

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 Tuesday,
March 26, 2013.

VOLUME VII

- - -

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Tuesday Morning Session,
March 26, 2013.

- - -

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

The Public Utilities Commission calls at
this time and place Case No. 12-426-EL-SSO, being in
the Matter of the Application of the Dayton Power &
Light Company for Approval of its Electric Security
Plan.

My name is Bryce McKenney, with me is
Gregory Price, we are the Attorney Examiners assigned
by the Commission to hear this case.

FirstEnergy Solutions, are you prepared
to call your witness?

MR. LANG: Yes, your Honor. FirstEnergy
Solutions calls Dr. Jonathan Lesser.

EXAMINER MCKENNEY: Mr. Lesser, please
raise your right hand.

(Witness sworn.)

EXAMINER MCKENNEY: Thank you.

MR. LANG: Your Honor, we ask that
Dr. Lesser's confidential testimony be marked as FES
Exhibit No. 14 and the public version be marked as
FES Exhibit No. 14A, please.

1 EXAMINER MCKENNEY: It will be so marked.

2 (EXHIBITS MARKED FOR IDENTIFICATION.)

3 - - -

4 JONATHAN A. LESSER

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

7 DIRECT EXAMINATION

8 By Mr. Lang:

9 Q. Dr. Lesser, can you introduce yourself,
10 please?

11 A. Yes, my name is Jonathan A. Lesser,
12 L-e-s-s-e-r, I'm the president of Continental
13 Economics. My address is 6 Real Place, Sandia Park,
14 New Mexico, 87047.

15 Q. Can you identify your testimony, what's
16 been marked as FES No. 14 as the confidential
17 version, 14A as the public?

18 A. I can.

19 Q. Do you have any corrections to make to
20 your testimony?

21 A. I do not.

22 Q. If I asked you the same questions today
23 that are in your prefiled testimony, would you
24 provide the same answers?

25 A. I would.

1 MR. LANG: Your Honor, Dr. Lesser is
2 available.

3 EXAMINER McKENNEY: Thank you.

4 I just, to clarify, FES 14 will be
5 Mr. Lesser's testimony, 14A will be the confidential
6 version; is that what you said?

7 MR. LANG: I had actually done it the
8 reverse, but if you would prefer the other way, we
9 did can do it too.

10 EXAMINER McKENNEY: Let's do it that way
11 for consistency.

12 MR. LANG: Okay.

13 EXAMINER McKENNEY: At this time we'll
14 move to cross-examination. We'll start with
15 Ms. Petrucci; do you have cross-examination?

16 MS. PETRUCCI: I do not.

17 MR. O'BRIEN: I have no questions, your
18 Honor.

19 MS. BOJKO: No questions, your Honor.

20 EXAMINER McKENNEY: OCC?

21 MS. YOST: No questions, your Honor.

22 EXAMINER McKENNEY: Mr. Darr?

23 MR. DARR: No questions.

24 EXAMINER McKENNEY: Mr. Yurick?

25 MR. YURICK: No questions.

1 EXAMINER MCKENNEY: Major.

2 MAJOR THOMPSON: Nothing, thank you.

3 EXAMINER MCKENNEY: Mr. Faruki?

4 MR. FARUKI: Yes, your Honor.

5 - - -

6 CROSS-EXAMINATION

7 By Mr. Faruki:

8 Q. Good morning, Mr. Lesser.

9 A. Good morning.

10 Q. I have a few questions about generation
11 separation, which is one of the subjects of your
12 testimony; is that right?

13 A. It is.

14 Q. You have not done an analysis to
15 determine how feasibility to -- for DP&L to separate
16 its generation assets by the end of 2014, have you?

17 A. I have relied on the corporate separation
18 plans that your client has filed. I have not done an
19 independent analysis; however, in reviewing the first
20 corporate separation plan where I believe your
21 witness Mr. Rice helped prepare that plan and talk
22 about completing corporate separation within one year
23 of that filing, and that would involve either
24 restructuring some of the debt, calling in so-called
25 uncallable bonds or no-call bonds, or doing a

1 beneficial transfer which would involve a lease of
2 the generation assets.

3 Q. You're talking about the original
4 corporate separation plan?

5 A. I am.

6 Q. Okay. And you have not done your own
7 independent analysis, however, as to how feasible it
8 is to do that, have you?

9 A. I would take the word of what your client
10 wrote in their corporate separation plan.

11 Q. That's not my question, sir. Have you
12 done your own independent analysis or not?

13 A. No, I have not done an independent
14 analysis of that.

15 Q. Okay. You agree with me that the costs
16 of separating generation into a separate company are
17 going to be very company specific; is that right?

18 A. I would agree that they're specific to
19 the company, yes.

20 Q. And, in terms of the work you did for
21 this case, you have not made an independent analysis
22 or determination about what separation of generation
23 assets by the end of 2014 would do to the financial
24 integrity of the applicant, The Dayton Power & Light
25 Company; is that correct?

1 A. There's no need for me to do an analysis
2 because there's no evidence I've seen in your case by
3 any of your witnesses that the company's financial
4 integrity would be at all jeopardized. There's
5 simply no evidence of that whatsoever.

6 MR. FARUKI: I'll move to strike. I
7 asked him whether he's done it.

8 MR. LANG: Your Honor, his question was
9 responsive.

10 EXAMINER MCKENNEY: Motion to strike is
11 overruled.

12 The witness is directed to please try to
13 respond to the question that's asked of you.

14 THE WITNESS: Yes, your Honor.

15 MR. FARUKI: Let me have my question read
16 back, please.

17 (Record read.)

18 Q. Your answer is?

19 A. I have not because there's no need to, in
20 my opinion.

21 Q. Okay.

22 MR. FARUKI: Your Honor, that's all I
23 have. Thank you.

24 EXAMINER MCKENNEY: Thank you.

25 Staff?

1 MR. McNAMEE: Nothing.

2 EXAMINER MCKENNEY: Mr. Lang, redirect?

3 Oh, sorry. Redirect?

4 MR. LANG: No, your Honor.

5 EXAMINER MCKENNEY: Thank you,

6 Mr. Lesser.

7 THE WITNESS: Thank you.

8 EXAMINER MCKENNEY: You are excused.

9 Mr. Lang.

10 MR. LANG: Your Honor, we would move FES

11 Exhibits 14 and 14A.

12 EXAMINER MCKENNEY: Any objection?

13 MR. FARUKI: No, your Honor.

14 EXAMINER MCKENNEY: They are so admitted.

15 (EXHIBITS ADMITTED INTO EVIDENCE.)

16 MR. SHARKEY: Could we go off the record

17 briefly?

18 EXAMINER PRICE: Go off the record.

19 (Discussion off the record.)

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

21 Mr. Yurick?

22 MR. YURICK: Thank you, your Honor.

23 Would you please swear the witness.

24 (Witness sworn.)

25 EXAMINER PRICE: Please be seated and

1 state your name and business address for the record.

2 THE WITNESS: My name is Kevin C.
3 Higgins. My business address is 215 South State
4 Street, Suite 200, Salt Lake City, Utah, 84111.

5 EXAMINER PRICE: Thank you.

6 Mr. Yurick.

7 (EXHIBIT MARKED FOR IDENTIFICATION.)

8 - - -

9 KEVIN C. HIGGINS

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

12 DIRECT EXAMINATION

13 By Mr. Yurick:

14 Q. Mr. Higgins, could you please tell the
15 panel how you're currently employed.

16 A. I'm a principal in the consulting firm
17 Energy Strategies.

18 Q. And in that capacity have you prepared a
19 prefiled testimony in this case?

20 A. Yes, I have.

21 Q. Showing you what's been marked Kroger
22 Exhibit 1, is that your prefiled testimony submitted
23 in this case March 1, 2013?

24 A. Yes, it is.

25 Q. And was that testimony prepared by you or

1 at your direction?

2 A. Yes, it was.

3 Q. And if I were to ask you the questions
4 set forth therein here today, would your answers be
5 the same at this point?

6 A. Yes, they would.

7 Q. Are there any changes you would like to
8 make to that testimony?

9 A. No.

10 MR. YURICK: Your Honors, I would like to
11 ask that Kroger Exhibit 1 be admitted into evidence
12 and I submit the witness for cross-examination.

13 EXAMINER PRICE: As is the practice, we
14 will defer ruling on admission until after we
15 complete cross-examination.

16 Ms. Petrucci, cross?

17 MS. PETRUCCI: No questions.

18 EXAMINER PRICE: Mr. O'Brien.

19 MR. O'BRIEN: No questions.

20 EXAMINER PRICE: Ms. Bojko?

21 MS. BOJKO: No questions, your Honor.

22 EXAMINER PRICE: Consumers' counsel.

23 - - -

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1 CROSS-EXAMINATION

2 By Mr. Berger:

3 Q. Mr. Higgins, I have just -- my name is
4 Tad Berger, I'm with the Office of Consumers'
5 Counsel. Mr. Higgins, I just have a couple of
6 questions for you.

7 With respect to your recommendation for a
8 sunset on the stabilization charge for shopping
9 customers, or for nonshopping customers --

10 A. For shopping customers.

11 Q. I'm sorry, for shopping customers.

12 Would you just explain your rationale for
13 exempting shopping customers from this charge
14 after -- five years I think is in your testimony?

15 A. Yes. The rationale is linked to the
16 situation in which a shopping customer finds themself
17 in and that is after five years the customers who
18 would be sunset under my proposal would have been
19 paying Dayton Power & Light for generation services,
20 even though they would have been purchasing their
21 full generation service from a CRES provider for that
22 entire period.

23 And it seems appropriate to me to have a
24 mechanism by which customers can, if you will, wean
25 themselves off of having to pay generation charges to

1 the incumbent utility long after they've demonstrated
2 that they intend to be market participants.

3 And so it seems reasonable to have a
4 period at which the Commission recognizes that these
5 customers should no longer be required to underwrite
6 Dayton Power & Light's generation costs.

7 Q. Now, you'd agree with me, wouldn't you,
8 that the company's rationale for the stabilization
9 charge is primarily related to customer switching?

10 A. Yes. Yes, I believe that that's a
11 fundamental part of the company's rationale.

12 Q. So nonshopping customers, you don't have
13 a specific recommendation for whether they should
14 even pay this charge in the first place, do you?

15 A. For nonshopping customers?

16 Q. Yes.

17 A. Well, my recommendation, generally
18 speaking, is that I think -- I believe the Commission
19 can reject the entire proposal from the company for
20 this nonbypassable charge. At the same time, I'm
21 recognizing in my testimony that the Commission chose
22 to award stabilization charges in the AEP Ohio case,
23 and so recognizing that that's a possibility in this
24 case, I proposed something of a middle ground, if you
25 will.

1 But from my vantage point my primary
2 recommendation is, at a first cut, is that the
3 Commission can choose to reject this entire charge.

4 Q. Okay. But you don't have a specific
5 recommendation in your testimony with respect to
6 nonshopping customers and whether they should also
7 sunset at the same time in the event the Commission
8 permits some charge; is that right?

9 A. That is correct.

10 Q. And on page 13 of your testimony at
11 line 4 you say "using Mr. Chambers' assumptions."
12 This is not an implicit acceptance of Mr. Chambers'
13 assumptions, is it?

14 A. No, it is not. And, in fact, elsewhere
15 in my testimony I do qualify that, I say without
16 necessarily accepting Mr. Chambers' assumptions, but
17 in this case for discussion purposes, and for
18 reference as a benchmark, I make the statement I do
19 here that if one were to use his assumptions and
20 using his numbers, then the results would be as
21 follows.

22 Q. And would you agree with me that if
23 structural separation in the company's generation
24 business had occurred, that the entire stability
25 charge would be --

1 EXAMINER PRICE: Mr. Berger, this
2 question better be adverse to this witness. This
3 better not be "do you agree with me and our position
4 in this case."

5 MR. BERGER: Withdrawn, your Honor.

6 Q. Now, in terms of your recommendation on
7 projected ROE impact and your indication that the
8 company should come back in -- well, I'm sorry.

9 You talk about the projected ROE impact
10 for 2013 and '14 and indicate that you haven't made
11 any calculation of it after that period; is that
12 right?

13 A. That is correct.

14 Q. Are you suggesting that this issue should
15 be reevaluated in a couple of years?

16 A. I'm -- on that score I would, in essence,
17 defer to the Commission as to whether or not another
18 look would be appropriate. For purposes of my
19 discussion on return on equity, I'm of the view that
20 trying to project them that far out is highly
21 speculative, and so for ratemaking purposes I would
22 not encourage the Commission to make decisions today
23 that are binding in the future based on projected
24 returns on equity.

25 To the extent that there is a valid

1 reason to look at Dayton Power & Light's return on
2 equity in those years, then of course the Commission
3 and the company would have the opportunity to address
4 that in the future.

5 EXAMINER PRICE: But fundamentally you
6 believe the farther out in the future the projections
7 go, the less reliable they are.

8 THE WITNESS: Yes, sir.

9 EXAMINER PRICE: Inherently.

10 THE WITNESS: Yes, your Honor.

11 Q. Now, with respect to your testimony about
12 the proposed reconciliation rider --

13 A. Yes.

14 Q. -- with respect to the competitive
15 enhancement cost portion of that --

16 A. Yes.

17 Q. -- rider, if CRES suppliers ask for these
18 improvements that cause the company to incur costs,
19 are they the ones who are responsible for those
20 costs?

21 A. I believe that a judgment call can be
22 made with respect to how those costs get assigned.
23 In my testimony I acknowledge that to the extent that
24 a portion of these costs are incurred for the purpose
25 of making the competitive market, the mechanics, if

1 you will, of the retail competitive market better,
2 then it is appropriate for those costs to be assigned
3 in that arena, and for that purpose ultimately
4 assigned either to shopping customers or they could
5 be assigned directly to CRES providers. But I do
6 believe it's appropriate for those costs to be
7 recovered in that arena.

8 Q. And you would not oppose those costs
9 being assigned directly to suppliers rather than
10 shopping customers as you indicated?

11 A. I would not oppose that. I believe that
12 some reasonable assignment of those costs can be made
13 either to the CRES providers or to the shopping
14 customers depending on, you know, the particular cost
15 that's involved.

16 Q. Now, with respect to the over- or
17 undercollection of fuel costs that are experienced by
18 customers who are switching from a nonshopping status
19 to a shopping status and they leave behind either an
20 over- or undercollection of those costs, are you
21 opposed to the company individually tracking those
22 costs for that customer and charging that customer
23 the balance that is either owed to them or credited
24 to them?

25 A. I'm not opposed to that. And just to be

1 clear that we're on the same page of this, my
2 argument about not assigning these particular
3 reconciliation costs to shopping customers speaks to
4 the issue of those shopping customers who have no
5 responsibility for incurring these costs, what I
6 would call long-term shopping customers, for example.

7 The company's proposal made no effort to
8 differentiate those customers from customers who may,
9 in fact, have caused certain fuel costs to be
10 incurred and then left to shop. So what you've
11 suggested, Mr. Berger, is an approach where one
12 attempts to directly assign and track these costs so
13 that the parties cause them or charge them. I would
14 have no objection to that

15 EXAMINER PRICE: Do you --

16 MR. BERGER: Thank you very much. I'm
17 sorry.

18 EXAMINER PRICE: Just to follow up,
19 assuming it can be done technically, do you think
20 your idea of having a five-year phase-out which you
21 propose for the SSR would have applicability in the
22 reconciliation rider, give the parties -- give people
23 who are shopping some period of time when they pay
24 the reconciliation rider and then they would be done
25 with it?

1 THE WITNESS: I believe there's an analog
2 there, your Honor. I think that the specifics might
3 have to be fine-tuned to fit the circumstances of the
4 reconciliation rider, but the concept is similar.

5 EXAMINER PRICE: But you agree, though,
6 that this does pose any sort of five-year phase-out;
7 we want to do it because of fairness, correct?

8 THE WITNESS: Correct.

9 EXAMINER PRICE: But it does raise some
10 other fairness issues, for example, if a customer
11 moves into the service territory and takes standard
12 service offer for one month, then now they're on the
13 hook for five years for charges they have no cost
14 causation as opposed to a customer who perhaps moves
15 out of the service territory or maybe moves in the
16 service territory may not need to pay the riders.

17 THE WITNESS: I recognize that, but then
18 one also must look at the status quo, which is an
19 open-ended imposition of generation related costs on
20 a shopping customer with no clear end in sight.

21 So recognizing that you might have
22 individual circumstances such as you described that
23 could be anomalous, and also trying to address the
24 issue of administrative expediency, it seems
25 reasonable to have a five-year cutoff that would

1 apply to all -- at least that would be, in my view,
2 an improvement over the current circumstances.

3 EXAMINER PRICE: Are you aware that when
4 competitive gas choice was introduced, we had similar
5 mechanisms like that in Ohio?

6 THE WITNESS: No, I'm not specifically
7 aware of that being implemented in Ohio; however, it
8 wouldn't surprise me.

9 EXAMINER PRICE: Thank you.

10 Thank you, Mr. Berger.

11 MR. BERGER: Thank you, Mr. Higgins.

12 EXAMINER PRICE: Mr. Williams.

13 MR. WILLIAMS: No questions your Honor.

14 EXAMINER PRICE: FES?

15 MR. HAYDEN: No, thank you.

16 EXAMINER PRICE: IEU?

17 MR. DARR: No, your Honor.

18 EXAMINER PRICE: Major?

19 MAJOR THOMPSON: Nothing, sir.

20 EXAMINER PRICE: Mr. Sharkey?

21 MR. SHARKEY: Yes. Thank you, your

22 Honor.

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CROSS-EXAMINATION

By Mr. Sharkey:

Q. Mr. Higgins, if you would turn, please, to page 8 of your testimony.

A. Yes, sir.

Q. In your answer that starts on line 12 you propose that the Commission conduct a balancing test regarding DP&L's request for an SSR, correct?

A. I do indicate that the Commission should balance several factors.

Q. And starting on line 3 of your testimony you quote Ohio Revised Code 4928.143(B)(2)(d), right?

A. Yes.

Q. You understand that DP&L seeks recovery of its SSR under that section?

A. That's my understanding.

Q. Okay. Take a look at the section, but it's true, isn't it, that there's no specific reference to a balancing test in that section?

MR. YURICK: There would be an objection for the record. I think the section speaks for itself.

EXAMINER PRICE: He can answer if he knows. I'm sure he's just asking for a lay opinion, not a legal opinion.

1 MR. SHARKEY: I am, your Honor.

2 A. The language in this section identifies
3 many factors that must be considered. Inherent in
4 identifying many factors it suggests that something
5 must be balanced in order to reach a reasonable
6 determination. There is no specific reference to the
7 phrase "balancing test" however, nor do I use the
8 phrase "balancing test."

9 Q. You do use the idea that DP&L's request
10 for an SSR should be balanced against specific items;
11 that's page 8, line 15, right?

12 A. Exactly.

13 Q. The word -- there's neither the word
14 "balanced" nor any synonym for the word "balanced" in
15 subparagraph (d), is there?

16 A. That is correct. Again, I'll refer to my
17 prior answer, Mr. Sharkey.

18 Q. On the one side of your balancing task
19 you say on page 8, line 13, that "the Commission may
20 find that DP&L's proposed SSR provides a type of
21 'certainty for retail electric service,' as the
22 Commission found in the AEP case," right?

23 A. Yes.

24 Q. Okay. And on the other side of the
25 balancing test you identify a number of factors that

1 you believe the Commission should take in
2 consideration?

3 A. Yes.

4 Q. On the certainty for DP&L's side of the
5 balancing test you believe that the Commission could
6 reasonably determine that DP&L was entitled to some
7 level of SSR, right?

8 A. I believe that the Commission may
9 ultimately determine that. I don't go so far in my
10 testimony to say that I believe it would be
11 reasonable for the Commission to do so, but I
12 acknowledge that the Commission may.

13 Q. I don't think it's a direct answer to my
14 question. It's true, isn't it, that you believe the
15 Commission could reasonably conclude DP&L's entitled
16 to some level of an SSR?

17 MR. YURICK: Objection. Asked and
18 answered.

19 EXAMINER PRICE: Overruled.

20 A. I believe that the Commission could
21 determine that the Commission believes it is
22 reasonable for DP&L to be granted an SSR. Does that
23 satisfactorily answer your question?

24 Q. I don't think so. The question is if the
25 Commission reached that conclusion, you would believe

1 that it would be reasonable, don't you?

2 A. I don't necessarily agree with that,
3 Mr. Sharkey.

4 Q. Do you have a copy of your deposition
5 handy, Mr. Higgins?

6 A. I don't.

7 Q. I will provide a copy to you.

8 MR. SHARKEY: Your Honor, may I approach?

9 EXAMINER PRICE: You may.

10 Q. If you'd turn to page 6.

11 A. Okay.

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

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

21 Your answer goes on. If your counsel
22 would like to me to read it, I will.

23 MR. YURICK: I would say yes.

24 Q. "So I do think the Commission could
25 reasonably find that no SSO is warranted in that

1 light. However, you know, recognizing that the
2 Commission did make a finding in the AEP case that
3 indicated that on the basis of there being certainty
4 for a retail electric service that some type of
5 continued charge for shopping customers was
6 warranted. I realize that the -- I recognize that
7 the Commission may find -- may make a finding of that
8 nature."

9 Did I read that accurately, sir?

10 A. Yes, you did.

11 Q. Now let me ask you about the items that
12 you say should be balanced against the SSR. What I
13 want to do is, first of all, make sure we have a
14 common list of the items and then come back and ask
15 you more detail about them.

16 A. Sure.

17 Q. First, on page 8 of your testimony you
18 opine that certain transition cost-related matters
19 should be balanced against the DP&L's request, right?

20 A. Yes.

21 Q. Then on pages 8 and 9 you state that the
22 interest of long-term shoppers should be balanced
23 against DP&L's request for an SSR, right?

24 A. Yes.

25 Q. And then on pages 9 and 10 you are

1 critical of certain pricing decisions that DP&L's
2 made in the past and suggest that those pricing
3 decisions have caused some of DP&L's financial issues
4 and should be weighed against DP&L's SSR request,
5 right?

6 A. Yes. I would qualify that slightly by
7 saying I'm -- my comments are -- with respect to
8 DP&L's pricing decisions are less about a criticism
9 of the company's pricing decisions but more about
10 recognizing that the company made certain pricing
11 decisions and there have been consequences of those
12 decisions. Less of a criticism, more of an
13 observation.

14 Q. Okay. But those three items are a fair
15 list of the factors that you say should be balanced
16 against DP&L's request, right?

17 A. Yes.

18 Q. Okay. On page 8, line 15 of your
19 testimony, you say that -- I'm focusing here on the
20 first item, transition costs, that DP&L's request for
21 an SSR, quote, "should be balanced against the
22 requirement in Ohio Revised Code § 4928.40 that
23 transition charges in not later than December 31,
24 2010."

25 Did I read that correctly?

1 A. Yes.

2 Q. Do you know when that section that you
3 cite to was enacted?

4 A. I believe that section was enacted as
5 part of Amended Substitute Bill -- Senate Bill 3,
6 which would have been approximately 1999 or
7 thereabouts.

8 Q. And you understand that the section that
9 DP&L has applied under was connected to the part of a
10 2008 legislation that amended Chapter 4928?

11 A. Yes, I am.

12 Q. Okay. It's your position that the Ohio
13 General Assembly has barred the recovery of
14 transition costs under 4928.40?

15 A. Yes.

16 Q. Okay. But you understand that the
17 General Assembly has authorized utilities to recover
18 stability charges, right?

19 A. I recognize, in fact, we can refer to the
20 passage on page 8 that's quoted from the statute,
21 subsection (d), that the Commission -- that the
22 General Assembly has authorized the actions listed in
23 (d). And that section does refer to charges.

24 It is not clear to me from reading this
25 language that these charges refer to charges on

1 non -- charges on shopping customers per se.

2 However, I do recognize that some type of charge is
3 permissible and a charge relating to stability is
4 permissible.

5 Q. Then let me turn to the next item you
6 list, which was the interest of long-term shoppers.

7 A. Yes.

8 Q. You define long-term shoppers as persons
9 who have been shopping for more than three years?

10 A. Yes. For purposes of this discussion,
11 yes.

12 Q. Okay. It's true, isn't it, that that
13 three-year figure is not the product of any
14 arithmetic calculation that you've performed?

15 A. Only counting to 3, but the three years
16 as I note in a footnote, Mr. Sharkey, is -- when you
17 correspond to customers who began to shop within one
18 year, within the first year of the company's last ESP
19 approval.

20 And so for purposes of this discussion I
21 felt that was a reasonable means to identify
22 long-term shopping customers.

23 Q. You would agree with me that long-term
24 shoppers, short-term shoppers, and nonshoppers all
25 have an interest in ensuring that DP&L maintains its

1 ability to provide stable service, correct?

2 A. Yes, because DP&L is the distribution
3 company and as a distribution company it's, you know,
4 it's -- there's importance for the company to be able
5 to provide stable service.

6 Q. And you would also agree that long-term
7 shoppers, short-term shoppers, and nonshoppers all
8 have an interest in making sure that DP&L can
9 maintain its financial integrity?

10 A. Again, since DP&L is the distribution
11 company, it is important that the distribution
12 company be able to maintain its financial integrity.

13 Q. Turn, then, to page 9 of your testimony.
14 Starting on line 20 you say that DP&L, quote, "also
15 faced the risk that pricing SSO rates too
16 aggressively would result in a loss of sales to the
17 market." Did I read that accurately?

18 A. Yes.

19 Q. Okay. And what you're expressing there
20 is the economic principle that DP&L set its SSO price
21 too high which caused a reduction in quantity and
22 which has contributed to the financial integrity
23 issues that DP&L's experience?

24 A. Yes.

25 Q. Turn then, if you would, to page 4, line

1 8 of your testimony.

2 A. Yes.

3 Q. You state there "In effect, DP&L proposes
4 to underwrite in significant part the anticipated
5 reduction in its SSO rates by increasing the
6 nonbypassable charge to shoppers by 88 percent." Did
7 I read that accurately?

8 A. Yes.

9 Q. Okay. You are opining there that DP&L's
10 decision to lower its prices is causing DP&L to have
11 lower profit and is, thus, contributing to DP&L's
12 need for an SSR, right?

13 A. Yes.

14 Q. So DP&L's historic prices were too high
15 which led to a reduction in quantity which
16 contributed to DP&L's need for an SSR and DP&L's plan
17 to lower prices will lead to lower revenue and will
18 also contribute to DP&L's need for an SSR, right?

19 A. As it turns out, both of those things are
20 correct and consistent with one another. One must
21 also bear in mind how DP&L is going to reduce its SSO
22 price; it's going to do so by bidding out more of its
23 service.

24 So, in effect, even though the SSO price
25 to a customer, to a nonshopping customer comes down,

1 DP&L's own quantity as a direct provider is reduced
2 as part of that program. So the quantity is coming
3 down because of the mechanism, DP&L isn't simply
4 reducing its SSO price directly from its own output
5 per say so much as to introducing this competitive
6 component in the auction.

7 Q. You have an economics background, right?

8 A. Yes, sir.

9 Q. You're familiar with laws of supply and
10 demand, correct?

11 A. Absolutely.

12 Q. Okay. You would agree with me that the
13 profit maximizing point for a firm is the price at
14 which the price and quantity intersect or its supply
15 and demand curves intersect, rather?

16 A. Actually to put a fine point on it, no,
17 not necessarily. It's really where marginal cost to
18 the firm intersects with marginal revenue which, for
19 a firm that has a declining demand curve, is actually
20 at a different point than the demand curve.

21 So it's -- I would say that the profit
22 maximizing point is where marginal cost equals
23 marginal revenue. Under perfect competition that is
24 the point that you just described, that is that would
25 be where marginal cost crossed the demand.

1 Q. The firm's -- if you were to look at it
2 as to the supply and demand interests facing an
3 individual firm --

4 A. Yes.

5 Q. -- its marginal revenue and marginal cost
6 curves could be considered to be a supply and demand
7 curve specific to that firm as opposed to specific to
8 the industry, right?

9 A. No. For an individual firm that faces a
10 declining demand curve, a sloped demand curve, its
11 marginal -- the marginal revenue curve will be
12 distinct from the demand curve itself, it's a
13 function of the demand curve but it is not the demand
14 curve per se.

15 Q. In any event, the profit maximizing
16 point, then, for a firm is where its marginal revenue
17 curve intersects with its marginal cost curve.

18 A. Yes. That will -- that will identify the
19 quantity produced at the profit maximizing point and
20 the price that the firm would attempt to charge, if
21 it was maximizing profits, would be off of a demand
22 curve at that quantity.

23 Q. So if I were to draw a marginal revenue
24 and marginal cost curve, they'd look a lot like the
25 traditional supply and demand curve and they're both

1 on the same chart that has price and quantity and
2 show that consumers want less of a product as the
3 price goes up and businesses would supply more when
4 the price goes up; right?

5 A. Yes.

6 Q. In real life businesses rarely, if ever,
7 have perfect knowledge and thus don't know what their
8 profit maximizing price is, do they?

9 A. True.

10 Q. So it's true that if an individual
11 business increases its price a little, you would
12 expect to see a small reduction in the quantity of
13 product that it sold.

14 A. You'd expect to see a reduction; whether
15 it's small or not remains to be seen.

16 Q. Okay. As a result of that increase in
17 price, the business's profits might increase due to
18 the higher price charged, right?

19 A. Yes.

20 Q. On the other hand, the business's profits
21 might also decrease because the decrease in quantity
22 may more than offset the increased price, right?

23 A. Correct.

24 Q. Okay. There is no way to know whether a
25 business's pricing decisions are correct unless you

1 are able to derive the business's marginal revenue
2 and marginal cost curves, which is difficult to do,
3 right?

4 A. I don't know if I'd go so far as to say
5 there's no way to know, but I would agree with you
6 that you wouldn't know with certainty without having
7 the information you described.

8 Q. Okay. For The Dayton Power & Light
9 Company it's true, isn't it, that you have not
10 sponsored any calculations as to what its marginal
11 revenue and marginal cost curves are?

12 A. True.

13 Q. So for DP&L it's true, isn't it, that
14 decreasing its price may have increased -- strike
15 that.

16 It's true, isn't it, that you don't know
17 whether or not DP&L's pricing decisions on a historic
18 basis are profit maximizing or not, right?

19 A. I don't know whether they are profit
20 maximizing or not, and over a period of time, given
21 the returns that DP&L earned, it may have been profit
22 maximizing. It simply is resulting in consequences
23 today going forward. However, viewed over a period
24 of time it may have been profit maximizing.

25 Q. You also don't know whether DP&L's plan

1 to reduce prices in the future is profit maximizing,
2 do you?

3 A. It may be profit maximizing to reduce
4 prices at this time. I don't know for certain. No.
5 I don't claim to know that.

6 Q. So you don't know whether DP&L's historic
7 pricing or plans for future pricing are what are
8 driving DP&L's needs and request for an SSR, right?

9 A. I disagree with that. I believe that
10 it's clear from the company's filing, the company
11 itself has made the case that the high level of
12 shopping has given rise to its need today for an SSR.
13 To me that says, using the simple logic of supply and
14 demand that we were discussing, that customers have
15 responded to the company's pricing by selecting other
16 suppliers.

17 So I do believe that in today's
18 circumstances, and in the recent circumstances of the
19 company, that the pricing decisions the company has
20 made have contributed in a major way to its loss of
21 quantity sold and in the company's request for an SSR
22 to obtain additional revenues.

23 Q. Let me follow up on that.

24 Again, you don't know whether the
25 company's historic decisions were profit maximizing

1 or not, right?

2 A. Viewed over a period of time I don't know
3 whether they were profit maximizing or not. They
4 very well, I've already said they very well could
5 have been profit maximizing viewed over an extended
6 period, because certainly the company earned some
7 very robust returns over this period in which the
8 current pricing has been in effect.

9 I'm just saying -- but, however, in
10 today's circumstance it appears on a going-forward
11 basis those decisions to price as the company have
12 consequences for its ability to remain as profitable
13 as it was and, in fact, appears to be contributing to
14 deteriorating profits.

