

BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

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

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

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

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

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

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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 10:00 a.m. on Monday, April
1, 2013.

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Monday Morning Session,
April 1, 2013.

- - -

EXAMINER MCKENNEY: Let's go on the record at this time. The Public Utilities Commission of Ohio 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're the Attorney Examiners assigned by the Commission to hear this case.

Mr. Faruki, before we open the record in this case, you mentioned, off the record, that you had something you wanted to present to the Bench.

MR. FARUKI: Thank you, your Honor. Your Honors will recall that at the end of the examination of Mr. Herrington, Edgemont Neighborhood Coalition and DP&L agreed to stipulate some facts into the record. I would ask that the single page that Mr. Jacobs prepared be marked as Edgemont Neighborhood Coalition Exhibit No. 1, and I've distributed copies to all the parties and to the Bench, and there being no objection to this, I would offer, on Edgemont's behalf, Edgemont Exhibit No. 1

1 to which DP&L has no objection.

2 EXAMINER MCKENNEY: Thank you. It will
3 be marked Edgemont 1.

4 (EXHIBIT MARKED FOR IDENTIFICATION.)

5 EXAMINER MCKENNEY: Any objection to the
6 admission of Edgemont 1?

7 MR. McNAMEE: No, your Honor.

8 EXAMINER MCKENNEY: Seeing no objection,
9 it will be admitted.

10 (EXHIBIT ADMITTED INTO EVIDENCE.)

11 MR. FARUKI: The only other item I
12 believe, your Honor, belongs to Mr. Miller on behalf
13 of the City of Dayton.

14 EXAMINER MCKENNEY: Mr. Miller.

15 MR. MILLER: Your Honors, Shelly
16 Dickstein, the City's witness, has had some surgical
17 complications, and in order to keep her from having
18 to come over here today because of that issue, we
19 would like to submit her prefiled testimony as City
20 of Dayton 1, and a small errata as City of Dayton 1A.
21 It was distributed to the parties late last week and
22 we've heard no objections or interest in crossing
23 her, so we'd like to submit those into evidence.

24 EXAMINER MCKENNEY: Dickstein Testimony
25 will be marked Dayton 1. We'll mark the errata as

1 Dayton 2.

2 (EXHIBITS MARKED FOR IDENTIFICATION.)

3 EXAMINER PRICE: We're marking the
4 confidential version as A.

5 MR. MILLER: Sorry.

6 EXAMINER MCKENNEY: Is there any
7 objection to the admission of Dayton 1 and Dayton 2?

8 MR. FARUKI: No, your Honor.

9 MR. McNAMEE: No.

10 EXAMINER MCKENNEY: Seeing no objection,
11 they will be admitted.

12 (EXHIBITS ADMITTED INTO EVIDENCE.)

13 EXAMINER MCKENNEY: Thank you,
14 Mr. Miller.

15 EXAMINER PRICE: Does the reporter have a
16 copy of the exhibits?

17 MR. MILLER: I believe she was supposed
18 to get a copy and she has one now.

19 EXAMINER MCKENNEY: Is there anything
20 further before we proceed?

21 (No response.)

22 EXAMINER MCKENNEY: Seeing nothing, OCC,
23 are you prepared to call your first witness?

24 MS. GRADY: We are, your Honor. OCC
25 calls Dr. Daniel J. Duann to the stand.

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EXAMINER MCKENNEY: Thank you.

Mr. Duann, would you please raise your right hand.

(Witness sworn.)

EXAMINER MCKENNEY: Thank you. Please be seated. If you would please state your name and business address for the record.

THE WITNESS: Daniel J. Duann, 10 West Broad Street, Suite 1800, Columbus, Ohio, 43215.

EXAMINER MCKENNEY: Thank you.

- - -

DANIEL J. DUANN

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

DIRECT EXAMINATION

By Ms. Grady:

Q. Good morning, Mr. Duann.

A. Good morning.

Q. Could you for the record state by whom you are employed and in what capacity?

A. I'm a principal regulatory analyst with the office of the Ohio Consumers' Counsel.

Q. Mr. Duann --

MS. GRADY: Or, your Honors, at this time I would like to mark three exhibits. As OCC Exhibit

1 No. 28, the public version direct testimony of Daniel
2 J. Duann, dated March 1st, 2013.

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

5 MS. GRADY: And as OCC Exhibit No. 28A,
6 the confidential version of Mr. Duann's direct
7 testimony also filed on March 1st, 2013.

8 EXAMINER MCKENNEY: It will be so marked.
9 (EXHIBIT MARKED FOR IDENTIFICATION.)

10 MS. GRADY: And, finally, the third
11 document being OCC Exhibit No. 29 which is the
12 revised Attachment DJD-6, a single-page document
13 entitled: Comparison of Return on Equity of Ohio's
14 Major Electric Utilities, 2004 through 2011.

15 EXAMINER MCKENNEY: It will be marked OCC
16 29.

17 (EXHIBIT MARKED FOR IDENTIFICATION.)

18 MS. GRADY: Thank you, your Honor.

19 Q. (By Ms. Grady) Mr. Duann, can you go to
20 what has been marked as OCC Exhibit No. 28, the
21 public version of your direct testimony.

22 A. That's the direct testimony I filed on
23 March 1st, 2013, in this proceeding.

24 Q. And was that testimony prepared by you or
25 under your direct supervision?

1 A. Yes.

2 Q. Do you have any additions, corrections,
3 or deletions to that testimony at this time?

4 A. I do have some corrections.

5 Q. Can you go ahead with those corrections,
6 please.

7 A. Okay. The first correction is on page 30
8 on line 13, and the words "competitive generation"
9 should be replaced by "monopoly distribution."

10 The second correction is on page 34, line
11 2 and 3. On line 2 at the end of the word "future,"
12 there should be a period there, and the remaining
13 words of the sentence on line 2 and 3 should be
14 deleted.

15 And the third correction is on page 43,
16 Table 3, and I believe the counsel has already
17 distributed the exhibit or Revised Exhibit DJD-6 and
18 which is essentially the same as the Table 3 on page
19 43. There are a few minor corrections and, you know,
20 to that table.

21 That's all the corrections and change I
22 have.

23 Q. Would those same corrections apply to OCC
24 Exhibit No. 28A which is the confidential version of
25 your testimony?

1 A. Yes.

2 Q. Mr. Duann, can you identify what we have
3 marked for identification purposes as OCC Exhibit
4 No. 29?

5 A. The No. 29 is the Comparison of Return on
6 Equity of Ohio's Major Electric Utilities, so they
7 include seven major utility for the period from 2004
8 to 2011.

9 Q. And can you tell me what the yellow
10 portions of that document signify?

11 A. The yellow portions of the document
12 signify that those number has been changed from my
13 original Table 3 and the original Attachment DJD-6.

14 Q. And was this exhibit prepared by you or
15 under your direct supervision?

16 A. Yes.

17 Q. Mr. Duann, if I were to ask you today if
18 the questions posed in OCC Exhibit No. 28 were posed
19 to you today, would your answers be the same?

20 A. Yes.

21 MS. GRADY: Your Honor, at this time I
22 would move for the admission of OCC Exhibit No. 28,
23 28A, and 29, subject to cross-examination.

24 EXAMINER MCKENNEY: Thank you.

25 At this time we'll move to

1 cross-examination of the witness.

2 Dr. Duann, I'm going to ask, since you
3 have confidential portions of your testimony, any
4 time you feel one of your answers is going to be
5 discussing a portion of the confidential portion of
6 your testimony, please let us know and we'll move to
7 the confidential portion of your transcript. Is that
8 okay?

9 THE WITNESS: Yes.

10 EXAMINER MCKENNEY: Okay.

11 Cross-examination at this time,
12 Mr. Petricoff?

13 MR. PETRICOFF: No questions, your Honor.

14 EXAMINER MCKENNEY: Ms. --

15 MS. MOONEY: Mooney.

16 EXAMINER MCKENNEY: -- Mooney?

17 MS. MOONEY: No questions.

18 EXAMINER MCKENNEY: Mr. Miller?

19 MR. MILLER: No questions.

20 EXAMINER MCKENNEY: Mr. Lang?

21 MR. LANG: No questions.

22 EXAMINER MCKENNEY: Mr. Oliker?

23 MR. OLIKER: No.

24 EXAMINER MCKENNEY: Mr. Yurick?

25 MR. YURICK: No questions, your Honor.

1 EXAMINER MCKENNEY: Mr. Faruki?

2 MR. FARUKI: Yes. Thank you, your Honor.

3 - - -

4 CROSS-EXAMINATION

5 By Mr. Faruki:

6 Q. Good morning, Mr. Duann.

7 A. Good morning.

8 Q. Let me start with some questions about
9 your qualifications. You were an independent
10 business consultant from 1996 to 2007 and that was
11 work for international clients; is that right?

12 A. Yes.

13 Q. You agree with me that that work was
14 totally unrelated to utility regulation and ROEs?

15 A. Yes.

16 Q. You're not an accountant?

17 A. No.

18 Q. You're not a lawyer?

19 A. No.

20 Q. You're not an engineer?

21 A. No.

22 Q. If you look at your Exhibit 2 attached to
23 your testimony, what you've marked as DJD-2, that
24 list of professional publications -- do you have that
25 in front of you?

1 A. Yes.

2 Q. Yes, sir. All of those articles,
3 research reports, and presentations were in the 1980s
4 and 1990s; is that right?

5 A. Yes.

6 Q. And on page 2 of that DJD-2, most of your
7 research, reports, and presentations listed there are
8 with regard to gas issues; is that right?

9 A. I think six out of eight are related to
10 gas issues.

11 Q. Yes, sir.

12 On these two pages, 1 and 2 of that
13 exhibit, all of your articles, your research reports,
14 and presentations predate 2008, the date of passage
15 of the law we are dealing with here that allows for
16 electric security plans; is that right?

17 A. Can I have the question read back,
18 please?

19 Q. I'll restate it if you'd like. I'm
20 simply asking isn't it true, of what you list on
21 pages 1 and 2 of your exhibit, all of your articles,
22 research reports, and presentations were before 2008?

23 A. That's correct.

24 Q. And you recognize that 2008 is the date
25 that the law was passed that provides for ESPs,

1 electric security plans; is that right?

2 A. Yes.

3 Q. Okay. Now, on your testimony at page 1,
4 one of the points you make is that you were with the
5 Illinois Commerce Commission; is that correct?

6 A. Yes.

7 Q. But you were only with the Illinois
8 Commerce Commission about seven months; is that
9 right?

10 A. Yes.

11 Q. You were, during that period of time,
12 what you did was you were involved in a case
13 regarding three nuclear power plants of an Illinois
14 utility; is that correct?

15 A. I testify in a case that involved
16 divestiture of the three nuclear power plant of
17 Commonwealth Edison.

18 Q. And then you have more than one page 1.
19 If you would look at Roman numeral II in your
20 testimony, which is one of your page ones. It's the
21 page that would have Questions 5 and 6 on it. Do you
22 have that?

23 A. Yes, I have that.

24 Q. If you look at the answer to Question 6
25 and the second sentence, your testimony reads "The

1 ESP as proposed by DP&L does not meet the
2 requirements of Ohio law...." Do you see that?

3 A. Yes.

4 Q. And then the next sentence begins, "I
5 have been advised by counsel that Ohio's laws in
6 regard to ESPs do not authorize any nonbypassable
7 charge," et cetera. Do you see that?

8 A. Yes.

9 Q. These were opinions or conclusions that
10 you got from OCC's lawyers; is that right?

11 A. That's the advice given by me -- given to
12 me by the counsel as well as my own understanding.

13 Q. Well, when you say that you had "been
14 advised by counsel," who was that counsel?

15 A. Ms. Grady.

16 Q. Okay. And there are other places in your
17 testimony in which you refer to advice of counsel.
18 This was also by Ms. Grady?

19 A. I think you have to be more specific on
20 where I was, you know, which part of my testimony.

21 Q. Okay. Let's go on. It is your belief,
22 sir, that the financial integrity of DP&L's
23 generation business is irrelevant in this case; is
24 that right?

25 A. That's true.

1 Q. But that position is based on your belief
2 that the Commission has no legal obligation to ensure
3 the financial integrity of DP&L's generation
4 business; is that right?

5 A. As I say in my testimony on page 1, you
6 know, I was advised by counsel that Ohio law in
7 regarding to ESP does not authorize any nonbypassable
8 charge for financial integrity purpose.

9 Q. I understand, but I'm looking for a yes
10 answer to my question, so I'm going to give you my
11 question again. Isn't it true that your belief that
12 the financial integrity of DP&L's generation business
13 is irrelevant is based on the advice you got that the
14 Public Utilities Commission has no legal obligation
15 to ensure the financial integrity of DP&L's
16 generation business?

17 A. That belief is based on advice given by
18 counsel as well as based on my 25 years of experience
19 as a regulatory economist.

20 Q. Okay. Did you bring your deposition with
21 you?

22 A. Yes.

23 Q. Okay. If you'd take a look, I believe
24 it's page 78. Tell me when you have that.

25 A. Yes, I have 78.

1 Q. Then we'll look at line 16. Line 16.

2 Question: "And it's your position -- you
3 correct me if I'm wrong, Mr. Duann, and I misstate
4 this. It's your position that the financial
5 integrity of DP&L's generation business is irrelevant
6 in this case; is that right?"

7 Answer: "That's my position."

8 Question: "And that position is -- if
9 you turn to page 30 -- that position is based, as you
10 say, starting on line fifteen, on your position that
11 the Commission has no legal obligation to ensure the
12 financial integrity of DP&L's generation business; is
13 that right?"

14 Answer: "Yeah. It's the same thing.
15 Yeah."

16 Have I read that correctly?

17 A. Yes.

18 MS. GRADY: Objection.

19 EXAMINER MCKENNEY: Overruled.

20 Q. So under your logic, DP&L's pro forma
21 financials that it filed in support of its ESP and
22 the ROEs that DP&L has calculated are irrelevant to
23 this ESP case; is that right?

24 A. Yes.

25 Q. But you are aware that the Commission's

1 filing requirements for an ESP require the applicant,
2 DP&L, to file projected financial statements for the
3 duration of the ESP; is that right?

4 A. That's correct.

5 Q. You don't offer any opinions on several
6 subjects, I just want to review those briefly with
7 you. One, you do not offer opinions on whether the
8 financial integrity of the applicant, The Dayton
9 Power & Light Company, is deteriorating; is that
10 correct?

11 A. I do offer an opinion on that.

12 Q. Take a look at your deposition again at
13 page 9.

14 A. Yes, I have that.

15 Q. And read with me starting, sir, at line
16 14 of your deposition. Actually, I'm going to start
17 at line 11.

18 Question: "Well, do you consider your
19 prefiled testimony to be complete?"

20 Answer: "Yes."

21 Question: "Take a look at page 8. I
22 have some questions about financial integrity to
23 start with. Are you offering any opinions in this
24 case as to whether the financial integrity of the
25 applicant, The Dayton Power & Light Company, is

1 deteriorating?"

2 Answer: "No."

3 Have I read that correctly?

4 A. You read that correctly, but I probably
5 didn't understand that question correctly at the time
6 because I think one answer of my testimony is
7 regarding the financial integrity of Dayton Power &
8 Light, so I do, you know, I do have opinion and I
9 just don't see how you can interpret it any other
10 way.

11 Q. Well, I can interpret the plain language
12 here, sir. Did you review your deposition after it
13 was taken on March 13?

14 A. Yes.

15 Q. And March 13 was over two weeks ago; is
16 that right?

17 A. Yes.

18 Q. And did you do an errata sheet to change
19 this answer from "no" to "yes"?

20 A. I believe the purpose of the errata sheet
21 is to change any typo or anything that you think the
22 court reporter does not record it correctly, but
23 that, you know, so I don't think it is appropriate I
24 just change everything I may misunderstood or change
25 everything that I subsequently have a different

1 opinion or anything. So I think I'm doing the right
2 thing.

3 Q. All right. Well, I will represent to you
4 that your understanding of an errata sheet is
5 mistaken.

6 MS. YOST: Objection, your Honor.

7 MR. FARUKI: And -- I'm in the middle of
8 a question.

9 MS. YOST: No, you're not. You're
10 representing something. It's irrelevant.

11 EXAMINER PRICE: First of all, one
12 counsel per witness, Ms. Yost, as we all know.

13 MS. YOST: Sorry, your Honor.

14 EXAMINER MCKENNEY: Please finish.

15 Q. (By Mr. Faruki) I'll represent to you
16 that your understanding of the purpose of an errata
17 sheet is mistaken. My question is: Did you consider
18 whether or not to correct a mistake in your testimony
19 in the over two weeks since it was transcribed?

20 MS. GRADY: Objection.

21 EXAMINER MCKENNEY: What grounds?

22 MS. GRADY: Move to strike. The first
23 statement was not a question and it was a
24 representation of Mr. Faruki's understanding of what
25 transcript erratas are for. I don't think it's

1 appropriate.

2 MR. FARUKI: Your Honor, what I stated
3 was a correct statement of the law. The law is that
4 a witness can -- assuming they haven't waived
5 signature, that a witness can change the deposition
6 transcript in any way he pleases, including changing
7 "yes" to "no" and "no" to "yes." And this sort of
8 sandbagging is not allowed.

9 EXAMINER MCKENNEY: The objection is
10 overruled.

11 Will you repeat the question for the
12 witness?

13 (Record read.)

14 A. I don't understand the word -- of your
15 word "testimony" here. Are you referring to my
16 prefiled testimony or the deposition?

17 Q. I'm referring to the deposition.

18 A. And your question is?

19 Q. Well, let's do this the slow way, then.
20 You remember, before your deposition, you were sworn
21 to tell the truth?

22 A. Yes.

23 Q. You remember in your deposition there
24 were times when you told me you did not understand a
25 question and so I clarified it?

1 A. You're asking whether you made that
2 statement or not?

3 Q. I'm asking you if you recall during your
4 deposition asking me to restate questions you did not
5 understand.

6 A. Yes.

7 Q. Okay. And you also remember during your
8 deposition that you asked to have some questions read
9 back.

10 A. Yes.

11 Q. Okay. Now, in the question that I'm
12 talking with you about here on page 9, you did not
13 ask to have the question repeated or read back by the
14 court reporter, did you?

15 A. Not on this particular question.

16 Q. Okay. And when you reread your
17 transcript before coming today, did you identify this
18 question as something that you thought was wrong?

19 A. I recognize this question and I, you
20 know, as I say, I probably misunderstood or
21 misunderstood the question and I noticed that, but I
22 did not put it on the errata sheet based on my belief
23 that you are not supposed -- errata sheet is just to,
24 you know, correct typo and those kind of things.
25 It's not you rewrite your deposition.

