO?

1 A. As I stated earlier, primarily yes, but,
2 of course, I also read the statutes myself.

3 Q. There are differences between the legal
4 standards for financial stability charges contained
5 in the ESP and MRO statutes, correct?

6 MR. SHARKEY: Objection, your Honor.
7 Calls for a question of law.

8 MR. ALEXANDER: Your Honor, it's in his
9 testimony and he just testified that he personally
10 reviewed the statute and applied it when creating the
11 MRO side of his test.

12 EXAMINER MCKENNEY: The objection is
13 overruled. Please tread carefully, Mr. Alexander.

14 A. Again, I can't offer a legal
15 interpretation of the statutes. I can only offer my
16 layman's reading of the language that's included in
17 the statutes.

18 Q. My question was are there differences
19 between the legal standards for financial stability
20 charges contained in the ESP and MRO statutes?

21 A. I'll say again, I don't -- I can't offer
22 an opinion on differences in legal standards. I can
23 offer an opinion on the actual language as a layman
24 reading it. And I would say there is differences in
25 the language, but I can't say whether that means

1 there's a difference in the legal standards.

2 Q. And you did not consider any difference
3 between the legal standards for financial stability
4 charges contained in the ESP and MRO statutes when
5 drafting your testimony, correct?

6 A. Not explicitly.

7 Q. Please turn your attention to page 12,
8 lines 8 through 16 of your testimony.

9 A. I'm sorry, what page again?

10 Q. Page 12, lines 8 through 16.

11 A. I'm there.

12 Q. And in this section you discuss including
13 an SSR in the same amount on both sides of the ESP
14 versus MRO test despite the change that would cause
15 in DP&L's revenue; is that right?

16 A. I discuss here the fact that I'm assuming
17 the same -- an SSR of the same magnitude and I
18 discuss the fact that implicitly that means that
19 there would be more revenue under an MRO than under
20 an ESP.

21 Q. And you asked to assume -- strike that.

22 And you were asked to make that
23 assumption by counsel, correct?

24 A. I was asked to make that explicit
25 assumption by counsel but, as I testified earlier, I

1 checked the reasonable -- I checked the
2 reasonableness of that myself via the financial
3 analysis that I described earlier. And that's
4 actually described in lines 10 through 18.

5 Q. DP&L has previously filed an MRO
6 application; is that correct?

7 A. It is my understanding that they filed an
8 MRO.

9 Q. And DP&L withdrew its MRO application in
10 September of 2012; is that correct?

11 A. I can't remember the exact date, but --
12 and I don't know what the legal standard is for
13 withdrawal versus -- or, what it's called, but I
14 think they changed over to an ESP in that approximate
15 timeframe.

16 Q. For the purposes of the ESP versus MRO
17 test your testimony includes only bypassable charges
18 in the standard service offer price, correct?

19 A. The rates that I use to determine -- to
20 measure the quantifiable benefit of the ESP are
21 bypassable charges, but my analysis includes
22 nonbypassable charges too.

23 Q. And you relied on Revised Code 4928.142
24 to obtain the blending percentages used in the MRO
25 portion of your test; is that correct?

1 A. In part, yes. And also on advice of
2 counsel in terms of interpreting those.

3 Q. Is there anything you specifically relied
4 on in 4928.142 which references including a new
5 nonbypassable charge in the MRO portion of the plant?

6 MR. SHARKEY: I'm going to object, your
7 Honor. He's asking him questions about the statute
8 that are, one, legal conclusions, and two, a copy of
9 the statute isn't in front of him. It's difficult
10 for him to answer or impossible to answer things that
11 are contained in the statute without having at least
12 a copy.

13 EXAMINER PRICE: Mr. Sharkey, when you
14 object on legal conclusion, you have to admit he
15 cited to the statute in his testimony so he has some
16 familiarity with the statute.

17 MR. SHARKEY: He certainly has some
18 familiarity with the statute, your Honor, he's
19 testified a number of times that he's, you know,
20 been, he's assumed interpretations of the statute for
21 purposes of applying his analysis, and the Bench has
22 already ruled that Mr. Alexander's entitled to some
23 leeway with the witness, but I would suggest if he's
24 going to be asked questions, detailed questions about
25 the statute, he at least ought to have a copy in

1 front of him.

2 MR. ALEXANDER: I'm happy to provide the
3 witness with a copy of the statute, Mr. Sharkey, if
4 it would resolve your objection.

5 MR. SHARKEY: I think it would resolve
6 this one.

7 EXAMINER MCKENNEY: I think there were
8 two parts to the objection, legal conclusion --

9 MR. ALEXANDER: Yes, your Honor, if I can
10 address the first part, it was was there anything in
11 the statute he relied on. He sites the statute in
12 his testimony and I just want to know if there's a
13 specific portion of the statute that he relies on in
14 his conclusion and that's going to be the end of this
15 series of questions.

16 EXAMINER MCKENNEY: Objection as to legal
17 conclusion is overruled. Please provide the witness
18 with a copy of the statute, Mr. Alexander.

19 MR. SHARKEY: Thank you, your Honors.

20 EXAMINER PRICE: Let's go off the record.
21 (Discussion off the record.)

22 EXAMINER MCKENNEY: Let's go back on the
23 record.

24 Mr. Alexander, are you prepared to
25 continue?

1 Q. (By Mr. Alexander) Mr. Malinak, have you
2 been provided with a copy of Ohio Revised Code
3 section 4928.142?

4 A. I have.

5 Q. And is there anything you specifically
6 relied on in Revised Code Section 4928.142 which
7 references including a new nonbypassable charge in
8 the MRO portion of the test?

9 A. As I testified to earlier, I relied on
10 counsel's instructions regarding the legal issues of
11 the type that you're describing and I relied on my
12 own reading of the whole statute and there are
13 particular portions such as the portion here in
14 (D) (4) -- first of all, just (D), the first big (D),
15 paragraph (D), they discuss the percentages of the
16 load during different years, and then -- and I relied
17 in part on that. I relied on my reading of that, I
18 relied on counsel's interpretation.

19 And then (D) (4), again, I may be
20 misreferring to it, but it's (D) (4), there's some
21 language beginning "additionally," and then it says
22 "The Commission may adjust the electric distribution
23 utility's most recent standard service offer price by
24 such just and reasonable amount that the Commission
25 determines necessary to address any emergency that

1 threatens the utility's financial integrity or to
2 ensure that the resulting revenue available to the
3 utility for providing the standard service offer is
4 not so inadequate as to result directly, or
5 indirectly, in a taking of property without
6 compensation pursuant to Section 19 of Article 1,
7 Ohio Constitution."

8 And, you know, this, again, this is my
9 layman's reading of this, but it says that if there's
10 an emergency that threatens the utility's financial
11 integrity, you know, the Commission may make an
12 adjustment, and, you know, when you're talking about
13 financial integrity, a nonbypassable charge is an
14 effective way to manage that problem.

15 And so, you know, again, I'm not offering
16 a legal opinion, but to the extent that the PUCO has
17 latitude to, you know, manage a financial integrity
18 problem, this language could support the development
19 of a nonbypassable charge under an MRO.

20 EXAMINER PRICE: I'm not asking if you
21 did any legal research, but did you look at any prior
22 Commission cases as to what circumstances the
23 Commission defined as a financial emergency and
24 whether those circumstances would exist with respect
25 to Dayton if there was an MRO?

1 THE WITNESS: I have not looked at prior
2 decisions in my analysis to set a standard.

3 EXAMINER PRICE: Thank you.

4 THE WITNESS: My standard is the one I
5 would apply as a financial analyst.

6 EXAMINER PRICE: Okay. Thank you.

7 Q. (By Mr. Alexander) And, Mr. Malinak, I
8 wasn't a hundred percent clear from your answer, so
9 you referenced 4928.142(D) and 4928.142(D) (4). Was
10 that the entirety of your answer?

11 A. Well, I also said I just read the -- I
12 read the whole statute as well and so to the extent
13 that any of that language kind of informed my
14 understanding or, you know, again, as a layman, of
15 these -- of this language, I should say as a layman
16 but also as a, you know, someone who studied
17 financial integrity issues in the electric utility
18 industry before, and so that helped inform my reading
19 of these specific passages that I just identified.

20 Q. But my question was were there any other
21 specific passages that you relied on.

22 A. Again, you know, in terms of specific
23 passages, I guess I honed in on these two. These
24 were the two most important parts of the statute from
25 the point of view of my analysis.

1 Q. Nonbypassable charges are not included in
2 the blending conducted on the MRO side of the test;
3 is that correct?

4 A. Yes. The blending that goes on to get to
5 the standard service offer, which is a combination of
6 the cost of service rate and the CBP rate, is -- are
7 bypassable charges to get to that result, that's
8 correct.

9 Q. And you rely on the AEP ESP decision in
10 your testimony, correct?

11 A. Yes, in part. I rely on it to inform me
12 about the way that the more favorable in the
13 aggregate test works generally.

14 Q. And the Commission treated the RSR as a
15 cost of the ESP in the AEP ESP decision.

16 A. That is my recollection, yes.

17 Q. And even though your testimony expressly
18 relies on the AEP ESP decision, you did not review
19 the AEP ESP decision to determine how it treated the
20 RSR in the ESP versus MRO test.

21 A. You said "explicitly rely." I don't know
22 if that characterizes my testimony or not. I mean, I
23 relied on the AEP ESP decision, I guess you could say
24 I relied on it explicitly to inform my understanding
25 more generally of the way the aggregate price test

1 operates, and I did read the portions of that
2 decision that related to the treatment of the RSR and
3 the way the Commission analyzed that.

4 Q. Mr. Malinak, do you have a copy of your
5 deposition in front of you?

6 A. I do.

7 Q. Do you recall being deposed on
8 February 28th, 2013?

9 A. Yes.

10 Q. Do you recall swearing an oath to tell
11 the truth during that deposition?

12 A. I do.

13 Q. And do you recall me asking you several
14 questions during that deposition?

15 A. I do.

16 Q. Would you please turn your attention to
17 page 51.

18 A. Yep.

19 Q. Please let me know if I read this
20 correctly. Question: "Did you check" --

21 MS. YOST: What line, please? What line?

22 MR. ALEXANDER: Oh, page 51, line 15.

23 Q. Mr. Malinak, please let me know if I read
24 this correctly. Question: "Did you check, when
25 drafting your testimony, to see how the Commission

1 handled the RSR in this case?"

2 Answer: "Not specifically, no."

3 Did I read that correctly?

4 MS. YOST: I'm going to object, your
5 Honor, it's not impeaching. The witness testified
6 that he read the entirety of the decision in his
7 testimony; that's not inconsistent with his answer
8 there.

9 EXAMINER MCKENNEY: Mr. Alexander.

10 MR. ALEXANDER: I believe the question I
11 asked, the witness's answer, and then the portion of
12 the deposition I just read speak for themselves.

13 EXAMINER MCKENNEY: The objection's
14 overruled.

15 MR. SHARKEY: Thank you, your Honor.

16 THE WITNESS: May I -- is there a
17 question pending? Because right before that I --

18 EXAMINER MCKENNEY: I believe the
19 question was whether he read it correctly.

20 THE WITNESS: Okay. He read those two
21 pieces correctly.

22 Q. (By Mr. Alexander) And you did not review
23 the Duke ESP opinion and order when drafting your
24 testimony; is that correct?

25 A. Yes.

1 Q. And you did not review any testimony
2 filed in the Duke ESP proceeding, correct?

3 A. Yes.

4 Q. And you are not familiar with the Duke
5 electric service stability charge, correct?

6 A. I would say that I'm not familiar with
7 it, but I have read various materials that refer to
8 it and describe it, so I don't have much of a
9 detailed understanding of it, but I have some
10 understanding.

11 Q. You don't know how the Commission treated
12 Duke's electric service stability charge in the ESP
13 versus MRO test, correct?

14 A. Not specifically, yes.

15 Q. If the SSR is included on the MRO side of
16 the ESP versus MRO test, that would flip the results
17 of your ESP versus MRO test, correct?

18 MR. DARR: Can I have that question read
19 back, please?

20 THE WITNESS: Yeah, I don't, I think if
21 the SSR is on the --

22 Q. Hold on.

23 EXAMINER MCKENNEY: Could we have the
24 question read back.

25 (Record read.)

1 MR. ALEXANDER: I withdraw the objection,
2 I believe I misspoke.

3 Q. If the SSR is not included on the MRO
4 side of the ESP versus MRO test, that would flip the
5 results of your ESP versus MRO test, correct?

6 A. I don't think it's to define the ESP MRO
7 test. The way we've defined the ESP versus MRO test
8 includes both the quantifiable and nonquantifiable
9 portions so the answer is I guess no because you'd
10 still have to consider the nonquantifiable piece --
11 elements.

12 Q. That's a fair clarification. Let me
13 clarify the question for you.

14 If the SSR is not included on the MRO
15 side of the ESP versus MRO test, that would flip the
16 aggregate price test portion of the ESP versus MRO
17 test.

18 A. If one assumes that the SSR is zero under
19 the MRO, in my analysis, then, it flips the
20 quantifiable portion of the test, of the aggregate
21 price test portion of my analysis.

22 Q. Please turn your attention to your
23 exhibit --

24 EXAMINER PRICE: Mr. Alexander, I wanted
25 to ask him a follow-up question before you --

1 MR. ALEXANDER: Yes, your Honor.

2 EXAMINER PRICE: Do you have a magnitude
3 of where it was -- something more than zero but less
4 than what was asked, where that point flips on the
5 quantified test.

6 THE WITNESS: More than.

7 EXAMINER PRICE: If the Commission were
8 to look at this and say no, we disagree with your
9 assumption that it would be exactly the same --

10 THE WITNESS: Right.

11 EXAMINER PRICE: -- but it would be some
12 other amount the Commission determines based on the
13 evidence in this proceeding --

14 THE WITNESS: Right.

15 EXAMINER PRICE: -- do you know at what
16 point, 60 million, 70 million, the quantified portion
17 of the test would flip from it meeting it to it does
18 not meet it?

19 THE WITNESS: Yeah, it's calculable from
20 my spreadsheets and I mention this in my direct
21 testimony. You can set the SSR if you want to at a
22 level --

23 EXAMINER PRICE: You're not asking the
24 Bench to do that.

25 THE WITNESS: I'm saying that I would

1 have to do the math to give you that exact number,
2 but I've got an assumption in my testimony, when I
3 say "assume" that the MRO was set under the, I mean,
4 I'm sorry, the SSR was set under the MRO, revenues,
5 total revenues exactly equal one another and then my
6 opinion is that the ESP would still be more favorable
7 in the aggregate because of the nonquantifiable
8 benefits under those circumstances.

9 EXAMINER PRICE: Okay. Thank you.

10 Q. (By Mr. Alexander) Mr. Malinak, please
11 turn your attention to your Exhibit RJM-1.

12 A. I'm there.

13 Q. The SSR is referenced on lines 21 and 22
14 of that exhibit, correct?

15 A. Yes.

16 Q. So if the SSR was removed from the MRO
17 portion of your test, that would move all the
18 allocation from line 21.

19 A. Yeah, if you just made all those zeros,
20 they would be zeros.

21 Q. I'm not sure that answered my question.

22 If the SSR was removed from the MRO
23 portion of your test, that would remove all the
24 allocations in line 21, correct?

25 A. Yes. All those, if those things -- those

1 things would all be zeros if you removed the SSR.

2 Q. Your Exhibit RJM-1 shows an SSR value of
3 \$137.5 million per year for a combined
4 \$687.5 million. Do you see that?

5 A. You know, in the version of RJM-1 that I
6 have it's rounded to 138. This is my second revised.

7 MR. ALEXANDER: Your Honor, may I
8 approach the witness?

9 EXAMINER MCKENNEY: You may.

10 Let's go off the record.

11 (Discussion off the record.)

12 EXAMINER MCKENNEY: Let's go back on the
13 record.

14 Before we continue I'd like to ask a
15 clarifying question of the witness. The exhibit you
16 have before you now which is RJM-1, does the MRO
17 state 137.5 for each of those years now?

18 THE WITNESS: Yes, it does.

19 EXAMINER MCKENNEY: Is that rounded to
20 690?

21 THE WITNESS: Yeah, there were some
22 different exhibits that were prepared over time and
23 some of them rounded to 138, when you multiplied that
24 by 5 you get 690, but when you multiply 137.5 by 5
25 you get 687.5 so there were some discrepancies in

1 that regard, but it's de minimis, but it's a rounding
2 issue.

3 EXAMINER MCKENNEY: Thank you.

4 Mr. Alexander, you can continue.

5 Q. (By Mr. Alexander) Mr. Malinak, would you
6 like to correct the \$690 million value seen on lines
7 21 and 22 of your testimony under the total?

8 A. Yeah. It should be 687.5.

9 Q. The term of the proposed ESP is
10 January 1st, 2013, through December 31st, 2017;
11 is that correct?

12 A. I believe as filed it ends in
13 December 31st, 2017, I think in the filing it says
14 that, yes.

15 Q. However, your aggregate price test runs
16 through May 31st, 2018, correct?

17 A. My test does run through May 31st,
18 2018, yes.

19 Q. And you were directed by DP&L to extend
20 the price test until May 31st, 2018, to align with
21 the PJM planning year.

22 A. Yes. We had conversations with counsel
23 and DP&L led us to -- led me to believe that that was
24 the appropriate thing to do because it does align
25 with the RPM auctions and so, for example, you know,

1 an auction would take place on, you know, May 31st,
2 2017, and the prices would extend through to the
3 May 31st, 2018. So in order to have, you know, a
4 complete five-year ESP, which was the proposed period
5 of time, and to align with the auction years, the
6 decision was made to extend it through 2018, through
7 May 31st, 2018.

8 Q. But your price test is not a five-year
9 price test, correct? It's a five-year and five-month
10 price test.

11 A. Well, it's five years, the extra months
12 don't matter because there's a zero impact for those
13 first five months. So it's -- I guess technically
14 it's an extra five months, but it's not relevant.

15 Q. Are you aware of any authority suggesting
16 the price test should be expanded beyond the end of
17 the ESP term?

18 A. By "authorities" I assume you mean legal
19 authorities?

20 Q. Any authority.

21 A. Yeah, I mean just consistency and, you
22 know, taking into consideration the realities of the
23 auction process, it makes sense to extend it through,
24 you know, May 31st, 2018, to me.

25 Q. My question was are you aware of any

1 authority?

2 A. Well, the authority would be logic and
3 consistency. And, excuse me, I mean, again, I don't
4 know the legal elements, but if the ESP and the MRO
5 are five-year -- is a five-year period and legally
6 that's permissible, then to get the full five years,
7 you know, especially from today or from June 1st or
8 the middle of this year, you would need to go all the
9 way into, you know, end of May, to get five years.

10 MR. ALEXANDER: Your Honor, could I have
11 that answer be reread, please?

12 EXAMINER MCKENNEY: Please reread the
13 answer.

14 (Record read.)

15 Q. If you align your aggregate price test
16 with the actual ESP term, it would cut off your
17 analysis five months earlier; is that correct?

18 A. I'm not sure I can answer that. I think
19 it's at least a quasi legal kind of opinion, but if I
20 were to just mechanically end my calculation at
21 December 2017, it would have, you know, a
22 mathematical impact on my answer.

23 Q. The end of the ESP period is
24 December 31st, 2017, correct?

25 A. My issue is that I don't understand the

1 legal end of the ESP period. I don't understand the
2 definition of that. It's -- that's my problem.
3 That's why I'm not answering, you know, on a legal
4 basis, because I can't. But because the ESP period
5 could be five years from June 1st of this year,
6 which would take you right to May 31st, 2018,
7 legally. I just don't know.

8 EXAMINER PRICE: Do you know what the
9 company asked for?

10 THE WITNESS: At the time of my testimony
11 they were asking for January 2013 through
12 December 2017 explicitly in the application.

13 EXAMINER PRICE: Do you have any reason
14 to believe that's changed?

15 THE WITNESS: I don't have any knowledge
16 of that.

17 EXAMINER PRICE: Okay.

18 Q. (By Mr. Alexander) If you wanted to
19 calculate the impact of using the end of the proposed
20 ESP term as a stopping point in your analysis, you
21 would reduce the last year's forecasted sales by
22 five-twelfths, correct?

23 A. Yes. If mathematically if I were asked
24 to lop it off right there, then you would get some
25 adjustment on that order.

1 Q. Now I'd like to discuss the blending
2 percentages used in your testimony. Please focus
3 your attention at page 7, the chart on line 1.

4 A. I'm there.

5 Q. On the MRO side of the test you assumed
6 market pricing is blended at 10 percent for an
7 initial 17-month term, correct?

8 A. Yeah. The first period that I assumed,
9 you know, it was a 17-month period, I assumed
10 10 percent for that period, yes.

11 Q. And the MRO statute provided the blending
12 percentages on an annual basis, correct?

13 A. It states, the statute states that for
14 the first five years of the market rate offer be
15 competitively bid under Division A of this section as
16 follows: 10 percent of the load in year 1; not more
17 than 20 percent in year 2; 30 percent in year 3;
18 40 percent in year 4; and 50 percent in year 5.

19 Q. And you conducted the MRO blending at
20 10 percent in the initial 17-month period based on
21 your understanding of the MRO statute.

22 A. Yeah. So, for example, it says for the
23 first year it says 10 percent, and it says "not more
24 than 20 percent for the second year," and 10 percent
25 is not more than 20 percent so I thought it was

1 consistent with the statute when I was asked to
2 look at.

3 Q. And you used -- I'm sorry, was your
4 answer completed? I didn't mean to --

5 A. Yes.

6 Q. You used a 12-month blending period after
7 the first period; is that correct?

8 A. Yes, that's correct.

9 Q. And you were instructed by DP&L to
10 conduct the first period blending at 10 percent for
11 17 months; is that correct?

12 A. There were discussions with counsel and
13 with DP&L personnel about these blending percentages
14 and so I wouldn't say I was instructed. I would say
15 I decided to use these blending percentages based on
16 a combination of discussions with counsel, DP&L
17 personnel, and my own, you know, my own review of the
18 statute.

19 Q. If the blending periods were conducted
20 using 12-month periods rather than the 17-month
21 period used in period 1, that would accelerate the
22 blending process on the MRO side of your ESP versus
23 MRO test.

24 THE WITNESS: Could I hear that back,
25 please?

1 (Record read.)

2 A. I'm not sure that's right. I mean, the
3 way I read the statute it says that year 1 is
4 10 percent, year 2 is not more than 20, and so if,
5 you know, so I guess you would have to, you know,
6 make your hypothetical more explicit because the
7 first period is 10 percent and, like I said just a
8 second ago, 10 percent is not more than 20 percent
9 and so it could extend, you know, further than 12
10 months under the statute as I read it.

11 Q. Your testimony holds switching constant;
12 is that correct?

13 A. Well, as I testified earlier, I do do
14 that, but it also implicitly does not because I
15 assume in my analysis that the switching tracker is
16 there in both the MRO and the ESP. So implicitly
17 there can be additional switching, but it won't
18 change my answer on the quantitative side.

19 Q. Because you assume the switching tracker
20 is on the MRO side of the test.

21 A. Yes, and on the ESP side as well.

22 Q. Your testimony compares the bypassable
23 generation revenue under an MRO and an ESP, correct?

24 A. I compare both bypassable and
25 nonbypassable, but bypassable is part of that, yes.

1 Q. And you have reviewed Witness Hoekstra's
2 estimates of future switching over the ESP period?

3 A. I have.

4 Q. And Dayton Power & Light directed you not
5 to use Witness Hoekstra's estimates of future
6 switching in your testimony.

7 A. I would say that, again, a decision was
8 made, counsel asked me for my analysis to, not to
9 explicitly do it, but it would almost not make sense
10 to because if I'm assuming the switching tracker is
11 in place, then running a higher switching scenario,
12 that wouldn't seem to make sense. You'd just get the
13 same answer.

14 Q. Implementing Mr. Hoekstra's switching
15 projections into your ESP versus MRO test would
16 reduce SSO load, correct?

17 A. I think I may have testified to this
18 earlier, but the answer is no, if the switching
19 tracker's in place in each, in the MRO and the ESP,
20 and the answer is yes, if it's not in place in either
21 of them.

22 Q. My question was: Would additional
23 switching decrease SSO load? It wasn't a question as
24 to your analysis, it was just would additional
25 switching decrease SSO load.

1 A. I apologize. I misheard the question.

2 Yes, additional switching reduces the
3 load subject to SSO. It does. Sorry.

4 Q. And as load decreases, that would make
5 the ESP less beneficial as compared to an MRO,
6 correct?

7 A. Again, depending on your assumptions
8 regarding the switching tracker. So we could go back
9 to my earlier answer for this one.

10 Q. Please turn to page 67 of your
11 deposition, let me know if I read this correctly, and
12 it's line 9. Question: "As load decreases that
13 would make the ESP less beneficial as compared to an
14 MRO."

15 Answer: "Yeah. As the SSO load
16 decreases, correct."

17 Did I read that correctly?

18 A. I'm sorry, where are you?

19 Q. Page 67, lines 9 through 12. Would you
20 like me to read it again?

21 A. Yeah, this was -- this is where you had
22 asked me to set aside the switching tracker, I
23 believe, but yeah, I mean, you read that correctly.

24 Q. And I'm fine with that clarification,
25 Mr. --

1 MR. SHARKEY: Your Honor -- your Honor,
2 I'd like to object because on page 66 the questioner,
3 I believe Mr. Alexander but I don't know who the
4 questioner was, page 66, line 9 already asked
5 Mr. Malinak to hold the switching tracker aside for
6 the purposes of that line of questions.

7 So his answer that he just gave to
8 Mr. Alexander's question was perfectly consistent
9 with his deposition testimony.

10 EXAMINER MCKENNEY: Mr. Alexander.

11 MR. ALEXANDER: I'll withdraw the
12 question and we can do this again.

13 EXAMINER MCKENNEY: All right. Let's
14 withdraw the question and we'll try this again.

15 Q. (By Mr. Alexander) Mr. Malinak, I'd like
16 you to set the switching tracker to the side. Do you
17 understand that?

18 A. Yeah. I think so. I think if you mean
19 assume that it would not be in place under either the
20 MRO or ESP. Is that what you mean?

21 Q. Correct.

22 A. Yes.

23 Q. And SSO load decreases, that would make
24 the ESP less beneficial as compared to an MRO,
25 correct?

1 A. On an aggregate -- on an aggregate price
2 test basis. On a quantitative price test basis. But
3 that's leaving aside the nonquantitative benefits.
4 So just narrowly on that mathematical calculation the
5 answer is yes.

6 Q. And you mentioned the switching tracker
7 quite a bit today. Can you describe what the
8 switching tracker is?

9 A. Yes. Generally it's a mechanism that the
10 company is proposing whereby there would be a revenue
11 true-up process that the company would go through
12 that if there's switching that goes beyond the base
13 case assumed switching level, then they would recover
14 revenue equal to the difference over time.

15 Q. Does your Exhibit RJM-1 reference a
16 switching tracker?

17 A. I don't believe the exhibit does but I
18 think, you know, it's discussed in the text. It may
19 be discussed in the text referring to this exhibit,
20 but I'd have to look back.

21 Q. And your Exhibit RJM-1 does not include
22 any impact from the Yankee Solar Facility; is that
23 correct?

24 A. That's correct.

25 Q. And your Exhibit RJM-1 does not include

1 any impact from the rider AERN; is that correct?

2 A. That's correct, which I, my understanding
3 is that that relates to the Yankee Solar Facility,
4 the AERN.

5 Q. And it's your understanding as well that
6 the AERN could include things additional to the
7 Yankee Solar Facility.

8 A. I actually don't know that for sure.

9 Q. And since you prepared your Exhibit RJM-1
10 you have since learned that the Yankee Solar Facility
11 must be included only on the ESP side of the test; is
12 that correct?

13 A. I'm sorry, could you read that back very
14 quickly, I was moving some papers.

15 (Record read.)

16 A. I actually learned about the Yankee Solar
17 Facility, it was actually between my -- the first
18 testimony that I filed and my second revised
19 testimony that I found out about it, is my
20 recollection.

21 Q. And adding rider AERN to your ESP versus
22 MRO test would make the ESP comparably less favorable
23 as compared to your projection by \$3.3 million.

24 A. On a quantitative basis if you assume
25 that the Yankee Solar Facility, the costs for that

1 could not be recovered under an MRO but could be
2 recovered under an ESP, then you're correct that it
3 would be an additional quantifiable cost, if you
4 will, to the -- which would offset my quantifiable
5 calculation of the benefits of the ESP.

6 Q. Now I'd like to talk just a little bit
7 about the nonquantifiable benefits that you
8 identified. One of those nonquantifiable benefits
9 you identify is a faster transition to market; is
10 that correct?

11 A. Yes.

12 Q. And the quantifiable benefits of the
13 faster transition to market are already included in
14 your ESP versus MRO aggregate price test; is that
15 correct?

16 A. Yes, I do have a -- I do calculate
17 quantifiable benefits to SSO customers of the faster
18 transition.

19 Q. So the benefits to customers associated
20 with lower market prices are already shown in your
21 aggregate price test.

22 A. No, a portion of them is shown. There
23 would be other nonquantifiable benefits or
24 difficult-to-quantify benefits from enhanced
25 competition from the faster transition to market. So

1 not all the benefits are there.

2 Q. My question was just on the quantifiable
3 benefits. The quantifiable benefits associated with
4 the faster transition to market are already shown in
5 your aggregate price test.

6 A. I would say the most straightforward
7 quantifiable benefits are included. You know, the
8 difficult -- there are additional potentially
9 quantifiable but, you know, I use the term "difficult
10 to quantify" and at times "nonquantifiable," but
11 there might be methods someone could use to try to
12 get at some of the difficult-to-quantify benefits of
13 additional competition.

14 Q. Are there any calculations in your
15 testimony showing the difficult-to-quantify benefits
16 you just testified about?

17 A. There are no calculations.

18 Q. And you agree with me that a faster
19 transition to market is generally better for
20 customers.

21 A. Yes, I do. I believe it's beneficial in
22 both quantifiable and difficult-to-quantify ways.

23 MR. ALEXANDER: I have nothing further at
24 this moment. Thank you very much.

25 EXAMINER MCKENNEY: Ms. Yost?

1 MS. YOST: Thank you, your Honor.

2 - - -

3 CROSS-EXAMINATION

4 By Ms. Yost:

5 Q. Good morning, Mr. Malinak.

6 A. Good morning.

7 Q. If I could have you turn to page 4 of
8 your testimony.

9 EXAMINER MCKENNEY: Ms. Yost, can I ask
10 you to turn on your microphone.

11 MS. YOST: Oh, absolutely.

12 EXAMINER MCKENNEY: Thank you.

13 Q. Starting on line 20 you state that "It is
14 assumed that this hypothetical MRO would be similar
15 to DP&L's ESP in every material respect, except that
16 the ESP involves a faster transition to market
17 generation rates and the ESP includes certain new
18 programs aimed at enhancing retail markets."

19 So just to clarify, this assumption that
20 the SSR and switching tracker would also be available
21 under an MRO was provided to you by the company; is
22 that correct?

23 A. Not exactly. I mean, there was
24 discussion with counsel and company and then I also
25 did my own analysis, as I described earlier, to check

1 the reasonableness of that assumption, and that
2 involved looking at the financial integrity metrics
3 under an MRO and what it showed is that without an
4 MRO and a switching track -- I'm sorry, without an
5 SSR and a switching tracker in the MRO, you would
6 have a significant financial integrity issue under an
7 MRO, and so it made a lot of sense to me that there
8 would be an SSR and a switching tracker under the MRO
9 because otherwise you would have a financial
10 integrity issue which would -- which would create a
11 lot of nonquantifiable costs or difficult-to-quantify
12 costs under an MRO.

13 MS. YOST: Your Honor, I'll ask that the
14 witness's statements be stricken from the record as
15 nonresponsive beyond the first answer there.

16 MR. SHARKEY: Your Honor, I believe it's
17 perfectly responsive. He began by disagreeing with
18 the question explaining his reasons why he disagreed.

19 EXAMINER MCKENNEY: Motion to strike is
20 denied.

21 Q. And could I have you turn to -- so then
22 it's your testimony that -- so the company never told
23 you to make the assumption that the SSR and the
24 switching tracker would be available under the MRO;
25 is that your testimony, sir?

1 A. My testimony is that I relied on counsel
2 and the company for the assumption that it would be
3 legal to have those kinds of charges under the MRO.
4 But from my own economic and financial analysis
5 perspective these were reasonable assumptions to be
6 making.

7 Q. Could you turn to page 7 of your
8 testimony, sir.

9 A. I am there.

10 Q. In regards to your chart at the top of
11 page 7 of your testimony would you agree with me that
12 in determining the amount of any stability charge,
13 all else being equal, you would need a smaller charge
14 with a slower transition to market? Correct?