15 Q. Well, you don't also -- also, you don't
16 know whether DP&L's future pricing decisions are
17 profit maximizing or not, do you?

18 A. I'm hesitating because the company's
19 future pricing decisions, of course, right, are
20 interwoven with its filing in this case. So the
21 company's pricing decisions going forward for SSO
22 service are not fully distinct from its request for a
23 stability charge.

24 So when you ask me if it's a profit
25 maximizing decision, I suppose it's probably useful

1 to parse whether or not that decision or that pricing
2 proposal is for SSO service on a stand-alone basis or
3 is it the entire proposal the company's making which
4 includes an SSO price and a stability charge.

5 So from the company's viewpoint its
6 entire package that it's making right now, its
7 proposal, if that were to be adopted by the
8 Commission, pricing for SSO service combined with the
9 stabilization charges, I would -- while I don't know
10 if that's a profit maximizing proposal, it very well
11 could be.

12 Q. Turn, then, to page 10 of your testimony,
13 please.

14 A. Yes.

15 Q. Starting on line 11 you recommend that if
16 the Commission were to approve an SSR for DP&L, then
17 it should be set no greater than the current rate
18 stability charge, correct?

19 A. Yes.

20 Q. Okay. It's true, isn't it, that you've
21 selected that \$73 million based upon your view of
22 policy considerations not based upon any mathematical
23 calculation? Right?

24 A. Yes.

25 Q. It's also true, isn't it, that you don't

1 sponsor any study that shows that DP&L could provide
2 stable service with a \$73 million SSR? Right?

3 A. I do not sponsor any studies to that
4 effect.

5 Q. Turn, then, to page 12 of your testimony.

6 A. Yes.

7 Q. In the question and answer at the bottom
8 you assert that the SSR -- strike that and start
9 over.

10 You assert that your proposal that the
11 SSR be no greater than the RSC is reasonable based
12 upon certain analysis that is contained in exhibits
13 that are sponsored by DP&L witness Bill Chambers,
14 right?

15 A. I use Dr. Chambers' returns on equity as
16 benchmarks in support of -- in support of the
17 reasonableness of my proposal. However, I believe
18 that my proposal is reasonable notwithstanding
19 Dr. Chambers' analysis. I believe that answers your
20 question with a slight qualification.

21 Q. Okay. Do you have Dr. Chambers'
22 testimony in front of you?

23 A. Yes, I do.

24 Q. Okay. If you would take a look, we'll
25 took at two exhibits simultaneously.

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A. Okay.

Q. WJC-2 and WJC-4.

EXAMINER PRICE: Mr. Sharkey, I know I don't have to remind you that these are confidential exhibits.

MR. SHARKEY: I was just about to ask to go onto the confidential record, your Honor.

EXAMINER PRICE: At this time, then, we'll go to the confidential record. Anybody who does not have a confidentiality agreement with the company should please excuse themselves for the time being.

(Confidential portion excerpted.)

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(Open record.)

Q. (By Mr. Sharkey) You propose on that page that the Commission in this case create a sunset date for the SSR charge, correct?

A. Yes.

Q. Okay. If DP&L can establish the factual statutory elements that are required to be established under Ohio Revised Code § 4928.143(B)(2)(d) that you quote in your testimony, are you aware of any section in the Ohio Revised Code that would authorize the Commission to deny a request under that charge?

A. I would certainly -- my short answer is yes. And I believe that the section itself is leaving a great deal of discretion to the Commission, and so certainly since the Commission is able to take into account many elements in subsection (d), that if one of those elements is that the Commission can determine to levy a charge on shopping customers, then certainly within the framework of all of these

1 factors the Commission can consider -- the Commission
2 can certainly consider to unlevy the charge on
3 customers after a period of time.

4 Q. That's not my question.

5 A. I'm sorry.

6 Q. My question is, is there any specific
7 statutory language that authorizes the Commission in
8 this case to bar DP&L's requests for recovery under
9 statutory sections in future cases?

10 MR. YURICK: There would be an objection.
11 I think that was asked and answered.

12 EXAMINER PRICE: No, I disagree.
13 Overruled.

14 A. Mr. Sharkey, your question presumed that
15 the ability of DP&L to levy this charge was found to
16 be valid under subsection (d), and my answer to you
17 is that, in my view, to the extent that this language
18 allows the Commission to reach that kind of
19 determination, that in reaching that determination I
20 believe the Commission could simultaneously conclude
21 that a particular period of time was appropriate for
22 the recovery of those costs from certain customers.
23 I believe it is inherent and intrinsic in this
24 language.

25 Q. Can you point me to any specific language

1 in that section, or if you're aware of any other
2 specific code section, that expressly authorizes the
3 Commission in this case to bar DP&L's application for
4 recovery of charges in future cases?

5 MR. YURICK: I'm going to object again, I
6 think it was asked and answered.

7 EXAMINER PRICE: Your continuing
8 objection is noted. Overruled.

9 MR. YURICK: Thank you, your Honor.

10 A. With respect to barring the Commission
11 from acting in the future, I don't see anything that
12 bars the Commission from acting in the future. I saw
13 your question, Mr. Sharkey, as related to the sunset
14 provision and so I answered it in that context
15 previously.

16 But if your question on a stand-alone
17 basis is simply is there -- does this language itself
18 continue to apply in the future, I would assume that
19 to the extent that it remains in effect it could
20 apply in the future.

21 MR. SHARKEY: I still don't think I've
22 got an answer to my question.

23 A. I'm sorry, I'm trying.

24 Q. My question is: Can you point me to any
25 specific language that you're aware of that would

1 authorize the Commission in this case to bar a future
2 recovery or future request by DP&L in a subsequent
3 case? And I'm looking for specific language not your
4 general understanding of the statute.

5 A. I believe that the statute bars DP&L from
6 obtaining transition cost recovery if a future
7 Commission would find that the stability charge is,
8 in fact, a form of transition cost recovery. Then,
9 in fact, I believe the company would be barred from
10 receiving that recovery in the future. So I do
11 believe that is a specific bar in the statute.

12 Now, to the extent that the Commission
13 determines that these charges are, in fact, not a
14 form of transition cost recovery, in that case I am
15 not aware of a specific language barring.

16 Q. Turn, if you would, then, to page 10,
17 line 8 of your testimony. I think this is just a
18 point of clarification. You refer there to the fact
19 that "the majority of the shopping load has gone to
20 DP&L's affiliate, DPL Energy Resources," correct?

21 A. Yes.

22 Q. It's true, isn't it, that you're not
23 claiming that DP&L is subsidizing DPLER?

24 A. I don't make that claim.

25 Q. Okay. And you're not claiming that DPLER

1 is somehow subsidizing DP&L either, are you?

2 A. I don't make that claim.

3 Q. Okay. Let me ask you some questions
4 about your recommendation about the reconciliation
5 rider.

6 A. Yes.

7 Q. You recommend that the Commission reject
8 DP&L's proposal that the reconciliation rider be made
9 nonbypassable, right?

10 A. Yes.

11 Q. It's true, isn't it, that you do not
12 sponsor any analysis of the effects of rejecting the
13 bypassable -- the nonbypassable nature of the
14 reconciliation rider would have on DP&L's financial
15 integrity, right?

16 MR. YURICK: I'm sorry, I didn't catch
17 the last part of that.

18 EXAMINER PRICE: Please have the question
19 reread.

20 MR. SHARKEY: Let me rephrase it because
21 I think I said "bypassable" and then switched to
22 "nonbypassable" in the middle, so let me rephrase it.

23 Q. You don't sponsor any testimony regarding
24 the effect of your proposal upon DP&L's financial
25 integrity, do you?

1 A. No. I make my proposal on the basis of
2 the ratemaking principle without performing a study
3 with respect to the company -- the impact on the
4 company's finances.

5 Q. Mr. Berger asked you some questions about
6 whether or not DP&L should continue to charge
7 customers who had switched costs under the
8 reconciliation for some period of time. Do you
9 recall --

10 A. Yes.

11 Q. -- that line of questions?

12 A. I do.

13 Q. Do you know if DP&L's current billing
14 system is currently programmed and is capable of
15 performing that functionality?

16 A. I am not aware of what investment the
17 company may or may not have made in its billing
18 system.

19 Q. And you don't know how much it would cost
20 to implement proposals along the lines that
21 Mr. Berger was asking you about?

22 A. I don't have -- I don't know what it
23 would cost, no.

24 Q. Okay. My last line of questions is
25 regarding DP&L's request for a switching tracker.

1 A. Yes.

2 Q. You recommend that the Commission reject
3 DP&L's request for the switching tracker.

4 A. Yes, I do.

5 Q. Okay. You understand that the switching
6 tracker -- rejection, rather, of the switching
7 tracker would result in further reductions to the
8 projected ROE from the Dr. Chambers exhibits that we
9 looked at earlier?

10 A. Yes.

11 Q. Okay.

12 A. If customers increased their shopping,
13 then one would think that if the SSO rate comes down,
14 as the company is proposing, that that would mitigate
15 the degree to which customers switched. But it's
16 certainly possible that additional customers could
17 switch.

18 Q. Okay. And my last question to you,
19 you've not done any analysis to determine what
20 additional effect denying DP&L's request for the
21 switching tracker would have on DP&L's financial
22 integrity, right?

23 A. That is correct.

24 MR. SHARKEY: Your Honor, I have no
25 further questions.

1 EXAMINER PRICE: Thank you.
2 Staff?

3 MR. McNAMEE: No, thank you.

4 EXAMINER PRICE: Redirect?

5 MR. YURICK: If I could have five
6 minutes, your Honor.

7 EXAMINER PRICE: Let's go off the record.

8 (Recess taken.)

9 EXAMINER PRICE: Let's go back on the
10 record.

11 Redirect?

12 MR. YURICK: Yes, your Honor, very
13 briefly.

14 - - -

15 REDIRECT EXAMINATION

16 By Mr. Yurick:

17 Q. Mr. Higgins, Mr. Sharkey on
18 cross-examination asked you a number of questions
19 that related to your testimony essentially on pages 9
20 and 10 regarding DP&L's pricing decisions.

21 A. Yes.

22 Q. Do you recall that?

23 A. Yes, I do.

24 Q. Okay. I want to make certain that it's
25 clear for the record, are you criticizing the

1 company's pricing decisions in terms that you're
2 asserting that the company failed to maximize their
3 profits?

4 A. No. My testimony, particularly on page
5 10, addresses the consequences of the company's
6 pricing decisions. That is, that I acknowledge that
7 the company may have made decisions that allowed it
8 to maximize profits over a period of time, but that
9 those decisions have long-term consequences and that,
10 in my view, much of this case turns on the question
11 of who should bear responsibility for those
12 consequences; should it be customers who are asked to
13 pay a stabilization charge as a result of those
14 pricing decisions, or should the company bear those
15 consequences.

16 MR. YURICK: Thank you.

17 I have nothing further, your Honor.

18 EXAMINER PRICE: Thank you.

19 Ms. Petrucci

20 MS. PETRUCCI: No questions.

21 EXAMINER PRICE: Hospital Association?

22 MR. O'BRIEN: No questions.

23 EXAMINER PRICE: SolarVision?

24 MS. BOJKO: No questions, your Honor.

25 EXAMINER PRICE: Mr. Berger?

1 MR. BERGER: Just one question, your
2 Honor.

3 - - -

4 RE-CROSS-EXAMINATION

5 By Mr. Berger:

6 Q. Mr. Higgins, just following up on that
7 question about pricing, when you're talking about
8 pricing there, was your discussion of pricing and
9 profit maximization, does that assume a competitive
10 business model?

11 A. Well, the question came to me about
12 profit maximization, that is I believe that
13 Mr. Sharkey asked me about profit maximization and I
14 am answering this question in the context of a market
15 that has been restructured, that is it is a market
16 that has been transitioned from a monopoly service to
17 a competitive service.

18 And, quite frankly, Ohio has had prices
19 that I would call administratively determined. You
20 know, the pricing in Ohio for the last number of
21 years has neither been cost-of-service based pricing
22 nor has it been pure market price, but it's been
23 something in between.

24 And so to fully answer your question, I
25 responded in the framework -- within the framework of

1 the Ohio market structure, the retail electric Ohio
2 market structure, which is one that has
3 administratively determined prices for incumbent
4 utilities but which also has an increasing element of
5 competitive pricing from third-party providers.

6 Q. Well, so with respect to the competitive
7 pricing, does it -- a competitive business, doesn't
8 it usually exhibit increasing marginal costs after it
9 achieves an initial level of efficiency?

10 A. Yes.

11 Q. And for a monopoly, that's a business
12 that exhibits both economies of scale and economies
13 of scope, and wouldn't it experience decreasing
14 marginal costs?

15 A. Well, decreasing marginal costs are a
16 justification for establishing a natural monopoly in
17 the first instance. However, in the case of
18 generation service I believe it's reasonable to
19 expect that even an incumbent utility has increasing
20 marginal costs.

21 Q. Is the generation portion of the business
22 a competitive enterprise, though?

23 A. That's a great question. I believe it's
24 intended to become competitive and has become
25 increasingly competitive; however, it is really,

1 today, in a status someplace in between those things.
2 You have competitive options for customers, but at
3 the same time you have an incumbent provider that is
4 allowed to continue to charge customers of the other
5 providers to help underwrite its own costs.

6 And so it's not a clean competitive
7 market, if you will, but it certainly has competitive
8 options.

9 Q. Would you agree that the T and D business
10 is a natural monopoly, though?

11 A. Yes.

12 Q. And when a corporation engages in both
13 competitive business and a natural monopoly, is it
14 appropriate for the corporation to ask one side of
15 the business to compensate the other side of the
16 business?

17 MR. SHARKEY: I'm going to object, your
18 Honor, friendly cross.

19 EXAMINER PRICE: Sustained.

20 MR. BERGER: Thank you.

21 Thank you, Mr. Higgins.

22 THE WITNESS: Thank you.

23 EXAMINER PRICE: FES?

24 MR. HAYDEN: No, thank you.

25 EXAMINER PRICE: IEU?

1 MR. DARR: No, your Honor.

2 EXAMINER PRICE: Major?

3 MAJOR THOMPSON: Nothing, your Honor.

4 EXAMINER PRICE: Mr. Sharkey.

5 MR. SHARKEY: Nothing further, your
6 Honor.

7 EXAMINER PRICE: Staff?

8 MR. McNAMEE: Nothing.

9 EXAMINER PRICE: You're excused. Thank
10 you.

11 THE WITNESS: Thank you.

12 MR. YURICK: Your Honor, at this time the
13 Kroger Company would renew its motion to admit what's
14 been marked as Kroger's Exhibit No. 1, the prefiled
15 testimony.

16 EXAMINER PRICE: Any objection to the
17 admission of Kroger Exhibit No. 1?

18 (No response.)

19 EXAMINER PRICE: Seeing none it will be
20 admitted.

21 (EXHIBIT ADMITTED INTO EVIDENCE.)

22 MR. YURICK: Thank you, your Honor.

23 EXAMINER PRICE: At this time we will go
24 off the record and take a ten-minute break before we
25 take our next witness.

1 (Recess taken.)

2 EXAMINER MCKENNEY: Let's go on the
3 record at this time.

4 OCC?

5 MR. BERGER: Your Honor, at this time OCC
6 calls Scott J. Rubin into the stand and we would ask
7 that his prepared direct testimony be marked as
8 OCC --

9 EXAMINER MCKENNEY: I want to get the
10 witness first.

11 Mr. Rubin, please raise your right hand.

12 (Witness sworn.)

13 EXAMINER MCKENNEY: Thank you. You may
14 be seated. Please state your name and business
15 address for the record.

16 THE WITNESS: Scott Rubin, R-u-b-i-n, 333
17 Oak Lane, Bloomsburg, Pennsylvania.

18 MR. BERGER: Thank you, your Honor.

19 We would ask at this time that
20 Mr. Rubin's prepared direct testimony, the public
21 version, be marked as OCC Exhibit 20, and the
22 confidential version be marked as OCC Exhibit 20A.

23 EXAMINER MCKENNEY: They will be so
24 marked.

25 (EXHIBITS MARKED FOR IDENTIFICATION.)

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SCOTT J. RUBIN

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

DIRECT EXAMINATION

By Mr. Berger:

Q. Mr. Rubin, are you the same Scott J. Rubin whose direct testimony has been marked as OCC Exhibit 20 and OCC Exhibit 20A that was filed in these proceedings?

A. Yes.

Q. And on whose behalf are you appearing in this proceeding?

A. The Office of Consumers' Counsel.

Q. And do you have your prepared testimony with you on the stand?

A. Yes, I do.

Q. And did you prepare it -- was the testimony prepared by you or was it prepared under your direction?

A. It was prepared by me, yes.

Q. Do you have any changes or corrections to your direct testimony at this time?

A. No.

Q. If I asked you the same questions today that are found in your direct testimony in OCC

1 Exhibits 20 and 20A, would your answers be the same?

2 A. Yes, they would.

3 MR. BERGER: Thank you.

4 At this time, your Honor, the OCC moves
5 for the admission of OCC Exhibits 20 and 20A and we
6 would tender the witness for cross-examination.
7 Thank you.

8 EXAMINER McKENNEY: Before we move to
9 cross-examination, I'd like to ask all the parties
10 and the witness to please speak up so the court
11 reporters can hear everything that's said.

12 At this time we'll move to
13 cross-examination.

14 Ms. Petrucci?

15 MS. PETRUCCI: No questions.

16 EXAMINER McKENNEY: Ms. Bojko.

17 MS. BOJKO: No questions.

18 EXAMINER McKENNEY: Mr. Williams.

19 MR. WILLIAMS: No questions.

20 EXAMINER McKENNEY: FES? IEU?

21 MR. OLIKER: Just a few questions, your
22 Honor.

23 EXAMINER McKENNEY: Sure.

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CROSS-EXAMINATION

By Mr. Oliker:

Q. Good morning, Mr. Rubin, my name is Joe Oliker, I represent the Industrial Energy Users of Ohio, I just have a few questions for you today.

You're familiar with the term "rate shock," correct?

A. Yes.

Q. Could you give a brief definition of what "rate shock" means?

A. I'm not sure I can give a very accurate definition. People use it when they are concerned about utility rates increasing more than someone would like them to increase and they're afraid that that will have an effect either on a customer's ability to afford service or on the amount of service the customer purchases from the utility.

Q. You would agree that rate shock is an undesirable consequence.

A. As a general matter, yes.

Q. You'd agree that rate shock must be examined on a customer-by-customer basis, correct?

A. Ideally, yes. Sometimes that is not feasible and it's looked at on a customer class basis.

1 Q. You recommend allocating service
2 stability rider and switching tracker revenue
3 responsibility on a kilowatt-hour basis, correct?

4 A. Yes.

5 Q. And your recommendation relative to the
6 company's proposed allocation process will shift
7 revenue responsibility to larger energy users,
8 correct?

9 A. As compared to the company's proposal,
10 that is correct.

11 Q. And you have performed no analysis of the
12 impact of your proposed allocation on any individual
13 customer taking service under GS secondary, GS
14 primary, GS primary substation, or GS high voltage,
15 correct?

16 A. That is correct for individual customers.
17 I have looked at the effect of my recommendation on
18 those for customer classes as compared to the
19 company's proposal.

20 MR. OLIKER: I believe I have no further
21 questions, your Honor.

22 EXAMINER MCKENNEY: Thank you.

23 Mr. Yurick?

24 MR. YURICK: No questions, your Honor.

25 EXAMINER MCKENNEY: Major?

1 MAJOR THOMPSON: Nothing, your Honor.

2 EXAMINER MCKENNEY: Mr. Faruki?

3 MR. FARUKI: Thank you, your Honor.

4 - - -

5 CROSS-EXAMINATION

6 By Mr. Faruki:

7 Q. Good morning, Mr. Rubin. I introduced
8 myself to you before we went on the record, my name
9 is Charlie Faruki and I represent DP&L.

10 A. Good morning.

11 Q. You did not examine or perform any
12 analysis of DP&L's financial integrity in this
13 matter; is that right?

14 A. That's correct.

15 Q. Your testimony does not address that
16 subject?

17 A. Correct.

18 Q. Mr. Oliker asked you a question along
19 these lines, but just for clarity of the record, you
20 agree with me that recovery of the costs of the SSR
21 through a kilowatt-hour charge would tend to shift
22 revenue responsibility to commercial and industrial
23 customers that use higher amounts of energy; is that
24 right?

25 A. It would shift costs to the GS primary,

1 GS primary substation, and GS high voltage classes.
2 The GS secondary class actually would receive
3 slightly less of an increase under my proposal than
4 they would under the company's proposal.

5 Q. I want to ask you about some of your
6 qualifications. Do you have the Attachment SJR-1 to
7 your testimony?

8 A. Yes, I do.

9 Q. That's your curriculum vitae; is that
10 correct?

11 A. Yes.

12 Q. Is that in front of you?

13 A. Yes.

14 Q. Okay. With regard to your testimony here
15 on rate design, let me ask you some questions, and
16 I'm going to walk through a good bit of this. Your
17 undergraduate degree, this is on page 2 of your
18 exhibit, sir, your undergraduate degree was in
19 political science; is that right?

20 A. That is correct.

21 Q. And then you attended law school, I take
22 it during part of that time you clerked at U.S. EPA;
23 is that right?

24 A. Yes.

25 Q. And you were an associate at a law firm

1 for it looks like two or three years; is that right?

2 A. That's right.

3 Q. Then you became an Assistant Consumer
4 Advocate in the Office of the Consumer Advocate in
5 Pennsylvania, which all told was about 11 years, from
6 1983 to 1994; is that right?

7 A. Just over ten years, yes.

8 Q. Okay. And the Office of Consumer
9 Advocate is the Pennsylvania version of Ohio's Office
10 of Consumers' Counsel; is that right?

11 A. Yes.

12 Q. Its clients were residential customers?

13 A. Actually, during part of that time the
14 charge to the office was to represent all consumers,
15 and then an Office of Small Business Advocate was
16 created to represent the interests of small business
17 consumers and the Office of Consumer Advocate focused
18 a little more on residential customers.

19 Q. From 1993 or 1994, '93 I take it, you
20 also lectured in computer science at Susquehanna
21 University, correct?

22 A. Yes. Sorry, I was just checking the
23 year. I didn't remember when that started.

24 Q. That's fine.

25 If we look still on page 1 at your

1 current activities, you're a member of the American
2 Bar Association and of the Public Utility Law
3 Section, right?

4 A. Yes, that's not the formal name of the
5 section, which I think goes on for about two lines,
6 but that's in effect what it is, yes.

7 Q. Me too.

8 Then you are a member of the American
9 Water Works Association.

10 A. Yes.

11 Q. Why are you a member of the American
12 Water Works Association?

13 A. A substantial amount of my work involves
14 the water utility industry. Nearly all of my
15 research work involves water utilities, a substantial
16 amount, I'd say maybe 50 percent of my work as an
17 expert witness involves water utilities.

18 Q. I'll come back to that point.

19 You're admitted in Pennsylvania and
20 New York and in three federal courts, that completes
21 your current professional activities, correct?

22 A. Yes.

23 Q. And then if you look at the previous
24 professional activities, you list seven of those,
25 four of which look to be related to water matters and

1 two of which look to be related to the Clean Air Act
2 work; is that right?

3 A. Yes, I think that's all right.

4 Q. I take it you got exposure to the Clean
5 Air Act work when you first worked with U.S. EPA?

6 A. No. Actually, my work with U.S. EPA
7 involved the wastewater industry. The Clean Air Act
8 work was while I was with the Pennsylvania Office of
9 Consumer Advocate.

10 Q. All right. I saw that you had a
11 substantial number of matters that dealt with acid
12 rain and Clean Air Act compliance matters; is that
13 right?

14 A. Yes.

15 Q. Okay. If we go to the next page, you
16 have a heading "Publications and Presentations" on
17 page 2. Do you see that?

18 A. Yes.

19 Q. Out of the number of matters you listed,
20 which total 116, I counted 91, over three-fourths of
21 them that are water related. Will you accept that
22 count, subject to check?

23 A. I have not counted and I doubt I would
24 want to check it, but certainly most of my research
25 involves the water industry, I agree with that.

1 Q. There are some other matters listed here,
2 miscellaneous ones, No. 19 where you're speaking at a
3 CLE program, a continuing legal education program, on
4 ethics and so forth, but -- and No. 67 where you
5 authored something called "The Wired Administrative
6 Lawyer," but the vast majority of these are water
7 matters, right?

8 A. Yes.

9 Q. And then if you go to page 9 and you look
10 at the Testimony as an Expert Witness section, I
11 wanted to talk about that for a few minutes with you.
12 You had 132 expert witness engagements, at least that
13 are listed on this chart, and by my count at least 81
14 of those, a little over 61 percent, are related to
15 water; accept that number, subject to check?

16 A. Again, I don't think I would want to
17 check it, but I agree that a majority of my work as
18 an expert witness has involved water utilities.

19 Q. Of the part that does not involve water
20 utilities, speaking still of your expert witness
21 work, you have a number of these matters that are
22 Clean Air Act related; is that right?

23 A. That was true in I'd say the mid- to
24 late-1990s, yes.

25 Q. And then I counted 15 engagements for

1 Ohio's Office of Consumers' Counsel; is that right?

2 A. That's approximately right. That would
3 include most of my work as an expert witness on Clean
4 Air Act compliance matters.

5 Q. I saw that. I saw that a good number of
6 the OCC matters were ones in which you were
7 testifying about some aspects of Clean Air Act
8 implementation; is that right --

9 A. Yes.

10 Q. -- you also, for OCC, were in some gas
11 and water cases; is that correct?

12 A. And some electric cases, yes.

13 Q. You were in some electric fuel component
14 cases?

15 A. Yes.

16 Q. Right. You have not testified in an ESP
17 case before, have you?

18 A. I have not.

19 MR. FARUKI: Thank you, your Honors,
20 that's all I have.

21 Thank you, Mr. Rubin.

22 EXAMINER MCKENNEY: Staff?

23 MR. MARGARD: No questions, thank you.

24 EXAMINER MCKENNEY: Redirect?

25 MR. BERGER: Just one minute, your Honor.

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REDIRECT EXAMINATION

By Mr. Berger:

Q. Mr. Rubin, referring to Mr. Oliker's questions, are you aware of whether anybody in this proceeding has made individual customer evaluations of the impact of either the company's rate design or some other party's rate design in this case?

A. I have not seen any. I'm not aware of any.

MR. BERGER: Thank you.

That's all I have, your Honor.

EXAMINER MCKENNEY: Thank you.

Ms. Petrucci?

MS. PETRUCCI: No questions.

EXAMINER MCKENNEY: Ms. Bojko?

MS. BOJKO: No questions.

EXAMINER MCKENNEY: Mr. Williams?

MR. WILLIAMS: No.

MR. ALEXANDER: No questions, your Honor.

EXAMINER MCKENNEY: Mr. Oliker?

MR. OLIKER: No questions, your Honor.

Thank you.

MR. YURICK: No questions. Thank you.

MAJOR THOMPSON: No questions.

MR. FARUKI: No, thank you.

1 MR. MARGARD: No, your Honor.

2 EXAMINER MCKENNEY: You're excused,

3 Mr. Rubin. Thank you.

4 OCC?

5 MR. BERGER: At this time we move the
6 admission of OCC Exhibits 20 and 20A.

7 EXAMINER MCKENNEY: Any objection?

8 MR. FARUKI: Yes, your Honor, I'm going
9 to object because I think my examination showed that
10 he's not qualified to testify on this subject matter.
11 The vast majority of his work, he admits, is in the
12 water area. Much of the rest of the work is with
13 regard to the Clean Air Act, and we can address this
14 on brief as well, but there is a substantial body of
15 case law that says that by virtue of their
16 involvement in activities, lawyers do not become
17 competent to become witnesses on the subject with
18 which they deal.

19 When you look at his CV, what you see is
20 that both in the Office of the Public Advocate and in
21 his subsequent private practice of law, and I'm not
22 questioning that he's a fine lawyer, but his time has
23 been spent almost exclusively on water and Clean Air
24 Act issues, he doesn't have the qualifications for
25 this testimony, and so we object to the admission of

1 both the public and confidential versions.

2 EXAMINER MCKENNEY: The objection is
3 denied. We will allow you to address that on brief
4 and we will grant his testimony the appropriate level
5 of credibility as we see fit.

6 The testimony of Rubin OCC 20 and 20A are
7 admitted.

8 MR. BERGER: Thank you, your Honor.

9 (EXHIBITS ADMITTED INTO EVIDENCE.)

10 MR. BERGER: Your Honor.

11 EXAMINER PRICE: Yes.

12 MR. BERGER: I realize that you've ruled
13 on the record denying the objection, but if we may be
14 given an opportunity to respond to the objection in
15 the first place so that there's a record of that.

16 EXAMINER PRICE: To what end? I mean,
17 it's in. You can argue on brief. If and when he
18 attacks the credibility of your witness on his brief,
19 you'll have a chance to reply.

20 MR. BERGER: I just want to briefly note
21 that Mr. Rubin has extensive cost of service and rate
22 design experience including in the electric industry,
23 and that's the subject of his testimony here.

24 MR. FARUKI: If he has it, it's not on
25 this record.

1 EXAMINER MCKENNEY: Thank you.

2 Let's go off the record real quick.

3 (Discussion off the record.)

4 EXAMINER PRICE: Let's go on the record.

5 Mr. Hess.

6 (Witness sworn.)

7 EXAMINER PRICE: Please state your name
8 and business address for the record.

9 THE WITNESS: My name is J. Edward Hess.
10 My business address is 21 East State Street,
11 Columbus, Ohio 43215.

12 EXAMINER PRICE: Thank you.

13 Mr. Oliker, please proceed.

14 MR. OLIKER: Your Honors, IEU-Ohio would
15 like to mark for identification Exhibit 3, J. Edward
16 Hess's public testimony and Exhibit 3A the
17 confidential version.

18 EXAMINER PRICE: So marked.

19 (EXHIBITS MARKED FOR IDENTIFICATION.)

20 - - -

21 J. EDWARD HESS

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

24 DIRECT EXAMINATION

25 By Mr. Oliker:

1 Q. Mr. Hess, you have placed before you what
2 has been marked IEU-Ohio Exhibit 3 and 3A?

3 A. Yes.

4 Q. Do you have any corrections -- well, was
5 this testimony prepared by you or at your direction
6 and filed on March 1st, 2013?

7 A. Yes.

8 Q. Do you have any corrections to make to
9 your testimony?

10 A. One minor correction. On page 26, second
11 line, the reference should read "Exhibit RLL-2 at 1
12 of 3," in (Attachment K).

13 Q. Do you have any other corrections,
14 Mr. Hess?

15 A. No.

16 Q. If I asked you today these same
17 questions, would your answer be the same, Mr. Hess?

18 A. Yes.

19 MR. OLIKER: Your Honor, I would move for
20 the admission of IEU-Ohio Exhibit 3 and 3A and tender
21 the witness for cross-examination.

22 EXAMINER PRICE: Thank you.

23 Ms. Petrucci?

24 MS. PETRUCCI: No questions.

25 EXAMINER PRICE: Ms. Bojko?

1 MS. BOJKO: No questions, your Honor.

2 EXAMINER PRICE: Consumers' Counsel?

3 MS. YOST: No questions, your Honor.

4 EXAMINER PRICE: Mr. Williams?

5 MR. WILLIAMS: No questions, your Honor.

6 MR. ALEXANDER: No questions, your Honor.

7 MR. YURICK: No questions. Thank you,
8 your Honor.

9 EXAMINER PRICE: Major?

10 MAJOR THOMPSON: No questions, your
11 Honor.

12 EXAMINER PRICE: Mr. Sharkey?

13 MR. SHARKEY: Yes, thank you, your Honor.

14 - - -

15 CROSS-EXAMINATION

16 By Mr. Sharkey:

17 Q. Good morning, Mr. Hess, my name is Jeff
18 Sharkey, as you know, I represent The Dayton Power &
19 Light Company.

20 A. Good morning, Mr. Sharkey. Yourself?

21 Q. I'm doing very well. How are you?

22 A. Good. Thank you.

23 Q. We're moving fast today, so I won't be
24 long.

25 A. Good.

1 Q. It's true, isn't it, that from a
2 50,000-foot view you sponsor essentially two
3 opinions; one, that DP&L shouldn't be entitled to
4 recover the SSR and the ST, and then, two, that DP&L
5 should be ordered to maintain separate books and
6 records for its T, D, and G functions?

