

BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

- - -

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-C,
Columbus, Ohio, called at 9:00 a.m. on Thursday,
March 21, 2013.

VOLUME IV

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Thursday Morning Session,
March 21, 2013.

- - -

EXAMINER PRICE: Good morning. The Public Utilities Commission of Ohio has set for hearing at this time and place Case Nos. 12-426-EL-SSO, et al., being in the Matter of the Application of The Dayton Power & Light Company for Approval of its Electric Security Plan and other matters.

My name is Gregory Price, with me is Bryce McKenney, we are the Attorney Examiners assigned to preside over today's hearing.

We'll dispense with taking appearances of the parties. Do we have any matters we need to address before we go on the record?

(No response.)

EXAMINER PRICE: Seeing none, Mr. McNamee, would you like to call a witness?

MR. McNAMEE: I would, your Honor. At this time the staff would call Shahid Mahmud.

(Witness sworn.)

EXAMINER PRICE: Thank you. Please state your name and business address for the record.

THE WITNESS: My name is Shahid,

1 S-h-a-h-i-d, as in David, middle initial U, last name
2 is Mahmud, M-a-h-m-u-d, as in David.

3 EXAMINER PRICE: Thank you.

4 Mr. McNamee, please proceed.

5 - - -

6 SHAHID MAHMUD

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

9 DIRECT EXAMINATION

10 By Mr. McNamee:

11 Q. Mr. Mahmud, by whom are you employed and
12 in what capacity?

13 A. I'm employed by the Public Utilities
14 Commission of Ohio. I'm a Senior Utility Specialist.

15 MR. McNAMEE: Your Honors, at this time I
16 would like to have marked for identification as Staff
17 Exhibit 1 the redacted testimony of Shahid Mahmud.

18 EXAMINER PRICE: So marked.

19 MR. McNAMEE: And as Staff Exhibit 1A the
20 confidential testimony of Shahid Mahmud.

21 EXAMINER PRICE: That will also be so
22 marked.

23 (EXHIBITS MARKED FOR IDENTIFICATION.)

24 MR. McNAMEE: By the way, I have copies
25 of both the confidential and redacted versions of

1 Mr. Mahmud's testimony for the convenience of the
2 parties, should anybody be interested.

3 EXAMINER PRICE: The Bench needs a copy
4 of the confidential.

5 MR. McNAMEE: I've given the Bench copies
6 of -- both of you both of the documents.

7 EXAMINER PRICE: Very well.

8 MR. McNAMEE: Also the reporter.

9 EXAMINER PRICE: Thank you.

10 MR. McNAMEE: Certainly.

11 Q. (By Mr. McNamee) Mr. Mahmud, you have
12 before you what's been marked for identification as
13 Staff Exhibits 1 and 1A.

14 A. Yes, I do.

15 Q. Okay. What are they?

16 A. They are my prefiled testimony and the
17 exhibits.

18 Q. Okay. And those were prepared by you or
19 under your direction?

20 A. Yes.

21 Q. Do you have any corrections to make to
22 either of these documents?

23 A. I don't.

24 Q. Okay. Are the contents of these
25 documents true to the best of your knowledge and

1 belief?

2 A. To the best of my knowledge they are
3 true.

4 Q. If I were to ask you the questions
5 contained within what's been marked for
6 identification as Staff Exhibits 1 and 1A again here
7 this morning, would your answers today be as
8 presented therein?

9 A. Yes.

10 MR. McNAMEE: With that the witness is
11 available for cross.

12 EXAMINER PRICE: Thank you.

13 Let's go off the record for one moment.
14 (Discussion off the record.)

15 EXAMINER PRICE: Let's go back on the
16 record.

17 Mr. Oliker.

18 MR. OLIKER: Thank you, your Honor.

19 - - -

20 CROSS-EXAMINATION

21 By Mr. Oliker:

22 Q. Good morning, Mr. Mahmud.

23 A. Morning.

24 Q. Can you hear me okay? I know we have --

25 A. No, that's fine.

1 Q. We have noise in the background. Let me
2 know if I'm not talking loud enough, I'm a little
3 hoarse.

4 MR. FARUKI: Your Honor, do we want to go
5 on the confidential record?

6 EXAMINER PRICE: Do you have any public
7 issues before we go on the confidential record?

8 MR. OLIKER: I have a few, but it's going
9 to probably happen quickly.

10 MR. McNAMEE: And I suspect his answers
11 may well be confidential even if the questions
12 aren't.

13 MR. OLIKER: Yeah.

14 EXAMINER PRICE: Let's take a shot at it.
15 Do as much publicly as we can.

16 MR. OLIKER: As soon as I get there I'll
17 try to let you know; I've got a bad track record
18 there but I'll do my best.

19 EXAMINER PRICE: We'll all try to keep
20 aware.

21 Q. (By Mr. Oliker) Mr. Mahmud, which
22 materials did you review before preparing your
23 testimony?

24 A. The materials I used primarily is the
25 company exhibits by Dr. Chambers and Mr. Jackson.

1 Q. When you say that, did you say the
2 company "exhibit" or "exhibits"?

3 A. Company exhibits.

4 Q. Okay. Which ones were those?

5 A. WJC-3 and CLJ-2. WJC-3.B and CLJ-2.

6 Q. Thank you.

7 Are there any other materials you
8 reviewed, perhaps interrogatories?

9 A. Yes. I have used some public information
10 from Value Line.

11 Q. What was the purpose of using Value Line?

12 A. The purpose of using Value Line was to
13 find out the comparable electric utilities that
14 capitalize on structure debt and equity percentages.

15 Q. I'm not sure I heard your answer
16 correctly. Did you review any of DP&L's responses to
17 interrogatories?

18 A. Could you rephrase that question again,
19 please?

20 Q. Did you review any of the company's
21 responses to interrogatories?

22 A. No.

23 Q. Have you been sitting in on the hearing
24 for the past week?

25 A. Off and on.

1 Q. Did you review any of the company's
2 responses to requests for production of documents?

3 A. I did not.

4 Q. Were you here during the hearing when
5 evidence was introduced regarding transaction
6 confirmation reports from the company with respect to
7 its sales to its affiliate DPLER?

8 A. I do not recall.

9 EXAMINER PRICE: Mr. Mahmud, when you say
10 you've been in and out of the hearing, can you tell
11 the Bench which witnesses that you were here for and
12 which witnesses -- at least which witnesses you were
13 here for.

14 THE WITNESS: I was temporarily when
15 Craig Jackson was interviewed as well as for a while
16 I was with -- I was there when Dr. Chambers was being
17 presented, but I had other projects so I was off and
18 on.

19 EXAMINER PRICE: So those are the only
20 two witnesses.

21 THE WITNESS: That I remember.

22 EXAMINER PRICE: No other witnesses.

23 THE WITNESS: To my knowledge.

24 EXAMINER PRICE: Okay.

25 Q. (By Mr. Olikier) Were you here for all of

1 Craig Jackson's testimony?

2 A. No, I wasn't here in either of those
3 cases.

4 Q. Have you reviewed the operating
5 procedures of DP&L that govern transfer prices
6 between transactions between Dayton Power & Light and
7 DPLER?

8 A. No.

9 Q. Did you listen in on any of the
10 depositions of company witnesses?

11 A. I do recall I listened for a very short
12 time because I had other projects, so I cannot
13 recollect how much I did because the deposition was
14 going for longer and I couldn't afford to listen to
15 it.

16 Q. Which witnesses did you listen in on
17 their deposition?

18 A. To the best of my knowledge I was
19 listening to Mr. -- Dr. Jackson's -- I'm sorry.
20 Dr. Chambers' deposition, that's what I can
21 recollect.

22 Q. Just Dr. Chambers?

23 A. That's what I recollect, yes.

24 Q. Did staff listen in on the depositions of
25 other witnesses, if you know?

1 A. There are other staffs, I know that they
2 have listened to the depositions, yes.

3 Q. Do you know which witnesses?

4 A. I think Dr. Choueiki is one of them.

5 Q. Do you know which DP&L witnesses'
6 depositions they listened to?

7 A. I don't know.

8 Q. Did you review any of the transcripts
9 from the depositions of DP&L's witnesses?

10 A. That also answer is partly I reviewed
11 Dr. Chambers' transcript partly because I didn't have
12 enough time to.

13 Q. Any other witnesses?

14 A. No.

15 Q. Could you please turn to page 3 of your
16 testimony.

17 A. Yeah.

18 Q. On page 3 you state that you adopted --

19 EXAMINER PRICE: Can we go off the record
20 for one second.

21 (Discussion off the record.)

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

24 Mr. McNamee.

25 MR. McNAMEE: Your Honor, for the sake of

1 clarity I would suggest that we might mark the,
2 what's been denominated for identification as Staff
3 Exhibit 1A with page numbers. The first page that
4 begins with "Please state your name and business
5 address" already has a 1 on it, I would suggest that
6 we mark the succeeding pages as 2 through 7 for
7 clarity for purposes of the cross-examination.

8 EXAMINER PRICE: Thank you. We will do
9 so.

10 Now, Mr. Oliker, would you care to
11 rephrase your last question?

12 MR. OLIKER: Yeah, thank you, your Honor.

13 Q. (By Mr. Oliker) Going to page 3 of your
14 testimony, you state that you have adopted Revised
15 WJC-3.B which was presented by Company Witness
16 William Chambers, correct?

17 A. Yes, sir.

18 Q. And you say that WJC3 dash -- strike
19 that.

20 You say that WJC-3.B starts with CLJ-2,
21 which was presented by Witness Craig Jackson, and
22 then applies a pro forma debt adjustment and removes
23 a switching tracker.

24 A. Yes.

25 Q. Do you have a copy of WJC-3.B and CLJ-2

1 with you?

2 A. Yes, I do.

3 Q. Now, can you tell me the discrepancies
4 between WJC-3.B and CLJ-2?

5 MR. FARUKI: I'll object to the form.
6 I'm not sure what "discrepancies" means at this
7 point.

8 MR. OLIKER: Differences is all I'm
9 looking for, how did they change.

10 A. The discrepancies in the debt adjustment
11 in Dr. Chambers' as compared with Mr. Jackson.

12 Q. Between WJC-3.B and CLJ-2?

13 A. Yes.

14 Q. Would you agree there are other
15 differences including the switching tracker or
16 removal of the switching tracker, I'm sorry?

17 Maybe I can state it differently,
18 Mr. Mahmud.

19 Would you agree that the wholesale
20 revenues in WJC-3 are different than the wholesale
21 revenues in CLJ-2?

22 A. Yes.

23 Q. And the reason for that is because WJC-3
24 models incremental switching without a switching
25 tracker, correct?

1 A. WJC-3 does not include switching tracker.

2 Q. But it does model the incremental
3 switching impact on the company, correct?

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

5 EXAMINER PRICE: Mr. Oliker, do we need
6 to go on the confidential transcript at this point?

7 MR. OLIKER: It might be a good idea.

8 EXAMINER PRICE: Okay, at this point
9 we'll go to the confidential portion of the
10 transcript. Any parties that do not have a
11 protective agreement with FirstEnergy [verbatim]
12 should please excuse themselves now.

13 Please proceed, Mr. Oliker.

14 (Confidential portion excerpted.)

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(Open record.)

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CROSS-EXAMINATION

By Ms. Grady:

Q. Good morning, Mr. Mahmud.

A. Good morning.

Q. Now, on page 1 of your testimony you indicate that in your current position you process a number of items, do you not?

Is that a "yes"?

1 A. I do.

2 Q. Thank you. And one of the items that you
3 list is that you process applications for emergency
4 rate increases; is that right?

5 A. That's -- yes, I do.

6 Q. And, in fact, Mr. Mahmud, you have
7 submitted testimony in emergency rate increase
8 proceedings, correct?

9 A. Yes, I did.

10 Q. Can you tell me what the standards are
11 for evaluating an emergency request for rate
12 increase?

13 MR. FARUKI: I'll object. Calls for a
14 statement of legal standards and, therefore, is
15 seeking a legal opinion and conclusion.

16 MR. McNAMEE: I object.

17 EXAMINER PRICE: Grounds?

18 MR. McNAMEE: Relevance.

19 MR. FARUKI: I'll join that objection.

20 EXAMINER PRICE: Mr. Faruki, on
21 relevance. Your witness testified in the MRO ESP
22 case that your company can get the equivalent of an
23 SSR in an MRO because of the tie-in to the financial
24 emergency that's in the statute.

25 That has got to be the exact same topic

1 that he's asking -- that she's about to ask the
2 questions on so I will overrule the relevance
3 objection, however, on the first objection, which was
4 legal conclusion.

5 MR. FARUKI: Legal conclusion or opinion.

6 EXAMINER PRICE: Just phrase it so you're
7 not asking for a legal opinion. If you want to ask
8 him what his experience is, that's fine.

9 Q. (By Ms. Grady) Mr. Mahmud, in your
10 experience in the emergency rate increase cases how
11 did the staff evaluate whether or not the increase
12 should be recommended?

13 A. In an emergency rate case normally the
14 utility, when they run short of their cash -- it's
15 purely a cash flow issue. When they have a low cash
16 flow, they cannot meet their expense, they come
17 before the Commission for an emergency rate relief.
18 It is called a rate relief but it's not really
19 because it's for a transitional period of time. An
20 emergency rate relief is conditioned upon filing a
21 base rate case within a reasonable time.

