

BEFORE
THE PUBLIC UTILITY COMMISSION OF OHIO

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In the Matter of the :
Application of The :
Dayton Power and Light :
Company for Authority :
to Recover of Certain : CASE NO.:
Storm-Related Service : 12-3062-EL-RDR
Restoration Costs. :
:
In the Matter of the :
Application of The : CASE NO.:
Dayton Power and Light : 12-3266-EL-AAM
Company for Approval of :
Certain Accounting >
Authority.
- - - - -

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DEPOSITION OF: MICHAEL E. BARRETT

TAKEN: Pursuant to Notice by
 Counsel for Ohio Consumer
 Counsel

DATE: January 30, 2014

TIME: 9:00 a.m. to 11:05 a.m.

PLACE: EARNST & Young
 401 East Jackson Street
 Tampa, Florida 33602

REPORTED BY: SONJA BONANNO
 Notary Public
 State of Florida at Large

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DEMPSTER BERRYHILL COURT REPORTERS
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1 APPEARANCES:

2 (Appearing Telephonically)

3 JEFFREYS. SHARKEY, ESQUIRE
4 Faruki Ireland & Cox, P.L.L.
5 500 Courthouse Plaza, S.W.
Dayton, Ohio 45402

6 Appeared on behalf of Dayton Power and Light
7 Company

8 LARRY S. SAUER, ESQUIRE
9 Office of the Ohio Consumers' Counsel
10 10 W. Broad Street, Suite 1800
Columbus, Ohio 43215

11 Appeared on behalf of Office of Ohio
12 Consumers' Counsel

13
14 Also present on the telephone:

15 Judy Sobecki

16 Tammy Turkenton

17 Jeff Hecker

18 Emily Rabb

19 David Litthratt - Staff

20 Melissa Yost - OCC

21 Michael Schuler

22

23

24

25

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P R O C E E D I N G S

The deposition of MICHAEL E. BARRETT was taken pursuant to notice by counsel for the Applicant on January 30, 2014, commencing at 9:00 a.m. at the Office of Earnst & Young located at 401 East Jackson Street, Tampa, Florida 33602, before Sonja Bonanno, Notary Public, State of Florida at Large.

MICHAEL E. BARRETT,

having been duly sworn to tell the truth, the whole truth, and nothing but the truth, was examined and testified as follows:

MR. SAUER: Before we get started, let's mark Exhibits 1 through 9.

(Deposition Exhibits 1 through 9
Were marked for identification.)

BY MR. SAUER:

Q Good morning, Mr. Barrett. My name is Larry Sauer. I am an attorney with the Office of the Ohio Consumers' Counsel. We are a party in this case that was filed by DP&L. And you are a witness, correct?

A That's correct. Good morning.

Q How are you?

A Fine. And you?

1 Q I am well. Have you had your deposition
2 taken before, Mr. Barrett?

3 A Yes, I have. In other cases.

4 Q Okay. So, you are familiar, kind of, with
5 the ground rules.

6 A Yes.

7 Q I'll ask you questions, and you'll
8 respond. If you don't understand a question, please
9 ask and I'll try to verify. This is a little more
10 complicated because we are doing it over the phone.
11 I'll try to respect your answers and wait until you
12 are finished so we are not talking over each other,
13 and the court reporter sitting next to you can get
14 everything down.

15 If you need to take a break, just let me
16 know. I would ask, if there is a question pending,
17 that you'll answer the question and then we will
18 accommodate your request after that. Do you have
19 any questions?

20 A No, I do not.

21 Q Okay. Have you testified in the State of
22 Ohio before?

23 A No, I have not.

24 Q Okay. So, you have not testified before
25 the PUCO then.

1 A No, I have not.

2 Q Okay. And you are not a registered
3 accountant in Ohio?

4 A I am not licensed as a CPA in Ohio, but I
5 am licensed in other states.

6 Q Okay. And those states that you are
7 licensed are --

8 A Currently, it's Florida. I have
9 historically been licensed in Pennsylvania, but due
10 to my retirement, I let this go to in inactive status
11 at the end of last year.