7 A. Generally, yes.

8 Q. I want to start with the first opinion
9 that you sponsor regarding the SSR and the ST. And
10 I'd like you to take a look at the binder that's in
11 front of you and, in particular, I'd like you to take
12 a look at DP&L Exhibit 103.

13 MR. OLIKER: Jeff, give me one second to
14 get that.

15 A. I have that.

16 MR. SHARKEY: Mr. Olikier, if it would
17 assist you, it's a copy of 4928.143.

18 MR. OLIKER: Object, the exhibit you
19 didn't move into evidence. Okay.

20 MR. SHARKEY: It is correct that we have
21 not moved that exhibit into evidence.

22 MR. OLIKER: Okay, that's fine.

23 Q. (By Mr. Sharkey) Do you have Exhibit 103
24 before you?

25 A. Yes.

1 Q. Okay. And if you would turn to the
2 second page, I want to ask you about the paragraph
3 that is subparagraph (d) about halfway down the page.
4 Do you see that?

5 A. Yes, sir, I do.

6 Q. Okay. You understand that DP&L has
7 requested its SSR and ST pursuant to that subsection
8 that we're looking at?

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

10 Q. Okay. It's true, isn't it, that you
11 don't sponsor any opinions regarding whether the
12 elements of that satisfaction are satisfied? Right?

13 A. That's correct.

14 Q. Okay. Just to be specific, you don't
15 sponsor an opinion regarding whether or not the SSR
16 or ST are a current condition or charge, correct?

17 A. That's correct.

18 Q. Nor do you sponsor any opinions regarding
19 whether the SSR or ST relate to limitations on
20 customer shopping for retail electric generation
21 service, bypassability, standby, backup, or
22 supplemental power service, default service, carrying
23 cost, amortization periods, and accountings or
24 deferrals including future recovery of such
25 deferrals.

1 A. That's correct.

2 Q. And you don't sponsor any testimony
3 regarding whether or not the SSR and the ST would
4 have the effect of stabilizing or providing certainty
5 regarding retail electric service?

6 A. That's correct.

7 Q. It's true, isn't it, that you don't know
8 whether DP&L as a whole could earn a reasonable
9 return on equity if the Commission adopted your
10 approach?

11 A. I did no analysis to try to show that.

12 Q. Let me ask you about your testimony that
13 the SSR and the ST are transition costs.

14 A. Are we done with the exhibit?

15 Q. We are done with that exhibit. I've got
16 some questions about other exhibits in the binder.

17 A. Thank you.

18 Q. You understand the method used by DP&L to
19 calculate the SSR was to determine the amount of
20 revenue needed by DP&L to earn a 7 percent return on
21 equity?

22 A. Generally, yes.

23 Q. Then I want to turn to your second
24 opinion regarding whether DP&L is required to
25 maintain separate books and records. Initially I

1 think you cite to both Ohio Revised Code and
2 Commission rules and to DP&L's corporate separation
3 plan in support of those opinions; is that true?

4 A. That's correct.

5 Q. Okay. Regarding your interpretation of
6 the Ohio Revised Code and the Commission's rules --
7 you're not a lawyer, are you?

8 A. I am not.

9 Q. You don't intend to sponsor any opinions
10 of law?

11 A. I do not.

12 Q. Then the second reason that you claim
13 DP&L is required to maintain separate books and
14 records relates to the terms contained within DP&L's
15 corporate separation plan, correct?

16 A. That's correct.

17 Q. Please, within the binder before you of
18 DP&L's exhibits, take a look at Exhibit No. 100.

19 A. I have that.

20 Q. Do you recognize that as a corporate
21 separation plan that was filed in DP&L's 1999
22 electric transition plan case?

23 A. Yes.

24 Q. Okay. And when you were on the
25 Commission staff, you worked on that case, didn't

1 you?

2 A. You said the '99 electric transition plan
3 case. I'm looking -- I'm sorry, I have to go back
4 and correct. This was filed on October 1st of
5 2008. Exhibit 101?

6 Q. Exhibit 100. I'm sorry.

7 A. I'm sorry. That's correct, this was
8 filed in the ETP case in 2000.

9 Q. Okay. And when you were on the
10 Commission staff, you worked on that case?

11 A. Yes, sir, I did.

12 Q. Is this a document you reviewed to
13 prepare your testimony?

14 A. Yes.

15 Q. Turn if you would, please, to page 7.

16 A. I have that.

17 Q. Subparagraph C, let me ask you the
18 question and then you can take a moment to read it.
19 The question is simply: There's no reference in
20 subparagraph C to the phrase "business units," is
21 there?

22 A. It's not within that paragraph,
23 Mr. Sharkey, but if I could direct your attention to
24 page 13 of that same document, the term "DP&L's
25 business units" is used to determine that DP&L will

1 be consistent with the plan.

2 Q. Where do you see the phrase "business
3 units"?

4 A. Page 13, bottom line.

5 Q. In the Effective Date section?

6 A. That's correct.

7 Q. Well, my question is about the Accounting
8 Records section, the subject of your testimony. It's
9 true, isn't it, there's no reference to business
10 units within that subsection?

11 A. There is no explicit recognition of
12 business units in that section.

13 Q. Turn then, if you would, to DP&L Exhibit
14 101. Do you understand that to be the corporate
15 separation plan from DP&L's 2008 ESP case?

16 A. Yes.

17 Q. And I believe you told me at your
18 deposition that you did not work on this case.

19 A. I did not work on this case.

20 Q. But you did review this document in the
21 preparation of your testimony.

22 A. For this proceeding, yes, sir.

23 Q. Turn, then, if you would, to page 7 of
24 this document.

25 A. Sir, I have that.

1 Q. There is a subsection C in this version
2 of the corporate separation plan that appears to
3 correspond to the subsection C that we looked at on
4 page 7 of the prior corporate separation plan, right?

5 A. Yes.

6 Q. But the phrase "business units" has now
7 been added to the list of items for which DP&L says
8 it's going to be maintaining separate books and
9 records, right?

10 A. I see that, yes.

11 Q. Okay. And it's your understanding that
12 the phrase -- that the addition of the phrase
13 "business units" required The Dayton Power & Light
14 Company to maintain separate books and records for
15 its transmission, distribution, and generation
16 functions.

17 A. No, sir. I believe that the company has
18 been required to maintain separate accounting records
19 since the implementation of its original corporate
20 separation plan back in 2000.

21 Q. That's your interpretation of Ohio law
22 and the Administrative Code, right?

23 A. That's -- and in addition to my reading
24 of your corporate separation plan, yes, sir. Your
25 original corporate separation plan.

1 Q. Let me ask you, then, about the phrase
2 "business units" here. Is that one of the items to
3 which you were citing to support your claim?

4 A. "Here" as in, can you -- we're still
5 talking about?

6 Q. Exhibit 101.

7 A. Page 7?

8 Q. Page 7, yes. Is that one of the items
9 that you claim shows that DP&L was required to
10 maintain separate books and records for its T, D,
11 and G functions?

12 A. That's one of the items, yes.

13 Q. I want to focus on that item. In
14 particular, if you would turn, please, to Exhibit I
15 to your testimony.

16 A. Exhibit or attachment?

17 Q. Attachment I.

18 A. I don't know the difference, but it is
19 marked "Attachment I."

20 Q. Before I ask you about that document, you
21 would agree with me that reasonable people could
22 interpret the phrase "business units" to mean
23 different things depending upon how it was -- how the
24 phrase was being used in a particular situation?

25 A. Well, without definitions like were

1 included in your corporate separation plan, yes,
2 probably.

3 Q. And then let's focus on Attachment I.
4 It's an interrogatory 10-4. Do you recall if this
5 was a interrogatory that was proposed by IEU or by
6 another party?

7 A. IEU.

8 Q. Okay. And the interrogatory refers to
9 the Accounting Record section, that question we were
10 just looking at in the first paragraph of the
11 interrogatory, correct?

12 A. Yes.

13 Q. And it then asks that DP&L provide that
14 separate information by T, D, and G function and
15 described those as DP&L's business units, doesn't it?

16 A. Yes.

17 Q. Okay.

18 A. Which I believe was language we got -- I
19 got off of an earlier response to an interrogatory,
20 an IEU interrogatory, and I believe it was 145.

21 Q. And my question to you, then, is if you
22 look about halfway down, there's a sentence that says
23 "In DP&L's 2008 ESP case." Do you see that? Halfway
24 down in the answer.

25 A. Okay. And give me the reference again.

1 Q. It begins with the phrase "In DP&L's 2008
2 ESP case."

3 A. I have that, yes.

4 Q. Before I ask you about that sentence, you
5 recall, don't you, that "business units" was not used
6 in DP&L's 1999 ETP case, right?

7 A. I disagreed with that, I think I pointed
8 out where it was.

9 Q. Thank you. It was not used in the
10 Accounting Record section in the corporate separation
11 plan in the ETP case, right?

12 A. Not directly, no.

13 Q. This then says, Attachment I. Your
14 testimony, "In DP&L's 2008 ESP case" and there's the
15 case number, "DP&L proposed in Tim Rice's testimony
16 that DP&L would begin to perform certain 'behind the
17 meter' services (e.g., customer equipment
18 maintenance) through a separate DP&L business unit;
19 DP&L thus proposed to amend its CSP to provide that
20 it would maintain separate books for its proposed
21 'behind the meter' business unit."

22 Did I read that accurately?

23 A. That is in your response to the
24 interrogatory, yes.

25 Q. And I read that accurately, right?

1 A. Yes.

2 Q. My question to you then, with that
3 buildup, is you're not aware of any specific facts
4 regarding what was intended when the phrase "business
5 units" was added to DP&L's 2008 corporate separation
6 plan, right?

7 A. As I spoke earlier, I was not involved in
8 that case.

9 Q. So you do not have any knowledge of any
10 specific fact regarding what was intended by that
11 language.

12 A. That's correct.

13 Q. Okay.

14 MR. SHARKEY: No further questions, your
15 Honor.

16 EXAMINER PRICE: Thank you.

17 Mr. Margard?

18 MR. MARGARD: No questions. Thank you,
19 your Honor.

20 EXAMINER PRICE: Redirect?

21 MR. OLIKER: Your Honor, can we just have
22 a minute or two?

23 EXAMINER PRICE: You may.

24 Let's go off the record.

25 (Recess taken.)

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

3 Redirect?

4 MR. OLIKER: Just a few questions, your
5 Honor.

6 - - -

7 REDIRECT EXAMINATION

8 By Mr. Oliker:

9 Q. Mr. Hess, counsel for DP&L asked you a
10 question about calculating transition cost recovery.
11 Would you agree that you've identified alternative
12 methods of identifying the stranded cost in
13 transition cost recovery?

14 MR. SHARKEY: Objection, your Honor.
15 First of all, objection, your Honor, that's beyond
16 the scope. I didn't ask him anything about the
17 calculation of transition costs. I also object to
18 the leading.

19 MR. OLIKER: Your Honor, he specifically
20 asked him about calculating an ROE and whether that
21 was stranded cost recovery in his testimony.

22 MR. SHARKEY: I asked him how the SSR was
23 calculated, your Honor.

24 EXAMINER PRICE: Okay.

25 MR. OLIKER: He referenced the transition

1 costs.

2 EXAMINER PRICE: We will overrule the
3 objections but let's keep it very tight to the SSR.

4 Mr. Hess, you can answer the question.
5 Would you like it back?

6 THE WITNESS: Please.

7 EXAMINER PRICE: Can we have the question
8 back, please?

9 (Record read.)

10 EXAMINER PRICE: You know, I'm going to
11 change my previous ruling. That -- he's right,
12 that's -- you need to rephrase that so that it's not
13 just explicitly your view of the case.

14 MR. OLIKER: Okay.

15 EXAMINER PRICE: I'm sorry, I'm changing
16 my ruling.

17 Q. (By Mr. Oliker) Mr. Hess, you were asked
18 a question by counsel about whether its proposal for
19 a 7 percent rate of return was exclusively or was
20 similar to a stranded cost recovery calculation. Do
21 you remember that question?

22 MR. SHARKEY: Object, your Honor, that's
23 not the question I asked.

24 EXAMINER PRICE: Again, I don't recall
25 him asking that question.

1 Q. Mr. Hess, would you agree -- do you
2 remember being asked a series of questions by counsel
3 about the calculation of the SSR?

4 A. Yes.

5 Q. And would you agree that your testimony
6 is that the SSR is a transition cost?

7 MR. SHARKEY: Objection, again, your
8 Honor. First of all, it's beyond the scope of my
9 cross, and he's just asking what's in his prefiled
10 testimony already.

11 EXAMINER PRICE: We'll allow this one.

12 THE WITNESS: Could I have it repeated,
13 please?

14 (Record read.)

15 A. Yes.

16 Q. And is it your testimony that there are
17 several different methods of calculating transition
18 costs?

19 MR. SHARKEY: Again, your Honor, it's
20 just rehashing what's already in his direct
21 testimony. It's beyond the scope of my
22 cross-examination which was simply to ask him how the
23 SSR was calculated.

24 EXAMINER PRICE: Sustained.

25 Q. Do you remember a discussion with counsel

1 about whether reasonable minds could differ on the
2 meaning of the term "business units"?

3 A. Yes, sir, I do.

4 Q. Do you agree that in this instance
5 reasonable minds could differ?

6 A. I'm not sure that they could differ in
7 this case. We were trying to actually define use --
8 let me try that again.

9 We were trying to use terminology that
10 Dayton Power & Light had used to define transmission,
11 distribution, and generation, and we picked those
12 terms up, "units," from some of their responses to us
13 in earlier interrogatories.

14 Q. Do you remember a discussion with counsel
15 about the corporate separation plan where you
16 identified the term "business unit" was not
17 explicitly referenced in the section termed
18 "Accounting Records"? Do you remember that
19 discussion?

20 A. I remember that discussion in reference
21 to the company's first corporate separation plan
22 which was filed in the ETP case, yes.

23 Q. When you use the term, when you said "it
24 wasn't explicitly defined," what did you mean by that
25 statement?

1 A. Well, the words aren't in that paragraph.
2 And as I noted, the company did use the term
3 "business units" under the paragraph "Effective
4 Date." And I believe those business units, that
5 definition would have applied to all the terms in the
6 rest of the corporate separation plan.

7 MR. OLIKER: No more questions, your
8 Honor.

9 EXAMINER PRICE: Thank you.

10 Ms. Petrucci, recross?

11 MS. PETRUCCI: No.

12 EXAMINER PRICE: Mr. Petricoff?

13 MR. PETRICOFF: We're the same.

14 MS. PETRUCCI: We're together.

15 EXAMINER PRICE: Ms. Bojko?

16 MS. BOJKO: No, your Honor.

17 EXAMINER PRICE: OCC?

18 MS. YOST: No, your Honor.

19 EXAMINER PRICE: Mr. Williams?

20 MR. WILLIAMS: No, your Honor.

21 EXAMINER PRICE: Mr. Alexander?

22 MR. ALEXANDER: No, thank you.

23 EXAMINER PRICE: Mr. Yurick?

24 MR. YURICK: No, thank you, your Honor.

25 EXAMINER PRICE: Major?

1 MAJOR THOMPSON: No, sir.

2 EXAMINER PRICE: Mr. Sharkey?

3 MR. SHARKEY: No questions, your Honor.

4 EXAMINER PRICE: Mr. Hess, you may step
5 down.

6 MR. OLIKER: Your Honor, IEU-Ohio would
7 move for the admission of Exhibits 3 and 3A.

8 EXAMINER PRICE: Objection to the
9 admission of 3 and 3A?

10 (No response.)

11 EXAMINER PRICE: Seeing none, they will
12 be admitted.

13 (EXHIBITS ADMITTED INTO EVIDENCE.)

14 EXAMINER PRICE: Let's go off the record.

15 (Off the record.)

16 EXAMINER MCKENNEY: Back on the record.

17 Raise your right hand.

18 (Witness sworn.)

19 EXAMINER MCKENNEY: Thank you, you may be
20 seated. Please state your name and business address
21 for the record.

22 THE WITNESS: Patrick Donlon, 180 East
23 Broad Street, Columbus, Ohio, 43215.

24 MR. MARGARD: Your Honor, I'd
25 respectfully request that the prefiled testimony of

1 Patrick Donlon filed in this case on March 11th,
2 2013, be marked for purposes of identification as
3 Staff Exhibit 7.

4 EXAMINER MCKENNEY: It will be so marked.
5 (EXHIBIT MARKED FOR IDENTIFICATION.)

6 - - -

7 PATRICK DONLON

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

10 DIRECT EXAMINATION

11 By Mr. Margard:

12 Q. Mr. Donlon, do you have before you what's
13 been marked as Staff Exhibit 7?

14 A. Yes.

15 Q. Can you identify that document for us,
16 please?

17 A. It is my filed testimony.

18 Q. Was this prepared by you or at your
19 direction?

20 A. Yes.

21 Q. Have you had a chance to review this
22 document prior to taking the stand today?

23 A. Yes.

24 Q. And after doing so do you have any
25 changes, corrections, modifications of any kind?

1 A. No.

2 Q. If I were to ask you the questions that
3 are contained in this document, would your responses
4 be the same?

5 A. Yes.

6 Q. And are those responses true and
7 reasonable to the best of your knowledge and belief?

8 A. Yes.

9 MR. MARGARD: Your Honors, I respectfully
10 move for the admission of Staff Exhibit No. 7 subject
11 to cross-examination, I tender the witness for that
12 purpose.

13 EXAMINER MCKENNEY: At this time we'll
14 proceed with cross-examination.

15 Ms. Petrucci? Mr. Petricoff, sorry.

16 MR. PETRICOFF: Thank you, your Honor.

17 - - -

18 CROSS-EXAMINATION

19 By Mr. Petricoff:

20 Q. Morning, Mr. Donlon.

21 A. Good morning.

22 Q. Mr. Donlon, I see from your testimony
23 that you've been with the Commission about nine
24 months now?

25 A. Yeah, I guess so.

1 Q. And before that you had, if you will, two
2 stints with American Electric Power?

3 A. Yes.

4 Q. And one of those you had responsibilities
5 as an energy trader?

6 A. Yes.

7 Q. When you were doing your energy trading,
8 was the power sold on a clock hour basis?

9 A. Clock hour. Well, it was hourly
10 marketing, so yeah. Round-the-clock.

11 Q. And why is power sold on an hourly basis?

12 A. Because you have to fill your load for
13 each hour.

14 Q. And the load changes each hour.

15 A. Correct.

16 Q. All right. Is there a difference in the
17 cost of providing power each hour?

18 A. Yes.

19 Q. And why is that?

20 A. As load increases, the higher priced
21 units are coming on line to fill that load, so -- and
22 most markets will have incremental costs so they're
23 always going up as your next megawatt to fulfill that
24 load.

25 Q. Given those dynamics of the power market,

1 is it fair to say that every individual customer has
2 their own cost of service depending on their load
3 profile?

4 THE WITNESS: Can you read that back to
5 me, please?

6 (Record read.)

7 A. I think that's a broad generalization.
8 You can say that, but quantifying that would be
9 difficult.

10 Q. Let me try it a different way. If I was
11 trying to price -- if I was a competitive retail
12 electric sup and I was trying to price service,
13 electric service, for an individual customer, would
14 it be important for me to know what the consumption
15 was on an hourly basis?

16 A. For the larger industrials, I'd say so.

17 Q. Wouldn't it also be true even for
18 commercial customers?

19 A. Could be.

20 Q. Well, let me give you a hypothetical,
21 then. Knowing what you know about the price per
22 hour, would it be more expensive to provide power to
23 a commercial customer that was open 8 to 5 Monday
24 through Friday versus a customer that was open
25 6:00 a.m -- I'm sorry, 6:00 p.m. to 6:00 a.m.?

1 A. Yes.

2 Q. And in order for a competitive retail
3 electric supplier to efficiently price if they need
4 to know hourly data, they're going -- is there going
5 to be some type of system where the CRES provider
6 communicates with the utility to get that
7 information?

8 A. I'd agree.

9 Q. And, likewise, then there's going to have
10 to be some type of scheduling system back and forth
11 between the supplier and the utility to make sure, as
12 you noted earlier, that the amount of power that is
13 needed for every hour is, in fact, delivered.

14 A. It would certainly help.

15 Q. Correct. And generally in this industry
16 that's done through electric data interexchange
17 and/or web-based systems?

18 A. To my knowledge.

19 Q. And in this case is the company making a
20 proposal to upgrade for electronic data
21 interexchange, we'll call it EDI, are they making a
22 proposal to update their EDI and web-based systems?

23 A. I'm pretty sure that is some of their
24 competitive enhancements.

25 Q. And you have reviewed those six that were

1 sponsored by Company Witness Dona Seger-Lawson?

2 A. I have reviewed them but not in extensive
3 detail. As I state in my testimony, I'm suggesting
4 that the Commission make the determination on which
5 competitive enhancements are determined, be it what
6 the company proposed or the intervenors.

7 Q. Well, you're way ahead of me, I'll just
8 ask my next line of questions.

9 You have seen that the marketing
10 witnesses also had some EDI and web-based
11 enhancements that they would like to see.

12 A. Yes, I have.

13 Q. And okay, and -- fair enough. Well, let
14 me put it this way: You said that the Commission
15 should investigate that further. Would the
16 investigation be in the nature of deciding whether
17 these upgrades on a cost-benefit basis made economic
18 sense?

19 A. That would be my suggestion, but the
20 Commission has the ability to review them as they see
21 fit.

22 Q. Has DP&L upgraded its computer and
23 billing interexchange systems with CRESs prior to
24 this application?

25 A. To my knowledge, yes.

1 Q. Okay. And how was that billed out?

2 A. To my understanding there was, they did
3 receive some payback from it but I'm not extremely
4 familiar with that case.

5 Q. Do you know whether customers paid as a
6 rider the cost of that improvement?

7 A. It's my understanding it was.

8 Q. Okay. Now, in your testimony you make a
9 slightly different proposal for the way to allocate
10 the costs; is that correct?

11 A. I do.

12 Q. And your proposal is 60 percent a charge
13 against the CRES, 20 percent -- 25 percent a charge
14 against customers, and 15 percent a charge against
15 the company?

16 A. It is.

17 Q. On the 60 percent that's going to -- that
18 you propose should be charged against the CRES, would
19 you know, would that be a cost of business that the
20 CRES would have to collect back as part of the rates
21 they charge the customer?

22 A. I guess that's up to each CRES provider
23 on how they pass that charge through.

24 Q. From your knowledge of business from your
25 stint or stints with AEP, isn't it true that a

1 company has to collect all the costs of doing
2 business in the sale of its product in order to stay
3 in business?

4 A. Usually, but there's always lost leaders
5 as well.

6 Q. In a situation where there's a lost
7 leader, isn't the expectation that the costs will
8 eventually be recovered in future sales?

9 A. Or from a different product or in a
10 different market.

11 Q. But in time all costs would have to be
12 covered by the sale of products.

13 A. I agree.

14 Q. With that in mind, in your proposal that
15 customers pay 25 percent, would customers who are
16 buying from CRESs get a credit for the fact that they
17 are also paying for some of these enhancements as
18 part of their CRES charge?

19 A. Well, my view is that if the ultimate
20 goal is to create a better, more fluid market, the
21 shopping customers are going to get the benefit in
22 the long run through a more fluid market and better
23 prices. Because ultimately that's why the CRES
24 providers need these enhancements.

25 Q. But in terms of philosophy isn't another

1 philosophy, one in which, since all customers have
2 the right to shop or not shop, and all customers
3 would benefit by having those options, all customers
4 should pay for the necessary upgrades?

5 MR. FARUKI: I'll object to the form
6 "isn't another philosophy"?

7 MR. PETRICOFF: Well, your Honor, I think
8 that is an economic philosophy.

9 EXAMINER MCKENNEY: The objection is
10 overruled.

11 The witness can answer the question if he
12 knows.

13 A. I might be misinterpreting your question,
14 but in my proposal all customers do pay 25 percent.

15 Q. Okay. In that case let me start over.

16 Are you familiar with the web-based
17 systems and EDI systems that are operated by Duke,
18 FirstEnergy, and/or American Electric Power?

19 A. Not besides that they have them, no.

20 Q. Are you familiar with how the upgrades,
21 well, are you familiar with the EDI and web-based
22 information systems of any EDU other than Dayton
23 Power & Light?

24 A. Not from a in-depth personal -- I've
25 never seen the systems, never used them, so no.

1 Q. Do you happen to know -- well, do you
2 know, though, that they have those type of systems?

3 A. It's my understanding that they do.

4 Q. And have they had upgrades in the past
5 five years?

6 A. It's my understanding that they have.

7 Q. And do you know how they collected,
8 "they" being Duke, FirstEnergy companies, and the AEP
9 companies, how they collected for their upgrades?

10 A. To my understanding Duke paid for it on
11 their own but that was due to a stipulation.

12 Q. Okay. To your knowledge, do any of the
13 other Ohio EDUs charge CRES providers?

14 A. Anything? Or for the upgrades?

15 Q. I'm sorry, charge CRES providers for EDI
16 and web-based enhancements.

17 A. To my knowledge, I don't think so.

18 EXAMINER PRICE: Mr. Donlon, you're
19 proposing a flat fee for CRES providers? Is that
20 irrespective of volume or what their sales are?

21 THE WITNESS: Yes, so it would be
22 60 percent of what the Commission determines the
23 competitive enhancements are and then taking whatever
24 those costs are supplied by the company with a staff
25 review to make sure that those are reasonable.

1 EXAMINER PRICE: And those would go to
2 the 29 currently-registered CRES providers.

3 THE WITNESS: And any new ones that
4 happen to enter in once they're -- as the systems
5 come on. Because I'm guessing the enhancements
6 wouldn't necessarily all happen at the same time, so
7 as they come on.

8 EXAMINER PRICE: As they came on you
9 would --

10 THE WITNESS: Be charging them out.

11 EXAMINER PRICE: -- be charging the
12 proportionate share.

13 THE WITNESS: That's my proposal.

14 MR. ALEXANDER: Your Honor, could I have
15 that question read back, please?

16 (Record read.)

17 MR. ALEXANDER: Thank you.

18 Q. (By Mr. Petricoff) Isn't there a fear
19 that if you have -- if you're a -- well, actually,
20 let me ask this question: How would you handle a new
21 CRES provider? What happens when the 30th CRES
22 provider comes to the Dayton Power & Light service
23 area, how would that be handled?

24 A. Well, in my proposal and how I envision
25 it, the Commission would come up with the number of

1 enhancements and perhaps a cap based on the
2 enhancements that are chosen. The company would come
3 in with their timeline, their RFPs, information to
4 the staff to make sure that it's reasonable, prudent.
5 Then from there as they went into and became used and
6 useful, which would be on the go-live date, then
7 those fees would be assessed to the CRES providers.

8 So if there's 30 at that time when that
9 system goes in, that would be what was allocated.

10 Q. Wouldn't that create a bit of a
11 free-rider problem? I've not come into the DP&L
12 service territory, I know there's a big fee that's
13 going to be assessed, if I wait till it's assessed
14 and then come in, I can have the upgrades for free.

15 A. It could.

16 Q. Wouldn't one way to get around that is
17 basically charge on a per kilowatt-hour basis?

18 A. Charge who?

19 Q. Well, we're talking about CRES providers
20 here, charge the CRES providers on a kilowatt-hour
21 basis.

22 A. That's not what I'm proposing here.

23 Q. What happens when a CRES provider leaves
24 the program, is there any refund anticipated?

25 A. No.

1 Q. If, in fact -- well, let's see. Do you
2 have -- let me try this again.

3 Do you recall what the cost estimates
4 were for the six enhancements that the company has
5 proposed?

6 A. 2.5 million.

7 Q. If, in fact, the amount was collected on
8 a per kilowatt-hour basis, do you know what the per
9 kilowatt-hour fee is likely to be?

10 A. No, I do not.

11 Q. If I divided the number of kilowatt-hours
12 sold in a year by the 2-1/2 million, would I be able
13 to come up with a cost per kilowatt-hour?

14 A. I'm sure you could.

15 Q. Do you know offhand how many
16 kilowatt-hours Dayton sold last year?

17 A. I do not.

18 Q. In the last reported year.

19 A. No, I do not.

20 MR. PETRICOFF: May I have a moment, your
21 Honor?

22 EXAMINER MCKENNEY: You may.

23 MR. PETRICOFF: I have no further
24 questions.

25 Thank you very much, Mr. Donlon.

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THE WITNESS: Thank you.
EXAMINER MCKENNEY: Ms. Bojko?
MS. BOJKO: No, your Honor, thank you.
EXAMINER MCKENNEY: OCC?
MR. BERGER: Thank you, your Honor.

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CROSS-EXAMINATION

By Mr. Berger:

Q. Good morning, Mr. Donlon. I just want to briefly talk about your testimony on page 10 where you discuss your disagreement with the company's proposal regarding the recovery of balances in the reconciliation rider that exceed 10 percent. And you say on lines 7 to 9 that this should not be done at the detriment of the company.

And as I understand it, you're talking there about whether the company should be able to recover those costs that exceed 10 percent of the rider; is that right?

A. That's correct.

Q. But your -- are you proposing that those rider adjustments continue to be made for the full balance even after customers leave -- go from nonshopping to shopping?

A. If I understand your question properly, I

1 am suggesting that none of the riders that they're
2 suggesting 10 percent or over moves into the
3 reconciliation rider. I'm suggesting none of those
4 move into a nonbypassable rider. But, at the end of
5 the term or at any point that the company is in what
6 they call the death spiral, that they can solicit the
7 Commission for recovery at that time and the
8 Commission can determine then if that really is the
9 case or not.

10 Q. Well, are you saying that the amounts
11 over 10 percent would be recovered from SSO
12 customers? Or would they just be put into a deferral
13 account for the company to make a future request for
14 recovery?

15 A. I'm saying that they -- all of the
16 charges in the bypassable rider should stay in the
17 bypassable rider.

18 Q. And since it's a bypassable rider they
19 would continue to be turned back into -- back to the
20 SSO customers; is that right?

21 A. Yes.

22 Q. So the company would not be bearing
23 responsibility for these costs under your model, it
24 would be the SSO customers.

25 A. Correct.

1 Q. And isn't the need here then to protect
2 not the company, but the SSO customers for the
3 amounts that are left behind by customers switching?

4 A. Well, I guess if those -- in my view, if
5 those charges become too high, then the customers
6 should look in the market. They can always choose to
7 go to the market.

8 Q. So you're saying that when a customer who
9 chooses to go to the market leaves behind hundreds or
10 thousands of dollars in amounts undercollected, that
11 SSO customers should pay for that and other
12 customers, if they see their rates going up because
13 they're paying for other people's undercollections,
14 then they should just switch too and leave additional
15 costs behind for the remaining SSO customers; is that
16 your position?

17 A. I don't view it as additional costs, but
18 a mark -- that's what a market is, a competitive
19 market, you go for the best price and you do what's
20 best for the individual -- for that individual and
21 that individual has to make the choice of what they
22 want to do. If they want to stay with the SSO, if
23 they want to go to a CRES provider, it's their
24 choice.

25 Q. Were you here earlier when Mr. Higgins

1 testified regarding the reconciliation rider?

2 A. I might have been. I forget which one
3 Mr. Higgins is, I apologize.

4 Q. And I asked him a question about whether
5 if he was okay with the company tracking individual
6 customers under- or overcollections and if they left
7 SSO service and went shopping, that those individual
8 customer under- or overcollections would go with
9 them, would you have a problem with that?

10 A. I'm a little confused -- I mean, I have
11 no problem with a company tracking whatever they want
12 to track, but for charging individual -- I guess I'm
13 not sure how you tell one customer, you know, John
14 Smith has used X number of fuel in that -- for that
15 fee. So I'm not sure how you would actually go about
16 it. And I'm not sure I would agree with your
17 comment.