1 Q. Did you bring this to the attention of
2 your counsel when you recognized you made a mistake?

3 A. Yes.

4 Q. So now you are saying in your last answer
5 that you probably misunderstood it? Is that your
6 testimony?

7 A. I think I misunderstood it because, as I
8 say clearly, one answer of my testimony is regarding
9 the financial integrity of Dayton Power & Light, so
10 you're saying that because I just put a note here, so
11 you're saying I'm not offering that opinion. I don't
12 believe that's a fair characterization of my
13 testimony. It is very clear in my testimony I talk
14 about, I have opinion about the financial integrity
15 of Dayton Power & Light.

16 Q. Well, let's see if that's true. You have
17 not done any calculation of ROEs for the period of
18 the ESP or for any part of the period of the ESP; is
19 that right?

20 A. The ROE of what?

21 Q. Of The Dayton Power & Light Company.

22 A. No, I have not.

23 Q. In this case you are not recommending or
24 proposing any ROE for The Dayton Power & Light
25 Company; isn't that correct?

1 A. Because I think that the ROE of Dayton
2 Power & Light Company is irrelevant in this
3 proceeding, so I did not recommend ROE.

4 Q. You have not studied or considered the
5 trend of switching for DP&L, have you?

6 A. I have not.

7 Q. You have no opinion as to the company's
8 projected switching rate; is that right?

9 A. I used the projected switching rate
10 prepared by the company in my discussion of the
11 switching tracker.

12 Q. So, for purposes of your testimony, you
13 accepted the company's projections of switching; is
14 that correct?

15 A. I accept the company's project switching
16 in discussion regarding switching tracker.

17 Q. Well, just for clarity, let me ask it a
18 different way. Isn't it true that you have no
19 opinion on what DP&L's projected switching rate will
20 be?

21 A. No, I have no opinion on that.

22 Q. Okay. And on the same topic, you have no
23 opinion on whether the company's switching experience
24 is presenting any financial risks to it; isn't that
25 true?

1 A. I don't understand the question.

2 Q. Well, let me ask it a slightly different
3 way. Isn't it true that you are not offering an
4 opinion on whether or not the customer switching that
5 DP&L has experienced has presented financial risks to
6 the company?

7 A. I will say that, up to 2012, the company
8 has experienced switching, and particularly like in
9 the -- for the industrial customer they have, like,
10 switching over 90 percent, and during that time, you
11 know, prior to 2012, I do not see the company
12 experience any financial integrity problem.

13 Q. I understand you believe that up till
14 2012, but I'm trying to look forward, Mr. Duann. Let
15 me ask it again. Isn't it true that you have no
16 opinion one way or the other on whether DP&L's
17 switching experience presents any financial risks to
18 it?

19 A. I already answered the question. You are
20 talking about the switching experience. The
21 switching experience we know is up to 2012 and it has
22 not caused any problem as far as I know to DP&L.

23 Q. Okay. Then look at your deposition
24 again, this time at page 33. I'll start on line 9.
25 Do you have 33, sir?

1 A. Yes.

2 Q. On line 9, Question: "Do you know
3 whether the switching that the company has
4 experienced has presented any risks to it?"

5 Answer: "I -- I -- I don't understand
6 your question because that's very general. Risk to
7 what? Risk to whom? What kind of risk?"

8 Question: "Let me ask it this way: Do
9 you know if the company's switching experience has
10 presented any financial risks to it?"

11 Answer: "I have no opinion on that one
12 way or the other."

13 Have I read that correctly?

14 A. Yes.

15 Q. You do not know how the amount of the SSR
16 was calculated; is that correct?

17 A. From the application and testimony, I
18 could not find how it was calculated.

19 Q. However, you did read in DP&L's testimony
20 that DP&L seeks an SSR so that it has an opportunity
21 to earn a reasonable rate of return, correct?

22 A. I think that's what DP&L claimed, yes --

23 Q. Yes, sir.

24 A. -- in its application.

25 Q. Yes. And in regard to the past ROEs that

1 you examine in your testimony, isn't it true that you
2 are not trying to predict future ROEs based on past
3 ROEs?

4 A. I do not.

5 Q. If I can shorten this up a bit, in a
6 nutshell, your position with regard to DP&L's
7 projected ROEs is that projecting ROEs after two
8 years is a difficult task and you simply don't
9 believe those ROEs; is that right?

10 A. I would say yeah. I would say that's
11 correct, uh-huh.

12 Q. And that opinion is not limited to DP&L,
13 but is an opinion that you hold with regard to
14 electric utilities in Ohio generally; isn't that
15 correct?

16 A. Yes.

17 Q. You have some testimony at page 9 of your
18 prefiled testimony that I want to ask you about. If
19 we can start with your definition of "financial
20 integrity." Your definition of "financial integrity"
21 is that a utility providing monopoly service is
22 allowed to have an opportunity to earn a reasonable
23 rate of return so that it can continue its operations
24 and attract capital; is that right?

25 MS. GRADY: Objection. May I have that,

1 or, actually, clarification, what lines on page 9
2 you're referring to?

3 MR. FARUKI: Well, among others, page 9,
4 line 15, he uses the words -- phrase "financial
5 integrity" and I'm asking him his definition, your
6 Honors.

7 Q. Do you need the question again, sir?

8 A. Yes, can I have the question read back?

9 (Record read.)

10 A. Yes.

11 Q. In other words, I'm not trying to trick
12 you, I'm asking many of the witnesses for their
13 definition of "financial integrity," and that's
14 yours, right?

15 A. Right. Financial integrity is only
16 applicable in a case of a utility providing monopoly
17 service.

18 Q. That was where I was going with my next
19 question. Your view and opinion of "financial
20 integrity" is that it only applies in the
21 circumstance of a utility that provides monopoly
22 service; is that right?

23 A. That's my understanding.

24 Q. And the definition that you just agreed
25 was your definition, is the one used in traditional

1 cost-based regulation such as is the case with rate
2 cases; is that right?

3 A. That's my understanding.

4 Q. Okay. But at page 9, line 17 of your
5 testimony, you concede that "DP&L's request for an
6 SSR and its claim of deteriorating financial
7 integrity are not based on the data and the
8 methodology used in a traditional rate case"; is that
9 right?

10 A. That's correct.

11 Q. You also admit that the Commission's
12 filing requirements for an ESP application are
13 different from the Commission's filing requirements
14 in a rate case, right?

15 A. At least regarding the data. I think in
16 a traditional rate case there's a date certain and a
17 test year and that's based largely on actual data.

18 Q. Yes, sir. Just to make sure our record
19 is clear, what you're saying now is that in a
20 traditional rate case, rate base would be measured,
21 according to your understanding, by a date certain,
22 and expenses would be measured by a test period?

23 A. That's my understanding.

24 Q. That's not the type of data that DP&L
25 filed here?

1 A. No.

2 Q. And, again, you recognize that with
3 regard to an ESP, the Commission's filing
4 requirements specifically require DP&L to file
5 projected financial statements that showed the effect
6 of the ESP on the company during the period of the
7 ESP; is that right?

8 A. I think that's the requirement, but that
9 does not necessarily mean that the data filed by the
10 company is credible or reasonable.

11 MR. FARUKI: Your Honor, I'll move to
12 strike everything after the word "requirement,"
13 specifically the statement "but that does not mean
14 that the data is credible."

15 EXAMINER MCKENNEY: Motion to strike is
16 denied.

17 Q. Now, one of your criticisms -- actually,
18 I'll withdraw that.

19 (Confidential portion excerpted.)
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(Open record.)

Q. (By Mr. Faruki) Do you have page 16, sir?

A. Yes.

Q. I'm interested, at the moment, in the answer to question 17.

A. Yes.

Q. About line 12, you offer a prediction that a transfer of assets is not likely to be completed before the end of the ESP; is that right?

1 MS. GRADY: Objection.

2 EXAMINER MCKENNEY: On what grounds?

3 MS. GRADY: Mischaracterized.

4 Mr. Duann's testimony says "expectation," not
5 "prediction."

6 MR. FARUKI: He can disagree with me if
7 he wants. It's a proper question.

8 EXAMINER MCKENNEY: Can you repeat the
9 question for me?

10 (Record read.)

11 EXAMINER MCKENNEY: Objection's
12 overruled. The witness can answer if he -- as he
13 sees fit.

14 A. Well, it is my expectation.

15 Q. And your basis for that opinion about a
16 future transfer is that DP&L continues to study the
17 issues regarding generation separation and has not
18 yet made the application to transfer assets; is that
19 right?

20 A. That's part of it.

21 Q. But you saw the statement in the
22 application that the company, DP&L, will file an
23 application with the Public Utilities Commission yet
24 this year to accomplish generation separation, didn't
25 you?

1 A. I didn't see that. What I see in their
2 application is that the company expect to file an
3 application, a separate application regarding that,
4 and in that application the company presently
5 expected, the company made no commitment or anything,
6 they just say the president expect to ask
7 authorization from the Commission to complete its
8 transfer of generation assets by the end of 2017.

9 MR. FARUKI: Your Honors, may I have that
10 answer read back?

11 EXAMINER MCKENNEY: You may.

12 (Record read.)

13 MR. FARUKI: That's all I need.

14 EXAMINER MCKENNEY: Can we have the
15 entire answer read back, please?

16 MR. FARUKI: Sure, I'm sorry.

17 (Record read.)

18 MS. GRADY: May I have the question
19 reread back, please?

20 (Record read.)

21 Q. (By Mr. Faruki) So, Mr. Duann, since you
22 say "I didn't see that," take a look at page 19 of
23 your deposition. Tell me when you're there.

24 I asked you -- sorry. Are you there?

25 A. Yes.

1 Q. Page 19, line 3: "Did you see the
2 statement in the application that the company will
3 file an application yet this year, 2013, to
4 accomplish generation separation?"

5 Answer: "Yes."

6 Have I read that correctly?

7 A. You read it correctly.

8 Q. Did you study your deposition before you
9 got on the stand?

10 MS. GRADY: Objection.

11 EXAMINER MCKENNEY: Sustained.

12 Q. It is not your testimony that if the
13 Commission enters an order that the generation assets
14 be transferred within the ESP period, that you expect
15 the transfer will not take place; is that right?

16 THE WITNESS: Can I have the question
17 read back, please?

18 (Record read.)

19 A. No, that's not my testimony.

20 Q. Once the assets are transferred to a
21 separate company, though, it is your testimony that
22 you do not know whether that separate entity will
23 help to ensure competition in the provision of retail
24 electric service; is that right?

25 A. That's my testimony. Yeah, that's my

1 opinion.

2 Q. Okay. Let me turn to a different subject
3 which we need to look at a couple different parts of
4 your testimony. You remember in your deposition we
5 talked about picking and choosing? Do you remember
6 that?

7 A. Yes, I think we had some discussion on
8 that.

9 Q. Okay. If we start in your testimony on
10 page 2, page 2, line 17 has a sentence: "I also
11 recommend the SSR should begin at the same time the
12 blending of auction-based price starts, and the SSR
13 should end one month before the end of the proposed
14 ESP so that the SSR will not be carried forward
15 beyond the proposed ESP."

16 Have I read that correctly?

17 A. Yes.

18 Q. So, to start with, you believe the SSR
19 should end one month before the proposed ESP would
20 end; is that correct?

21 A. Correct.

22 Q. And then, if you go over to page 3 of
23 your testimony, lines 8 to 10, you say: "The setting
24 of SSO rates" -- starting on line 8, "The setting of
25 SSO rates based on auction-based prices should be

1 continued after the end of the proposed ESP in the
2 event a new SSO rate plan has not been approved by
3 the Commission." Is that correct?

4 A. Yes, that's my testimony.

5 Q. So you want to end the SSR one month
6 before the ESP ends, but you want the SSO rates based
7 on auction prices to continue after the ESP; is that
8 right?

9 A. If there's no new SSO plan approved.

10 Q. And you also have testimony that we'll
11 get to shortly that you want the Commission, after
12 the end of the ESP, to impose a restriction on the
13 company's payment of dividends; is that right?

14 A. I don't think that's a correct
15 characterization of my testimony regarding the
16 dividend policy.

17 Q. Well, then let's look at that now. If
18 you stay on page 3, your point No. 4 is "DP&L should
19 be prohibited from paying dividends to its parent
20 companies, DPL, Inc., and the AES Corporation, during
21 the term of the ESP without receiving prior approval
22 from the Commission." Is that correct?

23 A. Yes.

24 Q. But you do understand, from reading the
25 application and the testimony and schedules, that

1 during the ESP period DP&L has debt coming due; is
2 that correct?

3 A. That's correct.

4 Q. And, indeed, you do not know where that
5 debt is, that is, you do not know whether there is
6 debt that is due to be refinanced at the DP&L level
7 or the DPL, Inc. level, or both; is that correct?

8 A. I don't think that's correct. I think I
9 state I know there's debt due for the DP&L, the
10 utility, but I don't know anything about the DPL,
11 Inc.

12 Q. All right. And you have not made any
13 analysis regarding the debt and how it will be
14 refinanced; is that correct?

15 A. That's correct.

16 Q. So, staying on the dividend subject, now
17 look at page 46. There's a sentence that starts on
18 the last line, line 23, of 46, it runs onto 47,
19 quote: I also recommend that any dividend payment by
20 DP&L after the end of the proposed ESP should be
21 limited to the earnings recorded in the years after
22 the end of the proposed ESP. Have I read that
23 correctly?

24 A. Yes.

25 Q. So you recommend to the Commission that

1 it restrict dividend payments after the end of the
2 ESP; is that right?

3 A. No, I don't think that's a correct
4 characterization of my testimony.

5 Q. Well, maybe you don't like my word
6 "restrict." Let me reask it this way: What you are
7 saying is that if, after the ESP period ends, DP&L --
8 DP&L's board wants to pay a dividend, they can do
9 that but they cannot use any money earned during the
10 ESP period to pay part of the dividend; is that
11 right?

12 A. That's correct.

13 Q. You are familiar, however, with the
14 concept that dollars are fungible, right?

15 A. Yes.

16 Q. And, in fact, if I can shorten this up
17 too, I asked you for an example in your deposition
18 and you gave me an example that in 2019 the
19 Commission should prevent a dividend payment if money
20 was used that was earned in the ESP period; is that
21 right?

22 MS. GRADY: Can we have a clarification,
23 if you're reading from the deposition, what page that
24 is, and so Mr. Duann can look at exactly what you're
25 asking?

1 MR. FARUKI: No, your Honor. I will show
2 him the page if I can impeach him with it, but at the
3 moment I'm asking if that's his example.

4 EXAMINER MCKENNEY: There's no
5 requirement for that. You can ask the question.

6 MR. FARUKI: Let me have her read it
7 back, she'll do a better job than I will.

8 (Record read.)

9 A. Yes, that's my position, the money you
10 earned as a result of this SSR or this nonbypassable
11 charge during the ESP term, they should not be used
12 to pay dividend after the end of the ESP period.

13 Q. And you would have that restriction apply
14 in 2019; is that right?

15 A. Yes.

16 Q. Okay. 2020?

17 A. Yes.

18 Q. 2025?

19 A. Yes.

20 Q. 2030?

21 A. Yes.

22 Q. And you don't have a way to tell in 2030
23 if a dividend payment would be made out of funds that
24 were used or, excuse me, earned during the ESP
25 period, do you?

1 A. Well, you just -- you just check what you
2 earn in 2030 and that's your reported income and then
3 you check the amount of dividend you paid, and if
4 that dividend you pay, like a hundred million is more
5 than 80 million that you reported to earn in 2080
6 [verbatim] then that should no be allowed.

7 Q. I can't resist asking this: Would you
8 say the same would be true in 2050?

9 A. Yes.

10 Q. Let's explore your understanding, then,
11 about dividends. When I asked you in your deposition
12 about how dividends are paid -- I'll withdraw that.
13 Let me ask it more simply.

14 Do you remember us talking in your
15 deposition about where, on the balance sheet,
16 income -- dividend payments come from?

17 A. Yes.

18 Q. Okay. I'm back to that subject, sir.
19 With regard to the company's balance sheet, when I
20 asked you if you're aware of the location on a
21 company's balance sheet out of which dividends were
22 paid, you said yes, they come out of net income; is
23 that right?

24 A. I believe so.

25 Q. Okay. But net income is a profit and

1 loss concept not a balance sheet concept. Are you
2 aware of that, sir?

3 A. Yes.

4 Q. When I explained that point to you and
5 asked again, from a balance sheet standpoint, where
6 do dividends come from on the balance sheet, you told
7 me you don't understand that point; is that right?

8 A. I think, first of all, I don't believe
9 you explained the difference between "balance sheet"
10 and "income statement" to me.

11 Q. Okay.

12 A. So I explained to you --

13 Q. Really?

14 A. -- on that.

15 Q. Okay.

16 A. Because you asked the question and I
17 explained it.

18 Q. Well, let's look, then. 45, page 45 of
19 your deposition, this is immediately after you gave
20 me your example of 2019. Look at line 17 and tell me
21 when you have it.

22 A. Yes, I have it.

23 Q. On line 17, Question: "And are you
24 aware -- well, are you aware of the location on a
25 balance sheet of a company out of which dividends are

1 paid?"

2 Answer: "Yeah. It's after the net
3 income. Pay out of net income."

4 Question: "Okay. Net income is a profit
5 and loss concept. I'm asking you from a balance
6 sheet standpoint, if you know where dividends come
7 from on the balance sheet?"

8 Answer: "Actually, I don't understand
9 your question."

10 Question: "Do you know whether dividends
11 come out of retained earnings or some place else on
12 the balance sheet?"

13 Answer: "Dividend are paid, you know,
14 it's after tax payment, and they come out the net
15 income. And those net income, they are not pay as
16 dividend, they become retained earning. That's my
17 understanding."

18 Have I read that correctly?

19 A. Yes.

20 MS. GRADY: Objection.

21 EXAMINER MCKENNEY: Improper impeachment.

22 MS. GRADY: It's improper. There's
23 nothing inconsistent with what he said. He said I
24 explained it to you. If you go down a couple more
25 questions, he'll explain it.

1 EXAMINER MCKENNEY: You asked him if he
2 remembered something from his deposition. I think
3 the appropriate course would have been to refresh his
4 recollection as opposed to impeach him on
5 something --

6 MR. FARUKI: Fair enough.

7 EXAMINER MCKENNEY: -- whether he
8 remembered it correctly or not.

9 MR. FARUKI: All right.

10 Q. Does this refresh your recollection of
11 what you said?

12 A. Up to what you just said.

13 Q. Well, let's read on, then.

14 EXAMINER MCKENNEY: Mr. Faruki, if you're
15 going to impeach him, I suggest you ask the question
16 before you impeach him.

17 MR. FARUKI: All right. Fine.

18 Q. When I asked you in the deposition for
19 how many years you want the Commission to impose this
20 restriction on payment of dividends, you told me "I
21 haven't given a thought on that"; do you remember?

22 A. I remember.

23 Q. Now you've gone up to at least 2050.
24 Have you given further thought on how long the
25 Commission should impose the remedy you are

1 suggesting?