22 Q. Is one of the standards that you would
23 look at, Mr. Mahmud, as to whether the relief they're
24 requesting is extraordinary in nature?

25 MR. FARUKI: Same objection, your Honor.

1 That's part of the Commission case law.

2 EXAMINER PRICE: I think she's asking
3 what his experiences are in terms of processing these
4 cases.

5 A. My experience in the emergency rate case
6 handling is not too many.

7 Q. I'm sorry?

8 A. My experience of handling the emergency
9 rate cases are not too many. Emergency rate cases
10 come to this Commission on a very rare occasion. The
11 last one was Akron Thermal emergency rate case.

12 Q. And in the Akron Thermal rate case you
13 presented testimony; did you not?

14 A. I did.

15 Q. And as part of your testimony,
16 Mr. Mahmud, do you recall supporting staff comments
17 filed in that case?

18 A. I did.

19 MS. GRADY: May I approach the witness,
20 your Honor?

21 EXAMINER PRICE: You may.

22 MS. GRADY: If I can hover over the
23 witness, I promise not to touch him.

24 EXAMINER PRICE: Okay.

25 THE WITNESS: You can touch me. Off the

1 record.

2 (Laughter.)

3 Q. Mr. Mahmud, I'm showing you what is a
4 document that says "Staff Comments and
5 Recommendations." Do you recognize that document?

6 A. I do.

7 MR. McNAMEE: Your Honors, is the
8 intention to mark this or notice it or something?

9 MS. GRADY: No, I'm not going to mark it,
10 I've just got some questions to ask about it.

11 MR. FARUKI: Are there copies for us?

12 MS. GRADY: No, I did not make extra
13 copies as I was not intending to move it as an
14 exhibit.

15 EXAMINER PRICE: Feel free to --

16 MR. FARUKI: I'll wait but before
17 substantive inquiry I'd like to look at it.

18 A. Yes, I recommend this as the comments.

19 Q. Now, as part of your testimony do you
20 recall in that proceeding that you sponsored portions
21 of those staff comments and recommendations?

22 A. It was a clarification because there are
23 three staffs involved in this case, my involvement
24 was in the AIS portion so my involvement in this
25 proceeding was only on the issuance of the

1 securities. While other staff members worked on the
2 emergency rate case interim portion.

3 Q. You did submit testimony, did you not, in
4 this case?

5 A. I did submit testimony on the AIS portion
6 only.

7 MS. GRADY: If I can go back to my . . .
8 May I approach the witness, your Honor.

9 EXAMINER PRICE: You may.

10 MR. McNAMEE: Wait a minute.

11 MS. GRADY: I'm sorry.

12 MR. McNAMEE: What have we got now?

13 MS. GRADY: Testimony.

14 MR. McNAMEE: From the same?

15 MS. GRADY: Yes.

16 MR. McNAMEE: Gotcha.

17 Q. (By Ms. Grady) Mr. Mahmud, I'm going to
18 show you a document that is your -- or, I'm going to
19 show you a document and ask you if you are familiar
20 with that document.

21 A. Yes.

22 Q. Is that document the testimony that you
23 submitted in the Akron Thermal case, if you know?

24 A. Yes.

25 Q. And could you take a moment to review

1 that document.

2 A. Yes, I do.

3 Q. And do you see in your testimony that you
4 sponsored part of the staff comments in that case?

5 A. Yes.

6 Q. And can you tell me which portions of the
7 staff comments you were responsible for sponsoring?

8 A. That has been 12, 13 years back, I don't
9 recall because on average I process a lot of finance
10 cases so I have to look at it, which part I did
11 sponsor.

12 Q. Yes.

13 MR. FARUKI: Your Honor, while he's
14 looking may I examine the other?

15 EXAMINER PRICE: You may.

16 A. Yes, I believe on page 10, determination
17 of the cash deficiency was part of my contribution to
18 this Staff Report.

19 Q. And, Mr. Mahmud, were you also
20 responsible for sponsoring the introduction and
21 summary of those staff comments?

22 A. I do not believe so because my division
23 chief worked on the most part of it.

24 Q. But would you agree with me in your filed
25 testimony you were asked what portion of the staff

1 comments and recommendations you were sponsoring and
2 your answer was "I am sponsoring the following
3 sections and attachments to the staff comments and
4 recommendations," and you have A, introduction; B,
5 summary; C, background; D, conclusion; and E,
6 attachments 5 through 7? Was that your testimony?

7 A. Yes, I believe so. Yes.

8 Q. And if we go to those staff comments, if
9 I would direct your attention to the introduction in
10 that staff comments, does the introduction contain,
11 Mr. Mahmud, the applicable standards governing
12 emergency rate relief?

13 MR. FARUKI: Objection.

14 EXAMINER PRICE: Grounds?

15 MR. FARUKI: Again, this is an attempt to
16 elicit a statement of Commission standards that can
17 be found in Commission case law, and in addition none
18 of the parties here have had the chance to review
19 this document.

20 EXAMINER PRICE: Was this document
21 provided in discovery?

22 MR. FARUKI: No.

23 EXAMINER PRICE: Ms. Grady.

24 MS. GRADY: It's available on the
25 website, your Honor.

1 MR. FARUKI: It's a 13-year-old case,
2 your Honor, and we're supposed to anticipate,
3 apparently, under that reasoning, that a party would
4 offer the testimony in a 13-year-old case of a
5 witness who sponsored a piece of a Staff Report on
6 the legal standards that apply to an issue?

7 EXAMINER PRICE: Did you ask for all
8 potential exhibits in your discovery requests?

9 MR. FARUKI: I believe we did. It's in
10 our first request for production of documents.

11 MR. SHARKEY: Yes, your Honor. We sent
12 interrogatories asking them to identify any documents
13 they may use as exhibits. These were not included in
14 their response.

15 MS. GRADY: It was identified this week,
16 your Honor, in the preparation of cross-examination.

17 EXAMINER PRICE: I'm sorry, if she
18 identified it, it's fair game.

19 MR. SHARKEY: I don't --

20 MS. GRADY: I mean, let me be correct,
21 your Honor. I determined I would use it for purposes
22 of cross-examination. I did not determine that I was
23 going to use it for an exhibit.

24 And I did not convey that determination
25 to the company, as I would not expect that

1 information that I'm using for purposes of
2 cross-examination is something that's subject to
3 discovery when it's not used as an exhibit.

4 EXAMINER PRICE: If you're going to use
5 it strictly for purposes of cross-examination, then I
6 don't think that's precisely what you're doing here.
7 You're not using this to impeach this witness, you're
8 simply asking him if he's familiar.

9 You want to go back over there and ask
10 him if he's familiar with the Commission standards
11 and then if he says no and you want to impeach him,
12 that would be using it for purposes of
13 cross-examination. Just having him read it into the
14 record is not proper cross-examination.

15 MS. GRADY: I thought we were at that
16 point. I thought I inquired earlier as to whether he
17 knew of the standards and he did not. He did not
18 relay the standards. But I can go ahead and try
19 again.

20 EXAMINER PRICE: I thought what he said
21 was "I haven't worked on very many of these cases."

22 MR. FARUKI: Right.

23 EXAMINER PRICE: It may not have been a
24 really responsive answer, but you didn't object to
25 that.

1 MS. GRADY: I can go --

2 EXAMINER PRICE: Go through this.

3 MS. GRADY: Yes, I can stay here because
4 I think I'm going to have to come back up here.

5 EXAMINER PRICE: Actually, I think it
6 would be best if you at least give him a little bit
7 of space.

8 MS. GRADY: I'm sorry.

9 EXAMINER PRICE: That's fine, you don't
10 have to go all the way back to your spot.

11 Q. (By Ms. Grady) Mr. Mahmud, are you
12 familiar with the standards that the staff would
13 apply when considering an application for emergency
14 rate relief?

15 MR. FARUKI: I'll object unless this just
16 calls for a "yes" or "no."

17 A. The question of familiarity ties with the
18 number --

19 EXAMINER PRICE: I haven't ruled on the
20 objection yet.

21 THE WITNESS: I'm sorry, your Honor.

22 EXAMINER PRICE: We're going to overrule
23 the objection. He clearly is not going to give a
24 "yes" or "no" answer.

25 Go ahead, Mr. Mahmud, give him your

1 non-"yes" or "no" answer.

2 A. I'm familiar with it as far as the
3 Commission rules concerning the emergency rate
4 relief, but as I mentioned earlier, they come once in
5 a blue moon and that's not a familiar or usual work
6 area that I am working on. The case you're referring
7 to is a 13-year-old case, that hardly -- goes beyond
8 my recollection.

9 Q. Are you familiar with a factor that
10 would -- a criteria that would consider whether or
11 not the relief is extraordinary?

12 MR. FARUKI: Same objection I made
13 earlier to that question, your Honor, about
14 extraordinary relief. Seeking a legal opinion or
15 conclusion about a standard in the Commission case
16 law.

17 EXAMINER PRICE: She's just asking about
18 his familiarity. We'll allow this question.

19 A. Yes, I am familiar to the extent when the
20 applicant files an application under an AEM
21 sufficient fixer, the applicant demonstrates that the
22 need for that rate relief is emergency in nature.

23 Q. And are you familiar with the scrutiny
24 that is generally given to a claim for emergency rate
25 relief?

1 MR. McNAMEE: Objection.

2 MR. FARUKI: I'll object, your Honor.

3 Level of scrutiny is a legal standard.

4 EXAMINER PRICE: Sustained.

5 Q. Now, Mr. Mahmud, if you know, is the
6 ultimate question in an emergency case that absent
7 the relief being requested, that the utility's
8 ability to render service will be impaired or that
9 the utility will be financially impaired?

10 MR. FARUKI: Objection.

11 EXAMINER PRICE: Conclusion?

12 MR. FARUKI: Yes.

13 EXAMINER PRICE: I'm going to sustain the
14 objection.

15 Ms. Grady, if you can just ask him what's
16 the basis of staff's recommendation, I would allow
17 it, but if you're saying what the ultimate decision
18 is based upon, that's asking what the Commission
19 decides. You can ask him what he does when he
20 processes financial emergency, or, an emergency rate
21 case.

22 MS. GRADY: Thank you.

23 Q. When you process a financial emergency
24 case and you make a recommendation to the Commission,
25 what is that recommendation based on?

1 MR. FARUKI: I'm going to object now for
2 lack of foundation. A few answers ago he said that
3 this is not a familiar or usual work area for him to
4 be working on.

5 EXAMINER PRICE: He can answer if he
6 remembers.

7 A. Could you rephrase your question, please?

8 Q. When you are --

9 EXAMINER PRICE: Do you want her to
10 rephrase it or repeat the question?

11 THE WITNESS: I'm sorry, repeat the
12 question, yeah.

13 EXAMINER PRICE: Can you read the
14 question back?

15 (Record read.)

16 A. An emergency rate case is not done by a
17 single person. There are accounting aspect of it and
18 then financial aspect of it. So it's a group work.
19 And the recommendations are based on the group
20 contributions. It's not a single person's
21 recommendation.

22 Q. And as a staff person would you be
23 looking at the utility's ability -- whether or not
24 the utility had the ability to render service?

25 MR. FARUKI: May I have a continuing

1 objection to this line, your Honor?

2 EXAMINER PRICE: Your continuing
3 objection is noted. He can answer if he knows.

4 A. As I mentioned earlier, that the part of
5 the accounting thing that I determined are provided
6 to the financial staff and then a number is
7 determined that this is the amount of the net
8 deficiency, cash deficiency, and that is what my role
9 would be in that analysis.

10 Q. And would you consider the number as
11 minimally compensatory?

12 A. Based on whatever the accounting staff
13 has determined the level of deficiency staff would,
14 yes.

15 Q. Now, is one of the things you would look
16 at in an emergency rate case the coverage ratios of
17 the company?

18 A. Yes.

19 Q. And when I use the term "coverage ratio,"
20 what do you think that means? What does that term
21 mean?

22 A. That the income is sufficient to service
23 their debt.

24 Q. Now, with respect to this case, the
25 present case before the Commission, did the staff of

1 the Commission consider the company's filing for a
2 financial stability rider as a request for emergency
3 rate relief?

4 A. An emergency rate relief case is suffixed
5 by AEM, case suffix, and this is a standard service
6 offer, so I would not consider or characterize it to
7 be an emergency rate case.

8 Q. That's because of the form that it was
9 filed in; is that correct?

10 A. That is because of the essence of it
11 because emergency is for a short-term and this is for
12 a five-year term.

13 Q. Did the staff make an evaluation of
14 whether or not the financial stability rider
15 requested by DP&L is, at a minimum level, necessary
16 to avert or relieve an emergency?

17 A. My answer goes the same, this is not an
18 emergency.

19 Q. Did the staff -- let me strike that.

20 Now let's talk for a moment about your
21 responsibilities in this proceeding which you
22 identify in response to question No. 5. Do you have
23 that in front of you?

24 A. Yes.

25 Q. You say there that you were to provide

1 two estimates of an SSR charge for a three-year
2 period that will result in an average ROE for DP&L;
3 do you see that?

4 A. I do.

5 Q. And one was based on an average ROE
6 of . . .

7 EXAMINER PRICE: Ms. Grady, you just --
8 you just gave the confidential information out.
9 Let's roll back, put this question --

10 MS. GRADY: I'm sorry.

11 EXAMINER PRICE: -- on the confidential
12 portion of the transcript.

13 MS. GRADY: I apologize. I was on a roll
14 and not realizing, well, I thought I was on a roll.

15 EXAMINER PRICE: We are now on the
16 confidential portion of our transcript.

17 (Confidential portion excerpted.)