18 Q. You haven't examined that issue; is that
19 right?

20 A. Not extensively.

21 Q. You haven't examined the feasibility of
22 it, have you?

23 A. No.

24 Q. But you have no problem with SSO
25 customers picking up the tab for switching customers'

1 undercollections. Do you agree with that?

2 A. I disagree with your comment, really,
3 that they're "picking up the tab." I don't really
4 like that phrasing.

5 Q. Well, what phrase would you use when
6 somebody pays for somebody else's bill?

7 A. I don't agree that they're paying for
8 someone else's bill.

9 Q. So if they would have been assigned
10 undercollections had they remained an SSO customer,
11 but when they leave they don't have to pay those, you
12 don't think someone else is picking up their bill?

13 A. They're paying other charges to the CRES
14 providers.

15 Q. They're not paying for undercollections
16 that they would have been assigned if they would have
17 continued as SSO customers; is that right?

18 A. Again, I just, I don't really agree with
19 the whole philosophy you're -- and the path you're
20 going down.

21 EXAMINER PRICE: Why not? If it's fuel
22 and fuel is used to serve a given customer and for
23 whatever reason there was an undercollection, why is
24 that fuel used to serve that customer not that
25 customer's responsibility in their cost causation or

1 transmission service.

2 THE WITNESS: Well, I guess there's some
3 point to that, but the over-/underrecovery as you
4 move across and from companies you can have that
5 same -- if you move from one CRES provider to the
6 other CRES provider, there's going to be some lag on
7 which costs you're paying for or which ones you're
8 not.

9 EXAMINER PRICE: We don't apply cost
10 causation principles to CRES prices, we let the
11 market set those.

12 THE WITNESS: Correct. So -- I guess
13 there is some of that.

14 EXAMINER PRICE: Thank you.

15 MR. BERGER: Nothing further, your Honor.
16 Thank you.

17 EXAMINER MCKENNEY: Mr. Williams?

18 MR. WILLIAMS: One clarifying question,
19 your Honor.

20 - - -

21 CROSS-EXAMINATION

22 By Mr. Williams:

23 Q. Good morning, Mr. Donlon. My name is
24 Gregory Williams, I represent Interstate Gas Supply
25 in this case.

1 I'd like to draw your attention to
2 page 5, line 19 of your testimony. Starting at line
3 19 you testified that "Staff does not have a position
4 on which Competitive Enhancements should be adopted
5 by the Commission." Do you see that?

6 A. Uh-huh.

7 Q. I assume by "competitive enhancements"
8 you mean the six competitive enhancements that were
9 submitted as a part of DP&L's application; is that
10 correct?

11 A. Those and the ones presented by the
12 intervenors.

13 Q. Okay. And so the ones presented by the
14 intervenors would include a purchase of receivables
15 program; is that correct?

16 A. If that was one of the items.

17 Q. Okay. All right. So then just to be
18 clear, staff does not have a position either for or
19 against a purchase of receivables program to be
20 adopted by the Commission, correct?

21 A. No.

22 Q. Is that correct?

23 A. Oh, yes. Sorry. Thank you.

24 MR. WILLIAMS: Nothing further.

25 A. We don't have a position is what I meant.

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EXAMINER MCKENNEY: Mr. Alexander?

MR. ALEXANDER: Thank you, your Honor.

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CROSS-EXAMINATION

By Mr. Alexander:

Q. Mr. Donlon, you received some questions by Mr. Berger about tracking an individual customer's costs as that customer leaves and shops. To your knowledge, are some of the riders which DP&L proposes to include in the reconciliation rider already populated with deferral balances?

A. To my knowledge, yes, they are.

Q. And that would include the transmission cost recovery rider specifically?

A. I think it does, yes.

Q. And would there be any way to allocate costs to a specific customer when those riders are already populated with costs that are historic?

A. I think that would cause problems.

Q. And a clarifying question: Page 6, lines 3 to 9, you recommend information which should be sent to the Commission regarding the competitive enhancements. Is it your recommendation that the Commission would then review those proposed costs for prudence?

1 A. Yes.

2 Q. And then would there be an audit of those
3 expenditures after the fact?

4 A. I think that would be -- yes. The costs,
5 and that's down line 15 through 17, the costs --
6 actually, I guess that doesn't say that. But yes,
7 that would be my assumption.

8 Q. And does your proposal anticipate a
9 comment period where interested parties could
10 potentially comment on the proposed costs associated
11 with whatever retail enhancements are eventually
12 approved by the Commission?

13 A. I think through an application I think
14 there would be that opportunity.

15 MR. ALEXANDER: That's all I have.

16 Thank you, Mr. Donlon.

17 THE WITNESS: Thank you.

18 EXAMINER MCKENNEY: IEU?

19 - - -

20 CROSS-EXAMINATION

21 By Mr. Darr:

22 Q. I'd like you to take a look at your
23 testimony on page 10, please.

24 A. Okay.

25 Q. If I understand correctly, what you're

1 suggesting here is that the Commission not approve
2 the proposed RR but direct the company to file a
3 true-up rider at some later point in time, if that
4 becomes necessary; is that a fair description of what
5 you're proposing?

6 A. If necessary, correct.

7 Q. Are you making any recommendation at this
8 point in time as whether or not that true-up rider
9 should be in a nonbypassable form?

10 A. No, I am not.

11 MR. DARR: Nothing further. Thank you.

12 EXAMINER MCKENNEY: Mr. Yurick?

13 MR. YURICK: No questions. Thank you,
14 your Honor.

15 EXAMINER MCKENNEY: Major?

16 MAJOR THOMPSON: Nothing, your Honor.

17 EXAMINER MCKENNEY: Mr. Faruki?

18 MR. FARUKI: Thank you, your Honor.

19 - - -

20 CROSS-EXAMINATION

21 By Mr. Faruki:

22 Q. Mr. Donlon, my name is Charlie Faruki and
23 I represent DP&L. I had some questions for you but
24 first I wanted to ask about some of the statements
25 you made in response to other questions.

1 First, you said in response to one or
2 more of Mr. Petricoff's questions that you would
3 agree that a cost-benefit analysis should be done
4 with regard to each of the competitive enhancements
5 that are at issue here; is that right? Do I have
6 that correct?

7 A. I didn't say a cost-benefit analysis
8 should be done with each one. I said that's
9 something that the Commission should take into
10 account as, you know, the cost benefit of each
11 project when they're choosing that, but a full-blown
12 cost-benefit analysis, no, I did not suggest that.

13 Q. Okay. And so if it's not a full-blown
14 cost-benefit analysis, what are you suggesting?

15 A. I'm suggesting that the Commission use --
16 determine how they see fit ultimately.

17 Q. So staff doesn't have a recommendation
18 for the Commission with regard to how to go about
19 that; is that what you're saying?

20 A. Yes, I think they can use their trusted
21 judgment.

22 Q. You think that it's possible for the
23 Commission to assess the cost and benefit of these
24 competitive enhancements without doing a cost-benefit
25 analysis. Is that your testimony?

1 A. Not a full blown cost-benefit analysis,
2 yes.

3 Q. Okay. And when you say "full blown"
4 cost-benefit analysis, what do you mean by that?

5 A. You know, an in-detail look into each
6 project, the benefits that you're going to have, and
7 the cost that it's going to cost and the savings.
8 Those can take months, years to determine, and I
9 don't think that anyone in this room wants that to
10 happen.

11 Q. Can you tell me, then, with any more
12 specificity what you think should happen to assess
13 costs and benefits?

14 A. I think the Commissioners should look at
15 what is proposed in the cost benefit -- or, the
16 competitive enhancements and use their judgment and
17 logic to determine which ones they feel is best.

18 Q. In connection with page 10 of your
19 testimony when OCC was asking about that, when
20 Mr. Berger was asking about that, you made the
21 statement that you were suggesting that none of the
22 riders move into a nonbypassable rider, but at the
23 end of the ESP term or at any point that the company
24 is in the death spiral the company can solicit the
25 Commission for recovery. Do you remember that?

1 A. Uh-huh.

2 Q. That's a "yes," for her?

3 A. Yes. Sorry.

4 Q. And have you made any examination of
5 whether or not the company is in the death spiral?

6 A. Personally, no.

7 Q. Do you know if anybody else on the staff
8 has?

9 A. No, I do not.

10 Q. Still within Mr. Berger's examination,
11 you made the statement that if charges become too
12 high, then customers can look at the market. Do you
13 remember that?

14 A. Yes, I do.

15 Q. Isn't that a shorthand description of the
16 death spiral problem that you're talking about in
17 your testimony?

18 A. Not to my understanding of how you -- how
19 the company was using the term "death spiral." To me
20 that means that the distribution company is not going
21 to be able to remain in business due to not being
22 able to collect fees.

23 My view would be if the SSO customers in
24 the auction becomes too expensive for -- because
25 there's such a small group of customers left in the

1 auction, then the Commission and the company should
2 probably see if the auction is still needed and -- at
3 that point.

4 Q. Well, you would agree with me that you
5 don't want to create a new at-risk population
6 consisting of that small group of customers who are
7 left.

8 A. No.

9 Q. You agree with me on that?

10 A. Yes.

11 Q. Okay. We'll come back to that point.

12 During your employment with AEP were you
13 involved with any of the AEP proceedings at this
14 Commission?

15 A. No, I was not.

16 Q. As I understood your testimony, you were
17 primarily in the accounting area; is that right?

18 A. For about four-and-a-half years, but I
19 also was in commercial operations and fuel emissions
20 and logistics.

21 Q. When I studied your testimony, I saw that
22 over and over again, and I can give you page
23 references if you want, you repeatedly say that these
24 recommendations you're making are of the staff. And
25 you are not, in your testimony, saying that they are

1 your opinions, and that's why I want to ask you, are
2 these recommendations you're presenting yours,
3 someone else's, or a group of staff members?

4 A. These are mine.

5 Q. Let me ask you about some general
6 principles, then, that underlie your opinions. You
7 agree with me that the Commission is encouraging an
8 open competitive market; is that right?

9 A. Yes.

10 Q. The Commission also encourages a
11 situation in which customers would have a choice of
12 suppliers?

13 A. Yes.

14 Q. And over on page 10, at line 7, you make
15 the statement "While the Commission encourages and
16 promotes an open market, it should not be done at the
17 detriment of the company."

18 What are the steps that you think should
19 be implemented to make sure that an open competitive
20 market is not done to the detriment of the company?

21 A. Well, what I'm referring to here is that
22 if the company feels that they are in a financial
23 hardship, or whatever term you want to use, death
24 spiral be it, that they can solicit the company --
25 or, the Commission and figure out what needs to be

1 done at that point.

2 Q. You understand that as the company has
3 used the term "death spiral" it is not aimed simply
4 at the company but also at the situation where a
5 smaller and smaller group of customers are left being
6 responsible for costs?

7 A. No, I did not.

8 Q. Okay. Did you read the testimony of Dona
9 Seger-Lawson in this case?

10 A. I did.

11 Q. Did you see her discussion of the death
12 spiral?

13 A. I'm sure I did. I'm not recalling it
14 word for word right now.

15 Q. Don't have that, okay.

16 Do you agree with me that all customers
17 are benefited by competition?

18 A. I do.

19 Q. SSO customers have the option to choose
20 another supplier, right?

21 A. Correct.

22 Q. They can switch from DP&L and, if they
23 choose later, they can switch back.

24 A. Correct.

25 Q. So even a customer who has decided to

1 switch from DP&L can switch back to SSO service if
2 they choose.

3 A. Correct.

4 Q. Over time you would expect customers to,
5 as the auction process would start, you would expect
6 some customers to switch and then return?

7 A. I would expect the customers to do what
8 is best for the individual customer.

9 Q. Okay. That doesn't answer my question,
10 however. Isn't it true that over time you would
11 expect some customers to switch and some to switch
12 back?

13 A. Potentially.

14 Q. So, for a switched customer, having the
15 option of SSO service is still valuable to them
16 because it gives them a choice; would you agree with
17 that?

18 A. I guess if they want that choice, sure.

19 Q. Then go back to page 10, if you would.

20 A. Yep.

21 Q. The way you are using "death spiral," I
22 take it from the answers you gave me a couple minutes
23 ago, is that you are using that term to apply to the
24 company, not the customers; do I have that right?

25 A. Correct.

1 Q. Okay. Well then explain to me your use
2 of the term "death spiral."

3 A. I think I answered that to you a couple
4 questions ago, but, again, it's -- the way I was
5 referring to it is the company's detriment.

6 Q. Financial detriment.

7 A. Yes.

8 Q. Okay. And on page 10, line 9 you have a
9 sentence that starts "If at the end of the SSO the
10 Company has a significant balance...." Is that a
11 mistake, did you mean to write "If at the end of the
12 ESP the Company has a significant balance...?"

13 A. Yes.

14 Q. Is that right?

15 A. I didn't notice that until you just spoke
16 a minute ago.

17 Q. I'm not picking on you, just for clarity.

18 A. Yep. Absolutely, you are correct.

19 Q. Okay. But then in response to, again,
20 one of Mr. Petricoff's questions you're not limiting
21 that to the end of the ESP, you're saying if this
22 becomes financially burdensome to the company, then
23 it should be able to come to the Commission with an
24 application.

25 A. I think so, yes.

1 Q. Then take a look at page 4 of your
2 testimony, if you would.

3 A. I'm there.

4 Q. And just for reference, on page 4 I'm
5 interested in talking about the last bullet on line
6 21 and 22. You agree with me that as customer
7 switching continues, the deferral balances in the
8 riders that are listed here, FUEL, RPM, TCRR-B, AER,
9 and CBT, would continue to grow?

10 A. Could.

11 Q. As such deferral balances would grow and
12 the number of SSO customers or the number of SSO
13 megawatt-hours decline, then the rate would continue
14 to increase; is that right?

15 A. It could.

16 Q. That increase would serve or provide an
17 incentive to more customers to switch, wouldn't it?

18 A. It could.

19 Q. As switching increases, the deferral
20 amounts in the bypassable riders could grow to a
21 point, in other words, that it gave an incentive to
22 customers to switch, right?

23 A. Potentially.

24 Q. If that occurs, then the problem that
25 we're talking about with fewer customers being

1 responsible for the costs would actually be getting
2 worse?

3 A. Could.

4 Q. Is it your expectation that once DP&L
5 reaches a hundred percent competitive bidding, DP&L
6 would be at risk of not being able to recover the
7 balance?

8 THE WITNESS: Can you reread the
9 question, please?

10 (Record read.)

11 A. There's always risks.

12 Q. That doesn't answer my question. Do you
13 agree with this risk that I just asked you?

14 A. It's a potential risk. I can't tell you
15 how likely it is.

16 Q. You know that there have been lags in
17 time between DP&L's application to change rates and
18 the PUCO order that approves or allows the change?

19 A. Yes. Specifically or just in general?

20 Q. In general.

21 A. In general I'd agree.

22 Q. You understand that the riders that are
23 listed at the bottom of page 4, line 22, are all
24 proposed to include carrying costs; is that right?

25 A. That's my understanding.

1 Q. So the longer we wait to true up the
2 rider recoveries, the more the carrying costs would
3 accrue; isn't that right?

4 A. To my understanding, I could be wrong, I
5 wasn't specifically on these -- the details of each
6 rider, but I thought the company was proposing
7 quarterly true-ups.

8 Q. You would support that?

9 A. That I'd support it?

10 Q. Yes, would you support quarterly
11 true-ups?

12 A. It's -- I'm not, I didn't work
13 specifically on those so that would be the other
14 staff that worked on those specific riders, but that
15 was my understanding of what the company proposed.

16 Q. Are you aware of other utilities in Ohio
17 that have deferred bypassable costs recovered on a
18 nonbypassable basis?

19 A. To my understanding there are some that
20 have through stipulation agreed to that.

21 Q. Do you know which ones?

22 A. To my understanding, the, is it
23 FirstEnergy and Duke have a couple or have some on
24 the competitive -- on the auction that they can --
25 through some form can move to bypassable.

1 Q. Is that also the case with FirstEnergy's
2 fuel rider?

3 A. I do not know.

4 Q. Is it also the case with AEP's TCRR
5 rider?

6 A. I do not know.

7 Q. Is it also the case with AEP's fuel rider
8 from its last ESP?

9 A. I do not know.

10 Q. Did you make an examination of the
11 treatment of other utilities in formulating your
12 recommendation as to what would be done here?

13 A. Some, yes, but most of those were done in
14 stipulations.

15 Q. Well, what examination did you make?

16 A. I looked through some of the other
17 companies' opinion and orders, for example, Duke's.

18 Q. Can you tell me anything else about what
19 you found other than what you said a moment ago?

20 A. Yeah, I found in the Duke order that
21 the -- where is it here? -- that the AERR shall
22 remain avoidable for customers taking generation
23 service from CRES providers.

24 Q. Let me show you an exhibit.

25 MR. FARUKI: Your Honors, this will be

1 IEU Exhibit 22 of which I have only two. I'll give
2 the witness one. There was a set of IEU exhibits
3 here.

4 Q. Do you have IEU Exhibit 22 in front of
5 you, sir?

6 A. I do.

7 Q. This page is titled "Summary of Projected
8 Jurisdictional Net Costs, Schedule B-1," and I'm
9 going to ask you questions starting with line 38.

10 A. Okay.

11 Q. You see that line 38 is labeled "Total
12 TCRR Including Carrying Costs"?

13 A. Correct.

14 Q. And the two figures I'm interested in are
15 not the total at the end, the \$30 million figure, but
16 the two that comprise it. You see that there is a
17 figure of, rounding this, 8,437,000 and change?

18 A. Uh-huh. Yes.

19 Q. That's in Column E.

20 A. Yes.

21 Q. And you recognize that as the amount of
22 the deferral associated with the TCRR?

23 A. Correct.

24 Q. Then if you look just to the left of
25 that, there's a figure of 21,640,000 and change. Do

1 you see that figure?

2 A. Yes.

3 Q. And you see that that is the total
4 including carrying costs; is that right?

5 A. That is what it says.

6 Q. And so the deferral, if you compare the
7 \$8.4 million figure to the \$21.6 million, you see
8 that this deferral has already grown by April of
9 2014, which is the end period of this schedule, to
10 over a third of the amount of the TCRR cost; is that
11 right?

12 A. Well, but if I remember correctly from
13 Ms. Seger-Lawson's, I think it was her testimony on
14 this, you're also going to -- half of this is the
15 TCR-N versus the TCR-B, is what that the bypassables
16 are? So you've got the two, a nonbypassable and a
17 bypassable split in these charges.

18 Q. And have you made any analysis of the
19 figures to see how rapidly these balances would grow?

20 A. I have not.

21 Q. If you take a look at line 53, that line
22 is titled "Total PJM RPM Rider Including Carrying
23 Costs."

24 A. Correct.

25 Q. Do you see that reference?

1 A. Yes, I do.

2 Q. Same two columns, Column E shows
3 a-million-73,000-dollars, right?

4 A. Yes.

5 Q. And the column just to the left, Column
6 D, shows the forecasted total of 4,073,000; is that
7 right?

8 A. And it's a 3 or an 8, but yes.

9 Q. Yes.

10 A. I can't tell, that's fine.

11 Q. 4 million?

12 A. I agree with what it is.

13 Q. It's either 4,073,000 or 4,078,000.

14 A. Yeah.

15 Q. I agree with you.

16 So, again, if you compare those two
17 figures, the amount of the deferral associated with
18 the RPM rider would be over a quarter, it would be
19 over one-fourth of that total, right?

20 A. Without doing the math, it looks pretty
21 correct.

22 Q. I did the math, it's over 26 percent. Do
23 you accept that, subject to check?

24 A. Sure. Yes.

25 Q. Now, going back to your answer when you

1 said that the company could approach the Commission
2 either at the end of the ESP term or earlier if
3 necessary, would you agree it would be appropriate
4 for the company and the staff to look at how rapidly
5 these balances grow so that the company could come
6 back to the Commission with an application prior to
7 the end of the ESP term and avoid unnecessary burden
8 on customers?

9 A. Potentially, yes.

10 Q. That's all I have on that one.

11 EXAMINER PRICE: Mr. Donlon, just one
12 follow-up question. Does staff support the creation
13 of Rider TCRR-N? As proposed by the company.

14 THE WITNESS: That wasn't my -- I'm
15 blanking on who testified on the TCRR-N.

16 EXAMINER PRICE: You don't recall one way
17 or the other?

18 THE WITNESS: No. Sorry.

19 EXAMINER PRICE: Thank you.

20 Q. (By Mr. Faruki) From your review of the
21 company's testimony, did you take it that DP&L's
22 request that deferral amounts over 10 percent of the
23 balances in these accounts is DP&L's request for cost
24 recovery?

25 A. You restate that?

1 Q. I can have her read it back, she'll do a
2 better job on it.

3 (Record read.)

4 A. So what you're -- let me make sure I get
5 your question correctly. What you're asking is do I
6 understand that the proposal as the company stated it
7 is their attempt to not have the death spiral and
8 that you already feel you're there?

9 Q. Yes. I'll accept that form of my
10 question, yes, sir.

11 A. Okay. I just want to make sure I had it
12 right.

13 No, I do not think that the company --
14 that is the company's stance.

15 Q. Okay. Let me ask you some questions
16 about auction costs. I think you talk about
17 competitive bid process auction costs beginning on
18 page 5.

19 A. Yes.

20 Q. You understand, just to start with, that
21 DP&L proposes to conduct a competitive bid process to
22 set its SSO rates.

23 A. Yes.

24 Q. And earlier you told me, I believe, that
25 the company -- or, that all customers of the company

1 benefit from competition and from the choice of
2 generation suppliers; is that right?

3 A. Yes.

4 Q. And so the competitive bid process
5 provides a benefit even to switching customers
6 because they have the option or the choice to switch
7 back; is that right?

8 A. Yes, but that doesn't mean that they
9 should pay for the auction while they are shopping.

10 Q. Since customers can return to SSO
11 service, you would agree with me that if a lower SSO
12 price results from an auction, that that would
13 benefit all customers because they have a choice to
14 be served under the SSO tariff, right?

15 A. And when they come back, they would get
16 that benefit.

17 Q. And if, as a result of the auction, the
18 SSO rates are lower than a CRES provider's generation
19 rate, then the customer may want to return to SSO
20 service, correct?

21 A. Correct.

22 Q. You agree with Staff Witness Strom who
23 testified last week that non-SSO customers receive a
24 benefit from the auctions?

25 A. I'm not sure in what reference he was

1 speaking so I can't necessarily say out of context.

2 Q. You were not here during his testimony?

3 A. I was, but I don't remember it, that
4 part.

5 Q. On page 5 beginning at line 8 I've got a
6 couple of questions. Are you familiar with Duke's
7 rider SCR and its nonbypassable recovery mechanism?

8 A. Not in detail, no.

9 Q. Have you read it?

10 A. I think I have, but, again, to my
11 knowledge that came through through a stipulation
12 order.

13 Q. Are you familiar with FirstEnergy's rider
14 GCR and its nonbypassable recovery mechanism?

15 A. I am not.

16 Q. Have you made any attempt to analyze the
17 differences in treatment between that rider and what
18 DP&L proposes here?

19 A. The rider I'm not aware of? No.

20 Q. Let me ask you some additional questions
21 about competitive enhancements which you talk about
22 on page 6.

23 A. Okay.

24 Q. I think I want to start on page 7 where
25 you say "Since the CRES providers will gain the most

1 from the competitive enhancements they should pay for
2 the majority of the cost." Do you see that
3 reference?

4 A. I do.

5 Q. Why is it that you're saying that CRES
6 providers gain the most?

7 A. Well, by getting increased information
8 into the marketplace they gain that knowledge that
9 Mr. Petricoff was talking about to be able to
10 determine the best prices for their customers, how to
11 break up everything, and hopefully, well not
12 "hopefully," but also create some cost savings in the
13 long run I would assume.

14 Q. With regard to your recommendation on
15 page 6 that the company be assessed 15 percent of the
16 cost, let me ask you this: The competitive
17 enhancements that we're talking about are designed to
18 improve the competitive shopping process both for
19 customers and CRES providers; is that right?

20 A. Correct.

21 Q. In fact, that's their very purpose, isn't
22 it?

23 A. To my knowledge.

24 Q. When you talk about that on page 7 at
25 line 16, you are talking about the benefit to the --

1 the benefit of these competitive enhancements both
2 for customers and CRES providers in that answer; is
3 that right?

4 A. I'm mostly -- in this particular answer
5 I'm mostly talking about the CRES providers, but I do
6 mention the customers as well.

7 Q. There's no mention of DP&L here, is
8 there?

9 A. Not in that question.

10 Q. You have some testimony about what the
11 company should submit to the Commission on page 6, I
12 believe.

13 A. Yes.

14 Q. Is it correct that these requirements are
15 designed, among other things, not only to inform the
16 Commission, but to ensure that the project stays on
17 schedule and is done economically?

18 A. Yes.

19 Q. With regard to your testimony about the
20 fact that you think the used and useful determination
21 should be made by the go-live date, is it staff's
22 view that the company would not be able to recover
23 those costs until the projects do go live?

24 A. Yes, that is what I proposed.

25 Q. So under that scenario or that approach

1 delaying cost recovery until DP&L's enhancements are
2 completed and go live provides another incentive to
3 the company to complete the projects in a timely
4 fashion; is that right?

5 A. Yes.

6 Q. And you also have an expectation that
7 DP&L's cost recovery would be allowed only for
8 prudently incurred costs; is that right?

9 A. Yes.

10 Q. Which is yet another incentive for the
11 company to complete these projects in an economic and
12 prompt fashion; is that right?

13 A. Correct.

14 Q. Then turn to page 8. On page 8 you're
15 testifying about the \$2.5 million and the fact that
16 the -- your proposed 15 percent allocation to the
17 company means that the company would be responsible
18 for \$375,000 of the total cost of the competitive
19 enhancements using the \$2.5 million estimate; is that
20 right?

21 A. Uh-huh.

22 Q. That's a "yes"?

23 A. Yes. I'm sorry. I apologize. I keep
24 doing that.

25 Q. That's okay. I'll catch it.

1 A. Thank you. Appreciate it.

2 Q. So you observed that DP&L would pay the
3 largest amount for any single entity of these costs;
4 is that right?

5 A. Yes, I do.

6 Q. You justify that by reference to two
7 advantages, first on lines 12 and 13 you say "the
8 company will receive a tax benefit from the
9 depreciation of the asset"; is that right?

10 A. Correct.

11 Q. And then on lines 14 and 15 you talk
12 about the reduced cost and time that you would expect
13 DP&L to spend on billing issues and complaints --

14 A. Correct.

15 Q. -- is that right?

16 What calculations or analysis have you
17 done to determine whether the value of those two
18 benefits would reach \$375,000?

19 A. So -- none.

20 MR. FARUKI: Thank you, sir.

21 Your Honors, that's all I have.

22 - - -

23 EXAMINATION

24 By Examiner Price:

25 Q. I have a follow-up question to the most

1 recent line. On page 8 of 11 -- 12 and 13, I guess,
2 no, 11 and 12, you indicate three reasons the company
3 should contribute 15 percent: So the project stays
4 on track, so it's done economically, and because the
5 company receives a tax benefit from depreciation; is
6 that correct?

7 A. Yes.

8 Q. Wouldn't those three factors apply to any
9 distribution asset? If the company is going to put
10 in a new power line, we would want the company -- the
11 project to stay on track, we'd want it to be done
12 economically, and the company would receive a tax
13 benefit.

14 A. Correct.

15 Q. But we would not ask the company to
16 contribute 15 percent towards that new distribution
17 line, would we?

18 A. Well, they'd get recovery through base
19 rates, correct? So I mean --

20 Q. That's right.

21 A. They're going to pay --

22 Q. They would be fully compensated. They
23 wouldn't receive 85 percent of the costs, they would
24 be fully compensated, right?

25 A. I guess so, yes.

1 Q. So why are these projects different than
2 any other distribution project?

3 A. These aren't technically distribution
4 projects, are they? In my mind they're not
5 distribution projects.

6 Q. Well, I understand that, but it is being
7 done because they are the distribution company, these
8 are billing -- for the most part they're billing
9 enhancements.

10 A. Okay.

11 Q. So is that it, the answer to the question
12 still is because it's not a distribution function,
13 it's a billing function?

14 A. My view is that to help move to a more
15 competitive market where ultimately hopefully
16 everyone benefits, that every -- all three groups,
17 being the company, the CRES providers, and the
18 customers, should have some skin in the game and
19 should be allocating out those costs a little bit to
20 every single one.

21 Q. And you don't think you're creating a
22 disincentive for the EDUs in the future to propose
23 competitive enhancements by requesting that they
24 share in the contribution. Would it be rational for
25 AEP Ohio or Duke or FirstEnergy to propose retail

1 enhancements that they're not going to benefit from
2 but they're going to have to contribute a share in
3 the payment of the recovery?

4 A. I'm sorry.

5 Q. Would it be rational for companies in the
6 future, if this is a new policy by the staff, if they
7 have to share in the cost of the projects, would it
8 be rational for those projects if they don't get any
9 benefit from it?

10 A. I guess from my understanding of your
11 question, no.

12 EXAMINER PRICE: Thank you.

13 EXAMINER MCKENNEY: Mr. Boehm? Do you
14 have cross-examination for Staff Witness Donlon?

15 MR. BOEHM: No. Thank you, your Honor.

16 EXAMINER MCKENNEY: Redirect?

17 MR. MARGARD: I have no redirect, your
18 Honor. Thank you.

19 EXAMINER MCKENNEY: All right.

20 Mr. Donlon, you're excused. Thank you.

21 MR. MARGARD: Your Honor, I would
22 respectfully renew my motion for admission of Staff
23 Exhibit No. 7.

24 EXAMINER MCKENNEY: Any objections?

25 (No response.)

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EXAMINER MCKENNEY: It will be so
admitted.

(EXHIBIT ADMITTED INTO EVIDENCE.)

EXAMINER MCKENNEY: At this time let's go
off the record.

(Lunch recess taken.)

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Tuesday Afternoon Session,
March 26, 2013.

- - -

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

Mr. McNamee, would you like to call your
next witness?

MR. McNAMEE: I would, your Honor. Staff
would call Ms. Turkenton.

(Witness sworn.)

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

THE WITNESS: Tamara Turkenton, 180 East
Broad, Columbus, Ohio, 43215.

EXAMINER PRICE: Mr. McNamee.

- - -

TAMARA S. TURKENTON

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

DIRECT EXAMINATION

By Mr. McNamee:

Q. Ms. Turkenton, by whom are you employed
and in what capacity?

A. Public Utilities Commission of Ohio, as
an administrator.

1 Q. Okay.

2 MR. McNAMEE: Your Honor, at this time I
3 would ask to have marked for identification as Staff
4 Exhibit 8 the prefiled testimony of Ms. Turkenton.

5 EXAMINER PRICE: It will be so marked.

6 (EXHIBIT MARKED FOR IDENTIFICATION.)

7 MR. McNAMEE: And I would ask for the
8 Bench's advice about how to mark -- there is an
9 erratum sheet that goes with Ms. Turkenton's
10 testimony, I would normally mark that 8A but that
11 might be confusing; it isn't confidential.

12 EXAMINER PRICE: Let's go ahead with
13 Staff 9.

14 MR. McNAMEE: Staff 9. That works for
15 me. I would ask to have marked for identification as
16 Staff Exhibit 9 a multipage document consisting of a
17 number of charts and some text --

18 EXAMINER PRICE: It will be so marked.

19 MR. McNAMEE: -- at the end.

20 (EXHIBIT MARKED FOR IDENTIFICATION.)

21 Q. Ms. Turkenton, do you have before you
22 what's been marked for identification as Staff
23 Exhibits 8 and 9?

24 A. I do.

25 Q. What are they?

1 A. 8 is my prefiled testimony in this case
2 and 9 is an errata sheet that was filed on I believe
3 March 20th.

4 Q. Ms. Turkenton, could you explain for me
5 the relationship between what has been marked for
6 identification as Staff Exhibit 8 and Staff
7 Exhibit 9?