15 A. A smaller charge with a slower transition
16 under which one? Under ESP or MRO?

17 Q. Well, comparing the blend periods under
18 the ESP versus the MRO, you would need a lesser
19 amount of a stability charge if one was permitted
20 under a slower transition to market than a faster
21 transition to market under the ESP.

22 MR. SHARKEY: Object, your Honor. It's
23 not clear whether she's asking slower transition to
24 market under the ESP, MRO, or both. I don't think
25 the witness can fairly answer the question.

1 EXAMINER MCKENNEY: Ms. Yost, can you
2 rephrase the question?

3 MS. YOST: Sure.

4 Q. I'll just say in general, if there's a
5 transition to market, a slower transition to market
6 would have a smaller negative impact on the financial
7 integrity of a company; would you agree with that?

8 MR. SHARKEY: Same objection, your Honor.
9 I can't tell whether it's a slower transition to
10 market under the ESP or the MRO or both.

11 EXAMINER MCKENNEY: I think she's asking
12 just generally, so the objection's overruled. The
13 witness can answer the question if he can.

14 A. As a general matter, a faster transition
15 to market in terms of blending a market rate in with
16 the cost of service rate would lead to lower revenues
17 and you may, like back when you said "all else
18 equal," okay, obviously there are a lot of issues, a
19 lot of factors that go into determining what the
20 right level of the SSR is that could extend beyond
21 this narrow -- this narrow question, okay.

22 But sort of all else equal, which is a
23 big assumption, if, you know, a faster transition to
24 market results in lower revenues, it would -- that
25 factor would tend to lead to, all else equal, point

1 to a higher SSR.

2 Q. And then all else equal, a slower
3 transition to market would result in a smaller
4 stability charge, correct?

5 A. I'm not sure if I misspoke on the last
6 answer. A faster transition to market leads to lower
7 revenue, I hope I said higher SSR would be required.
8 All else equal.

9 And now, I'm sorry, please ask your next
10 question.

11 MS. YOST: Could you please read the
12 question back.

13 (Record read.)

14 A. Again, all else equal, a slower
15 transition to market means some incremental --
16 generally means some incremental amount of more
17 revenue, kind of depends on, you know, a variety of
18 other factors but, again, all else equal, greater
19 levels of revenue coming from a slower transition to
20 market might result in a, or tend to result in a
21 lower SSR.

22 Q. And, in fact, you have not done a
23 calculation to determine the amount of the SSR to
24 maintain the financial integrity of the company under
25 an MRO, correct?

1 A. Actually, I have done an analysis of that
2 type.

3 Q. Okay.

4 A. That I've already described.

5 Q. Could I have you get your deposition
6 transcript, sir.

7 MS. YOST: Your Honors, do you have a
8 copy of it?

9 A. I do.

10 Q. And could I have you turn to page 91.
11 Please let me know when you are there.

12 A. I am there.

13 Q. Line 24, question: "Okay. Let me --
14 have you done a calculation to determine the amount
15 of the SSR to maintain the financial integrity of the
16 company under an MRO?"

17 Answer: "Not specifically, no."

18 Did I read that correctly, sir?

19 A. You did.

20 Q. Thank you.

21 A. But I --

22 Q. You've answered the question.

23 A. I have to just answer that? Okay.

24 Q. And you are aware that the company filed
25 an MRO application in 2012, correct?

1 A. Yeah, I -- my understanding is that they
2 filed it or they had one in -- they were working on I
3 think.

4 Q. And you are aware that they requested a
5 nonbypassable charge, correct, in that MRO
6 application?

7 A. My general recollection is that they
8 were -- at least in the things I saw, they were
9 requesting a nonbypassable charge, yes.

10 Q. And do you recall the charge being
11 approximately 70 to 80 million dollars in that case?

12 A. The things that I saw, materials that I
13 saw, had a nonbypassable charge in that range.

14 Q. Mr. Malinak, the company never indicated
15 to you that they had done a calculation to determine
16 the amount of a service stability charge under an MRO
17 application, correct?

18 A. My understanding was that they did
19 calculate a nonbypassable charge as part of their MRO
20 analysis. We just discussed it.

21 Q. Yes, I'm sorry. I wasn't referencing the
22 application. When they hired you to do your analysis
23 in this case, we were talking about the assumptions
24 made and one of the assumptions you indicated was
25 that the SSR would be at the same level that they are

1 requesting in their ESP application. Do you recall
2 stating that, sir?

3 A. Yeah. As I stated earlier, there were
4 discussions with counsel and with the company and a
5 decision was made to assume the same level of SSR
6 and, as I've said several times, I also checked that
7 for reasonableness myself.

8 Q. Right. And they indicated to you that
9 the amount of the SSR they were seeking in the ESP
10 application was the \$137.5 million per year, correct?

11 A. That's the level of SSR that they -- that
12 I knew they were asking for under the ESP and that
13 they would have asked for under a hypothetical MRO
14 filed on the same day.

15 Q. And but the company never did indicate to
16 you that they had conducted a analysis of an SSR
17 under an MRO and determined that the proper charge
18 would be \$137.5 million per year, did they?

19 A. By "proper charge," what do you mean by
20 proper?

21 Q. I'll strike the word "proper." Let me
22 rephrase that.

23 The company never indicated to you that
24 they had done an analysis of a -- excuse me.

25 The company did not indicate to you that

1 they had done a calculation to determine that the
2 charge for the service stability rider would be
3 \$137.50 million under an MRO, correct?

4 A. They never referenced any specific
5 calculations that they had done but, of course, I
6 knew they, you know, from their earlier filing that
7 that was, you know, they were analyzing nonbypassable
8 charges in connection with an MRO.

9 Q. And the original filing you're talking
10 about, you indicated that range was 70 to 80 million
11 dollars, correct?

12 A. I indicated that materials I saw had a
13 number in that range.

14 Q. And you can agree that if a service
15 stability rider is not authorized or allowed under
16 Ohio law for an MRO, then the ESP would fail your
17 aggregate price test, correct?

18 A. If the -- if an SSR or other
19 nonbypassable charge is not allowed under an MRO,
20 then it would fail the aggregate price test component
21 of my analysis, but -- which is the quantitative
22 part, but it would have a major impact on the
23 nonquantitative part.

24 Q. So the answer to my question was yes?

25 A. Yes, and then with the explanation.

1 Q. You consider one of your nonquantifiable
2 benefits of the ESP a faster transition to
3 market-based rates than could be achieved under an
4 MRO, correct?

5 A. Yes.

6 Q. And you believe that this faster
7 transition supports a more favorable climate for
8 business, correct?

9 A. Yes.

10 Q. And you believe a faster transition to
11 market improves the business climate because it
12 produces lower SSO rates to customers from DP&L since
13 the calculation of an SSO, that's a combination of
14 the cost of service rate and the competitive bid
15 rate, produces a lower offering from DP&L, correct?

16 A. Yes, that's the primary mechanism by
17 which the faster transition to market will have a
18 pro competitive impact.

19 Q. So it is the resulting lower SSO rates
20 for customers, both business and residential, that
21 you consider will improve the business climate,
22 correct?

23 A. And we're just focusing on the faster
24 transition to market piece because there's some other
25 nonquantifiable benefits like the retail enhancements

1 that could potentially affect the business climate,
2 but the primary -- the primary impact of faster
3 transition to market will happen by having -- through
4 the mechanism of having a lower SSO rate out there.

5 Q. And do you agree that the faster the
6 transition to market due to the competitive bid
7 process, then SSO prices will decrease?

8 A. Could you read the question back, please?

9 Q. Sure. I'll go ahead and read it, if that
10 makes it easier.

11 Do you agree that the faster the
12 transition to market due to the competitive bid
13 process, then SSO prices will decrease?

14 A. I agree the SSO prices will decrease the
15 higher percentage of market rates. CBP rates that
16 are blended in with the cost of service, that
17 automatically produce as lower, you know, SSO rate
18 which can -- which has the pro competitive impacts
19 that we've been discussing.

20 Q. And you would agree that a transition to
21 market price that is faster than what DP&L proposes
22 would result in even lower SSO prices than DP&L's
23 proposal.

24 A. Mathematically I believe that that's
25 true. The fact that if you're blending in market

1 rates at higher percentage you're going to get a
2 lower SSO rate.

3 MS. YOST: Thank you, Mr. Malinak. I
4 have no further questions at this time.

5 EXAMINER MCKENNEY: Thank you, Ms. Yost.

6 Mr. Darr, I believe you are next. As we
7 indicated -- let's go off the record real quick.

8 (Discussion off the record.)

9 EXAMINER MCKENNEY: We'll take a
10 20-minute recess. Be back at 10 after 11.

11 (Recess taken.)

12 EXAMINER MCKENNEY: Let's go back on the
13 record at this time.

14 Mr. Darr.

15 MR. DARR: Thank you, your Honor.

16 - - -

17 CROSS-EXAMINATION

18 By Mr. Darr:

19 Q. I want to follow up on a question that
20 Attorney Examiner Price asked you earlier this
21 morning. He asked whether or not you had
22 investigated or studied Commission decisions with
23 regard to Commission's emergency authority. Do you
24 remember that line of questions or that questioning?

25 A. Yes, I do, generally.

1 Q. And you have not done any independent
2 analysis on the effect of a disallowance of the SSR
3 on Dayton Power & Light's ability to render service
4 to its customers, correct?

5 A. You know, I'm having a little bit of
6 trouble, yeah, I've done no independent analysis,
7 but, you know, I have analyzed the impact on DP&L's
8 financial integrity of not having an SSR switching
9 tracker.

10 MR. DARR: Move to strike everything
11 after the beginning of his answer.

12 MR. SHARKEY: Your Honor, it was
13 clarifying, there's an obvious connection between
14 financial integrity and ability to render service,
15 it's just clarifying his response.

16 MR. DARR: That is not a clarification of
17 my question. I asked whether or not he had analyzed
18 rendering service. He answered that and then he
19 chose to add to his answer which was not responsive
20 to my question.

21 EXAMINER MCKENNEY: Can I have the answer
22 read back to me?

23 (Record read.)

24 EXAMINER MCKENNEY: The motion to strike
25 is denied.

1 Q. (By Mr. Darr) You have not done any
2 independent analysis as to any of the cost cutting
3 DP&L could undertake to avoid a financial emergency
4 or financial integrity concern for this proceeding;
5 is that correct?

6 A. I've done no independent analysis of that
7 outside of what I have done in terms of looking at
8 the financial metrics for the company under different
9 scenarios.

10 Q. And would it be fair to say that you have
11 not addressed any alternative sources of revenue that
12 DP&L might secure to improve its financial ability to
13 provide service if it did not secure the SSR or the
14 other nonbypassable riders? Is that fair?

15 A. I've done no specific analysis of
16 potential revenue enhancements.

17 Q. As part of your ESP versus MRO
18 calculation you did also -- you also did not include
19 the costs of the competitive retail enhancements as a
20 cost of the ESP, correct?

21 A. Based on our earlier definitions you said
22 ESP versus MRO. Just to be clear, we're talking
23 about the quantitative part of the ESP versus MRO
24 test, correct?

25 Q. Yes. With that qualification am I

1 correct that you did not include the cost of the
2 competitive retail enhancements as part of your
3 analysis of the enhancements?

4 A. I included it in the text of my report, I
5 did not put it specifically in my RJM-1.

6 Q. So the answer to my question is it's not
7 in the quantitative analysis, correct?

8 A. Actually, I wouldn't agree with that. It
9 is in the quantitative analysis in the sense that
10 it's in the text of my report and the amount of money
11 associated with it is identified in my report, but
12 it's not -- it's not in my RJM-1.

13 Q. Thank you.

14 You also indicate that, in your
15 testimony, that as we discussed -- as you discussed
16 earlier, one of the benefits of the -- or one of the
17 qualitative or non -- or difficult-to-quantify
18 benefits is this faster transition to market,
19 correct?

20 A. The faster transition to market creates
21 certain non or difficult-to-quantify additional
22 benefits, yes, I do say that.

23 Q. And you're familiar with the percentage
24 of load that has already switched to a CRES provider,
25 correct?

1 A. I'm familiar with Mr. Hoekstra's
2 testimony on the levels of switching for different --
3 for both residential and nonresidential customers.

4 Q. And at page 14, line 13 of your
5 testimony, you state that you anticipate more choices
6 for customers as a benefit of the proposed ESP,
7 correct?

8 A. Yes. The faster transition to market
9 creating a more competitive SSO I would expect would
10 produce not only lower priced offerings from CRES
11 providers but likely competition on quality as well.

12 Q. And it would be fair to say that you have
13 not identified or analyzed a change in the product
14 mix in any of the other Ohio electric distribution
15 utility service territories as a result of those EDUs
16 moving to a fully competitive bidding process,
17 correct?

18 A. That's correct, I have not done that
19 particular analysis.

20 Q. And for those customers that are already
21 shopping, some part of those benefits, whatever they
22 are, are already being realized, correct?

23 A. I'm not sure I would agree with that
24 because under the ESP -- actually, some benefits of
25 shopping are obviously being created, however, with a

1 faster transition to market, more of those types of
2 benefits will occur.

3 Q. And is it fair to say that you did not
4 explicitly carve out the shopping customers and
5 analyze how they would be impacted by this proposed
6 ESP?

7 A. No. I followed the definition of the
8 test which was to analyze the effect on ratepayers,
9 consumers in the aggregate as opposed to individual
10 groups of customers.

11 MR. DARR: Thank you, that's all I have.

12 EXAMINER MCKENNEY: Thank you, Mr. Darr.

13 Are there other intervenors that have
14 cross-examination for the witness?

15 MS. BOJKO: No.

16 MS. PETRUCCI: No.

17 MR. SINENENG: No, your Honor.

18 MR. WILLIAMS: I have some questions.

19 - - -

20 CROSS-EXAMINATION

21 By Mr. Williams:

22 Q. Good morning, Mr. Malinak. My name is
23 Gregory Williams and I'm here on behalf of Interstate
24 Gas Supply.

25 A. Good morning.

1 Q. I have just a few clarifying questions
2 for you.

3 Mr. Alexander earlier asked you some
4 questions about whether a faster transition to market
5 is better for customers. Do you remember that?

6 A. Generally, yes.

7 Q. Okay. And your answer was yes. Do you
8 remember that?

9 A. I don't remember my specific answer, but
10 in general a faster transition to market will have
11 certain benefits but there can be some costs
12 associated with that too. A faster transition to
13 market will have a quantifiable effect but then, to
14 the extent that it affects financial integrity, it
15 could have substantial nonquantifiable costs as well.

16 Q. Okay. My clarifying question is by
17 "faster transition" do you mean as compared to an
18 MRO? As compared to the transition that would be
19 required by statute under an MRO?

20 A. I mean, I don't remember the exact
21 context of Mr. Alexander's question, but my analysis
22 in general is comparing the ESP to the MRO and so I
23 wouldn't be surprised if in responding to his
24 question that was the context for it.

25 Q. Okay. Within the context of an ESP,

1 however, Ms. Yost asked you some questions about
2 whether a faster transition to a competitive auction
3 is better for customers. Do you remember her asking
4 you that question?

5 A. I remember her asking questions about
6 faster transition to market, yes.

7 Q. Okay. And in response to that question
8 you answered yes. Do you recall that?

9 A. Again, I can't recall exactly what my
10 answer was, but hopefully was the one I just gave
11 which is yes, it would, assuming that it didn't
12 create, you know, certain nonquantifiable costs. You
13 know, a faster transition to market is going to
14 result in a, you know, better for ratepayers in terms
15 of quantifiable rates, okay, or amounts they pay, but
16 it could have impacts on financial integrity that
17 could offset that.

18 Q. Okay. I have a hypothetical question
19 about a potential quantifiable effect of a faster
20 transition to a competitive auction. Hypothetically,
21 within the context of an ESP, if a faster transition
22 to a competitive auction results in a larger
23 nonbypassable charge being passed to customers, would
24 you still consider that transition to be better for
25 customers?

1 A. So if there's a faster transition to
2 market --

3 Q. Well, not market, specifically to a
4 competitive auction. I want to be clear about that.

5 A. Yeah, which would produce a faster
6 transition to a more fully market-based SSO rate, and
7 if across all customers one increased the
8 nonbypassable charge to offset that, then there would
9 be, from the customer perspective -- from a
10 quantifiable perspective from the customer
11 perspective in the aggregate there would be a wash.

12 Q. A wash.

13 A. Yeah, because -- it depends on how much
14 you were going to increase the nonbypassable charge
15 by, but I thought the context of your question was
16 that, you know, if you go to a faster transition to
17 market, revenues are going to fall, the amount that
18 ratepayers pay is going to fall.

19 If you raise -- if you created an
20 increase in the nonbypassable charge that offset that
21 exactly, then there would be a wash; customers in the
22 aggregate would pay less because of the faster
23 transition to market but would pay more because of
24 the higher nonbypassable charge. If I understand
25 your question.

1 Q. Yes. Let's assume, then, hypothetically
2 that instead of a wash it results in a net increase
3 in the overall cost.

4 A. Are we talking about relative to an MRO
5 at this point?

6 Q. No, no, within the context of the ESP.

7 A. So you're saying, just focusing right on
8 the ESP now, if the faster transition to market
9 resulted, just for sake of argument, in a hundred
10 dollars less, lower rates for ratepayers to pay,
11 again we're just talking about the quantitative
12 element now, right?

13 Q. Right.

14 A. And then you raised the nonbypassable
15 charge by \$110, then relative to the case that we
16 started from, which is before the hundred and the
17 110 --

18 Q. Right.

19 A. -- okay, mathematically in the aggregate
20 there will be an increase of \$10 in the aggregate.

21 Q. And depending upon --

22 A. An increased cost to ratepayers, it's
23 almost like a tautological mathematical result.

24 Q. And so depending on the amount of the
25 increase is it your opinion that the higher

1 nonbypassable charge -- strike that.

2 Depending upon the size of the increase
3 of the nonbypassable rider, is it your opinion that
4 the net increase in the bypassable rider would result
5 in a better result for customers as compared with the
6 wash scenario that you mentioned earlier?

7 A. It would depend on the magnitude of the
8 difference because the faster transition to market --
9 I'm sorry, are we talking -- well, let me finish my
10 answer.

11 Okay. So a faster transition to market
12 creates, you know, a savings for the ratepayers who
13 are paying those rates that are affected by it, and
14 then there are some nonquantifiable benefits of a
15 faster transition to market as well that would be
16 enjoyed.

17 Q. But my question is specifically in the
18 context of an ESP with regard to the quantifiable
19 effects of a net increase in the nonbypassable charge
20 as the result of a faster transition to a competitive
21 auction.

22 A. Okay, you said "as a result of," but is
23 it the -- it seems to me like a nonbypassable charge
24 would be set independently from the, what was going
25 on with the bypassable. So it's not an automatic

1 result. Just because you have a -- you have a faster
2 transition to market, you don't automatically have an
3 increase in the nonbypassable charge.

4 Q. Right. Which is why I was asking
5 hypothetically.

6 A. Okay, so hypothetically if the
7 nonbypassable charge were set, you know, at \$110 and
8 the savings on the bypassable side for ratepayers was
9 a hundred, then there would be a \$10 increase in cost
10 to the ratepayers relative to the situation that
11 prevailed before.

12 Q. And, depending upon the size of that
13 difference, so your difference is, you know, as --
14 110 as compared to 100.

15 A. Right.

16 Q. Let's just for the sake of argument
17 assume it was 150 as compared to 100 or whatever the
18 case may be, would the \$150 scenario be a better
19 result as compared to the \$100 scenario for
20 ratepayers?

21 A. And we're talking just about just the
22 math.

23 Q. Yes.

24 A. The quantifiable --

25 Q. The quantifiable.

1 A. -- piece of my analysis because, of
2 course, the size of the nonbypassable charge relative
3 to the potential losses on the transition to market
4 side has a big -- could have a potentially huge
5 impact on the financial integrity analysis and the
6 impact and results on the non or
7 difficult-to-quantify side.

8 But just on the quantifiable side, the
9 way my analysis is set up mathematically, you know,
10 if you increased the nonbypassable charge by more
11 than the savings from the faster transition, then
12 you -- then in the aggregate on a quantitative basis
13 ratepayers would be worse off.

14 MR. WILLIAMS: Nothing further.

15 EXAMINER MCKENNEY: Mr. Williams.

16 Redirect, Mr. Sharkey.

17 MR. SHARKEY: Thank you, your Honors.

18 - - -

19 REDIRECT EXAMINATION

20 By Mr. Sharkey:

21 Q. Mr. Malinak, I want to start by focusing
22 solely on the aggregate price test. Do you recall
23 that in response to questions from Mr. Alexander that
24 you stated that it would be reasonable to conclude
25 that an SSR would be included in an MRO on an

1 economic basis?

2 A. Yes, I remember saying that.

3 Q. Can you explain the reason that you said
4 that?

5 A. Yeah. Because it's very important to
6 consider the size of the SSR in light of the
7 financial integrity of the firm under an MRO, and
8 that was the analysis that I did here is I looked at
9 what would be the financial integrity metrics for the
10 firm if you assume an SSR equal to the SSR in the ESP
11 and concluded that it was reasonable to make that
12 assumption, and again, that's by looking at the
13 ratios that would prevail under the MRO and those
14 were higher than under the ESP and, you know, but
15 coming out of that analysis, you know, maybe the MRO
16 was ahead of the ESP by about 120 million bucks or
17 \$120 million when you assume the SSR is the same, it
18 kind of suggests almost that the company could have
19 asked for a higher SSR under the -- under the ESP
20 because the ratios under the MRO are not
21 significantly higher than under the ESP.

22 Q. My next question, do you remember when
23 Mr. Alexander asked you some questions about whether
24 the SSR should be -- should be bypassable or
25 nonbypassable under an MRO?

1 A. I do remember that.

2 Q. Okay. Is it reasonable on an economic
3 basis to conclude that the SSR should be
4 nonbypassable under an MRO?

5 A. It is.

6 Q. And why is that?

7 A. Well, because bypassable revenues have a
8 tendency to be bypassed and if you have a financial
9 integrity issue, then a nonbypassable charge is a
10 much more effective economic way to handle that
11 issue.

12 Q. My next question, do you recall that
13 Mr. Alexander also asked you a question about whether
14 the results of your ESP versus MRO test would flip if
15 the SSR was excluded from an MRO?

16 A. Yes, I remember talking about that in the
17 context of the quantitative side of the analysis.

18 Q. Okay. My recollection, tell me if you
19 have a different recollection, is that you said that
20 yes, the results would flip on a purely price test
21 but they would not flip if you considered
22 nonquantifiable attributes.

23 A. That's true. In particular, under an MRO
24 if an SSR or switching tracker were not available and
25 the SSR is about \$700 million, you're talking about

1 now, when you look at the ESP with an SSR, you're
2 talking about financial ratios, especially the ROE,
3 that are right at the borderline, and if you take
4 away \$700 million, even on an after-tax basis, you
5 have an MRO or you have a situation under the MRO in
6 which the viability of the company would be really
7 greatly threatened and that would, under an MRO
8 without an SSR ST, switching tracker, you're talking
9 about severe financial distress which could lead to
10 significant difficult-to-quantify costs.

11 Q. If you would, please, turn to page 7 of
12 your testimony.

13 A. I'm there.

14 Q. Do you recall whether -- do you recall
15 Mr. Alexander asking you some questions about whether
16 the 10 percent in the first 17-month period under the
17 MRO complied with the MRO statute?

18 A. I do.

19 Q. Okay. Under your chart, is the
20 competitive bid percentage 10 percent during the
21 first 12 months of your hypothetical MRO?

22 A. Yes.

23 Q. Is the competitive bid percentage not
24 more than 20 percent in the next 12 months of your
25 MRO?

1 A. Yes.

2 Q. Do you recall also that Mr. Alexander
3 asked you some questions about whether or not you
4 considered the effect of the Yankee facility and the
5 associated rider in your RJM-1?

6 A. I do remember that, yes.

7 Q. And it's true, isn't it, that you did not
8 include the effect of the Yankee facility in RJM-1?

9 A. Yes, I did not include it in RJM-1 but
10 it's discussed, included, and quantified in the text
11 of my direct testimony.

12 Q. And is it your understanding that the
13 Yankee facility and associated rider would be
14 available under an ESP but not an MRO?

15 A. That's my current understanding.

16 Q. So do you agree that in the price test
17 aspect of your analysis that you would need to
18 include those dollars?

19 A. Yes.

20 Q. Why didn't you include those dollars on
21 RJM-1?

22 A. Well, because, you know, RJM-1 is a
23 pretty pure kind of spreadsheet analysis that looks
24 at just the bypassable component. It has the
25 nonbypassable SSR in there too, and so it seemed like

1 a more efficient treatment to put it in my text.

2 And also, you know, I actually learned
3 about the AERN and the Yankee Solar Facility after I
4 had initially put together my RJM-1 so it was just
5 easier to put it in the text.

6 Q. Last topic I have for you. Do you recall
7 when Miss Yost asked you about whether or not you had
8 considered whether DP&L needs an SSR under the MRO to
9 maintain its financial integrity?

10 A. I do remember some questions along those
11 lines.

12 Q. If I recall correctly, you had answered
13 that yes, you had considered that, and then she asked
14 you to look at pages of your deposition that she
15 purported were inconsistent with your answer. Do you
16 recall that?

17 A. I do.

18 Q. Turn, if you would, back to the same
19 pages she was referring to, it was page -- the bottom
20 of page 91 stretching onto 92.

21 A. Uh-huh.

22 Q. I believe that Miss Yost asked you about,
23 starting on line 24, the portion that says: "Okay,
24 let me -- have you done a calculation to determine
25 the amount of the SSR to maintain the financial

1 integrity of the company under an MRO?"

2 And then you answered: "No, not
3 specifically, no."

4 Do you remember Miss Yost asking you
5 about that?

6 A. Yes.

7 Q. Further down on the page there's an
8 answer that you have, it starts on line 10, where you
9 describe having done an implicit calculation. Do you
10 see that?

11 A. I do.

12 Q. Did Miss Yost ask you about that portion
13 of your deposition testimony?

14 A. She did not.

15 Q. Okay. Can you describe for the Attorney
16 Examiners why it is that when you were under oath
17 here today you told Miss Yost that you had, in fact,
18 done a comparison of whether or not the company needs
19 the SSR under an MRO to maintain its financial
20 integrity?

21 A. I'm sorry, I was reviewing my answer
22 here. Could you please have that question read back.

23 Q. I'll just repeat it.

24 A. Okay, sorry.

25 Q. Can you explain why today you told

1 Miss Yost that the company needs an SSR under an MRO
2 to maintain financial integrity and that's something
3 you analyzed?

4 A. Yes. I talked a little bit about this
5 before, but it's important to analyze financial
6 integrity under the MRO in order to have a realistic
7 comparison between the ESP and the MRO and, you know,
8 what I did is just -- my implicit analysis here in my
9 deposition, what I was talking about was having
10 looked at the financial metrics under an MRO and
11 having determined that, you know, without an SSR, you
12 know, approximately equal to the one under the ESP,
13 the company would be in severe financial distress and
14 would create very large nonquantifiable benefits.

15 So my approach was to, or it made sense
16 to me to put in an assumption that held that
17 important element constant, in essence, and that's
18 what -- that was the analysis that I've been
19 describing all day about checking the reasonableness
20 of the assumption that there would be a charge like
21 the SSR under an MRO.

22 MR. SHARKEY: Thank you, Mr. Malinak.

23 Your Honors, I've got no further
24 questions for him.

25 EXAMINER MCKENNEY: Recross,

1 Mr. Alexander?

2 MR. ALEXANDER: Very, very briefly, your
3 Honor.

4 - - -

5 RE-CROSS-EXAMINATION

6 By Mr. Alexander:

7 Q. Mr. Malinak, Mr. Sharkey asked you about
8 some financial analysis that you did in connection
9 with the SSR. Do you recall those questions?

10 A. Yes.

11 Q. Can you tell me where that financial
12 analysis that you testified about can be found in
13 your testimony?

14 A. It's not provided explicitly, it's
15 implicitly provided in the place in my testimony
16 where -- that I'm currently having trouble finding,
17 where I talk about -- it's on page, I believe page
18 12, pages 10 to 18 [verbatim] where I talk about why
19 it is reasonable to assume an SSR of the same
20 magnitude. And I talk about the fact that an MRO --
21 or, an SSR of the same magnitude under an MRO, that
22 the improvement would not be sufficient to eliminate
23 the financial risks that DP&L was projected to
24 experience in the out years as determined by Company
25 Witness Chambers.

1 Q. And was your answer complete,
2 Mr. Malinak?

3 A. Yeah. I mean, it was in -- this is
4 describing the analysis that I did and I've talked
5 about where I was looking at financial metrics under
6 an MRO.

7 Q. Sure. I'm moving on to another topic.

8 A. Okay.

9 Q. Mr. Sharkey also asked you about the
10 CBP -- strike that.

11 Mr. Sharkey also asked you about MRO
12 blending percentages; do you recall that
13 conversation?

14 A. I do.

15 Q. And Mr. Sharkey asked you about blending
16 percentages in year 1. Did you understand him to be
17 referring to the period from January 1st, 2013,
18 through December 31st, 2013?

19 A. Yeah, he referred to the first 12 months
20 and the second 12 months, and I did understand him to
21 be talking about the first 12 months of what I have
22 in my testimony which is starting in January 2013.

23 Q. And ending on December 31st, 2013?

24 A. Yes, that's right.

25 Q. Okay. So Mr. Sharkey asked you about

1 calendar years 1 and 2. In the third calendar year
2 of the MRO blend which is located on page 7, line 1
3 of your testimony, do you apply a 30 percent blend
4 for the entire calendar year 2015?

5 A. No, because, I mean, for the first part
6 of 2015 it's 20 percent and then for the second part
7 of 2015 -- or 20 -- yeah, for the second part of 2015
8 it's 30 percent.

9 Q. And do you apply --

10 A. This is under the MRO. Go ahead. I'm
11 sorry. Under the MRO, yeah.

12 Q. Is your answer complete?

13 A. It is.

14 Q. And do you apply a 40 percent blend for
15 the entire year 2016?

16 A. No. The blend is 30 for the first five
17 months and then 40 for the next period of time, so
18 seven months.

19 Q. And do you apply a 50 percent blend for
20 the entire year 2017?

21 A. Talking calendar year again, right?

22 Q. That's correct.

23 A. No, calendar year, again, for the first
24 part of it the blending percent is 40 percent and
25 then for June 2017 forward to the end of the year

1 it's 50 percent.

2 MR. ALEXANDER: I have no further
3 questions, your Honor.

4 Thank you, Mr. Malinak.

5 EXAMINER MCKENNEY: Ms. Yost?

6 MS. YOST: No questions, your Honor.

7 EXAMINER MCKENNEY: Mr. Darr?

8 MR. DARR: Thank you, your Honor.

9 - - -

10 RE CROSS-EXAMINATION

11 By Mr. Darr:

12 Q. As part of your testimony for today you
13 provided us the scope of your testimony would be
14 specifically related to the ESP versus MRO test,
15 correct?

16 A. Yes, that's the primary focus of my
17 testimony.

18 Q. And in your redirect you were offering an
19 opinion as to the economic basis for the Commission
20 to adopt the stability rider. Am I understanding
21 that correctly?

22 A. No. I don't think so. Not exactly. In
23 those -- in my answers to Mr. Sharkey's questions I
24 was discussing the basis for why I believed it was
25 reasonable to assume an SSR under the MRO that's of

1 the same magnitude as under the ESP.

2 Q. So you're not offering an opinion as to
3 the economic reasonableness of it being bypassable
4 versus nonbypassable; is that correct?

5 A. Oh, no, I'm sorry, I did -- I do have an
6 opinion about it being nonbypassable in that with
7 respect to financial integrity it doesn't make much
8 sense to have a bypassable charge because bypassable
9 revenues tend to be bypassed.

10 Q. Yeah, that's kind of in their nature,
11 isn't it?

12 A. Yes.

13 Q. Now, the shortfall that we're talking
14 about here that's being made up by the SSR, you've
15 reviewed Mr. Jackson and Mr. Chambers' testimony I
16 believe, correct?

17 A. I mean, "the shortfall"? I'm not sure I
18 understand what you mean.

19 Q. The reason for the SSR is due to a
20 perceived shortfall in revenue, correct?

21 A. In part I think so. I mean, it's really
22 the point of the SSR is actually, you know, to
23 maintain profitability and profits are a function of
24 revenue and cost.

25 Q. So would you agree with me that, well, by

1 its terms it's a charge designed to generate \$137-1/2
2 million, correct?