12 Q Okay. So, Florida is the only state now
13 that you are currently licensed in?

14 A Yes.

15 Q And are you an attorney?

16 A No. I'm an accountant.

17 Q Okay. And you don't have a law degree?

18 A No, I do not.

19 Q Okay. Are you a financial analyst?

20 A Can I do financial analysis? I do that as
21 part of my accounting and auditing background. Am I
22 a certified financial analyst, if there is such a
23 thing? No.

24 Q Have you rendered an opinion regarding the
25 financial performance Of DP&L?

1 A Yes. I was the audit partner on DP&L prior
2 to my retirement. So, I signed off on the opinions
3 on their financial statements for 2012 and 2011.

4 Q Okay. And as part of that audit, did you
5 also render a financial opinion on their parent,
6 DP&L, Inc. (sic)?

7 A I did not but the firm that I was a partner
8 in did.

9 MR. SHARKEY: Larry, this is Jeff
10 speaking, just to be clear. There is "DP&L"
11 and there is "DPL, Inc." I think you said
12 "DP&L, Inc." I don't know who you were
13 referring to.

14 MR. SAUER: I meant to say DPL, Inc.
15 Thanks, Jeff.

16 THE WITNESS: Yeah. And just to be
17 clear, I would have signed the audit opinion
18 on both, Dayton Power and Light and DPL, Inc.
19 for both of those years.

20 BY MR. SAUER:

21 Q Okay. How about AES Corp?

22 A The firm I was a partner with, Ernst &
23 Young, did sign off on that, yes, but I was not the
24 partner that signed that opinion.

25 Q Okay. Have you ever been employed by a

1 lending institution?

2 A No, I have not.

3 Q Have you ever been employed by a rating
4 agency?

5 A No, I have not.

6 Q Do you have any investment experience?

7 A Well, I guess my personal investment
8 portfolio would be one. I've also dealt, from an
9 investor's point of view, in evaluating disclosures,
10 et cetera, in financial statements that they would be
11 relying on.

12 Q Have you ever done any investment
13 consulting?

14 A No, I have not.

15 Q Have you ever advised a client on
16 investment matters?

17 A That's a pretty broad question. You know,
18 I have had a number of clients with pension plans in
19 which we've evaluated the investment performance and
20 the different strategies in order to evaluate the
21 assumptions going into the pension calculations. I
22 mean, your question is kind of broad.

23 Q And I agree. But in your -- in your
24 discussion of the pension plan example, are you --
25 is your advice more on the financial statement

1 presentation of their pension investments?

2 A It would be that, but also evaluation of
3 the underlying assumptions that would go into the
4 pension calculation, which includes investment
5 returns.

6 Q But your advice wasn't in terms of what
7 investments they should be making specifically; is
8 that correct?

9 A Not the specific investments, but
10 evaluating the long-term returns off of the
11 investments that they have made, since that's the
12 data that goes into the pension calculation.

13 Q Have you ever testified about investments
14 or investment strategies before?

15 A No, I have not.

16 Q Have you ever spent time as an investor on
17 Wall Street?

18 A I'm a -- as an investor, obviously, I've
19 invested my own portfolio. Have I been on Wall
20 Street? I'm not quite sure -- are you asking me if
21 I've been an investment banker?

22 Q That, or -- to being an investment banker,
23 you are saying "no"?

24 A No.

25 Q Okay. Or a broker or any other type of

1 participant on Wall Street?

2 A I have not provided investment advice like
3 a broker or an investment banker.

4 Q Are you familiar with AES Corporation?

5 A If familiar means to understand who they
6 are and somewhat their business strategy, I would say
7 a little.

8 Q Okay. Do you know if AES has other
9 electric distribution subsidiaries in the United
10 States, other than DPL, Inc.?

11 A They have one that I'm aware of.

12 Q And that is?

13 A Indianapolis Power and Light.

14 Q Okay. Do you know when AES completed its
15 purchase of DPL, Inc.?

16 A It would have been in November 2011.

17 Q Okay. Are you familiar with an Electric
18 Security Plan in the sense as it's used in Ohio?

19 A Yes. It's part of the audit that we've
20 performed on Dayton Power and Light for the two years
21 we reviewed the Commission documentation and the ESP
22 plan.