8 A. Well, obviously, Staff 8 is my prefiled
9 testimony; Staff 9 is a correction to my prefiled
10 testimony. It was an error that was located in what
11 I call the company's proposed 65-month scenarios, so
12 the changes are to TST-3, 4, and TST-3A and 4A. The
13 changes include calculations regarding the blending.

14 In my original testimony I held constant
15 for years four and five the blending of 70 percent
16 and 30 percent. The errata sheet corrects that to
17 include for years four and five the 60/40 blend and
18 the 50/50 blend.

19 Q. Ms. Turkenton, when I examine what's been
20 marked for identification as Staff Exhibit 9, I
21 noticed that some of the numbers are in bold. Does
22 that have significance?

23 A. Yes. The bold is what I just referenced
24 that is for years four and five, the changes to the
25 blending periods.

1 Q. So the changes that you made to your
2 original testimony are bolded.

3 A. Correct.

4 Q. For clarity sake, I assume.

5 A. Yeah, they're bolded in the tables in my
6 text and then also in the attachments as I reference
7 TST-2, 3, and 4 and 4A and 3A, you could see in the
8 latter years, in years four and five I have bolded
9 and italicized those because the charts were a little
10 bit hard to see.

11 And then also in the errata is the only
12 two pages of testimony that changed and they are also
13 bolded.

14 Q. I see. Ms. Turkenton, were Staff
15 Exhibits 8 and 9 prepared by you or under your
16 direction?

17 A. They were.

18 Q. Are the contents of Staff Exhibit 8 with
19 the corrections that you've previously talked about
20 represented in Staff Exhibit 9 true to the best of
21 your knowledge and belief?

22 A. They are.

23 Q. Okay. If I were to ask you the questions
24 contained within Staff Exhibit 8, would your answers
25 here today be as presented in both Staff Exhibit 8

1 and Staff Exhibit 9?

2 A. Yes, they would.

3 Q. Do you adopt what's been marked for
4 identification as Staff Exhibits 8 and 9 as your
5 direct testimony in this case?

6 A. I do.

7 MR. McNAMEE: The witness is available
8 for cross, your Honor.

9 EXAMINER PRICE: I'm sorry, I have to
10 catch my exhibits up with the changes.

11 Okay. Ms. Petrucci?

12 MS. PETRUCCI: No questions.

13 EXAMINER PRICE: Ms. Bojko?

14 MS. BOJKO: No questions, your Honor.

15 EXAMINER PRICE: Consumers' Counsel?

16 MR. BERGER: Yes, we have some questions.

17 Do you have a copy of Exhibit 9, by the
18 way, an extra copy?

19 MR. McNAMEE: I do. Does anyone else
20 need one?

21 MS. BOJKO: Please.

22 MR. BOEHM: Yes, if you would, please.

23 MR. McNAMEE: You betcha.

24 MR. FARUKI: I will too, Tom.

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CROSS-EXAMINATION

By Mr. Berger:

Q. Good afternoon, Ms. Turkenton?

A. Good afternoon.

Q. My name is Tad Berger, I'm with the Consumers' Counsel and I just have a few questions for you.

Would you turn to page 6 of your testimony.

A. I'm there.

Q. And there at lines 9 through 15 you talk about the scenario that you analyzed in Exhibits TST-1A through TST-4A where you assumed a \$73 million rate stabilization charge under an MRO scenario. Can you -- can you explain to us why you chose to present this comparison to the proposed ESP?

A. I think it was important to give the Commission options. In my TST-1A through TST-4A they're sort of subpart scenarios to TST-1 through TST-4; I'm trying to go to the legal question as to whether under an MRO scenario what would constitute the then-current generation rate that's in the statute, and so I'm giving the Commission options in terms of whether that 73 million RSC charge would be included as the then-standard generation rate if they

1 were to go to an MRO.

2 Q. Okay. And your other schedules do not
3 have the 73 million rate stabilization charge you're
4 saying as the then-current generation rate; is that
5 correct?

6 A. Correct.

7 Q. Okay. Would you turn to page 13 of your
8 testimony regarding the max charge provision. With
9 respect to the phaseout of the max charge provision
10 as proposed by the company and which you disagree
11 with, have you evaluated the situation of the
12 customers who were benefiting from the max charge
13 provision in terms of their economic ability to bear
14 the elimination of this subsidy?

15 A. Do you mean in terms of -- well, the max
16 charge provision benefits low-load customers,
17 low-load factor type customer's usually around a
18 1 percent to 12 percent low-load factor, could be
19 higher than a 12 percent.

20 But in terms of did I do any analysis on
21 every single customer? I did -- obviously in my
22 testimony I did analysis on an average secondary
23 customer but I didn't look at the benefit that every
24 single customer was receiving under the max charge.

25 Q. You didn't assess their ability to afford

1 the elimination of the subsidy, did you?

2 A. I guess, again, if you look at my
3 testimony on page 13, I did an illustrative example
4 of an average load factor customer like at 6 percent
5 and they're going to get a 65 percent increase so,
6 yes, I do think that I did look at their ability to
7 be able to get this charge; 65 percent to me is not
8 reasonable.

9 Q. Okay. These are commercial customers; is
10 that correct?

11 A. Correct.

12 Q. And do you know the reasons why they have
13 such a poor load factor?

14 A. Well, in general somebody that has a poor
15 load factor is, you know, has a demand at a certain
16 time, doesn't have the additional kilowatt-hour usage
17 to spread that over. So they have a lower load
18 factor.

19 Q. Were you aware that these customers
20 actually may vary from month to month and that the
21 subsidy is given to those customers who have these
22 load factors in any particular month?

23 A. Yes. Some of these customers from data
24 requests that the staff sent out could benefit from
25 the max charge ten months out of the 12-month period

1 or they could benefit one month out of the 12-month
2 period, but yes, it varies from month and it varies
3 obviously from customer.

4 Q. So there may be a customer who's paying
5 the normal rate 11 months of the year and then just
6 pays this rate, this discounted rate, one month of
7 the year but you still think they should be entitled
8 to a discount because of that one low-load factor
9 month that they have, right?

10 A. I don't know if "entitled" is a good
11 word. This max charge provision has been in the
12 Dayton Power & Light tariffs since I think around
13 1991. My point of my testimony is that if the
14 company's proposal's accepted by the Commission and
15 they phase out this provision at a 10 percent per
16 quarter, I do not think it's reasonable a customer
17 would get a 65 percent increase.

18 Q. Well, you've not proposed any phaseout of
19 this provision.

20 A. That is correct. I think that the
21 provision should stay as it is.

22 EXAMINER PRICE: Ms. Turkenton, if the
23 company's proposal is adopted, according to the
24 company's witness, some portion of additional revenue
25 will go to other ratepayers and some portion of

1 additional revenue will go to the company.

2 THE WITNESS: Correct.

3 EXAMINER PRICE: Do you know, roughly,
4 what those proportions are?

5 THE WITNESS: From depositions, and I
6 think even from testimony here in this courtroom, I
7 think the total in any given year based on all these
8 customers, the total subsidy is about \$5 million.

9 I will tell you that I did a
10 back-of-the-envelope calculation as to who's being
11 subsidized and who is not being subsidized. The only
12 subsidy that comes into play here is with riders that
13 are trued up and the only riders that I know that are
14 trued up are the fuel rider and the TCRR-B.

15 And a back-of-the-envelope calculation
16 based on the example, this average secondary customer
17 example in question 17, the savings that this
18 customer achieved, about 15 percent of that was
19 attributable to TCRR and RPM, and so in my
20 estimation, to answer your question, 85 percent of it
21 is still being borne by the company. The company is
22 losing 85 percent of revenue, the only part that's
23 being subsidized by other customers is about
24 15 percent.

25 Again, in this example for this average

1 customer. I did not do a wide range of every
2 customer.

3 EXAMINER PRICE: Thank you.

4 Thank you, Mr. Berger.

5 MR. BERGER: Thank you.

6 Q. (By Mr. Berger) Are you aware of any
7 other customer class at DP&L that is receiving a
8 subsidy -- that is receiving explicit subsidy of
9 their rates?

10 A. My example, again, on my testimony is
11 secondary; primary customers are also receiving a max
12 charge. I will tell you from data requests that
13 99 percent or a large percent of the customers that
14 benefit from the max charge are secondary customers.
15 So 1 percent are about primary customers. But the
16 majority of the customers that are receiving this
17 benefit of the max charge are secondary customers but
18 primary also -- also benefit.

19 Q. But other than the GS class are you aware
20 of any other customer class that has an explicit
21 subsidy?

22 A. No, I'm not.

23 Q. Are you aware that customers may not even
24 know that they're receiving the subsidy in any
25 particular month if they don't receive it in other

1 months such that it may, in fact, they may not even
2 be aware of the subsidy?

3 A. I would have no idea, obviously, what
4 customers are aware of, but I would assume if they're
5 getting a max charge on their bill and they
6 know they're a low-load factor customer, I'm pretty
7 sure they're aware that they're getting a benefit.

8 Q. But a customer let's say that only
9 receives the benefit one month of the year might not
10 be aware of it, would you agree with that?

11 A. It's possible.

12 Q. And the company has proposed to phase out
13 this rate over a two-and-a-half year period, is
14 that --

15 A. Correct.

16 Q. -- your understanding?

17 A. Correct.

18 Q. So that 65 percent wouldn't happen all at
19 one time. It would take some time for that to occur;
20 is that correct?

21 A. Which 65 percent are you referencing?

22 Q. Well, the 65 percent you have on line 18
23 and 19 where you say that for the average customer
24 this would result in a 65 percent increase.

25 A. Actually, believe or not, it does all

1 happen at one time. They are not proposing to phase
2 this out over time. They're proposing to phase the
3 threshold out so once a customer drops off based on
4 the threshold, their bill automatically spikes up to
5 this 65 percent.

6 Q. Well, if it was phased out over
7 two-and-a-half years rather than just at one time for
8 any customer who drops out, would you have an
9 objection to that change?

10 THE WITNESS: Could you repeat the
11 question?

12 (Record read.)

13 A. My proposal is that -- is that if the
14 Commission were to adopt some type of phaseout, that
15 it be done on a slower basis, i.e., the
16 two-and-a-half percent that I propose in my testimony
17 versus the 10 percent. And, again, I would propose
18 that the Commission not only phase out the threshold,
19 but, yes, they could phase out or phase in, however
20 you want to say it, the increase. But that's not the
21 company's proposal.

22 Q. Thank you.

23 MR. BERGER: That's all I have. Thank
24 you very much.

25 EXAMINER PRICE: Thank you.

1 Mr. Williams?

2 MR. WILLIAMS: No questions, your Honor.

3 EXAMINER PRICE: Mr. Alexander?

4 MR. ALEXANDER: Thank you, your Honor.

5 - - -

6 CROSS-EXAMINATION

7 By Mr. Alexander:

8 Q. Ms. Turkenton, all of your adjustments
9 assume that switching is held constant at August of
10 2012 levels; is that correct?

11 A. That's correct. It's 62 percent level,
12 yes.

13 Q. And if switching increases from that
14 level and SSO load accordingly decreases, would that
15 make the ESP comparably less favorable?

16 A. If switching increases, the MRO looks
17 better, so yes, the ESP is less favorable.

18 Q. Would you agree that the primary
19 quantitative benefit of the proposed ESP is a faster
20 transition to market available, than is available
21 under the statutory MRO?

22 A. It's certainly a quantitative benefit. I
23 don't know that it's the primary quantitative benefit
24 but, yes, it's a quantitative benefit.

25 Q. And in your Exhibits TST-1 and TST-2 you

1 used 12-month blending periods; is that correct?

2 A. That's correct. That's staff's proposal,
3 yes.

4 Q. And your use of a 12-month blending
5 period is based on your understanding of Revised
6 Code 4928.142?

7 A. That's correct.

8 Q. And you believe that statute requires
9 blending on an annual basis?

10 A. I believe the statute used the word
11 "year" and "year" equals "annual," yes.

12 Q. And in your Exhibits TST-3 and TST-4 you
13 did not use a 12-month blending period for the first
14 period; is that correct?

15 A. TST-3 and TST-4 are scenarios, but I
16 consider them the company's proposed scenarios where
17 I used all their assumptions other than assumptions
18 that I believed, based on my plain reading of the
19 statute, were not items that should be included in an
20 MRO such as nonbypassable charges.

21 Q. And so you used a 17-month first period
22 to match Company Witness Malinak?

23 A. Yeah. I believed it was important that
24 staff present to the Commission that we looked at the
25 company's as-filed plan and showed how it was more

1 favorable or not favorable in the aggregate.

2 Q. Do you agree with Company Witness
3 Malinak's use of the 17-month first period?

4 A. It's certainly not what I would use, and
5 that's evidenced by TST-1 and TST-2.

6 Q. And does using a 17-month first period
7 understate the speed of a transition to market in an
8 MRO?

9 A. Yes.

10 Q. Would you agree that altering your
11 analysis in Exhibits TST-3 and TST-4 using a 12-month
12 blending period in the first period would make the
13 ESP comparatively less favorable than an MRO?

14 A. You're talking in TST-3 and 4?

15 Q. That's correct.

16 A. I don't think that's correct. If you
17 look at TST-3 -- the reason I say that, if you look
18 at TST-3, in the company proposed 65-month scenario,
19 the ESP is blended at 90/10 and the MRO is blended at
20 90/10. So the only thing that is going to change is
21 the megawatt-hours, i.e., kilowatt-hours that will be
22 lower because you're changing it to 12 months.

23 So lower revenue to the company in terms
24 of the 17-month would actually make the ESP more
25 favorable.

1 Q. But then on the MRO side of the test
2 there -- in the initial 12-month period there would
3 be a 10 percent blend.

4 A. Correct.

5 Q. And then for the next 5 months the blend
6 would be at 20 percent; is that correct?

7 A. Yes.

8 Q. So the MRO would be blending faster than
9 the ESP, correct?

10 A. In that scenario. But I was just doing a
11 17-month scenario to a 12-month scenario in terms of
12 revenue.

13 Q. Oh, okay. So were you just opining as to
14 that first period?

15 A. Yes.

16 Q. Okay. I'm sorry, I must have misspoke in
17 my question.

18 So in the ESP versus MRO test as a
19 whole --

20 A. Correct.

21 Q. -- the entire price test --

22 A. Correct.

23 Q. -- would moving from a 12-month period
24 one make -- to a 17-month period one -- that's poorly
25 worded. Let me rephrase the question.

1 A. Yeah, because if you do an apples to
2 apples, the revenue is going to be lower because
3 you're using lower kilowatt-hours on a 12-month
4 scenario versus a 17-month scenario.

5 Q. So in the 12-month scenario the ESP is
6 less favorable than the MRO, in comparison.

7 THE WITNESS: Can I have that question
8 reread.

9 EXAMINER PRICE: You may.

10 (Record read.)

11 A. I'm sorry, what 12-month scenario?

12 Q. Okay. So in Exhibits TST-3 and TST-4 the
13 blending is assumed to be at 10 percent over the
14 initial 17 months --

15 A. Correct.

16 Q. -- and if that blending percentage is
17 changed to be 10 percent for only the initial 12
18 months, then on the MRO side of the test the
19 transition to market will be faster for the entire
20 ESP period, correct?

21 A. I think over the entire ESP period. But
22 if you're doing an apples to apples on my first
23 column on TST-3, I disagree.

24 Q. Right. I agree with that. I'm just
25 talking about the entire ESP period.

1 So if annual periods are used for the
2 entire ESP period, that would make the ESP
3 comparatively less favorable in the aggregate than
4 the MRO.

5 A. I did not do that analysis in TST-3 and
6 4, but intuitively, yes, that makes sense.

7 Q. And staying on your Exhibits TST-3 and 4,
8 they also address the ESP term proposed by the
9 company; is that correct?

10 A. Correct. Again, I used their
11 assumptions.

12 Q. And the ESP as proposed by Dayton Power &
13 Light ends on December 31st, 2017?

14 A. That's correct.

15 Q. And your Exhibits TST-3 and TST-4
16 continue through to May 31st, 2018; is that
17 correct?

18 A. Again, based on what Mr. Malinak
19 performed, yes.

20 Q. Okay. So when you continue through
21 May 31st, 2018, that was to match Company Witness
22 Malinak?

23 A. Again, I used all the same assumptions
24 other than those nonbypassable riders that I did not
25 think were appropriate in an MRO scenario.

1 Q. And in your Exhibits TST-1 and TST-2 you
2 end the analysis at the end of the proposed ESP
3 period; is that correct?

4 A. That's correct.

5 Q. So would you agree with me that it is
6 appropriate to stop the ESP versus MRO price test
7 analysis at the end of the ESP period?

8 A. I would agree as evidenced by TST-1
9 and 2, which is staff's proposal.

10 Q. Would you agree, turning your attention
11 now to TST-3 and TST-4, that stopping the ESP
12 analysis at the end of the ESP period would make the
13 ESP comparatively less favorable than an MRO?

14 A. So going to TST-3 are you referencing
15 June of 2017 to December of 2017 instead of May of
16 '18?

17 Q. That's correct.

18 A. Again, I did not do that analysis. But
19 intuitively this sounds correct.

20 MR. ALEXANDER: Thank you very much.

21 I don't have anything further.

22 EXAMINER PRICE: Thank you.

23 IEU Ohio?

24 MR. DARR: Thank you, your Honor.

25 - - -

1 CROSS-EXAMINATION

2 By Mr. Darr:

3 Q. In terms of preparing your testimony,
4 what are the things that you reviewed in addition to
5 Mr. Malinak's testimony?6 A. I reviewed a lot of testimony that has
7 been presented in this case by other witnesses,
8 obviously reviewed the statute for my layman's
9 view -- or lay woman's view, layperson's view -- past
10 commission orders, data request responses,
11 depositions used in this case, interrogatories used
12 in this case. That's certainly not comprehensive,
13 but . . .14 Q. Did you go back and look at the testimony
15 that Mr. Fortney provided in the AEP ESP 2 case?

16 A. Previously, yes.

17 Q. Did you use that as a model for your
18 testimony?

19 A. Somewhat.

20 Q. Would you say that the approach that you
21 present here today is similar to the approach that
22 Mr. Fortney presented in the AEP ESP case?23 A. Yes, I think my approach is a little bit
24 more clear and simpler but, yes, in general it does
25 mimic Mr. Fortney's approach.

1 Q. And that would include his treatment of
2 the nonbypassable riders, correct?

3 A. That's correct.

4 Q. Did you participate or listen in on any
5 of the depositions that took place in this matter?

6 A. I was on many of the depositions on and
7 off getting interrupted by other work duties but,
8 yes, I was on depositions at various times.

9 Q. On page 2 of your testimony you state the
10 staff is only providing testimony in this proceeding
11 for the issues in the company's application the staff
12 either does not support or which the staff is
13 proposing to be modified. Do I have that statement
14 correct?

15 A. Yes. And I guess this is in reference to
16 my testimony. I am the staff. But, yes, for the
17 items that I was responsible for I'm only proposing
18 the things that I disagreed with.

19 EXAMINER PRICE: Is your statement
20 generally true of the staff?

21 MR. DARR: That was going to be my next
22 question too.

23 THE WITNESS: I think it's generally
24 true.

25 Q. Now, you suggest in your testimony that

1 under each of the scenarios, at least on a
2 quantitative basis, the staff's proposal does not
3 pass the ESP versus MRO test; is that correct?

4 A. That's correct.

5 Q. And by the same token, based on your
6 revisions, the company's proposal also fails the test
7 on a quantitative basis.

8 A. Yes. It failed it before my revisions
9 and still fails it after my revisions.

10 Q. Okay. You're not sponsoring any
11 testimony in support of Mr. Malinak's conclusion that
12 the use of competitive bid would encourage a business
13 climate in the DP&L business territory; is that
14 correct?

15 A. I do not sponsor such testimony.

16 Q. And is it correct that you have not
17 identified any change in prices or product definition
18 that may result from adopting the proposed ESP?
19 Correct?

20 A. I do not.

21 Q. And is it fair to say that the price
22 benefit associated with accelerating the auctions is
23 fully incorporated in the blended SSO price?

24 THE WITNESS: Could I have that question
25 reread, please?

1 EXAMINER PRICE: You may.

2 (Record read.)

3 A. That's correct.

4 Q. Have you identified in your testimony any
5 benefits that would result or accrue to shopping
6 customers as a result of approval of the company's
7 ESP?

8 A. I have not.

9 Q. And is it your understanding that
10 shopping customers would see no price benefit as a
11 result of the proposed ESP?

12 A. I do not know that. I'm not aware of
13 what shoppers pay to other CRES providers.

14 Q. So it's fair to say that you haven't
15 identified any benefits accruing to shopping
16 customers; is that correct?

17 THE WITNESS: Can I have that reread,
18 please?

19 EXAMINER PRICE: Please.

20 (Record read.)

21 A. For purposes of TST-1 through TST-4, no,
22 I have not.

23 Q. And would you agree with me that shopping
24 customers would see a price increase due to the
25 increased nonbypassable charges?

1 A. That is correct.

2 Q. I'd like to go back to the statement on
3 page 2 where you indicate that you're only presenting
4 testimony on items in the ESP which you either oppose
5 or are seeking to modify. Were you here during the
6 testimony presented by the company in which the
7 potential for a double recovery under the TCRR was
8 discussed?

9 A. I don't specifically remember that
10 testimony.

11 Q. Are you aware that there's a possibility
12 of a double recovery of TCRR charges based on the
13 proposal presented by the company?

14 A. I understand that that could happen.

15 Q. And is it -- do you understand that it's
16 the company's position that this is something the
17 customer and the CRES provider should sort out if the
18 proposed ESP is adopted?

19 A. I do understand that to be the company's
20 position.

21 Q. Is the staff aware or would it be fair to
22 say that the staff would normally be opposed to a
23 double recovery of a cost from a particular customer?

24 A. I would agree with that.

25 Q. Are you aware of any commitments on the

1 part of the company or any commitments sought by the
2 staff to continue the bidding process after the
3 conclusion of the proposed ESP whether we're talking
4 a three-year ESP or the five-year ESP proposed by the
5 company?

6 A. I'm not aware of any commitment nor was
7 any proposed by the company that I'm aware of.

8 MR. DARR: I have nothing further. Thank
9 you.

10 EXAMINER PRICE: Thank you.

11 Mr. Boehm?

12 MR. BOEHM: Thank you, your Honor. I'm
13 going to move down here so I can see you.

14 THE WITNESS: Great.

15 - - -

16 CROSS-EXAMINATION

17 By Mr. Boehm:

18 Q. Ms. Turkenton, do I understand that it is
19 the staff's recommendation through your testimony
20 that the revenue allocation in rate design in this
21 case should be essentially an adoption of the RSC
22 with a sort of layering on of the amounts over the
23 73 million?

24 A. Yes. Staff has --

25 Q. Okay. And you testify on page 14, line

1 17, that the "Staff recommends that in order to
2 minimize cost shifts between customers and customer
3 classes, the rate design and revenue distribution of
4 Rider SSR should mirror the design and revenue
5 distribution of the current RSC"; am I correct?

6 A. That is correct.

7 Q. What is the design of the current RSC?

8 A. It's a percentage of base generation.

9 Q. A percentage of base generation. Do you
10 know the genesis of it? Was it originally supposed
11 to be a POLR charge?

12 A. I've heard evidence in this hearing and
13 through depositions that it was once a POLR charge.

14 Q. Okay. You haven't independently
15 investigated that.

16 A. Other than I've read it in the genesis of
17 that case which was 276, that the Commission deemed
18 it to be a POLR charge.

19 Q. To your knowledge, was there ever a class
20 cost-of-service study used to design the RSC?

21 A. To my knowledge, no.

22 Q. And you say it was a percentage of the --

23 A. Base generation.

24 Q. -- base generation charge.

25 A. Correct.

1 Q. And, in your mind, what is that base
2 generation charge composed of?

3 A. It's composed of both energy and demand
4 charges.

5 Q. Okay. Are those energy and demand
6 charges -- strike that.

7 Does that allocation method assume
8 anything about the varying responsibility of customer
9 classes for demand charges versus energy charges?

10 A. As we just spoke, there was no cost of
11 service done --

12 Q. Yes.

13 A. -- in the 276 case.

14 Q. And when you say 11 percent of the base
15 generation charge, that assumes, then, that there was
16 a charge in place at that time that you were just
17 using to pass along these additional charges, right?

18 A. Again, comprised of demand and energy
19 charges.

20 Q. Okay. You assume that, do you not,
21 Ms. Turkenton, because you're not aware of the
22 cost-of-service study that was undertaken to design
23 that base generation charge? Am I correct?

24 A. That's not correct. In the tariff, if
25 you look at the tariff, it shows 11 percent of base G

1 and it shows demand and energy charges.

2 Q. Okay. And do you know how those demand
3 and energy charges in that base G came to be
4 allocated the way they were?

5 A. I do not.

6 Q. Isn't it true, Ms. Turkenton, that the
7 sole benefit of your recommendation -- well, I'm
8 sorry, the two benefits of your recommendation are
9 simplicity and inertia?

10 A. I would disagree.

11 Q. Okay. Tell me why.

12 A. Well, first, the company's proposing to
13 institute a customer charge. A customer charge, to
14 me, is something that should be done through a base
15 distribution charge or a base distribution case, not
16 a ESP proceeding. I think that customer charges are
17 for meters and service drops and those type of items;
18 that's point one.

19 Point two, staff is very concerned about
20 minimizing cost shifts and, obviously, maintaining
21 rate certainty, and I continue to believe that the
22 old RSC charge was based on demand and energy and
23 could continue to be based on demand and energy.

24 Q. And in a traditional -- in a traditional
25 ratemaking proceeding, and I don't remember, I don't

1 know if you can remember that far back, but --

2 A. I hope I wasn't here.

3 Q. -- isn't it true that in those states
4 that still engage in traditional ratemaking it is
5 customary, when rates are designed, to engage in a
6 class cost-of-service study?

7 A. I would agree in a base distribution case
8 or a base generation case. That is not the case that
9 we have here with the SSR charge.

10 Q. But I thought you said the RSC charge in
11 which you were going to layer this was on base
12 generation rates.

13 A. It was. But I'm just saying this charge
14 is not -- a cost-of-service study was not done
15 because it's not a base generation case or a base
16 distribution case.

17 Q. In your mind, then, what do these costs
18 represent?

19 A. Well, the SSR as evidenced in this
20 hearing over the last couple weeks has been for, you
21 know, obviously a various -- various circumstances,
22 whether it's generation, transmission, or
23 distribution. I think it's been borne out that it's
24 a generation charge, and generation charges, to me,
25 encompass both demand and energy charges.

1 Q. Are you familiar with the calculation of
2 a rate base for a utility company?

3 MR. McNAMEE: Objection.

4 EXAMINER PRICE: Grounds?

5 MR. McNAMEE: Relevance. We are not
6 calculating a rate base here. We are not setting
7 base rates here. It has nothing to do with our
8 current proceeding.

9 EXAMINER PRICE: Mr. Boehm.

10 MR. BOEHM: Your Honor, I think that the
11 testimony in this case is full of evidence that what
12 the company is seeking here is a rate of return on
13 equity, a higher rate of return on equity. And that
14 is how it defines its SSR. And a rate of return on
15 equity has got everything to do with the rate base.
16 There's no other way to calculate it.

17 EXAMINER PRICE: We'll give Mr. Boehm a
18 little bit of leeway right now but let's --

19 MR. BOEHM: I won't wander too far.

20 Will you read the last question then,
21 please?

22 EXAMINER PRICE: Please.

23 (Record read.)

24 A. Yes, generally.

25 Q. And, basically, isn't that rate base

1 plant that is used in generating the electricity?

2 A. That is a part of it, yes. You get a
3 return on rate base.

4 Q. And does rate base generally include
5 variable charges such as O&M?

6 A. Not rate base, but a revenue requirement
7 includes O&M, taxes, and depreciation.

8 Q. Do you get a rate of return on taxes and
9 depreciation and O&M?

10 A. No, you do not.

11 Q. You only get a return on your rate base,
12 right?

13 A. In a revenue requirement situation, yes.

14 Q. Okay. And a rate base, all of those
15 costs in the rate base are demand related, are they
16 not?

17 A. Yes. But, again, you're only showing
18 half the picture.

19 Q. Well, I will invite your counsel to give
20 us the rest of the picture, but I will stick with my
21 half right now.

22 Ms. Turkenton, at one point in time I
23 thought in discussion -- questions from counsel for
24 FES that a more rapid move to blending was a benefit
25 of the ESP. Am I correct? Did I hear that right?

1 A. Yeah. It's a quantitative and could be a
2 qualitative benefit, yes.

3 Q. And why do you think a move to the ESP is
4 a benefit, I'm sorry, a more rapid move than proposed
5 by the company, a more rapid move -- let me strike
6 all of that.

7 Why do you think that a more rapid move
8 to market either through blending or a shortened
9 blending period is a benefit?

10 A. In today's market it's certainly a
11 benefit as energy prices are low.

12 Q. So it's a benefit that would induce --
13 I'm sorry. It's a benefit for those people who have
14 not yet gone shopping; isn't that right?

15 A. That is true.

16 Q. Okay. And I thought that you had
17 answered a prior question that with respect to
18 shopping it is generally true that the shopping rates
19 are less than the current rates of the company; is
20 that right?

21 A. I would presume if somebody shopped, it
22 should be lower than what the standard offer service
23 price is, yes.

24 Q. So somebody, and in fact it could be
25 anybody because all the customers on DP&L have had

1 the right to go shopping for a long time, if any of
2 those people had already gone shopping, they would be
3 completely indifferent to the -- they would be
4 indifferent to the shorter blending period because
5 they've been at market for -- since they went
6 shopping, right?

7 MR. McNAMEE: Could we have that question
8 reread, please?

9 MR. BOEHM: Yeah, it's a little -- let me
10 try -- I'll try to do a better job this time.

11 Q. Isn't it true essentially that if you've
12 already gone shopping, you will receive no benefit
13 for a shortened blending period in this case?

14 A. No, not unless you would come back to
15 standard offer service. Only standard offer service
16 customers are going to benefit from a shorter
17 blending period.

18 EXAMINER PRICE: Ms. Turkenton, that
19 assumes current market conditions prevail, right?

20 THE WITNESS: That's what I said earlier,
21 current -- in today's market, current market
22 conditions, yes.

23 EXAMINER PRICE: But if the market were
24 to change, your answer would change.

25 THE WITNESS: That's correct.

1 MR. BOEHM: I'm sorry, did I interrupt
2 something?

3 EXAMINER PRICE: No.

4 Q. (By Mr. Boehm) And isn't it true that
5 currently the vast majority of customers, as far as
6 customer class is concerned, who haven't yet gone
7 shopping is residential customers?

8 A. I think that's been evident through this
9 hearing, yes.

10 Q. And so by extension of that, the shorter
11 shopping period benefits the residential customers,
12 right?

13 A. At this time, yes.

14 Q. Okay. And to the extent that the company
15 wants more money from ratepayers because of the
16 shortened period of time, that more money would be
17 attributable to the residential customers, wouldn't
18 it?

19 THE WITNESS: Could I have that question
20 read, please.

21 EXAMINER PRICE: Please.

22 (Record read.)

23 A. Based on the shopping levels as of today,
24 yes.

25 MR. BOEHM: I think I have no more

1 questions, your Honor.

2 Thank you, Ms. Turkenton.

3 EXAMINER PRICE: I want to follow up with
4 Mr. Boehm's questions on the rate design, and that is
5 your comment that you don't support the SSR through a
6 customer charge.

7 THE WITNESS: Correct.

8 EXAMINER PRICE: Isn't it true that if
9 you had a customer charge, there would be no
10 disincentive to the company to promote energy
11 efficiency because it wouldn't be based on volumetric
12 usage, therefore, the more energy efficiency that
13 they can provide for their customers the better,
14 whereas if you tie it to the RSC rate design, there
15 is, in fact, somewhat of a disincentive, the less
16 usage they have, then, because of energy efficiency,
17 the less revenue they'll receive?