2 A. I think, after I give some thought to it,
3 I say it is simply, it's not a restriction on what
4 the company can pay in future dividend. It is simply
5 saying that the earning that you've made as a result
6 of this ESP, they should not be used to pay the
7 dividend in the future.

8 Q. And my question is: How long would you
9 take that out --

10 A. Forever.

11 Q. Forever.

12 Let me go to a different point, then. I
13 want to talk about customer savings for a minute.
14 This is really relating to your testimony on page 2
15 that begins on line 12.

16 A. Yes.

17 Q. First of all, you do not know if there
18 are going to be savings or not as a result of
19 auction-based prices; is that correct?

20 A. Yes, that's correct.

21 Q. Okay. And then, second, this
22 recommendation that you're making on page 12,
23 beginning at line 12 -- or, I'm sorry, page 2,
24 beginning at line 12, is made without regard to
25 DP&L's financial integrity; is that correct?

1 A. No. Not -- has nothing to do with the
2 financial integrity.

3 Q. So you're agreeing with me that your
4 recommendation is being made without regard to its
5 effects on DP&L's financial integrity; isn't that
6 right?

7 A. My recommendation on that specific issue,
8 yes.

9 Q. Yes?

10 A. Yes.

11 Q. You also concede to me that if a blending
12 schedule should result in some savings for customers,
13 then that could be a justification for an SSR; isn't
14 that right?

15 A. I think that's the only justification.

16 Q. Okay. Let me change subjects again.
17 With regard to O&M expense adjustments, this is with
18 regard to your testimony on page 41, sir. On page 41
19 you have a paragraph that begins, "Second," on line
20 9.

21 A. Yes.

22 Q. You do not make any assessment or
23 judgment about the desirability of the particular O&M
24 expense adjustments that you discuss; is that
25 correct?

1 A. I did not look at each of those
2 individual O&M expense.

3 Q. You do agree with me that cuts in O&M
4 expenses can result in consequences to reliability or
5 service of the utility; isn't that right?

6 A. It may or may not.

7 Q. At the beginning of your testimony, on
8 line 13 of page 41, you talk about capital
9 expenditures; is that correct?

10 A. Yes.

11 Q. Your suggestion there is to keep the
12 capital expenditures at the 2014 level, but not
13 increase them in 2016 and 2017; is that right?

14 A. Yes.

15 Q. You have no knowledge of whether or not
16 some of the capital expenditures may be required by
17 the Environmental Protection Agency, right?

18 A. I don't know what those capital
19 expenditure are for.

20 Q. You did not attempt to analyze any of the
21 capital expenditure items or figures; isn't that
22 true?

23 A. That's true.

24 Q. And looking at your testimony, 2015 is
25 not mentioned here, and when we talked about that in

1 your deposition, you told me that you do not remember
2 what your recommendation will be for 2015; is that
3 correct?

4 A. That's correct.

5 Q. I think my last topic for you, sir, is
6 this: Beginning on page 42, you discuss your review
7 of ROEs over the last eight years; is that right?

8 A. Yes.

9 Q. Briefly, what you did was look at the
10 ROEs for -- over the last eight years for DP&L
11 compared to other Ohio EDUs, correct?

12 A. That's correct.

13 Q. But this analysis was purely
14 retrospective and you did not make your own estimates
15 of ROEs for the years of the proposed ESP period;
16 isn't that correct?

17 A. That's correct.

18 MR. FARUKI: Thank you, sir.

19 Your Honors, that's all I have.

20 EXAMINER MCKENNEY: Staff?

21 MR. McNAMEE: No questions, thank you.

22 EXAMINER MCKENNEY: Mr. Duann, I have one
23 question for you.

24 THE WITNESS: Sure.

25 EXAMINER MCKENNEY: Page 29 of your

1 testimony, lines 11 through 16, this will be line 14,
2 you say DP&L has chosen not to file a distribution
3 rate case. You have no opinion, do you, on whether
4 DP&L was able to file a distribution rate case over
5 the past 10 years, do you?

6 THE WITNESS: I believe there's a
7 restriction in the current ESP that DP&L is -- cannot
8 file a distribution rate case before the end of 2012.

9 EXAMINER MCKENNEY: Thank you.

10 MR. FARUKI: I don't know, follow-up on
11 that if I might, your Honor?

12 EXAMINER MCKENNEY: I believe we're on
13 redirect. Let's pursue it on redirect.

14 Do you have redirect?

15 I'm sorry, you're right, let's --

16 MS. GRADY: Your Honor, a short break.

17 EXAMINER MCKENNEY: One moment.

18 Is it clarifying, Mr. Faruki?

19 MR. FARUKI: Yes.

20 EXAMINER MCKENNEY: If it's clarifying,
21 you can ask.

22 MR. FARUKI: Your last answer, sir,
23 referred to the fact that distribution rates were
24 frozen as a result of a previous stipulation and
25 order; is that right?

1 THE WITNESS: No. I don't remember
2 whether it's frozen, because I say -- there's maybe
3 some built-in mechanism in the current distribution
4 case that will allow you to increase distribution
5 rate.

6 MR. FARUKI: All right.

7 EXAMINER MCKENNEY: Thank you.

8 At this time we'll move to redirect.
9 We'll take a five-minute recess. Let's go off the
10 record.

11 (Recess taken.)

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

14 Ms. Grady, do you have redirect?

15 MS. GRADY: Yes, your Honor.

16 - - -

17 REDIRECT EXAMINATION

18 By Ms. Grady:

19 Q. Mr. Duann, do you recall the numerous
20 questions by company counsel with respect to your
21 qualifications?

22 A. Yes.

23 Q. And do you recall Mr. Faruki emphasized
24 that a lot of your publications and your work prior
25 to joining the OCC were related to gas issues?

1 A. Yes.

2 Q. Can you explain to me, since you came to
3 OCC in 2008, what your work for the agency has been
4 on?

5 A. My work at the agency, since 2008, has
6 involved a lot in the electricity issues;
7 specifically, I testify in the second AEP ESP case, I
8 testify in the AEP, the first ESP agreement case, I
9 testify on the AEP fuel adjustment case, and I also
10 testify on the FirstEnergy ESP case. The FirstEnergy
11 ESP case. So I have involve a lot regarding the
12 electricity issues.

13 Q. And, Mr. Duann, are you part of the OCC
14 electric team?

15 A. Yes.

16 Q. And what does that team do?

17 A. The team is a team within the OCC that
18 deal with all those electricity related cases.

19 Q. Now, Mr. Faruki asked you a number of
20 questions about your recommendation for -- with
21 respect to dividends. Do you recall those questions?

22 A. Yes.

23 Q. Mr. Duann, is it common to have -- to
24 place restrictions on an entity's right to declare
25 dividends?

1 A. I believe so. I think especially if a
2 company or utility that is in financial difficulty, I
3 think that in a lot of time when the bank making a
4 loan to that company, they will place restriction on
5 the dividend, and when that entity want to issue
6 bonds, there could also be restriction put on the
7 payment of dividend.

8 And I think this also makes sense because
9 when a company is claiming, you know, financial
10 difficulty, cannot, you know, continue operation
11 and -- on the one hand, and, on the other hand, you
12 continue to pay large amount of dividend to your
13 holder, I think that's unreasonable.

14 Q. Now, Mr. Duann, do you recall a series of
15 questions by company counsel with respect to your
16 concerns with the projected information that the
17 company presented to the Commission?

18 A. Yes.

19 Q. And can you clarify your concern with
20 respect to the forecasted -- or, the projections that
21 the company presents as a basis for its case?

22 A. Yes. I say many times in my testimony
23 and in my deposition, you know, I believe the
24 company's long-term financial projection are
25 irrelevant in this proceeding and are speculative and

1 unreliable, and, specifically, I indicate, you know,
2 these projection, they are not ordered and they are
3 not file with SEC or they are not, you know,
4 presented to the financial analyst and, you know,
5 they are not made available to the public.

6 And my point is not really, say, what
7 should be included in SEC regulatory filing, what
8 should be included in the Commission's filing
9 requirement, or what should be included to the
10 financial analyst.

11 My point is pretty simple. My point is
12 this long-term financial projection are made by the
13 company, they are -- they have no accountability,
14 they are not a file, they are not order, the company
15 can choose whatever number they want to use.

16 And the company also specifically say
17 that they made these long-term projection for the
18 DP&L, the utility company, specifically for the ESP
19 filing in the regular -- in the regular business they
20 do this projection on a consolidated basis. They
21 prepare for the DPL, Inc.

22 So my point is simply this projection,
23 their projection, they are inherently imprecise, they
24 are difficult to make. And also the company has no
25 accountability, you know, they just choose whatever

1 number they want to use.

2 Q. Now, Dr. Duann, you had a number of
3 questions posed to you by company counsel with
4 respect to the electric security plan proceeding and
5 the fact that -- let me strike that.

6 You had questions posed to you as to why
7 you believe a return on equity calculation is
8 irrelevant for purposes of the ESP proceeding. Do
9 you recall those questions?

10 A. Yes.

11 Q. And is it your understanding that the ESP
12 proceeding is a cost-based proceeding?

13 A. No.

14 Q. And can you tell me why it would not be
15 appropriate in a noncost-based proceeding to derive
16 rates based on return on equity?

17 A. Well, you know, as probably everybody in
18 this room knows, that an ESP is not a cost-based
19 rate.

20 EXAMINER PRICE: Not at all?

21 THE WITNESS: Not at all.

22 EXAMINER PRICE: No cost-based elements
23 to it whatsoever?

24 THE WITNESS: That's my understanding.

25 EXAMINER PRICE: And your understanding

1 is based upon your reading of the statute or your
2 advice of counsel?

3 THE WITNESS: It's based on the advice of
4 counsel as well as my participation of this EST --
5 ESP, this proceeding.

6 EXAMINER PRICE: Not this ESP, but ESPs
7 in general you're saying have no cost-based elements
8 at all.

9 THE WITNESS: Yes.

10 Q. (By Ms. Grady) Dr. Duann, can an ESP have
11 cost-based elements in it?

12 A. The ESP, the ESP plan can have
13 cost-based. For example, if they want to file
14 something related to distribution or they want to
15 file something that related it to new generation
16 facility. But overall, as you indicate, and as
17 probably the company's counsel indicate, the ESP is
18 not a cost-based proceeding. And because it's not a
19 cost-based proceeding, so there's no -- and in my
20 view there's no concern regarding the rate of return
21 or the financial integrity.

22 I think the only applicable, applicable
23 material in an ESP is the test, the aggregate test
24 that the impact on a customer as a result of the ESP
25 should be better than what it can be achieved under

1 an MRO.

2 MS. GRADY: Thank you, Mr. Duann.

3 That's all the questions I have.

4 EXAMINER MCKENNEY: Recross? Mr. Faruki.

5 MR. FARUKI: Oh, yes.

6 - - -

7 RECROSS-EXAMINATION

8 By Mr. Faruki:

9 Q. Let's start with your redirect on
10 dividends. You said -- you were justifying your
11 proposal with regard to dividends because you said
12 it's common to place restrictions on the right-to-pay
13 dividend, and you gave two examples, a bank making a
14 loan or a company that wants to issue bonds, right?

15 A. Yes.

16 Q. And your explanation was that it's common
17 to place restrictions on the right-to-pay dividends
18 if the company's in financial difficulty, correct?

19 A. Yes.

20 Q. But that's not the rationale that you are
21 using for restricting the payment of dividends in
22 2050 or forever, is it? Because you're not saying
23 the company is going to be in financial difficulty in
24 2050, are you?

25 A. As I say, I do not propose a restriction

1 on the amount of dividend that paid after the ESP
2 period. I'm only saying that the amount of money
3 that you earn during the ESP, that should not be
4 used. And I give you example in my depositions, you
5 know, very clearly explained that, say that if you
6 earn \$150 million in 2018, 2019, you can pay a
7 dividend up to \$150 million, but you should not pay a
8 dividend at \$200 million because that would require
9 you to use the money you earn during the ESP period.

10 Q. So in 2050 when you say this proposal of
11 yours should still apply, you're not trying to
12 predict whether or not the company would be in
13 financial difficulty then, are you?

14 A. No.

15 Q. Your concern with projections, you
16 repeated your point that they're not audited and not
17 filed with an agency; is that right?

18 A. Not filed with a regulatory agency.

19 Q. Yes, sir.

20 You're aware, however, that DP&L had no
21 choice, if it was going to comply with the
22 Commission's requirements for filing an ESP, but to
23 file pro forma financial projections of the effect of
24 the ESP's implementation upon the electric utility
25 for the duration of the ESP, right?

1 A. That's correct.

2 Q. Okay.

3 A. They have to file, yes.

4 Q. Yes, sir.

5 And so, under your opinion, any time any
6 electric utility files for an ESP and complies with
7 the Commission's requirement of filing pro forma
8 financial projections, those projections should be
9 rejected as unreliable because they're not audited,
10 for one reason, right?

11 A. I didn't say that.

12 Q. Well, is that your opinion?

13 A. No, that's not my opinion.

14 Q. All right. So you're saying that it is
15 possible for a utility to file for an ESP and file
16 the pro forma financial projections that the
17 Commission requires even though those pro formas
18 cannot be audited. Is that your opinion?

19 A. They have to file it, yeah. Even if they
20 cannot be audited.

21 Q. And the fact that they're not audited,
22 then, is not what makes these projections unreliable;
23 is that correct?

24 A. That's correct.

25 MR. FARUKI: All right. Thank you, your

1 Honors, that's all I have.

2 EXAMINER MCKENNEY: Thank you.

3 Anything further?

4 EXAMINER PRICE: No.

5 EXAMINER MCKENNEY: Staff?

6 MR. McNAMEE: No questions.

7 EXAMINER MCKENNEY: Any other
8 intervenors?

9 (No response.)

10 EXAMINER MCKENNEY: Nothing?

11 Thank you, Mr. Duann, you're excused.

12 Ms. Grady.

13 MS. GRADY: Yes, at this time, your
14 Honors, I would move for admission of OCC Exhibit 28,
15 28A, and 29.

16 EXAMINER MCKENNEY: Any objections to the
17 admission of 28, 28A, or 29? Mr. Faruki?

18 MR. FARUKI: Not to 28 or 28A. I will
19 object to 29, the retrospective comparison of ROEs as
20 irrelevant to a forward ESP period.

21 EXAMINER MCKENNEY: Is it a motion to
22 strike or objection?

23 MR. FARUKI: I meant to just object to
24 admission of 29.

25 EXAMINER MCKENNEY: Okay. Sorry. The

1 objection is overruled. OCC 29 will be admitted.

2 (EXHIBITS ADMITTED INTO EVIDENCE.)

3 EXAMINER PRICE: Mr. Rinebolt, would you
4 like to take the stand.

5 MR. OLIKER: Your Honor, can we go off
6 the record for a second?

7 EXAMINER PRICE: Yes.

8 EXAMINER MCKENNEY: Go off the record.

9 (Discussion off the record.)

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

12 (Witness sworn.)

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

15 THE WITNESS: My name is David C.
16 Rinebolt. My business address is 231 West Lima
17 Street, Findlay, Ohio.

18 EXAMINER PRICE: And your degree was in
19 Russian literature, was that correct?

20 THE WITNESS: That was liberal studies,
21 your Honor.

22 EXAMINER PRICE: With a concentration in
23 Russian literature.

24 THE WITNESS: One of them.

25 EXAMINER PRICE: Ms. Mooney.

1 MS. MOONEY: Thank you, your Honor. Your
2 Honor, I would call David C. Rinebolt, and mark his
3 prefiled direct testimony as OP&E Exhibit No. 1.

4 EXAMINER PRICE: So marked.

5 (EXHIBIT MARKED FOR IDENTIFICATION.)

6 MS. MOONEY: And I have handed a copy to
7 the court reporter.

8 - - -

9 DAVID C. RINEBOLT

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

12 DIRECT EXAMINATION

13 By Ms. Mooney:

14 Q. Mr. Rinebolt, do you recognize -- do you
15 have a copy with you of OP&E Exhibit No. 1, your
16 direct testimony?

17 A. I do.

18 Q. Was that testimony prepared by you?

19 A. Yes, it was.

20 Q. And do you have any corrections to that
21 testimony at this point?

22 A. Yes, I have one correction. It's on page
23 5 in line 3, and where it says "OP&E then remits a
24 payment to ODSA," "ODSA" should be replaced with
25 "DP&L."

1 Q. Okay. And that's the only correction
2 that you have?

3 A. That is the only correction.

4 MS. MOONEY: Your Honor, we would move,
5 OPAAE would move for the admission of OPAAE Exhibit 1,
6 subject to cross-examination.

7 EXAMINER PRICE: We will defer ruling on
8 the admission of OPAAE Exhibit 1 until the conclusion
9 of cross-examination.

10 Mr. Petricoff?

11 MR. PETRICOFF: "Nyet."

12 (Laughter.)

13 EXAMINER PRICE: Ms. Yost?

14 MS. YOST: No questions, your Honor.

15 EXAMINER PRICE: Mr. Williams?

16 MR. WILLIAMS: No questions, your Honor.

17 EXAMINER PRICE: Mr. Lang?

18 MR. LANG: No. Thank you.

19 EXAMINER PRICE: Mr. Oliker?

20 MR. OLIKER: No. Thank you, your Honor.

21 EXAMINER PRICE: Mr. Yurick?

22 MR. YURICK: No questions, your Honor.

23 EXAMINER PRICE: Mr. Faruki?

24 MR. FARUKI: Yes, your Honor. Thank you.

25 Very briefly.

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CROSS-EXAMINATION

By Mr. Faruki:

Q. Good morning, Mr. Rinebolt.

A. Good morning, Mr. Faruki.

Q. Do you agree that the fuel fund is essentially an antipoverty program meant for low-income customers?

A. I believe that the fuel fund has dual functions, one, it is, per the statute, 4928.02(L), to protect low-income customers from impacts of components of the ESP, and then, beyond that, it clearly functions as a component of an antipoverty strategy.

Q. Your proposal in your testimony is to nearly double the fuel fund specifically from 400 to 750,000 dollars; is that right?

A. That is correct.

Q. You agree with my math, subject to check, that that's an increase of 87-1/2 percent?

A. I would agree to that.

Q. You do not have a calculation of some sort to support the rationale for increasing the fuel fund by that, to that extent, do you?

A. The recommendation that the fuel fund be increased by that extent is a function of my

1 understanding of the level of poverty statistics, the
2 amount spent on bill payment systems in DP&L
3 territory and other utility territories throughout
4 the state, the increase in incidence of poverty since
5 the level of funding was essentially set in 2008
6 prior to the recession.

7 MR. FARUKI: I'll move to strike that as
8 nonresponsive, your Honor. I asked him if he had a
9 calculation.

10 EXAMINER PRICE: We will deny the motion
11 to strike this time, but we'll ask the witness to
12 please pay careful attention to counsel's question
13 and answer the question and only the question being
14 posed by counsel.