3 A. Yeah, it's a charge that is, being
4 nonbypassable, is designed to produce that much
5 revenue for the company.

6 Q. And based on your familiarity with
7 Mr. Jackson's testimony, you understand that the
8 reason why there's a financial integrity problem is
9 that there is a problem with customer migration and a
10 concern with the decline in energy prices and
11 capacity prices, correct?

12 A. It's been a while since I reviewed his
13 direct testimony and I wasn't here for his testimony
14 in this room, but accepting your representations that
15 those were some of the elements that he referred to,
16 then those elements would contribute to the financial
17 integrity of DP&L.

18 Q. So if I understand it correctly, the
19 point of making the rider nonbypassable is basically
20 it's more effective in terms of raising this revenue
21 to tax all customers than to have the company respond
22 to the economic downturn that's led to the need for
23 the SSR.

24 A. It's actually not a tax. If the payment
25 would -- if the payment helps the company maintain

1 its financial integrity and stability, then
2 ratepayers are enjoying the benefit to go along with
3 that --

4 Q. Have you --

5 A. -- those rates.

6 Q. I'm sorry, I didn't mean to interrupt.

7 A. I just finished up by saying: Paying
8 that rate.

9 Q. And have you looked at whether or not the
10 affiliate transfer pricing that the company has
11 adopted would be a means of remedying the financial
12 impairment that the company seems to have found
13 itself in?

14 MR. SHARKEY: Object, your Honor, he's
15 straying well beyond the scope of my rebuttal
16 testimony here.

17 MR. DARR: I believe not, your Honor. He
18 has opined that there is a reason for the
19 nonbypassable -- the rider to nonbypassable. The
20 rider's based on his economic justification and I'm
21 asking whether or not he's looked into all the other
22 ways that the shortfall could have been made up.

23 EXAMINER MCKENNEY: I think the
24 objection's overruled. Please try to be careful not
25 to get too much further outside, not to get outside

1 the scope --

2 MR. DARR: I understand, your Honor.

3 EXAMINER MCKENNEY: -- of redirect.

4 Q. (By Mr. Darr) And my question, just to
5 clarify --

6 A. Please.

7 Q. -- have you looked at whether or not a
8 change in the affiliate transfer pricing rules would
9 be a means of making up the shortfall?

10 A. Not explicitly, no.

11 Q. And you understood my question referred
12 to the affiliate transfer pricing rules; is that
13 correct?

14 A. My understanding was -- by "affiliate"
15 could you, just to make sure we're on the same page,
16 what do you mean by "affiliate pricing rules"?

17 Q. Sure. Do you understand that DP&L
18 provides wholesale services to DPLER? Correct?

19 A. They sell energy to -- capacity and
20 energy to DPLER at a market rate.

21 Q. And you understand that market rate to be
22 their transfer price, correct?

23 A. That's correct.

24 Q. And my question, again, is did you look
25 at whether or not that -- whether or not as an

1 alternative to the SSR the company could make any
2 changes to its transfer pricing policy.

3 A. I did not because I, in part because it
4 doesn't make much sense because an appropriate
5 transfer price should be market.

6 Q. So your answer to my question is no, you
7 did not look at that, correct?

8 A. No, I didn't -- I didn't explicitly
9 analyze that, like I said, because it would not
10 naturally occur to me to do so.

11 MR. DARR: Thank you. I have nothing
12 further.

13 EXAMINER McKENNEY: Thank you.

14 Mr. Williams?

15 MR. WILLIAMS: No questions, your Honor.

16 EXAMINER McKENNEY: Other intervenors?

17 (No response.)

18 EXAMINER McKENNEY: Sorry.

19 MR. SHARKEY: No questions, your Honor.

20 EXAMINER McKENNEY: Mr. Malinak, you're
21 excused.

22 THE WITNESS: Thank you, your Honor.

23 MR. SHARKEY: And, your Honors, we move
24 the admission of DP&L Exhibit 5.

25 EXAMINER McKENNEY: Any objection?

1 MR. DARR: No objection, your Honor.

2 MR. ALEXANDER: No objection.

3 EXAMINER MCKENNEY: It will be so
4 admitted.

5 (EXHIBIT ADMITTED INTO EVIDENCE.)

6 EXAMINER PRICE: Mr. Faruki?

7 MR. FARUKI: Our next witness is
8 Mr. Rice. As I recall, we're breaking at 12:30.

9 EXAMINER PRICE: Yes.

10 Mr. Rice.

11 (Witness sworn.)

12 EXAMINER PRICE: Would you please state
13 your name and business address for the record.

14 THE WITNESS: My name is Timothy Rice,
15 and my business address is 1065 Woodman Drive,
16 Dayton, Ohio, 45432.

17 EXAMINER PRICE: Please proceed,
18 Mr. Faruki.

19 MR. FARUKI: Thank you, your Honors. I'd
20 like to designate his prefiled direct testimony as
21 DP&L Exhibit 6.

22 EXAMINER PRICE: So marked.

23 (EXHIBIT MARKED FOR IDENTIFICATION.)

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TIMOTHY RICE

being first duly sworn, as prescribed by law, was
examined and testified as follows:

DIRECT EXAMINATION

By Mr. Faruki:

Q. Mr. Rice, you have a copy of your
prefiled direct that has been designated as Exhibit 6
before you?

A. I do.

Q. If I were to ask you each of the
questions contained in that testimony, would your
answers be as shown there?

A. They would.

Q. Would they be true?

A. They would.

MR. FARUKI: Your Honor, I offer
Exhibit 6 and tender the witness for cross.

EXAMINER PRICE: We'll defer ruling on
the admission of Exhibit 6 until after
cross-examination.

Mr. Lang?

MR. LANG: Thank you, your Honor.

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CROSS-EXAMINATION

By Mr. Lang:

Q. Good morning, Mr. Rice, I'm Jim Lang on behalf of FirstEnergy Solutions.

A. Good morning.

Q. It's good to see you in person. We talked on the phone.

A. We did.

Q. Now, you are for DP&L both an assistant general counsel and a corporate secretary, correct?

A. That is correct.

Q. And you are corporate secretary to the boards of both DP&L and DPL, Inc.; is that right?

A. That's correct.

Q. Now, your testimony here relates to your role as an assistant general counsel not as a corporate secretary; is that fair?

A. That's correct.

Q. And your knowledge regarding DP&L's corporate separation plan is based on your, say long history serving as an attorney for DP&L, correct?

A. Also correct.

Q. You've been with them since 1985; is that right?

A. That's correct.

1 Q. Now, in your role as an attorney for the
2 company staff members of DP&L, staffers at DP&L will
3 consult with you regarding the corporate separation
4 plan and the code of conduct; is that right?

5 A. That's correct.

6 Q. And you also assist with code of conduct
7 training.

8 A. That's correct.

9 Q. And on an annualized basis you estimate
10 that you spend about 2 percent of your time on
11 corporate separation and code of conduct issues; is
12 that fair?

13 A. That's correct.

14 Q. Then the other 98 percent of your time
15 is, as referenced in your testimony on page 1, line
16 17 and 18, would relate to legal services for
17 finance, SEC compliance, tax, and ERISA; is that
18 right?

19 A. That's correct.

20 Q. Now, are you a, what they would call a
21 shared employee of DP&L?

22 A. I provide services to DPL and to
23 affiliated companies under the DPL, Inc. family of
24 companies.

25 Q. And in that role you allocate your time

1 to DP&L or the affiliate; is that right?

2 A. That's correct.

3 Q. You provide legal counsel both to DP&L
4 employees and employees of affiliates such as
5 D-P-L-E-R, or DPLER.

6 A. That's correct.

7 Q. So with regard to corporate separation or
8 code of conduct issues, you get those questions from
9 DP&L or from DPLER or another DP&L affiliate.

10 A. That's correct. It could come from
11 anywhere.

12 Q. With regard to the allocation of your
13 time between DP&L and the affiliates, that's an
14 allocation that you perform on an annual basis; is
15 that right?

16 A. That's correct.

17 Q. And what happens is each year the general
18 accounting office asks you to allocate your time,
19 correct?

20 A. That's correct.

21 Q. And that allocation is done between the
22 noncompetitive and the competitive operations; is
23 that what you do?

24 A. Well, we're looking at all of our
25 operations so it's really a form that is provided by

1 our corporate accounting office by which we then fill
2 out and determine the amount of time that we spend
3 doing these functions and working for -- and part of
4 those functions would be working for separate
5 affiliates.

6 Q. So with regard to DP&L with its T and D
7 function and generation function, do you allocate
8 time to those functions or would DP&L be one -- DP&L
9 as a whole be one function?

10 A. It would be separated by function so part
11 of my time would be for generation, could be for
12 generation, and part of my time could be for T and D.

13 Q. Now, as an outside counsel I have the
14 burden of keeping hourly time sheets I think every
15 six minutes, something like that, but that's not
16 something that you do, correct?

17 A. That's correct.

18 Q. So the allocation that you perform at the
19 end of each year is based on your experience and your
20 reference to your calendars; is that correct?

21 A. That and looking at the projects that we
22 do for the year. I also look at other sources, I
23 look at my staff meeting notes with regards to where
24 we're meeting and how often so I get a feel for the
25 amount of time we're spending on the projects we're

1 working on.

2 Q. Now, as part of your testimony is it fair
3 to say that DP&L is asking this Commission to approve
4 functional separation through the end of 2017?

5 A. We're asking -- that's correct. I mean,
6 that's generally correct. Obviously, we will be
7 looking to make an application later on outside of
8 this proceeding for the -- which will be made by the
9 end of this year, in there we have stated that it is
10 our target that we would complete separation by the
11 end of December 2017.

12 Q. We had mentioned earlier that you advise
13 employees with regard to the cost allocation manual,
14 or the CAM. Can you tell me when the last time was
15 that you reviewed the cost allocation manual?

16 A. I would say about two-and-a-half years
17 ago.

18 Q. And can you give us a general idea of
19 what sections are included in the cost allocation
20 manual?

21 A. In glowing generalities only. Obviously,
22 there is a host of materials associated with how we
23 allocate costs amongst our T and D function and our
24 generation functions. There are provisions
25 associated with keeping a log associated with

1 complaints that come in, there are provisions
2 associated that the corporate minutes must be kept as
3 part of the CAM.

4 There's provisions associated with making
5 sure there are shared employees, that there's a log
6 associated with those employees that are shared and
7 how we track that in case there would be a question
8 as to who's working for who and those types of things
9 are in there.

10 Q. Okay. And does -- part of the cost
11 allocation manual would relate to the relationship
12 between DP&L employees and DPLER employees; is that
13 fair?

14 A. Yes.

15 Q. And you are generally aware of how DPLER
16 makes purchases of generation from DP&L?

17 A. Generally, yes.

18 Q. Is it fair to say that you do not know
19 how those transactions between DP&L and DPLER are
20 tracked and accounted for under the corporate
21 separation plan?

22 A. That's correct.

23 Q. And so I guess you would not be the
24 person to talk to about how the cost of a sale to
25 DPLER is allocated in the cost allocation manual; is

1 that fair?

2 A. That's correct.

3 Q. You had said -- part of your testimony is
4 that DP&L intends to make a filing later this year
5 that would address future corporate separation,
6 right?

7 A. That's correct.

8 Q. And the commitment that's in the ESP is
9 to make the filing later this year and not
10 specifically with regard to an end date or a
11 drop-dead date for when the corporate separation
12 itself would be achieved; is that right?

13 A. I believe that's generally what we have
14 stated so far, yes.

15 Q. Now, you do believe that full structural
16 separation would make it easier for you to advise
17 your clients with regard to corporate separation
18 requirements, correct?

19 A. I believe in some respects, yes,
20 ultimately it may do so, but I don't believe that --
21 I believe the functional separation gives us
22 substantially the same impact. I still have the same
23 types of questions whether it's legal separation or
24 functional separation.

25 Q. Well, with regard to structural

1 separation, you would agree that it would make it
2 easier to identify and provide counsel to employees
3 with regard to cross-subsidy issues, right?

4 A. Again, the types of questions are the
5 same. You know, knowing where people are at in the
6 organization may make it a little simpler but the end
7 result is the same. I'm still able to ferret out and
8 resolve questions whether we stay in the functional
9 format or whether in the structural format.

10 Q. Now, you have, as part of your testimony
11 do you have the third amended corporate separation
12 plan with you?

13 A. I do.

14 Q. If I could ask you to turn to page, I
15 guess it's page 2 of that third amended corporate
16 separation plan right after the table of contents.

17 A. I'm there.

18 Q. I wanted to ask you about, it's the third
19 paragraph where it says "DP&L," we'll ignore the
20 apostrophe S, "DP&L has not yet applied to the
21 Commission for authority pursuant to RC 4928.17(E) to
22 sell or transfer DP&L's generating assets...."

23 As we sit here today is it fair to say
24 DP&L is still continuing to look at how this will be
25 accomplished?

1 A. That's correct.

2 Q. And is this also something that DP&L has
3 been looking at since 1999?

4 A. Off and on since then, yes.

5 Q. And your testimony here is that there are
6 impediments to achieving corporate separation that
7 exist today, correct?

8 A. That's correct.

9 Q. And the prior impediment is the first
10 mortgage lien pursuant to which first mortgage bonds
11 are issued by the company, correct?

12 A. That is the primary impediment.

13 Q. And that same impediment also existed in
14 1999, correct?

15 A. Yes, it did.

16 Q. And I guess that impediment would have
17 existed in 2005 and 2010, correct?

18 A. Since 1935.

19 Q. Now, if I can ask you to turn to page 16
20 of the third amended corporate separation plan.

21 A. Yes.

22 Q. And at the top of the page there under
23 the heading of Functional Separation at the end of
24 the second line it says "The obstacles to legal
25 separation are described below." And is it fair to

1 say that the reference there to the obstacles to
2 legal separation being described below is actually
3 what is immediately below in the section 3 that's
4 headed Indenture and Related Issues?

5 A. That is correct.

6 Q. And at the very end of that paragraph
7 it's in bold type, there's a, I guess a formatting
8 error where it says "B. Sharing of Employees,
9 Facilities and Services," that's actually the heading
10 for the next section; is that right?

11 A. I believe that's correct.

12 Q. So as described in section 3, the
13 obstacles to full structural separation is that
14 substantially all of the assets of DP&L are
15 encumbered by a first mortgage lien; is that right?

16 A. That is correct.

17 Q. And, as you said, that goes back to the
18 1930s.

19 A. It does.

20 Q. And DP&L is currently exploring how to
21 remove the generation property from the indenture; is
22 that right?

23 A. We're looking at a host of different ways
24 in order to complete corporate separation, one of
25 which would be the, certainly the splitting off the

1 generation properties into an affiliated company.

2 Q. And is that also something that you've
3 been looking at since 1999?

4 A. Again, off and on.

5 Q. Now, is it correct that DP&L contemplates
6 that some level of financing will be allocated to the
7 new generating company and then some level of
8 financing would be allocated to the, what -- the DP&L
9 that would become a wires company?

10 A. I would answer that by saying we're
11 looking at a host of different alternatives and that
12 is part of the exploration process is how we will
13 restructure the balance sheet post legal separation.

14 Q. Now, there are some of the -- are you
15 aware that some of the outstanding long-term debt
16 issuances are pollution control bonds?

17 A. I am.

18 Q. Is it your understanding that the
19 pollution control bonds, because they relate to the
20 generating facilities, would follow the generating
21 facilities in a -- as part of a corporate separation?

22 A. I would not necessarily agree with that
23 conclusion, no.

24 Q. Do you know whether a determination has
25 been made at this point with regard to what will be

1 done with the pollution control bonds?

2 A. There has been no determination made.

3 Q. Now, one of the issues that DP&L has been
4 analyzing is the fact that some of the bonds issued
5 during the last ten years have no-call provisions; is
6 that right?

7 A. That's correct.

8 Q. And a no-call provision is, as it says,
9 an agreement as part of the issuance of the bond
10 documents that the issuer, DP&L, will not call the
11 bonds before a specified time; is that right?

12 A. That's correct.

13 Q. And if DP&L were interested in calling
14 those bonds prior to the end of that no-call period,
15 then DP&L would have to pay a premium to the
16 bondholders to convince them to redeem the bonds; is
17 that right?

18 A. One of the things we're exploring is that
19 very alternative, the issue being, of course, is even
20 if you could tender and pay a premium, whether we
21 would even get all the bonds back. In many cases
22 that does not occur and that's part of the
23 controversy and part of the issue under exploration.

24 Q. For the bonds that are no-call bonds, has
25 DP&L yet identified who the bondholders are?

1 A. We have over time historically. I don't
2 know if it's been done recently, but we have
3 attempted to try to identify some of the bondholders.
4 In some case it's very difficult.

5 Q. Do you know when the last time was that
6 effort was made?

7 A. The end of 2011.

8 Q. Have you developed an analysis of what
9 cost or range of costs would be incurred if paying
10 the premium to the bondholders of the no-call bonds
11 would be required?

12 A. I don't know if I'm aware of any specific
13 analysis associated with the tender premium, what
14 that would be, or just that our history tells us that
15 no matter what the premium is, many times we're not
16 successful getting all of them anyway.

17 So it becomes even more expensive; you
18 pay money for the bonds to be re-tendered and you
19 don't get them all and you're still subject to the
20 lien on the first mortgage. So unless you get them
21 all, it's a risky proposition.

22 Q. Do you have in front of you the exhibits
23 from the first day that were used with Mr. Jackson?

24 A. I have in front of me, sir, my deposition
25 testimony and my direct filed testimony including the

1 corporate separation plan. I don't have any other
2 exhibits.

3 Q. Okay. That's no problem.

4 MR. LANG: May I approach, your Honor?
5 I'd like to give him a copy of FirstEnergy -- FES
6 Exhibit No. 5 that was used with Mr. Chambers.

7 EXAMINER PRICE: You may approach.

8 MR. LANG: I'm sorry, I'm getting the
9 names confused. Used with Mr. Jackson.

10 Q. Mr. Rice, Exhibit FES No. 5 that I put in
11 front of you was discussed with Mr. Jackson on
12 Monday. Have you actually seen this specific
13 workpaper before?

14 A. I have not.

15 Q. With regard to the bonds that are listed
16 on this document under the First Mortgage Bond
17 category, there are certain bonds that show Face
18 Amount Outstanding in Column F. Do you see that?

19 A. I do.

20 Q. And on lines 7, 8, and 9, that shows
21 pollution control bonds with face amounts
22 outstanding. Do you see that?

23 A. I do.

24 Q. And with regard to the no-call bonds that
25 we've been discussing, do you know whether or not --

1 whether those bonds we've been discussing are the
2 pollution control bonds referenced here on lines 7,
3 8, and 9?

4 A. The pollution control bonds referenced on
5 lines 7, 8, and 9 indeed have no-call provisions.

6 Q. And, to your knowledge, are the -- is the
7 long-term debt that's listed here under first
8 mortgage bonds that shows that it has face amount
9 outstanding, is that the debt to which you are
10 involved in the process as described in the corporate
11 separation plan of analyzing the complex
12 indenture-related issues?

13 A. Yes. All of the indebtedness which shows
14 under Face Amount Outstanding would be debt we're
15 looking at to potentially restructure as a result of
16 corporate separation.

17 Q. And where it says in the corporate
18 separation plan that there are a large number of
19 complex indenture-related issues that have to be
20 analyzed and resolved, are there any of those issues
21 that DP&L has managed to resolve as of today?

22 A. The answer's no.

23 Q. Now, the first mortgage bonds that are
24 identified here, is it your understanding that the
25 principal amount of what's outstanding, that you're

1 dealing with as part of corporate separation plans,
2 would be a little over \$900 million, 904 million?

3 A. That's correct.

4 Q. Have you or anyone at DP&L, to your
5 knowledge, consulted with -- let me back up.

6 Mr. Jackson mentioned that DP&L has
7 discussions with a group of banks with regard to
8 financing issues; are those discussions that you are
9 involved in with that group of banks?

10 A. Some of those meetings, yes.

11 Q. Is there a particular lead bank that
12 is -- that would be heading the corporate
13 restructuring effort with regard to these indenture
14 issues?

15 A. I'm not sure there's a lead bank
16 involving the indenture issues themselves, no.

17 Q. Is there a particular bank that you
18 specifically would be dealing with with regard to
19 these corporate separation and indenture issues?

20 A. The only bank that would come to mind
21 that particularly was involved with the indenture
22 issues would be the bank that holds -- serves as
23 their trustee and that would be the Bank of New York
24 Mellon.

25 Q. Does DP&L have or has DP&L retained the

1 services of outside legal counsel with regard to
2 resolving these indenture-related issues that I
3 referenced in the corporate separation plan?

4 A. Yes, we have.

5 Q. Who is that?

6 A. That's Skadden Arps.

7 Q. For the -- I'm sorry, strike that.

8 When these issues first arose or when
9 these corporate separation issues, indenture issues
10 were identified back in 1999, was the outside legal
11 counsel also Skadden Arps?

12 A. It was not.

13 Q. Was the trustee for the indenture the --
14 was it the Bank of Mellon that you said?

15 A. Bank of New York Mellon, yes.

16 Q. So the trustee is still the same?

17 A. Yes. They've changed names but it's
18 still the same bank, yes.

19 Q. Do you understand that functional
20 separation as DP&L has existed in since the year 2000
21 is authorized for an interim period and for good
22 cause shown?

23 A. Yes, I am.

24 Q. Now, the maturity dates of the debt
25 identified on FES Exhibit No. 5 run out through, well

1 certainly into the 2030s; is that correct?

2 A. That's correct, as late as '40.

3 Q. As late as 2040. Was it DP&L's
4 understanding in -- between 2003 and 2007 when those
5 debt -- when that debt was issued, that the interim
6 period for functional separation would extend until
7 sometime after 2040?

8 A. I don't think there was a specific
9 understanding one way or the other. I don't think
10 anyone was trying to prophesy what the future might
11 bring. I think at the time we were looking at
12 functional separation as appropriate because there
13 was no market at that time and no one was doing -- no
14 one was really pursuing structural separation because
15 the market just wasn't there and we were looking
16 primarily at how to refinance this debt and try to do
17 it at a cost with the lowest amount of interest so
18 that ultimately ratepayers pay the least amount of
19 money.

20 Q. Now, with regard to the bonds issued in
21 2005, 2006, and 2007, by the time those were issued
22 the FirstEnergy utilities had gone through corporate
23 separation; isn't that right?

24 A. I believe that's correct.

25 Q. Now, you were a witness in the, I'm going

1 to take you back in time a little bit, in the DP&L
2 electric transition plan case, correct?

3 A. I was a witness.

4 Q. And I'm always impressed by people that
5 remember this, but do you remember that the case
6 number was 99-1687?

7 A. I remember it was 99.

8 Q. All right. That's good.

9 And you were a witness on the corporate
10 separation plan in that case, correct?

11 A. I was.

12 MR. LANG: Your Honor, if I could have,
13 actually ask to have two exhibits, we'll have them
14 marked together because they go together, as FES
15 No. 11 will be the application itself and the legal
16 notice that was filed in 99-1687, and then the second
17 exhibit, FES No. 12, if I can find it, will be the
18 corporate separation part -- it should be here --
19 will be the corporate separation part of the
20 application which was part B.

21 EXAMINER PRICE: Both documents will be
22 so marked.

23 (EXHIBITS MARKED FOR IDENTIFICATION.)

24 MR. LANG: For the parties in the room, I
25 did not have -- did not have enough copies made of

1 the part B, it's actually a little long, but if
2 anyone would like a copy, just send me an e-mail and
3 I will send it electronically.

4 MR. McNAMEE: So which one, this is --

5 MR. LANG: The application itself would
6 be FES No. 11.

7 Q. (By Mr. Lang) Mr. Rice, with regard to
8 the electric transition plan, I think, as we
9 discussed at the beginning, you were part of the DP&L
10 Legal Department at the time this was filed; is that
11 right?

12 A. That's correct.

13 Q. And as in your role with the Legal
14 Department you worked on the -- well, let me ask you
15 more generally.

16 In your role with the Legal Department
17 what parts of the application did you work on?

18 A. I don't remember.

19 Q. Okay. But you do remember working on the
20 electric transition plan case?

21 A. I would have had some input, but we would
22 have had other staff counsel that would have been
23 primary lead in this case, so I would have had input
24 but not necessarily leading the effort.

25 Q. Do you remember at some point in time

1 reading the application that was filed for the
2 electric transition plan case?

3 A. I'm sure I read the application, but I
4 have no independent memory.

5 Q. Now, you were a witness on the corporate
6 separation plan that was part of the application,
7 correct?

8 A. That's correct.

9 Q. And on the page 3 of the application that
10 is FES No. 11 do you see that the, about halfway down
11 it says that the corporate separation plan is part B
12 of the application?

13 A. Yes.

14 Q. And do you recognize the Revised Code
15 section -- the Administrative Code section following
16 that that relates to the corporate separation plan
17 requirements?

18 A. I do recognize it.

19 Q. Now, after the application itself, which
20 you can see on page 7 was signed by your counsel,
21 Mr. Faruki, do you see what's on the following pages?

22 A. Yes, I do.

23 Q. And can you tell me what these following
24 pages are?

25 A. The following pages constitute a notice,

1 a public notice as to the filing of the application
2 and then providing a, what appears to be, although
3 I've not read it in detail the minute I've had to
4 look at it, the generalized description of the
5 overall electric transition plan.

6 Q. Is it your understanding that's what we
7 call the legal notice that's required of a, or that
8 was required of the transition plan filing?

9 A. That's what this appears to be, yes.

10 Q. Now, the reference to the corporate
11 separation plan contained in part B, if I could ask
12 you to turn to what's been marked as FES No. 12, and
13 you see there on the very first page it says,
14 references part B, C, D, and E, part B is the
15 corporate separation plan. Do you see that?

16 A. I'm sorry, what page are we on, please?

17 Q. On the very front page of this exhibit.

18 A. Where it says part B, yes. Yes. Oh,
19 yes, sir.

20 Q. And then on the second page would be the
21 cover page of the corporate separation plan itself;
22 is that right?

23 A. That's correct.

24 Q. And do you recognize that this was the
25 original corporate separation plan that was filed

1 with the application as part of Case No. 99-1687?

2 A. I recognize it but I did not review this
3 in preparation for my testimony today.

4 Q. That's fine.

5 If I could ask you to turn to page --
6 well, before we do that, looking at this corporate
7 separation plan, it is quite similar in structure,
8 isn't it, to the third amended corporate separation
9 plan?

10 A. In some respects, yes, very similar.

11 Q. And if we turn to page 15 and if we
12 actually compare that to page 16 of the third amended
13 corporate separation plan that's filed with your
14 testimony here, you'll see that in both locations
15 we're discussing functional separation at the top of
16 those pages, correct?

17 A. Yes.

18 Q. And then the next heading, No. 3, in both
19 sections is Indenture and Related Issues. Correct?

20 A. Yes.

21 Q. And, in fact, then the text, at least the
22 text that's in the third amended corporate separation
23 plan and the text that is in the original filing from
24 1999, at least the first paragraph thereof, is nearly
25 identical, correct?

1 A. They're nearly identical, yes, sir.

2 Q. And, in fact, in the very first corporate
3 separation plan it's also referencing the large
4 number of complex indenture-related issues that must
5 be analyzed and resolved in order for DP&L to achieve
6 corporate separation; is that correct?

7 A. That's correct.

8 Q. And that's the same language from the
9 corporate separation, the third amended corporate
10 separation plan that's part of your testimony,
11 correct?

12 A. Yes, that's correct.

13 Q. Now, in this original corporate
14 separation plan which is marked as FES No. 12 there's
15 additional text that discusses the indenture and
16 related issues; is that right?

17 A. There is additional wording, again, I've
18 not read it here, but that appears to talk in more
19 detail about some of the specific problems about the
20 outstanding indentures that were outstanding at that
21 time.

22 Q. And, in fact, in the first sentence there
23 of that second paragraph it says that DP&L at that
24 time had six series of debt issuances outstanding
25 under the first mortgage bonds for a total of a

1 little over 552 million; is that correct?

2 A. If you're looking at the first plan,
3 that's absolutely correct. From the detailed
4 language beginning on page 16, uh-huh.

5 Q. And, in fact, five of those six series of
6 bonds also had no-call provisions; is that right?

7 A. That's correct.

8 Q. And those -- now, all of these six series
9 of first mortgage bonds that are discussed in this
10 paragraph, they have all either been called or
11 matured as we sit here today, right?

12 A. They have either been matured or
13 refinanced.

14 Q. Or refinanced.

15 So there's none of these bonds that are
16 referenced here that -- none of these bonds that were
17 outstanding as of 1999 that remain outstanding.

18 A. That's correct.

19 Q. Now, at this time in 1999 one of the
20 complex indenture-related issues was specific to the
21 no-call status of the five of these six series of
22 bond issuances; is that fair?

23 A. Yes.

24 Q. And, in fact, the corporate separation
25 plan as originally filed discussed that, you'll see

1 at the very bottom of page 16, that DP&L anticipated
2 that the bondholders would demand additional --
3 substantial additional compensation to consent to a
4 release. Is that fair?

5 A. That's a summary but, yes, that's it.

6 Q. And that's in fact, well, and then it
7 says at the top of page 17 that that would
8 substantially increase the company's transition
9 costs, correct?

10 A. That's what it states, yes.

11 Q. Now, in the -- I guess the second full
12 paragraph on page 17 that starts "Therefore, until
13 DP&L is able," there is a discussion of how DP&L
14 intended to achieve corporate separation while
15 addressing the issue with regard to the indenture and
16 the outstanding bonds; is that right?

17 A. There is discussion there, yes.

18 Q. And what was under consideration at the
19 time was a transfer of beneficial ownership; is that
20 right?

21 A. That term is used in this -- on page 17,
22 yes.

23 Q. So in 1999 when this first corporate
24 separation plan was developed, DP&L had about
25 \$550 million in debt that was tied to the first

1 mortgage lien and five of the six series of bonds had
2 no-call provisions, correct?

3 A. Some are based off of what's in the
4 electric transition plan, that's correct, again, I
5 haven't had a chance to review that plan document.

6 Q. And as we sit here today the issues with
7 corporate separation that DP&L is facing is
8 \$904 million of debt with, looks like six series of
9 bonds outstanding; is that right? Specific to the
10 first mortgage bonds.

11 A. Six is correct.

12 Q. So \$904 million of debt, six series,
13 several of them, again, with no-call provisions even
14 though these are all different bonds than the ones
15 that you had no-call problems with in 1999, correct?

16 A. That's correct.

17 Q. You're aware that Duke and AEP have
18 committed to achieve corporate separation of their
19 generation assets by the end of next year; 2014?

20 A. I don't know the exact date, but I am
21 aware they've made those types of commitments, yes.

22 EXAMINER PRICE: Mr. Lang, it is just
23 about time for us to take our lunch break.

24 MR. LANG: Actually, I have one more
25 question.

1 EXAMINER PRICE: That's what I was going
2 to ask you, you looked like you were winding down.

3 Q. Have you or, to your knowledge, anyone
4 from DP&L consulted with anyone at Duke or AEP with
5 regard to whether they're facing the same issues with
6 regard to first mortgage liens and how they're
7 addressing those issues?

8 A. I am unaware if there's been any
9 conversations, but I'm not sure they would be
10 relevant even if we did because the indentures
11 themselves can be -- are so drastically different.

12 MR. LANG: That was my last question,
13 your Honor. Thank you.

14 EXAMINER PRICE: Thank you.

15 MR. LANG: Thank you, Mr. Rice.

16 EXAMINER PRICE: At this time we will
17 take our lunch break and we will resume at 2 o'clock
18 with Mr. Oliker's cross-examination. Thank you.

19 EXAMINER McKENNEY: Off the record.

20 (Lunch recess taken.)

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25

1 Wednesday Afternoon Session,
2 March 20, 2013.

3 - - -

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

6 IEU-Ohio.

7 - - -

8 CROSS-EXAMINATION

9 By Mr. Oliker:

10 Q. Good afternoon, Mr. Rice. My name is
11 Joel Oliker. I represent the Industrial Energy Users
12 of Ohio. How are you?

13 A. I'm fine. Good afternoon. Thank you.

14 Q. I'm going to try to not repeat any of
15 Mr. Lang's questions, but it might be difficult, he
16 did such a good job.

17 I believe you said this earlier, but
18 you're a lawyer for DP&L that is responsible for
19 assisting the company work through corporate
20 separation issues?

21 A. That is correct.

22 Q. And you're admitted to the practice of
23 law in Ohio.

24 A. Yes.

25 Q. Would you agree that one of the purposes

1 of corporate separation was to prevent incumbent
2 utilities from favoring or providing an advantage to
3 their generating assets?

4 A. I would restate that as saying the
5 purpose of corporate separation is to provide
6 customers an opportunity to receive their generating
7 service from other than their traditional utility.