18 THE WITNESS: It's not my proposal but,
19 yes, I could see how you could get there based on
20 energy efficiency, yes.

21 EXAMINER PRICE: Okay. Thank you.

22 Mr. Yurick?

23 MR. YURICK: I have about 10, maybe 15
24 minutes, if that's okay, your Honor.

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CROSS-EXAMINATION

By Mr. Yurick:

Q. Ms. Turkenton, are you generally familiar -- did you become familiar in preparing your testimony with the way -- the methodology that the company used to calculate their SSR requirement?

A. Yes.

Q. And would you agree that they basically forecasted what their rate of return on equity would be over the term of the ESP, figured out what a fair rate of return would be and then kind of backed into that number? Would you agree with that?

THE WITNESS: Could you reread that, please?

MR. YURICK: That was a poor question, I'll rephrase. Your Honor, if I can have that stricken, I'll try to ask a coherent question.

EXAMINER PRICE: I thought it was a fine question, but go ahead.

Q. Would you agree that the method that the company used to calculate their SSR requirements, what those requirements would be, would be to calculate or forecast what their return on equity would be over the term of the ESP, figure out what a fair rate of return would be, and then sort of the

1 amount would be the amount that would bridge that gap
2 between what the forecast was and what they
3 considered to be a fair rate of return?

4 A. I think based on the testimony that's a
5 fair characterization, yes.

6 Q. Okay. Thank you for that. It was harder
7 to ask than I thought it was going to be.

8 And would you also agree that generally
9 the company's identified three components that
10 contribute, generally, to their declining return on
11 equity, those three components being decreasing
12 energy prices, customer switching, and a decrease in
13 the value of their generation capacity?

14 A. And you said "capacity"?

15 Q. Yes.

16 A. I would agree.

17 Q. And you are not testifying, I would -- I
18 didn't see it in your testimony, as to what the
19 proportional impact on ROE of those three factors
20 are. That's not your testimony, correct?

21 A. That's not my testimony, no.

22 Q. Would you agree, however, that
23 institution of the competitive bid process, should
24 the Commission decide to do that, would you agree
25 that that should take some pressure off of the

1 decreasing price of energy because DP&L should, at
2 least theoretically, be paying less for the energy
3 they need to serve their SSO load?

4 A. If today's lower market prices prevail,
5 yes, that would be true.

6 Q. And would you also agree that the
7 switching tracker that they propose should mitigate
8 some of the harm of customer switching on -- some of
9 the impact of that on their ROE, should the
10 Commission decide to do that? Or is that beyond the
11 scope of your testimony?

12 A. It's definitely beyond the scope of my
13 testimony, but staff did not propose that the company
14 would be allowed to collect the switching tracker.

15 Q. The switching tracker, all right.

16 Would you agree with me that the SSR
17 proposed by the company is a fixed amount over the
18 ESP term, for example, \$137.5 million per year?

19 A. Over five years, yes.

20 Q. And would you agree with me that that
21 charge does not change depending on the level of
22 customer switching or a change in the fluctuation of
23 energy prices?

24 A. That's -- it's a nonbypassable charge.

25 Q. And there's no true-up mechanism for that

1 either, correct?

2 A. There is no true-up mechanism.

3 MR. YURICK: I have no further questions
4 of the witness at this time.

5 EXAMINER PRICE: Thank you.

6 Major?

7 MAJOR THOMPSON: Nothing, your Honor.

8 EXAMINER PRICE: Mr. Sharkey?

9 MR. SHARKEY: Yes, thank you, your Honor.

10 - - -

11 CROSS-EXAMINATION

12 By Mr. Sharkey:

13 Q. Ms. Turkenton, as you know, my name is
14 Jeff Sharkey and I represent DP&L.

15 All of my questions today will be on the
16 ESP versus MRO test that you sponsor.

17 A. Okay.

18 Q. As an initial matter, you know that
19 toward the back of Jeff Malinak's testimony he
20 sponsors opinions that DP&L's ESP would have certain
21 nonquantifiable benefits.

22 A. That's correct.

23 Q. You don't sponsor any testimony on
24 whether or not DP&L's ESP proposal would have
25 nonquantifiable benefits as compared to an MRO?

1 A. I do not.

2 Q. You also don't address whether a
3 hypothetical MRO under different scenarios would have
4 nonquantifiable costs, right?

5 A. I do not.

6 Q. Okay. Then I'm going to ask you
7 questions strictly on the quantifiable aspects of
8 your test that you performed. If you would, please,
9 turn to the errata sheet that you had, and I think
10 it's your errata sheet page 1. That would correspond
11 to the sheet that formerly was in your testimony at
12 page 9, right?

13 A. That is correct.

14 Q. Okay. I'm going to focus on the
15 proposals that are on the bottom half of the page and
16 I think you referred to them as TST-4 and TST-4A.

17 A. Correct.

18 Q. Those proposals take the company's
19 proposed term of 17 months and the company's proposed
20 \$137.5 million switching tracker -- I'm sorry,
21 service stability rider and apply staff market rates,
22 correct?

23 A. That is correct.

24 Q. And you then in the first column there,
25 TST-4, compare an ESP with a \$137.5 million SSR to an

1 MRO that has no service stability rider at all,
2 correct?

3 A. That's correct.

4 Q. Okay. You understand that Mr. Malinak
5 had sponsored the opinion that the company would have
6 sought a service stability rider of \$137.5 million in
7 either an ESP or an MRO.

8 A. I understand that's his position. I
9 don't agree with it, but I understand that's his
10 position.

11 Q. Your disagreement is based upon your
12 reading of the statute?

13 A. My layperson's view of the statute, yes.

14 Q. Well, I'll address that on brief rather
15 than dragging out the statutes here. But what I want
16 you to do is to make an assumption that the
17 Commission agrees with Mr. Malinak and does not agree
18 with you in terms of the interpretation of the
19 statute, and that, thus, DP&L would be entitled to a
20 service stability rider of \$137.5 million on both the
21 ESP and the MRO test.

22 Do you understand the assumption I'm
23 asking you to make?

24 A. I do.

25 Q. Okay. Under that scenario would you

1 agree with me that DP&L's ESP, at least this is the
2 box we're looking at here, would be more favorable in
3 the aggregate than an MRO based upon a pure price
4 test?

5 A. Based on a pure price test, yes.

6 Q. Okay. And the reason that it would be
7 more favorable is that DP&L's ESP moves more rapidly
8 to 100 percent competitive bidding, correct?

9 A. Yes.

10 Q. Let me ask, I want to see if we can
11 quantify in this example how much more favorable the
12 ESP would be than the MRO under the assumption that
13 I've offered.

14 A. Okay, we're still working on TST-4 or are
15 we on TST-4A?

16 Q. The numbers I have prepared are under
17 TST-4 so let's stay there.

18 A. Okay.

19 Q. If we were to do the comparison, you
20 would agree that we would need to add -- let me step
21 back.

22 You have here a five-year and five-month
23 period for the ESP, right?

24 A. Based on the company's proposed 65-month,
25 yes.

1 Q. So to determine how much would need to be
2 added to the MRO side, if the \$137.5 million was
3 available under both, you'd need to add 137.5 million
4 for five years and five months, right?

5 A. Again, under your hypothetical scenario I
6 don't agree with, but, yes.

7 Q. I understand you don't agree with me but
8 I just asked you to assume.

9 A. Yes, you would add .9948 as we did under
10 the ESP. I'm actually going to the rate aspect of
11 it. Yeah, 137.5 million under your hypothetical
12 scenario.

13 Q. I'll represent to you that I've done the
14 math and that's \$687.5 million. That's 137.5 times
15 five, okay?

16 A. I agree.

17 Q. And if we were then to add the additional
18 five months, we would do 137.5 divided by 12 to get
19 to a monthly figure, times five to account for the
20 fact there's another five months, right?

21 A. Yes, I agree.

22 Q. Okay. I'll represent to you I've done
23 the math and that's \$57.2 million.

24 A. Okay.

25 Q. And that I've summed the two, it would be

1 \$687.5 million plus \$57.2 million equals
2 \$744.7 million.

3 A. Slow down, Mr. Sharkey.

4 Q. Sorry.

5 A. I was with you on the 57.5.

6 Q. It was 687 million -- 687.5 million was
7 five --

8 A. Five years.

9 Q. That was five years.

10 A. Correct.

11 Q. To get another five months there I took
12 137.5 million, divided it by 12 and then multiplied
13 by five and got \$57.2 million.

14 A. I'm with you.

15 Q. Okay. I then summed the \$687.5 million
16 with the \$57.2 million and, if I hit the buttons on
17 my calculator right, I got 744.7 million?

18 A. Yeah, based on your hypothetical scenario
19 I get 744.7, correct.

20 Q. Okay. And then to compare, that would be
21 another \$744.7 million that would need to be added to
22 the MRO side of the comparison, correct?

23 A. Correct.

24 Q. Okay. So if we were to then apply that
25 number to your chart to figure out how much more

1 favorable the ESP was than the MRO under your set
2 of -- under my set of assumptions, not yours, you
3 would take 744.7 minus your 613.2?

4 A. Under your hypothetical scenario, that's
5 correct.

6 Q. Which I get to be \$131.5 million? Is
7 that right?

8 A. One second.

9 I get 131.5, yes.

10 Q. Okay. Now, we've done this exercise on
11 only one of your charts. If we apply the same
12 assumption, namely that the SSR is available under
13 both the ESP and the MRO side in an equal amount,
14 then under each of your charts the end result of
15 doing this mathematical exercise would be that the
16 ESP was, in fact, more favorable than the MRO, right?

17 A. Under TST-3 and 4 under your hypothetical
18 scenario, that's correct.

19 Q. Okay. That's also true though, isn't it,
20 under TST-1 and TST-2?

21 A. Yes, it is.

22 MR. SHARKEY: Could I have a moment, your
23 Honors?

24 EXAMINER PRICE: You may.

25 MR. SHARKEY: Your Honors, no further

1 questions.

2 EXAMINER PRICE: Thank you.

3 Mr. McNamee.

4 MR. McNAMEE: Could I have a few moments,
5 your Honor?

6 EXAMINER PRICE: You may.

7 EXAMINER MCKENNEY: Let's go off the
8 record.

9 (Recess taken.)

10 EXAMINER PRICE: Let's go back on the
11 record.

12 Redirect?

13 MR. McNAMEE: Thank you, your Honor.
14 Yes, I do have two questions.

15 EXAMINER PRICE: You have the other half
16 of the story?

17 THE WITNESS: Actually, no.

18 MR. McNAMEE: No. No, you'll hear it
19 eventually but not here.

20 - - -

21 REDIRECT EXAMINATION

22 By Mr. McNamee:

23 Q. Ms. Turkenton, in your cross-examination
24 I believe you indicated that a more rapid move to
25 market would not be of benefit to those who were

1 currently shopping. Do you recall that?

2 A. I do.

3 Q. Is that a correct statement?

4 A. It's not entirely accurate. In today's
5 marketplace with market prices being lower, if the
6 competitive bid auction obviously came in at a lower
7 price, marketers would need to get out there and
8 compete against that lower price so, therefore, it
9 could benefit shoppers.

10 MR. McNAMEE: Thank you.

11 That's all the questions I have.

12 MR. BOEHM: I'm sorry, I didn't hear the
13 last part.

14 EXAMINER PRICE: Could we have the answer
15 back, please.

16 (Record read.)

17 MR. BOEHM: Thank you.

18 EXAMINER PRICE: Ms. Petrucci?

19 MS. PETRUCCI: I have no questions.

20 EXAMINER PRICE: Ms. Bojko?

21 MS. BOJKO: No, thank you, your Honor.

22 EXAMINER PRICE: Consumers' Counsel?

23 MR. BERGER: No, thank you.

24 EXAMINER PRICE: Mr. Williams?

25 MR. WILLIAMS: No, thank you, your Honor.

1 EXAMINER PRICE: Mr. Alexander?

2 MR. ALEXANDER: I don't think I'd be
3 allowed.

4 EXAMINER PRICE: Okay. Mr. Oliker? Or
5 Mr. Darr, I'm sorry.

6 MR. DARR: No questions, your Honor,
7 other than I want to know the answer to the rest of
8 that statement.

9 EXAMINER PRICE: Mr. Boehm?

10 MR. BOEHM: Perhaps just one or two, your
11 Honor.

12 - - -

13 RE-CROSS-EXAMINATION

14 By Mr. Boehm:

15 Q. Ms. Turkenton, as I understand your
16 question -- your answer to your counsel's question,
17 you indicated that it might be that the competitive
18 bid that the company put out to provide the SSO
19 service might come in lower than the market? Did you
20 say that?

21 A. Not saying lower than the market, just
22 the price to compare itself for all customers, SSO
23 customers, would be lower so then marketers would
24 need to compete against a lower price to compare or
25 lower standard offer service price and that could

1 benefit shoppers; they could renegotiate their
2 contracts.

3 Q. You think that shoppers could renegotiate
4 their contracts?

5 A. They could. I mean, obviously there
6 might be penalties, but they could.

7 Q. Well, you don't know that, do you,
8 Ms. Turkenton?

9 A. I don't know the particulars of each
10 individual contract that shoppers have, that's
11 correct.

12 Q. Yeah.

13 EXAMINER PRICE: But contracts have
14 terms, too.

15 THE WITNESS: Correct.

16 EXAMINER PRICE: Nobody is fixed to a
17 marketer for life, so at the end of their normal term
18 they could renegotiate.

19 THE WITNESS: Right.

20 EXAMINER PRICE: And that's what you
21 meant.

22 THE WITNESS: Yeah. Okay.

23 MR. BOEHM: We'll go with that. Thank
24 you, your Honor.

25 Thank you, Ms. Turkenton.

1 MR. YURICK: Nothing.

2 EXAMINER PRICE: Major?

3 MAJOR THOMPSON: No.

4 EXAMINER PRICE: Mr. Sharkey?

5 MR. SHARKEY: Nothing, your Honor.

6 EXAMINER PRICE: I have one follow up to
7 that question. Your testimony then, Ms. Turkenton,
8 is everybody benefits from the auction process; is
9 that correct?

10 THE WITNESS: At today's market prices,
11 yes.

12 EXAMINER PRICE: And you make that
13 testimony despite staff's recommendation that the CBP
14 auction costs be recoverable through a bypassable
15 reconciliation rider?

16 THE WITNESS: That's not my testimony
17 but, yes, I --

18 EXAMINER PRICE: That was Mr. Donlon's
19 testimony.

20 THE WITNESS: Mr. Donlon's testimony,
21 yes.

22 EXAMINER PRICE: But if everybody
23 benefits, shouldn't everybody pay for the cost of the
24 auction?

25 THE WITNESS: Obviously that question's

1 more appropriate to Mr. Donlon, but my opinion is
2 that it's a provision of providing service, so could
3 be under an MRO or an ESP construct.

4 EXAMINER PRICE: Luckily for me even if
5 my questions are objectionable, I get the answers.

6 Thank you, you're excused.

7 MR. McNAMEE: At this time, staff would
8 move for the admission of Staff Exhibits 8 and 9.

9 EXAMINER PRICE: Any objection to the
10 admission of Staff Exhibits 8 and 9?

11 (No response.)

12 EXAMINER PRICE: Seeing none, let's go
13 off the record.

14 (EXHIBITS ADMITTED INTO EVIDENCE.)

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

17 Mr. McNamee?

18 MR. McNAMEE: Thank you, your Honor. At
19 this time staff would call Dr. Choueiki to the stand.

20 (Witness sworn.)

21 EXAMINER PRICE: Please be seated and
22 state your name and business address for the record.

23 THE WITNESS: Hisham Choueiki, I'm
24 employed by the Public Utilities Commission of Ohio,
25 and the address is 180 East Broad Street, Columbus,

1 Ohio.

2 - - -

3 HISHAM M. CHOUEIKI

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

6 DIRECT EXAMINATION

7 By Mr. McNamee:

8 Q. Dr. Choueiki, what is your capacity at
9 the Public Utilities Commission?

10 A. I'm a senior energy specialist.

11 Q. Okay.

12 MR. McNAMEE: At this time, your Honor,
13 staff would ask to have marked for identification as
14 Staff Exhibit 10 --

15 EXAMINER PRICE: It's been previously
16 marked, hasn't it?

17 MR. McNAMEE: Was it?

18 EXAMINER PRICE: We marked 10A.

19 MR. McNAMEE: A was, I forgot, that's why
20 it's written on the top of there, okay. Couldn't
21 remember why that was.

22 Okay, as Staff Exhibit 10 --

23 EXAMINER PRICE: It will be so marked.

24 MR. McNAMEE: -- the redacted testimony
25 of Hisham Choueiki.

1 (EXHIBIT MARKED FOR IDENTIFICATION.)

2 Q. (By Mr. McNamee) Dr. Choueiki, you have
3 before you, because I just gave them to you, copies
4 of what has just been marked for identification as
5 Staff Exhibit 10 and what was previously marked for
6 identification as Staff Exhibit 10A. Do you have
7 those?

8 A. Yes.

9 Q. What are they?

10 A. Those are my direct prefiled testimony,
11 the confidential -- the public version and the
12 confidential version.

13 Q. Were what's been marked for
14 identification as Staff Exhibits 10 and 10A prepared
15 by you or under your direction?

16 A. Yes.

17 Q. Do you have any corrections to make to
18 either Staff Exhibits 10 or 10A?

19 A. Yes. It's one grammatical error.

20 Q. What is that, please?

21 A. On page 13 of both 10 or 10A, the answer
22 to question 22, so the top paragraph at the end, the
23 last sentence of the top paragraph, "The latter
24 adjustment to the projected switch rate in Chambers
25 WJC-3.B would have caused," so there's a "D" missing.

1 Q. Okay.

2 A. And that's it.

3 Q. With that correction --

4 EXAMINER PRICE: I'm sorry, which one was
5 that?

6 THE WITNESS: Page 13, the answer, there
7 is answer -- the last sentence in the answer.

8 EXAMINER PRICE: Okay.

9 EXAMINER MCKENNEY: I only see it in 10,
10 not in 10A.

11 EXAMINER PRICE: Oh, it's right in 10A.

12 THE WITNESS: Oh, that's something I
13 learned.

14 MR. McNAMEE: Who knows.

15 Q. (By Mr. McNamee) With that correction are
16 the contents of what's been marked for identification
17 as Staff Exhibits 10 and 10A true to the best of your
18 knowledge and belief?

19 A. Yes.

20 Q. If I were to ask you the questions that
21 are contained in those two documents again here this
22 afternoon, would your answers today be as represented
23 therein?

24 A. Yes.

25 Q. Do you adopt the contents of what's been

1 marked for identification as Staff Exhibits 10
2 and 10A as your direct testimony in this case?

3 A. Yes.

4 MR. McNAMEE: Thank you, Mr. Choueiki.

5 With that, your Honors, the witness is
6 available for cross.

7 EXAMINER PRICE: Thank you.

8 Ms. Petrucci?

9 MS. GRADY: Your Honor, I'm sorry, I have
10 a motion to strike.

11 EXAMINER PRICE: We'll take that now.

12 MS. GRADY: Thank you, your Honor. OCC
13 would move to strike beginning on page 11, footnote
14 3, the latter part of that footnote, the reference to
15 Case No. 11-3549-EL-SSO. Your Honors, that case was
16 Duke-Ohio's -- Duke Energy of Ohio's most recently
17 approved ESP proceeding, the case was resolved by
18 stipulation which the PUCO adopted.

19 The staff was a signatory party to that
20 stipulation and contained in the stipulation was the
21 following language: Neither this stipulation nor any
22 Commission order considering this stipulation shall
23 be deemed binding in any other proceeding, nor shall
24 this stipulation or any such order be offered or
25 relied upon by any party in any proceedings except as

1 necessary to enforce the terms of this stipulation.

2 Allowing a signatory party to use a PUCO
3 order adopting a stipulation in violation of the
4 terms of the stipulation will have a chilling effect
5 on parties' willingness to enter into negotiations,
6 we would move to strike this from the testimony.

7 EXAMINER PRICE: Mr. McNamee?

8 MR. McNAMEE: Your Honor, we would agree
9 to strike that from the testimony, the reference to
10 that case.

11 EXAMINER PRICE: No ruling is necessary,
12 the staff has withdrawn it.

13 MR. McNAMEE: Sorry.

14 MS. GRADY: Thank you.

15 EXAMINER PRICE: Ms. Petrucci?

16 MS. PETRUCCI: No questions.

17 EXAMINER PRICE: Ms. Grady?

18 MS. GRADY: Thank you.

19 - - -

20 CROSS-EXAMINATION

21 By Ms. Grady:

22 Q. Good afternoon.

23 A. Good afternoon.

24 Q. Now, I'm sorry, I always mispronounce
25 your last name. Could you tell me?

1 A. Choueiki.

2 Q. Choueiki. Choueiki. Choueiki.

3 Mr. Choueiki, you indicate that you are a
4 senior energy specialist at the Commission and serve
5 as a technical policy adviser to the PUCO
6 Commissioners and senior staff. Do you see that in
7 your testimony?

8 A. Yes.

9 Q. And can you tell me what you advise the
10 PUCO Commissioners and senior staff on?

11 A. Mostly technical matters. To the extent
12 the Commission, if one of the Commissioners has
13 technical matters on matters of RTO, you know, then
14 they would set up a meeting with me and they ask for
15 my opinion on matters.

16 Q. Would that include matters associated
17 with PJM and --

18 A. And MISO and transmission cost allocation
19 issues, to the extent I am aware of the information.

20 Q. Thank you.

21 Now, as a member of the staff steering
22 committee in the Organization of PJM States, what do
23 you do?

24 A. I represent the State of Ohio and also I
25 try to promote our policy matters to the extent, you

1 know, of course I'm one of 13 other members because
2 every state has a technical person who is a
3 representative, and then each one of us advises our
4 board member.

5 So in our case, for example, for Ohio,
6 Commissioner Porter is the Organization of PJM States
7 board member, so to the extent he has questions, then
8 I provide him with advice.

9 Q. Now, on page 9 of your testimony you
10 indicate that DP&L embraced the market by adopting --
11 by opting to fully engage its generation fleet in
12 PJM's capacity market. Do you see that?

13 A. Yes.

14 Q. And they chose to opt for the RPM
15 capacity constraint since the inception of the RPM,
16 correct?

17 A. The RPM --

18 MR. McNAMEE: Can I have that question
19 reread, please?

20 EXAMINER PRICE: You may.

21 (Record read.)

22 MS. GRADY: I'm sorry, let me rephrase
23 that. I misspoke.

24 Q. You indicate in footnote 2 that "DP&L
25 opted for the RPM capacity construct since the

1 inception of RPM..., " correct?

2 A. Yes.

3 Q. What other options for capacity could
4 DP&L have pursued, if you know?

5 A. She could have -- "she," I apologize.

6 Dayton Power & Light could have opted for
7 the fixed resource requirement, which is another
8 option available to load-serving entities.

9 Q. Now I want to talk to you for a moment
10 about the difference between being a load-serving
11 entity with an FRR construct versus being a
12 load-serving entity with an RPM construct, okay?

13 A. Okay.

14 Q. Now, some examples of a load-serving
15 entity who has chosen the FRR construct would be a
16 company like Ohio Power and Duke?

17 A. Yes.

18 Q. Would you agree that the PJM open access
19 transmission tariff and the reliability assurance
20 agreement discuss the FRR construct?

21 A. Yes.

22 Q. And under the FRR construct an entity
23 must secure capacity outside of the centralized PJM
24 auction, correct?

25 A. Correct.

1 Q. And would you agree that there are risks
2 for -- under an FRR construct that differ from an
3 entity that participates in the RPM construct?

4 A. Correct, because under an FRR construct
5 the entity has to secure the generating units and
6 take them out of the market.

7 Q. Would you agree with me that an entity
8 under the FRR construct must commit resources to
9 cover the full resource requirements for the load of
10 all of its distribution customers in advance of the
11 base residual auction?

12 A. Correct. If they are an EDU, then that's
13 correct.

14 Q. Would you also agree that the resource
15 requirement for an FRR entity is based on the load of
16 all customers served through the distribution system
17 including those served by CRES or other load-serving
18 entities?

19 A. Well, the two examples that I'm aware of,
20 you are correct, which would be AEP Ohio and Duke.

21 Q. Now, the load-serving entities in the FRR
22 service area may opt out of the FRR plan and secure
23 capacity resources separately, correct?

24 THE WITNESS: Could you repeat the
25 question, please?

1 EXAMINER PRICE: Please.

2 (Record read.)

3 A. They have to give -- they have to have
4 been, once they've chosen, they have to stay in that
5 specific construct for five years. After that they
6 can opt out.

7 Q. Now, DP&L -- let me strike that.

8 Would you agree with me an entity under
9 the FRR construct has an obligation to provide all
10 remaining capacity resources for the load-serving
11 entities in its service area?

12 A. Yes, they have to provide enough capacity
13 for -- to satisfy the demand of the load-serving
14 entity plus the reserve that PJM requires.

15 Q. And would you also agree with me that an
16 entity under an FRR construct faces greater penalties
17 for failing to provide capacity compared to a base
18 residual auction participant?

19 A. Well, the liability is on the entity. In
20 the PJM basically the load-serving entity is buying
21 in the market, so PJM is responsible for --

22 THE REPORTER: Excuse me?

23 A. Under an FRR construct the load-serving
24 entity is required to procure the resources and
25 demonstrate to PJM those are the resources. In RPM,

1 PJM basically procures capacity for the entire load
2 that is not FRR.

3 Q. And perhaps you misunderstood. I was
4 asking about whether or not an FRR -- or, an entity
5 that is under an FRR construct faces greater
6 penalties if it fails to provide capacity than a
7 load-serving entity under a base residual auction
8 construct.

9 A. Yes. And what I'm saying is under an RPM
10 there's no penalty at all, they just pay to PJM
11 whatever capacity PJM procures.

12 On the other, on the FRR construct there
13 is a requirement and PJM is going to charge them a
14 premium to the extent they don't satisfy that
15 commitment they make. I don't know what the -- how
16 big is the penalty or --

17 Q. Well, that's my next question.

18 So you would not know whether or not, if
19 the FRR fails to provide capacity, that they would
20 face a commitment insufficiency charge?

21 A. They have to pay a penalty. I don't
22 remember what are the components of the penalty. I
23 know they have to -- PJM would have to procure the
24 capacity right away, so they'd have to pay a premium
25 and PJM is going to translate that premium to the

1 LSE, the load-serving entity, that does not meet its
2 commitment.

3 Q. And in this -- and an entity under the
4 FRR construct would be the LSE that would face the
5 penalty?

6 A. Correct.

7 Q. Regardless of whether it was based on
8 their inability or based on their load or someone
9 they were serving load for.

10 A. Correct.

11 Q. And would you also agree with me that an
12 FRR must supply capacity whether it has sufficient
13 existing capacity or not?

14 A. Yes. They are going to have to point to
15 capacity and they're going to have to show units and
16 contracts, if they don't own them, they have to show
17 the -- they have to demonstrate to PJM they can
18 satisfy demand plus reserves, whether they own the
19 units or not.

20 Q. And would you also agree with me that
21 the -- an FRR entity -- or, an LSE, a load-serving
22 entity, under an FRR construct must cover 100 percent
23 of its resource requirements three years in advance?

24 A. That's correct.

25 Q. And, on the other hand, a load-serving

1 entity relying on a base residual auction is only
2 locked in for -- is only locked in for 97.5 percent
3 of its expected reliability requirements; is that
4 correct?

5 A. Well, they have to satisfy a hundred
6 percent, but at the time of the base residual auction
7 PJM procures only 97-1/2 percent. But later on
8 during the incremental auctions before the delivery
9 year they have to get all the way to a hundred
10 percent.

11 Q. And is it also your understanding that an
12 FRR entity is restricted in its ability to sell
13 surplus resources in the RPM auction?

14 A. I think they have, and I think that was
15 just one condition they had on a very large supplier
16 in PJM who was an FRR company. They couldn't sell
17 more than I think 1,300 megawatts in the -- after
18 they satisfied all their FRR requirements, then they
19 have an additional 1,300 megawatts that they could
20 sell in the RPM, no more than that.

21 EXAMINER PRICE: May I have the question
22 and answer back again.

23 (Record read.)

24 EXAMINER PRICE: Thank you.

25 Q. And do you know who that large supplier

1 was?

2 A. Yes. AEP.

3 EXAMINER PRICE: That wasn't
4 confidential, was it?

5 THE WITNESS: No.

6 EXAMINER PRICE: Thank you.

7 Q. Now, you note -- and I'm going to now go
8 to your testimony at page 10 where you talk about the
9 service stability rider.

10 A. Okay.

11 Q. And you indicate that, on page 11, that
12 "...the Commission has granted similar charges to
13 other utilities based on Revised Code
14 4928.143(B)(2)(d)." Do you see that reference?

15 A. Yes.

16 Q. And in the footnote you refer to Case
17 No. 11-346-EL-SSO, correct?

18 A. Yes.

19 Q. Now, I want to talk about that case for a
20 moment. The staff presented testimony in that case,
21 did it not?

22 A. Yes.

23 Q. And, in fact, you would have submitted
24 testimony in that case but not on the company's
25 proposed service stability rider.

1 A. Correct.

2 Q. And do you know if the staff presented
3 testimony on the rate stability rider in that case?

4 A. I can't recall. I know what I discussed
5 was basically the RPM-FRR constructs and RPM prices
6 and what our recommendations would be.

7 Q. So you're not aware of whether or not
8 Mr. Fortney of the staff would have presented
9 testimony on the proposed rate stability rider by
10 AEP?

11 A. Frankly, I can't recall.

12 Q. Are you familiar -- if you cannot recall,
13 would you be familiar with whether or not the staff
14 took a position on the rate stability rider in that
15 case?

16 A. I don't recall if in the MRO-ESP test
17 Mr. Fortney included anything or not on the stability
18 rider.

19 Q. Now, you are aware that in Case
20 No. 10-2929 the PUCO established a state compensation
21 method for AEP Ohio, correct?

22 A. Yes. Under the FRR construct you can
23 either -- the LSE either could opt for to charge its
24 competitors the RPM rate or the state compensation
25 mechanism, if there is one; if not, they can go to

1 FERC and file for a cost study. FERC can decide.

2 Q. And were you aware of staff's position in
3 that case?

4 A. The position in the 2929? We -- I
5 remember we brought in an outside consultant who
6 determined that the rate of capacity was -- which is
7 basically your annual fixed cost less energy revenues
8 and ancillary services, revenues was about 145 or
9 150 dollars a megawatt-day, and then the Commission
10 made some adjustments in their order, and I can't
11 recall what, it was like 180, 190 a megawatt-day
12 after the adjustments were made.

13 Q. Do you -- would you agree with me that
14 the staff's position in that case was that AEP Ohio
15 should receive compensation for its FRR obligation
16 based on the prevailing RPM rate?

17 A. In the SS -- in the ESP case I presented
18 testimony. In the cost case we only had I think, I
19 could be -- I mean, I stand to be corrected, and
20 please correct me, what I recall is we hired someone,
21 an expert, to develop a capacity cost for the
22 Commission to evaluate to the extent our position in
23 the ESP case was to charge CRES providers the RPM
24 rate, but we didn't address the compensation issue.

25 To the extent the Commission disagreed

1 with staff and said no, an FRR company should be or
2 AEP in that case should be compensated for their
3 capacity, then we made the recommendation that it
4 ought to be whatever our consultant came up with in
5 the 2929 case.

6 Q. Now, in this case you state that the
7 staff agrees with the establishment of an SSR. Do
8 you see that in your testimony?

9 A. Yes.

10 Q. Is this agreement based on what the
11 Commission has done with other utilities?

12 A. Well, the policy issue is that -- I'm not
13 making any legal conclusions here because I'm not a
14 lawyer, but my observation is the Commission under
15 that specific statute has granted another EDU --
16 another EDU an SSR, stability rider, so that's the
17 policy issue addressed here.