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(Open record.)

EXAMINER PRICE: In the event that the witness believes an answer might call for confidential information, he should notify the Bench before he gives his answer.

Let's proceed, Mr. Alexander.

- - -

CROSS-EXAMINATION

By Mr. Alexander:

Q. Mr. Mahmud, my name is Trevor Alexander, I'm one of the lawyers for FirstEnergy Solutions. Just a couple of questions.

You already testified you used Exhibit

1 WJC-3.B as the starting point for your calculations.
2 If adjustments were made to the numbers included in
3 Exhibit WJC-3.B, would those, then, flow through to
4 your exhibits?

5 A. If I understand your question correctly,
6 the adjustment made by other staff members were
7 incorporated in this exhibit which is reflected in my
8 testimony.

9 Q. No, I apologize. I'll trying to be more
10 clear.

11 The numbers included in Mr. Chambers'
12 testimony were changed. Would that then change the
13 numbers which your testimony uses as a starting
14 point?

15 A. Yes.

16 Q. If Witness Benedict makes any corrections
17 to his testimony, would those corrections then flow
18 through into your testimony?

19 A. That is correct.

20 Q. Please turn your attention to Exhibits
21 SUM-2 and SUM-4. Each of these exhibits at the top
22 of the page reference a time period 2013 to 2017 in
23 bold there at the top of the page. Do you see that?

24 A. In my testimony or --

25 Q. In your testimony, in your Exhibits SUM-2

1 and SUM-4.

2 A. Yes. Yes.

3 Q. Is that a typographical error?

4 A. It is a typographical error. I apologize
5 for that.

6 Q. Does your testimony address any potential
7 increases in distribution revenues over the next
8 three years?

9 A. My calculation is the total revenues, so
10 I didn't look at the distribution revenue per se.

11 Q. An increase in distribution revenues from
12 that projected by Mr. Chambers.

13 Let me reask the question to make sure
14 the record is clear.

15 Does your testimony take into account any
16 potential increase in distribution revenues over that
17 included in Mr. Chambers' WJC-3.B?

18 A. Whatever is in WJC-3.B is what my base
19 was and then I incorporated Staff Benedict's numbers.

20 Q. And if additional distribution revenues
21 were incorporated into your calculations, then you
22 could reduce the SSR value on a dollar-for-dollar
23 basis and still reach the same projected operating
24 income; is that correct?

25 A. That is correct.

1 MR. FARUKI: I'll object to the
2 incomplete hypothetical.

3 MR. ALEXANDER: Your Honor, he's already
4 answered the question. I believe he understood it.

5 EXAMINER PRICE: You need to wait on the
6 objections.

7 Overruled.

8 Q. Does your testimony consider -- strike
9 that.

10 Were you present in the hearing room when
11 Company Witness Jackson discussed capital expense
12 reductions?

13 A. I was off and on during both the
14 company's witnesses so I cannot recollect.

15 Q. Okay. And is it your understanding that
16 the capital expense reductions testified to by
17 Company Witness Jackson are not included in
18 Mr. Chambers' Exhibit WJC-3.B?

19 A. I do not recollect what he said during
20 the -- his witness.

21 Q. If capital expenses are decreased, would
22 that have the effect of lowering Dayton Power &
23 Light's plant-in-service?

24 THE WITNESS: Can you read the question
25 again, please?

1 (Record read.)

2 A. I don't have an answer to that question.

3 Q. Okay. If plant-in-service is decreased,
4 would that have an effect on Dayton Power & Light's
5 depreciation expense?

6 MR. FARUKI: Objection. Lack of
7 foundation.

8 EXAMINER PRICE: Sustained.

9 Q. When you created your Exhibit SUM-1 -- I
10 would direct your attention to line 5. Do you see
11 that?

12 A. I'm at SUM-1. Yeah. What was the
13 question?

14 Q. Without discussing the numbers included
15 within that exhibit, what is the caption of line 5?

16 A. "Depreciation and amortization."

17 Q. Can you explain what you understand
18 depreciation and amortization to mean?

19 A. I believe depreciation is loss of the
20 service life of the plant.

21 Q. And where did you obtain the numbers you
22 used to populate line 5 of Exhibit SUM-1?

23 A. That's from WJC-3.A.

24 Q. And you understand those numbers to be
25 the company's estimates of depreciation over that

1 three-year period?

2 A. Yes.

3 Q. So if -- does plant-in-service have any
4 impact on the company's calculation of projected
5 depreciation?

6 A. Yes.

7 Q. So if plant-in-service is decreased,
8 would that lower depreciation expense?

9 A. Theoretically, yes.

10 Q. And if -- please turn your attention to
11 Exhibit SUM-2, particularly line 22. What is the
12 caption for that line?

13 A. "General taxes."

14 Q. And do you understand that line to
15 include property taxes?

16 A. As mentioned earlier, that I do not do
17 the accounting portion of this so I just relied on
18 these things as the depreciation, other staff members
19 worked on the depreciations, so.

20 MR. ALEXANDER: I apologize, there's a
21 heater going back here, it's difficult to hear.
22 Maria, could you read that answer back, please, or
23 your Honor, may I have the answer read back, please?

24 EXAMINER PRICE: You may.

25 Q. Mr. Mahmud, my question was on property

1 taxes, not depreciation. Are property taxes included
2 in line 22 of your Exhibit SUM-2?

3 A. I could not give a correct answer because
4 I'm not involved there, the accounting aspect of it.

5 Q. Okay. So would it be fair to say you
6 don't know where property taxes are incorporated in
7 this exhibit?

8 A. That is correct.

9 Q. Okay. Is it your understanding that
10 property taxes are incorporated in this exhibit?

11 A. I do not know the answer to the question
12 either.

13 Q. Let's return our focus to depreciation.
14 If depreciation expense is reduced, holding all else
15 constant, would that have the effect of increasing
16 net income?

17 MR. McNAMEE: I might interpose an
18 objection here.

19 EXAMINER PRICE: You may.

20 MR. McNAMEE: The staff witness who
21 addresses depreciation for taxes is Lipthratt, not
22 Mahmud.

23 EXAMINER PRICE: I think he's just asking
24 the mechanics of SUM-2. Is that correct,
25 Mr. Alexander?

1 MR. ALEXANDER: That's correct, your
2 Honor.

3 EXAMINER PRICE: That being the case,
4 overruled.

5 Can we have the question reread, please?

6 (Record read.)

7 A. Theoretically, yes.

8 Q. And if net income was increased, and I'm
9 not asking you to do the math on the stand, but if
10 net income was increased, then the SSR value could be
11 decreased and still lead to the same operating income
12 which is found on line 25 of your testimony.

13 A. Yes, I believe so.

14 Q. Through your use of Mr. Chambers' exhibit
15 as a starting point -- well, let me ask you to direct
16 your attention to Exhibit 1, SUM-1, in particular
17 line 16. Do you see that reference?

18 A. Yes.

19 Q. Through your use of Mr. Chambers' exhibit
20 as a starting point, your exhibits 1 and 3 do not
21 assume any dividend payments over the relevant
22 period; is that correct?

23 A. Yes.

24 Q. And are you aware of whether or not
25 Dayton Power & Light has recently paid dividends to

1 its shareholder?

2 A. I'm not aware of it. I am not aware of
3 it.

4 Q. And just focusing on the effect on
5 financial statements, if Dayton Power & Light does
6 not pay a dividend, then retaining those funds acts
7 as an increase to owners' equity?

8 A. That is correct.

9 Q. Holding all else constant, if owners'
10 equity is increased, would that have the effect of
11 decreasing projected return on equity?

12 A. That is correct.

13 Q. So Dayton Power & Light's assumption of
14 zero dividend payments over the next several years
15 has the effect of lowering its projected return on
16 equity.

17 A. In this mechanism, yes.

18 Q. And if Dayton Power & Light is assumed to
19 pay dividends over the ESP period, would that have
20 the effect of lowering the SSR values that you
21 calculated?

22 A. Can you rephrase the question, please?

23 Q. Would you like me to repeat the question
24 or --

25 A. Rephrase the question, please.

1 Q. Okay. Please assume that Dayton Power &
2 Light pays dividends over the ESP period. Do you
3 understand that assumption?

4 A. (Witness nods.)

5 Q. If you make that assumption, would that
6 have the effect of lowering the amount of SSR needed
7 to reach the same return on equity?

8 A. I believe that will defer them because
9 then the equity number is lowered because dividends
10 out from the mix. Let's assume that the equity is
11 hypothetically say \$900 million and let's say
12 dividend is 50. If it doesn't declare the dividends
13 theoretically next year it's like \$950 million, that
14 will function into ROE based on the net income.

15 When the dividends is declared, then net
16 income is already reduced. I'm sorry, strike that.

17 If the dividend is paid, then the 900
18 equity stays the same, and then if we divide net
19 income by 900, it will be different than the previous
20 one.

21 Q. And then it would be higher.

22 A. It would be higher.

23 Q. I'm not sure that came out clean in the
24 record. So if Dayton Power & Light is assumed to pay
25 dividends over the ESP period, would that have the

1 effect of lowering the SSR value needed to reach the
2 same return on equity?

3 A. To reach the same return on equity, as I
4 calculated that, SSR stays the same to -- assuming
5 that the dividend is not declared. If the dividend
6 is declared, then you need more SSR to arrive at.
7 You need less SSR to arrive at the ROE, yes.

8 Q. So if you assume a dividend is declared,
9 the SSR value needed to reach the same target ROE
10 number would be lower; is that correct?

11 A. That is correct.

12 Q. You are not advocating or testifying that
13 Dayton Power & Light needs additional funds to
14 protect its financial integrity; is that correct?

15 A. I am recommending two alternative
16 scenarios of SSR so that the applicant gets a return
17 equity that I targeted.

18 Q. But my question was are you -- I
19 understand the way you calculated the SSR values, and
20 my question is: Are you recommending in this case
21 that DP&L needs additional funds to maintain its
22 financial integrity?

23 MR. McNAMEE: Objection.

24 EXAMINER PRICE: Grounds?

25 MR. McNAMEE: I believe the witness

1 previously testified that he is not recommending
2 either scenario.

3 MR. ALEXANDER: Your Honor, may I
4 respond?

5 EXAMINER PRICE: You may.

6 MR. ALEXANDER: The witness has
7 repeatedly testified as to what he did and I'm just
8 trying to understand the scope of what that is.
9 Mr. McNamee's previous objection said the witness
10 wasn't providing that opinion, I'd just like to hear
11 it from the witness.

12 EXAMINER PRICE: Let's allow the
13 question.

14 A. What I'm presenting is two alternative
15 scenarios, I did not give an opinion of myself which
16 one should the Commission take, I just presented
17 before the Commission two alternative scenarios with
18 two different SSRs.

19 Q. Mr. Mahmud, are you opining in this case
20 as to whether Dayton Power & Light needs additional
21 funds to maintain its financial integrity?

22 A. Absent SSR I would assume that Dayton
23 Power & Light will suffer for financial integrity.
24 Will have an effect on their financial integrity.

25 Q. And where is that discussion in your

1 testimony?

2 MR. FARUKI: Your Honor, while he's
3 looking I'd ask the court reporter to mark that
4 answer.

5 A. Well, in my testimony, page 5, I mention
6 in the last line "If the Commission finds that the
7 Company requires a payment to preserve its financial
8 integrity, I recommend that the Commission grant the
9 Company an annual SSR charge of \$133 million for a
10 period of three years. This charge is based on a
11 targeted average ROE of 6.2 percent...."

12 I have not opined that, I just presented
13 a scenario where if the Commission thinks that this
14 fund is required to maintain the financial integrity
15 of the company.

16 Q. So you're not providing an opinion on
17 staff's behalf that Dayton Power & Light needs
18 additional funds to maintain financial integrity;
19 you're discussing the financial integrity
20 determination which needs to be made by the
21 Commission in this case.

22 A. That is correct.

23 MR. ALEXANDER: Your Honor. Could I have
24 just a minute, your Honor?

25 EXAMINER PRICE: Yes.

1 Q. Mr. Mahmud, could you please turn your
2 attention to page 6, question 9 of your testimony.

3 A. Yes.

4 Q. In response to this question you provide
5 a lengthy discussion of financial integrity factors
6 that the Commission should weigh; is that correct?

7 A. Yes. Yes.

8 Q. And the Commission should also consider
9 the impact of the SSR on customers; is that right?

10 A. That is a thing the Commission will
11 decide the impact of the SSR.

12 Q. And earlier you testified regarding
13 staff's concerns and in particular your department's
14 concerns regarding the relationship between Dayton
15 Power & Light and unregulated affiliates; is that
16 correct?

17 A. Yes.

18 Q. And I'd like to drill down specifically,
19 do you recall discussing financial-related concerns
20 that you had had and your department had had?

21 A. As regards to financial issues, it has
22 always been an ongoing issue as in when the utility
23 either issues a new obligation or refinance an
24 obligation. The staff strictly confines that
25 recommendation to the Commission that all these

1 financing or refinancing shall be in compliance with
2 the utility's electric transition plan, rate
3 stabilization plan, and SSO case.

4 That has always been a concern, continues
5 to be a concern as long as the matters is settled and
6 then the obligations are followed that the utility is
7 carved out from the nonutility business.