15 THE WITNESS: Yes. Your Honor.

16 Q. David, I'll reask my question. Isn't it
17 true that you do not have a calculation to support
18 the increase in the fuel fund that you are
19 recommending?

20 A. I do not have a calculation in my
21 testimony, that's correct.

22 MR. FARUKI: Thank you, Mr. Rinebolt.

23 Your Honors, that's all I have.

24 EXAMINER PRICE: Thank you.

25 Mr. McNamee?

1 MR. McNAMEE: No questions.

2 EXAMINER PRICE: Redirect?

3 MS. MOONEY: No, your Honor.

4 EXAMINER PRICE: You're excused,
5 Mr. Rinebolt. Thank you.

6 THE WITNESS: Thank you.

7 EXAMINER PRICE: Any objections to the
8 admission of OPAE Exhibit 1?

9 MR. FARUKI: No, your Honor.

10 EXAMINER PRICE: Seeing none, it will be
11 admitted.

12 MS. MOONEY: Thank you.

13 (EXHIBIT ADMITTED INTO EVIDENCE.)

14 EXAMINER MCKENNEY: Ms. Kingery.

15 MS. KINGERY: Duke Energy Retail Sales
16 calls Matthew Walz to the stand.

17 EXAMINER MCKENNEY: Mr. Walz, will you
18 please raise your right hand.

19 (Witness sworn.)

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

23 THE WITNESS: My name is Matthew M. Walz.
24 My business address is 139 East Fourth Street,
25 Cincinnati, Ohio, 45202.

1 MS. KINGERY: Your Honors, we would ask
2 that the direct testimony of Matthew Walz, dated
3 March 1, 2013, be admitted as Duke Energy Retail
4 Sales Exhibit 1.

5 EXAMINER MCKENNEY: It will be marked as
6 Duke Energy Retail Sales 1.

7 MS. KINGERY: Thank you.

8 (EXHIBIT MARKED FOR IDENTIFICATION.)

9 - - -

10 MATTHEW M. WALZ

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

13 DIRECT EXAMINATION

14 By Ms. Kingery:

15 Q. Mr. Walz, will you please tell us who you
16 are employed by and in what capacity?

17 A. I work for Duke Energy Commercial
18 Enterprises and I manage the Duke Energy Retail
19 business line.

20 Q. Thank you.

21 And do you have in front of you what has
22 just been marked as Duke Energy Retail Sales Exhibit
23 1?

24 A. I do.

25 Q. And is that your direct testimony filed

1 in this proceeding?

2 A. It is.

3 Q. And do you have any corrections or
4 changes to make to that testimony?

5 A. I have no corrections.

6 Q. And if I asked you those same questions
7 today, would your answers be the same?

8 A. They would.

9 MS. KINGERY: Thank you.

10 The witness is available for
11 cross-examination.

12 EXAMINER MCKENNEY: Thank you.

13 Mr. Petricoff?

14 MR. PETRICOFF: No questions, your Honor.

15 EXAMINER MCKENNEY: OCC?

16 MS. YOST: No questions, your Honor.

17 EXAMINER MCKENNEY: Ms. Mooney?

18 MS. MOONEY: No, your Honor.

19 EXAMINER MCKENNEY: Mr. Williams?

20 MR. WILLIAMS: No, your Honor.

21 EXAMINER MCKENNEY: Mr. Lang?

22 MR. LANG: No. Thank you.

23 EXAMINER MCKENNEY: Mr. Oliker?

24 MR. OLIKER: No. Thank you, your Honor.

25 EXAMINER MCKENNEY: Mr. Yurick?

1 MR. YURICK: No questions.

2 EXAMINER MCKENNEY: Mr. Sharkey?

3 MR. SHARKEY: Yes your Honor.

4 - - -

5 CROSS-EXAMINATION

6 By Mr. Sharkey:

7 Q. Mr. Walz, we talked on the phone before,
8 my name is Jeff Sharkey, and I represent The Dayton
9 Power & Light Company.

10 As a 50,000-foot overview of your
11 testimony, it's true, isn't it, that you propose a
12 number of competitive enhancements that you recommend
13 that DP&L implement?

14 A. I recommended a couple of, yes, I
15 recommended ways to lower the barriers for customers
16 to select alternative supply.

17 Q. It's true, isn't it, that you didn't
18 review any of the testimony that DP&L filed in this
19 case before you prepared your testimony?

20 A. I did not review their testimony.

21 Q. Okay. And you didn't review any of the
22 documents that The Dayton Power & Light Company
23 produced in this case either, did you?

24 A. I did not.

25 Q. Okay. You haven't read Ohio Revised Code

1 4928.143?

2 A. If I did, I don't recall -- remember.

3 Q. Okay. And you don't know what
4 competitive enhancements, if any, The Dayton Power &
5 Light Company has proposed in this case, do you?

6 A. I do not.

7 Q. You assume there will be costs associated
8 with competitive enhancements that you proposed,
9 right?

10 A. I would assume there's costs. I don't
11 know what they would be.

12 Q. Your prefiled testimony doesn't contain
13 any proposal regarding who would pay those costs,
14 does it?

15 A. It does not.

16 Q. Turn, if you would, to page 4 of your
17 testimony, line 8. You state there that DP&L
18 currently requires that the customer name, as it
19 appears on their pre-enrollment database, to match
20 the name on the enrollment request exactly, correct?

21 A. I do.

22 Q. And you assert that DP&L should revise
23 its enrollment process so that the customer name in
24 the pre-enrollment database does not need to exactly
25 match the enrollment request?

1 A. My testimony is that you do not need the
2 name to enroll somebody, just the account number.

3 Q. Okay. It's true, isn't it, that you
4 don't sponsor any testimony that quantifies how often
5 Duke Energy Retail has had the problem that you're
6 describing in this Q and A?

7 A. I did not quantify, yes.

8 Q. Okay. It's also true you have not
9 quantified the costs that would be used to accomplish
10 your proposal.

11 A. I have not.

12 Q. And you also haven't quantified the
13 benefits, right?

14 A. I have not.

15 Q. Then starting on page 4, again, line 19,
16 you make a proposal that DP&L change its interval
17 metering requirements, correct?

18 A. I do.

19 Q. Your complaint is if the customer did not
20 have an interval meter before that customer switches,
21 DP&L continues to monitor the customer's usage and
22 may require the customer to have an interval meter at
23 some point in the future.

24 A. My testimony says that when a customer
25 switches, Dayton Power & Light will review that

1 customer, that switched customer, for interval meter
2 on an ongoing basis.

3 Q. And at some point later, if the
4 customer's usage -- let me strike that.

5 If the customer's usage initially was not
6 sufficient to require an interval meter but the
7 customer's usage later changes, DP&L may then require
8 the company to install an interval meter; is that
9 your understanding?

10 A. My understanding is Dayton Power & Light,
11 after a customer switches, will continue to review
12 whether that customer is required to have an interval
13 meter and that check is on an ongoing basis unlike
14 the other utilities in the state, where that -- that
15 check is done only at the time of switching.

16 Q. So if something -- so the Dayton Power &
17 Light policy, as you understand it, is that DP&L will
18 continue to monitor the customer's usage and even if
19 the customer didn't require an interval meter at the
20 time they switched, if a year later the usage pattern
21 of the customer has changed, The Dayton Power & Light
22 Company may then impose an interval meter requirement
23 upon the customer.

24 A. And, again, just to be very specific to
25 my testimony, it's for a switched customer they're

1 doing it on an ongoing basis; whereas, the rest of
2 the utilities in Ohio only make that assessment that
3 one -- that assessment at the time the customer
4 chooses to switch, not on an ongoing basis.

5 Q. Okay. And you believe The Dayton Power &
6 Light Company should not make that evaluation on an
7 ongoing basis; is that correct?

8 A. I do not believe they should make it on
9 an ongoing basis.

10 Q. Okay. Your testimony, again, doesn't
11 make any effort to quantify how often this issue that
12 you're describing occurs for -- creates problems for
13 Duke Energy, does it?

14 A. For Duke Energy? You mean Duke Energy
15 Retail?

16 Q. I do.

17 A. I did not quantify.

18 Q. And you also don't quantify any costs or
19 benefits associated with your proposal, do you?

20 A. I do not.

21 Q. Then turn to page 5, line 7 of your
22 testimony. You are, there, offering an opinion that
23 The Dayton Power & Light Company should be required
24 to include a customer's meter number on the bill.

25 A. I do.

1 Q. Okay. And, again, you have not made any
2 effort to quantify how often this item creates any
3 problems for Duke Energy Retail, right?

4 A. I do not.

5 Q. And, again, you haven't quantified, made
6 any effort, rather, to quantify either the costs or
7 the benefits of your proposal, right?

8 A. I did not quantify.

9 Q. Then starting on line 16 of that same
10 page, you recommend The Dayton Power & Light Company
11 implement a purchase of receivables program, right?

12 A. I do.

13 Q. Okay. If you'd take a look on page 3 of
14 your testimony, line 4, you say "DER is interested in
15 a consistent framework for retail competition
16 throughout the state of Ohio." Did I read that
17 accurately?

18 A. That is an accurate statement.

19 Q. It's true, isn't it, that Duke
20 Energy Ohio is the only electric utility in the state
21 of Ohio with a purchase of receivables program?

22 A. It is true.

23 Q. And it's your understanding that Duke
24 Energy -- let me step back.

25 You understand that the Duke utility

1 agreed to have a POR program pursuant to a
2 stipulation, right?

3 A. I don't know how they -- I don't know how
4 it evolved. I don't know how the purchase of
5 receivables program with Duke Energy Ohio started.

6 Q. So you don't know whether they agreed to
7 offer a POR program via stipulation or whether it
8 came about through some other methodology.

9 A. I don't.

10 Q. Okay. Regarding your proposal, it's
11 true, isn't it, that Duke Energy Retail, the CRES
12 provider, is not compelled to do business with any
13 customers in DP&L's service territory?

14 A. We are not compelled to serve any
15 customers in DP&L's utility.

16 Q. Okay. You want DP&L to implement a rider
17 so that it would recover any bad debt costs from
18 customers, right?

19 A. My testimony is I want a purchase of
20 receivables program for -- to simplify the customer
21 experience to make it make more sense for customers.
22 To do that you need to consolidate the accounts
23 receivable, I believe, with one entity, which would
24 be the utility, and it would clean up the confusion
25 customers have with regard to the fact that there is

1 a single, on a consolidated bill there's a single
2 payment, a single bill, a single payment, a single
3 account balance, and a single entity that can
4 disconnect the customer.

5 Q. To be clear here, you expect DP&L --
6 strike that.

7 You don't want DP&L to take on the
8 bad-debt risk, you want DP&L's customers to take on
9 that bad-debt risk, correct?

10 A. Yes. My recommendation, my suggestion
11 would be to follow the Duke Energy Ohio purchase of
12 receivables program which would be covered by the
13 rate base, the customers in that service territory.

14 Q. So DP&L's customers would ultimately bear
15 the risk that Duke Energy Retail's customers didn't
16 pay it.

17 A. Yes, but they also benefit from a
18 consistent framework for choice and consolidated
19 billing in the state -- in the utility.

20 Q. Have you made any comparison to show the
21 amount of the benefit they receive, in terms of
22 having a consistent framework, exceeds the amount of
23 costs that would be imposed upon customers if they
24 were forced to assume the bad-debt risk associated
25 with Duke Energy Retail's customers?

1 THE WITNESS: Can you repeat that
2 question, please?

3 (Record read.)

4 A. I have not done any cost-benefit analysis
5 for purchase of receivables.

6 Q. You don't sponsor any opinion, do you,
7 regarding whether DP&L should purchase Duke Energy
8 Retail's receivables at a discount?

9 A. I've deferred -- I would defer to the
10 Commission on what the discount rate would be.

11 Q. You also don't make any proposal on how a
12 discount rate, if any, would be determined, do you?

13 A. I do not.

14 Q. Turn then, if you would, to page 6 of
15 your testimony, line 16. Here you recommend that
16 DP&L provide additional information to CRES providers
17 on DP&L's pre-enrollment list, right?

18 A. Yes.

19 Q. And, again, you haven't made any effort
20 to quantify how often Duke has this problem, what
21 costs would be incurred to fix the problem, and what
22 benefits would result from fixing the problem that
23 you identify, right?

24 A. I did not quantify the costs or benefits
25 associated with this improvement.

1 Q. Nor did you quantify how often Duke
2 experiences any problems with this item.

3 A. I did not quantify how much -- how often
4 this impacts Duke Energy Retail.

5 Q. Turn, if you would, to page 7, line 12 of
6 your testimony, if you would.

7 A. Give me -- say that again, please.

8 Q. Page 7 of your testimony starting on line
9 12. You recommend there that DP&L implement a
10 hundred percent competitive bidding immediately,
11 right?

12 A. I do.

13 Q. You have not conducted any analysis of
14 whether DP&L can maintain its financial integrity if
15 the proposal was implemented, right?

16 A. I did not. I based it solely on
17 competitive choice barriers for customers.

18 Q. Okay. You also haven't conducted any
19 analysis to determine whether DP&L can provide
20 reliable service if that proposal was implemented,
21 have you?

22 A. I did not. I based it solely on
23 competitive choice.

24 Q. You agree with me that it's important to
25 customers that DP&L be able to provide reliable

1 distribution service?

2 A. I believe reliable service is important
3 to customers.

4 Q. And since Duke Energy Retail provides
5 service to customers within DP&L's service territory,
6 you also agree with me that it's important to Duke
7 Energy Retail that DP&L be able to provide reliable
8 distribution service, right?

9 A. Could you repeat your -- rephrase your
10 question, I'm sorry?

11 Q. Sure. Duke Energy Retail provides
12 generation services to customers within DP&L's
13 service territory, right?

14 A. We do.

15 Q. Okay. You, therefore, agree that it's
16 important to Duke Energy Retail that DP&L be able to
17 provide reliable distribution service.

18 A. Yes. My -- our business objective with
19 customers is to make the right choice easy, part of
20 that is having reliable service with their
21 relationship with us and between us as a retailer and
22 our customers, and having unreliable service with the
23 local utility, customers would assume that we have
24 something to do with that sometimes, and I would
25 prefer to have reliable service from the local

1 utility.

2 MR. SHARKEY: Thank you, Mr. Walz.

3 Your Honors, I have no more questions.

4 EXAMINER MCKENNEY: Staff?

5 MR. McNAMEE: No questions.

6 EXAMINER MCKENNEY: Redirect,

7 Ms. Kingery?

8 MS. KINGERY: No redirect. Thank you.

9 EXAMINER MCKENNEY: Thank you.

10 Mr. Walz, you're excused.

11 Objection to the admission of Duke Energy

12 Retail Sales 1?

13 (No response.)

14 EXAMINER MCKENNEY: It is so admitted.

15 MS. KINGERY: Thank you.

16 (EXHIBIT ADMITTED INTO EVIDENCE.)

17 EXAMINER MCKENNEY: Let's go off the

18 record at this time.

19 (Lunch recess taken.)

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Monday Afternoon Session,
April 1, 2013.

- - -

EXAMINER MCKENNEY: Let's go on the record at this time. Before we continue, we had a discussion off the record about the briefing schedule for this case. We discussed amongst the parties that the briefing schedule would consist of 30 days from the filing of the transcripts for initial briefs and then 15 days after that for reply briefs. We'll make that announcement again tomorrow for anyone that's not here this afternoon.

At this time, is IGS ready to present?

MR. WHITT: We are, your Honor. I believe we have a housekeeping matter to take care of with an appearance that needs to be entered.

EXAMINER MCKENNEY: I'm sorry.

MR. CASTO: Scott Casto on behalf of FirstEnergy Solutions. C-a-s-t-o.

EXAMINER MCKENNEY: Thank you, Mr. Casto. Mr. Whitt.

MR. WHITT: Yes, your Honor, IGS would call Matthew White.

EXAMINER MCKENNEY: Mr. White, will you please raise your right hand.

1 (Witness sworn.)

2 EXAMINER MCKENNEY: Thank you. Please be
3 seated. Please state your name and business address
4 for the record.

5 THE WITNESS: My name is Matthew White.
6 My business address is 6100 Emerald Parkway, Dublin,
7 Ohio, 43016.

8 - - -

9 MATTHEW S. WHITE
10 being first duly sworn, as prescribed by law, was
11 examined and testified as follows:

12 DIRECT EXAMINATION

13 By Mr. Whitt:

14 Q. Mr. White, do you have in front of you a
15 document that's been marked for identification as IGS
16 Exhibit 1?

17 A. Yes, I do.

18 Q. Does that document represent your direct
19 testimony prepared in this proceeding?

20 A. Yes, it is.

21 Q. Do you have any corrections to make to
22 your testimony?

23 A. No, I do not.

24 Q. If I were to ask you the same questions
25 that appear in IGS Exhibit 1 today, would your

1 answers be the same?

2 A. Yes.

3 MR. WHITT: Thank you. The witness is
4 available for cross.

5 EXAMINER MCKENNEY: The witness's
6 testimony will be marked IGS 1.

7 (EXHIBIT MARKED FOR IDENTIFICATION.)

8 EXAMINER MCKENNEY: Proceed with
9 cross-examination.

10 Mr. Berger?

11 MR. BERGER: Yes, I have a few questions
12 for Mr. White.

13 - - -

14 CROSS-EXAMINATION

15 By Mr. Berger:

16 Q. Good afternoon, Mr. White. My name is
17 Tad Berger, I'm with the Office of the Ohio
18 Consumers' Counsel. I just have a few questions for
19 you.

20 A. Okay.

21 Q. Mr. White, if an SSO customer switches to
22 a CRES supplier at a time when the fuel rider has an
23 undercollection obligation, let's say an
24 undercollection of several hundred dollars per
25 customer, is it fair that when that customer

1 switches, they're no longer responsible for that
2 amount of undercollection that was incurred while
3 they were an SSO customer?

4 A. You say "fair"?

5 Q. Yes.

6 A. Is it reasonable?

7 Q. Reasonable.

8 A. Can you put that in context a little bit
9 more?

10 Q. Yes. Let's talk --

11 A. I mean, are you asking questions about my
12 testimony specifically?

13 Q. Well, I think on page 7 of your testimony
14 you talk about this particular issue in terms of the
15 reconciliation rider.

16 A. Okay.

17 Q. And it's your recommendation, as you
18 know, that those costs shouldn't pass -- continue as
19 nonreconcilable charges to non-SSO customers. So,
20 again, my question to you, would it be fair for that
21 customer who's switching to leave behind a
22 substantial undercollection associated with the
23 period when they receive the service?

24 A. I guess I can't tell you whether it's
25 fair or not. I can tell you what I recommend in my

1 testimony.