18 EXAMINER PRICE: Dr. Choueiki --

19 THE WITNESS: Yes.

20 EXAMINER PRICE: -- I want you to answer
21 her questions truthfully. If she opens the door to
22 something that you feel you shouldn't say, you still
23 need to answer these questions truthfully and then
24 I'll decide whether your answer is objectionable.

25 THE WITNESS: Okay. I forgot the

1 question so I need it to be --

2 EXAMINER PRICE: Let's have the question
3 back again.

4 MR. FARUKI: Your Honor, could we have
5 the question and --

6 THE WITNESS: And answer.

7 MR. FARUKI: -- whatever answer he gave?

8 EXAMINER PRICE: Yes.

9 (Record read.)

10 A. Now, to continue with this line of
11 thought, under this we've looked at the financial
12 information the company has provided us with. To the
13 extent we agree with the concept of an SSR and we
14 agree that to the extent the Commission finds that
15 the company -- the financial integrity of the company
16 is compromised, then the SSR would be a
17 recommendation. That's when we develop an SSR
18 estimate.

19 But first the first question would have
20 to be does the Commission agree with the company that
21 the financial integrity of the company is compromised
22 in the next several years.

23 Q. Now, when you mentioned in your testimony
24 that your agreement is based on what the Commission
25 has done with other utilities, you mentioned one EDU,

1 and that EDU would have been Ohio Power and would
2 have been an FRR entity, correct?

3 A. Ohio Power is an FRR company.

4 Q. Now, you cite to the statute
5 4928.143(B)(2)(d). Are you familiar with that
6 statute?

7 A. Yes. As an engineer reading a law book,
8 yes, I'm familiar with it.

9 Q. I take it that you have not done any
10 analysis to determine whether or not the SSR charge
11 fits into that provision of law.

12 A. No; I'm not making a legal conclusion
13 myself.

14 Q. Have you determined that the SSR will
15 have the effect of stabilizing or providing certainty
16 regarding retail electric service?

17 A. No. Because that is the, actually the
18 core, the heart of the financial integrity.

19 Q. Now, you indicate on page 13 of your
20 testimony that the switching rates that Witness
21 Chambers relied upon were not reasonable. Do you see
22 that?

23 A. Yes.

24 Q. And you believe that if you used what you
25 view as reasonable switching rates for the three-year

1 period, there would be a significant increase in the
2 company's retail rates, correct?

3 MR. OLIKER: Could I have that question
4 read back again?

5 EXAMINER PRICE: I think you might have
6 misstated the last word.

7 MS. GRADY: I'm sorry, why don't I -- I
8 can restate the question, or respeak it.

9 Q. You believe that if you used what you
10 view as reasonable switching rates for the three-year
11 period, that there would be a significant increase in
12 the company's revenues.

13 A. Yes.

14 Q. And by "significant increase," what do
15 you mean?

16 A. It's about our estimate, and this is my
17 estimate although I didn't -- now we're starting
18 to -- maybe you want to go into confidential.

19 EXAMINER PRICE: At this time we will go
20 into the confidential portion of our transcript.
21 Let's go off the record.

22 (Discussion off the record.)

23 (Confidential portion excerpted.)

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(Open record.)

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

3 Mr. Alexander.

4 - - -

5 CROSS-EXAMINATION

6 By Mr. Alexander:

7 Q. Good afternoon, Dr. Choueiki.

8 A. Good afternoon.

9 Q. Are you generally familiar with the
10 disputes in this case regarding the timing of Dayton
11 Power & Light's actual structural separation?

12 A. Dispute? I mean, I'm familiar with what
13 the company is asking for. I don't know what
14 dispute.

15 Q. Some parties are asking for transition
16 faster.

17 A. Yes.

18 Q. Okay. And I'd like to direct your
19 attention to page 15, the last paragraph in response
20 to question 24.

21 A. Yes.

22 Q. When staff makes this recommendation, is
23 staff referring to DP&L the distribution company?

24 A. Yes.

25 Q. And in the event structural separation

1 occurs during the ESP period, staff would recommend
2 that SSR charges stay with the distribution entity,
3 whichever, whatever name that entity ends up
4 receiving.

5 A. It stays with the distribution, on the
6 distribution side, yes.

7 Q. And would this recommendation by staff
8 apply to dividends by the distribution entity to its
9 parent?

10 A. The mechanics, now you're going a bit
11 above my level of information. My -- the spirit of
12 this sentence is we want to make sure that that money
13 doesn't go up to DP&L, Inc. [verbatim] and then comes
14 back down to DPLER or goes to another affiliate,
15 that's number one.

16 Number two, I want to make sure after the
17 end of the SSR, or during the period when they're
18 collecting the SSR, that the money is staying at the
19 distribution, with the EDU.

20 Now, right now the EDU includes
21 generation too, but we want to make sure that we
22 don't want to get to a place where now the
23 distribution and transmission utility is -- has
24 financial integrity issues.

25 So that's why the recommendation is there

1 for the Commission to evaluate.

2 MR. ALEXANDER: I don't have anything
3 further, your Honor.

4 EXAMINER PRICE: Thank you.

5 IEU?

6 MR. OLIKER: Thank you, your Honor.

7 - - -

8 CROSS-EXAMINATION

9 By Mr. Oliker:

10 Q. Good afternoon, Dr. Choueiki.

11 A. Good afternoon.

12 Q. Just a few questions for you.

13 What materials did you review in
14 preparation of filing testimony?

15 A. First thing is the application; most of
16 the company witnesses; also intervenor testimony
17 although I've read them over time now; data requests;
18 staff data requests, you know, specifically like
19 Craig Jackson's workpapers; some of the, not a lot,
20 of the intervenors' data requests; the long-term
21 forecast report of the EDU, the 2012.

22 I'm pretty sure there are lots of things
23 I'm missing too but those are the things I'm coming
24 up with right now.

25 Q. Thank you.

1 Did you participate in any of the
2 depositions of DP&L witnesses?

3 A. Like every other staff witness, I've
4 dialed in and had it in my office and, you know, when
5 we got interruptions, I got distracted, but I dialed
6 in a lot on the depositions.

7 Q. Do you remember which particular
8 witnesses you listened to?

9 A. Definitely I listened in on Craig
10 Jackson's and Hoekstra's. I didn't listen in on any
11 of the intervenors' depositions, I didn't have time.

12 Q. Going back to a question -- an answer you
13 provided before about Craig Jackson's workpapers, I
14 think that was FES Exhibit 1 that provided all of the
15 base information for his calculations. You reviewed
16 that information, correct?

17 A. Yes, if it has everything that is in our
18 data request because staff asked for all internal
19 documents, to the extent FES is exactly everything we
20 asked for, then yes.

21 Q. Thank you.

22 Do you remember which intervenor witness
23 testimony you reviewed?

24 A. I know I looked at Hess's testimony,
25 Lesser's testimony, some of Murray's testimony. OCC

1 I think also I reviewed -- I can't remember now if it
2 was -- whoever did the ESP-MRO test, I can't remember
3 who the witness was from OCC who did that.

4 Q. Okay. Did you review the testimony of
5 other staff members before --

6 A. Yes.

7 Q. -- or after they filed testimony?

8 A. Before.

9 Q. Which ones? All of them?

10 A. I think I've read them all at least once.

11 Q. Dr. Choueiki, in this proceeding has DP&L
12 made any commitments regarding the sale or transfer
13 of its generating assets? If you know.

14 A. Well, they made a commitment that by the
15 end of this year, I think, that they will file an
16 application before the Commission, and that they --
17 it is their intention, although it's not a hard
18 commitment, I mean there will be a case and the
19 Commission will decide it, but their intention is to
20 by the end of 2017 to separate generation.

21 Q. Does staff have a position of whether
22 those commitments should be a condition of any
23 Commission order authorizing the ESP?

24 A. No, not in this case.

25 Q. Okay. Are you aware that DP&L has

1 represented that it might not be able to effectuate
2 corporate separation at the end of 2017?

3 A. I heard during cross-examination, I
4 think, that it is -- right now that's their thinking
5 is that they will, but it's not a hard commitment.

6 Q. Does staff have a position of whether it
7 should be a hard commitment?

8 A. I believe the staff will have a
9 recommendation once it's filed and we look at the
10 whole thing. But we're not going to have a
11 recommendation on a case that hasn't been filed
12 before us.

13 Q. Thank you.

14 So just so I can rehash that, you'd like
15 to see what the application says and then you'll make
16 your judgment at that point in time.

17 A. Yes.

18 Q. Okay. Page 12 of your testimony you
19 recommend that if the Commission finds an SSR charge
20 is necessary, the SSR charge be limited to three
21 years, but then on page 14 of your testimony you
22 identify that the represented three-year period for
23 the SSR would be in place June 1, 2013 to May 31st,
24 2016, right?

25 A. Yes.

1 Q. Now, for a second just assume for me that
2 the Commission issued an order adopting an ESP with
3 staff's recommendations for three years, and DP&L in
4 turn accepts the Commission's order, and then
5 assuming DP&L has not completed the transfer of its
6 generating assets by that point in time, in 2016
7 would DP&L be permitted to request a similar charge
8 to the SSR or another nonbypassable charge?

9 MR. McNAMEE: Objection.

10 MR. FARUKI: Before I object I'd like to
11 hear it back, I'll have multiple grounds.

12 EXAMINER PRICE: Well, before I rule on
13 Mr. McNamee's objections, I'd like to hear
14 Mr. Faruki's, so let's hear the question back again.

15 (Record read.)

16 MR. FARUKI: Several grounds, your Honor.
17 Number one, it's an incomplete hypothetical. Number
18 two, there's no foundation. And number three, he's
19 being asked what the Commission would do and what a
20 utility under its jurisdiction would be permitted to
21 do several years down the road, that calls for
22 speculation and I think it's an attempt really to try
23 to lock the staff into a position in March of 2013 as
24 to what a hypothetical Commission order would be in
25 2016 or 2017 under an incomplete set of facts.

1 EXAMINER PRICE: Mr. McNamee, your
2 grounds?

3 MR. McNAMEE: My grounds are very simple:
4 The question does ask this witness to issue a
5 judgment on what the company is permitted to do and
6 he has, not being a lawyer, he has no ability to
7 speak to what is permitted or not.

8 EXAMINER PRICE: Mr. Oliker, would you
9 care to respond?

10 MR. OLIKER: Your Honor, we can clarify
11 I'm asking if staff has a position. He can give me
12 his layman's understanding of whether staff has
13 thought of this, you know, hypothetical situation and
14 whether they have a position about what they would
15 take.

16 MR. FARUKI: It still calls for
17 speculation, your Honor.

18 MR. OLIKER: If he knows. If he doesn't
19 know, he doesn't know.

20 EXAMINER PRICE: I'm going to sustain the
21 objections.

22 Q. (By Mr. Oliker) Dr. Choueiki, turning to
23 page 9 of your testimony.

24 A. Nine?

25 Q. Yes, page 9. You state that the concept

1 of the switching tracker mechanism is anticompetitive
2 and violates the spirit of several state policy goals
3 in Section 4928.02 Revised Code.

4 A. Yes.

5 Q. Can you identify specifically which
6 policy goals you're talking about from 4928.02?

7 A. I can think --

8 EXAMINER PRICE: Wait one second. How is
9 this question adverse to the common position of IEU
10 and staff that the switching tracker should not be
11 adopted?

12 MR. OLIKER: I think I need to establish
13 this principle before I can get to the point --

14 EXAMINER PRICE: Where you're adverse?

15 MR. OLIKER: Yeah. It's pretty quick,
16 though.

17 EXAMINER PRICE: Okay, I'll allow it.

18 A. I think, if memory serves me correct, I
19 think it's, in my mind, again, reading the statutes,
20 the guideline, the policy guideline of 4928.02, I
21 think of like (A), (H), I can't remember if the last
22 one is (I) or not, but I have to look at them and
23 read them again.

24 Q. And it's hard for us just talking about
25 the letters. Do you know what those letters stand

1 for, or at least the policy provisions?

2 A. Well, one of them has to do with
3 basically money between a regulated and
4 unregulated --

5 Q. Subsidies?

6 A. Subsidies. One of them has to do with
7 reasonable rates, we believe -- I think (A) is the
8 one that talks about reasonable rates, and I believe
9 the switching tracker, the minute you include it in
10 our mind, in staff's mind, is unreasonable.

11 Q. Okay.

12 A. And (I) I think has to do with market
13 monitoring and market power issues.

14 Q. Thank you.

15 Is there any other ones you can think of
16 off the top of your head?

17 A. Not at this time.

18 Q. And your understanding of the switching
19 tracker is it's designed to compensate DP&L for lost
20 retail revenues because when customers switch, DP&L
21 makes more sales into the wholesale market and those
22 sales are at a lower price than retail rates,
23 correct?

24 A. Correct. But that's not why. The issue
25 at hand is, the issue in my mind for anticompetitive

1 is, first, their generation is in the market so
2 everyone who's competing in PJM, that's on the
3 wholesale side, is competing based on offer prices
4 and whatever they get, they get. All the generation
5 owners.

6 So to have a switching tracker that
7 compensates Dayton Power & Light for the difference
8 between the cost of -- SSO supposedly, the SSO rate
9 that exists is a legacy rate that includes
10 generation; whether we like it or not, that's how it
11 was established long time ago.

12 So the SSO rate and the market rate,
13 there is this difference that the company is getting
14 on top of what it's getting for capacity from the
15 RPM. That's on the wholesale side.

16 On the retail side, because DPLER is a
17 major competitor and has about, I think this is a
18 public number because it was filed in the 10-Q, about
19 75 percent of the CRES market, in my mind I look at
20 an example, okay, so you have the, let's say, this is
21 a hypothetical, the SSO rate is \$70 a megawatt-hour,
22 the wholesale rate is \$45 a megawatt-hour, DPLER
23 charges its retail customers \$60 a megawatt-hour.

24 In my mind DPL, Inc., who owns DPLER and
25 Dayton Power & Light, under the company's application

1 they're making the difference between \$45 and \$70,
2 and on top of that they're making the difference
3 between \$45 and \$60.

4 Now, it's not on the whole lost
5 megawatt-hours, it's only on 75 percent of it, but,
6 still, that's a very large portion that in my mind,
7 you know, that doesn't make any sense.

8 Q. But would you agree if -- say wholesale
9 energy rates were higher, there would be no need for
10 the switching tracker, correct?

11 MR. FARUKI: I'll object as friendly
12 cross.

13 MR. OLIKER: Your Honor, I'm trying to
14 build to my very next point.

15 MR. FARUKI: He -- I'm sorry, go ahead.

16 MR. OLIKER: And it's not friendly, as
17 you will very quickly see.

18 EXAMINER PRICE: We'll give him a little
19 bit of leeway. I'm confident that he will marry this
20 up to something adverse very quickly.

21 MR. OLIKER: Thank you, your Honor. I
22 can restate the question.

23 EXAMINER PRICE: Please.

24 Q. (By Mr. Oliker) You would agree that the
25 switching tracker would not be necessary for DP&L in

1 their mind if wholesale energy prices were much
2 higher, correct?

3 MR. FARUKI: Same objection.

4 EXAMINER PRICE: Your continuing
5 objection is noted. Overruled.

6 A. Well, as I said, switching tracker,
7 according to the application, is the difference
8 between SSO and market. If the market is higher,
9 then the switching tracker would be less. The dollar
10 value of the switching tracker would be less.

11 Q. And it's -- it's using the nonbypassable
12 charge -- strike that.

13 You would also agree that the SSR is
14 being driven by lower wholesale energy prices, in
15 part.

16 A. I mean, the way the SSR is determined,
17 it's a function of, I mean, you know, Chambers'
18 spreadsheets, there is wholesale revenues, retail
19 revenues, fuel expense, depreciation. There's a
20 bunch of information, one of them is wholesale
21 revenues. To the extent the company earns more in
22 wholesale revenues, then it would impact the SSR.

23 Q. So just so we're clear, would you agree
24 that the switching tracker and the SSR are both being
25 driven by lower wholesale revenues as one component?

1 A. So the company made assumptions on what
2 the wholesale market, what the price of energy in the
3 wholesale market in their application, everything is
4 dependent on this information in the application.

5 Q. And on the one hand with the switching
6 tracker you've identified that it would violate state
7 policy, but the SSR which is being driven by the same
8 factor, you don't seem to identify that as violating
9 4928.02.

10 A. Correct. Because the SSR is not tied to
11 generation. The SSR is tied to the revenues from
12 transmission, from distribution, and from generation.

13 Q. If the Commission were to determine that
14 the SSR is solely related to generation compensation,
15 would your answer change?

16 THE WITNESS: May I hear the question
17 again? I didn't hear the first part.

18 EXAMINER PRICE: You may.

19 (Record read.)

20 A. The Commission can determine whatever it
21 wants. Right now I'm looking only at the application
22 before me. So I see them completely -- the switching
23 tracker is really a function of how much switching is
24 occurring.

25 The other one I see as the company as a

1 whole, the distribution, transmission, and generation
2 together, they're all -- they're still vertically
3 integrated, has one revenue stream and, according to
4 the company, they need a specific SSR. That's the
5 most I can say about this.

6 Q. Okay. Thank you.

7 I think I understand what you're saying,
8 but just so the record is clear, you're saying you
9 didn't evaluate the policy of 4928.02 because you
10 didn't look at the SSR as if it was tied exclusively
11 to generation.

12 A. In my mind it's not only tied to
13 generation.

14 Q. Okay. Dr. Choueiki, there's nothing in
15 your testimony that takes the position on whether the
16 service stability rider is a lawful transition
17 charge, correct?

18 A. Is?

19 Q. Let me restate that. Your testimony does
20 not take a position regarding whether the service
21 stability rider is an unlawful transition charge.

22 A. An unlawful transition charge?

23 Q. Transition charge. I can try to restate
24 it again. I'm sorry.

25 A. I'm sorry, I'm not hearing, is it

1 "unlawful" or "lawful"?

2 Q. Unlawful.

3 A. That it is an unlawful?

4 Q. Just so I can be clear, he --

5 EXAMINER PRICE: Why don't you ask him a
6 question that doesn't ask for a legal conclusion.
7 You have the word "unlawful" in there and he's not a
8 lawyer.

9 MR. OLIKER: Fair enough, your Honor.

10 Q. Dr. Choueiki, in your testimony you
11 haven't taken a position whether or not the service
12 stability rider recovers transition charges or
13 stranded costs.

14 A. No.

15 Q. Thank you.

16 And you're not making a recommendation
17 one way the other whether the Commission should
18 authorize a service stability rider, correct?

19 A. The only thing I'm making a
20 recommendation on is if the Commission finds that the
21 company's financial integrity is compromised, then
22 here's an estimate of an SSR.

23 Q. And the estimate you just referenced,
24 that's contained in the testimony of Mr. Mahmud?

25 A. Yes.

1 Q. What was your involvement in the
2 development of Mr. Mahmud's testimony?

3 A. I am the one who guided him as to which
4 WJC to use which of the Chambers exhibits to use as
5 the starting point. Now, he's the one who
6 understands financial interrelation, I do not, so
7 that's why he did that adjustment. He understands
8 depreciation, he understands these types of financial
9 information that I don't.

10 Q. Okay. Now, since Maureen touched on
11 these I might be able to do it a little quicker.

12 MR. OLIKER: Your Honor, can we go on the
13 confidential transcript, if we're not there already?

14 EXAMINER PRICE: We're not, but we will
15 go on the confidential transcript at this time.

16 MR. OLIKER: Thank you.

17 (Confidential portion excerpted.)
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(Open record.)

Q. (By Mr. Oliker) There's a statement in your testimony, I'm just trying to understand what you mean by this: "The company should have been strategically planning for long-term, setting itself up to be more lean...."

I haven't really heard that term used in utility speak. What do you mean by "be more lean"?

EXAMINER PRICE: Could we have a page reference?

A. Yes, please.

MR. OLIKER: I'm sorry.

1 EXAMINER PRICE: Nine.

2 THE WITNESS: The switching tracker
3 section.

4 EXAMINER PRICE: Nine.

5 MR. OLIKER: Thank you.

6 A. So now your question is?

7 Q. Yeah, I'm just trying to understand, what
8 did you mean by the company should have strategically
9 been planning in the long-term setting itself up to
10 be more lean and adaptable to price uncertainties in
11 the energy and capacity markets? I'm more interested
12 in the use of the term "lean." What did you mean by
13 that?

14 A. Just to be able to adapt to change very
15 fast and react to change very fast.

16 Q. And you also talk about forward energy
17 and capacity prices are available in the market at
18 least four years in advance. Are you -- do you
19 review forward energy prices?

20 A. They're daily downloaded to our systems.

21 Q. And have you reviewed the energy prices
22 included in the workpapers of Craig Jackson or that
23 existed on August 30th, 2012?

24 A. Yes.

25 Q. Would you agree that, as we sit here

1 today, energy prices are on average 4 to 6 dollars a
2 megawatt higher?

3 MR. FARUKI: I'll object. He sailed into
4 the waters of friendly cross.

5 MR. OLIKER: Your Honor, staff is giving
6 a recommendation in Mr. Mahmud's testimony and I am
7 entitled to ask him whether or not Mr. Mahmud or
8 anybody else on staff has considered these prices and
9 the impact they may have on the company's revenue
10 projections.

11 EXAMINER PRICE: Overruled.

12 A. I don't know if it's -- depends if you're
13 talking off-peak or on-peak. I think off -- last
14 time we checked off-peak is about \$3 on average above
15 what the company's August 22 filing, and on-peak I
16 would say in the range of 3 to 5 dollars also. 3 to
17 5 dollars.

18 Q. And is that over the term of the ESP?

19 A. That's for, again, if we were to do the
20 adjustments, it will be for 2013, '14, and '15
21 because Mahmud looks at three calendar years so, yes,
22 over the term of the ESP recommended by staff.

23 Q. And, to your knowledge, did Mr. Benedict
24 or -- strike that.

25 To your knowledge, has any staff witness

1 incorporated updated energy prices in any of their
2 analysis for their recommendation to the Commission?

3 A. Well, Mr. Benedict looked at the prices
4 as provided by the company and I think he would be
5 the only one who would apply an adjustment.
6 Mr. Mahmud didn't do any adjustments. They used the
7 company's application.

8 Q. All other things being equal would you
9 agree that the company would have more revenue
10 available today if it were to redo its financial
11 projections?

12 A. If the market prices are higher and the
13 costs of the company don't change, then there will be
14 more revenues.

15 MR. OLIKER: Could I have one moment,
16 your Honor, and then I think I may be done.

17 EXAMINER PRICE: Yes.

18 MR. OLIKER: Thank you.

19 Thank you, Dr. Choueiki.

20 And thank you, your Honor, that's all the
21 questions I have.

22 - - -

23 EXAMINATION

24 By Examiner Price:

25 Q. Before we go on with the company I just

1 had a follow-up on page 9 in your company -- that the
2 company should have been strategically planning for
3 the long term.

4 Now, when you make that statement, did
5 you consider the fact that the Commission extended
6 the company's market development period from 2003 to
7 2005? At that point the Commission could have said
8 no, we don't need to extend the market development
9 period, you should go right to market now; is that
10 correct?

11 A. Correct.

12 Q. But the Commission didn't.

13 A. I was talking after 2005 when they joined
14 RPM.

15 Q. I'll get to that.

16 A. Okay.

17 Q. I'll get to that. And it was at that
18 point the extended market development period we had
19 our first rate stabilization plan; is that correct?

20 A. Yeah, I'm not familiar with the rate
21 stabilization plans.

22 Q. You're not familiar with the rate
23 stabilization plans.

24 A. Yes.

25 Q. Oh, okay.

1 A. I wasn't involved in any of them, I was
2 in Telecom at that time.

3 Q. So are you aware that we had a rate
4 stabilization plan prior to 2005 for Dayton?

5 A. Yes.

6 Q. And in those rate stabilization plans the
7 Commission was, as a goal, looking for rate stability
8 for consumers.

9 A. Of course.

10 Q. And you're aware in 2005 the Commission
11 extended Dayton Power & Light's rate stabilization
12 plan with the goal of rate stability for customers.

13 A. Correct.

14 Q. And you're aware in 2008 we had an
15 electric security plan where the Commission basically
16 froze existing rates for Dayton Power & Light.

17 A. I'm aware of all that.

18 Q. So I guess my question is how do you --
19 aware of all three of those factors where the
20 Commission has certainly stressed rate stability,
21 what should Dayton have done differently in terms of
22 strategically planning?

23 A. The generation of Dayton is in the market
24 from since 2005. So any generation that didn't clear
25 in that capacity market they could have done

1 bilateral contracts, they could have, I mean there
2 are lots of things they could do as a company. The
3 Commission can't control what contracts they have for
4 their generation as long as they satisfy the SSO
5 load.

6 So to the extent they can maximize their
7 profit by making available their generation beside in
8 the RPM market, because not every megawatt clears,
9 not every megawatt that the company owns goes to the
10 RPM, some of it doesn't clear, so they could do other
11 things with that capacity. They could participate in
12 SSO auctions

13 Q. You're saying they didn't do other things
14 with that capacity?

15 A. I don't know what they did with that
16 capacity. I'm saying that's what someone, what an
17 entity would do, in my mind, they would make that
18 generation available, market that generation in the
19 wholesale market, generation, energy and capacity
20 beside the RPM market.

21 Q. Do you have any reason to disagree with
22 the company's witnesses' assertion that they would
23 offer wholesale generation to any CRES providers for
24 the same terms and conditions that they offer it to
25 DPLER?

1 A. Not in the day-ahead market, no, they
2 would -- nondiscriminatory access. They would
3 provide it at wholesale market in the day-ahead and
4 in the realtime market.

5 Q. On the same terms and conditions they
6 provide it to DPLER.

7 A. Yeah. I have no reason -- at FERC Dayton
8 Power & Light is granted market-based rates so they
9 don't have market power in the wholesale market so
10 that means they can charge market rate to anyone who
11 wants it.

12 Q. I'm not asking whether they can charge
13 it, I'm asking do you disagree with their assertion
14 that they make it available to anybody who wants it
15 for the same terms and conditions DPLER does?

16 A. No. I have no reason to, I mean I have
17 no knowledge that they are not making it available.

18 Q. You're not advocating at this point that
19 Dayton should have already divested its generation
20 assets, are you?

21 A. No, I have no position on that.

22 EXAMINER PRICE: Okay. Thank you.

23 Mr. Faruki, you may proceed with your
24 cross-examination.

25 MR. FARUKI: Thank you, your Honor.

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CROSS-EXAMINATION

By Mr. Faruki:

Q. Good afternoon, Dr. Choueiki.

A. Good afternoon.

Q. Let me start on page 11 of your testimony, if you would get that in front of you. Before I ask some specific questions about that let me ask you to tell us what your definition of "financial integrity" would be.

A. This is from the engineer's point of view I'm going to tell you.

Q. Well, I'm asking you as a witness for the staff.

A. I would be more than happy to give you my opinion.

Q. All right. I thought you might.

A. It's the ability of the company to satisfy all its financial obligations, the ability of the company to operate efficiently, the ability of the company to provide adequate and reliable service, and the ability of the company, whether we like it or not, to pacify Wall Street.

MR. OLIKER: Can I hear that answer back, please?

EXAMINER PRICE: You may.

1 (Record read.)

2 Q. Let me ask you what you mean by the last
3 statement about the ability of the company whether we
4 like it or not to pacify Wall Street.

5 A. I mean, we want -- the company has its
6 investors and wants to attract investment, so to the
7 extent its financial ratios are -- and I'm not very
8 familiar with financial ratios but I've heard it
9 here, but to the extent the financial ratios are not
10 looking good or the company is showing negative
11 returns in its SEC filings, then definitely folks who
12 invest would not invest.

13 Q. Okay.

14 A. So that's what I mean.

15 Q. So you're talking about the ability to
16 attract capital.

17 A. Correct.

18 Q. Now that I understand your definition,
19 let me ask you, is the financial integrity of a
20 utility important, and if so, why?

21 A. For the Commission it's very important.
22 I mean, the Commission -- in my mind, the Commission
23 can decide what it wants on the financial integrity
24 in this case, but in my mind if the Commission -- the
25 Commission would want to make sure that the company

1 is charging a reasonable rate to customers but also
2 reasonable to the company. So the company doesn't go
3 bankrupt.

4 Q. Is another way of saying what you're
5 telling us that the Commission needs to balance the
6 interests of customers as well as the utility in a
7 case like this?

8 A. Correct.

9 Q. Now, on page 11, your question 18, or
10 your answer to question 18, you say the staff agrees
11 with the establishment of an SSR; is that right?

12 A. Yes.

13 Q. Would you tell me the reasons for that?

14 MS. GRADY: Objection.

15 EXAMINER PRICE: Grounds?

16 MS. GRADY: It's been asked and answered
17 and it's friendly cross.

18 MR. OLIKER: Yeah, it's friendly. Join
19 the objection.

20 MR. FARUKI: Your Honor, I'm leading to
21 the point of asking him about the position on the
22 next page and I think this ties directly to that.

23 EXAMINER PRICE: We'll give him a little
24 bit of leeway. Fair is fair.

25 Q. Do you want my question again or are

1 you --

2 A. No, I think I still remember it.

3 Q. Go ahead.

4 A. There is enough -- in staff's mind,
5 there's enough evidence that the company needs some
6 money. Now, do they need \$137.5 million for five
7 years or else their financial integrity would
8 be compromised? The answer is I am not going to
9 judge, I'm going to leave it to the Commission to
10 judge.

11 But do we agree that their revenues have
12 gone down and they will go down if we were to push
13 them to auction faster and -- because of the switch
14 rates and because of the commodities market in the
15 next two or three years? Yes, we agree.

16 But do we agree, again, what the
17 company -- with the company on all its parameters?
18 The answer is no.

19 MR. McNAMEE: Could I hear that answer
20 again, please?

21 EXAMINER PRICE: You may.

22 (Record read.)

23 Q. You mentioned three factors there, the
24 commodities market, switch rates, and DP&L moving
25 faster to auction, right?

1 A. Yes.

2 Q. In view of those three factors and the
3 interaction of those three factors, do you think that
4 DP&L's financial condition is likely to deteriorate
5 over the next several years?

6 MS. GRADY: Objection.

7 EXAMINER PRICE: Grounds?

8 MS. GRADY: Friendly cross.

9 EXAMINER PRICE: Not at all. He's
10 cross-examining him on his indifference to the
11 company's financial integrity claim. Overruled.

12 THE WITNESS: Could you -- may I hear
13 that question again? I forgot.

14 (Record read.)

15 A. If the forecasts become actuals, I mean,
16 there are lots of assumptions in the company's
17 financial model. To the extent the wholesale, like I
18 was having that discussion with Mr. Oliker, if the
19 energy prices stay where they are the way you've
20 projected them to be, then yes, there will be a
21 deterioration because the revenues will go down.

22 But -- I'll leave it at that. Does that
23 answer your question?

24 Q. Almost. You go on in question 19, and
25 that question is whether the staff agrees with the

1 company that without the SSR charge DP&L's financial
2 integrity will be compromised, and you say "Staff
3 does not take a position on that claim"; is that
4 right?

5 A. That's correct.

6 Q. And why is it that staff does not take a
7 position on that claim?

8 A. That's a decision that is -- has to be,
9 in my mind, has to be decided by the Commission, not
10 by staff. We can give them technical advice, we can
11 provide them with information, but that's not a
12 decision that we're going to make a finding, staff is
13 going to make a finding on.

14 Q. And my question is: Why not? Given that
15 you have told us a minute ago that you believe the
16 company needs some money, I'm trying to reconcile
17 these two things.

18 A. Generally decisions of this type we've
19 always -- since I've been here, we've always left to
20 the Commission to make that decision.

21 Q. Now, as I understand the testimony that
22 the staff has filed here, you are recommending a
23 three-year ESP, right? Not a five-year.

24 A. Correct.

25 Q. You're also recommending no switching

1 tracker; is that right?

2 A. Yes.

3 Q. You are recommending the -- this goes
4 along with the three-year ESP, but you are
5 recommending a more aggressive or more accelerated
6 blending schedule; is that correct?