8 Q. I apologize, it's hard to hear, did you
9 say corporate separation plan?

10 A. Yeah, I mean, yes, corporate separation
11 plan.

12 Q. And the staff's concern with regard to
13 the corporate separation plan and financing in
14 particular related to the use of distribution
15 revenues to pay pollution control bonds.

16 A. As of now all the obligations including
17 the pollution control bonds are the obligation of
18 vertically integrated Dayton Power & Light Company.
19 These will be -- Dayton Power & Light Company is the
20 ultimate obligor to this obligation until the last
21 dollar met.

22 In the event of the corporate separation,
23 the obligation that follows the nonwire business,
24 which is generation, some mechanism need to be
25 developed to demonstrate to the Commission that frees

1 the utility from further recourse to this obligation.

2 MR. FARUKI: Your Honor, may I have the
3 last sentence of that answer read back?

4 EXAMINER PRICE: You may.

5 MR. FARUKI: The "in the event" sentence.

6 EXAMINER PRICE: Please.

7 (Record read.)

8 Q. When you say "the utility," are you
9 referring to the wires business?

10 A. Yes. Distribution and transmission.

11 Q. Because it's your understanding that the
12 pollution control bonds are associated with
13 generation activities?

14 A. That is correct.

15 MR. ALEXANDER: Nothing further. Thank
16 you very much.

17 EXAMINER PRICE: Thank you.

18 Mr. Boehm? Any questions?

19 MR. BOEHM: Just maybe two questions.

20 - - -

21 CROSS-EXAMINATION

22 By Mr. Boehm:

23 Q. Mr. Mahmud, my name is David Boehm and I
24 represent the Ohio Energy Group.

25 I've been listening to testimony here and

1 I wonder if you would agree with sort of a summary
2 that I've gotten listening to the testimony here
3 about what you did.

4 Would you agree with me, Mr. Mahmud, that
5 in preparing your testimony and coming up with your
6 rate of return ROE figures, that you reviewed the
7 testimony of Mr. Jackson and Mr. Chambers, the
8 company witnesses, prior to your testimony but you
9 did not review any of the testimony of any of the
10 intervenors criticizing or finding fault with or
11 adjusting the testimony of Mr. Chambers or
12 Mr. Jackson? Is that correct?

13 A. That is correct.

14 Q. And as you sit here today you have formed
15 no opinion as to whether in any areas where they
16 diverge, whether you believe the testimony of
17 Mr. Jackson or Mr. Chambers or you believe the
18 testimony of the intervenor witnesses criticizing
19 them; am I right?

20 A. Right.

21 MR. BOEHM: Okay. No further questions,
22 your Honor.

23 EXAMINER PRICE: Thank you.

24 Federal Executive Agencies, any
25 questions?

1 MAJOR THOMPSON: No questions, sir.

2 EXAMINER PRICE: Mr. Whitt?

3 MR. WHITT: Yes, your Honor, very
4 briefly.

5 - - -

6 CROSS-EXAMINATION

7 By Mr. Whitt:

8 Q. Mr. Mahmud, we know each other, I'm Mark
9 Whitt. I'm here today on behalf of Interstate Gas
10 Supply.

11 And you are a certified rate of return
12 analyst, correct?

13 A. Yes.

14 Q. Now, in developing a rate of return in
15 rate cases, for example, once a rate of -- once a
16 return on equity and the overall rate of return is
17 developed, that's applied to the rate base which has
18 the effect of producing a source of cash for the
19 utility, correct?

20 A. Yes.

21 Q. And in that calculation the rate of
22 return is the numerator and the rate base is the
23 denominator, correct?

24 A. Yes. Yes.

25 Q. For example, if we had a 7 percent rate

1 of return, 7 percent overall rate of return on a
2 hundred-million-dollar rate base, that would produce
3 \$7 million in revenue, correct?

4 A. That is correct.

5 Q. If we had a 6 percent return on a \$200
6 million rate base, that would produce a level of
7 revenue of \$12 million, correct?

8 A. Yes. Yes.

9 Q. So it's true, is it not, that a lower ROE
10 or rate of return doesn't necessarily translate into
11 lower revenue for the utility? Correct?

12 A. I think your statement needs a little bit
13 of correction. You merged ROE with ROR. ROR is the
14 obligation of the ROE and embedded cost of -- with
15 the embedded cost of debt.

16 Q. Correct. And so we're clear, the rate of
17 return is the weighted average cost of capital which
18 has an equity component, correct?

19 A. That is correct.

20 Q. And especially in today's financial
21 environment the equity component is going to be the
22 bulk of the utility's capital structure and more
23 costly than debt, correct?

24 A. Correct.

25 Q. Okay. But back to my hypothetical, a

1 lower overall rate of return which has the ROE baked
2 into it doesn't necessarily translate to a lower
3 level of revenue assuming the same level of rate
4 base.

5 MR. FARUKI: I'm going to object because
6 that's not the calculation that he's made with regard
7 to an SSR.

8 EXAMINER PRICE: I think he's just asking
9 a hypothetical so I'll overrule the objection.

10 MR. FARUKI: Well, if I could be heard a
11 minute more. If it's a hypothetical, then it's not a
12 hypothetical that has to do with the witness's
13 testimony because that's not the calculation that
14 this witness has done for an SSR.

15 EXAMINER PRICE: I understand.

16 MR. WHITT: And that's kind of my point,
17 your Honor. But I understand there's an objection to
18 be overruled?

19 EXAMINER PRICE: It's been overruled.

20 MR. WHITT: Okay.

21 Q. (By Mr. Whitt) Where I'm going,
22 Mr. Mahmud, is that the level of revenue actually
23 generated for a utility is highly dependent on the
24 denominator in the equation we talked about.

25 MR. FARUKI: And may I have a continuing

1 objection to this line, then?

2 EXAMINER PRICE: You're going to tie this
3 to the case soon, aren't you, Mr. Whitt?

4 MR. WHITT: Yes.

5 EXAMINER PRICE: Okay.

6 MR. FARUKI: May I have a continuing
7 objection to this line?

8 EXAMINER PRICE: Noted.

9 MR. WHITT: All he has to do is say
10 "yes."

11 EXAMINER PRICE: You can answer the
12 question if you know.

13 A. Yes.

14 MR. WHITT: Thank you.

15 Q. And to Mr. Faruki's point, Mr. Mahmud, in
16 this case you did not attempt to determine DP&L's
17 actual cost of equity, correct?

18 A. I did not.

19 Q. And you did not attempt to forecast
20 DP&L's cost of equity for 2013, correct?

21 A. I did not.

22 Q. Would your answer be the same if I asked
23 you whether you prepared forecasts of ROE for 2014 or
24 2015?

25 Let me ask it a different way.

1 A. Yes.

2 Q. Did you attempt to forecast DP&L's
3 required return on equity for any future period?

4 A. No, I did not.

5 Q. Do you know what DP&L's earned return on
6 equity was in 2012?

7 A. I do not.

8 Q. Now, is it your understanding that if an
9 SSR is authorized in this case, that there are no
10 restrictions on how DP&L may use the funds generated
11 by the SSR?

12 A. I do not know impact of SSR other than it
13 increases the revenue to meet DP&L's expenses.

14 Q. And those expenses include the cost of
15 its generation, correct?

16 A. Those expenses into DP&L's expense, if it
17 includes generation, that probably is correct.

18 Q. Now, with regard to page 7 of your
19 testimony and the issue of the relationship between
20 DP&L and its affiliates, I'm not sure you actually
21 answered your own question posed in the testimony so
22 I'll try to ask it.

23 Did staff, in fact, investigate the
24 relationship between DP&L and its affiliates?

25 MR. FARUKI: Objection. Asked and

1 answered.

2 MR. McNAMEE: Object. Well, yes.

3 EXAMINER PRICE: I believe he's already
4 indicated that he performed no investigation. I'll
5 sustain the objection, earlier in the proceeding --

6 MR. WHITT: I'm not sure I heard that in
7 the record. If the parties are going to stipulate
8 that he did not perform an investigation, I'll be
9 happy to move on.

10 MR. McNAMEE: I believe the record
11 already says that.

12 EXAMINER PRICE: Just so the record is
13 clear, I will ask the question.

14 Did you perform any investigation into
15 the relationship between Dayton Power & Light and its
16 affiliates; "yes" or "no"?

17 THE WITNESS: No, I did not.

18 MR. WHITT: Thank you. Nothing further.

19 EXAMINER PRICE: Thank you.

20 Ms. Petrucci?

21 MS. PETRUCCI: No questions.

22 EXAMINER PRICE: Mr. Faruki?

23 MR. FARUKI: Thank you, your Honor.

24 Give me a minute, your Honor, to look at
25 my notes. Many of my questions were asked.

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CROSS-EXAMINATION

By Mr. Faruki:

Q. Mr. Mahmud, with regard to page 3 of your testimony and the answer to question 6 where you are addressing the methodology that you used to arrive at projected ROEs. Do you see that subject?

A. Yes.

Q. Yes.

(Confidential portion excerpted.)

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(Open record.)

MR. JACOBS: Your Honors, if I might, I would love the opportunity to go next and I've tried to clear it with some of the other counsel if that's possible. I will be brief.

EXAMINER McKENNEY: Any objections?

MR. DARR: No objection.

MR. LANG: No, your Honor.

EXAMINER McKENNEY: You may proceed.

MR. JACOBS: Thank you very much.

- - -

CROSS-EXAMINATION

By Mr. Jacobs:

Q. Mr. Herrington, good afternoon. My name is Ellis Jacobs.

A. Good afternoon.

Q. I'm the attorney for the Edgemont Neighborhood Coalition. Edgemont, just for your knowledge, is the neighborhood right on the other side of 75 from the UD arena.

A. Yeah.

Q. You're nodding your head. Are you familiar with that?

A. I am.

1 Q. Great. I just have a few questions for
2 you today. And most of them relate to page 6 of your
3 testimony. Page 6 and 7 where you were asked the
4 question about Section 4928.02(L), the protect
5 at-risk populations part of the statute.

6 Are you there?

7 A. I am there.

8 Q. Okay. And you were asked that question
9 does DP&L's ESP advance that policy, and if so, how.
10 And your answer, "Yes, DP&L's ESP protects at-risk
11 populations by ensuring that they will receive the
12 best available marketplace price," right? That was
13 your answer?

14 A. That was my answer, yes. Or that is my
15 answer.

16 Q. And you've in your testimony today or in
17 the cross-examination you've agreed that, in fact,
18 when we're talking about at-risk populations, we're
19 mostly talking about people who are having difficulty
20 paying their bills, right?

21 A. Yes.

22 Q. Residential customers, typically
23 low-income residential customers, correct?

24 A. That's correct.

25 Q. And in preparing -- in preparing this

1 short answer, what efforts did you take to
2 familiarize yourself with the challenges low-income
3 customers have in paying their electric bills and the
4 sorts of protections they might need?

5 A. Specifically to your question, as part of
6 the preparing of this filing we did have
7 conversations early on about all of our customers and
8 the overall impact of what our filing would do to the
9 bills that would be seen by all of our customers and
10 including not only our customers, the customers who
11 actually have left our system.

12 The comment about providing the best
13 available price of power is really based in the fact
14 that we feel we are moving as quickly as possible to
15 the market price of power which would translate to
16 lower bills ultimately for customers in the City of
17 Edgemont. And so that is certainly one element of
18 how we thought about this.

19 We remain committed to the level of
20 funding that we have provided to our low-income
21 customers and intend to continue that within this
22 filing. So that was part of the conversation early
23 on.

24 Specifically, and to be honest with you,
25 the blow by blow of that conversation I can't

1 remember; it was very early in that process.

2 Q. You said a lot in that answer --

3 A. Sure.

4 Q. -- and thank you for all of it.

5 MR. LANG: Mr. Jacobs, are we still on
6 the confidential portion?

7 EXAMINER PRICE: We're still on the
8 confidential.

9 EXAMINER MCKENNEY: I believe we are.

10 MR. JACOBS: I do not imagine any of this
11 is going to be confidential.

12 EXAMINER MCKENNEY: Let's go to the
13 public portion of the transcript at this time.

14 Q. (By Mr. Jacobs) So I thank you for your
15 answer and let's just try to address all parts of it.

16 EXAMINER PRICE: Excuse me, real fast
17 let's go off the record.

18 (Discussion off the record.)

19 EXAMINER PRICE: Let's go back on the
20 record.

21 MR. JACOBS: Thank you.

22 Q. Mr. Herrington, so back to your answer.
23 You indicated that you have a commitment to -- and I
24 don't want to misstate what you said: We have a
25 commitment to low income funding and we intend to

1 continue that in this filing, I believe that's what
2 you said. Did I get that right?

3 A. Continue that moving forward. And, to be
4 honest with you, I do not recall whether we have a
5 specific element that discusses that piece, the
6 funding mechanism we do have, which I know we have
7 money set aside as part of our ongoing operations to
8 support low-income housing, assist those who can't
9 pay their bills.

10 Q. Explain --

11 A. Whether that's specifically included in
12 this, I don't recall.

13 Q. Okay. If you would, explain to the Court
14 what that funding mechanism is to help low-income
15 customers pay their bills.

16 A. The specific mechanics I am not clear on.
17 I know we set aside roughly \$400,000 a year is my
18 understanding to assist those customers in paying
19 their bills.

20 Q. Okay. And would it surprise you to know
21 that there's nothing about continuing that commitment
22 in this filing?