2 Q. Well, is what you recommended, in your
3 opinion, fair?

4 A. What I recommend is fair, yes.

5 Q. And why is it fair if customers who are
6 switching leave behind a substantial obligation that
7 was incurred on their behalf?

8 A. Well, what I recommend in my testimony
9 would not leave behind a substantial obligation.
10 What I recommend in my testimony was that in the
11 event there was a certain -- a certain level of
12 deferrals, the Commission should set a point at which
13 point they conduct retail auctions to recover that
14 remaining -- or, excess money that has not been
15 recovered through the riders.

16 Q. And what would be that point, in your
17 opinion? Is that the 70 percent you were talking
18 about?

19 A. Yes. Roughly. I mean, it could be more,
20 it could be less than 70 percent, but I suggest the
21 Commission set a point where migration reaches a
22 certain level and then they conduct retail auctions
23 to recover any of the revenue that may be remaining
24 from those deferred riders.

25 Q. Am I correct in understanding what you're

1 testifying is that current switching rate, I think
2 it's 62 percent of the load, is that the point that
3 you understand it to be?

4 A. I believe, but I'm not -- whatever's on
5 the record.

6 Q. So until 70 percent of the load has
7 switched, you would not have those undercollection
8 obligations falling upon the switching customers; is
9 that correct?

10 A. I would recommend that those obligations
11 be collected through a bypassable rider.

12 Q. So the answer to my question is yes --

13 A. Yes.

14 Q. -- those obligations wouldn't follow
15 those customers.

16 A. Until the threshold is reached, I'd
17 recommend that those obligations are recovered
18 through a bypassable rider.

19 Q. And with respect to your proposed retail
20 auction and whether it could pay down deferred costs,
21 would that depend -- that would depend, wouldn't it,
22 on market prices and whether they were sufficient to
23 cover those deferred costs?

24 A. It would depend on, yes, it would depend
25 on a number of factors, primarily being how much

1 suppliers would be willing to pay to serve those
2 customers.

3 Q. According to your testimony, you
4 contemplate that there would be a price below the
5 utility's SSO price at which marketers would enter
6 the market --

7 A. Yes.

8 Q. -- and take on this retail load; is that
9 right?

10 A. I believe that's likely, yes.

11 Q. Is that based upon your current market
12 price projections?

13 A. Not just price. The desire of marketers
14 to want to serve customers on a retail level.

15 Q. Would you agree with me that if those
16 deferred costs were going to be placed or going to be
17 recovered, this Commission would have to make a
18 determination that out of the margin that the
19 marketers would otherwise receive, they would have to
20 pay a certain portion toward the deferred costs under
21 your proposal?

22 A. Under my proposal, the marketers would
23 bid at a certain -- a certain amount which would go
24 towards paying down the deferred costs per customer.

25 Q. Would you agree with me that the

1 Commission -- that these customers wouldn't have to
2 be switched to a CRES supplier for this to occur.
3 This could occur while the utility was still serving
4 the SSO load; wouldn't that be correct?

5 A. Not under my proposal. And I don't think
6 it would work if it was -- the SSO load was still
7 served by the utility because the marketers would be
8 paying to essentially get a customer. So I don't
9 think they would pay, you know, when the utility is
10 serving that customer.

11 Q. Couldn't the Commission simply say,
12 "Utility, these remaining customers are going to pay
13 the deferred costs that were incurred on behalf of
14 you and the customers who have already switched"?
15 Isn't that the same thing?

16 A. They can say -- can you repeat the
17 question?

18 MR. BERGER: Could you just read that
19 back?

20 EXAMINER MCKENNEY: Please.

21 (Record read.)

22 A. No. Under my proposal, the marketers
23 would pay the cost to serve those customers. It
24 wouldn't be the customers. The marketers would be
25 paying -- they would get a customer, they'd pay money

1 to get that customer, and that money would go to
2 paying down any deferrals or any legacy costs
3 incurred for serving -- incurred because of serving
4 the default load.

5 EXAMINER PRICE: What price would the
6 customers pay them?

7 THE WITNESS: The price would have to be
8 determined. I would recommend that the price be
9 determined administratively by the Commission; a
10 price that they feel comfortable. You know, I
11 believe that the price --

12 EXAMINER PRICE: So it wouldn't be the
13 lowest market price.

14 THE WITNESS: No, probably not. But it
15 would be below the default rate.

16 Q. Mr. White, on page 8, on lines 7 to 8,
17 you indicate there's no mechanism to share the
18 benefit with shopping customers in the event of a
19 credit. Now, if there is a credit as well as a
20 charge on the nonbypassable mechanism for these --
21 for the reconciliation rider, would you be satisfied
22 with a mechanism that had that -- that balance to it?

23 A. That was one of my rationales why I did
24 not believe that the nonbypassable rider proposed by
25 DPL was appropriate. But that would not alleviate

1 all my concerns about that rider, as I discuss
2 further in my testimony.

3 Q. And on page 9, at line 11, you use the
4 term "incremental costs above the 10 percent
5 threshold." Is that the same level of cost that the
6 company is talking about in its proposal that would
7 be above the 10 percent threshold? Is that the same
8 definition of "incremental cost" the company uses?

9 A. On page 9, line 11, what I'm trying to
10 say here is that in the event the Commission does
11 agree with DPL that there should be a nonbypassable
12 rider to recover those deferred costs, which I don't
13 agree with, I don't support, but in the event the
14 Commission makes that determination, then the entire
15 deferred cost should not be recovered through a
16 nonbypassable rider but only the deferred cost above
17 the 10 percent threshold.

18 So that when the 10 percent threshold is
19 hit, only the incremental cost above that 10 percent
20 threshold becomes recovered through the nonbypassable
21 rider and not, you know, not the entire deferred
22 cost.

23 MR. BERGER: Thank you.

24 That's all I have, your Honor.

25 EXAMINER MCKENNEY: Thank you,

1 Mr. Berger.

2 Mr. Casto?

3 MR. CASTO: No.

4 EXAMINER MCKENNEY: Mr. Darr?

5 MR. DARR: No questions.

6 EXAMINER MCKENNEY: Mr. Yurick?

7 MR. YURICK: No questions. Thank you.

8 EXAMINER MCKENNEY: Mr. Sharkey?

9 MR. SHARKEY: Yes, your Honor.

10 - - -

11 CROSS-EXAMINATION

12 By Mr. Sharkey:

13 Q. Mr. White, my name is Jeff Sharkey. I
14 represent DP&L. It's true, isn't it, that you're a
15 licensed attorney?

16 A. Yes.

17 Q. Graduated from law school in May of 2007?

18 A. Yes.

19 Q. And your only career experience before
20 law school was that you did some work in the
21 governor's office helping to manage constituent
22 inquiries?

23 A. I worked in the West Virginia governor's
24 office, before I entered into law school, in
25 constituent services and organizing events and

1 communicating with constituents.

2 Q. You've never submitted written testimony
3 in a proceeding before, correct?

4 A. I have in Duke, the application to
5 increase distribution rates, gas distribution rates,
6 I submitted written testimony.

7 Q. Other than that you've never submitted
8 written testimony?

9 A. Yes.

10 Q. You've never testified before?

11 A. No.

12 Q. You're agreeing with me, you have not
13 testified before.

14 A. Yes, I have not testified.

15 Q. You practice as a regulatory attorney at
16 IGS?

17 A. Yes. As an attorney in the Regulatory
18 Affairs Department.

19 Q. Okay. And before that, you were a
20 regulatory attorney at Chester Willcox?

21 A. Energy and utilities lawyer, yes.

22 Q. You appeared as counsel on behalf of IGS
23 before various utility regulatory bodies, right?

24 A. In Ohio I have.

25 Q. Okay.

1 A. Yes.

2 Q. And you, in fact, appeared as counsel in
3 proceedings before the PUCO before?

4 A. Yes.

5 Q. Okay. You don't have any responsibility
6 for IGS's pricing of services in the market, correct?

7 A. That is not my day-to-day responsibility.

8 Q. You don't have any direct responsibility
9 for pricing in the market, right?

10 A. In the past when I worked -- when I
11 entered IGS Energy, I started in a program where I
12 worked in all the departments at IGS Energy,
13 including our Supply Department and our Marketing
14 Department, where I did have direct input into
15 pricing, but not currently.

16 Q. You don't manage any of the persons at
17 IGS who are responsible for its competitive
18 activities.

19 A. Not in the -- not employees of IGS, but
20 various outside contractors -- and attorneys I have
21 responsibility for managing.

22 Q. You're responsible for outside attorneys.

23 A. Yes.

24 Q. Okay. You don't have any direct
25 responsibility -- strike that.

1 You're not responsible for preparing
2 IGS's accounting books and records.

3 A. No.

4 Q. You originally entered an appearance in
5 this case as an attorney, didn't you?

6 A. Yes.

7 Q. You withdrew that appearance before
8 submitting testimony, correct?

9 A. Yes.

10 MR. SHARKEY: Your Honors, I'm going to
11 move to strike Mr. White's testimony. While I'm sure
12 that Mr. White is a fine regulatory attorney, being a
13 regulatory attorney does not qualify him to submit
14 testimony in this proceeding. In fact, your Honor,
15 this room is full of attorneys who are every bit as
16 qualified as Mr. White, but that doesn't mean that
17 each of us can elect to, instead of appearing as
18 counsel, simply appear as attorneys and submit our
19 opinions.

20 EXAMINER PRICE: Which sections of his
21 testimony do you think he's not competent to testify
22 on?

23 MR. SHARKEY: Your Honor, I would submit
24 that he's not competent -- I would submit that merely
25 by being an attorney, you're not competent to submit

1 any opinions to this Commission on any matters;
2 merely being an attorney should not qualify a person
3 to submit testimony on matters before this proceeding
4 on any matters.

5 EXAMINER PRICE: He has an MBA, doesn't
6 he?

7 MR. SHARKEY: All of his experience, your
8 Honor, is as an attorney. I forget whether he has an
9 MBA or not, your Honor.

10 EXAMINER PRICE: He has a master's in
11 business administration from the College of William
12 and Mary.

13 MR. SHARKEY: Still, your Honor --

14 EXAMINER PRICE: And he also said that he
15 initially came in in some sort of executive training
16 program where he worked from department to
17 department.

18 MR. SHARKEY: Briefly, I think while he
19 was at IGS he did that, your Honor, but his entire
20 career has essentially been as a regulatory attorney
21 which, I submit to your Honors, every attorney in
22 this room has substantially similar experiences and
23 probably a lot more lengthy experiences in terms of
24 submitting testimony -- I'm sorry, in terms of
25 practicing before this Commission. I have many

1 opinions, as I'm sure all of the lawyers do here, but
2 it --

3 EXAMINER PRICE: It almost seems like
4 you're holding that against him. If he had worked
5 for IGS in the Regulatory Affairs Department or the
6 Regulatory Operations Department, we wouldn't be
7 having this conversation, would we?

8 MR. SHARKEY: If he had different
9 experiences, if he would have been somehow
10 substantially involved in something other than active
11 practice of law, yes, I think that would make him
12 qualified. But what he's done is work as a lawyer.

13 I've worked as a lawyer a lot, I've got a
14 lot of opinions, your Honor, so does Mr. Faruki, that
15 doesn't mean we can start calling each other as
16 witnesses and start sponsoring opinions before your
17 Honors.

18 EXAMINER PRICE: Mr. Whitt.

19 MR. WHITT: Your Honor, I believe that we
20 have established that the witness is an expert by
21 virtue of education, training, and experience in the
22 area of utility regulation. As we are all aware in
23 this field, the business is driven almost entirely by
24 the legal and regulatory aspects imposed on market
25 participants.

1 We've seen a number of motions to strike
2 filed by DP&L on the basis that people weren't
3 lawyers and couldn't offer opinions. Now we have a
4 lawyer who's offering an opinion, they seek to strike
5 that testimony as well. The motion should be denied.

6 EXAMINER MCKENNEY: Mr. Faruki, your
7 motion to strike is denied. I'm sorry, Mr. Sharkey,
8 your motion to strike is denied.

9 EXAMINER PRICE: If Mr. Faruki made the
10 motion, it might have been different.

11 (Laughter.)

12 MR. WHITT: He's an expert.

13 Q. (By Mr. Sharkey) Mr. White, IGS is a CRES
14 provider, right?

15 A. Yes.

16 Q. It has not bid, in the past, into
17 competitive auctions that have occurred in Ohio?

18 A. No.

19 Q. So you're agreeing with me that it has
20 not, right?

21 A. Yes.

22 Q. You don't know whether IGS will, in fact,
23 bid in competitive auctions in Ohio in the future, do
24 you?

25 A. I don't know.

1 Q. IGS is not a customer of DP&L, right?

2 A. No.

3 Q. Again, it's a --

4 A. Yes.

5 Q. Poorly-phrased question. You are
6 agreeing with me.

7 A. Yes, IGS is not a customer of DP&L.

8 Q. You recommend that the Commission reject
9 DP&L's request for an SSR and switching tracker?

10 A. Yes.

11 Q. Turn to page 4 of your testimony, if you
12 would. It's the answer that's on line 13. You
13 assert that the Commission should reject DP&L's
14 request for an SSR and a switching tracker based upon
15 your interpretation of Ohio Revised Code 4928.38 and
16 4928.141, right?

17 A. That's part of my rationale, yes.

18 Q. Okay. And those are statutory provisions
19 dealing with transition costs, correct?

20 A. Among other things, yes.

21 Q. You're aware that DP&L recovered
22 transition costs in its 1999 ETP case?

23 A. That's my understanding.

24 Q. Okay. And you understand that DP&L
25 Witness Chambers has sponsored testimony that the

1 levels of DP&L's SSR are reasonable?

2 A. If that's what the record says, then I'll
3 accept the record.

4 Q. I'm not asking you to accept the record
5 or not. If you know or you don't know, you can tell
6 me "Yes, I know that," or "No, I'm not aware of
7 that."

8 A. I don't recall exactly what he testified
9 to.

10 Q. Okay.

11 A. But I reviewed his testimony and, again,
12 I'll accept the record if that was his testimony.

13 Q. Do you recall that he at least offered
14 testimony in support of DP&L's request for the SSR
15 and switching tracker?

16 A. Yes.

17 Q. Okay. You're not familiar with the
18 methodology used by Dr. Chambers to determine whether
19 or not the SSR and ST were appropriate, right?

20 A. In this case?

21 Q. In this case.

22 A. I mean, yes. I reviewed his testimony.

23 Q. You reviewed his testimony --

24 A. Yes.

25 Q. -- but you don't recall the details of

1 how he reached his conclusion that the SSR and
2 switching tracker were reasonable, do you?

3 A. Let me think about that.

4 I think, generally, I understand why he
5 thought they were reasonable, yes.

6 Q. Let's short-circuit this. Regarding your
7 assertion that the SSR and ST, switching tracker,
8 it's true, isn't it, that you don't know if the
9 methodology used to establish DP&L's transition costs
10 is the same as, or even similar to, the methodology
11 used by DP&L to calculate the amount of the SSR and
12 switching tracker?

13 A. Can you repeat the question?

14 Q. Okay. It's true, isn't it, that you
15 don't know if the methodologies used by DP&L to
16 calculate its transition costs in the 1999 case, you
17 don't know whether those methodologies are the same
18 as, or even similar to, the methodologies that DP&L
19 used to calculate the amount of its SSR and switching
20 tracker?

21 A. Yes.

22 Q. That's true.

23 A. Yes.

24 Q. Do you have before you a copy of DP&L's
25 exhibits? Should be in that binder, black binder.

1 If you would turn to DP&L Exhibit 103.

2 MR. WHITT: May I approach, Jeff, or do
3 you have an extra copy?

4 MR. SHARKEY: Can we go off the record
5 briefly, your Honor?

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

8 (Discussion off the record.)

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

11 Q. (By Mr. Sharkey) Mr. White, do you have,
12 before you, a copy of DP&L Exhibit 103?

13 A. Yes.

14 Q. Okay. If you would turn to page 2,
15 subsection (d), do you see that that begins with the
16 phrase "Terms, conditions, or charges"?

17 A. Yes.

18 Q. Okay. You agree with me that the SSR and
19 ST are both a term, condition, or charge?

20 A. They're a proposed charge.

21 Q. Fair enough.

22 You also agree with me that you don't
23 sponsor any testimony on whether or not those
24 proposed charges, and I'm reading from subsection
25 (d), whether they relate to limitations on customer

1 shopping for retail electric generation service,
2 bypassability, standby, back-up, or supplemental
3 power service, default service, carrying costs,
4 amortization periods, and accounting for deferrals,
5 including future recovery of such deferrals.

6 My question, again, was: Your question
7 doesn't address whether or not the SSR and ST relate
8 to those items.

9 A. I don't specifically address those terms
10 in my testimony; that language in my testimony.

11 Q. And you also don't sponsor any testimony
12 regarding whether the SSR and ST would have the
13 effect of stabilizing or providing certainty
14 regarding electric service?

15 A. I don't explicitly address that language
16 in my testimony.

17 Q. You don't address at all whether or not
18 the SSR and ST would have the effect of stabilizing
19 or providing certainty regarding electric service, do
20 you?

21 A. I don't explicitly address that in my
22 testimony.

23 Q. You keep using the word "explicitly."
24 You don't address that topic implicitly or
25 explicitly, do you?

1 A. The testimony refers to everything in the
2 case, but it's not the language in my testimony.

3 Q. There wouldn't be any spot in your
4 testimony where you address whether or not the
5 proposed charges would have the effect of stabilizing
6 or providing certainty regarding retail electric
7 service, right?

8 A. No.

9 Q. Turn to page 5 of your testimony, if you
10 would, please. Starting on page -- I'm sorry,
11 starting on line 11. As I read your testimony, you
12 advocate that DP&L should not have a wholesale
13 competitive bidding process if it is to receive the
14 SSR and switching tracker; is that right?

15 A. Yes.

16 Q. I'm sorry, I think I gave you a bum line
17 cite. I think the actual line cite is line 20; is
18 that right?

19 A. Yes.

20 Q. In any event, you understand that the
21 purpose of a wholesale auction would be to establish
22 the rate that DP&L's SSO customers pay?

23 A. Yes.

24 Q. Okay. And you told me earlier that IGS
25 hasn't bid and doesn't plan to bid in the wholesale

1 auctions in the future, right?

2 A. We haven't. I can't represent whether or
3 not we plan to in the future.

4 Q. You're not aware of any plans to bid into
5 wholesale auctions in the future.

6 A. I can't represent one way or the other
7 whether we plan to bid into the auction in the
8 future.

9 MR. WHITT: Mr. White?

10 A. I can't represent whether we plan to bid
11 into an auction in the future.

12 Q. In any event, IGS is not an SSO customer
13 of DP&L, so it wouldn't pay the results of a
14 competitive bidding process, right?