8 Q. Could you please turn to your deposition
9 at page 12. Do you have that information?

10 A. I do.

11 Q. And could you please look to line 5.
12 Tell me if I read this correctly.

13 Question: "Would you agree that the
14 purpose of corporate separation and having a
15 corporate separation plan is to prevent an incumbent
16 utility from favoring or providing advantage to its
17 generating assets?" And then there's an objection
18 from Mr. Faruki. And I believe on line 18 you said
19 "I believe that's one purpose."

20 Did I read that correctly?

21 A. You did read that correctly.

22 Q. Thank you.

23 You're familiar with Senate Bill 3,
24 Mr. Rice, correct?

25 A. Generally, yes.

1 Q. One of the purposes of Senate Bill 3 was
2 to unbundle distribution, transmission, and
3 generation rates, and I believe this ties to your
4 previous answer so that customers can choose a
5 generation supplier.

6 A. That's correct.

7 Q. And you would agree that the unbundling
8 of rates separated competitive and noncompetitive
9 services.

10 A. The unbundling of rates had that result,
11 yes.

12 Q. Would you agree that the generation
13 business within DP&L is not regulated by the Public
14 Utilities Commission of Ohio?

15 A. Yes, I would.

16 Q. Would you agree that Commission rules
17 provide that the internal merchant function of a
18 utility is subject to the same corporate separation
19 rules that apply to affiliates?

20 A. I'm not sure I understand your question.
21 I'm not sure what you mean by "internal merchant
22 function."

23 Q. Mr. Rice, you reviewed the Commission
24 rules regarding transition plans and corporate
25 separation?

1 A. I have reviewed those plans, yes. Some
2 of them in anticipation of this testimony today.

3 Q. Would you agree you do not understand the
4 meaning of "internal merchant function" as it's
5 described in the Commission's rules?

6 A. I can't answer that question, I'd have to
7 see the rules. If you'll show me the rule, I'll be
8 glad to try to show you whether I understand it or
9 not.

10 Q. I'm just asking if you understand the
11 word as I've just used it.

12 A. The answer is in the context you just
13 used it I don't understand your question, but I'm
14 sure if you give me the rule, I certainly would give
15 it a shot.

16 Q. Do you understand the meaning of
17 "internal merchant function" in the context of
18 corporate separation rules?

19 A. Because I failed to understand what you
20 mean by "internal merchant function," I'm not sure
21 the context of how you're using that term in your
22 question.

23 MR. OLIKER: Could I have that answer
24 read back, please, along with the question?

25 EXAMINER PRICE: You may.

1 (Record read.)

2 Q. Would you agree that utilities -- strike
3 that.

4 Would you agree that the generation
5 business is a competitive service?

6 A. The generation business is a competitive
7 service under Ohio law.

8 Q. Would you agree that that is a merchant
9 function?

10 MR. FARUKI: I'll object now. He keeps
11 asking the witness and the witness keeps saying the
12 same thing about his not understanding that concept.

13 EXAMINER PRICE: Overruled, he asked a
14 different question, Mr. Faruki. I believe he asked
15 just the merchant function.

16 Can we have the question back?

17 MR. OLIKER: Thank you, your Honor.

18 (Record read.)

19 EXAMINER PRICE: Overruled. Please
20 answer the question.

21 A. Generically speaking, yes.

22 Q. Thank you.

23 Mr. Rice, you're familiar with the
24 differences between functional separation and legal
25 separation, correct?

1 A. I am.

2 Q. And legal separation involves the
3 transfer of the generation business to a separate
4 affiliate or the transfer of the distribution and
5 transmission business to a separate affiliate,
6 correct?

7 A. Not necessarily, no. I don't agree with
8 that.

9 MR. OLIKER: Could I have the question
10 and answer read back again, please?

11 EXAMINER PRICE: You may.

12 (Record read.)

13 Q. Would you agree that the examples I just
14 provided would be examples of legal separation?

15 A. The examples you provided would indeed
16 constitute a legal separation. One example anyway.

17 Q. Whereas functional separation involves
18 DP&L maintaining its legal status as one company but
19 operating its transmission, distribution, and
20 generation business as separate entities, correct?

21 A. I don't know as separate entities but I
22 would say as separate lines of business, yes.

23 Q. DP&L first submitted a corporate
24 separation plan in its electric transition plan case,
25 correct?

1 A. In 1999, that's correct.

2 Q. I believe you talked about this subject
3 with Mr. Lang. You testified in that case, correct?

4 A. I did provide testimony in that case,
5 yes.

6 Q. Would you agree that DP&L proposed an
7 interim period of functional separation followed by
8 the transfer of its transmission and distribution
9 businesses to a separate entity?

10 A. I believe the Dayton Power & Light
11 Company in that plan proffered a corporate separation
12 plan which was approved by the Commission as a -- in
13 compliance with the code and that it provided for
14 functional separation.

15 Q. Did DP&L also propose legal separation by
16 transferring its distribution and transmission assets
17 to a separate affiliate?

18 A. We did at the time but, again, the
19 marketplace was significantly different than it is
20 now and times have changed. And with that we amended
21 that plan later in 2008 to basically call for
22 functional separation and that's what we're currently
23 working with now.

24 MR. OLIKER: Your Honor, I would move to
25 strike everything after "we did at that time."

1 EXAMINER PRICE: Let's have the question
2 back, please. Question and answer, I'm sorry.

3 (Record read.)

4 EXAMINER PRICE: We're going to deny the
5 motion to strike this time but we're going to ask the
6 witness to listen carefully to counsel's question and
7 answer the question fully and only the question
8 that's being asked.

9 THE WITNESS: Thank you, your Honor.

10 Q. Would you agree that the Commission
11 approved DP&L's proposal to transfer its distribution
12 and transmission assets to a separate affiliate?

13 A. At what time?

14 Q. In DP&L's electric transition plan.

15 A. That was approved in that plan, yes.

16 Q. Would you agree that the Commission also
17 approved DP&L reclassifying the affiliate which held
18 the distribution and transmission assets as the
19 electric distribution utility?

20 A. I'm sorry, I misunderstood your question.
21 Could you say it again, please?

22 Q. Would you agree that the affiliate that
23 was to hold the distribution and transmission assets
24 was going to be reclassified as the electric
25 distribution utility?

1 A. I believe that's correct.

2 Q. Would you agree that the opinion and
3 order approving the transition plan required DP&L to
4 maintain separate accounting?

5 A. No, I do not agree.

6 MR. OLIKER: Your Honor, I'd like to mark
7 an exhibit. Your Honor, I'd like to mark IEU-Ohio
8 Exhibit 14.

9 EXAMINER PRICE: So marked.

10 (EXHIBIT MARKED FOR IDENTIFICATION.)

11 Q. Mr. Rice, do you see the document that I
12 have placed in front of you as IEU-Ohio Exhibit 14?

13 A. It's not marked as 14, but I do have the
14 exhibit you gave me, yes.

15 Q. Earlier there was some discussion about
16 DP&L's electric transition plan. Do you remember the
17 case number?

18 A. 99-1687?

19 Q. Does that match the case number on the
20 document in front of you?

21 A. It does.

22 Q. Does that appear to be the opinion and
23 order that approved DP&L's electric transition plan?

24 A. I have not had the opportunity to read
25 this opinion and order but it does appear to be that,

1 yes.

2 Q. Sorry to interrupt you. Would you agree
3 that it looks like -- you can take a moment to
4 familiarize yourself with it just to make sure.

5 MR. FARUKI: Your Honors, we'll accept
6 his representation that that's what it is.

7 Q. Could you please turn to page 17,
8 Mr. Rice.

9 A. Okay.

10 Q. And do you see during the first paragraph
11 where it says "...DP&L will keep its books, records,
12 and accounts separate from those of its affiliates
13 pursuant to Rule 4901:1-20-16...." It "will also
14 follow the Commission's rules on financial
15 arrangements to preserve the financial independence
16 of DP&L from its affiliates pursuant to
17 4901:1-20-16(G) (3)"?

18 A. I'm not seeing that. I apologize.
19 You're on page --

20 Q. On page 17. In the first paragraph.

21 A. First paragraph.

22 EXAMINER PRICE: The last sentence of the
23 first paragraph.

24 A. Yes, I see it now.

25 Q. Now, would you agree that the opinion and

1 order required DP&L to maintain separate accounting?

2 A. DP&L does maintain separate accounts for
3 its utility business from its other affiliated
4 companies.

5 Q. Would you please explain what you mean by
6 "its other affiliated companies," Mr. Rice?

7 A. These would be other companies under the
8 DPL, Inc. holding company system, DPLER has been
9 mentioned earlier here today in testimony, and other
10 companies, other affiliated companies, those
11 accounts -- those companies' accounts are kept
12 separately from the Dayton Power & Light Company.

13 EXAMINER PRICE: So when you testified
14 earlier that Dayton Power & Light was not required to
15 maintain separate accounting, you're distinguishing
16 accounting from the phrase "books, records, and
17 accounts."

18 THE WITNESS: I guess I presumed the
19 question to be, or at least implied in the question
20 that I was asked whether we kept separate accounting
21 from our distribution and transmission business from
22 our generation business and I'm saying that The
23 Dayton Power & Light Company keeps its own records
24 completely and that its affiliated companies under
25 DPL, Inc. holding company system also maintain their

1 books separate.

2 EXAMINER PRICE: Okay.

3 MR. OLIKER: I'm sorry, that was a little
4 muffled. Could I hear his response read back again.

5 EXAMINER PRICE: Yes.

6 (Record read.)

7 Q. I'm not sure I understood that. Maybe,
8 Mr. Rice, did you just testify that you don't believe
9 the distribution and transmission and generation
10 businesses maintain separate accounting?

11 A. That's correct.

12 Q. And you do not define "affiliates" to
13 include DP&L's generation business.

14 A. That's correct.

15 I'd like to offer one other piece,
16 though, in explaining why I meant that.

17 Q. I think the question was done, Mr. Rice.

18 A. That's fine.

19 EXAMINER PRICE: I'm sure Mr. Faruki will
20 give you an opportunity to explain later.

21 MR. FARUKI: You are so right, your
22 Honor.

23 Q. Could you please turn to page 11 of the
24 opinion and order. Could you review paragraph 16,
25 please. Let me know when you're done.

1 A. I've completed my review.

2 Q. Would you agree that paragraph 16
3 obligates DP&L to provide the Commission staff
4 information regarding sales of power and ancillary
5 services from DP&L to an affiliate for review and
6 auditing to determine if DP&L's in compliance with
7 corporate separation requirements?

8 A. I believe the order speaks for itself and
9 certainly was in effect, you know, under this
10 transition plan up until the next case. It does have
11 the fact that information will be provided, whether
12 that's still the case now, I don't know the answer.

13 Q. So the answer to my question was yes?

14 A. With my explanation, yes.

15 Q. Would you agree that Ohio law and
16 Commission rules require transactions between DP&L
17 and its affiliates to be priced at fully embedded
18 costs, also referred to as fully allocated costs?

19 MR. FARUKI: I'll object, your Honors,
20 most of the questions thus far have asked for legal
21 opinions or conclusions but there are multiple
22 grounds for this objection, one is that when he uses
23 "Commission rules," he's not specifying anything.

24 Mr. Rice has reviewed some things, but he
25 is not a walking Lexis library of all Commission

1 rules. If there's something specific they want to
2 address him to, that's fine.

3 Second, this is asking purely for a legal
4 conclusion based on undefined Commission rules and
5 regulations.

6 EXAMINER PRICE: I think it's a standing
7 objection.

8 If you can rephrase, Mr. Oliker.

9 MR. OLIKER: Okay.

10 Q. Mr. Rice, as an attorney for DP&L you are
11 relied upon to interpret corporate separation rules,
12 correct?

13 A. Yes.

14 Q. And are you aware of whether corporate
15 separation rules define "fully allocated costs"?

16 A. I'm aware that the corporate separation
17 rules do discuss the concept of fully allocated
18 costs.

19 Q. You would agree that the corporate
20 separation rules require fully allocated costs --
21 strike that.

22 EXAMINER PRICE: Mr. Murray, no hearing
23 is worth breaking your leg over. Seriously.

24 MR. OLIKER: He is a runner, too.

25 I think I'll just give the witness two of

1 the Commission's rules on this subject, your Honor,
2 if I may approach.

3 EXAMINER PRICE: You may.

4 Q. Turning first to 4901:1-20-16, would you
5 agree that that's the corporate separation rule that
6 was implemented in the electric transition plan time?

7 MR. FARUKI: Your Honor, is there a copy
8 for us?

9 EXAMINER PRICE: Yes.

10 Q. Could you please turn to -- could you
11 turn to (B) (3) under fully allocated costs.

12 MR. FARUKI: I'm sorry, which rule are we
13 in now?

14 MR. OLIKER: We are in 20-16.

15 A. Okay, I'm there.

16 Q. Would you agree that this rule defines
17 fully allocated costs?

18 MR. FARUKI: Your Honor, I don't think I
19 was given 20-16. I was given three copies of --

20 MR. OLIKER: Sorry, Charlie. It's on the
21 way.

22 MR. FARUKI: Thank you, your Honors.

23 EXAMINER PRICE: Do we have a question
24 pending?

25 MR. OLIKER: I can't remember, to be

1 honest.

2 EXAMINER PRICE: Would you read the
3 pending question back, please.

4 (Record read.)

5 A. Yes, this rule defines fully allocated
6 costs.

7 Q. Would you agree that this rule controls
8 the pricing of transactions between affiliates?

9 A. In some respects.

10 Q. Can you point me to another rule that
11 would dictate?

12 A. Well, when I say "in some respects" --

13 MR. FARUKI: Wait. Wait. Tim, hold up a
14 minute. Give me a chance to object.

15 When you say "point me to another
16 rule" -- your Honor, what he's done is give him six
17 pages of rules which are not all of the rules and
18 then he says point me to another one. As I argued a
19 minute ago, if they want to give him the entirety of
20 the rules, that's one thing, but requiring him to
21 recite from memory or identify from memory a
22 provision of a rule is not a proper question. That's
23 basis one.

24 Basis two, these are all asking for legal
25 opinions.

1 EXAMINER PRICE: Overruled on both bases,
2 the witness can answer if he knows. If he doesn't
3 know, then he will tell us.

4 THE WITNESS: Could I hear the question
5 again, please?

6 EXAMINER PRICE: You may.

7 (Record read.)

8 A. I apologize, I'm not sure I can answer
9 unless I'm given more context. I forget what the
10 question was before that so I can give context in my
11 response.

12 EXAMINER PRICE: In your response you
13 said "in some respects." Can you just explain to the
14 Bench what you mean by "in some respects"?

15 THE WITNESS: Yes, I can. As I interpret
16 the corporate separation rules I look at fully
17 allocated costs as part of how you solve the problem,
18 in other words you cannot -- no party can
19 subsidize -- no utility company can subsidize its
20 affiliated companies, and the way to solve that in
21 most cases with things like the use of facilities,
22 the use of personnel, and those matters that are
23 covered in the CAM is use fully allocated costs as a
24 way to level the playing field.

25 However, there are other circumstances

1 when it just doesn't apply; looking at
2 nondiscrimination and undue preference issues are not
3 necessarily solved by fully allocated costs.

4 EXAMINER PRICE: Thank you.

5 THE WITNESS: You're welcome.

6 MR. OLIKER: Thank you.

7 Q. (By Mr. Oliker) Mr. Rice, you're aware
8 that DP&L currently sells power to its affiliate
9 DPLER, correct?

10 A. Yes, I am.

11 Q. Mr. Rice, you do not know whether DP&L
12 makes sales of power to DPLER at fully embedded
13 costs, correct?

14 A. I didn't know at the time of my
15 deposition. I know now.

16 Q. What is your answer now?

17 A. My answer is that they sell power to
18 DPLER at market.

19 EXAMINER PRICE: Mr. Rice, are you aware,
20 is DP&L required to obtain FERC approval for
21 wholesale sales into the market?

22 THE WITNESS: My generalized
23 understanding, I'm not a FERC attorney, is that the
24 FERC has to approve the tariff by which we sell power
25 into the wholesale market, which would include types

1 of sales you're talking about.

2 EXAMINER PRICE: Have you obtained FERC
3 approval for your wholesale sales tariff?

4 THE WITNESS: Yes, we have.

5 EXAMINER PRICE: Are your affiliate --
6 are your transactions with your affiliate governed by
7 your FERC-approved wholesale tariff?

8 THE WITNESS: I don't know the answer.

9 EXAMINER PRICE: Do you have separate
10 approval from FERC for sales with your -- wholesale
11 sales to your affiliates?

12 THE WITNESS: To the best of my
13 knowledge, no.

14 EXAMINER PRICE: Thank you.

15 Q. (By Mr. Olikier) Mr. Rice, just one more
16 question on that. Assuming DP&L does not make sales
17 to DPLER at fully embedded costs, you have no opinion
18 of whether DP&L's in violation of corporate
19 separation requirements, correct?

20 A. I do have an opinion.

21 Q. Could I turn you to your deposition.

22 Mr. Rice, I asked you a question on page
23 43, line 7, could you please turn there. Let me know
24 when you're there.

25 A. I'm there. Go ahead.

1 Q. On page 43, line 7, question: "Mr. Rice,
2 assuming that DP&L makes electricity sales to DPLER
3 that are not based upon fully loaded embedded costs,
4 would you agree that DP&L is in violation of
5 corporate separation requirements?"

6 Answer, after Mr. Faruki's objection: "I
7 don't know the answer to that."

8 MR. FARUKI: Your Honor, I renew my
9 objection.

10 EXAMINER PRICE: At the moment the only
11 question is "Did I read that correctly?"

12 MR. FARUKI: Yes, and I object to that
13 question for the reasons stated in the transcript,
14 but I don't know if you have the transcript.

15 EXAMINER PRICE: I don't have the
16 transcript.

17 MR. FARUKI: My objection was partly on
18 the basis of an incomplete hypothetical, partly to
19 the lack of foundation, and partly because it calls
20 for a legal opinion.

21 MR. BERGER: Your Honor, if I may, I have
22 a couple extra copies of the transcript, if you like.

23 EXAMINER PRICE: That would be very
24 helpful, thank you.

25 As to the portions of the objection

1 regarding requesting a legal opinion, we've given
2 everybody a lot of latitude on regulatory matters and
3 we'll put that underneath that umbrella. As to the
4 objection, parts of the objections were overruled as
5 to that argument. As to the portions of the
6 objection related to incomplete hypothetical, the
7 witness clearly expressed, perhaps too hastily, that
8 he does have an opinion, so he certainly had some
9 understanding in his head and he can answer the
10 question to the extent he understands the question
11 and knows the answer.

12 Overruled.

13 Q. (By Mr. Oliker) Would you like me to read
14 the deposition again?

15 A. I have it here in front of me and I
16 believe you read it correctly. But since then I
17 have --

18 Q. That's all I asked, Mr. Rice.

19 EXAMINER PRICE: The Bench would like to
20 know the answer to the question. Mr. Rice, what is
21 your opinion?

22 THE WITNESS: My opinion is, is that to
23 the extent that DP&L is selling power at other than
24 fully loaded costs is not a violation of the
25 corporate separation plan and not a violation of the

1 state statute.

2 And the reason I say that is, is that the
3 state statute is designed to determine if there is an
4 undue preference first and foremost, and since DPL --
5 DP&L sells energy to DPLER and to other
6 nonassociated -- nonaffiliated companies at market,
7 there is no undue preference.

8 Until you reach the threshold question of
9 undue preference, you don't have to worry about
10 finding a way to make it appropriate and under the
11 market to find a way to make up for it.

12 I believe the statute states clearly that
13 the purpose of the -- in this situation the purpose
14 of the section associated with fully loaded costs has
15 to do in those circumstances where DP&L would loan
16 facilities or give DPLER facilities, people,
17 resources and not fully charge DPLER that, in that
18 situation you're looking at fully embedded, fully
19 loaded costs.

20 In the situation where you're looking at
21 power, you first have to look at whether there's an
22 undue preference, and because DP&L sells power at
23 market, just like it would sell to a third-party
24 provider, just like it would sell into PJM, there is
25 no -- there is no violation of it, everyone stays on

1 the same competitive level.

2 That's my opinion.

3 EXAMINER PRICE: Thank you.

4 THE WITNESS: You're welcome.

5 Q. Could you please turn to page 8 of your
6 proposed corporate separation plan, Mr. Rice.

7 A. Okay. I'm there.

8 Q. You would agree that the corporate
9 separation plan uses the term "business unit,"
10 correct?

11 A. The plan does have that -- those words in
12 there, yes, it does.

13 Q. You do not believe the term "business
14 unit" refers to distribution, transmission, and
15 generation segments of your business, correct?

16 A. That's correct. I believe that statement
17 refers to a vestige from the 2008 ESP in which the
18 company was looking to do behind-the-meter services
19 and as a result of the stipulation in that case we
20 withdrew the offer to -- or withdrew the provision to
21 provide such behind-the-meter services and it is that
22 use of the word "business," in this case that is
23 where that term was being used as a result of the
24 2008 plan.

25 Q. And you do not believe that DP&L

1 previously accounted separately for its regulated
2 business, the distribution and transmission, using
3 unit 2 on the general ledger.

4 A. I believe you're confusing what is
5 fully -- what is accounting records and what we did
6 in order to satisfy our obligations under the cost
7 administration manual. The CAM itself, those are
8 accounting records and certainly we did track
9 accounting records for distribution, transmission,
10 and generation in order to satisfy our obligations
11 under the CAM.

12 We did not provide fully blown or audited
13 financial statements and we did not account for those
14 parts of the business nor have we ever accounted for
15 those businesses as fully blown audited financial
16 statements under those parts of the company.

17 Q. And you do not believe that DP&L
18 previously accounted separately for its unregulated
19 business unit of -- on the general ledger.

20 A. Again, as I just testified, the company
21 has never provided full-blown accounting for those
22 various divisions of the company. We have tracked
23 our costs and expenses so that we can comply with the
24 cost allocation manual under the corporate separation
25 plan.

1 MR. OLIKER: Your Honor, I'd like to mark
2 an exhibit as IEU-Ohio Exhibit 15.

3 EXAMINER PRICE: So marked.

4 MR. OLIKER: And I would say this
5 document is probably highly confidential.

6 EXAMINER PRICE: Okay. At this time we
7 will go to the confidential portion of our transcript
8 to the extent necessary. Anybody who has not signed
9 a protective agreement with the company should excuse
10 themselves at this time.

11 (Confidential portion excerpted.)
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(Open record.)

MR. OLIKER: Just to clarify, this has been marked as IEU-Ohio Exhibit 16.

Q. Now, do you recognize the document that's been placed in front of you, Mr. Rice?

A. Yes.

Q. Would you agree that this is an application to issue and assume liability and short-term notes in Case No. 04-1557-EL-AIS?

A. Yes, it is.

Q. And you are listed as trial counsel, correct?

A. That is correct.

Q. Would you agree that DP&L amended this application?

A. It very well could have. I have no idea.

1 MR. OLIKER: Your Honor, I'd like to mark
2 another Exhibit as IEU-Ohio Exhibit 17.

3 EXAMINER PRICE: So marked.

4 (EXHIBIT MARKED FOR IDENTIFICATION.)

5 Q. Mr. Rice, do you recognize the document
6 that has been marked as IEU-Ohio Exhibit 17?

7 A. I do.

8 Q. Would you agree that DP&L amended its
9 application to add the following statement:
10 "Applicant's short-term debt including RLA loans will
11 be in compliance with Applicant's electric transition
12 plan as approved by this Commission in Case
13 No. 99-1687-EL-ETP"?

14 A. That's correct.

15 Q. Would you agree that the Commission
16 approved your application upon condition of this
17 commitment in your amendment?

18 A. I don't have an independent memory of the
19 order itself, but I don't think I would dispute it.

20 MR. OLIKER: I'd like to mark another
21 exhibit, your Honor. I'd like to mark IEU-Ohio
22 Exhibit 18.

23 EXAMINER PRICE: So marked.

24 (EXHIBIT MARKED FOR IDENTIFICATION.)

25 Q. Mr. Rice, do you recognize the document

1 that's been marked as IEU-Ohio Exhibit 18?

2 A. Yes, I do.

3 Q. Would you agree this is the finding and
4 order approving DP&L's application for short-term
5 notes and to assume liabilities?

6 A. Yes, it is.

7 Q. Turn to page 2.

8 A. Okay.

9 Q. Would you agree that the Commission,
10 looking at paragraph 7, conditioned approval of your
11 application on DP&L maintaining compliance with
12 DP&L's electric transition plan commission --
13 commitments?

14 A. Yes.

15 Q. Thank you.

16 If you know, Mr. Rice, didn't the
17 Commission require this commitment in all of your
18 applications to issue new notes?

19 A. I don't know that.

20 Q. Moving to a different topic. Would you
21 agree that a large part of corporate separation is
22 preventing subsidies?

23 A. I would not characterize it that way, no.

24 Q. Would you agree that's part of it?

25 A. I believe that's a part.

1 Q. Generally you would define a subsidy as a
2 benefit, correct?

3 A. That's correct.

4 Q. And in the electric utility industry a
5 subsidy would exist if DP&L would guarantee the debt
6 of an affiliated company, correct?

7 A. Yes, it would be.

8 Q. And would you agree that a subsidy would
9 exist if DP&L's noncompetitive business provided a
10 benefit to DP&L's unregulated business that the
11 unregulated business could not otherwise obtain in
12 the market?

13 MR. FARUKI: May I hear that back,
14 please?

15 EXAMINER PRICE: You may.

16 (Record read.)

17 MR. FARUKI: Object, it calls for a legal
18 conclusion.

19 MR. OLIKER: Would you like me to
20 respond, your Honor?

21 EXAMINER PRICE: Sure.

22 MR. OLIKER: For one, he's an attorney
23 testifying about corporate separation which are the
24 issues before him and so I think it's fair game.

25 EXAMINER PRICE: I understand that, but I

1 would prefer to keep the legal arguments on brief and
2 not in testimony; however, we will grant you some
3 leeway, although Mr. Faruki is probably correct, we
4 will grant you a little bit of leeway at this time on
5 this line of questioning.

6 You can answer the question.

7 MR. FARUKI: Is that a Pirik victory for
8 me, your Honor?

9 EXAMINER PRICE: I won't let him go on
10 too long so if you want to claim victory on that one.

11 THE WITNESS: Could I hear the question
12 again, please?

13 EXAMINER PRICE: Certainly. Say the
14 question again.

15 (Record read.)

16 A. Yes.

17 Q. Okay. And this will be my last question
18 in this area, Mr. Rice, you agree that if the SSR was
19 designed to provide financial support to DP&L's
20 generation business, that it would be a subsidy due
21 to its nonbypassable nature.

22 MR. FARUKI: Object. Foundation as to
23 this witness, certainly, as well as calling for a
24 legal conclusion.

25 MR. OLIKER: I can ask it as a

1 hypothetical, your Honor.

2 MR. FARUKI: Well then it's an incomplete
3 hypothetical.

4 EXAMINER PRICE: Let's have the question
5 back again.

6 (Record read.)

7 EXAMINER PRICE: The witness can answer
8 if he knows.

9 A. I don't know the answer.

10 Q. Can I turn you to your deposition. Could
11 you please look at page 52. Particularly line 16,
12 and tell me when you're there.

13 MS. YOST: Joe, what page was that?

14 MR. OLIKER: Page 52.

15 A. Which line, please?

16 Q. Line 16, and tell me if I read this
17 correctly: Question: "Would you agree that the SSR
18 was designed to provide financial support to DP&L's
19 generation business that it would be a subsidy due to
20 its nonbypassable nature?" And Mr. Faruki's
21 objection, your answer: "Yes, it would."

22 Did I read that correctly?

23 MR. FARUKI: I'll renew my objection.

24 EXAMINER PRICE: Thank you. Overruled.

25 A. You read it correctly, yes.

1 MR. OLIKER: If I could have just one
2 minute to review my notes, your Honor.

3 EXAMINER PRICE: You may.

4 MR. OLIKER: Thank you.

5 Your Honor, I don't believe I have any
6 further questions but I would like to offer, because
7 there's no numbers on IEU-Ohio Exhibit 15, would it
8 be possible for us to offer a hand-numbered exhibit
9 for the court reporter? Would DP&L object to that?

10 MR. FARUKI: I'm not sure what the
11 question is. 15 is the --

12 MR. OLIKER: CAM Rates Manual, I think it
13 would be very difficult to refer to this document and
14 maybe if we could just write in the page numbers.

15 MR. FARUKI: Oh, write the page numbers.
16 Certainly, that's fine.

17 EXAMINER PRICE: That would work. Thank
18 you.

19 MR. OLIKER: Thank you, your Honor.

20 EXAMINER PRICE: And you have no more
21 questions?

22 MR. OLIKER: Mr. Rice, no more questions,
23 thank you.

24 EXAMINER PRICE: Mr. Berger.

25 MR. BERGER: Thank you, your Honor.

1 - - -

2 CROSS-EXAMINATION

3 By Mr. Berger:

4 Q. Mr. Rice, is it possible you can move the
5 podium?

6 A. I can sure try.

7 Q. Or stand so I can see you.

8 A. That help?

9 Q. Yes. My name is Tad Berger, I'm with the
10 Office of the Ohio Consumers' Counsel, we previously
11 spoke during your deposition, so good afternoon.

12 Just following up from a couple of
13 questions from Mr. Olikier there, would you turn to
14 IEU-Ohio Exhibit No. 14 at page 17 where he
15 previously referenced you.

16 A. Unfortunately, the versions I have don't
17 have numbers so you're going to have to describe the
18 document so I can find the right one.

19 Q. Right. It's the Commission's opinion and
20 order from the 1999 ETP case.

21 A. I have that available, yes.

22 Q. And he previously referenced you to this
23 page discussing with you the corporate separation
24 plan and the manner in which it was to work. Would
25 you look at the last paragraph on that page and can

1 you tell me whether you would agree that at the time
2 the Commission issued this order it believed that
3 DP&L would structurally separate by the end of
4 calendar year 2000, this order was issued in
5 September of 2000?

6 MR. FARUKI: Is this a question asking
7 what the Commission believed or what the company
8 believed?

9 EXAMINER PRICE: Mr. Berger.

10 MR. BERGER: I'm asking whether it's your
11 understanding of this language that the Commission
12 was expecting the company to structural separate.

13 EXAMINER PRICE: I don't think he can
14 testify as to the Commissioners' expectation.

15 MR. FARUKI: That was the basis of my
16 objection.

17 Q. (By Mr. Berger) Well, let me ask you
18 about the language here because this language here
19 says by December 31, 2000, this corporate separation
20 plan achieves structural separation contemplated by
21 the statute.

22 A. Yes. That's what it says. Can you point
23 me exactly to the page, please, so I can make sure.

24 I'm not sure I'm on the right page.

25 Q. It's on page 17. The last paragraph on

1 that page.

2 A. I'm there now, Mr. Berger. Please, go
3 ahead.

4 Q. Yes. Would you agree with me that this
5 indicates the Commission's understanding that the
6 company was going to -- that this language indicates
7 that the Commission's understanding that the company
8 was going to structurally separate by December 31,
9 2000?

10 MR. FARUKI: Same objection to him
11 testifying about the Commission's understanding.

12 MR. BERGER: I'm just asking him what the
13 language says.

14 MR. FARUKI: Your Honor, it doesn't
15 matter. He's asking what -- he's not asking what the
16 language says. His question was is this the
17 Commission's understanding. He's asking a witness
18 what someone else's understanding was.

19 EXAMINER PRICE: Sustained.

20 Q. Well, let me ask you, does the language
21 say that the company is going to structurally
22 separate by the end of calendar year 2000?

23 MR. FARUKI: Your Honor, the language
24 speaks for itself and he's already answered that
25 question.

1 EXAMINER PRICE: We'll give him some
2 leeway and allow him to --

3 MR. BERGER: Thank you, your Honor.

4 EXAMINER PRICE: -- get an answer to this
5 question.

6 You can answer if you know.

7 A. I believe the language is intended to
8 state that the company is fully compliant with the
9 statute involving corporate separation because that
10 sort of language is in the statute itself, that we
11 are indeed compliant with this Section 4928.17(A)(1).

12 Q. Does Section 4928.17(A)(1) require
13 structural separation, to your understanding?

14 MR. FARUKI: I'll object, legal opinion
15 again.

16 MR. BERGER: Your Honor, I'm just asking
17 for a little leeway on this, I'll show him the
18 statute if that will help him interpret it.