23 A. It would not surprise me, but I would
24 tell you there's nothing that's inconsistent with
25 that commitment within this filing.

1 Q. But in your -- implied in your answer was
2 the idea that having a commitment to help low-income
3 customers pay their bills, a continuation of the fuel
4 fund, would be an important way of protecting at-risk
5 populations in your service territory; am I right?

6 A. I agreed to making that commitment would
7 be an important element, whether it needs to be in
8 this or not we decided, obviously, if it's not part
9 of this, that it wasn't relevant to this particular
10 filing.

11 Q. Well, but you opine in this particular
12 filing that this ESP advances the policy of
13 protecting at-risk populations; am I right?

14 A. You are. And I would go back to the
15 original answer which is our view that within this
16 filing the best way to do that is by providing the
17 lowest possible cost of power, and I would say that
18 has to be balanced by ensuring that DP&L as an
19 enterprise continue to operate and continue to
20 maintain its service.

21 So there is a balancing that we undergo
22 in evaluating how quickly we can move to market, how
23 quickly we can reduce our pricing versus what we need
24 as an enterprise to continue to operate, have a
25 reasonable rate of return and maintain our business.

1 Q. So you think this filing can past muster
2 under this section if all it does is allow low-income
3 customers to also receive the available marketplace
4 like all other customers; is that correct?

5 A. Yes, that is my -- my understanding of
6 this particular filing. Again, there's nothing
7 inconsistent with other elements of the statute that
8 would enable DP&L to help those customers and, again,
9 we remain committed to those customers.

10 Q. Okay. And you've already said that
11 at-risk customers are people that are having a hard
12 time paying their bills, right?

13 A. I would agree with that.

14 Q. Having a hard time paying their bills
15 under existing rates, right?

16 A. That's true.

17 Q. And, in fact, you have a lot of customers
18 like that, and not just DP&L specifically but all
19 utilities do, don't they?

20 A. Yes, I think that's true.

21 Q. Okay. And would you accept that, for
22 instance, DP&L had 33,000 disconnections for
23 nonpayment in 2012?

24 A. I have not seen the disconnection
25 statistics recently. That number does not surprise

1 me.

2 Q. Does that sound about right?

3 A. Again, I don't have a reference point
4 right now so I prefer not to speculate on whether
5 that sounds right or not. Can you tell me where that
6 number came from?

7 Q. It came from your interrogatories. I'll
8 be glad to show them to you if that would refresh
9 your recollection.

10 MR. FARUKI: That's not a question.

11 Q. Would it refresh your recollection?

12 A. I don't know that I have actually seen
13 that document.

14 MR. FARUKI: Your Honor -- if I stand up,
15 don't talk.

16 If he's going to show it to him, he's got
17 to show it to him and then ask if it refreshes his
18 recollection.

19 EXAMINER MCKENNEY: I agree.

20 Mr. Ellis.

21 MR. JACOBS: Your Honor, I didn't want to
22 make the long trip unless it would refresh his
23 recollection but I would be happy to. And I don't
24 want to belabor this particular point.

25 Q. These are -- can you tell us what this

1 is?

2 A. It says "Objections and Responses to
3 Dayton Power & Light Company from the Office of Ohio
4 Consumers' Counsel Interrogatories and Requests for
5 Production of Documents Propounded upon The Dayton
6 Power & Light Company, 15th Set."

7 Q. Okay. And if you would turn to the
8 answer to question No. 75, which I think you'll find
9 on page 5.

10 MR. FARUKI: I'll ask that you not stand
11 over the witness, either.

12 MR. JACOBS: Okay. Where would you like
13 me to stand, Charlie?

14 MR. FARUKI: Right here.

15 MR. JACOBS: Guys from Dayton stick
16 together. All right.

17 Q. All right. So if you would take a look
18 at the answer to 75. Do you see that?

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

20 MR. JACOBS: I have to go over there,
21 Charlie.

22 MR. FARUKI: No, you don't. Right here.

23 A. I'm sorry.

24 Q. Page 5, question 75.

25 MR. FARUKI: Page 5.

1 Q. Do you see the answer there? Does that
2 refresh your recollection?

3 MR. FARUKI: I'll object.

4 EXAMINER MCKENNEY: We have an objection.

5 MR. FARUKI: He's not asked him if he's
6 seen this before nor has he given him a chance to
7 read it. I object because he hasn't laid a
8 foundation for it.

9 MR. JACOBS: I'm asking him -- this is
10 strictly to refresh his recollection.

11 A. Yeah, I have not seen this document
12 before.

13 Q. And having seen this document now does it
14 refresh your recollection as to the number of people
15 that were shut off in the DP&L service territory in
16 2012?

17 A. I'm generally familiar with the numbers.
18 This number seems to be what I've heard, so I'll say
19 that it's consistent with what I understand.

20 Q. And what is that number?

21 A. This number written here is 33,478. I'll
22 also note it's actually lower than every prior year.

23 Q. Okay.

24 A. Back to 2007.

25 Q. And would you agree that the average

1 disconnection amount for disconnected customers in
2 your service territory has risen from 2009 when it
3 was \$317 to \$469 in 2012?

4 EXAMINER PRICE: Are you asking if that's
5 his recollection or are you asking him to read from
6 that document?

7 MR. JACOBS: I'm asking if he knows that.

8 A. I do not know that.

9 Q. Okay. And would it help you to look at
10 this document to refresh your recollection?

11 A. Well, it will not refresh my
12 recollection; I'll be reading this for the first
13 time.

14 Q. Would you read that.

15 A. Sure.

16 Q. Look at question No. 76.

17 A. Can you ask me the question again? I'm
18 trying to find the question in there.

19 Q. Is it true that the average amount owed
20 to disconnection for disconnected customers has
21 increased from \$317 in 2009 to \$469 in 2012?

22 MR. FARUKI: Objection. Your Honor, I'll
23 be glad to stipulate the answer in, but using it with
24 this witness when he hasn't seen it, doesn't know the
25 numbers, and said it won't refresh his recollection,

1 is not proper cross.

2 MR. JACOBS: Your Honor, we would be glad
3 to take the stipulation.

4 Will you also stipulate then the answer
5 to 77, that there were 78,000 people working under
6 Commission-ordered repayment plans to avoid
7 disconnection in 2012?

8 MR. FARUKI: Your Honor, I'll stipulate
9 in 76 and 77 in OCC's 15th set.

10 MR. JACOBS: Okay. And then 86, let's go
11 to 86 which you'll find on page 11. And would you
12 stipulate that there's been a steady growth since
13 2007 from -- of PIPP Plus customers in the DP&L
14 territory in 2007 of 21,000, is it 242, to 35,715 in
15 2012?

16 MR. FARUKI: No, but I'll stipulate the
17 numbers themselves. Not your characterization.

18 MR. JACOBS: Okay, fine.

19 And 87, go to 87. Would you stipulate
20 that in 2012 5,023 PIPP customers were disconnected?

21 MR. FARUKI: I will stipulate that
22 figure.

23 MR. JACOBS: Thank you very much.

24 Q. (By Mr. Jacobs) Okay. So, indeed, as we
25 can see, there are real reasons to be concerned about

1 low-income customers, at-risk populations not being
2 able to pay their bills in the DP&L service
3 territory, correct?

4 A. Again, these particular numbers, it's the
5 first time I've actually seen them presented that
6 way. The only thing I would take issue with is in
7 the DP&L service territory relative to how these
8 numbers compare nationwide to other populations, to
9 other populations with socioeconomic conditions that
10 are comparable to the Dayton area.

11 Is it specific to Dayton? I can't
12 speculate on that. You know, does Dayton Power &
13 Light care and it's concerned about this customer
14 class? Absolutely, we do care.

15 Q. And because you have numbers like this in
16 your service territory, I mean, that's why it's
17 important, as you recognized at the very beginning of
18 your testimony, for DP&L to provide extra fuel fund
19 type assistance to help people stop disconnection,
20 correct?

21 MR. FARUKI: I'll object, this is
22 repetitive.

23 MR. JACOBS: Your Honor, I haven't asked
24 this question before.

25 EXAMINER MCKENNEY: I'll allow the

1 witness to answer the question if he knows.

2 A. Again, I referenced the program we have
3 in place so I think that certainly is evidence of our
4 commitment. I think that is an important commitment
5 we have made. I don't know or I can't speculate on
6 whether that truly belongs in this filing. I think
7 that's the nature of the question you're asking me.

8 Q. Okay. But without that in this filing
9 there's nothing in this filing that specifically acts
10 to protect at-risk populations, is there?

11 MR. FARUKI: Objection. Asked and
12 answered.

13 EXAMINER MCKENNEY: I think we're
14 rehashing old territory here, so the objection is
15 sustained.

16 MR. JACOBS: I assumed he -- the answer
17 was no?

18 MR. FARUKI: The answer was your
19 objection was sustained.

20 EXAMINER MCKENNEY: That's correct.

21 MR. JACOBS: I want to make sure I know
22 what the answer was and without trying to --

23 MR. FARUKI: My objection.

24 Q. (By Mr. Jacobs) All right. So the only
25 way in this particular ESP at-risk populations would

1 be protected is that they would receive the best
2 available market price like other customers, correct?

3 MR. FARUKI: Objection. It's been
4 covered already.

5 EXAMINER MCKENNEY: Sustained.

6 MR. JACOBS: Well this is a predicate for
7 the next question.

8 EXAMINER MCKENNEY: Get right to the next
9 question.

10 Q. In your answers to Ms. Yost's question
11 about whose bills would go up and whose wouldn't, I
12 believe you said: It's just not in the front of my
13 head.

14 Would it -- I think -- would it help you
15 to take a look at the revised electric security plan
16 if, in fact, the answer to that question was in there
17 to be able to answer the question as to whose bills
18 would go up and who wouldn't?

19 A. Well, I'll be happy to look in there.

20 Q. All right.

21 MR. JACOBS: I assume everybody's got
22 this and, your Honors, I did not bring many copies of
23 this.

24 Q. If you would read over -- would you
25 identify that.

1 A. This is the Revised Electric Security
2 Plan Book I - Application, Rate Blending Plan, ESP
3 Schedules, Workpapers, and TCRR-N Schedules.

4 Q. Okay. Have you seen that before?

5 A. I have seen this before.

6 Q. And were you involved in the preparation
7 of that?

8 A. I was generally involved in the
9 preparation. This is a very lengthy document, as you
10 can imagine, involving a lot of people's time and
11 efforts. I have not -- I did not prepare every
12 single page or review every single input to this.

13 Q. Okay. Would you just open it to the
14 first page of the ESP rate blending plan and just
15 read that very first paragraph, and then I'll ask you
16 a question.

17 A. Okay. The paragraph reads: "DP&L's ESP
18 Rate Blending Plan is expected to result in a slight
19 rate increase for standard service offer residential
20 customers that consume a thousand kilowatts or more a
21 month, and a total bill decrease of zero to 3 percent
22 for most non-residential SSO tariff classes.

23 Although the amount of increase or decrease will
24 ultimately depend upon the results of the Competitive
25 Bidding Process (CBP), footnote 1, using a

1 placeholder for the CBP result, DP&L's estimate is
2 that proposed rates will result in a per-bill
3 increase for a typical residential customer that uses
4 750,000 kilowatt-hours of electricity a month by
5 \$2.81, or 2.61 percent from current rates for the
6 first period. Most non-residential customers should
7 experience between zero and 3 percent rate decrease
8 from current standard service offer rates in the
9 first year of the Rate Blending Plan. Most tariff
10 classes will experience SSO rate decreases for
11 periods 2 through 5 as the market prices are blended
12 into current rates."

13 Q. And so --

14 A. End of paragraph.

15 Q. Oh. And so now let me just -- if that
16 has refreshed your recollection, let me just ask you,
17 will a typical residential customer, 750
18 kilowatt-hours, see a 2.61 percent -- are you
19 projecting a 2.61 percent rate increase for those
20 people?

21 MR. FARUKI: I'll object, your Honor.
22 This is not the witness for that. That book is
23 sponsored by another witness in the case. It's
24 outside the scope of his testimony and he's asking
25 about another witness's sponsorship of a portion of

1 the filing.

2 EXAMINER MCKENNEY: Response?

3 MR. JACOBS: Your Honor, this is the
4 president of the company. He indicated that he
5 simply couldn't remember the answer to Ms. Yost's
6 question. I've given him an opportunity to review
7 the fundamental filing of his company.

8 EXAMINER MCKENNEY: I believe the
9 objection is sustained. Move on to a new line of
10 questioning.

11 MR. JACOBS: I have no further questions.

12 EXAMINER MCKENNEY: Thank you.

13 I'm just going to work my way around the
14 table. Mr. Petricoff, do you have any questions?

15 MR. PETRICOFF: Two questions, your
16 Honor.

17 - - -

18 CROSS-EXAMINATION

19 By Mr. Petricoff:

20 Q. Good afternoon. Question number one: To
21 the best of your knowledge has The Dayton Power &
22 Light Company ever participated in an auction, a
23 wholesale auction, for any of the Ohio electric
24 distribution utilities that have conducted them?