15 A. Yes.

16 Q. You are aware that DP&L customers
17 advocate that DP&L should have competitive bidding?

18 A. I think there's multiple different
19 customers that advocate for multiple different
20 things, so to claim that customers advocate one way
21 or another is, you know, you can't do it.

22 Q. Are you aware that some of DP&L's
23 customers advocate that DP&L should, in fact, have
24 competitive bidding?

25 A. Yes.

1 Q. And some of them, in fact, advocate that
2 DP&L should have competitive bidding at a more rapid
3 pace than DP&L, in fact, proposes, don't they?

4 A. Yes.

5 Q. You're not aware of any customers who
6 have advocated that DP&L not have competitive
7 bidding?

8 A. There are multiple different customers
9 out there and I'm not aware of every customer's
10 opinion.

11 Q. I wouldn't expect you to be aware of
12 every customer's opinion, but my question just says
13 you're not aware of any customers who have made an
14 appearance in this case and in their appearances have
15 advocated that DP&L should not have competitive
16 bidding.

17 A. I'm not aware of any.

18 Q. Turning, if you would, to page 7 of your
19 testimony. You address, there, DP&L's request for a
20 reconciliation rider, correct?

21 A. Yes.

22 Q. There's been a lot of testimony already
23 in this case regarding what the reconciliation rider
24 is and DP&L's concerns about it, so I'm not going to
25 ask you those questions.

1 But it is true, isn't it, that your
2 proposed resolution to the issues DP&L's addressed
3 through the reconciliation rider is that DP&L would
4 conduct retail auctions?

5 A. Yes.

6 Q. You discussed that item with Mr. Berger
7 here earlier, didn't you?

8 A. Yes.

9 Q. It's true, isn't it, that you're not
10 aware of any reason to expect that customer pricing
11 would be lower under a retail auction than it would
12 under a wholesale auction?

13 A. There is -- it could be. To the extent
14 customer -- or, to the extent suppliers are willing
15 to pay for -- more for a retail relationship with a
16 customer, depending on how the retail auction is
17 structured, it could result in lower pricing,
18 but . . .

19 Q. Do you have a copy of your deposition
20 handy, Mr. White?

21 A. Yes.

22 MR. SHARKEY: Your Honors, if I may
23 approach?

24 EXAMINER MCKENNEY: You may.

25 Q. Turn, if you would, to page 31.

1 A. Yes.

2 Q. Line 8.

3 Question: "Is there any reason to expect
4 that customers' pricing would be lower under a retail
5 auction than under a wholesale auction?"

6 Answer: "I don't know. I can tell you
7 that on a retail auction, you can -- A, my proposal
8 -- the other benefit of my proposal to customers is
9 that my proposal -- the revenues from the retail
10 auction would go to reduce not -- some of the
11 deferred costs -- the deferred costs or other
12 nonbypassable charges that the Commission is levying
13 on customers.

14 "So that is a benefit to all customers
15 for a retail auction, and again, I can't tell you
16 what the price is going to be in retail auctions
17 versus wholesale auctions because that would be just
18 speculation, but what I can say is, you know, it's
19 potential to structure the bidding to come in below
20 DP&L's base generation rates."

21 Did I read that accurately, Mr. White?

22 A. Yes.

23 Q. It's also true, isn't it, that you're not
24 aware of any law in the State of Ohio that authorizes
25 or even requires -- I'm sorry, strike that.

1 You're not aware of any law in Ohio that
2 requires or even authorizes retail auctions?

3 A. I believe the policy of the state,
4 numerous policy -- numerous parts of the policy of
5 the state including, I don't have the Revised Code in
6 front of me, but a provision that essentially says
7 that it's the policy of the state to recognize
8 competitive markets and flexible regulatory
9 treatment, that would be a part of the Revised Code
10 that would support and authorize the implementation.

11 There are also other provisions in the
12 Revised Code that discuss enhancing competitive
13 markets, but I don't have the actual Revised Code in
14 front of me to point to the specifics.

15 Q. It's true, isn't it, that other than the
16 policies of the state, you're not aware of any
17 specific statutory section that authorizes or
18 requires retail auctions?

19 A. Again, I don't have the Ohio Revised Code
20 in front of me to point to any specific statute.

21 Q. That's not my question. My question is,
22 as you sit here today, are you aware of any specific
23 section that authorizes or requires the Commission to
24 have retail auctions?

25 A. Other than the Revised Code section that

1 I pointed -- I brought up, no.

2 Q. Turn to page 9 of your testimony, would
3 you, please.

4 A. Okay.

5 Q. You recommend, starting on page 9, that
6 DP&L employ a purchase of receivables program,
7 correct?

8 A. Yes.

9 Q. It's true, isn't it, that you're not
10 aware of any statute or Commission rule that requires
11 DP&L to have a purchase of receivables program?

12 A. Again, back to the policy of the state to
13 recognize competitive markets, grants the Commission
14 flexibility to have -- flexibility in the regulatory
15 treatment for competitive markets, that provision,
16 and the numerous other policies of the state to --
17 that are supportive of competitive markets. Other
18 than those, no.

19 Q. None of those specifically require The
20 Dayton Power & Light Company to offer a purchase of
21 receivables program, do they?

22 A. That's right.

23 Q. It's true, isn't it, that IGS has
24 voluntarily elected to do business with retail
25 customers in DP&L's service territory?

1 A. Yes.

2 Q. Okay. IGS could eliminate the risk of
3 nonpayment by not doing business with those
4 customers, couldn't they?

5 A. Yes.

6 Q. IGS could at least mitigate the risk of
7 nonpayment by requiring its customers to make a
8 deposit at IGS before IGS agreed to provide service
9 to those customers, right?

10 A. The deposit would mitigate, but not
11 eliminate, the risk.

12 Q. The risk that a customer will not pay is
13 going to exist for somebody under any and all
14 proposals, correct?

15 A. In the POR proposal that I'm proposing,
16 the risk that the customer will not pay -- it depends
17 on where the risk falls. It doesn't fall on the POR
18 proposal, it falls, like all customers, in an
19 uncollectible expense rider or a -- if you choose to
20 go the discount-rate method, then the discount rate.

21 Q. The point is somebody is going to have to
22 bear the risk that a customer's not going to pay its
23 bill it owes to IGS, right?

24 A. Just like somebody bears the risk for
25 default-rate customers, yes.

1 Q. And your proposal is that somebody bear
2 that risk other than IGS.

3 A. My proposal is that IGS's customers be
4 treated like all customers where the risk of
5 nonpayment is recovered through an uncollectible
6 expense rider or, in the alternative, if the
7 Commission sees appropriate, a discount rate apply to
8 CRES supplier receivables.

9 Q. Well, you understand that The Dayton
10 Power & Light Company is compelled by law to offer a
11 standard service offer to customers?

12 A. I'm not a hundred percent sure that's
13 entirely accurate, but I'll -- for the purpose of
14 this question, I'll accept that as your statement.

15 Q. Okay. So whether or not The Dayton
16 Power & Light Company believes that a particular
17 customer is creditworthy or likely to pay its bill,
18 DP&L still has to provide service to those customers,
19 doesn't it? If you don't know, you can tell me that
20 you don't know.

21 A. No, I'm thinking.

22 Q. Okay.

23 A. Can you repeat the question?

24 Q. Sure. Do you know whether the Dayton
25 Power & Light Company has to provide service to

1 customers whether or not DP&L believes that customer
2 is a good credit risk?

3 A. I believe, I'm not a hundred percent
4 sure, but DP&L has credit standards that it can
5 reject service to customers if they don't meet those
6 standards. Or if they can't pay an appropriate
7 deposit, I believe that DP&L has the ability not to
8 serve customers, but I don't have DP&L's tariff in
9 front of me.

10 Q. Let's just move on.

11 It's true, isn't it, that your testimony
12 does not address whether DP&L could maintain its
13 financial integrity under the proposal that you make?

14 A. That's not -- you're right; no, I don't,
15 no.

16 Q. Nor do you address whether DP&L can
17 provide reliable service if it were compelled to
18 implement the proposals made in your testimony.

19 A. In my testimony I don't explicitly
20 address whether or not DP&L can maintain reliable
21 service.

22 Q. You do agree with me it's in the best
23 interest of DP&L's customers that DP&L be able to
24 provide reliable service, right?

25 A. I believe that it's in the best interest

1 of distribution customers that DP&L is able to
2 maintain reliable service through its distribution
3 network.

4 MR. SHARKEY: Thank you, Mr. White.

5 Your Honors, I have no more questions.

6 EXAMINER MCKENNEY: Staff?

7 MR. McNAMEE: Nothing.

8 EXAMINER MCKENNEY: Mr. Whitt, redirect?

9 MR. WHITT: Briefly.

10 - - -

11 REDIRECT EXAMINATION

12 By Mr. Whitt:

13 Q. Mr. White, do you still have DP&L Exhibit
14 103 in front of you?

15 A. Yes, I do.

16 Q. Could you turn to the second page,
17 please. And do you recall being asked the question
18 of whether you were aware of any specific statutes
19 that authorized retail auctions?

20 A. Yes.

21 Q. Now, could you look at subdivision (d) on
22 page 2 of DP&L Exhibit 102 -- I'm sorry, 103. Would
23 it be your opinion that subsection (d), which talks
24 about "Terms, conditions, or charges...as would have
25 the effect of stabilizing or providing certainty

1 regarding retail electric service," would that
2 provision accommodate, in your opinion, the
3 Commission to authorize retail auctions?

4 A. Can you give me a second to read that
5 provision?

6 Yes.

7 Q. Would the same subdivision, in your
8 opinion, authorize the Commission to authorize the
9 POR program as a term, condition, or charge that
10 would have the effect of stabilizing or providing
11 certainty regarding retail electric service?

12 A. Yes.

13 Q. You were asked whether you were aware of
14 any DP&L customers who advocated competitive bidding
15 and I believe your answer was that you were aware of
16 some customers that advocated that; is that correct?

17 A. For a competitive bidding?

18 Q. Yes.

19 A. Yes.

20 Q. Are you aware of any DP&L customers who
21 have appeared in this proceeding to support DP&L's
22 recovery of over two-thirds of a billion dollars in
23 SSR revenues over five years? Have customers showed
24 up to support that?

25 A. Not that I'm aware of.

1 MR. WHITT: Thank you.

2 EXAMINER MCKENNEY: Anything further?

3 MR. WHITT: Nothing further.

4 EXAMINER MCKENNEY: Recross?

5 MR. SHARKEY: No, your Honors.

6 - - -

7 EXAMINATION

8 By Examiner Price:

9 Q. Have you ever looked at the transcripts
10 of the public hearings held in this case regarding
11 whether customers supported the ESP as a whole?

12 A. In this case, have I looked at the public
13 hearing transcripts?

14 Q. Yes.

15 A. No, I haven't, your Honor.

16 Q. Have you looked at the public comments in
17 the docketing section?

18 A. I go through the docketing section and
19 look at filings from time to time, but --

20 Q. With respect to this case?

21 A. Yes. Yes.

22 Q. And you've never seen any public comments
23 supporting Dayton's ESP?

24 A. Off the top of my head I'm not -- I don't
25 know exactly what the public comments say.

1 Q. Fair enough.

2 You have an average cost of customer
3 acquisition in your business, don't you?

4 A. Yes.

5 Q. I'm not asking what it is.

6 A. No. Yes.

7 Q. Your company calculates that.

8 A. More or less.

9 Q. And you expect your proposal for
10 acquiring customers to be less than your average cost
11 of customer acquisition, don't you?

12 A. Are you talking about the retail auction
13 proposal?

14 Q. The retail auction proposal.

15 A. The cost to acquire retail customers
16 under the retail auction proposal versus acquiring
17 them in the market. That, I don't know. I don't
18 know what the actual -- I would imagine that the
19 price that comes in the retail auction to acquire
20 customers in that mechanism would be in line with
21 what marketers would pay acquisition costs for --

22 Q. Because it would be irrational --

23 A. Right.

24 Q. -- for a marketer to bid more than their
25 average customer acquisition cost, wouldn't it?

1 A. I would imagine it would come in, however
2 much in general marketers wanted to pay for a
3 customer, they would be willing to pay that much to
4 acquire a customer including all costs involving
5 acquiring customers, regulatory verification, there's
6 more than just acquisition costs in getting a
7 customer.

8 Q. Okay.

9 A. But all costs, I would imagine that would
10 be closed under the retail auction proposal.

11 Q. And you accepted, I think, the point that
12 counsel for DP&L made, that the shopping rate is
13 about 62 percent right now in their service
14 territory; is that correct?

15 A. Yes. I think that's pretty much been the
16 accepted rate, yes.

17 Q. So there's 38 percent of the customers
18 have chosen not to shop.

19 A. Yes.

20 Q. And under your proposal, they would be
21 assigned to a marketer and they would stay with that
22 marketer until they affirmatively decided to go
23 somewhere else.

24 A. Yes.

25 Q. They would be there forever.

1 A. They could be, but not required to be,
2 and they will face no cancellation fees if they
3 leave.

4 Q. Would the Commission regulate the amount
5 that they were charged by that marketer or would the
6 marketer simply choose to charge whatever their
7 monthly variable was, whether it was 10 cents a
8 kilowatt-hour or \$50 a kilowatt-hour?

9 A. Under my proposal the rate would always
10 be published on the utility's Apples to Apples
11 website.

12 Q. That's not what I asked.

13 A. Well, to an extent it is a --

14 Q. It would be disclosed.

15 A. It would be required, but to the point
16 where would the Commission dictate what that rate is?
17 No.

18 Q. Are there any limitations on the rate?

19 A. To the extent that it would always be
20 published on the Apples to Apples website and that
21 all -- everybody would have access to those customers
22 that they knew were on that variable rate, the
23 limitations would be like in all markets, you know,
24 the market rate. That's how, you know --

25 Q. That's what I'm asking you. I'm asking

1 you are you envisioning something that would be
2 either NYMEX plus an adder, or are you envisioning
3 something that the marketer simply chooses at their
4 discretion?

5 A. It would be a variable rate and it would
6 be a transparent rate, but it would not be a
7 regulated rate.

8 Q. What does "transparent" mean?

9 A. Meaning always published in an open
10 source, available to everyone, including competitors,
11 who wish to solicit customers on that rate.

12 Q. How much time would a customer get to
13 have to review the rate, from month to month, before
14 they decided to switch or not to switch? Would the
15 rate be published two weeks before the actual time
16 the customer would have to pay?

17 A. Well, under my proposal, the customer
18 would be on a percentage-off rate to the default rate
19 for a period of time, whether it be a year or two,
20 and then if the remaining customers that were
21 maintained on that percentage-off rate --

22 Q. I'm talking about customers who have
23 never -- chosen affirmatively to leave that market.

24 A. And, again, this is -- some of these
25 details will have to be worked out in the

1 implementation phase. But I envision it, I would
2 suggest that it would be, like, whenever a supplier
3 publishes his, you know, his rate on the Apples to
4 Apples website, they can switch at any time and they
5 will have -- they're required to publish that at a
6 certain period of time for, you know --

7 Q. I guess my question is: When would the
8 customer know ahead of time what rate they're going
9 to get charged for the next month if it's not a, if
10 we're not talking about a NYMEX plus an adder or
11 something like that?

12 A. I think it would -- again, this is
13 implementation-phase stuff, but you could put
14 something like two weeks beforehand the supplier must
15 publish that rate before it goes into effect. I
16 mean, I think that's a rule that could be established
17 as part of that process. Or a month. I mean,
18 whatever the, you know, the parties find reasonable
19 including the Commission.

20 Q. And how long would -- this would be part
21 of Dayton's ESP; is that correct?

22 A. Yes.

23 Q. And how long, what's the term of the ESP
24 that you're proposing? How long would we do this
25 retail generation auction?

1 A. Well, it would be a one-off auction. So
2 that once -- you would only have to conduct the
3 auction once.

4 Q. So this would be an ESP forever?

5 A. It would essentially -- yes, it would
6 essentially eliminate the need to file more ESPs.

7 Q. What if Dayton ever decided they want to
8 do a market rate offer, will they ever have the
9 ability to come in and file for a market rate offer?

10 A. Would they ever? Again, I think part of
11 that is it would have to be determined by the
12 Commission what kind of framework they want to put
13 around it, whether or not they allow Dayton to, I
14 mean, from my general understanding, the Commission
15 always has the authority to review the rates and, if
16 it's not working, you know, switch to a different
17 mechanism, rate mechanism.

18 But, I mean, those details I'm not quite
19 aware of.

20 Q. Can the Commission preclude Dayton from
21 ever filing for a market rate offer by adopting an
22 ESP with no ending date? You're an attorney, I can
23 ask you legal questions.

24 A. Could the Commission ever preclude?

25 Q. Could the Commission preclude Dayton from

1 ever filing for a market rate offer by approving the
2 ESP with no termination date whatsoever?

3 A. I think that's a question open for legal
4 interpretation.

5 Q. That's why I'm asking you. You're an
6 attorney.

7 (Laughter.)

8 A. You know, I would have to review the
9 statutes. I would believe so, yes, under -- yes.

10 EXAMINER PRICE: Yes. Okay. Fair
11 enough. I'm done.

12 EXAMINER MCKENNEY: All right. Thank
13 you, Mr. White. You're excused.

14 Any objection to the admission of IGS 1?

15 MR. SHARKEY: Just the ones previously
16 stated, your Honors.

17 EXAMINER MCKENNEY: Continuing objection
18 is noted. IGS 1 will be admitted at this time.

19 (EXHIBIT ADMITTED INTO EVIDENCE.)

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

21 (Discussion off the record.)

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

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 Joseph G.
3 Bowser, and my business address is 21 East State
4 Street, Columbus, Ohio.

5 EXAMINER PRICE: Thank you.

6 Mr. Darr.

7 MR. DARR: I request to have marked a
8 document as IEU Exhibit 1 and 1A; the first being the
9 public testimony and the latter being the
10 confidential testimony of Joseph G. Bowser.

11 EXAMINER PRICE: It will be so marked.

12 (EXHIBITS MARKED FOR IDENTIFICATION.)

13 - - -

14 JOSEPH G. BOWSER

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

17 DIRECT EXAMINATION

18 By Mr. Darr:

19 Q. Mr. Bowser, do you have in front of you
20 what's been previously marked as IEU Exhibits 1 and
21 1A?

22 A. Yes.

23 Q. Can you identify those for us, please.

24 A. Yes. It's my -- they're my prefiled
25 direct testimony in this case.

1 Q. Do you have any additions or corrections
2 to that testimony?

3 A. Yes, I do.

4 Q. Could you outline those for us, please?

5 A. Yes. Page 8, on lines 18 and 24, I refer
6 to the, all capitals, "TCRR-B." In both of those
7 cases it should be just "TCRR." That's, again, lines
8 18 and 24, on page 8.

9 Then turning to page 13, on line 14, the
10 figure "1.328.5 billion," that second decimal point
11 should not be there, so that the corrected figure is
12 "1.3285 billion."