19 EXAMINER PRICE: Very little leeway,
20 Mr. Berger.

21 Go ahead and answer the question, if you
22 know.

23 MR. BERGER: Your Honor, before he
24 answers the question would you let me mark the
25 4928.17?

1 EXAMINER PRICE: Yes.

2 MR. BERGER: As OCC Exhibit No. 3.

3 EXAMINER PRICE: We have a 3 already.

4 Mr. Berger, you can't have 3, Ms. Grady took 3
5 yesterday after Ms. Yost took 2 from her.

6 MR. BERGER: She didn't mark it down, I
7 apologize. What number are we on?

8 EXAMINER PRICE: 6.

9 MR. BERGER: Well, that's what happens
10 when you don't have assistants.

11 If I may approach, your Honor.

12 EXAMINER PRICE: You may.

13 MR. BERGER: Thank you.

14 (EXHIBIT MARKED FOR IDENTIFICATION.)

15 Q. Mr. Rice, let me know when you've had a
16 chance to look that over, especially (A) (1).

17 MR. FARUKI: Is there a question pending?

18 EXAMINER PRICE: Yes. Can we have the
19 question read back, please?

20 (Record read.)

21 A. I believe that 4928.17(A) (1) does speak
22 to the issue of providing competitive services
23 through a fully separated affiliate. But reading the
24 entire statute, however, I believe compliance with
25 (A) (1) is satisfied by functional separation if

1 you look later on in the same statute under
2 subsection (C).

3 Q. Mr. Rice, subsection (C) specifically
4 requires a showing of good cause and approval by the
5 Commission for functional separation as opposed to a
6 fully separated affiliate; is that right?

7 A. Generally, yes.

8 Q. And looking again at (A) (1) -- strike
9 that.

10 Looking back at the ETP order, Mr. Rice,
11 the sentence following the sentence I previously
12 reviewed with you states that "The plan provides for
13 competitive retail electric service through a fully
14 separated affiliate of the utility...."

15 Did the company begin -- has the company
16 begun to provide competitive retail electric service
17 at any point through a fully separated affiliate of
18 the utility?

19 A. If you mean by "fully separated" through
20 a legally separate entity, I would say the answer is
21 no. We are providing that service, obviously, on a
22 functional basis.

23 Q. But you're not doing it through a
24 separate affiliate; is that correct?

25 A. We are not providing some generation

1 service -- The Dayton Power & Light Company is still
2 providing generation services through its generation
3 division, not through a fully separated entity, in
4 compliance with our '08 corporate separation plan.

5 Q. The company, however, is not providing
6 competitive retail electric service which includes
7 all generation services through a fully separated
8 affiliate; is that correct?

9 A. Again, if you mean by the company The
10 Dayton Power & Light Company, that we are providing,
11 The Dayton Power & Light Company is not a CRES
12 provider, we are generating -- we are providing
13 generation services under the name of the Dayton
14 Power & Light Company in accordance with our
15 corporate separation plan as approved by the
16 Commission.

17 We also have, as you know, a separate
18 affiliated company, a CRES provider, in the name of
19 DPL Energy Resource, Inc. That entity is providing
20 competitive electric retail service to customers in
21 Ohio and elsewhere.

22 EXAMINER PRICE: And that is a fully
23 legally separate entity; is that correct?

24 THE WITNESS: That is correct.

25 MR. BERGER: I'm sorry, I didn't hear

1 your question, your Honor.

2 EXAMINER PRICE: I said "That is a fully
3 legally separate entity, isn't it?" And he said
4 "That's correct."

5 MR. BERGER: But, Mr. Price, doesn't this
6 language say that the company is to provide all
7 competitive retail electric services through a fully
8 separated affiliate?

9 EXAMINER PRICE: Mr. Berger, I think your
10 leeway is up on legal arguments. There are a host of
11 legal questions in that question you just asked.

12 MR. BERGER: Thank you, your Honor.

13 EXAMINER PRICE: I think we need to move
14 on.

15 MR. FARUKI: You did record my objection,
16 did you not?

17 EXAMINER PRICE: I promised you only a
18 little leeway and I fulfilled my promise.

19 Q. (By Mr. Berger) Would you agree with me
20 that the Revised Code defines competitive retail
21 electric services as including all generation
22 services?

23 MR. FARUKI: Objection.

24 EXAMINER PRICE: Grounds?

25 MR. FARUKI: Asking for a legal

1 conclusion and --

2 EXAMINER PRICE: Sustained.

3 MR. BERGER: Your Honor, this is in a
4 different area. I'm trying to get a definition from
5 him of a term, "competitive retail electric service,"
6 and whether he interprets it in a way that's
7 consistent with the statute.

8 EXAMINER PRICE: You're just saying, your
9 defense of asking for a legal conclusion is you're
10 asking him for a legal conclusion.

11 Q. You said The Dayton Power & Light Company
12 is not a CRES provider. What does that mean to you?

13 A. The Dayton Power & Light Company, the
14 CRES provider is a defined term under Ohio rules and
15 regulations. "CRES" means competitive retail
16 electric supplier, and our CRES services are being
17 provided through DPL Energy Resources, Inc., what we
18 commonly know as DPLER.

19 Q. Mr. Rice, I'm talking about competitive
20 retail electric services --

21 MR. BERGER: And, your Honor, I'm not
22 going to ask him -- I'm just going to ask him whether
23 he knows if that's defined in the statute, I'm not
24 asking him a legal question.

25 EXAMINER PRICE: Okay.

1 A. I believe it is.

2 Q. And does your definition of competitive
3 retail electric services as you've used it include
4 all generation services?

5 A. I'm not sure I understand your question.

6 Q. Is there something about the question
7 that you don't understand?

8 A. I perhaps am looking at the question
9 differently than you, but I look at CRES providers as
10 affiliated -- as separately affiliated companies from
11 The Dayton Power & Light Company providing retail
12 electric service to customers in Ohio. And I
13 understand that The Dayton Power & Light Company is
14 providing noncompetitive retail electric service as
15 part of its utility business and it's also providing
16 generation services, but -- and generation is a
17 nonregulated portion of our business, but I still
18 fail to grasp your question. I may be missing
19 something.

20 Q. Okay. Would you agree with me that
21 Senate Bill 3 provided that generation services were
22 now -- were competitive? I think you already agreed
23 with one of the other counsel about that.

24 MR. FARUKI: Objection.

25 MR. BERGER: For competitive retail

1 electric services.

2 EXAMINER PRICE: We'll allow this one
3 question. Overruled.

4 A. I think, as I stated previously, I
5 believe generation is a competitive service under
6 Ohio law.

7 Q. Okay. And my question to you before was
8 your terminology for competitive retail electric
9 services, not providers, services, does that include
10 generation? I'm talking about your definition of
11 competitive retail electric services.

12 A. Under my definition the answer is no.

13 Q. So what competitive retail electric
14 services -- what services would be included in your
15 definition in competitive retail electric services?
16 It would not include generation according to you so
17 what would it include?

18 A. Well, they do include generation but I
19 guess it's how they're being provided. I guess I'm
20 focusing on the fact that we have this separate
21 affiliated company that is providing those services.
22 So, I look at it as CRES providers providing retail
23 generation services to customers and being able to
24 sell those services to anyone within the state of
25 Ohio.

1 Q. So do I understand your opinion is that
2 as long as some generation or competitive generation
3 services are provided through an affiliate, other
4 generation services are noncompetitive -- that are
5 non -- that you define as noncompetitive can be
6 provided from -- through DP&L itself?

7 A. No. I don't believe that at all. I
8 believe DP&L is providing generation services in
9 accordance with this corporate separation plan as a
10 part of its functional separation. Generation is
11 retail. I mean, generation retail services is a part
12 of what we sell, but it's pursuant to our corporate
13 separation plan as approved by the Commission.

14 Q. And those generation services that Dayton
15 Power & Light is providing, is it your opinion that
16 those are competitive retail electric services or
17 noncompetitive services?

18 A. I believe they're competitive services.

19 Q. Okay. And would you agree with me that
20 the Commission's order said in September of 2000 that
21 competitive retail electric services will be provided
22 through a separate affiliate and it didn't separate
23 out any specific competitive -- any particular
24 competitive retail electric services from any others,
25 did it?

1 MR. FARUKI: Can I hear that back,
2 please?

3 EXAMINER PRICE: Yes. Please.
4 (Record read.)

5 A. I believe it does require us to do so,
6 but it also states that we're compliant with the Ohio
7 Revised Code Section 4928.17(A) (1) because we are
8 functionally addressing that issue.

9 Q. And where does it say that?

10 A. Well, I think you have to look at the
11 entire history of the proceeding. In this case --

12 MR. BERGER: Your Honor, move to strike
13 the answer.

14 MR. FARUKI: Well, your Honor, he doesn't
15 have an answer yet.

16 MR. BERGER: Talking specifically about
17 the order. If he doesn't have an order, I can
18 provide it to him.

19 MR. FARUKI: He's trying to cut him off
20 and if you ask the question, you have to at least
21 listen to the answer.

22 EXAMINER PRICE: I agree. The witness
23 should have a chance to answer the question,
24 nonetheless, the order speaks for itself. I don't
25 see the purpose in having him trace through 50-some

1 pages to look for the answer to your question. He
2 can give you his understanding of what the order was,
3 but the order says what it says and you can all argue
4 on brief what the order says.

5 MR. BERGER: Well, all I'm asking, your
6 Honor, if he knows where the order would say what he
7 just said it says.

8 MR. FARUKI: I'll object.

9 EXAMINER PRICE: Do you have a specific
10 cite to where you believe you inferred that from or
11 was that just your overall understanding of the
12 order?

13 THE WITNESS: It's my general
14 understanding.

15 EXAMINER PRICE: He doesn't have a
16 specific cite.

17 MR. BERGER: Thank you.

18 Q. (By Mr. Berger) Mr. Rice, the third
19 amended corporate separation plan that is the subject
20 of this proceeding would you agree with me that in
21 your testimony on page 3, lines 51 and following, you
22 basically say that this is a continuation of the
23 second amended corporate separation plan? Is that
24 right?

25 A. Generally that's correct.

1 MR. BERGER: Your Honor, can I have
2 marked Mr. Rice's testimony in the ESP I proceeding
3 as OCC Exhibit 7.

4 EXAMINER PRICE: You may.

5 (EXHIBIT MARKED FOR IDENTIFICATION.)

6 MR. BERGER: If I may approach.

7 EXAMINER PRICE: You may.

8 MR. BERGER: Thank you.

9 Q. (By Mr. Berger) Mr. Rice, I would refer
10 you to pages 3 and 4 of your testimony, those are the
11 pages I have a brief question or two about.

12 A. Yes, please proceed.

13 Q. Would you agree with me that on page 3
14 and 4 of this testimony you basically indicated that
15 the second amended corporate separation plan was
16 basically a continuation of the first in that it
17 maintained functional separation?

18 MR. FARUKI: Your Honor, I'll ask that he
19 be given a chance to read these two pages first
20 before he answers.

21 EXAMINER PRICE: Take your time to read
22 it.

23 THE WITNESS: Thank you.

24 I've completed my review.

25 Q. And would you agree with what I just

1 indicated, that the second amended corporate
2 separation plan was basically a continuation of the
3 first with some minor changes, and maintained
4 functional separation?

5 A. Yes, I would.

6 MR. BERGER: Your Honor, if I could have
7 marked the company's second amended corporate
8 separation plan as OCC Exhibit 8.

9 EXAMINER PRICE: You may.

10 (EXHIBIT MARKED FOR IDENTIFICATION.)

11 MR. BERGER: If I may approach.

12 EXAMINER PRICE: You may.

13 MR. BERGER: Thank you.

14 Q. (By Mr. Berger) Mr. Rice, would you turn
15 to page 14 to 15 where it says "Indenture and Related
16 Issues."

17 A. Yes.

18 Q. And do you see the paragraph -- would you
19 just read that paragraph to yourself there for a
20 minute?

21 A. That would be paragraph 3 at the bottom
22 of page 14?

23 Q. Yes.

24 A. Okay. I've completed that review.

25 Q. Now, Mr. Rice, this second corporation --

1 corporate separation plan was submitted to the
2 Commission in the company's 2008 ESP I proceeding; is
3 that correct?

4 A. That's correct.

5 Q. It's dated October 1, 2008.

6 A. That is correct.

7 Q. And this was submitted after all of the
8 refinancings of the first mortgage bonds occurred
9 between the first amended corporate separation plan
10 and this filing; is that correct?

11 A. There was refinancing activity between
12 the first corporate separation plan and this one.

13 Q. Okay. And all of the non-callable bonds
14 were refinanced between the year 2000 and the year
15 2008; is that correct?

16 A. That's correct.

17 Q. Would you agree with me that there's no
18 reference in this paragraph to the refinancings that
19 occurred during that timeframe?

20 A. There's no specific mention of the
21 refinancing activity, that's correct.

22 Q. Thank you.

23 Now, would you pull up Exhibit FES 5 that
24 Mr. Lang previously referred you to.

25 A. I have it.

1 Q. I'm just not sure on there which -- he
2 indicated the pollution control bonds on lines 7, 8,
3 and 9, and you indicated that those were all
4 non-callable bonds; is that right?

5 A. They have certain no-call provisions,
6 yes.

7 Q. All of them have certain no-call
8 provisions.

9 A. Yes. Of the ones he mentioned, 7, 8,
10 and 9, he mentioned those specifically and those
11 specifically have no-call provisions.

12 Q. And does line No. 16 that was financed in
13 September of 2006, does that have no-call provisions
14 in it?

15 A. It does.

16 Q. Do any of the other bonds have no-call
17 provisions?

18 A. They do not.

19 Q. And I think during your deposition you
20 indicated that in total there were approximately
21 315 million out of that total \$904 million bond
22 indebtedness that was subject to no-call provisions;
23 is that right?

24 A. That's correct.

25 Q. And you'd agree that all of these bonds

1 were entered into after the General Assembly of Ohio
2 mandated that competitive retail electric services
3 were to be provided through a fully separated
4 affiliate of the utility in the Section 4928.17(A) (1)
5 that we previously referenced. Would you agree with
6 that?

7 A. I would agree with that with the
8 exception of stating that, again, you'd have to look
9 at the entire statute including subsection (C) which
10 permits the company to provide this -- to provide and
11 satisfy sections (A) (1) by functionally separating by
12 order of the Commission.

13 MR. BERGER: Can I just have a minute,
14 your Honor?

15 EXAMINER PRICE: Sure. I have a
16 follow-up question.

17 Are you familiar with the case you
18 testified in 08-1094-EL-SSO? Mr. Berger referenced
19 it earlier, where the Commission adopted your second
20 amended corporate separation plan.

21 THE WITNESS: I certainly remember I did
22 provide testimony in that case, your Honor.

23 EXAMINER PRICE: If you could remind me,
24 did any party contest the adoption of the second
25 amended corporate separation plan in that proceeding?

1 THE WITNESS: To the best of my
2 knowledge, no.

3 EXAMINER PRICE: Thank you.

4 MR. FARUKI: Your Honor, I can assist.
5 There was a stipulation that most of the parties
6 signed in that case, no party contested the adoption
7 of the second amended plan, and the stipulation that
8 the Commission accepted and approved in that case,
9 when you look at it, the stipulation provides that
10 unless otherwise modified by this stipulation, the
11 company's filing is accepted and approved, and that
12 was the stipulation that was accepted in the case and
13 the stipulation was signed, among others, by
14 Industrial Energy Users --

15 EXAMINER PRICE: Uh-uh. You can't hold
16 that against them. There is a term in the stip.

17 MR. OLIKER: Thank you.

18 MR. BERGER: Your Honor, we would move to
19 strike Mr. Faruki's testimony.

20 EXAMINER PRICE: He was just refreshing
21 my recollection. It happened three years ago.

22 MR. BERGER: Thank you, your Honor.

23 Q. (By Mr. Berger) Mr. Rice, do you know
24 what the net book value of the company's generating
25 plant that would have to be transferred to a separate

1 affiliate to comply with the terms of 4928.17(A)(1)
2 would be if structural separation were to be
3 implemented?

4 A. I do not know.

5 Q. Now, is it your position that the company
6 received a waiver of the requirement for structural
7 separation as part of the stipulation in the ETP
8 proceeding?

9 A. I will state that the company received,
10 basically received an order of the Commission stating
11 that we were in compliance with 1428.17(A)(1)
12 [verbatim]. I don't know whether that constitutes a
13 waiver but it certainly was their order saying that
14 that plan, that we were in compliance with the plan
15 and approved.

16 Q. And was there anything in the stipulation
17 itself between the parties that you were relying on
18 for that conclusion?

19 A. Which conclusion are you talking about?
20 I want to make sure I answer your question.

21 Q. For the conclusion that the company was
22 in compliance with the requirements of 4928.17.

23 A. Are we talking about the '08 case? Or
24 are we talking about the '99 case? Which case are we
25 talking about?

1 Q. I'm talking about the '99 case.

2 A. In that case there's nothing in the
3 stipulation per se, I'm going off the order of the
4 Commission itself stating that we're in compliance.

5 MR. BERGER: Your Honor, at this time I'd
6 like to have marked as an exhibit OCC Exhibit No. 9
7 the parties' stipulation in the '99 electric
8 transition plan proceeding.

9 EXAMINER PRICE: It is so marked.

10 (EXHIBIT MARKED FOR IDENTIFICATION.)

11 MR. BERGER: Just one minute, your Honor.
12 So, your Honor, may I approach, please?

13 EXAMINER PRICE: You may.

14 Let's go off the record briefly while you
15 look through this.

16 (Off the record.)

17 EXAMINER PRICE: Let's go back on the
18 record.

19 Q. Actually, I'm not going -- as it turns
20 out I'm not going to ask you a question at this time
21 about that document so let's move on to another area.

22 Looking at the company's first -- I do
23 want to mark the company's --

24 MR. BERGER: Your Honor, let me mark as
25 OCC Exhibit No. 10 the company's first amended

1 corporate separation plan.

2 EXAMINER PRICE: It will be so marked.

3 (EXHIBIT MARKED FOR IDENTIFICATION.)

4 MR. BERGER: If I may approach.

5 EXAMINER PRICE: You may.

6 MR. BERGER: Thank you.

7 MR. OLIKER: Tad, is this the amended
8 plan?

9 MR. BERGER: This is the first amended
10 plan.

11 MR. OLIKER: Thank you.

12 Q. (By Mr. Berger) Mr. Rice, would you agree
13 with me that this was the first corporate separation
14 plan actually approved by the Commission. I think
15 the one that Mr. Lang provided as an exhibit earlier
16 was the one that was filed with the application but
17 this one is February 28th, 2000, and I think that
18 date's referenced in your testimony in the second --
19 in the ESP I case.

20 A. I haven't had a chance obviously to read
21 the entire plan document, but from appearances and
22 from what I'm seeing here, I believe it is the plan.

23 Q. Would you turn to page 17 of that plan.

24 A. Yes, I'm there.

25 Q. And would you agree with me that that

1 section basically says that after the company
2 completes -- that the company would complete
3 corporate separation after it resolved the issues
4 with its first mortgage bonds that were then not
5 callable and did not begin to become callable until
6 August 2002?

7 MR. FARUKI: I'll object. He needs time
8 to read this. It's three pages long. And he's
9 trying to summarize an entire section in one
10 sentence.

11 EXAMINER PRICE: Take as much time as you
12 need to answer the question.

13 THE WITNESS: Thank you.

14 Could I ask for the question again,
15 please?

16 EXAMINER PRICE: Could I have the
17 question read back.

18 (Record read.)

19 A. I believe this section is just talking
20 about the issues that we face to address corporate
21 separation including specifically the fact that
22 certain of the bonds -- certain of those bonds were
23 not callable at that particular time.

24 Q. Now, on page 18, and I'm referring to the
25 last paragraph on that page, and I think you

1 indicated this in response to a question from
2 Mr. Lang, that the company would transfer beneficial
3 ownership of these assets to an affiliate along with
4 full operational control until it was
5 cost-effective -- up to the point that it was
6 cost-effective to transfer full legal ownership. Do
7 you see that?

8 A. I see the section that you're talking
9 about, yes.

10 Q. And did that -- did that transfer of
11 beneficial interest actually occur, to your
12 understanding?

13 A. It did not.

14 Q. Did the Commission ever grant a waiver or
15 an exception to this provision of the first amended
16 corporate separation plan that was approved in its
17 July 2000 order -- I'm sorry, September 2000 order.

18 A. It provided an order to us approving our
19 corporate separation plan and stating that we were in
20 compliance with Revised Code Section 4928.17(A)(1).
21 The plan was approved.

22 Q. But when the company did not proceed with
23 transferring beneficial ownership, did it ever
24 request a waiver or an exception to the provisions of
25 this first amended corporate separation plan

1 informing the Commission that it was not going to
2 go -- going to go forward with this provision? Did
3 it ever do that?

4 A. No, it did not, but instead it, in '08
5 obviously it filed for another electric security plan
6 in which it received the specific authority to
7 continue to operate in a functional fashion.

8 Q. And it did not file that second amended
9 corporate separation plan for another eight years; is
10 that right?

11 A. In 2008, that's correct.

12 Q. Thank you.

13 This plan also says that the, quote,
14 on-going obligations as well as existing liabilities
15 relating to such assets will be appropriately assumed
16 by the transferring affiliate including assuming
17 ongoing operation and maintenance expenses, taxes,
18 and other capital expenditure obligations relating to
19 the generation assets. Do you see that?

20 A. I do not. Can you tell me what page
21 we're on, please?

22 Q. It's a continuation of that same
23 paragraph at the bottom of page 18. Continuing onto
24 page 19.

25 A. Yes, I see it now.

1 Q. Did those assumptions of liabilities ever
2 occur?

3 A. No, they did not.

4 Q. And did the company ever seek a waiver or
5 exception from this provision of the first amended
6 corporate separation plan?

7 A. No, it did not, except in the context of
8 once it filed its second amended plan in 2008 we
9 received the order of the Commission approving our
10 ability to continue to functionally operate as we had
11 up until then.

12 EXAMINER PRICE: Mr. Rice -- pardon the
13 interruption, Mr. Berger.

14 MR. BERGER: Oh, please.

15 EXAMINER PRICE: Do we even address
16 corporate separation in Dayton's rate stabilization
17 plan?

18 THE WITNESS: I didn't hear the whole
19 question.

20 EXAMINER PRICE: If the Commission did
21 not address -- do you recall if the Commission
22 addressed corporate separation in Dayton's rate
23 stabilization plan in 2005? 2003.

24 THE WITNESS: I don't remember.

25 EXAMINER PRICE: Do you recall if we

1 addressed it in Dayton's rate stabilization extension
2 plan in 2005?

3 THE WITNESS: I don't remember.

4 EXAMINER PRICE: Me neither.

5 Thank you.

6 MR. BERGER: Thank you, your Honor.

7 Q. (By Mr. Berger) And looking at the last
8 sentence there in that paragraph, Mr. Rice, it says
9 "In addition, DP&L and its affiliates will determine
10 an appropriate principal amount of the first mortgage
11 bonds and other indebtedness of DP&L to be assumed by
12 such affiliate." Do you see that?

13 A. I do.

14 Q. And did those assumptions of indebtedness
15 ever occur?

16 A. Well, I think the statement says we will
17 determine an appropriate amount. It doesn't say we
18 will transfer them. So we did review at that time
19 what might have been possible, but there was no
20 specific assumption of that indebtedness.

21 Q. Thank you.

22 Would you agree with me that the reason
23 that the company determined to enter into the
24 \$315 million, approximately, in bonds with
25 non-callable provisions during the years 2005 and

1 2006, the bonds that Mr. Lang previously referred to,
2 was for economical reasons?

3 A. Primarily, yes.

4 Q. And would that have been because of the
5 interest rate?

6 A. That's correct. By using a no-call
7 provision in the bond itself we're able to lower the
8 overall interest rates which overall means less cost
9 to ratepayers.

10 Q. But you don't know what the difference in
11 interest rates between what the non-callable and the
12 callable provisions were.

13 A. I don't remember off the top of my head
14 what the difference was except I will tell you to the
15 extent we did not include a no-call provision,
16 interest rates would have been higher.

17 MR. BERGER: Your Honor, move to strike
18 the last portion of his response as nonresponsive to
19 the question.

20 EXAMINER PRICE: Could I have the
21 question and answer back, please?

22 (Record read.)

23 EXAMINER PRICE: And you objected to his
24 response?

25 MR. BERGER: I move to strike the last

1 portion of his response after --

2 EXAMINER PRICE: Denied.

3 MR. BERGER: -- he said he didn't
4 remember.

5 EXAMINER PRICE: Thank you. Denied.

6 MR. BERGER: Thank you.

7 Your Honor -- strike that.

8 Q. (By Mr. Berger) Mr. Rice, the third
9 amended corporate separation plan provides for
10 separate accounting; does it not?

11 A. If you would like to point me to a
12 provision that you're looking to, I would be happy to
13 provide a response to that, but as I stated in
14 earlier testimony, the third amended plan continues
15 functional separation which includes a CAM which
16 means we will have separate accounting, if you will,
17 associated with the expenses of the various divisions
18 of the company so that we can be compliant with the
19 CAM.

20 Q. Thank you.

21 Looking at the Revised Code provision
22 that I earlier provided you, which is OCC Exhibit
23 6 --

24 A. And this is Revised Code Section 4928.17?

25 Q. Yes.

1 A. Yes, I have it here.

2 Q. -- am I correct that that provision,
3 4928.17(A) (1) provides for separate accounting
4 requirements for competitive retail electric services
5 from other services provided by the company?

6 MR. FARUKI: I'll object.

7 EXAMINER PRICE: Grounds?

8 MR. FARUKI: Asking for a legal opinion
9 and he's added words to the statute. When he adds
10 words to the statute, he's asking for the lawyer to
11 interpret the statute.

12 EXAMINER PRICE: Let's have the question
13 back again, please.

14 (Record read.)

15 EXAMINER PRICE: Overruled. You can
16 answer if you know.

17 THE WITNESS: I apologize, I'm going to
18 ask it be read one more time because there was a part
19 of the question I was not sure I picked up on I want
20 to make sure I understand. Can I ask it be read one
21 more time?

22 EXAMINER PRICE: Please.

23 (Record read.)

24 A. Yes, it does.

25 Q. And would you agree with me, Mr. Rice,

1 that there are no -- the company does not have any
2 audited books for its generation business?

3 A. The company does not have audited books
4 for its generation business, rather it satisfies this
5 requirement, as I stated before in previous
6 testimony, by separately tracking expenses of the
7 generation business from the distribution and
8 transmission business so that we can satisfy our
9 requirements under the CAM.

10 Q. Would you agree with me that the company
11 does not have any separate audit, independent audit,
12 of cost allocations by an outside auditor?

13 MR. FARUKI: May I hear that again,
14 please?

15 EXAMINER PRICE: Reread the question,
16 please.

17 (Record read.)

18 A. While the company does not have a
19 specific independent auditor to audit the CAM, the
20 CAM has been audited and reviewed by the Public
21 Utilities Commission of Ohio staff.

22 Q. Is there anywhere that you can show me in
23 any of the Commission's orders or stipulations
24 between parties where there was a specific waiver or
25 an exception to the separate accounting requirement

1 required by the Section 4928.17(A) (1) that I earlier
2 referred you to?

3 MR. FARUKI: Objection, your Honor.
4 There's been no showing of a violation or potential
5 violation and, hence, no need for a waiver.

6 In addition, he's apparently asking the
7 witness to sort through all of the exhibits that have
8 been designated today to find something. On both
9 grounds the question is objectionable.

10 EXAMINER PRICE: Sustained.

11 Q. Mr. Rice, are you aware of any waiver
12 that has ever been specifically granted to the
13 separate accounting requirement of the code?

14 MR. FARUKI: Same objections, your Honor.

15 EXAMINER PRICE: Sustained.

16 Q. Mr. Rice, I think you earlier answered a
17 question from Mr. Lang that you devote only 2 percent
18 of your time to corporate separation and code of
19 conduct issues; is that correct?

20 A. That's correct.

21 Q. And if you work a 2,000-hour year, that
22 would be 40 hours or one week of time; is that
23 correct?

24 A. I haven't done the math, but I'll trust
25 you.

1 Q. Am I correct that if the generation
2 portion of the business was operated by a separate
3 affiliate, you're not aware of any provision of the
4 law that would allow that separate affiliate to
5 recover a regulated rate?

6 MR. FARUKI: I'll object.

7 EXAMINER PRICE: Grounds?

8 MR. FARUKI: Asking for a legal opinion
9 again without -- and it's phrased in terms of
10 something you would ask someone to go out and
11 research.

12 EXAMINER PRICE: Could I have the
13 question back again?

14 (Record read.)

15 EXAMINER PRICE: Are you asking a
16 hypothetical or are you asking something based upon
17 the record of this proceeding?

18 MR. BERGER: No; I'm asking a
19 hypothetical, your Honor. Certainly if these
20 facilities, the generation facilities, had been
21 transferred to an affiliate, whether there could be
22 any recovery of a charge like the service stability
23 rider from that affiliate.

24 EXAMINER PRICE: That certainly is asking
25 for a legal opinion. Overruled.

1 MR. FARUKI: You meant, I think you meant
2 not that I was correct --

3 EXAMINER PRICE: No, you're right.
4 You're correct. Thank you. The objection is
5 sustained.

6 MR. FARUKI: I didn't want to be editing
7 your ruling.

8 EXAMINER PRICE: Mr. McKenney was on top
9 of it.

10 MR. BERGER: Well, he is a -- all right.
11 Thank you.

12 Q. (By Mr. Berger) Would you agree with me
13 that the company does not currently prepare operating
14 statements separately for its generation function and
15 its transmission and distribution function?

16 MR. FARUKI: Object. Asked and answered.

17 EXAMINER PRICE: We'll allow it.

18 A. That's correct, we do not -- we do not
19 prepare financial statements audited or unaudited
20 associated with our generation, transmission, and
21 distribution functions.

22 Q. And when the company was deciding how to
23 do functional separation, Mr. Rice, you were involved
24 in those discussions; is that correct?

25 A. I was involved with some of those

1 discussions, certainly.

2 Q. And do you recall discussion of whether
3 there should be separate bookkeeping and accounting
4 for generation versus transmission and distribution
5 as part of functional separation?

6 A. I don't recall. I mean, there are
7 probably lots of discussions on how to best do the
8 business. It could have been discussed, I just don't
9 remember specifically.

10 MR. BERGER: Thank you, Mr. Rice, that's
11 all I have.

12 EXAMINER PRICE: Ms. Bojko?

13 MS. BOJKO: No questions, your Honor.

14 EXAMINER PRICE: Ms. Petrucci?

15 MS. PETRUCCI: No questions.

16 EXAMINER PRICE: Mr. Boehm?

17 MR. BOEHM: No questions, your Honor.

18 EXAMINER PRICE: Mr. Williams, Mr. Whitt?

19 MR. WHITT: Yes, your Honor. May I
20 relocate?

21 EXAMINER PRICE: You may. Near a working
22 microphone?

23 MR. WHITT: Yeah.

24 EXAMINER PRICE: It's easier said than
25 done.

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(Discussion off the record.)

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CROSS-EXAMINATION

By Mr. Whitt:

Q. Good afternoon, Mr. Rice. My name is Mark Whitt, I represent Interstate Gas Supply, which is a CRES supplier.

A. Good afternoon.

Q. I want to ask you a few questions about shared services at DP&L. And as I understand it, you provide legal services to both DP&L as well as certain affiliates, correct?

A. That's correct.

Q. Are there any other employees similarly situated to yourself that provide shared services among DP&L, Inc. [verbatim] affiliates?

A. Sure, there are several.

Q. Why does DP&L have separate employees -- why doesn't DP&L have separate employees for the utility and various affiliates of the utility?

A. That's a policy question. I'm not sure I can answer except to say that by being -- by having a corporate separation plan and functional separation in place we're able to allocate the time of certain employees that perform certain functions, which is a

1 more effective and more efficient way to spread that
2 cost amongst various companies.

3 Q. Okay. So we can agree that it is, in
4 fact, more efficient to share personnel among the
5 affiliates when it's feasible to do so and obviously
6 consistent with the code of conduct and cost
7 allocation manual, correct?

8 A. That's correct.

9 Q. I assume that DP&L also shares facilities
10 and equipment among its affiliates.

11 A. There is some sharing, yes.

12 Q. Okay. For example, at the Woodman Drive
13 address, the company's headquarters, who works there?
14 I don't need an employee list, but in terms of
15 companies. Is it just the utility or are there some
16 shared services?

17 A. There are shared services.

18 Q. Okay. And in talking about the sharing
19 of facilities and equipment, would you agree that
20 there are instances where it makes sense for the DP&L
21 entities to share billing systems?

22 A. I don't know if I have a strong feeling
23 either way with that, but to the extent there is an
24 effective way to use the system for both companies,
25 that's fine. Or for affiliate companies, I think

1 that's fine. As long as it would be compliant.

2 Q. Do you know whether DPLER has its own
3 billing system or does it use the same system as
4 DP&L?

5 A. I believe it has a separate billing
6 system.

7 Q. Okay. But to the extent DPLER and DP&L
8 can share personnel, facilities, and equipment in a
9 manner consistent with the cost allocation manual and
10 code of conduct, that is beneficial to customers
11 ultimately, would you agree, because of spreading
12 costs among more people?