25 A. Yes, I understand that we have.

1 Q. And second question: Have you
2 participated in any auctions outside of Ohio?

3 A. Not to my knowledge.

4 MR. PETRICOFF: No further questions.
5 Thank you, your Honor.

6 EXAMINER MCKENNEY: Thank you.

7 Ms. Bojko.

8 MS. BOJKO: No, I have no questions, your
9 Honor.

10 EXAMINER MCKENNEY: Mr. Whitt?

11 MR. WHITT: Very briefly, your Honor.

12 - - -

13 CROSS-EXAMINATION

14 By Mr. Whitt:

15 Q. Mr. Herrington, my name is Mark Whitt. I
16 represent Interstate Gas Supply which is a CRES
17 supplier in Ohio, among other states.

18 First, on page 4 of your testimony in
19 response to a question, I'll let you get there, page
20 4, line 6. In response to a question of whether the
21 ESP promotes competition, you indicate that it does
22 because the company is proposing provisions to make
23 it easier for CRES providers to do business in DP&L's
24 territory; is that right?

25 A. That is correct.

1 Q. I assume we can agree, then, that the
2 Commission's order in this case, in your opinion, and
3 to be consistent with state policy, should have as
4 one of its effects the promotion of competition?

5 A. Yes, I would agree with that.

6 Q. And one way to promote competition is to
7 eliminate any barriers that may exist for CRES
8 providers to serve customers in DP&L's territory; can
9 we agree on that?

10 A. Again, I think the promotion of
11 competition would be minimizing barriers. I don't
12 want to speculate on specific things that CRES
13 providers may interpret as a barrier, but as a
14 general matter, absolutely, barriers to competition
15 reduce competition.

16 Q. Fair enough. At the very bottom of
17 page 5 of your testimony and then continuing on to
18 page 6 there's a question and answer pertaining to
19 the state policy prohibiting anticompetitive
20 subsidies. Do you see that?

21 A. I'm sorry. Can you point me in the right
22 direction again?

23 Q. Sure.

24 A. Page?

25 Q. The very last line of page 5.

1 A. Oh, yes, okay. Question -- Section
2 4928.02(H) .

3 Q. In response to the question asking you
4 how the ESP advances state policy reflected in
5 Section 4928.02(H), you indicate that the DP&L filing
6 satisfies this policy in part because DP&L plans to
7 transfer its generation assets into a separate
8 affiliate; is that correct?

9 A. That's correct.

10 Q. Now, recognizing that the details of any
11 transfer may not have been figured out, I'm assuming
12 from your answer that DP&L has, in fact, made a
13 decision that when it transfers generation -- its
14 generation, that that transfer will be to an
15 affiliate; is that a fair characterization of the
16 answer?

17 A. That is our plan at this time.

18 Q. Okay.

19 A. But, again, that plan and the steps we
20 take to implement that plan will be largely
21 determined by the outcome of this proceeding that
22 we're involved in right now.

23 Q. Okay. Now, if DP&L's proposal in this
24 case is approved, it could transfer its generation
25 assets as late as the end of 2017, correct?

1 A. Again, the commitment we have made to
2 make a filing that we anticipate at this point we'd
3 transfer our assets at the end of '17, so you're
4 correct and it's also correct to state that's our
5 intention and our plan.

6 Q. And the term of the ESP as proposed by
7 DP&L also happens to end at the end of 2017, correct?

8 A. That is correct.

9 Q. So, in effect, DP&L is requesting
10 permission to continue to own its own generation
11 through the term of the ESP for which it has filed
12 approval in this proceeding.

13 A. Yes. We are looking to have flexibility
14 or request the flexibility to separate around the end
15 of '17 which is coincident with the term of the CSP.

16 MR. WHITT: Thank you. I have no further
17 questions.

18 EXAMINER MCKENNEY: Mr. Lang?

19 MR. LANG: Yes, thank you, your Honor.

20 - - -

21 CROSS-EXAMINATION

22 By Mr. Lang:

23 Q. Good afternoon, Mr. Herrington.

24 A. Good afternoon.

25 Q. Staying in the policy section of your

1 testimony here on pages 4 through 7, you reference
2 six different divisions of 4928.02. Do you see that?

3 A. I haven't counted them but I'm on page,
4 you say page 4?

5 Q. Four through 7.

6 A. Four through 7. There are many
7 references to 4928.02, yes.

8 Q. And "division" is actually the reference
9 to division A, division B, H, I, L, and N. So
10 there's six of those. Do you see that?

11 A. Okay. Yes.

12 Q. And for five of those six you
13 consistently say that the state policy is advanced by
14 giving SSO customers access to market pricing through
15 a competitive bid process, or a CBP, right?

16 A. Yes, that's correct.

17 Q. And that is the case for divisions A and
18 B on page 5, I and L on page 6, and also division N
19 on page 7. Is that right?

20 A. To be honest with you, I'll need to read
21 through all these to make sure that I'm in agreement
22 with you. Do you want to go through that? Happy to
23 do it but it will take a few minutes.

24 Q. You know, we'll move on.

25 A. Okay.

1 Q. Now, I did want to ask you, though, about
2 in your discussions of divisions I and L which starts
3 in the middle of page 6, you state that the ESP
4 should ensure that customers receive the best
5 available market price, and what you mean by that is
6 the best market price that DP&L is willing to make
7 available as part of this ESP, correct?

8 A. Again, I've said this several times but I
9 think to be responsive I've got to have a very, I
10 think broad answer that responds to that question.
11 Again, yes. The short answer is yes, we believe that
12 providing the best available price DP&L could
13 provided is consistent with this statute.

14 We need to blend a -- rate blending
15 period that is consistent with not only the
16 nonbypassable which we've requested in our stability
17 rider, switching tracker we've also included, and
18 lastly the time for separation in a package that will
19 overall allow DP&L to maintain a healthy company.

20 Implicit in all of these answers also is
21 maintaining the health of DP&L is in the best
22 interest of the state of Ohio and the customers of
23 DP&L. So preserving the health of DP&L moving and
24 transitioning as quickly as possible to the market
25 price is a feature of this rate filing and this

1 regulatory filing we've made.

2 Q. All right. We'll go with the short
3 answer of "yes."

4 A. Okay.

5 Q. And moving on to -- division H is, of the
6 six divisions, the one division that you discuss that
7 is not advanced by giving customers access to market
8 pricing. And will you agree that division H is
9 advanced by avoiding anticompetitive subsidies that
10 would flow from DP&L's T and D service to DP&L's
11 generation service?

12 A. I'd like to just take a moment to read
13 the bottom of page 5 again. Correct?

14 Q. Uh-huh. And really the top of page 6.

15 A. Okay.

16 Q. Yep.

17 A. Yes, I'm in agreement with that.

18 Q. And as we sit here today you would also
19 agree that it is not permissible for DP&L's
20 competitive generation service to provide subsidies
21 to D-P-L-E-R, or DPLER; is that fair?

22 MR. FARUKI: Can I hear that back.

23 THE WITNESS: Yeah, can I hear that back
24 too.

25 (Record read.)

1 A. I think that's my understanding.

2 Q. Mr. Herrington, DP&L's first application
3 for an MRO was filed at the end of March of last
4 year. Is that your memory?

5 A. That's my recollection, yes. Or, yes, it
6 was.

7 Q. And that was around the time that you
8 became -- it's around the time you started with DP&L,
9 correct?

10 A. That's right.

11 Q. And you have no reason to believe that
12 the MRO that was filed in March of 2012 was a sham
13 filing, do you?

14 A. I'm not sure what the definition of a
15 "sham filing" is, but absolutely not. It was a real
16 filing and the intent was to secure an MRO.

17 Q. And then that first application was
18 withdrawn in September of 2012, correct?

19 A. I thought it was October, but perhaps it
20 was September.

21 Q. We can agree it was one or the other.

22 A. Yes. Now, actually, you're right, I was
23 thinking about the refiling of the case.

24 Q. Good. And that was my next question,
25 that the -- once the MRO was withdrawn, DP&L proposed

1 an ESP in its place, which is what we're talking
2 about here today, correct?

3 A. That is correct.

4 Q. Fair to say you are not asking the
5 Commission to compare this ESP to the MRO that was
6 filed last March?

7 A. That's correct.

8 Q. Now, the five-year term of this ESP
9 provides DP&L the opportunity and the funds to
10 restructure DP&L's balance sheet as part of effecting
11 corporate separation; is that fair?

12 A. Among other things, yes, the five-year
13 term will enable us to do that.

14 Q. And as I understand it, you're looking at
15 this, at the ESP process and the corporate
16 separation, in a series of steps; is that fair?

17 A. Yes. As we plan and make and take steps
18 to prepare for corporate separation, the first key
19 element in our path is the outcome of this filing.

20 Q. And so that first step is obtaining an
21 ESP which will have certain revenue streams in it and
22 that will tell you what DP&L can expect with regard
23 to the timing and DP&L's ability to achieve corporate
24 separation; is that right?

25 A. I think that's a fair statement.

1 Q. And then once you have the ESP and you
2 know what those revenue streams are, then the company
3 can advance to the second step which is restructuring
4 its debt?

5 A. That's correct.

6 Q. And then the third step would be putting
7 DP&L in position to actually separate its generation;
8 is that fair?

9 A. Some of these things will start going on
10 in parallel. Obviously, there's interrelation
11 between all the steps but, generally speaking, that's
12 correct.

13 Q. And the service stability rider or SSR
14 that is included as part of the ESP helps DP&L
15 achieve that corporate separation by providing funds
16 that can be used in the restructuring of DP&L's debt.

17 A. Again, among other things, part of the --
18 setting the stability rider also is key to DP&L
19 achieving what we view through expert testimony, I
20 know we've had one of our folks put on testimony
21 about a reasonable rate of return and the
22 Commission's also opined recently on a reasonable
23 rate of return so that factors into the level of the
24 SSR as well as the separation. There's multiple,
25 multiple outcomes that this regulatory proceeding

1 will enable us to achieve.

2 Q. And as part of that your understanding is
3 that the SSR will help DP&L align its balance sheet
4 so that it can separate the generation assets from
5 the T and D assets.

6 A. That's correct.

7 Q. Now, your belief is that five years is
8 the fastest that corporate separation can be done,
9 right?

10 A. That's correct.

11 Q. And the five years, in addition to giving
12 DP&L time to restructure its debt, provides an
13 opportunity for the market to recover, correct?

14 A. That is one outcome that could happen
15 with the five-year term. There are other elements of
16 the five-year term that go into that. As I believe
17 our CFO has testified to earlier, we have certain
18 financing arrangements that have what we call no-call
19 provisions that mature in 2015 and 2016 timeframe, so
20 that window is also supported by a five-year ESP
21 term.

22 Q. Well, you'd certainly agree that over the
23 next five years you are hoping, and based on current
24 forward curves you're expecting that the market will
25 recover and that that will allow more funds to be

1 available for DP&L's generation assets.

2 A. Yeah. From my perspective, again, we're
3 looking at this filing as a DPL-wide filing, so
4 T and D and generation, I'm just drawing a
5 distinction between funds for generation. That will
6 enable us to restructure our balance sheet and
7 position us to separate the generating assets from
8 the T and D assets, but -- minor distinction but I
9 wanted to make sure that wasn't lost in my answer.

10 Q. You agree that the market recovery -- the
11 market recovery you are anticipating will assist with
12 corporate separation is evident today in the forward
13 curves?

14 A. Yes. Yes, it is.

15 Q. And what you're seeing today is in the
16 out years an increase in the dark spreads and an
17 increase in the profitability of DP&L's generation
18 assets; is that also fair?

19 A. Increase in the dark spreads, also an
20 increase in capacity prices, some of which has
21 already very clearly been realized by the cleared
22 auction prices but, again, not only generation but
23 DP&L's entire enterprise is helped, all things being
24 equal, by recovery of the dark spread.

25 Q. Now, you've mentioned many factors that

1 have --

2 A. Right.

3 Q. -- been considered in developing the ESP.
4 Is it fair to say one of those factors was not the
5 company's earnings prior to the ESP period?

6 A. I'm sorry, could you ask the question
7 again?

8 Q. I'm asking whether -- do you agree that
9 one of the factors that contributed to the
10 development of the ESP was not the company's earnings
11 prior to the ESP period?

12 A. Yeah, I would agree with that. We looked
13 prospectively given the inputs and our best available
14 knowledge of what we see happening, you know, from
15 now or the time of the filing going forward relative
16 to switching, relative to forward pricing and other
17 economic factors that drive the results of the
18 business.

19 Q. And you also did not consider the
20 company's earnings as a wires company that it will
21 have after the ESP period after corporate separation.
22 Is that fair?

23 A. Yeah, that is fair. We looked, again,
24 for the purposes of the filing at DP&L as an entire
25 enterprise. We leverage off the same financing

1 package. It's all one enterprise right now.

2 The separate T and D wires business which
3 will be an outcome of separation, as I mentioned
4 earlier, there's a sequence of steps, we're not there
5 at that point.

6 Q. So is it fair to say you focused on the
7 company's ability to get to separation but not at
8 what happens after separation?

9 A. At this stage, yes. Again, one of the
10 key outcomes and I think planning for that analysis
11 will be the outcome of this proceeding.

12 Q. So I think, as you've discussed the SSR,
13 the blending percentages, the five-year duration of
14 the ESP, those all work together for you to give the
15 company the financial outcome it's looking for and
16 then balanced against customer interests. Is that --

17 A. Yeah.

18 Q. -- kind of a fair summation of your
19 position?

20 A. I think so. Looking at four elements;
21 separation, balancing customer interests, reasonable
22 rate of return, and basically stability of service.

23 Q. Is it a fact that you have not calculated
24 what the impact would be on DP&L's revenue if you
25 went 100 percent to market with a CBP immediately

1 instead of the blending process that's proposed?