13 Also on page 13, during my deposition it
14 was pointed out to me that I had made a minor error
15 in calculating the ROE that I calculated on line 22
16 and, basically --

17 EXAMINER PRICE: You're not going to say
18 anything confidential, are you?

19 THE WITNESS: No, not yet, your Honor.

20 EXAMINER PRICE: Okay.

21 THE WITNESS: My final correction will
22 be, though.

23 EXAMINER PRICE: Okay. Excellent.

24 A. The ROE there of "10.8" percent should be
25 "10.6" percent, and the reason that that number

1 changed was I needed to add, into the ending common
2 equity balance, the net income effect of that
3 adjustment.

4 Q. You said the last change is in the
5 confidential section?

6 A. Yes, it is.

7 EXAMINER PRICE: Let's go on the
8 confidential portion of the transcript at this time.

9 (Confidential portion excerpted.)

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22 (Open record.)

23 Q. (By Mr. Darr) With those corrections, if
24 you were asked the questions contained in your
25 prefiled testimony marked as Exhibits 1 and 1A, would

1 your answers be the same?

2 A. Yes.

3 MR. DARR: I tender the witness for
4 cross-examination, your Honor.

5 EXAMINER PRICE: Thank you.

6 OCC?

7 MR. BERGER: No questions, your Honor.

8 EXAMINER PRICE: IGS?

9 MR. WILLIAMS: No questions, your Honor.

10 EXAMINER PRICE: FES?

11 MR. CASTO: No questions.

12 EXAMINER PRICE: Mr. Yurick?

13 MR. YURICK: No questions, your Honor.

14 EXAMINER PRICE: Mr. Faruki?

15 MR. FARUKI: Thank you, your Honor.

16 - - -

17 CROSS-EXAMINATION

18 By Mr. Faruki:

19 Q. Good afternoon, again, Mr. Bowser.

20 A. Good afternoon.

21 Q. You are neither an economist nor an
22 attorney; is that right?

23 A. Correct.

24 Q. Would you look at your testimony, I'd
25 like to start on page 12, line 6, you have a sentence

1 that begins "Based on advice from counsel, such an
2 anticompetitive subsidy would violate Section
3 4928.02(H)." Do you see that?

4 A. Yes.

5 Q. You have a number of points which I'd
6 like to go through relatively quickly of your
7 testimony in which you are making such statements
8 about Revised Code sections.

9 Would you turn with me next to page 15.
10 On page 15, question 24, you are asked a question
11 about whether the Commission's authority to provide
12 relief to meet financial integrity claims applies to
13 the competitive side of an electric distribution
14 utility's financial performance, and your response
15 begins: "No. On the advice of counsel, Section
16 4909.16...applies only to the noncompetitive side of
17 an EDU's financial performance." Is that right?

18 A. Yes.

19 Q. 4909.16, you recognize or recall, is the
20 statute that governs emergency rate cases?

21 A. Yes, it is.

22 Q. And then if you turn back to page 9, you
23 have a similar "advice of counsel" statement at line
24 3, this time about 4928.143; is that correct?

25 A. Yes.

1 Q. At page 10 you have a couple of those,
2 one is at lines 14 and 15; is that right?

3 A. On line 14, I see that, yes.

4 Q. Yes, sir. That's another -- I was just
5 trying to shorten this up. In other words, lines 14
6 and 15 is another "Based upon the advice of counsel
7 here's what Ohio law specifically requires," is that
8 right?

9 A. Yes.

10 Q. And then on the same page, lines 22 and
11 23 of page 10, you have a statement about section
12 4928.143(B)(2)(c), also made on advice of counsel; is
13 that right?

14 A. Yes.

15 Q. Line 11, page -- I'm sorry, page 11, line
16 3, you say "...Ohio law prohibits recovery of all
17 renewable benchmark compliance costs through a
18 non-bypassable charge," and you cite section
19 4928.64(E); is that right?

20 A. Yes.

21 Q. Same page, line 11, a similar statement
22 is in line 11, where you are talking about --

23 EXAMINER PRICE: What was the page
24 reference on the one?

25 MR. FARUKI: I'm sorry, your Honor. It's

1 page 11 and line 11, where he's talking about
2 compliance with the Ohio Revised Code requirements
3 which he says "prohibit a nonbypassable charge for
4 recovery of the costs of renewable benchmark
5 compliance."

6 Q. Is that right, sir?

7 A. Yes.

8 Q. And then I believe the last one is on
9 page 17, lines 4 and 5, with the sentence beginning
10 "First, on the advice of counsel, the Application's
11 assertion of threatened financial integrity is not
12 one which the Commission may consider or act upon
13 unless and until the procedural and substantive
14 requirements of Section 4909.16...are satisfied." Is
15 that right?

16 A. Yes.

17 Q. My final one, then, is page 20, lines 1
18 and 2, where you are making a statement -- the advice
19 of counsel actually begins on the bottom of page 19,
20 page 19, line 23 specifically, and you're talking
21 about the scope of the Commission's jurisdiction on
22 the top of 20; is that right?

23 A. Yes.

24 Q. You agree with me that with respect to
25 the legal opinions and conclusions you state in your

1 testimony, that you are not qualified to be opining
2 on questions of law; is that right?

3 A. I am not a lawyer.

4 Q. That answers some of my question, but not
5 all of it, so I'll ask you again. Isn't it true that
6 you agree with me that with respect to the legal
7 opinions and conclusions you state, you are not
8 qualified to be opining on questions of law? Isn't
9 that true?

10 A. Correct.

11 Q. Okay. You also agree with me that these
12 statements that we have reviewed together form part
13 of the basis of your opinions in this case?

14 A. Yes, they do.

15 Q. More broadly, in terms of the foundation
16 of your testimony, one of the key assumptions
17 underlying your testimony here is a legal point that
18 you believe the Commission lacks jurisdiction with
19 regard to generation; is that true?

20 A. Yes. Generation has been found to be a
21 competitive service and the Commission does not --
22 does not have the ability to use ROEs on generation
23 as a basis for determining, let's say, the SSR charge
24 in this case.

25 Q. Again, that answers most of my question,

1 but that belief that you just articulated is one of
2 the key assumptions that underlies your testimony,
3 isn't it?

4 A. It's one of the assumptions, yes.

5 EXAMINER PRICE: When you say
6 "competitive," do you mean market-based?

7 THE WITNESS: Not necessarily.
8 Generation is now a competitive service, whereas
9 distribution is not. You know, the ESP basically is
10 a distribution utility providing a standard service
11 offer, that's the way I would see that.

12 EXAMINER PRICE: Okay.

13 Q. Let me ask about your definition of
14 "financial integrity," which is a question I've been
15 asking a number of witnesses. Your definition of
16 "financial integrity" is different from that of some
17 of the other intervenors' witnesses because your
18 definition is based upon the standards for emergency
19 rate relief under section 4909.16; is that correct?

20 A. Yes. Because of the nature of the
21 company's request, I felt that that was the
22 appropriate definition of "financial integrity" that
23 would be applied in this case.

24 Q. So as you use the term "financial
25 integrity" in this case, it would be coincident with

1 the standard for emergency rate relief at the
2 Commission; is that correct?

3 A. That's correct.

4 Q. In fact, you admit that you are not aware
5 of the definition of "financial integrity" as it is
6 used in literature of financial analysis of companies
7 in the United States; isn't that correct?

8 A. That's correct.

9 Q. So if we look at page 3 of your
10 testimony, you have a statement, in lines 12 and 13,
11 where you're expressing the opinion that DP&L
12 improperly defines financial integrity. Do you see
13 that?

14 A. At line 12?

15 Q. Twelve and 13, sir.

16 A. Yes.

17 Q. When you write that, or when you say
18 that, however, you are not saying that DP&L is using
19 a definition of "financial integrity" that is at
20 variance with the generally-accepted definition in
21 the financial literature; isn't that true?

22 A. Yes. I'm saying that I don't believe
23 that that's the appropriate definition that would
24 apply in this case.

25 Q. Not only that, I understand that point,

1 but the next point is you are not saying that the
2 definition that DP&L uses is out of the mainstream in
3 terms of the definition of "financial integrity" in
4 the literature in this country; isn't that true?

5 A. What do you mean by "the mainstream"?

6 Q. I'm talking about the definition of
7 "financial integrity" as it is generally accepted in
8 the literature of financial analysis of companies.
9 And my question is: Isn't it true that you are not
10 claiming that DP&L uses it in some way that is
11 different from its generally-accepted definition in
12 financial analysis?

13 A. Correct.

14 Q. Now, a couple of times in your testimony
15 you have references to the emergency rate case
16 statute, 4909.16, and, in particular, you talk about
17 that on pages 15 and 16; is that correct?

18 A. Yes.

19 Q. You are -- I'll withdraw that.

20 You're aware, among other things, 4909.16
21 allows a utility to file an emergency rate case
22 seeking emergency rate relief, right?

23 A. Yes.

24 Q. You are also aware that section 4909.16
25 is not the statute upon which DP&L relies in its

1 application for an ESP, right?

2 A. Correct.

3 Q. And as I understand it, if the ESP, as
4 proposed by DP&L, were not to be approved, you are
5 not offering any testimony here about the level of
6 rate relief that might be required for DP&L; is that
7 correct?

8 A. That's correct.

9 Q. You do not offer any opinions in your
10 testimony about the financial prospects for DP&L's
11 generation business; isn't that right?

12 A. That is correct.

13 Q. You have not, in the course of your work
14 on this case, examined the extent to which the
15 137.5 million SSR charge would be necessary to assure
16 DP&L's continued ability to provide safe and reliable
17 electric service; is that correct?

18 A. That's correct.

19 Q. Your testimony includes an examination of
20 certain financial information from 2001 to 2012, but
21 you have not done any financial analysis for 2013 and
22 beyond; is that right?

23 A. Right. I think the parties tried to get
24 information in the case through discovery that would
25 allow them to do that with some confidence, but I

1 don't think the needed figures were forthcoming.

2 Q. And you didn't do it from any other
3 source either, right?

4 A. No, I did not.

5 Q. Okay. You agree with me that DP&L's past
6 financial performance is not necessarily a predictor
7 of future financial results?

8 A. Right. That would be true of any
9 company.

10 Q. You did not make an examination of the
11 negative effects on DP&L's financial condition of
12 additional customer switching, did you?

13 A. No.

14 Q. A little more broadly, you are not
15 offering an opinion here as to what you believe the
16 financial picture would be for DP&L over the period
17 of the ESP, are you?

18 A. No, I am not.

19 Q. You've read Mr. Jackson's testimony in
20 which he said that what DP&L wants is the opportunity
21 to earn a reasonable rate of return?

22 A. Yes.

23 Q. You recall that he expressed that
24 reasonable rate of return in a range?

25 A. Yes, I do.

1 Q. You also know that it's not unusual for
2 both the Commission and witnesses before the
3 Commission to express reasonable returns in the form
4 of a range; is that right?

5 A. Yes, it is. However, in this particular
6 case, the now-competitive-generation business is
7 included in the ROEs that Mr. Jackson calculated and
8 I don't believe that that's appropriate.

9 Q. You are aware that the Commission's
10 standard filing requirements for an ESP case require
11 that the applicant file pro forma financial
12 projections of the effect of the ESP's implementation
13 upon the electric utility for the duration of the
14 ESP; is that right?

15 A. I'm generally familiar with that, but I
16 don't recall precisely what has to be provided in
17 accordance with that. For instance, I don't recall
18 if projected ROEs are part of that.

19 Q. Well, you know that the applicant here
20 for the ESP is The Dayton Power & Light Company,
21 right?

22 A. Correct.

23 Q. You also know that's an integrated
24 company, by which I mean it has transmission,
25 distribution, and generation businesses.

1 A. Correct.

2 Q. You also know that when DP&L filed for an
3 ESP, the Commission's requirement, among other
4 things, was that pro forma financial projections of
5 the effect of the ESP's implementation upon the
6 electric utility had to be filed, right?

7 MR. DARR: Excuse me. I missed the end
8 of that. Could I have that read back?

9 EXAMINER PRICE: You may.

10 (Record read.)

11 MR. DARR: Thank you.

12 A. I don't recall that precisely, but I know
13 that generally there's a requirement to provide that
14 sort of information.

15 Q. Okay. You also understand that the SSR
16 would be a charge to provide cash flow support for
17 the transmission and distribution business as well as
18 for generation.

19 A. Yes, but my understanding is it's
20 primarily the generation business that's driving
21 that, that's driving the SSR.

22 Q. But not solely the generation business;
23 is that right?

24 A. Correct.

25 Q. At page 14 of your testimony you are

1 talking, among other subjects, about the history of
2 DP&L's dividends on common stock from 2001 to 2011;
3 is that right?

4 A. Yes.

5 Q. You're aware that in most of that period
6 it was a publicly-held company with different owners?

7 A. My recollection is that it was in
8 late-2011 that DPL, the parent of DP&L, was acquired
9 by AES, so yes, most of that period was different
10 ownership.

11 Q. Similar to a question I asked you a
12 couple of minutes ago, you agree with me that the
13 historic ability of a company to make dividend
14 payments is not a sign of future financial strength;
15 isn't that right?

16 A. That's correct.

17 Q. In fact, you agreed with me when we
18 talked about this at your deposition, that there have
19 been many companies which have had years of stable or
20 increasing dividends, but then run into financial
21 difficulties, right?

22 A. True. That doesn't necessarily mean that
23 that would happen to DP&L, but that can happen, yes.

24 Q. You understand that over the last two or
25 two-and-a-half years DP&L has experienced increasing

1 customer shopping?

2 A. Yes.

3 Q. It's the customer's decision to switch,
4 of course, not DP&L's decision to switch them, right?

5 A. Yes, it is.

6 Q. You also agree that there are some
7 conditions as to the future that DP&L doesn't have
8 control over, right?

9 A. Can you be more specific?

10 Q. Sure. DP&L has no control over the
11 market prices for natural gas, for example; is that
12 right?

13 A. I would assume that's the case, yes.

14 Q. Let me see if I can shorten this up. You
15 have not made any study or analysis in this case of
16 the extent to which the financial circumstances
17 facing DP&L are beyond its reasonable control; isn't
18 that right?

19 A. That's correct.

20 Q. With regard to the -- I'm changing
21 subjects now. With regard to the SSR and the
22 switching tracker, you agree that they would not
23 provide a guaranteed level of earnings; is that
24 right?

25 A. My understanding is that they would

1 provide a level of revenues which is not necessarily
2 a level of earnings.

3 Q. As to earnings, there are other factors
4 such as market price levels, the degree of customer
5 switching, among others, which would affect a
6 company's earnings, correct?

7 A. As well as the expense levels that the
8 company would incur, yes.

9 Q. And you have not formed an opinion, as I
10 understand it, that it is either likely or unlikely
11 that DP&L will experience financial problems
12 associated with its generation business; is that
13 true?

14 A. I have not made that determination.

15 Q. On, I think it's page 17 of your
16 testimony, yes, if you look with me, sir, at page 17
17 on lines 16 and 17, you are referring to testimony
18 from DP&L's witness Bill Chambers and the statement,
19 on line 16 and 17, where you're talking about "a
20 severe impact on DP&L's survival probability" was
21 your characterization after reading that testimony;
22 is that right?

23 A. Yes.

24 Q. You, to use your words, in the
25 deposition, you said you thought that indicated that

1 the financial condition of the company was a
2 potentially dire situation in his opinion, as you
3 read it.

4 A. That's what it sounded like to me, yes.

5 Q. But you are not offering an opinion, one
6 way or another, about whether the financial
7 circumstances that face DP&L would threaten its
8 survival; is that correct?

9 A. No, I'm not. I was saying that the way
10 Mr. Chambers portrayed that to me seemed like perhaps
11 the company should be asking for emergency rate
12 relief under 4909.16.

13 Q. You have not examined whether DP&L is
14 likely to be on a downward trajectory financially
15 without the SSR and the switching tracker, correct?

16 A. No, I have not.

17 Q. And I'll modify that question to ask only
18 about the SSR. You have not examined whether or not
19 DP&L's financial condition is likely to be on a
20 downward trajectory without the SSR, correct?

21 A. That's correct.

22 Q. You asked about O&M or you brought up O&M
23 expense reductions a couple minutes ago. Let me ask
24 you a couple of questions about that.

25 You read in the testimony of the DP&L

1 witnesses, including Mr. Jackson, about estimates
2 that DP&L did of potential O&M savings over the
3 period of the ESP, right?

4 A. Yes. I recall that.

5 (Confidential portion excerpted.)
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(Open record.)

Q. If I can shorten that up, basically, what you did to make those changes, this was something we talked about in your deposition, was that you had taken a shortcut that had the effect of artificially increasing ROE by a slight amount and you just revised it on direct examination; is that right?

A. Correct.

EXAMINER PRICE: At this time should we be going back to the public record?

MR. FARUKI: No, I wasn't going to get into those numbers, again, your Honor.

EXAMINER PRICE: So we should go back to the public record.

MR. FARUKI: I'm sorry, yes.

EXAMINER PRICE: In fact, let's go ahead and put that previous question and answer on the public transcript since we were changing territories and go on the public transcript.

Q. (By Mr. Faruki) Let me ask you some

1 questions about Section II of your testimony which
2 begins on page 4 about the reconciliation rider.

3 As you understand it, the purpose of the
4 competitive bid process is to move toward a
5 competitive bid process where generation is acquired
6 by means of an auction process; is that right?

7 A. Correct.

8 Q. Actually, you don't have an opinion on
9 whether or not you would favor that approach, do you?

10 A. I have not made that determination, no.

11 Q. You, on page 5, list some or refer to
12 some competitive retail system enhancements; is that
13 correct? Page 5, line 5.

14 A. Yes.

15 Q. Those competitive retail enhancements are
16 capital projects that would make it easier for CRES
17 providers to obtain information they need to sign up
18 customers; is that right?

19 A. To simplify it, I think that's a good
20 representation, yes.

21 Q. Okay. In your view, those enhancements
22 benefit the CRES providers?

23 A. Primarily, yes.

24 Q. With regard to your testimony on page 6,
25 you are not objecting to the timeline or the plan to

1 implement competitive retail enhancements or most of
2 the enhancements within 24 months after a Commission
3 order; is that right?

4 A. That's correct.

5 Q. And on page 7, with regard to your first
6 question, you agree with me that -- or, your first
7 answer, question 11, you agree with me that deferral
8 of expenses and recovery of those expenses over time
9 is a standard mechanism for cost recovery used by
10 electric utilities.

11 A. Yes, it is.

12 Q. And what you are describing on page 7, in
13 lines 3 to 6, would not be an unusual practice in
14 that regard, correct?

15 A. Correct.

16 Q. The rest of that answer, from lines 6
17 through 12, discusses a quarterly adjustment and that
18 also would not be an unusual practice; is that right?