13 A. For the economic reason that you just
14 discussed, I would say generally yes.

15 Q. And then it would be inefficient to
16 duplicate resources where existing resources could be
17 shared.

18 A. Generally speaking, again, as long as we
19 stayed compliant with the code of conduct and in
20 accordance with our cost allocation manual.

21 Q. Okay. Now, speaking of the cost
22 allocation manual, I'm going to try not to plow some
23 of the same fields here, but as you point out in your
24 testimony, the whole point of having a cost
25 allocation manual and code of conduct is to make sure

1 that there are no cross-subsidies among DP&L
2 affiliates, correct?

3 A. That's one -- that's one desired goal,
4 but there are several. But yes, that's one of them.

5 Q. It's an important goal; would you agree?

6 A. It's very important.

7 Q. And would you agree that we can't know
8 whether there are subsidies unless DP&L is recording
9 costs and revenues separately for each of its
10 businesses?

11 A. I believe it's important, and to be
12 compliant with the CAM that DP&L and its
13 affiliated -- and affiliated companies comply with
14 the CAM itself so we allocate costs and we know
15 exactly what costs are being incurred by what part of
16 The Dayton Power & Light Company.

17 Q. Okay. And just to be clear, when you use
18 the term "businesses" in your testimony, I think what
19 I've heard this afternoon is that what you're really
20 referring to are legal entities. In other words, you
21 would track costs and expenses for DP&L the utility,
22 DP&L, Inc., DPLER, whomever, correct?

23 A. Well, we track costs for purposes of the
24 CAM, we would also track generation costs versus
25 transmission and distribution costs, because there

1 are certain shared costs that are charged to the
2 generation side of our business, there might be
3 certain shared costs that might be charged and
4 allocated to the distribution side of our business,
5 but generally speaking, most of my discussion today
6 is compliant to what you said. But, to be fair, the
7 CAM also allocates costs amongst the divisions of the
8 Dayton Power & Light Company.

9 Q. So are you saying then, that it would be
10 possible to go back and create financial data showing
11 costs and expenses for transmission, distribution,
12 generation separately?

13 A. What I'm saying is, is that we track
14 those expenses for CAM purposes, but we do not do it
15 as a full-blown financial statement. We don't have
16 the capacity nor do we track the information in the
17 manner and the fashion that we would need to in order
18 to generate full-blown accounting statements.

19 Q. Why don't you do that?

20 A. Because we don't need to.

21 Q. Is there a reason, technically or
22 otherwise, why you can't do that?

23 A. It would be extraordinarily costly and
24 expensive to do so.

25 Q. Well -- I'm sorry, were you finished?

1 EXAMINER PRICE: Mr. Whitt, I have a
2 question.

3 Did you do it in the past?

4 THE WITNESS: No.

5 EXAMINER PRICE: Mr. Whitt, thank you.

6 MR. WHITT: You threw me off. Can I have
7 the last question and answer.

8 EXAMINER PRICE: I said did they do it in
9 the past.

10 MR. WHITT: My last question and answer.

11 EXAMINER PRICE: Oh.

12 (Record read.)

13 Q. Okay. Well, when you say those costs are
14 recorded for, I believe you said for CAM purposes,
15 what does that mean?

16 A. Well, I'm not the accountant, obviously,
17 so I'm not going to be able to give you specifics.
18 But my generalized understanding of that is that we
19 track costs and expenses so that they can be properly
20 allocated under the CAM those that we should be borne
21 by the generation side of our business and those that
22 should be borne by the T and D side of our business.

23 And obviously we track, again,
24 separately -- separate accounting books for our
25 affiliated companies like DPLER and other companies

1 like that.

2 Q. Okay. And I take it that your testimony,
3 and I'm not intending to put words in your mouth, but
4 from what I understand, DP&L intends to continue to
5 observe the cost allocation manual and code of
6 conduct in the same manner that it has in the past;
7 is that fair?

8 A. That's correct.

9 Q. And I take that to mean that DP&L does
10 not have any plans to create financial statements or
11 data separately recording revenue and expense for
12 generation, transmission, distribution separately.

13 A. At this time based on this application
14 under this ESP, the answer to that is correct. We
15 will continue functional separation and we would not
16 create separate accounting statements for the various
17 divisions of The Dayton Power & Light Company.

18 Q. Okay. Now, when you say that it would be
19 expensive to separately track transmission,
20 generation, distribution, how do you know that?

21 A. 28 years with The Dayton Power & Light
22 Company working with our financial and corporate
23 accounting types and SEC reporting purposes where we
24 actually are dealing with audited financial
25 statements associated with The Dayton Power & Light

1 Company, DPL, Inc., and other affiliated companies
2 and dealing with transactional matters involving the
3 company as a whole. I mean understand -- my general
4 overall understanding of the company.

5 Q. Are you aware of any specific undertaking
6 to investigate what it would cost to separately track
7 generation, transmission, distribution?

8 A. I know that when corporate separation
9 rules, the 2000 plan, was being contemplated and
10 ultimately approved, we were exploring several
11 different options of how we should be proceeding from
12 here and I'm sure those areas were being discussed.

13 Q. Well, when you say "I'm sure," do you
14 know that to be the case or are you guessing?

15 A. I'm not really guessing. I guess I'm
16 really surmising that we would have looked at several
17 alternatives at that point in time including separate
18 accounting.

19 Q. When you say "I'm surmising," is that
20 something the company did or not, do you know?

21 A. I don't know.

22 Q. Okay. Let me ask you about the company's
23 plans for structural separation, and I believe the
24 testimony has been that DP&L is looking at
25 structurally separating by the end of 2017, correct?

1 A. What we said is we'll be filing an
2 application, not part of this proceeding, but a
3 separate application in which we expect to request
4 structural separation at that time and we have, in
5 that notice we've stated that our target date of that
6 would be to separate by the end of '17.

7 Q. Okay. Do you know whether any of DP&L's
8 generating plants were fully depreciated as of the
9 end of 2012?

10 A. I don't have specific knowledge on
11 depreciation issues.

12 Q. Do you know whether DP&L has calculated
13 what the net book value of its generation assets are
14 as of the end of 2012?

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

16 Q. Okay. Do you know whether DP&L has
17 projected what the net book value of its generation
18 fleet will be at the end of 2017?

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

20 Q. Can we agree that the net book value of
21 DP&L's generation at the end of 2017 will be lower
22 than whatever the net book value is today just as a
23 matter of accounting?

24 MR. FARUKI: I'll object to lack of
25 foundation. He's elicited three times that he

1 doesn't know the answers in that area and then he
2 asks for a conclusion. There's no foundation for
3 this witness to answer that.

4 EXAMINER PRICE: Well, I have to admit,
5 the witness earlier testified that he had 28 years of
6 working with accountants at The Dayton Power & Light
7 Company so I think that sort of a general question
8 Mr. Whitt asked is something well within his 28 years
9 of experience.

10 You can answer if you know.

11 A. I don't know.

12 Q. Are you familiar with the general concept
13 of depreciation -- depreciation accounting for a
14 utility plant?

15 A. Sure.

16 Q. And that when I used the term "net book
17 value," I assume you understood that to mean the
18 original cost of the asset minus depreciation. Are
19 we on the same page there?

20 A. Yes, we are.

21 Q. Can you agree, then, that as a function
22 of how depreciation accounting works that DP&L's
23 generation fleet will have a lower net book value in
24 2017 than it does today simply by virtue of passage
25 of time?

1 A. If you make the assumption that there's
2 no difference, no adds, no additional to the fleet,
3 this fleet you're talking about is static today as it
4 will be in '17, I would generally agree as a matter
5 of accounting process that that's the case, but I
6 don't know what our fleet's going to look like in
7 2017.

8 Q. Okay. And is it correct that DP&L's
9 ratepayers pay depreciation expense for plant
10 investment?

11 A. You're beyond my area of expertise. I
12 don't know the answer.

13 Q. Will DP&L seek to maximize the value of
14 its generation fleet when it divests it?

15 A. I'm not sure what you mean by the word
16 "maximize." Can you explain what you mean by that?

17 Q. Get the most money for it.

18 A. To be honest, we have not completely
19 finalized exactly how that transfer will occur, if
20 that will be done pursuant to a bill of sale, whether
21 that will be done by dividending. There are several
22 different ways by which we're currently exploring how
23 that transfer of assets will occur and we've not
24 reached a conclusion today as to how that will occur.

25 Q. Would you concede to the possibility that

1 in 2017 DP&L's existing generation fleet, and let's
2 assume -- we'll take your assumption that it remains
3 static, that that fleet could have a higher fair
4 market value than net book value?

5 A. I don't know what the market's going to
6 be like in 2017. I don't know where capacity pricing
7 and energy pricing is going to be in 2017.
8 Anything's possible.

9 Q. Okay.

10 A. It could be higher, it could be lower.

11 Q. Okay. Now, if DP&L divested its plants
12 at fair market value and the fair market value was
13 higher than whatever the net book value is, the delta
14 between fair market value and net book value would be
15 a source of cash; would it not?

16 A. Your assumption presumes there will be a
17 bill of sale and cash transfer and, again, we have
18 not made that conclusion. We are looking at various
19 ways by which the transfer of assets could take
20 place. It could be in the manner that you just
21 spoke, it could also be done in other ways whereby we
22 would look at dividending and contribution of capital
23 and looking at taxation issues. There are a whole
24 host of issues we're examining right now; we have not
25 made the determination as to how that would proceed.

1 Q. Okay.

2 A. So if you're looking at -- as a
3 hypothetical you're looking at that delta, then that
4 would be, you know, and we do it by some sort of bill
5 of sale, then there would be the potential for
6 profit, yes.

7 Q. Okay. And that profit could be used to
8 offset, if not eliminate, the need for an SSR,
9 couldn't it?

10 MR. FARUKI: I'll object. Calls for
11 speculation, and no foundation for this witness.

12 EXAMINER PRICE: Sustained.

13 Q. Has DP&L made a determination that if it
14 does divest itself of generation, then the transfer
15 will occur to DPLER?

16 A. It has not made that decision, no.

17 Q. So DP&L is leaving open the possibility
18 of selling or transferring its generation to
19 unaffiliated companies?

20 A. Again, we're looking at all options at
21 this point in time and there have been no decisions
22 made exactly how that transfer will be completed.

23 Q. Going back to our discussion about fair
24 market value versus net book value, would you agree
25 with me that to the extent a generating plant

1 generates electricity, that it would have some fair
2 market value greater than zero?

3 MR. FARUKI: I'll object to the
4 incomplete hypothetical. For example, nothing was
5 said about depreciation, and also to lack of
6 foundation as to this witness.

7 EXAMINER PRICE: He can answer if he
8 understands the question and if he knows.

9 THE WITNESS: Could I ask to have it read
10 back, please?

11 (Record read.)

12 A. I can't -- I mean, the answer is I would
13 say no, not necessarily. I mean, there are several
14 parts of your hypothetical I don't know about. I
15 don't know what the debt of that particular facility
16 might be or anything else. It might have in essence,
17 unless you're presuming fair market value is, after
18 all, is the cap, you know, if you're looking at the
19 capitalization.

20 I'm not sure what that would be so I
21 think the answer is a qualified no, I can't say there
22 would be value above zero. It may indeed be below,
23 below zero.

24 MR. WHITT: I don't have any further
25 questions.

1 EXAMINER PRICE: Thank you.

2 Any other intervenors have questions for
3 this witness?

4 (No response.)

5 EXAMINER PRICE: Mr. McNamee?

6 MR. McNAMEE: No, thank you.

7 EXAMINER PRICE: Redirect?

8 MR. FARUKI: Your Honor, I have a
9 housekeeping matters but I'd rather stay on the
10 record. I can shorten redirect if OCC is going to
11 offer its exhibits because the public filings and the
12 Commission orders that were marked as exhibits by OCC
13 are obviously things that the Commission can refer
14 to. Can I inquire about that? Is that their
15 intention?

16 EXAMINER PRICE: You know, it doesn't
17 matter because we will, as to the Commission orders,
18 they speak for themselves, they don't need to be
19 admitted, and if people want to request, we'll take
20 administrative notice of the filings that have been
21 marked thus far in the course of this witness.

22 MR. FARUKI: I request that you take
23 administrative notice of each of the filings that the
24 company has made of the finding and order that was
25 marked --

1 EXAMINER PRICE: We don't need to do any
2 commission orders. Commission orders speak for
3 themselves.

4 MR. FARUKI: Right. And also of the
5 stipulation and recommendation that was filed.

6 EXAMINER PRICE: Do we have any
7 objections to us taking administrative notice of the
8 application in 04-1557-EL-AIS, the amended
9 application in 04-1557 --

10 MR. OLIKER: Your Honor.

11 EXAMINER PRICE: Yes.

12 MR. OLIKER: Just for ease of the
13 briefing -- I'm sorry, I'll stand. For ease of
14 briefing I've come to the conclusion that it's easier
15 to refer to the exhibits than to say your Honor took
16 administrative notice at such and such time.

17 EXAMINER PRICE: You can still refer to
18 them as exhibits but just coming into the record
19 under administrative notice. So why don't I reask
20 the question according to how they've been marked.

21 MR. OLIKER: On the orders, your Honor,
22 I'd be happy -- for purposes of the application I'd
23 like them added as exhibits.

24 EXAMINER PRICE: You can still refer to
25 them on briefing as exhibits, it's just they're not

1 being admitted, we're taking administrative notice of
2 them. You can still refer to them as OCC Exhibit X.

3 MR. OLIKER: Maybe for purposes of
4 keeping the record in the event this case goes to
5 appeal I think I would prefer the application to be
6 in the record. I'm sorry, your Honor.

7 MR. FARUKI: Your Honor, let me do it
8 this way, maybe I can assist. I'll ask that with
9 regard to FES Exhibit 11, the application in the
10 99-1687 case, that administrative notice be taken of
11 that.

12 Do you want me to give you a list or do
13 you want to take these one at a time?

14 EXAMINER PRICE: Let's take them one at a
15 time.

16 MR. BERGER: Your Honor?

17 EXAMINER PRICE: Yes.

18 MR. BERGER: Before we get into that, is
19 he talking about the entire application, which is
20 probably 6 volumes or something like that, or is he
21 talking about some limited portion that just pertains
22 to Exhibit 11?

23 MR. FARUKI: As I just said, I referred
24 to Exhibit 11 and I meant to include just the pages
25 that are in Exhibit 11.

1 EXAMINER PRICE: Just the pages that are
2 in Exhibit 11.

3 MR. BERGER: Thank you.

4 EXAMINER PRICE: Okay. We will take
5 administrative notice of Exhibit 11.

6 MR. FARUKI: I'll make the same request
7 that you take administrative notice of FES
8 Exhibit 12.

9 EXAMINER PRICE: No objection.

10 MR. FARUKI: In the 99-1687 case.

11 EXAMINER PRICE: Just the portion that
12 has been marked.

13 MR. FARUKI: Yes, your Honor. When I
14 reference the exhibit, I just mean the portions that
15 were --

16 EXAMINER PRICE: Any objections?

17 (No response.)

18 EXAMINER PRICE: Seeing none, it will be
19 admitted -- or we'll take administrative notice of
20 it.

21 MR. FARUKI: Let me make the same request
22 with regard to IEU Exhibit 16, skipping the opinion
23 and order in view of your comment, but IEU Exhibit 16
24 which was the October 12, '04, application.

25 EXAMINER PRICE: This is I believe what

1 Mr. Oliker is --

2 MR. OLIKER: Thank you, I'm sorry. I
3 just find that it's easier for purposes of when the
4 record -- in the event this case were to be one day
5 transmitted to the Supreme Court, to have the
6 application and the amendment in the record that's
7 transmitted rather than have to refer to a document
8 that was taken administrative notice.

9 EXAMINER PRICE: I think it's still in
10 the record, it's just we're not admitting it into the
11 record as testimony or documents. We're just taking
12 administrative notice of it.

13 MR. OLIKER: With that qualification, I'm
14 fine, thank you.

15 EXAMINER PRICE: Then we'll take
16 administrative notice of IEU 16 and 17.

17 MR. FARUKI: And then the second amended
18 corporate separation plan of October 1, 2008, which
19 was designated OCC Exhibit 8, same request.

20 EXAMINER PRICE: We'll take
21 administrative notice of that document.

22 MR. FARUKI: Exhibit -- OCC Exhibit 9
23 which was the stipulation in the ETP case.

24 EXAMINER PRICE: Any objections?

25 (No response.)

1 EXAMINER PRICE: No objection?

2 MR. LANG: Were there any questions asked
3 about that?

4 EXAMINER PRICE: No, there were not.

5 MR. BERGER: Your Honor, I didn't ask any
6 questions about that, so I don't --

7 MR. FARUKI: I'll withdraw my request,
8 then.

9 EXAMINER PRICE: Okay.

10 MR. FARUKI: I'll ask for OCC, that you
11 would take administrative notice of OCC Exhibit 10,
12 which was the first amended corporate separation --

13 EXAMINER PRICE: Any objections to OCC
14 Exhibit 10?

15 MR. BERGER: No, your Honor.

16 MR. FARUKI: That was the first amended
17 corporate separation plan.

18 EXAMINER PRICE: We'll take
19 administrative notice of that.

20 You did not ask for OCC Exhibit 7; was
21 that correct, Mr. Rice's testimony?

22 MR. FARUKI: It is but that's fine, I'll
23 ask for that as well. OCC Exhibit 7 was Mr. Rice's
24 testimony in the 08-1094 case.

25 EXAMINER PRICE: Any objection?

1 MR. BERGER: No objection.

2 EXAMINER PRICE: We'll take
3 administrative notice of that document.

4 MR. FARUKI: With that, your Honor, can
5 we take five and I can shorten my redirect a bit?

6 EXAMINER PRICE: Yes.

7 MR. FARUKI: Thank you.

8 EXAMINER PRICE: Let's go off the record.

9 (Recess taken.)

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

12 Redirect?

13 MR. FARUKI: Thank you, your Honors.
14 Thanks for the interlude to cut this down.

15 - - -

16 REDIRECT EXAMINATION

17 By Mr. Faruki:

18 Q. Mr. Rice, let me go back through just a
19 few points. You remember early in your
20 cross-examination you were asked about impediments
21 presented by the first mortgage lien, the lien that
22 secures the first mortgage bonds?

23 A. Yes.

24 Q. Would you explain what those impediments
25 are?

1 A. Primarily, there are several and they're
2 complex, but to summarize a few of the certainly more
3 significant ones, one would be what we call the
4 after-acquired clause in the first mortgage, that
5 provision in the mortgage applies -- basically states
6 that all the property of The Dayton Power & Light
7 Company, that would be generation, transmission, and
8 distribution, that to the --

9 Q. Slow down a little bit so that the court
10 reporter's keeping up with you.

11 A. That all of the property of the Dayton
12 Power & Light Company that would include generation,
13 transmission, and distribution, are subject to the
14 first mortgage.

15 So as the company acquires property,
16 constructs facilities, puts up new poles, builds new
17 generating facilities, replaces equipment, all of
18 that -- all that property is subject to the first and
19 refunding mortgage and the mortgage is not allocable
20 to either -- any particular division of the company.

21 In a similar way there are significant
22 issues that we will be facing involving the release
23 of property under the first mortgage. There are lots
24 of constraints on how that is done and specifically
25 one of the most significant constraints is there's a

1 provision in the mortgage that restricts the company
2 or prohibits the company from releasing the electric
3 properties substantially as an entirety.

4 Beyond that, there would be consent
5 issues that we are going to have to get with regards
6 to bondholders and those would summarize at least the
7 most significant ones.

8 Q. Is this mortgage, is this first mortgage
9 interest representative by a single mortgage as
10 amended from time to time or is it separate
11 mortgages?

12 A. It's a difficult question to answer
13 except to say that there is a primary mortgage that
14 was first adopted in 1935 and then as we add new
15 indebtedness to it we would add supplemental
16 indentures to that first and refunding mortgage.

17 So you have the complexity associated
18 with the provisions of the first mortgage in the
19 initial document in 1935, and then you also add many
20 times new covenants, new issues, new complexities
21 when you add subsequent debt in the supplemental
22 indentures which would -- are reflected in the six
23 issuances which were discussed earlier in my
24 testimony.

25 Q. We'll get to the issuances in a minute,

1 but with regard to the indenture, you made the
2 statement a couple of times that the indenture was
3 originally drafted as well in the 1930s. The
4 original one; is that correct?

5 A. That's correct.

6 Q. When that was prepared, was it prepared
7 in contemplation of deregulation?

8 A. Absolutely not.

9 Q. Let me ask you about these debt issues,
10 then. For clarity, define what a "no-call provision"
11 is.

12 A. Sure. A no-call provision basically
13 states that an issuance of debt cannot be called,
14 i.e., redeemed or refinanced, dealt with by the
15 issuer for a certain number of years. And that
16 provision is typically inserted in debt financings
17 for the purpose of giving holders of that debt the
18 luxury, if you will, of knowing that that debt will
19 be outstanding for a certain number of years and that
20 they will earn a certain interest rate on that
21 indebtedness for a certain number of years.

22 Q. Is there any advantage to DP&L and its
23 customers to engage in financing which contains such
24 a no-call provision?

25 A. Yes, there is.

1 Q. What is that?

2 A. The advantage primarily is lower interest
3 rates. Because of the no-call provisions holders of
4 those notes who know their investment is going to be
5 outstanding for a certain number of years are willing
6 to take a slightly smaller interest rate payment for
7 that -- for that indebtedness for the security and
8 the certainty of knowing that that investment will be
9 outstanding for the no-call period.

10 Q. You were shown some of the Commission
11 filings with regard to one of the financing issues,
12 but let me ask you more broadly, with regard to the
13 first mortgage bonds and the pollution control bonds
14 on the schedule that you were shown, has the company
15 made applications to the Commission for approval of
16 those financings?

17 A. Yes, we have.

18 Q. With regard to the issuances that
19 contained no-call provisions, were those provisions
20 disclosed as part of those filings in those
21 proceedings?

22 A. Yes, they were. For the -- for the
23 issuance that was done in 2005, which three of the
24 six were tied to that issuance there, in that case in
25 the application itself the company attached as

1 exhibits to it documentation which discloses the fact
2 that we would be having a no-call provision within --
3 within those financings.

4 Q. Did the Commission approve those
5 issuances?

6 A. They did.

7 Q. When you say "attached as exhibits," do
8 you mean the application itself?

9 A. I do.

10 Q. You were also asked a couple of questions
11 about whether the pollution control bonds were backed
12 only by generation assets or only by some of the
13 assets of the company. Do you remember that subject?

14 A. I do.

15 Q. What is the situation with regard to how
16 extensive the security is in terms of company assets
17 for the pollution control bond issuances?

18 A. Simply put, all of the property of the
19 Dayton Power & Light Company, generation,
20 transmission, and distribution, back all of the
21 bonds. There is no way to allocate to any of the
22 issuances, whether they be pollution control or
23 otherwise, what property's backing that particular
24 issuance.

25 Q. Okay. Let me change subjects.

1 You were asked some questions about
2 fully-allocated cost or fully loaded embedded cost,
3 and I had a couple of questions about that. Would
4 you start with IEU Exhibit 14 which is the 99-1687
5 case opinion and order of which I have requested the
6 Bench to take administrative notice. Do you have
7 that exhibit?

8 A. I have that in front of me.

9 Q. Would you look at page 11.

10 A. I have that page.

11 Q. Paragraph 16 is a paragraph that talks
12 about sales or transfers of wholesale power to its
13 affiliates. Do you see that?

14 A. I do.

15 Q. The part I'm interested in is as follows:
16 "With respect to sales or other transfers of
17 wholesale power to any of its affiliates, including
18 but not limited to any future DP&L unregulated retail
19 marketing affiliate for resale at retail to DP&L
20 electric distribution customers in the DP&L
21 distribution service territory, DP&L agrees its
22 generation affiliate shall not offer power or
23 ancillary services incident to the delivery of power
24 at prices and terms more favorable than those
25 available to nonaffiliated electric suppliers."

1 Have I read that correctly?

2 A. You have.

3 Q. With regard to the question that you were
4 asked by the Attorney Examiners concerning your
5 interpretation of the corporate separation statute,
6 4928.17, let me ask you this: In connection with the
7 work that you have done in corporate separation and
8 including being one of the people that advise on that
9 subject, have you ever had or become aware of a
10 requirement that the Commission has that DP&L has to
11 sell or transfer power to DPLER at a power price that
12 is based on fully-allocated cost?

13 A. No, I'm not.

14 Q. With regard to the section that I just
15 read here that talks about not offering power or
16 services incident to the delivery of power at prices
17 and terms more favorable than those available to
18 nonaffiliated electric suppliers, to your knowledge,
19 have DP&L and DPLER always complied with that
20 standard?

21 A. They have.

22 Q. For clarity, DP&L sells generation in two
23 ways in the sense that it sells to SSO customers and
24 it also makes sales at wholesale; is that correct?

25 A. That's correct.

1 Q. And when you responded to the Attorney
2 Examiner's questions about FERC-approved tariff,
3 would you elaborate and explain to what that tariff
4 applies?

5 A. The tariff applies to wholesale sales
6 transactions. And so, therefore, the sale of
7 generation service -- generation services wholesale
8 would be covered by our open access tariff with FERC.

9 Q. Is a sale from DP&L to DPLER a sale at
10 wholesale?

11 A. Yes, it is.

12 EXAMINER PRICE: So just to clarify,
13 following up on my question, you are now saying that
14 the DPLER sales are, in fact, covered by your FERC
15 approved wholesale tariff.

16 THE WITNESS: I'm not saying that. As I
17 said to you before, I'm not confident on that but I
18 believe -- that is a wholesale transaction, but this
19 is not my area of expertise.

20 EXAMINER PRICE: Thank you. I thought
21 maybe you had had a chance to think it over and were
22 more confident.

23 THE WITNESS: I wish I had. I wish I had
24 a better answer for you, but I do not.

25 EXAMINER PRICE: Okay.

1 Q. (By Mr. Faruki) Now, I just mentioned the
2 fact that you give advice with respect to corporate
3 separation and code of conduct questions; is that
4 right?

5 A. That's correct.

6 Q. You had some questions about how much of
7 your time your 2 percent estimate annually that you
8 would spend on that. Are you the only person in the
9 Legal Department of the company that gives advice on
10 those subjects?

11 A. No.

12 Q. How many others do that as at least as
13 part of their duties?

14 A. I would say there are at least two other
15 counsel in the office that have spent some time,
16 maybe I would say three others have spent some of
17 their time responding to these same types of issues.

18 Q. With regard to compliance with the
19 corporate separation plan and compliance with the
20 code of conduct, can you explain, in addition to you
21 and others in the law department being available to
22 answer questions, what else the company does to
23 assure compliance?

24 A. First of all, we, obviously, counsel and
25 advise on the CAM and we make sure CAM questions get

1 addressed. We also would do and handle
2 responsibility for training, training activities.
3 The training activities of the company pursuant to
4 our approved corporate separation plan that would
5 include computer assisted as well as individual
6 sessions on training and that would be applicable to
7 all employees, particularly new employees. As soon
8 as they get here on the job they're required to learn
9 this because it's important from day one they
10 understand the significance of the code of conduct.

11 That's all I've got.

12 Q. You paused, I just wasn't sure.

13 You have been asked some questions and
14 Mr. Lang spent a long time on the initial corporate
15 separation plan, you were asked some questions about
16 subsequent amended plans. Would you describe for the
17 record how the company's corporate separation plan
18 has evolved over the years with regard to functional
19 versus structural separation?

20 A. Sure. I'll try to make it brief. In
21 1999-2000 with the first plan, because it was so new
22 and novel, we obviously had put statements within the
23 plan for the purposes of complying with the statute
24 including issues about structural operation and our
25 intent to move forward that way.

1 Key there at the time, of course, was
2 that despite our best intent there just wasn't a
3 marketplace, and as time evolved and there was no
4 marketplace, there were no switching going on, we had
5 no CRES providers within the DPL service territory,
6 we sort of evolved that to working toward a
7 functional separation concept.

8 That really got crystallized in the 2008
9 plan which at that point in time we solidified the
10 fact that we were continuing a functional separation
11 in light of the absence of a marketplace and the
12 absence of switching and activities by CRES
13 providers. And the reason that there was no
14 activity, of course, was that there was no market,
15 was that our tariff prices were less than market
16 rates, so, therefore, there was no push. There was
17 no desire to push toward a lot of corporate
18 separation because to do so would -- didn't appear to
19 be appropriate at the time because there was no need
20 to do so.

21 And in 2008 we pushed through and
22 received in a stipulation a continuation of our
23 corporate separation plan and certainly reinforcing
24 the fact that we would be continuing to operate
25 thereafter in a functional separation mode, which, of

1 course, we have continued to do.

2 Q. Was the company's market development
3 period actually extended with approval of the
4 Commission?

5 A. It was.

6 Q. Do you remember why?

7 A. Because of the absence of a marketplace.

8 Q. You were asked a few questions about a
9 statement in the first amended corporate separation
10 plan about the plan to transfer of beneficial
11 ownership of assets. Do you recall that subject?

12 A. I do.

13 Q. And you said that the plan to transfer of
14 beneficial ownership did not come about or did not
15 occur. Would you tell us why?

16 A. To a certain extent for the same reasons
17 I just discussed; there was the absence of a
18 marketplace. It looked like corporate separation,
19 structural corporate separation wasn't necessarily
20 viable and that functional separation became the way
21 that the company should be operating.

22 We felt that too, we were trying to at
23 the time, trying to deal with the fact that we had
24 some very significant constraints in the first
25 mortgage and no-call provisions but in the absence of

1 the marketplace and the absence of switching, in the
2 absence of CRES providers we ultimately decided to
3 just stay in a functional separation mode.

4 Q. Were the provisions in the first
5 corporate separation plan about which Mr. Lang, and
6 perhaps others but at least Mr. Lang, asked you that
7 required legal separation, were those provisions
8 dropped or omitted or eliminated from the plan when
9 it was subsequently amended?

10 A. Yes, they were.

11 Q. Did the Commission approve that amended
12 plan?

13 A. They did.

14 MR. FARUKI: Your Honor, may I consult?

15 EXAMINER PRICE: You may.

16 MR. FARUKI: Your Honor, that's all I
17 have. Thank you.

18 EXAMINER PRICE: Thank you.

19 Mr. Lang?

20 - - -

21 CROSS-EXAMINATION

22 By Mr. Lang:

23 Q. Just to be clear on that, the last
24 question about the Commission approving the
25 amendments that dropped the structural separation

1 provisions, is that what we looked at earlier that
2 happened in 2008?

3 A. Yes.

4 MR. LANG: That's all I have. Thank you.

5 EXAMINER PRICE: Thank you.

6 Mr. Oliker

7 MR. OLIKER: Just a few questions, your
8 Honor.

9 - - -

10 RE CROSS-EXAMINATION

11 By Mr. Oliker:

12 Q. Mr. Rice, you don't specifically remember
13 when shopping in Dayton Power & Light's territory
14 rose to 20 percent, do you?

15 A. No, I do not.

16 Q. You don't remember if that was a specific
17 important number for purposes of the electric
18 transition plan case?

19 A. I can't answer. I don't know the answer.

20 MR. OLIKER: That's all the questions I
21 have, your Honor.

22 EXAMINER PRICE: Thank you.

23 Mr. Berger?

24 - - -

25 RE CROSS-EXAMINATION

1 By Mr. Berger:

2 Q. Mr. Rice, when you were talking about the
3 2005 and 2006 applications for the new no-call
4 indebtedness -- do you recall that?

5 A. Yes.

6 Q. -- you said that, obviously, those bond
7 issues were attached to the application and reflected
8 the no-call provisions. Do you recall specifically
9 whether the company included in the written portion
10 of the application, not the attachments, a statement
11 that there were no-call provisions in there and that
12 that could impact on whether the company was able to
13 structurally separate?

14 A. It was not included in the application
15 document itself but was included, as I said
16 previously in my testimony, in the appendices and
17 then for the 2007 one it was actually in the report
18 of sale also.

19 Q. And was the report of sale filed with the
20 Commission?

21 A. It was.

22 Q. The market development period you
23 indicated was extended. Was it extended into 2005 or
24 beyond that?

25 A. I don't have specifics as to the

1 extension. I just remember that the cases -- that
2 there were extensions provided under that case in
3 order to provide for rate recovery in certain areas
4 until we had our next ESP.