2 A. I don't recall that number in particular.
3 I can tell you that in discussions with counsel about
4 outcomes that might happen in this proceeding we
5 looked at a number of factors. I don't specifically
6 recall whether or not 100 percent was evaluated.
7 It -- were it to be, obviously it would be a very
8 heavy impact, and back to some earlier questioning,
9 require a much larger stability rider.

10 Q. Now, with regard to the SSR, you do not
11 believe that the SSR is a charge that will limit
12 customer shopping, correct?

13 A. That's correct.

14 Q. And is it also correct that there isn't
15 anything in DP&L's filing that seeks a specific
16 revenue target?

17 A. That's correct as well.

18 Q. Now, with regard to corporate separation,
19 there will be some amount of costs that will be
20 incurred to restructure the debt; is that right?

21 A. Yes. Typically we would expect to have
22 to pay advisers, there's fees preparing information
23 memorandums and, essentially, going to the market has
24 a cost we've not factored those in yet, though.

25 Q. And at this point in time you can't say

1 whether the cost of structural separation will be
2 material until you started engaging the people that
3 will effect that transaction, correct?

4 A. Exactly. I mean, we've, again, obviously
5 done some preliminary work to start the planning
6 process. I believe it's been discussed. We've had
7 Skadden Arps as one outside counsel start the review
8 process, it's lengthy and, again, the key -- key
9 variable is the outcome of this proceeding.

10 Q. On behalf of all Ohio counsel I will note
11 that Skadden I hear is quite expensive and you can
12 look -- you can look in Ohio. Just throwing that out
13 there. Anyway. I'm conflicted.

14 MR. WHITT: I'm not.

15 (Laughter.)

16 Q. Is it fair to say that you do not have a
17 range at this time of what the costs will be for DP&L
18 to restructure its debt as part of corporate
19 separation?

20 A. Yes, that's correct. That's correct.

21 Q. Now, DP&L is not committing as part of
22 the ESP that it will complete corporate separation on
23 or before December 31, 2017; is that right?

24 A. Yes. We specifically agreed to make a
25 filing and, again, we anticipate that the date of

1 separation will be no later than December 2017.

2 Q. And I think, as we discussed a little
3 bit, the specific timing of corporate separation will
4 depend to some extent on the outcome of this ESP.

5 A. Correct.

6 Q. So is it true that if the Commission
7 approves the ESP as filed, that you do believe that
8 DP&L will be able to complete corporate separation by
9 the end of 2017?

10 A. Yes, that is correct.

11 Q. If the Commission does not approve the
12 ESP with all of the revenue streams requested and the
13 five-year term, is it your opinion, then, that DP&L's
14 corporate separation could be delayed beyond the end
15 of 2017?

16 MR. FARUKI: May I hear that back,
17 please?

18 (Record read.)

19 A. That would be at this point speculative.
20 Again, I can't say for certain. Not to hit the
21 balance point again, but I will do that, all these
22 things hang together and we have to see what the
23 order is, evaluate it in the context of all the
24 elements that come out in that order. So just taking
25 that one point in isolation I think I'm really not

1 prepared to do that. I think it's speculating on my
2 part.

3 Q. Now, you are aware that AEP and Duke
4 Energy Ohio are going through a similar corporate
5 separation process right now?

6 A. Yes, I am.

7 Q. I'll ask you a question I've asked a few
8 other people. Have you -- have you or do you know
9 whether anyone at DP&L has consulted with AEP or Duke
10 to share information on corporate separation and how
11 to get things done?

12 A. Yeah, to my knowledge we haven't. We've
13 been comfortable with our own conclusions and,
14 frankly, I know each of us are situated somewhat
15 differently in the state, we're certainly all
16 utilities driving towards separation, but DP&L has
17 some unique considerations, I mentioned the financing
18 being fairly significant in our minds as one element.

19 So I think, you know, a rate plan that
20 fits DP&L in this case is appropriate.

21 EXAMINER PRICE: You can always ask
22 FirstEnergy Solutions for advice on divestment.

23 MR. LANG: Not Solutions, but . . .

24 Q. You had mentioned earlier the 2013 budget
25 had just been approved. As part of that you had

1 mentioned that there was an updating of commodity
2 curves that took place. Can you tell me, when did
3 the updating of commodity curves take place?

4 A. Oh, yeah, I don't recall that.

5 Q. Do you know whether it would have been
6 this year?

7 A. I would be speculating. My guess is it
8 would be at some point -- well, I just won't
9 speculate on it. It would be more recent than the
10 last submittal of the budget, I know that for
11 certain.

12 Q. Okay. And that last submittal of the
13 budget was when?

14 A. Well, we had talked about, I believe in
15 earlier testimony, round 2, which was done in the
16 late third quarter or early first quarter, so
17 certainly there would have been a commodity update,
18 at least one, perhaps two commodity updates between
19 now and then, but I'm just not certain when the last
20 commodity update was.

21 Q. Now, you're employed, it says in your
22 testimony, by AES Global Wind Generation and that
23 would have been from December 2010 until you joined
24 DP&L in late-March of last year, right?

25 A. That's correct.

1 Q. And that's a company that owns, operates,
2 and develops wind generation projects?

3 A. Yes, it is.

4 Q. And that's both the United States and
5 elsewhere, outside of the United States.

6 A. That's right.

7 Q. And, in fact, they've developed two wind
8 projects in PJM in Pennsylvania and West Virginia.

9 A. That's right.

10 Q. And then before that you were with Edison
11 Mission Energy?

12 A. Correct.

13 Q. They're also involved in renewable energy
14 development projects?

15 A. They are, among other things, they also
16 have a pretty substantial coal generation.

17 Q. Also have coal.

18 A. Yes.

19 Q. Based on your experience with AES Global
20 Wind Generation, with Edison Mission Energy, is it
21 fair to say that the availability of federal and
22 state incentives for renewable resources drives the
23 decision-making process relating to investment in
24 those resources?

25 A. Yes. It's the PTC, as it's referred to

1 as renewable energy credits, other programs that
2 provide other additional revenue streams are
3 important to the economics of a renewable project.

4 Q. Is it also fair to say that developers of
5 renewable projects are looking for a stable
6 regulatory environment and fair treatment from state
7 regulators so they are on a level playing field?

8 A. I think that's correct.

9 Q. Is it your belief that if renewable
10 developers don't see a level playing field in a
11 particular state, that, you know, they have other
12 options, there are other markets in which they can
13 invest in?

14 A. I think that's true. I would also add
15 that specific, and speaking as someone who's been
16 involved in the development, we're looking for fair
17 treatment of our investment and our, you know,
18 business that we bring to a state, to a locality,
19 whatever that is. We are less focused on what
20 somebody else may have gotten as opposed to making
21 sure that we feel we are being fairly treated.

22 MR. LANG: Thank you, Mr. Herrington. I
23 have no further questions.

24 EXAMINER MCKENNEY: Thank you.

25 IEU?

1 MR. DARR: Thank you, your Honor.

2 EXAMINER MCKENNEY: Can we go off the
3 record real quick?

4 MR. DARR: Sure.

5 (Discussion off the record.)

6 EXAMINER MCKENNEY: Let's go back on the
7 record.

8 EXAMINER PRICE: Let's go off the record
9 real fast.

10 (Discussion off the record.)

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

13 Mr. Darr.

14 MR. DARR: Thank you, your Honor.

15 - - -

16 CROSS-EXAMINATION

17 By Mr. Darr:

18 Q. Turning to page 4 of your testimony, sir.
19 You reference Mr. Malinak's conclusion that the ESP
20 passes the ESP versus MRO test. Do you see that?
21 Page 4.

22 A. Yeah, I'm on page 4.

23 Q. Am I correct that you're not making any
24 independent conclusion that the ESP passes the ESP
25 versus MRO test?

1 A. That's correct. We've -- I've relied on
2 Mr. Malinak to support that element of our filing.

3 Q. Now, you are the president of both DPL,
4 Inc. and DP&L, correct?

5 A. That's correct.

6 Q. What is the relationship between, the
7 corporate relationship between DPL and DPLER?

8 A. DPLER is a wholly-owned subsidiary of
9 DPL, Inc.

10 Q. So effectively you're part of the
11 corporate management or corporate management of DPLER
12 would report to you as the president of DPL, Inc.?

13 A. The president of DPLER is -- actually
14 reports to someone who reports directly to me.

15 Q. Is it anticipated by DP&L or DPL, Inc.
16 that DPLER will participate in the auctions that are
17 or may be authorized as part of this proposed ESP?

18 A. That's our anticipation, yes.

19 Q. Has there been any discussion about the
20 contract structure between DP&L and DPLER if DPLER
21 participates and is successful in securing tranches
22 in the auction?

23 A. Not that I'm aware of. We do have a
24 transfer pricing mechanism in place and I believe it
25 would be consistent with, you know, that activity.

1 Q. So you would anticipate that the
2 contracting price would be the same under the auction
3 as it is in the current custom and retail matrix and
4 organic market contracting?

5 A. That would be my expectation, yes.

6 Q. I'd like to turn your attention to page
7 3, lines 1 and 2 of your testimony, where you talk
8 about the standard service or, excuse me, stability
9 service rider.

10 A. Yes.

11 Q. And there you state that it's to permit
12 DP&L to provide stable electric service. When you're
13 referring to "stable electric service," are you
14 referring to generation, transmission, and
15 distribution?

16 A. The entire -- the entire enterprise, yes,
17 that's correct.

18 Q. Am I also correct that you've not looked
19 at each individual element of the DP&L business and
20 what happens if you don't get the SSR?

21 A. That's correct. Again, we view this as a
22 DP&L-wide filing.

23 Q. For example, you've not identified any
24 specific reliability improvements in transmission
25 associated with receiving or not receiving the SSR,

1 correct?

2 A. That's correct.

3 Q. And you've not identified any specific
4 reliability improvements in distribution service
5 associated with receiving or not receiving the SSR;
6 is that also correct?

7 A. That is correct.

8 Q. And would it be fair to say that you've
9 not identified any specific reliability improvements
10 in generation service associated with receiving or
11 not receiving the SSR?

12 A. That is correct as well.

13 Q. One of the outcomes, if you're
14 unsuccessful in this application, with regard to the
15 SSR is that you would see a significant reduction in
16 the return on equity, correct?

17 A. Again, I would have to say, qualify my
18 response by saying you would have to set all things
19 being equal. So if we say everything is equal,
20 forward curves, level switching, so on and so forth
21 that we have made in our filing and compare that to
22 our requested ROE, requested SSR, you know, say it
23 has a certain ROE, everything else stays the same but
24 you lower that SSR, then yes, that would negatively
25 impact our return on equity.

1 Q. And with that qualification would it be
2 fair to say that the SSR is -- one of the effects of
3 the SSR is that it will provide some stabilization on
4 the return of equity that the company is receiving
5 over the term of the ESP?

6 A. Yes, again, with that qualification I
7 agree with that.

8 Q. And, as a practical matter, do I
9 understand your position correctly that it's the
10 compressed dark spreads and shopping that are the
11 primary factors that pose a threat to DP&L's ability
12 to provide stable electric service?

13 A. Yeah, I would maybe answer that a little
14 bit differently. I would say that the forward
15 commodity markets, which really are the dark spread,
16 and switching are challenging our revenue and,
17 therefore, do pose a challenge to DP&L and form a
18 significant basis of the filing that we've made.

19 Q. With regard to the switching tracker, am
20 I correct that the switching tracker is intended to
21 accomplish a similar result as the SSR, that is to
22 assist the company in providing an opportunity to
23 earn a level of a return on equity within the range
24 of reasonableness that the company has identified?

25 A. Yes, I would agree with that.

1 Q. Now, you're not taking any position in
2 this case that the SSR results in stable SSO prices,
3 correct?

4 A. Not sure I understand the question. Can
5 you rephrase it maybe.

6 Q. Let me see if I can specify it a little
7 bit more for you.

8 A. Sure.

9 Q. As proposed in this ESP there are a
10 number of riders that adjust periodically, correct?

11 A. Yes, that's correct.

12 Q. For example, the competitive bid rider is
13 one of those.

14 A. Yes.

15 Q. You also have a fuel rider which would
16 adjust periodically.

17 A. That's correct.

18 Q. The capacity rider would adjust with the
19 passing of each planning year?

20 A. Correct.

21 Q. You have an energy efficiency rider as
22 part of this application, correct?

23 A. Yes. That's correct.

24 Q. You have an alternative energy rider that
25 also changes periodically, correct?

1 A. That is correct.

2 Q. You would update your transmission cost
3 recovery rider, correct?

4 A. That is correct.

5 Q. And, if approved, the switching tracker
6 would change as switching changes, correct?

7 A. Yes, switching that goes on over the
8 course of the ESP, and yes, that would change.

9 Q. So it's fair to say that none of these
10 riders is fixed for the duration of the ESP, correct?

11 A. That is correct.

12 Q. One of the concerns raised by you and
13 others in this proceeding is a degradation of DP&L's
14 creditworthy; is that a fair statement?

15 A. Yes, it's one of the measures that we
16 look at when we talk about being financially viable
17 or a viable enterprise.

18 Q. Now, as part of the merger in this case
19 are you aware of some of the merger commitments made
20 by DP&L, AES Corporation, and The Dayton Power &
21 Light Company as part of its application?