7 A. Yes.

8 Q. You have also -- or, the staff has also
9 filed testimony that would reject the company's
10 request for storm damage recovery. Are you familiar
11 with that?

12 A. Very little.

13 Q. I'm not going to ask you about the
14 details, but you know that the staff in general, what
15 their recommendation is on that.

16 A. That nothing for staff during the ESP, no
17 storm damage?

18 Q. Yes, sir. You're aware of that?

19 A. Yes, I'm aware of that.

20 Q. You're also aware that the staff differs
21 with the company on the treatment of the company's
22 proposed fuel rider; is that right?

23 A. On the issue of how you estimate --

24 Q. Yes, sir.

25 A. -- the SSO fuel. Yes.

1 Q. Have you or anybody under your direction
2 made an analysis that takes account of these factors
3 that you and I just reviewed, three years for an ESP,
4 no switching tracker, more accelerated blending
5 schedule, no on the storm damage request, the
6 adjusted fuel rider, have you done an analysis of
7 that whole package to see what it would imply for the
8 company's financial condition over either of the
9 company's requested five-year period or the staff's
10 recommended three-year period for an ESP?

11 A. The only ones that weren't included would
12 be the fuel rider and the storm, we did not include
13 those. Everything else we did.

14 Q. So what the staff did calculate would
15 exclude, in the list you and I are talking about now,
16 storm damage and fuel rider adjustment; is that
17 correct?

18 A. Now, to my knowledge -- to my knowledge
19 the fuel rider is small, whether you do average or
20 least cost; Mr. Gallina's recommendation. The storm
21 damage I'm not aware of the magnitudes we're talking
22 about.

23 Q. All right.

24 A. But I know it was excluded.

25 Q. So I'll just focus on, not on those two,

1 then, but the ones you did take account of. Are the
2 ones that you did take account of, then, the ones
3 that are reflected in the calculations that
4 Mr. Mahmud made where he sponsored two different
5 estimates of an SSR, those two estimates being
6 133 million and 151 million?

7 MR. OLIKER: I'm sorry, could I have
8 that -- I didn't hear, Charlie, could I have the
9 question read back please?

10 EXAMINER PRICE: You may.

11 MR. OLIKER: I think because you're
12 facing that way.

13 MR. FARUKI: I'm sorry.

14 (Record read.)

15 MR. OLIKER: Thank you.

16 A. Yes, although also the discussion that
17 we've had earlier with OCC and Mr. Oliker about
18 pushing the company faster would reduce its revenues
19 adjusting the switching rates to our recommendation
20 would increase the revenues, but they balance each
21 other so they weren't included.

22 Q. Yes. You said earlier, I think in your
23 initial explanation of that, you said those two
24 issues counterbalanced each other, in other words, it
25 was essentially a wash in the numbers.

1 A. With the error of margin of the forecast,
2 yes.

3 Q. Yes, sir.

4 A. Yes.

5 Q. That 2 percent, plus or minus 2 percent.

6 A. Yes.

7 Q. Okay. So in the analysis that you did,
8 and I'm using the plural "you," staff, not assigning
9 it all to your responsibility, but in the analysis
10 that staff did that takes account of these factors,
11 is it the staff's view that either the 133 million or
12 the 151 million would be reasonable for the
13 Commission to adopt depending on how the Commission
14 saw the facts?

15 A. We provided them, yes, with these two
16 estimates if they make a finding of financial
17 integrity.

18 Q. Yes.

19 A. That's a necessary condition.

20 Q. Yes. And more specifically, you mean
21 that if they make a finding that DP&L's financial
22 integrity is in jeopardy.

23 A. Right.

24 Q. Okay. So I'll ask you to assume for a
25 minute that the Commission would make that type of a

1 finding for the purpose of this question. Is it your
2 testimony, then, that the 133 million estimate, the
3 lower of the two estimates Mr. Mahmud, made and the
4 151 million estimate he made, establish a range
5 within which, again, assuming a finding of jeopardy
6 to DP&L's financial integrity, that that would
7 establish a range that the Commission -- that the
8 Commission staff believes to be reasonable?

9 MR. OLIKER: Your Honor, I object. That
10 is friendly cross.

11 EXAMINER PRICE: Could I have the
12 question back again.

13 (Record read.)

14 MR. FARUKI: Your Honor, if you look at
15 the top answer on page 12, it is fair cross. I mean,
16 the answer to question 19.

17 EXAMINER PRICE: I was going to say it's
18 fair cross because you're disputing the amount of the
19 SSR anyway so either way I think it's an allowable
20 question. Overruled.

21 Q. (By Mr. Faruki) Do you need it again?

22 A. Yes.

23 (Record read.)

24 A. Yes, with a caveat, only if the
25 Commission agrees with all the assumptions made, like

1 to the extent the Commission decides no, the energy
2 markets are higher, so we're going to adjust staff's
3 table, Mr. Mahmud's table, by X dollars, then they
4 would make their adjustment.

5 Q. Is that a topic or a subject on which you
6 would expect to be consulted for advice?

7 A. I'm not sure. I'd have to ask my counsel
8 and then he would or she would let me know whether I
9 can do something like this or not because this is an
10 open case, so.

11 Q. Right. Now, let me bring into this the
12 subject of generation separation. You were asked
13 some questions about that earlier. Is it the staff's
14 view that the three-year ESP that staff is
15 recommending at the range of these two estimates of
16 Mr. Mahmud, 133 million and 151 million, would be
17 conducive or would allow generation separation, or is
18 that not something that is part of that SSR
19 consideration?

20 A. That is not a part of the way of our
21 recommendation because the reason we went to a
22 three-year, in staff's position -- staff's position
23 is three years, not five years, because years four
24 and five are way uncertain for us to even look at it.

25 Now, we don't address that question is

1 the years enough to separate or not.

2 Q. Yes.

3 A. We're going to wait for the company to
4 file and then we're going to look at the -- given the
5 parameters of the ESP, if the Commission -- I mean we
6 don't know what the Commission's going to allow under
7 the ESP; whether it's going to be three years or five
8 years.

9 Q. Okay.

10 A. But at that time when the company makes
11 its filing, there will be an extensive evaluation.

12 Q. Well, stay on this point with me but look
13 on page 15 of your testimony where you were asked a
14 couple of questions about the paragraph right above
15 the heading that begins "To the extent the Commission
16 grants."

17 A. Okay.

18 Q. Do you remember those questions?

19 A. (Witness nods.)

20 Q. This recommendation in this paragraph
21 does not deal with the need for the company to
22 refinance debt as part of a series of steps toward
23 generation separation; is that right?

24 A. This recommendation is purely based on
25 making sure that the SSR revenues don't go somewhere

1 else. Don't go outside Dayton Power & Light.

2 Right now Dayton Power & Light owns
3 generation, so -- but the recommendation is for it to
4 stay in The Dayton Power & Light on the distribution
5 side and, to the extent -- and it also, the second
6 thing is to make sure that the financial integrity of
7 the company left behind after the generation is spun
8 off --

9 Q. The T and D company.

10 A. -- the T and D company is not
11 compromised.

12 Q. I understand that. And you said that
13 before. But let me push you on this because I
14 want -- I want to make sure that the record is clear.

15 You know, I believe, Doctor, that there
16 is debt at the DPL, Inc. level that is also secured
17 by assets of DP&L. You're aware of that.

18 A. Yes.

19 Q. And I know that you've studied the
20 Jackson testimony and I remember you dialed in to at
21 least part of that deposition, and you remember that
22 Mr. Jackson described the fact that in order to
23 separate generation, both the debt that DP&L has and
24 this DPL, Inc. debt that is secured by DP&L assets
25 are going to have to be refinanced.

1 MS. GRADY: Objection.

2 Q. Do you remember that?

3 EXAMINER PRICE: Grounds?

4 MS. GRADY: Hearsay.

5 MR. FARUKI: It's information that he
6 learned in studying this case and it is the type of
7 information that an expert with a PhD in this field
8 would commonly rely upon.

9 EXAMINER PRICE: Could I have the
10 question back again?

11 MR. FARUKI: And let me add, before you
12 read it back, it's also, it's not hearsay because
13 it's evidence established in this record by Jackson's
14 testimony.

15 EXAMINER PRICE: Let's have the question.

16 (Record read.)

17 EXAMINER PRICE: All he asked him was if
18 he remembered that statement. He didn't ask if he
19 agreed with the statement, he didn't ask if he
20 endorsed the statement, he just asked if he
21 remembered it. The following question might be
22 problematic but this one is not. Overruled.

23 A. Yes, I remember.

24 Q. (By Mr. Faruki) Okay. And with regard to
25 the recommendation that you're making on page 15,

1 does this recommendation reach in any way the need
2 that DP&L would have to refinance its own debt as
3 well as the DPL, Inc. debt as part of a generation
4 separation plan?

5 A. No. The only thing is to the extent the
6 debt is tied to assets and it doesn't distinguish
7 between this debt is tied to distribution only or
8 this debt is only tied to generation. If it's tied
9 to assets, period --

10 Q. Yes, all assets.

11 A. -- then that doesn't vio -- as long as --
12 that doesn't violate my recommendation as long as
13 it's tied to DP&L, that is DP&L debt.

14 Q. Now, I think you were agreeing with me,
15 now I'm not sure. Let me ask it this way: Your
16 recommendation on page 15 that we're talking about in
17 your view would not be violated if DP&L as a step
18 toward generation separation would refinance the debt
19 at the DPL, Inc. level when that DPL, Inc. level debt
20 is secured by assets of DP&L.

21 EXAMINER PRICE: I'd like to stop real
22 fast and make an inquiry. I'm not sure,
23 understanding the Jackson deposition is not
24 necessarily in the record of this case, I'm not sure
25 that in the record of this case that that claim is

1 backed by what is actually in the record that certain
2 DP&L assets are secured by DPL.

3 If I'm wrong, I'm happy to admit that
4 I'll be wrong, but I --

5 MR. FARUKI: I can't give you a page
6 number but Jackson testified to that, I'll make that
7 representation.

8 MR. OLIKER: That's news to us, your
9 Honor.

10 I don't remember anywhere in the record,
11 having crossed Mr. Jackson, where he might have
12 mentioned that the DP&L assets are somehow tied to
13 DPL, Inc.'s debt. I don't believe that is in this
14 record and I would like to see the transcript cite if
15 I am incorrect.

16 MR. ALEXANDER: Your Honor.

17 EXAMINER PRICE: Let's hear from
18 Mr. Alexander. We'll hear from them and then you can
19 respond.

20 MR. ALEXANDER: In a point of
21 clarification, are you talking -- referring to a
22 hypothetical allocation such as Mr. Chambers referred
23 to, or are you asserting that the regulated DP&L
24 assets serve as security for the unregulated DPL,
25 Inc. debt?

1 MR. FARUKI: Your Honor, I'm saying that
2 because, as between DPL, Inc. and DP&L, the bulk of
3 the assets that can be pledged and the value is in
4 the DP&L assets, that those are also pledged for the
5 DPL, Inc. debt.

6 But I think I can avoid this, given that
7 it's 5:00 o'clock, by asking this same thing on a
8 hypothetical basis and we can avoid the objection.

9 EXAMINER PRICE: Let's hear from
10 Ms. Grady.

11 MS. GRADY: Yes, my concern is that when
12 Mr. Faruki made the statement a couple of questions
13 ago that now becomes part of the evidence that
14 Mr. Jackson testified that way, and I do agree that I
15 don't think that's in the record in this case. It
16 might be in the deposition, but that is not evidence
17 in this case.

18 So my concern is with that question and
19 with that understanding, I would ask that that
20 question be struck and the answer be struck.
21 Otherwise we're going to have --

22 EXAMINER PRICE: The Bench is aware of
23 the issue because we brought it up. So we understand
24 the issue but we will allow him to ask a hypothetical
25 question, and that will give everybody time when

1 writing their briefs to pursue this issue as to
2 whether this is or is not in the record of this case
3 or just happened to be something in the deposition of
4 Jackson which is not in the record of this case.

5 MR. OLIKER: Can we go off the record for
6 one second?

7 EXAMINER PRICE: Let's go off the record.

8 (Discussion off the record.)

9 EXAMINER PRICE: Let's go back on the
10 record.

11 Mr. Faruki, would you like to rephrase
12 your question?

13 MR. FARUKI: Yes, your Honor.

14 EXAMINER PRICE: Okay.

15 Q. (By Mr. Faruki) Let me ask it in a
16 different fashion.

17 Doctor, now that the lawyers are done
18 arguing, let me ask the question this way: With
19 regard to your recommendation on page 15 that we are
20 talking about, should the -- should the facts be that
21 DPL, Inc. debt is secured at least in part by assets
22 of DP&L, is it correct that your recommendation is
23 not to be taken as one that would prevent that debt
24 at the DPL, Inc. level from being refinanced as part
25 of a plan for DP&L to separate its generation?

1 A. Okay, to the extent that the debt is tied
2 to DP&L assets --

3 Q. Yes, sir.

4 A. -- then it's not a violation in my mind.

5 Q. Okay. Thank you.

6 One of the things you have said, I
7 believe, is that you think that the -- or, you
8 believe that the five-year ESP period was too long
9 because the out years of the projection years four
10 and five were not as reliable as the earlier years,
11 is that right?

12 A. Yes.

13 Q. And in that connection you are aware that
14 the Commission's rules require, when an ESP filing is
15 made, that the applicant for the ESP provide pro
16 forma financial projections of the effect of the
17 implementation of the ESP on the electric utility for
18 the duration of the ESP.

19 A. Yes.

20 (Confidential portion excerpted.)

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(Open record.)

1 Q. (By Mr. Faruki) Do you need the question?

2 A. Yes, please.

3 (Record read.)

4 A. Yes.

5 Q. Are you familiar with the factors that
6 Staff Witness Mahmud listed for the Commission's
7 consideration in determining whether or not DP&L's
8 financial integrity has been compromised?

9 A. I've read his testimony but he is the
10 financial expert, I'm not.

11 Q. Okay. Would you turn to page 6 of your
12 testimony.

13 A. Yes.

14 Q. I'm interested in the first full
15 paragraph on page 6 of your testimony that begins
16 "The lack of reliable knowledge." Do you have that?

17 A. Yes.

18 Q. In connection with that subject you agree
19 that the Commission could order DP&L to file another
20 standard service offer filing in advance of the
21 expiration of an existing SSO?

22 A. Can the Commission order in the middle of
23 an ESP another ESP?

24 Q. A refiling or a new filing, yes.

25 A. After it's been approved.

1 Q. Yes. Partway through one.

2 A. I thought the company would have to --
3 once an ESP -- before an ESP expires by I don't know
4 how many days they have to file, but the
5 Commission -- the company would have to accept an
6 order by the Commission, the way I read the statute.
7 Now, I could be wrong, but I thought the company
8 would -- the Commission can order an ESP, but that
9 doesn't mean -- if the company doesn't accept it,
10 then the current rates would stay until they accept
11 an ESP or an MRO.

12 Q. Okay. And in the context of your
13 statement here about "lack of reliable knowledge
14 about future capacity revenues," what would you
15 consider "reliable knowledge" to be?

16 A. For example, clearing prices for RPM for
17 the 2016-'17, and '17-'18. Right now we just have a
18 forecast by a consultant of what the capacity prices
19 are.

20 Q. And how far into the future are those
21 prices available?

22 A. Only three years.

23 Q. So under your reasoning you would not be
24 recommending approval of any ESP longer than three
25 years because you would never have, to use your

1 words, reliable knowledge about future capacity
2 revenues; is that your testimony?

3 A. That's my opinion, yes.

4 Q. Okay. So it's not only something that
5 you're saying with respect to DP&L, you're saying the
6 absence of that type of capacity revenue data would
7 mean that you would not recommend an ESP longer than
8 three years for anyone?

9 A. No. What I'm saying is it will be less
10 certain. Right now we have revenues, we know exactly
11 how much Dayton Power & Light is going to make in
12 capacity revenues for the next three years. We don't
13 know how much they're going to make after. The
14 Commission may decide no, we're going to go with a
15 third year, with a fourth year, or a fifth year based
16 on other information.

17 Q. Okay. Let me ask you, then, about page 9
18 in your testimony about the switching tracker. You
19 were asked a few questions about this.

20 You agree, first of all, that as
21 increased switching has occurred, DP&L has suffered
22 more financially from that.

23 A. Have lost revenues, yes.

24 Q. Yes, sir.

25 You agree, even though you're not

1 recommending it, that the switching tracker device or
2 mechanism would be one method to -- that would assist
3 in maintaining DP&L's financial integrity. Do you
4 agree with that?

5 A. The company believes so. I disagree with
6 the concept completely so I can't agree that it
7 should generate any dollars.

8 Q. Have you examined whether or not the
9 pattern of switching rates historically for DP&L as
10 opposed to other utilities is that initially
11 switching was slow but then has been increasing more
12 rapidly?

13 A. Yes.

14 Q. You were also asked some questions about
15 the 7 percent ROE, and more particularly about --
16 I'll withdraw that.

17 You were asked some questions about the
18 AEP case that was referenced in one of your
19 footnotes. Do you remember that?

20 A. Yes.

21 Q. Okay. On page 11 in your footnote 3 you
22 say "The Commission has granted similar nonbypassable
23 charges in the 11-346 and 11-3549 cases."

24 MR. ALEXANDER: Objection.

25 MS. GRADY: Objection.

1 MR. OLIKER: Objection, your Honor.

2 EXAMINER PRICE: Grounds?

3 MR. ALEXANDER: Language has previously
4 been stricken from the record.

5 EXAMINER PRICE: The last case number has
6 been withdrawn.

7 MR. FARUKI: I apologize, I didn't mark
8 that out on this copy.

9 EXAMINER PRICE: That's okay.

10 MR. FARUKI: Let me rephrase it.

11 MR. McNAMEE: I made the same mistake,
12 that's why there was a motion to strike originally.

13 Q. (By Mr. Faruki) Doctor, on page 11 in
14 footnote 3 you reference the fact that the Commission
15 granted a similar nonbypassable charge in the 11-346
16 case; is that right?

17 A. Yes.

18 Q. And when you say "similar nonbypassable
19 charge," you're talking about a stability charge?

20 A. Yes.

21 Q. Can you describe what the economic
22 rationale would be for such a charge?

23 MS. GRADY: Objection.

24 EXAMINER PRICE: Grounds?

25 MS. GRADY: Your Honor, it's friendly

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1 cross. The staff -- on question 18 it says "Does the
2 staff agree with the establishment of an SSR?"

3 "Yes." This is friendly cross.

4 EXAMINER PRICE: I'm going to agree. I
5 agree. Sustained.

6 (Confidential portion excerpted.)

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(Open record.)

MR. FARUKI: Thank you, your Honors.

Q. (By Mr. Faruki) Would you look at page 10 of your testimony, I'm interested in the paragraph toward the top that begins "Lastly," where you're talking about DPL Energy Resources. Do you have that reference?

A. Yes.

Q. First of all, you are aware that DP&L is

1 operating under an approved corporate separation
2 plan; is that right?

3 A. Yes.

4 Q. You're also aware that DP&L and DPLER are
5 separate entities.

6 A. Yes.

7 Q. If DP&L did not have an unregulated
8 affiliate providing generation service in its service
9 territory, would your opinion regarding the switching
10 tracker be different?

11 A. No. Because it's still on the wholesale
12 side in my mind, there is an advantage of DPL
13 generation getting money that is generation related,
14 because switching tracker is the difference between
15 the SSO and the market price for energy.

16 Q. Is it true whether DPLER served none of
17 the switched load or a hundred percent of the
18 switched load DP&L would still have the same -- would
19 experience the same effect of switching?

20 A. Correct. But DPL, Inc. would lose less
21 if DPLER was in the equation. So this is at the DPL,
22 Inc. level, who owns both Dayton Power & Light and
23 DPLER, so my argument is about DPL, Inc. in this
24 case.

25 And I gave the example earlier to, I

1 don't know who, whether Mr. Oliker or Ms. Grady, I
2 don't recall who, but the issue of DP&L selling at --
3 DPLER at wholesale and then DPLER making a margin but
4 DPL, Inc. would get compensated twice.

5 MR. FARUKI: Let me ask the reporter, did
6 you get the first word of his answer?

7 THE REPORTER: "Correct."

8 MR. FARUKI: Thank you.

9 Q. You reference both in your prefiled
10 testimony and this afternoon the fact that staff
11 recognizes that going to market earlier would result
12 in losses in retail revenues; is that right?

13 A. Yes.

14 Q. Have you conducted an analysis to see
15 what the effect of the staff's proposed blending
16 schedule would be on DP&L?

17 A. Yes.

18 Q. And what have you found in that regard?

19 A. That DP&L would lose a little bit under a
20 hundred million dollars over the three-year period.

21 Q. And -- I'm sorry.

22 A. That was the issue of counterbalancing --

23 Q. Yes.

24 A. -- the switch rate assumption with the
25 SSO going faster to auction.

1 Q. And have you related that or considered
2 that hundred million dollar loss, however, in the
3 context of what that would present by way of an
4 impediment to DP&L being able to separate its
5 generation on the schedule it's proposed?

6 A. No. This analysis was independent of
7 DP&L separating.

8 Q. Okay. So, sorry, sometimes you pause and
9 I --

10 A. -- DP&L separating its generation. That
11 analysis was independent.

12 Q. So from the standpoint of what the
13 Commission would do, you believe that the Commission
14 is free to take into account that hundred million
15 dollar effect when it decides what to do with an
16 order in this case; is that right?

17 A. Yes. Like they're free to decide whether
18 to go with the switching tracker as proposed by the
19 company or with staff, so.

20 Q. Now, OCC asked you some questions about
21 DP&L's participation in the RPM market, and let me
22 ask you a couple of questions about that.

23 Do you agree that the fact that DP&L
24 chose to participate in the RPM market and not the
25 FFR construct --

1 A. FRR.

2 Q. FRR, excuse me -- is not a basis for the
3 Commission to reject the proposed SSR?

4 A. The SSR, that's correct. I agree with
5 you on the SSR.

6 Q. Since the rates that the Commission would
7 be setting or approving in this case would be rates
8 that would be in place in the future, if DP&L would
9 experience an increase in switching so that its
10 actual experience was what the company projected as
11 opposed to what you believe to be more reasonable,
12 then, in fact, the situation would be -- financially
13 would be worse for DP&L than what you're
14 anticipating; is that right?

15 MR. McNAMEE: May I have that question
16 reread, please?

17 EXAMINER PRICE: You may.

18 (Record read.)

19 MS. GRADY: I'm going to object.

20 MR. McNAMEE: I will too.

21 EXAMINER PRICE: Okay, Ms. Grady first,
22 grounds.

23 MS. GRADY: Incomplete hypothetical. You
24 know, what would happen if the energy prices
25 decreased or increased. I think it assumes way too

1 much. There's too many factors.

2 MR. McNAMEE: And the question isn't
3 clear about what plan the Commission has put in
4 place. Whether it's gone with something the staff
5 would approve or something that the company would
6 approve, it's simply unclear. I'm sure it can be
7 restated.

8 EXAMINER PRICE: Why don't you rephrase
9 it and include the caveat "all other things being
10 equal" to address the incomplete hypothetical.

11 MR. FARUKI: Thank you, your Honor, I
12 will.

13 Q. (By Mr. Faruki) Let me start from a
14 different point. Since we are looking to set rates
15 for the future, we need to be concerned about what
16 the switching rates will be in the future when we
17 assess the financial impact on the company; would you
18 agree with that?

19 A. That's one factor.

20 Q. Yes. And I think you said previously
21 that you were looking at historic switching rates
22 when you considered switching rates here; is that
23 right?

24 A. I looked at the history and looked at
25 what is reasonable as a forecast based on history.

1 Q. Okay. And certainly, for example, if
2 DP&L experienced large increases in aggregation
3 activity, that could dramatically affect switching
4 rates, could it not?

5 A. If that's the only assumption that
6 changes. Because if energy goes up, then DP&L may
7 experience additional revenues even though the
8 switching rate climbs.

9 Q. All else being equal, if, for example,
10 DP&L did experience large aggregation activity in its
11 area, then the switching rates could jump quickly,
12 couldn't they?

13 A. All else being equal, if the switching --
14 if you have lots of aggregation, then the switching
15 rate would increase. If it increases more than
16 staff's but that's the only change, everything else
17 is still exactly the same, yeah, under that scenario
18 the answer is yes.

19 MR. FARUKI: Your Honor, that's all I
20 have, although Judi Sobecki made a quick check and I
21 wanted -- I stand corrected with regard to my memory
22 of the testimony of Mr. Jackson earlier. He did not
23 testify that debt at the DPL, Inc. level was secured
24 by assets at the DP&L level. So that was my mistake
25 and I apologize.

1 EXAMINER PRICE: Thank you.

2 Mr. McNamee?

3 MR. McNAMEE: I suspect I will have some
4 redirect examination, but if I could have a couple of
5 minutes with the witness, we can iron that out.

6 EXAMINER PRICE: You may.

7 (Recess taken.)

8 EXAMINER PRICE: Let's go back on the
9 record. Redirect. We're on the public transcript by
10 the way.

11 (Open record.)

12 MR. McNAMEE: Yes, thank you, your Honor,
13 I do have a couple questions.

14 - - -

15 REDIRECT EXAMINATION

16 By Mr. McNamee:

17 Q. Dr. Choueiki, during your
18 cross-examination by OCC about Mr. Mahmud's
19 testimony, I believe you indicated you wanted to
20 correct something. What was that?

21 A. Yes, sir, I misspoke on the company's
22 application. I stated that the auction parameters
23 they applied, included in the application were
24 10 percent, 20 percent, and 70 percent in the first,
25 second, and third years; they're actually 10 percent,

1 40 percent, and 70 percent.

2 Q. Does that change anything in your --

3 A. No, I just misspoke on the percentages.
4 Doesn't change anything of the dollars or anything
5 that I stated.

6 Q. Okay. During your cross-examination by
7 Mr. Faruki I believe you may have been quoted as
8 saying the staff advocates the exclusion of the storm
9 rider. Does the staff advocate the exclusion of the
10 storm rider?

11 A. No, misspoke here. Actually we presented
12 testimony, and I was reminded of that with
13 Mr. Lipthrott, David Lipthrott, where he said the
14 only thing is -- the disagreement with the company I
15 think is on above which we allow recovery, and I
16 think the company's application was
17 1-point-something-million dollars, I can't remember
18 if it was 1 or 2 million, and the staff's
19 recommendation was above 4 million.

20 Q. Do you have any knowledge of the storm
21 rider issue beyond what you've just stated?

22 A. No, it's only what I heard, but I forgot
23 that when Mr. Faruki was examining me.

24 EXAMINER PRICE: Just so the record is
25 clear, the storm -- the company's request to recover

1 storm damage expenses is not part of this
2 application.

3 THE WITNESS: Correct. It was only on
4 the minimum.

5 EXAMINER PRICE: The only thing that is
6 part of this case is the staff's recommendation, as
7 part of this ESP, there be a threshold above which
8 the company can collect storm damage expenses.

9 THE WITNESS: Correct.

10 MR. McNAMEE: With that I have no further
11 questions.

12 EXAMINER PRICE: Ms. Grady?

13 MS. GRADY: No recross.

14 EXAMINER PRICE: Mr. Alexander?

15 MR. ALEXANDER: No, thank you, your
16 Honor.

17 EXAMINER PRICE: Mr. Oliker?

18 MR. OLIKER: No questions, your Honor.

19 EXAMINER PRICE: Mr. Faruki?

20 MR. FARUKI: I believe so. Let me have a
21 minute, your Honor.

22 Yes. Thank you, your Honors.

23 - - -

24 RECROSS-EXAMINATION

25 By Mr. Faruki:

1 Q. Dr. Choueiki, the numbers the staff was
2 using that were provided for the company -- by the
3 company when it analyzed the SSR request included
4 \$24 million over three years built into DP&L's
5 projected results --

6 MR. OLIKER: Your Honor, I object --

7 MS. GRADY: Objection.

8 MR. OLIKER: -- exceeds the scope of
9 redirect.

10 EXAMINER PRICE: Let's hear the question
11 first. Before you object, let him finish the
12 question.

13 MR. OLIKER: I apologize, I thought he
14 was done.

15 EXAMINER PRICE: No.

16 Q. -- for storm damage recovery.

17 EXAMINER PRICE: Overruled.

18 Q. Are you aware of that? Do you recall
19 that?

20 A. Do I recall, do I -- do I know your
21 question or do I recall that \$24 million?

22 Q. The latter, do you recall that -- let's
23 take it in smaller bites.

24 Leave aside the \$24 million. You
25 remember that the company's presentation in this case

1 included costs for storm damage recovery.

2 A. In terms of anything that deals with
3 distribution, I personally did not review.

4 Q. Okay.

5 A. So to the extent it was included, then it
6 was included.

7 Q. All right. I'll represent to you, then,
8 that the company's submission included \$24 million
9 over three years that was built into DP&L's financial
10 analysis for storm damage, all right?

11 A. All right.

12 Q. If the staff recommendation that you have
13 just described would not allow the company to recover
14 any of that \$24 million, then wouldn't you agree with
15 me that the SSR figure should be higher?

16 A. All things being equal, again --

17 Q. Yes, sir.

18 A. -- that's the only thing that's
19 changing --

20 Q. Yes, sir.

21 A. -- the SSR number would change.

22 Q. And the SSR number would be higher.

23 A. It would be higher.

24 MR. FARUKI: Thank you, sir.

25 That's all I have, your Honors.

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EXAMINER PRICE: Thank you.

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FURTHER EXAMINATION

By Examiner Price:

Q. Before you're excused, we've heard of lot of testimony in the hearings thus far about potential for distribution rate case. Does the staff include in its analysis at all what the results might be from a potential distribution rate case?

A. No.

Q. To the best of your knowledge, are Dayton Power & Light's transactions with its affiliate -- they're governed by Dayton Power & Light's market authority from FERC; is that correct?

A. Yes.

Q. Okay.

A. Dayton Power & Light is granted market based authority by FERC and we never challenged it. Staff of the PUCO never challenged that application when it was at FERC.

Q. Okay. Going back to the testimony regarding the zone of reasonableness that the staff estimated from 7 to 11 percent, I think that's a public number, isn't it?

MR. McNAMEE: 7 to 11?

1 A. Yes.

2 Q. Yes, that's public.

3 A. It's from the Commission order.

4 Q. Yes. Going back to that number, that is
5 from the AEP case; is that right?

6 A. Yes.

7 Q. In that case AEP had already recently
8 completed a distribution rate case; had it not?

9 A. Frankly, I don't recall. If they have,
10 then they have. I don't get involved in distribution
11 cases, only in ESP cases.

12 Q. Some of my best work. Never mind.

13 EXAMINER PRICE: Okay. You're excused.

14 MR. McNAMEE: Your Honor, at this time
15 staff would move for the admission of Staff
16 Exhibits 10 and 10A.

17 EXAMINER PRICE: That will be granted
18 subject to the withdrawal of the offending language
19 in the one footnote.

20 (EXHIBITS ADMITTED INTO EVIDENCE.)

21 MS. GRADY: Yes, your Honor, I wanted to
22 renew my motion to strike the question that referred
23 to the evidence from the deposition, given
24 Mr. Faruki's representation that there was no
25 evidence in the record to that effect. Just to make

1 the record perfectly clear.

2 EXAMINER PRICE: Mr. Faruki?

3 MR. FARUKI: I'll just withdraw that
4 question.

5 EXAMINER PRICE: Okay. Thank you.

6 Anything else?

7 MR. FARUKI: No, your Honor.

8 MR. McNAMEE: Nothing.

9 EXAMINER PRICE: We are adjourned until
10 9:00 o'clock tomorrow.

11 Let's go off the record.

12 (Hearing adjourned at 5:50 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 Tuesday, March 26, 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.

(71890-MDJ-PUBLIC)

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Summary: Transcript in the matter of The Dayton Power and Light Company hearing held on 03/26/13 - Volume VII - Public Version electronically filed by Mrs. Jennifer Duffer on behalf of Armstrong & Okey, Inc. and Jones, Maria DiPaolo Mrs.