5 Q. You're not aware of any extension beyond
6 2005, are you?

7 A. I can't speak to the answer on that. I'm
8 not sure of the specifics of how it was done.

9 Q. Okay. So you don't know when the end of
10 the market development period for DP&L was.

11 A. That's correct.

12 Q. Thank you.

13 MR. BERGER: That's all I have.

14 EXAMINER PRICE: Mr. O'Brien?

15 MR. O'BRIEN: No questions, your Honor.

16 EXAMINER PRICE: Ms. Bojko?

17 MS. BOJKO: No, thank you.

18 EXAMINER PRICE: Ms. Petrucci, Mr. Boehm,
19 Mr. Williams, Mr. McNamee?

20 MR. McNAMEE: No, thank you.

21 EXAMINER PRICE: Thank you, Mr. Rice.

22 You're excused.

23 MR. FARUKI: Your Honor, I renew the
24 offer of DP&L Exhibit 6 and its exhibit.

25 EXAMINER PRICE: Any objection to the

1 admission of DP&L Exhibit 6?

2 (No response.)

3 EXAMINER PRICE: Seeing none, it will be
4 admitted.

5 (EXHIBIT ADMITTED INTO EVIDENCE.)

6 MR. FARUKI: The next witness is
7 Mr. Sharkey's, your Honor.

8 MR. OLIKER: Your Honor, IEU-Ohio also
9 moves, I believe I only have one, Exhibit IEU 15.

10 EXAMINER PRICE: Any objections to the
11 admission of IEU 15?

12 MR. FARUKI: Let me refresh myself.

13 EXAMINER PRICE: CAM experts.

14 MR. FARUKI: No, your Honor.

15 MR. OLIKER: Actually, I would like to
16 provide the court reporter with a numbered exhibit.

17 EXAMINER PRICE: We'll go ahead and admit
18 IEU Exhibit 15 and Mr. Oliker will provide the court
19 reporter with a copy of the exhibit with
20 hand-numbered pages.

21 MR. OLIKER: Thank you, your Honor.

22 MR. LANG: Your Honor, for purposes of
23 FES 11 and 12, so I guess I'm clear, because you took
24 administrative notice of it do you not want us to
25 move it in but we can still reference it in as part

1 of the record?

2 EXAMINER PRICE: Yes.

3 MR. LANG: Thank you.

4 EXAMINER PRICE: And, again, as I
5 indicated earlier, the Commission, actual Commission
6 orders speak for themselves, no need to be admitted
7 for administrative notice taken of those.

8 EXAMINER MCKENNEY: Mr. Sharkey?

9 MR. SHARKEY: Yes, your Honors. DP&L
10 would call Nathan Parke to the stand.

11 EXAMINER MCKENNEY: Mr. Parke, please
12 raise your right hand.

13 (Witness sworn.)

14 EXAMINER MCKENNEY: Thank you.

15 - - -

16 NATHAN C. PARKE

17 being first duly sworn, as prescribed by law, was
18 examined and testified as follows:

19 DIRECT EXAMINATION

20 By Mr. Sharkey:

21 Q. Mr. Parke, do you have before you a copy
22 of your prefiled testimony entitled the "Second
23 Revised Direct Testimony of Nathan C. Parke"?

24 A. Yes, I do.

25 Q. If I asked you the questions in it, would

1 you give me the answers that are provided in that
2 document?

3 A. Yes, I would.

4 Q. Do you have any corrections or changes to
5 it?

6 A. I do have one correction on page 11.
7 Line No. 1 and line No. 18 both have the month
8 "October" and it should be the month of December.

9 EXAMINER PRICE: I'm sorry, could I have
10 that page reference again?

11 THE WITNESS: It's page 11.

12 EXAMINER PRICE: Thank you.

13 THE WITNESS: That was part of our second
14 revised filing that was made in December, that
15 reference should have changed to December.

16 Q. Do you have any other changes or
17 corrections to your testimony?

18 A. No, I don't.

19 MR. SHARKEY: Your Honor, we would
20 designate his testimony as DP&L Exhibit 7 and I'll
21 move for its admission at the close of cross and
22 tender him for cross-examination.

23 (EXHIBIT MARKED FOR IDENTIFICATION.)

24 MR. BOEHM: Your Honor, we've gotten
25 together and agreed that I will go first on this one,

1 if that's okay with everybody.

2 EXAMINER MCKENNEY: All right, Mr. Boehm.

3 - - -

4 CROSS-EXAMINATION

5 By Mr. Boehm:

6 Q. Good afternoon, Mr. Parke.

7 A. Good afternoon.

8 Q. Your patience is finally being rewarded,
9 you get to . . .

10 Mr. Parke, I've been reading your
11 testimony about your experience and I don't see
12 anything about designing rates. Have you ever
13 designed a rate before?

14 A. Sure. I've been in the Rate Department
15 since 2007.

16 Q. Okay.

17 A. And during that time I have designed some
18 of the rates that came out of the company's first
19 ESP.

20 Q. And they were riders; am I correct?

21 A. They were riders, correct.

22 Q. Would you agree with me, Mr. Parke, that
23 traditionally when a utility company wants to design
24 rates, they conduct a class cost-of-service study?

25 A. I would agree with that, yes.

1 Q. Okay. Did you conduct a class
2 cost-of-service study in this case?

3 A. I did not in this case because the rates
4 that I was designing in this case did not -- I didn't
5 find the need for one to be performed.

6 Q. You didn't find a need, you say?

7 A. Correct.

8 Q. Okay. Let's go to your testimony,
9 Mr. Parke, about that designing the rates. And I'm
10 on page 7 and it says on line 5, or line 4 "How was
11 the rate designed?"

12 "The rate was designed in the manner that
13 factored in ratemaking principles of stable and
14 predictable revenues and rates, fair distribution
15 among customer classes, and easily understandable
16 rates. Therefore, the rate was first designed by
17 including the energy and demand rates of a prior
18 nonbypassable rate, the rate stabilization charge,
19 then a customer charge was added to balance the
20 overall impact across tariff classes. Finally,
21 energy charge and demand charge were adjusted to
22 achieve parity among rate classes, et cetera, and to
23 ensure the appropriate revenue recovery"; is that
24 right?

25 A. That's right.

1 Q. Okay. Now, is it not a ratemaking
2 principle, an old and traditional ratemaking
3 principle, that rates should be designed for cost
4 causality?

5 A. Yes, I would agree with that.

6 Q. Okay. So the idea is that the designer
7 of rates will take a look at the differing
8 responsibility of the various rate classes in
9 contributing to certain costs of the utility; is that
10 right?

11 A. Right.

12 Q. And so traditionally a residential rate
13 is not the same as an industrial rate which is
14 usually not the same as a commercial rate.

15 A. That's generally true.

16 Q. And that is almost invariably true when
17 those rates are designed around a class
18 cost-of-service study; isn't that true?

19 A. That's generally true.

20 Q. When you were looking -- let me back up.
21 So essentially, briefly, your testimony,
22 as I understand it, is it you started off with the
23 rates in the rate stabilization charge, right?

24 A. The existing rate stabilization charge,
25 correct, that's one of the factors of rate design.

1 Q. And you built on them, right?

2 Essentially it was your desire to keep the same
3 relative rates as in the rate stabilization charge in
4 your design of the rates to meet the increased rate
5 of return on equity the company is asking for, right?

6 A. My goal in the rate design, I was asked
7 to design a rate for the SSR which is a financial
8 integrity charge, and that charge is not -- it's not
9 a cost based charge that's easily identifiable costs
10 to it to where a cost-of-service study would be
11 prudent. I didn't see a cost-of-service study would
12 be able to be done easily, therefore, while I agree
13 with the theoretical concept of cost-of-service
14 study, I didn't find that it was a practical way to
15 design this rate.

16 So my key -- the key to designing this
17 rate was to balance the overall impact across all
18 customers and that's why I started with the rate
19 stabilization charge to maintain some rate structure
20 of rates that were currently being charged.

21 Q. Did you go back in the record to see how
22 the rate stabilization charge came about?

23 A. I have a general understanding of that.

24 Q. What is that general understanding?

25 A. That the rate stabilization charge was a

1 POLR charge.

2 Q. A POLR charge. So is it true that there
3 was no cost of service -- class cost-of-service study
4 conducted to come up with the rate stabilization
5 charge?

6 A. I'm not familiar with the -- that case.
7 I wasn't in the Rate Department at the time that was
8 developed.

9 Q. Did you go back and look at the record to
10 see if you could find a class cost-of-service study
11 that was used to design that rate?

12 A. I did not. I didn't see that that was
13 necessary. My goal here was to design a rate that
14 was -- that had some stability in the rate structure
15 and balanced the impact of the entire ESP.

16 Q. And so far as you were concerned you
17 didn't care which rate classes were causing the
18 particular cost and in what proportion.

19 A. Again, the SSR is a financial integrity
20 charge and I view it as all customers are causing the
21 need for financial integrity, and that there's no --
22 that there's no good reason for a cost of service
23 analysis on something that doesn't have costs that
24 are easily identifiable.

25 Q. The SSR is essentially a charge to

1 increase the rate of return on equity of the company;
2 isn't that correct?

3 A. I'm not sure the full justification of
4 the SSR. I believe that's covered by other
5 witnesses.

6 Q. Well, isn't it necessary to know
7 exactly -- well, bear with me for a moment,
8 Mr. Nathan. I'd like to investigate what the
9 company's characterization of these costs are.

10 It is true, is it not, that the company's
11 asking for an increase in rate of return on equity
12 and it was their goal to obtain a rate of return on
13 equity within a certain range? Isn't that correct?

14 A. I believe that to be true from reading
15 Witness Chambers' testimony.

16 Q. Okay.

17 A. He's outlined several financial and
18 business risks that factor into financial integrity.

19 Q. So would it be informative to understand
20 how a rate of return on equity is calculated in
21 designing your rates?

22 A. My understanding of his testimony is that
23 there are several factors that go into the need for
24 financial integrity and many of them would be very
25 difficult to truly identify which customer was

1 causing the cost.

2 Q. Have you been in the hearings over the
3 last few days? Have you heard the witnesses,
4 et cetera?

5 A. I was here part of the time on Monday --

6 Q. Okay.

7 A. -- and I was not here yesterday.

8 Q. From what you heard or -- either in this
9 room or back in the office, is it your understanding
10 that the company is -- isn't it your understanding
11 that the company is relatively satisfied with the
12 rates of return that it is earning on transmission
13 and distribution?

14 A. I don't have an opinion on that.

15 Q. If I were to tell you or if I were to
16 represent -- no, let's do it this way: Let me
17 represent to you that in response to a question by
18 Attorney Examiner Price the DP&L witness indicated
19 that -- Mr. Jackson I believe indicated that the
20 company was satisfied with its distribution and
21 transmission revenues, okay? Do you accept that?

22 A. Okay.

23 Q. So if that's the case, then by a process
24 of elimination the revenue shortfall must be in the
25 generation function; am I correct?

1 A. Again, I don't know that for sure, but --

2 Q. Assuming that I am correct and that the
3 witness responded as I indicated to the question by
4 Attorney Examiner Price, wouldn't you conclude from
5 that that the company's shortfall in revenues,
6 claimed shortfall in revenues, is in the generation
7 function?

8 A. It could be. I guess my understanding of
9 the financial integrity was that it affected all
10 lines of business.

11 Q. Well, if it needed more revenues from
12 transmission and distribution functions, it could
13 file a T and D rate case, couldn't it?

14 A. I suppose it could. I guess I'm not
15 supporting anything regarding that.

16 Q. But it's not doing that here. It's
17 asking for a SSR, right?

18 A. The company is seeking for an SSR, which
19 my understanding was that it was to provide revenues
20 to -- for all business units of the company to
21 operate.

22 Q. Okay. And don't you -- and you don't
23 think it's important in designing those rates that
24 the customer classes be assigned responsibility for
25 their causation of the particular costs that the

1 company wants to be reimbursed for.

2 A. In this circumstance with the SSR I did
3 not find that a cost-of-service study was practical.

4 Q. Let me ask you, Mr. Parke, have you ever
5 conducted a class cost-of-service study?

6 A. For many riders that the company has
7 we've worked to identify the cost causers and
8 designed the rates to align with our -- the customers
9 that cause the costs.

10 Q. Okay. Let me ask it this way: Have you
11 done a fully embedded class cost-of-service study?

12 A. I have not.

13 Q. Okay. Have you testified with regard to
14 a fully embedded class cost-of-service study?

15 A. I have not testified to that.

16 Q. If one were going to do a fully embedded
17 class cost-of-service study, isn't it true that the
18 company's plant, generation of plant, would be almost
19 entirely assigned to the demand function of the
20 rates?

21 A. That could be true, yes.

22 Q. Well, it is true, isn't it?

23 A. Generally I would agree with that, yeah.

24 Q. And so wouldn't it, then, seem logical to
25 you that if what you're looking for is an increase in

1 rates for the generation, that the rate design should
2 be such that it would pass those costs along on a
3 demand basis?

4 A. I guess my testimony here is that the SSR
5 is for financial integrity and the explanation of
6 financial integrity by Witness Chambers included many
7 factors and I didn't see that any of those factors
8 could easily be identifiable to demand or energy.

9 Q. So this is just sort of a general
10 bailout. This isn't related to any particular kind
11 of property; is that right?

12 MR. SHARKEY: Object to the
13 characterization as a bailout, your Honor.

14 EXAMINER MCKENNEY: Mr. Boehm, can you
15 rephrase the question?

16 MR. BOEHM: I'm trying to think of a nice
17 way to . . .

18 Q. I don't know how to do that. Okay, I'll
19 withdraw the question.

20 So that I can understand this and without
21 running it on too long, Mr. Parke, there is nothing
22 in these rates including the existing rate
23 stabilization charge upon which you have constructed
24 your rates that, to your knowledge, speaks to the
25 cost causation responsibility of the various rate

1 classes for those costs.

2 A. Again, as I stated, the SSR is a
3 financial integrity charge and I did not see that it
4 was necessary to do a full cost-of-service study
5 financial integrity --

6 Q. What about the rate stabilization charge?
7 What was that?

8 A. To my knowledge that was a POLR charge.

9 Q. POLR charge, okay. Provider of last
10 resort charge? Is that right?

11 A. That's my understanding.

12 Q. That's what it stands for?

13 A. Yes.

14 Q. Okay. And you don't know how that was
15 constructed either.

16 A. I believe I understand the rate design.

17 Q. Well, but as far as you know that rate
18 design had nothing to do with cost causation.

19 A. Well, I believe that rate design was
20 based off of generation rates at the time and I
21 believe the generation rates would have had a
22 cost-of-service study.

23 Q. But you don't know that. Let's assume
24 for the moment, Mr. Parke, that there was a class --
25 let's assume, contrary to what we both believe, that

1 there was a class, fully embedded class
2 cost-of-service study done at the time those rates
3 were -- went in, what was it, 2004, something like
4 that originally?

5 A. I believe it was probably later than
6 2004, but I'm not certain of the exact timing of when
7 it went in.

8 Q. Well, the record will reflect. But in
9 any event, let's assume it was nine years ago, okay.
10 Is that fair?

11 A. Okay.

12 Q. About nine years ago. Even if there was
13 a fully embedded class cost-of-service study nine
14 years ago, would you believe that that
15 cost-of-service study would still be valid today?

16 A. My testimony here is on the SSR which is
17 a financial integrity charge which is different from
18 the RSC.

19 Q. And so when you talk about the fair
20 distribution among customer classes being one of the
21 ratemaking principles that you think you achieved,
22 this is fair -- this is not fairness based upon who
23 caused the costs, right?

24 A. As I stated, I didn't find the need for a
25 cost-of-service study because it wasn't a practical

1 method, so the most practical thing for me was to
2 balance the impact across all tariff classes for the
3 ESP filing.

4 Q. Regardless of cost causation.

5 A. Again, the SSR was a financial integrity
6 charge which I didn't see it necessary to perform a
7 full cost-of-service study for.

8 Q. So your concept of fairness, then, is to
9 preserve the status quo.

10 A. I wouldn't characterize it as "status
11 quo." The SSR charge is new and this is a new rate
12 design for it.

13 Q. I don't want to beat a dead horse and
14 you've been very forthcoming, Mr. Parke, I just want
15 to understand where you got this concept of fairness
16 from. Is this just something innate to you or what
17 are the factors that make it fair?

18 A. So this charge is new and one of the
19 ratemaking principles is stable and predictable
20 revenue and rates and, you know, another factor is
21 gradualism, and that's part of the reason we would
22 start with the rate structure from a previous rate
23 was to maintain some rate structure so we don't have
24 any major cost shifts between customer classes as a
25 result of a new rider.

1 MR. BOEHM: Can I have a moment, your
2 Honor?

3 EXAMINER MCKENNEY: Yes, you may.

4 MR. BOEHM: I think that's all I have,
5 thank you.

6 Thank you, Mr. Parke.

7 EXAMINER MCKENNEY: Mr. Boehm.

8 Is there an agreement who would go next?

9 MR. BERGER: Yes.

10 EXAMINER MCKENNEY: Mr. Berger.

11 MR. BERGER: Yes.

12 - - -

13 CROSS-EXAMINATION

14 By Mr. Berger:

15 Q. Good afternoon, Mr. Rice -- Mr. Parke.
16 Excuse me, Mr. Parke. We spoke previously at your
17 deposition, and I think Mr. Boehm already established
18 that you did not perform a fully-allocated
19 cost-of-service study; is that correct?

20 A. Correct. I didn't see a need for a full
21 cost-of-service study on the financial integrity
22 charge.

23 Q. And you just referenced the concept of
24 gradualism, I just want to -- tell me what the
25 concept of gradualism means in your understanding.

1 A. Gradualism means that you don't create a
2 rate that causes significant changes in revenue
3 across tariff classes.

4 Q. Now, I think you agreed with Mr. Boehm
5 that, in fact, the financial integrity charge relates
6 to the rate of return of the company; is that right?

7 A. I believe there were several factors
8 listed by Company Witness Chambers, both financial
9 and business risks that he identified.

10 Q. Okay. But he did establish,
11 Dr. Chambers, a rate of -- rate of return as the
12 reason for the financial integrity charge, right?

13 A. I believe that to be true.

14 Q. Okay. So then the financial integrity
15 charge would be associated with rate of return.

16 A. That's not my testimony. I'm only
17 providing the rate design for the charge.

18 Q. Well, but the dollars, the calculation,
19 the way in which it was calculated all relates to
20 establishing a level of return in order for the
21 company to maintain financial integrity allegedly; is
22 that right?

23 A. My understanding is that the dollar
24 amount was determined to provide financial integrity.

25 Q. And it was determined based upon the rate

1 of return that the company wanted to achieve that it
2 said it was necessary to achieve for financial
3 integrity, right?

4 A. That's probably true. I guess I'm not
5 the one supporting that, but --

6 Q. You're aware of the 6.2 percent return
7 included in CLJ-2, aren't you?

8 A. Vaguely.

9 Q. Okay. You're not aware that that's how
10 the ... service stability rider that you're proposing
11 to allocate in a particular way was calculated.

12 MR. SHARKEY: Your Honor, I believe that
13 that was confidential information.

14 MR. BERGER: If so, we strike it and ask
15 it on the confidential record.

16 EXAMINER MCKENNEY: All right. At this
17 time we'll strike the question. Let's move to the
18 confidential record. If you have not signed a
19 stipulated protective agreement with the company,
20 please step out of the room at this time.

21 MR. SHARKEY: Just so the record is
22 clear, your Honor, it was the reference to --

23 EXAMINER MCKENNEY: Let's wait until we
24 go on the confidential record. Let's wait.

25 Go off the record real quick.

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(Discussion off the record.)

(Confidential portion excerpted.)

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(Open record.)

EXAMINER MCKENNEY: Mr. Berger, can you restate your question?

MR. BERGER: Sure. Do we want to call back in the folks who stepped out?

EXAMINER MCKENNEY: Are they out there to be called back?

FROM THE FLOOR: They're not coming back.

MR. BERGER: I just want to show them I had courtesy.

EXAMINER MCKENNEY: Thank you, Mr. Berger.

Q. Can you tell me, Mr. Parke, the steps that are normally performed in preparing a cost-of-service study?

A. So normally you identify the costs for what you're trying to recover and then identify which customers or why those costs are being incurred and then design a rate to recover those costs.

Q. Do you know what cost functionalization is?

1 A. Functions as in transmission,
2 distribution, generation?

3 Q. I'm asking if you know what
4 functionalization is in terms of performing a
5 cost-of-service study.

6 A. I guess that's how I would classify it.

7 Q. Which is?

8 A. To classify it into transmission,
9 generation, distribution.

10 Q. Okay. And did you speak to the people
11 who determined what the costs were, such as
12 Mr. Jackson and Dr. Chambers, to determine how these
13 costs should be functionalized, whether they related
14 to generation, transmission, or distribution?

15 MR. SHARKEY: Object, your Honor.
16 Mr. Parke has testified a number of times that it
17 wasn't designed to recover specific costs. The
18 question assumes that it was designed to recover
19 specific costs which I don't think there's any basis
20 in evidence for.

21 EXAMINER MCKENNEY: The objection's
22 overruled. If the witness knows the answer, he can
23 answer.

24 A. My understanding of the SSR was that it
25 was a financial integrity charge.

1 Q. My question to you was --

2 MR. SHARKEY: Object, your Honor, he
3 hadn't had a chance to finish his question. I object
4 to him cutting off the answer.

5 MR. BERGER: I'm sorry.

6 EXAMINER MCKENNEY: If you had more,
7 please proceed.

8 A. It was a financial integrity charge and
9 it was not a cost-based charge, therefore, a
10 cost-of-service study would be extremely difficult
11 and I didn't see that to be a practical thing to do.

12 Q. You didn't see speaking to Dr. Chambers
13 or Mr. Jackson as a practical thing to do?

14 A. I didn't see a cost-of-service study as a
15 practical thing to do for a financial integrity
16 charge which is not cost based and has several
17 factors to it.

18 Q. Okay. My question to you was: Did you
19 speak to Dr. Chambers and/or Mr. Jackson regarding
20 how they determined the charge in order to determine
21 whether you could functionalize the costs?

22 A. I don't believe I did. I don't believe
23 that that was necessary since it was a financial
24 integrity charge.

25 Q. Do you know whether a return on capital

1 is functionalized?

2 A. Can you repeat the question?

3 Q. Yes. Do you know whether return --
4 return on capital is functionalized?

5 A. In general terms?

6 Q. In a class cost-of-service study in a
7 base rate proceeding.

8 A. I'm sorry, I didn't catch all that. I
9 didn't hear all that.

10 EXAMINER PRICE: Let's go off the record.

11 (Off the record.)

12 EXAMINER MCKENNEY: Let's go back on the
13 record.

14 Q. Mr. Parke, is return on capital
15 functionalized in performing a class cost-of-service
16 study to your knowledge?

17 A. In general terms I believe it is. But in
18 this circumstance it's not applicable since we're
19 dealing with financial integrity charge.

20 Q. Well, you heard Mr. Boehm ask you some
21 questions about whether these dollars would relate to
22 generation, okay, because Mr. -- because of
23 Mr. Jackson's testimony. Do you recall that?

24 A. I recall the question.

25 Q. Okay. And if that's correct, would you

1 agree with me that it would have been appropriate to
2 functionalize them to generation because they would
3 be return on capital costs related to generation?

4 A. That was not my understanding when I
5 designed the rate. My understanding was it was a
6 financial integrity charge that applied to all the
7 business units for the company to operate.

8 Q. Okay. But you can't -- strike that.

9 And do you know what the classification
10 steps of a cost-of-service study is?

11 A. Yes. Typically you classify costs by
12 type of charge whether it be customer, energy, or
13 demand charge.

14 Q. Okay. And can you tell me what kind of
15 costs are included in customer costs?

16 A. Sure. Generally customer charge costs
17 are items that can't easily be identified as energy
18 or demand and exist whether or not the customer
19 reaches energy or demand.

20 Q. Well, wouldn't they be the kind of costs
21 that vary based upon the number of customers?

22 A. They could.

23 Q. Okay. You didn't perform a
24 classification step in performing your assessment of
25 the service stability rider, did you?

1 A. No, I did not see that that was
2 necessary. Again, the SSR charge was a financial
3 integrity charge which I didn't see the need for a
4 theoretical study on cost of service to be performed,
5 so I took the practical approach of making sure that
6 the rate was balanced and fair among all the tariff
7 classes for the ESP.

8 Q. Are you aware that it's the company's
9 position that customers who are switching, and in
10 particular the load of customers switching are
11 primarily responsible for the factors driving the
12 financial integrity issues that underlie the claim
13 for the SSR?

14 A. My understanding is that that was one of
15 the factors that was discussed by Chambers and likely
16 Jackson, but there were many others.

17 Q. There are many others?

18 EXAMINER PRICE: Mr. Parke, if the
19 Commission were to conclude, based upon the evidence
20 in this proceeding, that the primary driver is, in
21 fact, customer switching which is driving the
22 financial distress, potential financial distress of
23 the company, would you agree that your rate design is
24 defective?

25 THE WITNESS: I guess I wouldn't agree

1 that it's defective. The goal for the rate design
2 was to balance the impact across all tariff classes
3 and I think it --

4 EXAMINER PRICE: But if the Commission --
5 I'm sorry. Finish your answer.

6 THE WITNESS: I think the rate design
7 would accomplish that.

8 EXAMINER PRICE: But if the rate design,
9 according to your testimony, took nothing into
10 account as to whether it was generation related or
11 distribution related or transmission related, you
12 said it was simply a financial integrity charge that
13 you attempted to balance the impact on all classes,
14 if the Commission were to conclude that it really is
15 driven by generation, then would you agree that your
16 rate design is inappropriate? Instead of defective,
17 would you agree that it's inappropriate?

18 THE WITNESS: I'm still not sure I would
19 agree with that. I guess -- I think it was a sound
20 rate design for mitigating the cost impacts to all
21 the customers that would be assessed on that charge.

22 EXAMINER PRICE: Even though there's no
23 cost causation element to this rate design.

24 THE WITNESS: Correct.

25 EXAMINER PRICE: Thank you.

1 Q. (By Mr. Berger) Mr. Parke, the switching
2 tracker would -- would you agree with me that the
3 underlying principle for the switching tracker is
4 that when customers switch, it causes financial
5 integrity problems for the company?

6 A. I don't think I can. I guess I'm not the
7 witness that supports anything regarding the
8 switching tracker.

9 Q. Okay. Are you familiar with the
10 switching tracker?

11 A. Only in general terms.

12 Q. Are you aware that the company has
13 indicated in responses to discovery that the design
14 of the switching tracker is to follow -- the rate
15 design of the switching tracker follows the rate
16 design of the service stability rider?

17 A. I haven't reviewed all the discovery in
18 the case so I'm not completely familiar with all of
19 it.

20 Q. Now, you'd agree with me that your
21 proposal would effectively double customer charges
22 for residential customers.

23 A. I believe that to be true.

24 Q. And would you agree with me that your
25 rate design, in coming up with your rate design you

1 stated that you started out with the rate
2 stabilization charge, correct?

3 A. That was one of the factors that -- that
4 was one of the factors that went into the rate design
5 was the rate stabilization rate structure, correct.

6 Q. But at the time you designed the service
7 stability rider you didn't know what the purpose of
8 the rate stabilization charge was; would you agree
9 with that?

10 A. I think I understood the purpose of the
11 rate stabilization charge to be a POLR charge.

12 Q. But you don't know what a POLR charge is;
13 is that right? Or at the time you designed these
14 rates you didn't know what a POLR charge was.

15 A. I knew it to be a provider of last
16 resort.

17 Q. Do you know what the purpose of the POLR
18 charge is?

19 A. I don't know the details of the POLR
20 case, no.

21 Q. Do you know what the purpose of a POLR
22 charge is?

23 A. Not specifically, no.

24 Q. So at the time you designed these rates
25 you didn't know the purpose of the rate stabilization

1 charge, the POLR charge, that you were basing it
2 upon; is that correct?

3 A. No, I don't believe that was -- that was
4 necessary. I guess the reason I used that charge is
5 because customers were currently paying those rates
6 and to maintain rate structure and to factor in the
7 ratemaking principles of stable and predictable
8 rates, I used that rate structure as one of the
9 factors that went into designing the new SSR.

10 Q. I didn't ask you whether you used the
11 rate structure or not. I asked you if you knew what
12 the purpose of the charge was. Would you agree with
13 me you didn't know the purpose of the charge at the
14 time that you designed the rates for the service
15 stability rider?

16 A. Again, I didn't see that that was
17 necessary in designing a new SSR which was a
18 different -- it is a different charge.

19 Q. Mr. Parke, I'm just asking you whether
20 you knew the purpose of the RSC charge -- I've asked
21 it three times now. Did you know the purpose of the
22 RSC charge other than that it was a POLR charge at
23 the time you designed the service stability rider
24 charge?

25 A. Right, and I believe I answered that,

1 that I didn't, and I didn't see that that was
2 necessary in designing a new SSR charge.

3 Q. At the time that you designed the SSR
4 charge, would you agree with me that you did not know
5 what costs are typically recovered in rates through a
6 customer charge?

7 A. Generally speaking, there are items that
8 aren't easily identifiable as energy or demand.

9 Q. And, again, my question was: At the time
10 that you designed the rate did you know what kinds of
11 costs are typically included in a customer charge?

12 A. Generally I think I did.

13 Q. Now, Mr. Parke, the reason you give for
14 having a customer charge is that all customers cause
15 the need for financial viability; is that correct?

16 A. Correct, all customers do cause the need
17 for financial viability.

18 Q. Would you agree with me that all
19 customers that use electricity cause a need for
20 generation or purchased power, but even though that's
21 the case we don't put cost of generating electricity
22 or purchased power itself into a customer charge?

23 A. I believe what I'm saying in my testimony
24 is that all customers cause the need for financial
25 viability and financial viability isn't something

1 that can be determined through a cost-of-service
2 study, therefore, I performed the rate design on a
3 practical method of stabilizing the rates.

4 Q. Can you answer my question?

5 A. Can you repeat the question?

6 Q. Yes. Would you agree with me that all
7 customers that use electricity cause a need for
8 generation or purchased power but we don't put the
9 cost of generating electricity or purchased power
10 itself in a customer charge?

11 A. Yes, I would agree that generation is
12 different from financial viability.

13 Q. What I'm asking you is we don't put the
14 cost of generation into a customer charge.

15 A. Correct. Because it's -- it's different.

16 Q. And -- would you agree with me that on
17 DP&L's system most of the load that is switched would
18 be load associated with large commercial and
19 industrial customers?

20 A. Can you repeat that question?

21 Q. Would you agree with me that on DP&L's
22 system most of the load that has switched would be
23 load associated with large commercial and industrial
24 customers?

25 A. I believe that to be generally true.

1 Q. So is it your view that small residential
2 customers should pay the financial integrity costs
3 imposed by large commercial and industrial customers
4 who have switched?

5 A. No. I have designed a rate that is
6 charged to all customers, I believe it's a fair
7 balance among all of the tariff classes.

8 Q. Are you aware of any Ohio electric
9 distribution utility that has a customer charge as
10 part of a nonbypassable charge?

11 A. Can you repeat that question?

12 Q. Would you agree with me that there's no
13 Ohio electric distribution utility that has a
14 customer charge as part of a nonbypassable charge
15 that's not included in base rates?

16 A. Can you define the term "base rates"?

17 Q. What is your understanding of what base
18 rates are?

19 A. I believe there's base rates for
20 generation and distribution and potentially some
21 utilities might put transmission, but . . .

22 Q. Okay. Other than those base rates, are
23 you aware of an Ohio electric distribution utility
24 that has a customer charge as part of a nonbypassable
25 charge?

1 A. Other than their base rates I'm not sure
2 if they do or if they don't.

3 Q. Is the customer charge you're proposing
4 in this case for all customer classes the same or
5 does it vary by customer class?

6 A. It varies by customer class.

7 Q. And outside of Ohio are you aware of any
8 nonbypassable charge that includes a customer charge
9 component that is not part of distribution rates?

10 A. I'm not aware if there are or if there
11 aren't. I didn't perform any research on that.

12 Q. Now, are you aware that the company has
13 proposed in this case to phase out the maximum charge
14 provision in certain secondary and primary tariffs?

15 A. Yes, I'm aware of that. I have that in
16 my testimony.

17 Q. And you would agree with me that this is
18 a subsidy to those customers.

19 A. It is a benefit to secondary and primary
20 customers, that's true.

21 Q. And residential customers are one of the
22 classes that subsidize that rate; is that correct?

23 A. For many of the rate components the rate
24 is designed to recover a certain amount of revenue,
25 therefore, other customers are paying the difference

1 from what otherwise would be collected from the
2 customers on the max charge provision.

3 Q. You'd agree with me that it is a subsidy;
4 is that correct?

5 A. I would use the term "benefit."

6 Q. Would you agree with me that the maximum
7 charge provision subsidized those customers who have
8 poor load factors?