22 A. Yes, I have seen those. I have not
23 reviewed them recently, but I have seen them.

24 Q. And those commitments would be contained
25 in the application that was filed by DP&L and others

1 with the Commission, correct?

2 A. I don't think I understand your question.

3 Q. Did the application filed by DP&L, AES,
4 and others contain the commitments that you're
5 referring to?

6 A. Yeah, that's -- that is my understanding.

7 MR. DARR: For the record, I'd like to
8 represent that this is a copy that's been stamped by
9 the Commission with the typical certification that
10 it's a true and accurate record. And I'd like to
11 have this marked as IEU Exhibit --

12 MR. FARUKI: If I may help, it would be
13 19, I believe.

14 MR. DARR: Nineteen? You know, I leave
15 for a couple days and just look what happens.

16 EXAMINER MCKENNEY: It will be so marked.

17 MR. DARR: Thank you.

18 (EXHIBIT MARKED FOR IDENTIFICATION.)

19 Q. (By Mr. Darr) Do you have in front of you
20 what's been marked as IEU Exhibit 19?

21 A. I do. I don't see a 19 on here, but I
22 have before me the application of the AES
23 Corporation, Dolphin Sub, Inc., DP&L Inc. and The
24 Dayton Power & Light Company.

25 Q. Yes, I think we're all on the same page.

1 A. Okay.

2 Q. And I realize this application was filed
3 before you joined DP&L. Would you turn to page 4,
4 actually page 3.

5 A. Yes.

6 Q. You see the section that's titled "Key
7 elements and benefits of the merger"?

8 A. Yes, I do.

9 Q. And these would be the merger
10 commitments?

11 A. Uh-huh. I see them.

12 Q. And are these the merger commitments that
13 you were referring to when you said that you had
14 reviewed or understood that there were merger
15 commitments that were made a few minutes ago?

16 A. Yes. Yes, they are.

17 Q. And if we go to page 4, am I correct that
18 one of these merger commitments is that, quote, "Upon
19 consummation of the merger, DP&L's credit rating will
20 remain investment grade." Do you see that?

21 A. Yes, I am -- I do.

22 MR. DARR: I'd like to have another
23 document marked as IEU Exhibit 20.

24 EXAMINER MCKENNEY: It will be so marked.

25 (EXHIBIT MARKED FOR IDENTIFICATION.)

1 MR. DARR: And, again, I'll represent for
2 the record that this is an item that's been marked
3 with the certification of the Commission to indicate
4 that it's a true and accurate record.

5 Q. Would you identify this for us, please?

6 A. It's Applicants' Reply Comments. I'm
7 assuming the applicant is Dayton Power & Light,
8 Incorporation.

9 Q. Well, the caption of the case -- excuse
10 me?

11 A. I'd like to confer with counsel on
12 exactly what it is I am looking at here.

13 MR. FARUKI: Your Honor, my copy is
14 missing pages. I'm not sure if that's --

15 THE WITNESS: Oh, yeah, mine is too.

16 MR. FARUKI: -- material to the question
17 that is coming.

18 THE WITNESS: I have only the odd pages.

19 MR. DARR: I apologize, your Honor. I'll
20 withdraw this exhibit.

21 EXAMINER MCKENNEY: The exhibit is
22 withdrawn.

23 Q. (By Mr. Darr) Since you have become
24 president and CEO of DP&L, I believe you indicated
25 that there have been some qualitative benefits that

1 you have identified as a result of the merger; is
2 that correct?

3 A. Yes, that's correct.

4 Q. And these would be in the areas of IT
5 integration and some sharing of expertise, correct?

6 A. That's correct.

7 Q. Am I also correct that in your view AES
8 has not done anything affirmatively to support the
9 financial integrity of DP&L?

10 A. That is correct.

11 Q. And, further, am I correct that you
12 cannot identify any quantitative benefits that have
13 been realized as a result of the merger with AES?

14 A. That is correct, other than those that
15 we -- you just mentioned, IT, Synergy, licensing
16 fees, savings, things like that.

17 Q. As president and CEO of DP&L, Inc. and
18 Dayton Power & Light, you were also signatory of the
19 filings that are made with the Securities & Exchange
20 Commission, correct?

21 A. That is correct.

22 MS. YOST: Your Honor, if I may
23 interrupt. It's 5:30.

24 EXAMINER PRICE: You may. Let's go off
25 the record.

1 (Discussion off the record.)

2 EXAMINER PRICE: Let's go back on the
3 record.

4 MR. DARR: Could I have this marked as
5 IEU Exhibit, should we call it 21?

6 EXAMINER MCKENNEY: It will be so marked
7 IEU 21.

8 (EXHIBIT MARKED FOR IDENTIFICATION.)

9 Q. (By Mr. Darr) Do you have in front of you
10 what's been marked as IEU Exhibit 21?

11 A. I do.

12 Q. Could you identify that for us, please?

13 A. Yes. This is the 10-K report for The
14 Dayton Power & Light Company and DP&L, Inc.

15 Q. And this contains statements concerning
16 the financial activities and business activities of
17 Dayton Power & Light that is filed with the
18 Securities & Exchange Commission, correct?

19 A. Yes, that is correct.

20 Q. And these statements are true and
21 accurate to the best of your understanding, correct?

22 A. To the best of my knowledge, yes.

23 Q. If you turn to page 52 of the document --

24 A. Yes.

25 Q. -- am I correct that you're reporting

1 \$42-1/2 million in wholesale revenues in 2012? Or an
2 increase of \$42-1/2 million of wholesale revenues in
3 2012?

4 A. Yes, that's represented here. Just can
5 you point me to the point in the page where you're
6 looking at? I'd like to see that.

7 Q. Sure.

8 MR. FARUKI: I can show him, your Honor.

9 Q. About halfway down in the table, total
10 wholesale change.

11 A. Yes, I see that.

12 MR. FARUKI: He has it in front of him.

13 A. Yes, 42-1/2, I see that.

14 Q. And if we turn to page 66 of the 10-K,
15 it's reported that 36 percent of DP&L's electric
16 revenue for the year ended 2012 were from the sales
17 of excess energy and capacity in the wholesale
18 market, that DP&L's electric revenues in the
19 wholesale market -- and that the electric revenues in
20 the DP&L wholesale market are reduced by sales to
21 DPLER. Can you explain to us what that means?

22 A. Can you point to me that point, I need
23 direction again.

24 Q. It's right at the bottom of the page --

25 A. Okay.

1 Q. -- marked as 66.

2 A. Wait a minute. Oh, I see it's at the top
3 of --

4 Q. One of the nice features now of the SEC,
5 they've gone to a web-based system and pages tend to
6 roll over.

7 A. This statement here?

8 Q. Yes.

9 A. Let me read that.

10 I'm sorry, can you ask the question
11 again?

12 Q. Sure. You're reporting 36 percent of
13 DP&L's electric revenue for the year ended 2012 were
14 from the sales of excess energy and capacity in the
15 wholesale market and then there's a caveat that
16 follows that that indicates that the market rev --
17 that the revenues were reduced by sales to DPLER.
18 Can you explain what that means?

19 A. Yeah. My understanding of that statement
20 is that to the extent that we are selling to DPLER,
21 that would be shown somewhere else or, in other
22 words, if you are selling a wholesale -- you're
23 making a wholesale transaction into the PJM market,
24 that would be recognized in one spot, if that is a
25 sale to DPLER, it will show up somewhere else. So

1 the revenue, you would account for the revenue
2 differently.

3 Q. I see.

4 A. That's my interpretation of that. I have
5 not looked at this for a month or so.

6 Q. And further you report that DP&L's --
7 states that energy in excess of existing -- I'm going
8 to just read this correctly. "Energy in excess of
9 the needs of existing retail customers is sold into
10 this -- into the wholesale market when we," meaning
11 DP&L "identify opportunities with positive margins,"
12 correct.

13 A. Correct.

14 MR. DARR: I have nothing further. Thank
15 you.

16 EXAMINER MCKENNEY: Mr. Darr.

17 Staff?

18 - - -

19 CROSS-EXAMINATION

20 By Mr. McNamee:

21 Q. Mr. Herrington, very quickly. In
22 discussing your budgeting process I believe you
23 indicated that your budget for the current year was
24 pretty good and as you go farther out it becomes less
25 accurate. Speculative, less certain.

1 A. Yes, more subject to unexpected
2 variation.

3 Q. Okay. And that's true of forecasts
4 generally, isn't it?

5 A. That's correct.

6 Q. That is to say, a second year is more
7 speculative than the first year.

8 A. That's correct.

9 Q. The third is more speculative than the
10 second.

11 A. I would agree with that.

12 Q. On and on like that; isn't that correct?

13 A. I agree with that.

14 MR. McNAMEE: Perfect. That's all I
15 need. Thank you.

16 EXAMINER McKENNEY: Mr. McNamee.

17 Redirect?

18 MR. FARUKI: Yes, thank you, your Honor.

19 MR. McNAMEE: I believe he's Mr. Faruki
20 though.

21 EXAMINER McKENNEY: Mr. Faruki.

22 MR. FARUKI: I didn't feel insulted by
23 that.

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REDIRECT EXAMINATION

By Mr. Faruki:

Q. Mr. Herrington, you were asked some questions earlier about O&M expense reductions that the company had studied. Do you remember that?

A. I do.

Q. With regard to the potential O&M expense reductions let me ask you this: Is the need for an SSR in the amount that the company has requested lessened by virtue of the O&M expense reduction potential that you have identified?

A. No, it's not.

Q. Why not?

A. For one, again, I spent some time talking about the ultimate impact of O&M expense reduction, there may be a cost.

Secondly, many of these, as I commented on them as related to the first point, we've been calling them prospective or using other terminology that says they're potential O&M cuts. Regardless of the fact that they're in the budget, the budget is a goal and it's what we're striving towards. We have no indication that we will get there.

The O&M forecasts that were included in the filing are based on the historic operation of

1 DP&L as an enterprise. As I mentioned before, our
2 team, the DP&L organization, has been around for some
3 decades and has expertise in operating and has, in
4 our belief, run the plants, run the facilities, the
5 T and D system very efficiently.

6 What that means is we have found what we
7 believe historically to be the optimal O&M costs
8 versus reliability, subject to your conversation we
9 had said this is -- the O&M cuts were in relation to
10 potential outcomes that may happen in this regulatory
11 proceeding.

12 So to that extent they are simply cuts or
13 reductions, if you will, that give us an opportunity
14 to continue to earn a reasonable rate of return.
15 They're by no means guaranteed. We are taking on
16 additional risk by doing them and that risk may
17 ultimately prove to be not worth the savings that we
18 think we will achieve at this point.

19 MR. FARUKI: Thank you, Mr. Herrington.

20 Your Honors, that's all I have.

21 EXAMINER MCKENNEY: Thank you,
22 Mr. Faruki.

23 Recross?

24 MR. FARUKI: I would move the admission
25 again of DP&L Exhibit 8 which is Mr. Herrington's

1 prefiled testimony.

2 EXAMINER McKENNEY: DP&L 8, any
3 objection?

4 (No response.)

5 EXAMINER McKENNEY: It will be so
6 admitted.

7 (EXHIBIT ADMITTED INTO EVIDENCE.)

8 MR. JACOBS: Your Honors, I would mark
9 the objections and answers of DP&L to OCC's
10 15th set of interrogatories as Edgemont 1 and move
11 it into admission to capture Mr. Faruki's
12 stipulations.

13 MR. FARUKI: I think it's appropriate to
14 mark it but since the text was stipulated in, the
15 whole exhibit should not come in.

16 EXAMINER McKENNEY: It will be marked
17 Edgemont 1.

18 EXAMINER PRICE: Why doesn't counsel for
19 Edgemont and counsel for Dayton Power & Light get
20 together and just present tomorrow a joint exhibit
21 that represents those stipulations, preferably just
22 the relevant pages.

23 MR. FARUKI: We can do. That it may not
24 be tomorrow, but we will get that done. Thank you.

25 EXAMINER McKENNEY: We'll mark that

1 document tomorrow Edgemont 1.

2 MR. FARUKI: Yes, thank you.

3 MR. JACOBS: The stipulated document.

4 EXAMINER MCKENNEY: Yes.

5 MR. JACOBS: That's fine.

6 EXAMINER MCKENNEY: Is there anything
7 further?

8 MR. DARR: Yes, your Honor, move
9 admission of IEU 19 and 21.

10 EXAMINER MCKENNEY: Any objection?

11 MR. FARUKI: No objection to 19.

12 EXAMINER MCKENNEY: Nineteen will be
13 admitted.

14 (EXHIBIT ADMITTED INTO EVIDENCE.)

15 MR. FARUKI: Was 21 --

16 MR. McNAMEE: My only objection to 19 is
17 I didn't get one. Do you have another one?

18 MR. OLIKER: I do for you tomorrow.

19 MR. FARUKI: No objection to 21.

20 EXAMINER MCKENNEY: 19 and 21 will be
21 admitted.

22 (EXHIBIT ADMITTED INTO EVIDENCE.)

23 EXAMINER MCKENNEY: Thank you all.

24 Mr. Herrington, you are excused.

25 Let's go off the record.

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(Hearing adjourned at 5:41 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 Thursday, March 21, 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.

(71803-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 The Dayton Power and Light Company hearing held on 03/21/13 - Volume IV - Public Version electronically filed by Mrs. Jennifer Duffer on behalf of Armstrong & Okey, Inc. and Jones, Maria DiPaolo Mrs.