19 A. Various riders tend to be adjusted at
20 different intervals, quarterly is not unusual.

21 Q. Here you don't object to a quarterly
22 adjustment of these riders, do you?

23 A. No. My objection is that the rider would
24 be a nonbypassable charge.

25 Q. With regard to the AER-N, the

1 nonbypassable AER rider, let me ask you some
2 questions about that in the first instance.

3 You believe that or you contend that the
4 finding of need for the facility must be in the ESP
5 case and the basis of that is advice of counsel from
6 the McNees firm that employs you; is that correct?

7 A. Do you have a reference in my testimony?

8 Q. I believe the subject of it is at 9 and
9 10 of your testimony.

10 A. Yes, that's correct.

11 Q. But you are aware of the fact that, with
12 respect to generation facilities, a finding of need
13 is usually done in the long-term forecast report
14 process, right?

15 A. My understanding is that's where findings
16 of need are typically made.

17 Q. You do not know or recall the state of
18 the market for solar RECs in 2010, do you?

19 A. No, I do not.

20 Q. You do recall, however, that in AEP's
21 2012 TCRR filing, the Commission found that AEP could
22 recover the current TCRR deferral on a nonbypassable
23 basis over three years in order to minimize the rate
24 impacts, right?

25 A. AEP's TCRR rider is a bypassable rider

1 and the decision that you're referring to, the
2 Commission permitted a \$36 million underrecovery to
3 be recovered through a nonbypassable charge over
4 three years.

5 Q. Okay.

6 EXAMINER PRICE: So you do recall that.

7 THE WITNESS: Yes, took me a, I had to
8 think that through.

9 Q. That's fine. Thinking's permitted.

10 You recall also that IEU was a party to
11 that case and objected to that treatment, right?

12 A. That's correct, yes.

13 MR. FARUKI: Thank you, Mr. Bowser.

14 Your Honors, that's all I have for this
15 witness.

16 EXAMINER PRICE: Staff?

17 MR. McNAMEE: Nothing, your Honor.

18 EXAMINER PRICE: I have a couple
19 follow-up questions.

20 - - -

21 EXAMINATION

22 By Examiner Price:

23 Q. Getting back to, and we'll use page 10,
24 line 14 as the example of this, in response to
25 question 17, you say "It is my understanding, based

1 upon the advice of counsel, Ohio law" specifies --
2 "specifically requires that the cost of compliance
3 with Ohio's renewable portfolio mandates must be
4 bypassable by shopping customers."

5 Is it your testimony that you are
6 offering no independent opinion on what this
7 provision says, you're solely relating what your
8 counsel told you?

9 A. Well, no. Based on my experience --

10 Q. So you are offering -- I'm sorry.

11 A. Yeah. Based on my experience over many
12 years, even though you're not an attorney, you still,
13 as part of your work, have to look at requirements
14 and try to interpret those.

15 Q. So you are offering an independent
16 opinion.

17 A. It's not -- it's not only the legal
18 conclusions -- or, not conclusions, but the advice of
19 counsel that leads me to all of my conclusions in
20 this testimony.

21 Q. Okay. So you are offering an
22 independent, based upon your own knowledge and
23 expertise, opinion on what these sections of the law
24 say.

25 A. Yes.

1 Q. Thank you.

2 Okay. On the AER-N, then, you do not
3 believe that the Commission can rely upon a decision
4 made in a previous Commission -- one more time.

5 Do you believe the Commission can rely
6 upon a determination made in a previous proceeding in
7 a subsequent proceeding?

8 A. My opinion was that 49 --

9 Q. I'm just asking generally. I'm not
10 asking specific to this. Do you believe that,
11 generally, the Commission can rely upon a
12 determination made in a previous proceeding in a
13 subsequent proceeding?

14 A. Generally, yes.

15 Q. For example, if there was a distribution
16 rate case and the Commission determined a just and
17 reasonable distribution rate and immediately
18 thereafter, when the rates go into effect, an
19 industrial customer filed a complaint regarding that
20 rate, the Commission could rely upon the previous
21 decision and say -- and dismiss the complaint.

22 A. Generally speaking, yes.

23 Q. And that's collateral estoppel. Are you
24 familiar with the term?

25 A. No.

1 Q. Okay. Well, we'll stay away from that.

2 But you do not believe in the case of a
3 rider-AER-type proposal, like we have here, that the
4 Commission can rely upon its determination made in
5 the previous LTFR to -- regarding the determination
6 of need.

7 A. Yeah, my interpretation was that that
8 determination of need had to be determined in this
9 particular case.

10 Q. Why is this different from the complaint
11 distribution rate case -- complaint proceeding
12 example I cited earlier?

13 A. My answer to that is the only reason I
14 can think of is because I believe there is a
15 provision that specifically says it has to be in the
16 ESP.

17 Q. So the mere Commission recognizing in the
18 ESP proceeding that it had previously made this
19 determination is insufficient for you.

20 A. The way I would interpret this, yes.

21 Q. Okay. Let's talk about the issue of
22 recovering the costs of compliance with rider AER --
23 strike that. One more time.

24 Let's talk about recovering the cost of
25 compliance with the renewable portfolio standards

1 that has to be done on a bypassable basis. You
2 cannot envision any possible structure that the
3 companies may propose which would accommodate both
4 the statutory requirement that compliance costs be
5 achieved on a nonbypassable -- on a bypassable basis
6 but still allow the funding of the generation
7 facility on a nonbypassable basis.

8 A. The way you put the question, I haven't
9 thought it through that way in terms of no
10 conceivable way of doing that. My bottom line is
11 that those renewable portfolio costs should be
12 bypassable costs.

13 Q. But if the company proposed a structure
14 so that all the compliance costs were bypassable, but
15 the cost of the generation facility was still
16 recovered on a nonbypassable basis, then you would
17 acknowledge that's fulfillment of the statutory
18 requirements.

19 A. I can't say that for sure. I don't know
20 if --

21 Q. Can you rule it out?

22 A. I'm not comfortable giving an opinion on
23 that. I feel like it's too legal.

24 Q. So you cannot rule it out at this point
25 in time.

1 A. I guess not, no.

2 Q. Okay. On the rider, rider RR, do you
3 believe that the costs of the competitive bid should
4 be recovered from customers on a bypassable basis
5 only from SSO customers?

6 A. Yes, because I believe they're the
7 primary beneficiaries of a competitive bid.

8 Q. So you don't think that -- that shopping
9 customers benefit at all from the competitive bid
10 process.

11 A. I think it would be too indirect or too
12 hard to measure.

13 Q. Okay. And the competitive enhancements,
14 is it true that although you think they may be a good
15 idea, you simply don't think highly enough of them
16 that you think that shopping customers should pay for
17 them?

18 A. I didn't really try to evaluate the
19 nature of the competitive enhancements and, you know,
20 whether those made sense as things to do, let's say,
21 but rather my, I guess my preferred choice would have
22 been that the company asked for that in, let's say, a
23 distribution rate case and the Commission could have
24 determined how that should be recovered at that time.

25 But barring that I think if it's a cost

1 that benefits the CRES providers by making it easier
2 for them to get the information they need to sign
3 customers up, then, to me, it would make sense that
4 they bear that cost.

5 Q. So your preferred option would be the
6 Commission not decide the competitive enhancements in
7 this proceeding but defer consideration of this issue
8 to a subsequent distribution rate case.

9 A. Yes.

10 Q. And in the event that your alternative
11 proposal, charging the CRES providers, were to be
12 ruled off the table by the Commission, and the
13 choices were to not proceed at this time, not proceed
14 at all, or charge customers on a nonbypassable basis,
15 which option would you choose?

16 A. I prefer not to proceed at all.

17 EXAMINER PRICE: Thank you.

18 Mr. Darr.

19 MR. DARR: Thank you, your Honor. Could
20 we have a couple minutes?

21 EXAMINER PRICE: You may. Let's go off
22 the record.

23 (Recess taken.)

24 EXAMINER PRICE: Let's go back on the
25 record.

1 Mr. Darr.

2 MR. DARR: Thank you, your Honor. Thank
3 you for the time.

4 - - -

5 REDIRECT EXAMINATION

6 By Mr. Darr:

7 Q. Mr. Bowser, you were asked a series of
8 questions concerning the review that you did with
9 regard to financial integrity of the company with or
10 without the SSR or the switching tracker. Do you
11 remember that line of questions?

12 A. Yes.

13 Q. Now, have you looked at the factors that
14 are contributing to the so-called challenges to
15 financial integrity that the company may be facing?

16 A. Not in detail, no.

17 Q. Okay. Based on your understanding of the
18 company's case, have you been able to identify the
19 factors that may be affecting the financial integrity
20 of the company?

21 A. Well, as --

22 MR. FARUKI: I'm going to object because
23 he just said he hadn't looked at them in detail.
24 There's no foundation.

25 EXAMINER PRICE: Mr. Darr?

1 MR. DARR: I believe what he said was
2 I've reviewed the testimony. I asked him
3 specifically with regard to the testimony presented
4 by the company, your Honor.

5 EXAMINER PRICE: Can I have the question
6 and answer -- the previous question and answer read
7 back, please?

8 (Record read.)

9 MR. FARUKI: Your Honor, that question
10 and answer she just read goes to lack of foundation
11 for the next questions.

12 EXAMINER PRICE: I'm going to overrule
13 the objection, but I'm going to caution Mr. Darr not
14 to lead the witness.

15 MR. DARR: Fair enough, your Honor.

16 A. Yeah, I think, as Mr. Faruki had asked me
17 earlier, you know, the SSR is driven, apparently in
18 large part, by generation, and I know there was
19 discussion in this case, I think there was discovery,
20 and this may be confidential, regarding the company's
21 ability to file a distribution rate case, and there
22 weren't any numbers put out there for what that --
23 what that rate increase could possibly be if the
24 company did that, but, you know, that would be
25 another source, potentially, of revenues to the

1 company going out into the future and I don't believe
2 any revenues like that were reflected in
3 Mr. Jackson's or Mr. Chambers' figures.

4 MR. FARUKI: If he's done --

5 Are you done with your answer?

6 THE WITNESS: Yes.

7 MR. FARUKI: Your Honors, I'll move to
8 strike as both lacking foundation and nonresponsive
9 to the question.

10 EXAMINER PRICE: I think Mr. Darr can
11 decide if it's responsive or not.

12 With respect to the lack of foundation,
13 it will go to the amount of weight that we give his
14 testimony. So your objection is overruled.

15 Please proceed, Mr. Darr.

16 MR. DARR: Thank you.

17 Q. (By Mr. Darr) You were asked a series of
18 questions by Mr. Faruki about the relevance of past
19 performance of DP&L in this case as it might be
20 relevant to their future performance. Do you recall
21 those questions?

22 A. Yes.

23 Q. Going back to your testimony, why do you
24 believe it's important for the Commission to look at
25 past performance of DP&L?

1 A. The reason I had this section in my
2 testimony about the 2001 to 2011 and then the 2012
3 period was because the company has had extremely high
4 returns on equity over that period. Also paid out a
5 large percentage of its earnings up to the
6 shareholder. And I think, you know, perhaps the
7 company's request in this case indicates somewhat of
8 a lack of symmetry in that the ROEs that Mr. Chambers
9 used in trying to justify the SSR, you know,
10 basically were total company ROEs that had the
11 competitive generation service in there and that it
12 shouldn't be there.

13 Q. You were also asked a series of questions
14 with regard to the fact that DP&L is currently an
15 integrated company. Do you recall those questions?

16 A. Yes.

17 Q. For purposes of your analysis in this
18 case, is it important that this is an integrated
19 company?

20 A. Well, as Mr. Faruki said, you know, the
21 company still owns those lines of business, however,
22 generation is a -- now a competitive business whereas
23 distribution is not, and, you know, there are
24 corporate separation implications that were addressed
25 in, I believe, Mr. Hess or Mr. Murray's testimony

1 with respect to that.

2 So I guess I don't view it as an
3 integrated company for purposes of whether or not the
4 SSR, for instance, is appropriate.

5 Q. You were also asked a series of questions
6 about the effects of O&M reductions. Do you recall
7 that?

8 A. Yes.

9 Q. Would you expect, based on your
10 experience in this segment of the industry, that
11 management would have to exercise discretion in these
12 areas?

13 A. Yes. I don't think management would
14 defer expenses if they thought that would result in
15 unreliable service for customers.

16 MR. DARR: That's all the redirect I
17 have, your Honor.

18 EXAMINER PRICE: Thank you.

19 OCC?

20 MR. BERGER: No questions, your Honor.

21 EXAMINER PRICE: Mr. Williams?

22 MR. WILLIAMS: No questions, your Honor.

23 EXAMINER PRICE: FES?

24 MR. CASTO: No questions.

25 EXAMINER PRICE: Mr. Yurick?

1 MR. YURICK: No questions. Thank you,
2 your Honor.

3 EXAMINER PRICE: Mr. Faruki?

4 MR. FARUKI: Very briefly. Thank you,
5 your Honor.

6 - - -

7 RECROSS-EXAMINATION

8 By Mr. Faruki:

9 Q. Mr. Bowser, you said I do not view it as
10 an integrated company for purposes of whether or not
11 the SSR is appropriate. Do you remember that
12 statement a minute ago?

13 A. Yes.

14 Q. The company whose rates are being set or
15 adjusted in this proceeding is the DP&L company,
16 right?

17 A. That's correct.

18 Q. During the period of time when -- if the
19 Commission were to order an SSR, the company that
20 would begin to receive that SSR is The Dayton Power &
21 Light Company, right?

22 A. That's correct.

23 Q. And at the time The Dayton Power & Light
24 Company would begin to receive an SSR, if one is
25 approved by the Commission, it would be an integrated

1 company with transmission, distribution, and
2 generation lines of business, right?

3 A. Except that the generation business was
4 unbundled and made competitive quite a few years ago.

5 Q. But that doesn't get to my question.
6 Isn't it true that if the Commission approves an SSR
7 in this case, then the company begins to receive that
8 charge, the company that's receiving it is an
9 integrated company, right?

10 A. It's DP&L that's receiving it.

11 Q. And DP&L, as a corporate entity, has
12 transmission, distribution, and generation
13 businesses, doesn't it?

14 MR. DARR: Objection. Asked and
15 answered.

16 EXAMINER PRICE: Overruled.

17 A. It does have all those businesses, yes.

18 MR. FARUKI: Thank you, sir.

19 That's all I have, your Honor.

20 - - -

21 FURTHER EXAMINATION

22 By Examiner Price:

23 Q. Although Dayton -- although competition
24 has been -- has now been declared to be
25 competitive -- let me rephrase that.

1 Although generation has been now declared
2 to be competitive, Dayton Power & Light, like every
3 electric distribution utility, is required to offer a
4 standard service offer, aren't they?

5 A. Yes.

6 Q. So although we have this competitive
7 market, there is one entity that still has to make a
8 standard service offer for generation; is that
9 correct?

10 A. Correct.

11 Q. And we're in a period right now of
12 unusually low PJM capacity prices; isn't that
13 correct?

14 A. For the current delivery year, yes, but
15 the next few deliver years it's going back up.

16 Q. For the current year.

17 A. Yes.

18 Q. And there's really nothing to guarantee
19 the Commission that when this period of unusually low
20 capacity prices ends, marketers won't exit the
21 market, is there?

22 A. I don't know.

23 Q. When market support generation ended in
24 the FirstEnergy service territory, after Senate Bill
25 3 was enacted, many marketers exited the market,

1 didn't they?

2 A. I do not recall. I recall --

3 Q. You don't recall?

4 A. I recall market support generation, i.e.,
5 MSG, but I don't recall what was happening to the
6 market at that time.

7 Q. You don't recall Green Mountain Energy
8 Company?

9 A. I do recall Green Mountain.

10 Q. Did they exit the market at the end of
11 market support generation?

12 A. They exited the market, but I don't
13 recall the timing of that.

14 Q. Shell Energy?

15 A. I remember Shell Energy as well.

16 Q. Did they exit the market at the end of
17 market support generation?

18 A. I remember they exited the market, but I
19 don't remember when specifically.

20 Q. Fair enough.

21 You indicated that you included the
22 returns on equity in 2001 through 2011 as a matter of
23 fairness or because you thought the Commission needed
24 that part of the picture.

25 A. Yes.

1 Q. Would you agree that, pursuant to
2 Commission orders, Dayton Power & Light offered
3 below-market generation rates for that period of 2001
4 through 2011?

5 A. They may have, but I don't know if they
6 definitely did.

7 Q. You don't know if the rates were below
8 market.

9 A. No. I don't recall.

10 Q. You don't recall.

11 A. No.

12 Q. During this period you were employed by
13 Consumers' Counsel and IEU-Ohio?

14 A. Yeah. IEU-Ohio, I started in 2005.

15 MR. DARR: Can I make a -- you said
16 "IEU-Ohio."

17 EXAMINER PRICE: Pardon me?

18 MR. DARR: You said he was employed by
19 IEU-Ohio.

20 THE WITNESS: Pardon me. Employed by
21 McNees, Wallace & Nurick. Excuse me.

22 Q. During this period you were employed by
23 Ohio Consumers' Counsel or McNees, Wallace & Nurick.

24 A. Correct.

25 Q. But you can't, you don't recall off the

1 top of your head whether the rates were below market.

2 A. At different points in time my
3 responsibilities have been different and might have
4 included those areas or might not have.

5 EXAMINER PRICE: Fair enough.

6 Okay. You're excused. Thank you.

7 Mr. Darr.

8 MR. DARR: Thank you, your Honor. Move
9 the admission of IEU Exhibits 1 and 1A, please.

10 EXAMINER PRICE: Any objection to the
11 admission of IEU Exhibits 1 and 1A?

12 MR. FARUKI: Briefly, yes, your Honor.
13 Because he said statements, including legal
14 conclusions and opinions, formed part of the basis of
15 his opinions and conclusions, I do object.

16 EXAMINER PRICE: I think consistent with
17 our past rulings in this proceeding, we will overrule
18 the objection and admit IEU Exhibits 1 and 1A.

19 (EXHIBITS ADMITTED INTO EVIDENCE.)

20 EXAMINER PRICE: Do we have any other
21 issues that we need to attend to before tomorrow?

22 (No response.)

23 EXAMINER PRICE: Okay. Let's go off the
24 record. We'll resume tomorrow at 10:00 o'clock.

25 (Hearing adjourned at 3:30 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 Monday, April 1, 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.

(71944-MDJ-PUBLIC)

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Case No(s). 12-0426-EL-SSO, 12-0427-EL-ATA, 12-0428-EL-AAM, 12-0429-EL-WVR, 12-0672-EL-RDR

Summary: Transcript in the matter of The Dayton Power and Light Company hearing held on 04/01/13 - Volume X - Public Version electronically filed by Mrs. Jennifer Duffer on behalf of Armstrong & Okey, Inc. and Jones, Maria DiPaolo Mrs.