9 A. Yes. The max charge provision does
10 provide a benefit to low-load factor customers,
11 meaning they have a high demand and low energy use,
12 and it works to cap their overall average cents per
13 kilowatt-hour rate.

14 Q. Your use of the term "benefit" is
15 equivalent to the term "subsidy" in your mind; is
16 that correct?

17 A. It's basically the same.

18 Q. So you'd agree with me that the maximum
19 charge is a tariff subsidy for a small group of
20 customers in the secondary and primary tariffs.

21 A. Right. And I think I just stated that I
22 would agree to that but use the term "benefit."

23 Q. And the amount of the subsidy is
24 currently approximately \$5 million; would you agree?

25 A. Generally it's approximately \$5 million,

1 that's my understanding, on an annual basis.

2 Q. But you don't know the residential share
3 of that subsidy?

4 A. I do not.

5 Q. Are you aware, Mr. Parke, of the
6 residential share of the SSR charge under your
7 proposed allocation? And I think that's shown in
8 your Schedule 8 if I'm not mistaken.

9 MR. BERGER: Your Honor, if I may
10 approach the Bench, I can provide you with a copy of
11 Schedule 8 which is part of the company's filing in
12 this case.

13 EXAMINER MCKENNEY: You may approach.

14 MR. BERGER: Can we mark that as OCC
15 Exhibit 11.

16 EXAMINER MCKENNEY: It is so marked.

17 (EXHIBIT MARKED FOR IDENTIFICATION.)

18 MR. BERGER: This exhibit I don't think
19 is confidential. If the company -- is that correct,
20 Jeff?

21 MR. SHARKEY: It is not confidential,
22 you're correct.

23 Q. (By Mr. Berger) Mr. Parke, are you aware
24 of the percentage allocation to the residential class
25 on this schedule?

1 A. No, I'm not familiar with the percentage.

2 Q. Would you, either can you calculate it
3 here or -- of the service stability rider is what I'm
4 talking about, adding up the line that has the
5 residential heating and the line that has the
6 residential nonheating, residential and residential
7 heating, and then dividing those by the 137.5 at the
8 bottom, would you agree that that equals
9 approximately 48.4 percent?

10 A. It appears to, correct.

11 Q. Okay. And do you know what the
12 allocation percentage is of the current rate
13 stabilization charge to the residential class?

14 A. No, I'm not sure what that is.

15 MR. BERGER: Just one minute, your Honor.

16 EXAMINER MCKENNEY: Take your time.

17 MR. BERGER: Your Honor, can we have
18 marked as OCC Exhibit 12 the company's response to
19 data request No. 1.2, this was sponsored by
20 Ms. Seger-Lawson but I think it relates to rate
21 design. And if I may approach the Bench.

22 EXAMINER MCKENNEY: Sure. This will be
23 marked OCC 12.

24 (EXHIBIT MARKED FOR IDENTIFICATION.)

25 Q. Now, Mr. Parke, this response to data

1 request No. 1.2, this refers to the ESSC charge. Is
2 that the same as the rate stabilization charge or is
3 that something different? This was from the MRO
4 proceeding.

5 Was this the -- was this the projected
6 allocation in the MRO proceeding with respect to the
7 proposed charge in that case?

8 EXAMINER PRICE: I think you need to
9 establish that the witness has some understanding of
10 what this document is before you start asking him
11 questions about it.

12 MR. BERGER: Okay. Thank you, your
13 Honor.

14 Q. Have you seen this response before,
15 Mr. Parke?

16 A. I don't recall that I have.

17 Q. Okay. Are you familiar at all with the
18 proposed allocation or the proposed rate design in
19 the MRO proceeding before it was withdrawn?

20 A. Generally. I wasn't the witness on there
21 for the ESSC.

22 Q. Are you aware of whether the proposed
23 rate design from the MRO proceeding was a rate design
24 that you also utilized?

25 A. Could you repeat that?

1 Q. Did you rely on the rate design at all
2 from the MRO proceeding?

3 A. Not exactly. My rate design was from the
4 RSC, was one of the factors that went into it.

5 MR. BERGER: Can we mark, your Honor, as
6 Exhibit OCC No. 13 the company's response to
7 interrogatory 330. If I may approach the Bench.

8 EXAMINER MCKENNEY: Approach. It will be
9 marked OCC 13.

10 (EXHIBIT MARKED FOR IDENTIFICATION.)

11 Q. Mr. Parke, does this have the current
12 allocation of revenues or the current recovery of
13 revenues by class for the rate stabilization charge
14 from 2008 through 2011?

15 A. That appears to be what it is, yes.

16 Q. Are you familiar with this response?

17 A. Generally. I did not draft it, but I
18 believe it to be accurate.

19 Q. Would you agree with me that if you look
20 at this response, the approximate allocation to the
21 residential class during that timeframe was
22 approximately 41 percent?

23 A. That generally appears to be true.

24 Q. So there's a -- would you agree that
25 there's a substantial increase in the allocation of

1 the -- with respect to the service stability rider
2 that you've proposed versus the existing rate
3 stabilization charge?

4 A. I would agree that there is an increase
5 but also point out that it is being offset by the
6 benefits of the competitive bid process.

7 Q. Did you perform an analysis of that
8 offset?

9 A. So the analysis I performed in the rate
10 design was within regard to the typical bills.

11 Q. Did you present that analysis in this
12 proceeding?

13 A. I believe the typical bills were filed in
14 the case, Schedule 10.

15 Q. So we can refer to those.

16 A. Sure.

17 Q. Okay. And are you saying that the
18 reduction in rates to the residential class reflected
19 in Schedule 10, the overall reduction is more or less
20 than for other classes? If you know.

21 A. I guess I'm not sure I know in detail. I
22 mean, generally I understand that certain classes of
23 customers have shopped and aren't paying the standard
24 offer rates and the majority of the residential class
25 is.

1 MR. BERGER: Can I just have a minute,
2 your Honor?

3 EXAMINER MCKENNEY: You may.

4 MR. BERGER: Thank you.

5 Q. Mr. Parke, you address the rate design of
6 the fuel rider in your testimony; is that correct?

7 A. Yes, there were a couple of modifications
8 to the fuel rider that were proposed.

9 Q. And you've provided documents or
10 discovery responses with respect to the fuel rider;
11 is that correct?

12 A. There probably were some, yes.

13 MR. BERGER: Your Honor, I'd like to go
14 to the confidential record here because this document
15 I want to distribute is a confidential document and
16 if we can mark this as OCC Exhibit 14.

17 EXAMINER MCKENNEY: Move to the
18 confidential portion of the transcript. I don't
19 think there's anyone present in the room, there
20 shouldn't be. So, Mr. Berger, you may continue.

21 (Confidential portion excerpted.)

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(Open record.)

EXAMINER MCKENNEY: Mr. Berger, you may continue.

Q. (By Mr. Berger) So when you -- when you received the information that the number was going to be 137.5 per year rather than the original I think 120 million, did you do anything to change your proposed rate design? Or did you just float through the rate design that you had originally proposed?

A. There was a small change. I guess I had to change the rates to get them to equate to 137.5.

Q. Did you increase all the rates proportionately for the SSR?

A. I did not.

1 Q. Which rates did you increase?

2 A. I increased the energy and demand rates.

3 Q. Thank you. And you increased them
4 proportionately for all customer classes?

5 A. Yes, I did.

6 MR. BERGER: Thank you, Mr. Parke.

7 That's all I have, your Honor.

8 EXAMINER MCKENNEY: Are there any other
9 intervenors that have questions for Mr. Parke?

10 MR. BOEHM: I think Ms. Bojko, who ran
11 out, has some questions, your Honor.

12 EXAMINER MCKENNEY: I will remember to
13 ask Ms. Bojko when she returns.

14 Does anyone else have questions, first,
15 before we wait for Ms. Bojko? Mr. Williams?

16 Let's go off the record at this time,
17 we'll wait for Ms. Bojko.

18 (Recess taken.)

19 EXAMINER MCKENNEY: Let's go back on the
20 record at this time.

21 Ms. Bojko.

22 MS. BOJKO: Thank you, your Honor.

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CROSS-EXAMINATION

By Ms. Bojko:

Q. Mr. Parke, my name's Kim Bojko and I represent SolarVision, LLC in this proceeding. I'd like to talk to you a few minutes about the AER rider starting on page 3 of your testimony.

A. Okay.

Q. Do I need a mic?

A. Yeah, I can barely hear you.

Q. Is that better?

A. Yes.

Q. Are you on page 3 of your testimony, sir?

A. Yes.

Q. Could you tell me what the AER actually includes and what kind of costs are passed through this rider?

A. So this rider is the alternative energy rider, it includes the cost of compliance with the Ohio Revised Code requiring renewable energy given that certain percentages for certain years -- it's a 3 percent average.

So it includes costs of compliance such as RECs, it would also include some research and development and costs included to buy RECs.

Q. I'm sorry. Did you mean to state that

1 the 3 percent average is the renewable portfolio
2 standard?

3 A. No, there's a three-year average in the
4 Revised Code that determines the amount of the
5 requirement.

6 Q. Three-year rolling average of what?
7 Maybe you can explain more.

8 A. It's of sales.

9 Q. So it's based on load. Kilowatt-hour
10 load sales, the renewable portfolio standards is
11 based on the sales or the load.

12 A. Yes, that's my understanding.

13 Q. So if the load -- is it your
14 understanding then if the load increases, then the
15 level of RPS would increase?

16 A. The amount needed to comply with the RPS
17 would increase.

18 Q. Correct.

19 A. Right.

20 Q. That's your understanding.

21 A. Yes.

22 Q. Do you know if there was a -- and then
23 also, I'm sorry, in your testimony you reference a
24 3 percent cost cap on line 15 on page 3; is that
25 correct?

1 A. Correct.

2 Q. And do you know if there's been a
3 methodology determined in this statute that talks
4 about the 3 percent or sets a methodology for that
5 3 percent cap?

6 A. I'm not aware of the methodology that --
7 I'm not aware of any methodology that has been
8 developed.

9 Q. Are you aware if there's any contained in
10 the statutory provision?

11 A. I guess the methodology for determining
12 the 3 percent cost cap?

13 Q. That's what I'm asking, that's correct.

14 A. Yeah, I'm not aware that the methodology
15 to determine the 3 percent cost cap.

16 Q. Is in the law?

17 A. Right. I don't believe that it has been
18 developed, no.

19 Q. Okay. And so then is it also your
20 understanding it hasn't been developed by the
21 Commission through either orders or Commission rules?

22 A. I don't believe that it has.

23 Q. And, again, going back to line 15 --
24 you're not an attorney, right, Mr. Parke?

25 A. I am not.

1 Q. So you're not attempting on lines 15 and
2 16 to interpret the statutory provision of the
3 3 percent cost cap in your testimony, are you?

4 A. No. I'm not a lawyer and I'm not
5 testifying to a legal opinion on the law, no.

6 Q. On lines 18 and 19 you talk about an
7 estimated competitive bid auction result is used as
8 the means of otherwise acquiring electricity. Do you
9 see that?

10 A. Yes.

11 Q. Is that what you based your calculation
12 of the 3 percent cap on?

13 A. Yes.

14 Q. Does your calculation include the load
15 associated with the standard service offer portion of
16 the ESP application?

17 A. Can you repeat that question?

18 MS. BOJKO: Could you please repeat the
19 question?

20 EXAMINER MCKENNEY: Can we have that.

21 (Record read.)

22 A. I guess indirectly it does, but I didn't
23 specifically consider that.

24 Q. Let's take a step back. Are you aware
25 that Dayton's application includes a blending

1 percentage with regard to the load that's offered
2 under the ESP?

3 A. It does.

4 Q. And when you did your calculation of the
5 3 percent cap, did you base that on the otherwise
6 acquiring electricity that's on line 19 or did you
7 also include the standard service offer portion of
8 that blend?

9 A. Perhaps I can clarify. The AER is not
10 part of the blend. It will be charged throughout the
11 blend and after the company's hundred percent
12 competitive bid process so that rate is going to
13 apply to standard offer customers and not be blended.

14 Q. I understand that, Mr. Parke. That's not
15 my question. When you calculated the 3 percent to
16 come up with your fixed rate of .0012813, did you
17 calculate the 3 percent based on the auction load
18 only or did you include both the auction load and the
19 standard service offer load?

20 A. It was based on the auction price.

21 Q. Okay. And the auction price is
22 determined on that load that is bid into the auction?

23 A. The auction price is determined on an
24 amount of load.

25 Q. And so that was based on a price on a

1 given amount of load that is bid out through the
2 auction; is that right?

3 A. That's true.

4 Q. So it doesn't include the price of
5 electricity that is supplied under the standard
6 service offer portion of the blend.

7 A. No, it does not.

8 Q. And if it did -- do you know whether the
9 price of the standard service offer under the ESP is
10 going to be higher than the anticipated load price or
11 auction price?

12 A. I believe in the filing the
13 noncompetitive bid portion on the rate is higher.

14 Q. And if we were to add the standard
15 service offer load to the competitive bid auction
16 load since the 3 percent is based on the total load,
17 as you just previously stated, wouldn't the 3 percent
18 fixed price that you have listed in your testimony
19 increase?

20 THE WITNESS: Can I have that question
21 reread?

22 (Record read.)

23 A. In that hypothetical I believe that to be
24 true, but what I was proposing here is that the
25 auction price is a means of acquiring electricity so,

1 therefore, that rate could be used.

2 Q. So you didn't take the amount of load
3 into consideration in your analysis?

4 A. I did not.

5 Q. You purely took the price.

6 A. Right.

7 Q. Of the estimated auction price.

8 A. Yes.

9 Q. So if the auction is not as estimated, if
10 the auction price increases, then your corresponding
11 3 percent cap would increase as well.

12 A. As I stated earlier, I'm not a lawyer,
13 but my understanding of the law was that it was to be
14 an expected means of otherwise acquiring electricity.
15 So, therefore, I used the expected result of the
16 competitive bid as an expected result.

17 Q. You used the price.

18 A. The price, correct.

19 Q. And you used an estimated forecasted
20 price.

21 A. Yes.

22 Q. Over what period of time did you
23 estimate?

24 A. I believe it was the first auction.

25 Q. So you used an estimated price of one

1 auction only to arrive at your capped number.

2 A. Yes. I used the auction price as the
3 means of otherwise acquiring electricity.

4 Q. And you did not, just to be clear since
5 you said "otherwise," you did not include the price
6 of the standard service offer load or per
7 kilowatt-hour, if you want to just focus on the price
8 instead of load, you did not take a blended price to
9 make your estimation.

10 A. I did not. I viewed it as one of the
11 means of acquiring electricity could be through a
12 competitive bid process.

13 Q. And another means of acquiring
14 electricity could be through a standard service
15 offer, correct?

16 A. I guess I'm not sure --

17 Q. Well, isn't the application, Mr. Parke,
18 in part based on standard service offer to customers
19 and in part based on competitive bid auction to
20 customers?

21 MR. SHARKEY: Let me object, your Honor,
22 I don't believe Mr. Parke had completed his prior
23 answer.

24 EXAMINER MCKENNEY: The objection's
25 sustained. There was a question asked before that.

1 MS. BOJKO: I'm sorry, I thought he was
2 done. He paused.

3 EXAMINER MCKENNEY: I don't believe the
4 witness was finished answering the question. The
5 objection's sustained.

6 Do we need to have the question read from
7 the record?

8 MR. SHARKEY: Can we have the prior
9 question reread to him so that he can answer the
10 question.

11 (Record read.)

12 MS. BOJKO: Your Honor, it was a yes or
13 no question; correct. "I'm not sure," I assumed he
14 was finished answering the question.

15 EXAMINER MCKENNEY: Is there a question
16 following that?

17 (Record read.)

18 EXAMINER MCKENNEY: We'll allow the
19 witness to continue, then.

20 THE WITNESS: Can I have that question
21 reread one more time.

22 (Record read.)

23 MR. SHARKEY: I believe, your Honor, it
24 was the next question.

25 (Record read.)

1 MS. BOJKO: I object, he answered the
2 question and I'm going to move to strike anything
3 after a yes or no response to "is that correct."

4 EXAMINER MCKENNEY: Mr. Sharkey, I
5 believe "I don't know" is a complete answer in this
6 case.

7 MR. SHARKEY: Okay, your Honors, thank
8 you.

9 EXAMINER MCKENNEY: Can we have the last
10 and final question that was asked reread to the
11 witness, please.

12 (Record read.)

13 A. This application, the ESP application,
14 does include both standard offer current rates and
15 the competitive bid process, yes.

16 Q. (By Ms. Bojko) And just so I understand
17 your proposal, the figure that's established today in
18 this case that's based on the one estimated auction
19 will be the cap going forward regardless as to
20 whether the RPS requirements increase each year --
21 I'll break up the question.

22 It will be stabilized as to whether any
23 RPS requirements are increased; is that correct?

24 A. The company's proposal is that the rate
25 of the AER be capped, correct.

1 EXAMINER PRICE: Are you saying that this
2 number, .0012813, is the cap irrespective of what the
3 actual results in the CBP are, this is if -- this is
4 your calculation so this is it for four years?

5 THE WITNESS: That is the company's
6 proposal, yes.

7 EXAMINER PRICE: And I'm not asking if
8 that's the company's proposal. I'm asking if that's
9 your testimony.

10 THE WITNESS: Yes, that's the testimony.

11 EXAMINER PRICE: Isn't it true that you
12 in your paraphrasing of the statute have left out
13 half of the words that are relevant to this question?

14 THE WITNESS: I believe the statute is
15 much longer, I don't think I recited the whole thing.

16 EXAMINER PRICE: Well, I'm not even
17 talking about the statute, I'm talking about the
18 phrase. Isn't it true that the statute actually
19 says -- now I've lost it on my phone.

20 Isn't it true that the statute actually
21 says "To the extent that it's reasonably expected
22 cost of" -- wait, I'm sorry -- "exceeds its
23 reasonably expected cost of otherwise producing or
24 acquiring requisite electricity by 3 percent more,"
25 it's not just of otherwise producing or acquiring.

1 It says reasonably expected cost of otherwise
2 producing or acquiring the requisite electricity, not
3 electricity in general.

4 Isn't that what the statute actually
5 says? Understanding that you're not an attorney, I'm
6 not asking you for legal advice.

7 THE WITNESS: Yeah, I guess I'm not sure.
8 I mean, my understanding was that the forecast was
9 reasonable because it says "expected cost." So
10 that's the reason why we used a forecast.

11 EXAMINER PRICE: But the --

12 THE WITNESS: And then --

13 EXAMINER PRICE: I'm sorry, go ahead.

14 THE WITNESS: I guess on the second part,
15 producing or acquiring, I'm not certain that our
16 standard offer rates are the exact production cost of
17 electricity, therefore, I used the acquiring
18 electricity through a CBP process.

19 EXAMINER PRICE: But it's also the
20 requisite electricity, for the first year the CBP is
21 only going to provide 10 percent of the cost,
22 correct?

23 THE WITNESS: It is.

24 EXAMINER PRICE: Ninety percent of the
25 requisite electricity is going to be provided by --

1 through the legacy blended rate.

2 THE WITNESS: Right. I guess some of the
3 difficulty I have is that you can comply with this
4 law through RECs which isn't purchasing energy, and
5 the company was looking for a way to have some
6 stability on this issue. So I was asked to come up
7 with a method for providing some certainty.

8 EXAMINER PRICE: Thank you, Ms. Bojko.
9 Sorry for the interruption.

10 MS. BOJKO: Took the words out of my
11 mouth. Shortened my questions. You got to the end
12 faster than I expected.

13 Q. (By Ms. Bojko) But you used the word
14 "purchasing." In the quoted statutory section that
15 Mr. Price just read and, again, we've already
16 determined you're not an attorney and you're not
17 offering a legal interpretation of the statute, but I
18 think it's helpful to understand the mentality or the
19 thinking behind creating the methodology, so that's
20 why -- you just used the word "purchasing" and I
21 don't see the word "purchasing" in the statute.

22 A. I believe the word in the statute is
23 "acquiring."

24 Q. Or "producing."

25 A. Or "producing," correct.

1 Q. And under the company's ESP, the standard
2 service offer is producing -- the company is going to
3 be producing electricity to serve the standard
4 service offer; is that right?

5 A. They do. I guess the difficulty I had
6 was that I wasn't sure that the standard service
7 offer rates were exactly production cost.

8 Q. Does it talk anything about, in the
9 statutes, production costs?

10 A. It says "the cost of producing."

11 Q. Or acquiring.

12 A. Correct.

13 Q. It doesn't talk about the cost to
14 actually -- strike that.

15 And irrespective of, we talked about
16 already irrespective of the increase in renewable --
17 well, first of all, let's back up and lay some
18 foundation.

19 Is it your understanding that the
20 renewable portfolio standard requirements increase
21 every year?

22 A. Yes, I believe they do.

23 Q. So irrespective of that renewable
24 portfolio standard increase every year, the flat rate
25 of .0012813 would be stable and remain the cap.

1 A. That's what the proposal is, yes.

2 Q. And irrespective of the company's blend
3 on a per-year basis, the cap remains stable; is that
4 correct?

5 A. That's correct.

6 Q. And irrespective of the load in DP&L's
7 service territory, the rate remains stable.

8 A. That's correct.

9 Q. And irrespective of whether the
10 methodology is established by the Commission or has
11 been established, the proposal is that that rate
12 would remain stable.

13 A. When we filed this, there wasn't and to
14 my knowledge there still is not a methodology that is
15 accepted.

16 Q. And assuming going forward that there is
17 a methodology, your proposal is that this is a fixed
18 rate, it doesn't alter or change based on any of the
19 factors we've discussed so far.

20 A. The proposal is that it's a fixed rate
21 but I guess if there were Commission rules that were
22 adopted, we would need to comply with those.

23 Q. But the proposal does not have that
24 qualification in it, does it?

25 A. It does not because they --

1 Q. And neither does your testimony.

2 A. Because that does not exist right now.

3 Q. Thank you.

4 And when this rate is hit, what happens?

5 A. I believe that the company's requirement
6 would no longer increase.

7 Q. Can you be a little more specific,
8 please. The company's requirement for what?

9 A. For the renewable requirements would be
10 capped as in it does not continue to increase.

11 Q. Meaning that the company does not further
12 have to comply with the law of the renewable
13 portfolio standard increase.

14 A. I believe the company will still comply
15 up to that rate, but not beyond because it would
16 exceed the 3 percent.

17 Q. And this calculation was based on the
18 estimated, just to be sure, of the auction that is
19 proposed to take place in what year? What month and
20 year?

21 A. I believe the filing, the auction was to
22 take place prior to January 2013.

23 Q. And it's your understanding that there
24 was going to be subsequent -- three other auctions
25 for subsequent periods?

1 A. Yes.

2 Q. And those estimated prices were not
3 considered or forecasted prices were not considered
4 in your calculation.

5 A. They were not.

6 MS. BOJKO: Thank you. No further
7 questions, your Honor.

8 EXAMINER McKENNEY: Ms. Bojko.
9 Any other intervenors, questions for the
10 witness?

11 (No response.)

12 EXAMINER McKENNEY: Does staff have
13 questions for the witness?

14 MR. McNAMEE: Sadly, I do.

15 - - -

16 CROSS-EXAMINATION

17 By Mr. McNamee:

18 Q. Good evening, Mr. Parke.

19 A. Good evening.

20 Q. Let's look at this maximum charge
21 provision, I believe you had some questions about
22 that previously.

23 A. Yes.

24 Q. Company's proposing to eliminate the
25 maximum charge provision, right?

1 A. Yes.

2 Q. Okay. That would have the effect of
3 raising some customers' bills, would it not?

4 A. It could, some customers, yes.

5 Q. Well, it must, mustn't it?

6 A. Yes, I believe it will.

7 Q. You say this in your testimony, 8 of 17,
8 you indicate that this applies to customers that have
9 very poor load factors. What do you mean by "very
10 poor load factors"?

11 A. I believe the max charge provision
12 typically kicks in around 12 percent load factor.

13 Q. Okay. And what do you mean by
14 "12 percent load factor"?

15 A. Load factor is a ratio between the amount
16 of energy divided by the demand times the hours in
17 the period.

18 Q. Okay. Good. What sort of customers have
19 such a poor load factor?

20 A. There would be a wide variety of
21 customers. Typically they would have a process that
22 would require a high amount of usage in a short
23 period of time and then relatively low demand for the
24 remaining of the billing period. So they're setting
25 a high peak and then not consuming as much energy

1 through the rest of the billing period.

2 Q. These would all be businesses, wouldn't
3 they?

4 A. Generally, yeah.

5 Q. Okay. And what kind of businesses do you
6 think would fall into that class, not specific names,
7 but types of business?

8 A. There really could be lots of different
9 ones. It is the secondary and primary tariffs so I
10 wouldn't even be able to classify it as being all
11 small businesses. Customers on the primary tariff
12 are typically a little bit larger. But it could be
13 anything from, you know, a bakery or a farm or a
14 seasonal recreation facility or something like that.

15 Q. How many customers are we talking about
16 that would be affected by the elimination of this,
17 I've forgotten the name, maximum charge provision?

18 A. My recollection there is approximately
19 3,000 a month.

20 Q. 3,000. Are they the same from month to
21 month?

22 A. No, they are not. Some customers would
23 be billed under the max charge provision for only one
24 month out of the year and some may be billed more
25 frequently than that. There may be customers that

1 are billed all 12 months but generally I think it's
2 spread out.

3 EXAMINER PRICE: Mr. Parke, the poor load
4 factors, does this take into account people whose
5 peak usage would be in off-peak hours so if
6 somebody's peak usage is during the evening, could
7 they still be -- are they still counted as one of
8 your customers with a very poor load factor, or is it
9 only on-peak demand that gets counted?

10 THE WITNESS: I believe it's both.

11 EXAMINER PRICE: It's both. Churches
12 could have very poor load factors, and schools.

13 THE WITNESS: They could. The off-peak
14 mechanism --

15 EXAMINER PRICE: Have you done any
16 calculation to determine whether any churches or
17 schools would be affected by the withdrawal of the
18 maximum charge provision?

19 THE WITNESS: I would expect that there
20 are some that would, yes.

21 Q. (By Mr. McNamee) Okay. How long has this
22 sort of provision been in in the company's tariffs?

23 A. It's been in there for a very long time.
24 It's been at least since the 1991 rate case and it
25 was unbundled generally in the '99-2000 timeframe.

1 Q. So it's been around for at least 22
2 years.

3 A. Probably at least, yes.

4 Q. Can you give me any indication of how
5 large of an increase customers affected by the
6 removal of this provision would see as a result of
7 the removal of that provision?

8 A. Yeah, I'm not sure that I can because
9 there's customers of all different sizes and
10 depending on how many months out of the year they are
11 actually billed under this provision, there will be
12 some customers that if they're only billed under this
13 provision for a month or two may not really see any
14 impact to it. But customers who are billed under max
15 charge most months out of the year could see a larger
16 impact.

17 Q. Okay. So we don't know how many people
18 and we don't know what affect we'll be seeing from
19 the removal of this provision; is that right?

20 A. Right. I guess, as I stated in my
21 testimony, the max charge provision was contained in
22 our generation tariff which is being phased out and
23 replaced with a competitive bid tariff and I didn't
24 see the max charge provision was reflective of
25 markets or market pricing, therefore -- that and that

1 the max charge provision is very complex and many
2 customers are confused by it, and to simplify it and
3 to help customers make better decisions about
4 customer choice and shopping, we decided to phase it
5 out.

6 EXAMINER PRICE: Does the company
7 currently recover revenue foregone because of the
8 maximum charge provision from other customers?

9 THE WITNESS: In some of the components
10 it does, in others it does not.

11 EXAMINER PRICE: So when you phase out,
12 then, the maximum charge provision, you'll cease
13 recovering that foregone revenue from some customers,
14 right? Some of the revenue you'll cease collecting;
15 what will happen to the remaining revenue?

16 THE WITNESS: I'm not sure I understand.

17 EXAMINER PRICE: You said some of the
18 components of the maximum charge provision are
19 recovered from other customers.

20 THE WITNESS: Right, there are tariff
21 riders that contain a max charge provision, yeah.

22 EXAMINER PRICE: So there is going to be
23 some percentage that's not currently recovered from
24 other customers and when you phase out the maximum
25 charge provision, there's going to be additional

1 revenue. Where does that additional revenue go?

2 THE WITNESS: Right, I guess it goes to
3 the company, and I guess I would say it would have
4 the effect of those customers that are now getting
5 the benefit of the max charge paying their fair
6 share.

7 MR. McNAMEE: You've taken the last of my
8 questions.

9 EXAMINER PRICE: I'm sorry.

10 MR. McNAMEE: It's not a problem.

11 EXAMINER PRICE: It was such an
12 interesting topic.

13 EXAMINER MCKENNEY: Redirect,
14 Mr. Sharkey?

15 EXAMINER PRICE: Before you do redirect
16 I'd like to cover my handful of questions.

17 EXAMINER MCKENNEY: Oh, I thought you --
18 apologize.

19 EXAMINER PRICE: No, I'm not done yet,
20 but that way if I mess something up, Mr. Sharkey can
21 correct me.

22 - - -

23 EXAMINATION

24 By Examiner Price:

25 Q. You do have distribution tariffs and

1 generation tariffs and transmission tariffs; is that
2 right?

3 A. Correct.

4 Q. In fact, we famously lost a Supreme Court
5 case on the sole issue of placing the predecessor for
6 the RSR in the wrong tariff.

7 Where is the rate stability charge
8 tariff, the service stability rider, going to go, in
9 the distribution tariffs, the generation tariffs, or
10 the transmission tariffs?

11 A. I believe we propose that as a generation
12 tariff.

13 Q. You're putting in the generation tariff
14 but you represent that it is not a generation charge;
15 is that correct?

16 A. My understanding was that it was -- for
17 financial integrity that would cover the utility as a
18 whole for all business units.

19 Q. So it's not a generation charge.

20 A. My understanding when I developed it was
21 that it was for the utility to operate.

22 Q. So the service stability rider is not
23 related to transmission. It's not related to
24 distribution. Follow along and say yes.

25 A. Yes.

1 Q. It's not related to transmission, is it?

2 A. I guess I'm not sure I'm supporting an
3 opinion on that but --

4 Q. Well, you said it's solely related to
5 financial integrity of the company. So --

6 A. The company, DP&L the utility that owns
7 transmission, distribution, and generation.

8 Q. It has nothing to do with providing
9 standard service offer service, does it?

10 A. I don't know that it does or doesn't.

11 Q. But in your opinion it's solely a
12 financial integrity --

13 A. That's the best that I can testify to.
14 My understanding was that it was a financial
15 integrity charge and I believe there are other
16 witnesses that testified to it.

17 EXAMINER PRICE: Okay. Fair enough.
18 Fair enough.

19 Thank you, Mr. Sharkey.

20 MR. SHARKEY: Your Honor, no questions.

21 EXAMINER MCKENNEY: The witness,
22 Mr. Parke, you're dismissed.

23 THE WITNESS: Thanks.

24 EXAMINER MCKENNEY: I mean excused.

25 Mr. Sharkey. Do you seek the --

1 MR. SHARKEY: Oh, thank you. Yeah, we'd
2 like to have the admission of DP&L Exhibit 7, your
3 Honor.

4 EXAMINER MCKENNEY: Any objection?

5 (No response.)

6 EXAMINER MCKENNEY: It will be admitted.

7 (EXHIBIT ADMITTED INTO EVIDENCE.)

8 EXAMINER MCKENNEY: OCC?

9 MR. BERGER: We would move the admission
10 of OCC Exhibits 11, 12, 13, and 14.

11 EXAMINER MCKENNEY: Any objection?

12 MR. SHARKEY: No objection, your Honor.

13 EXAMINER MCKENNEY: OCC, in regards to
14 OCC 11, 13, and 14, they will be admitted.

15 (EXHIBITS ADMITTED INTO EVIDENCE.)

16 EXAMINER MCKENNEY: However, in regards
17 to OCC 12, we find that there was a lack of
18 foundation for that document and it will not be
19 admitted into the record.

20 MR. BERGER: Thank you, your Honor.

21 EXAMINER MCKENNEY: At this time we will
22 go off the record.

23 (Hearing adjourned at 7:18 p.m.)

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CERTIFICATE

I do hereby certify that the foregoing is a true and correct transcript of the proceedings taken by me in this matter on Wednesday, March 20, 2013, and carefully compared with my original stenographic notes.

Maria DiPaolo Jones, Registered
Diplomate Reporter and CRR and
Notary Public in and for the
State of Ohio.

My commission expires June 19, 2016.

(71892-MDJ)

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

Summary: Transcript in the matter of Dayton Power and Light Company hearing held on 03/20/13 - Volume III - Public Version electronically filed by Mrs. Jennifer Duffer on behalf of Armstrong & Okey, Inc. and Jones, Maria DiPaolo Mrs.