23 Q Are you familiar with an SSO in the
24 context of current Ohio utility regulations?

25 A Yes. I mean, I'm trying to think what

1 "SSO" stands for now, but I'm familiar with the term.

2 Q "Standard service offer."

3 A Yes.

4 Q But your familiarity is just with the term
5 itself?

6 A Well, the term and its application to the
7 customers that haven't switched.

8 Q Do you know if DP&L has to file an ESP to
9 set its prices for the SSO?

10 A The -- you are probably getting into more
11 detail now than -- I mean, I'm trying to recollect
12 from three years ago, so -- I know that the ESP plan
13 covers the rates to be charged. I believe it covers
14 both, the distribution rates and the standard offer
15 rates, but I would want to clarify that.

16 Q Okay. Do you know when the DP&L's
17 Electric Security Plan ends?

18 A Again, it's from recollection. What I'm
19 recollecting is that it was due to end and continues
20 to be extended for a period of time. I know that in
21 the Spring 2013, they filed some filings. Maybe it
22 was '12. But the exact dates, I don't recall.

23 Q Have you read the stipulation that
24 approved the 2008 Electric Security Plan?

25 A I would have as part of the audit, but that

1 was a long time ago.

2 Q Do you recall if there was anything
3 related to the collection of storm costs in the 2008
4 stipulation?

5 A I would have to go back and look at it.

6 Q Do you recall if there is anything related
7 to the collection of storm costs in the application
8 of the current Electric Security Plan case filed by
9 DP&L?

10 A I have not reviewed that.

11 Q Okay. Are you familiar with the PUCO
12 policies pertaining to deferral orders?

13 A I'm familiar with the process that's taken
14 by the Commission, if that's what you mean.

15 Q Yeah. And what is your understanding?

16 A That the -- when the company has an unusual
17 event and they are seeking to defer certain unusual
18 costs, that they would ask the Commission to issue an
19 Accounting Deferral Order, which the Commission has
20 historically issued relatively timely. And then the
21 company would use that as part of their evaluation
22 process on whether to defer the costs or not under
23 the accounting guidance.

24 Q When you say 'the Commission issues its
25 decision timely', what do you mean by that?

1 A Well, one of the reasons for the accounting
2 order process is to get clarification on the
3 Commission's current thinking on whatever those costs
4 are or whatever the event was that gave rise to those
5 costs.

6 Obviously, one way would be to wait until
7 the final rate case arrived that adjudicated those
8 costs, which could you, you know, several years in
9 the future. So, by having a timely accounting order,
10 you get a preliminary look at the Commission's view
11 in time to make the judgments in closing of the
12 books. Which, you know, public companies do and
13 issue reports, you know, every quarter.

14 So, "timely" relates to the ability to have
15 something in hand to issue the statements, you know,
16 on a quarterly basis.

17 Q Is there timeliness necessary on the
18 company's part in order to file for the deferral
19 request itself?

20 MR. SHARKEY: Objection, vague.

21 BY MR. SAUER:

22 Q You can answer the question if you
23 understand it, sir.

24 A I think the question is, is there a
25 requirement for the company to ask on a timely basis.

1 And, again, I don't believe that there is any
2 requirement within the Ohio Commission's policies and
3 procedures. And then it really relies on the
4 company's judgment as far as whether it's needed or
5 not on a timely basis, you know, prior to making the
6 decision to defer the costs.

7 Q And what goes into -- what is your
8 understanding of what goes into the company's
9 judgment as to when to file?

10 A They need to consider a number of factors.
11 And, again, the accounting guidance says, in order
12 for cost to be deferred, it has to be probable of
13 future recovery in rates.

14 So, the one element that would go into that
15 judgment would be the Account Deferral Order. The
16 second would be what has been done with those costs
17 or similar costs for the company in the past. A
18 third piece would be other companies within the
19 jurisdiction of the Ohio Commission. If they've had
20 similar costs, how those were provided rate treatment
21 by the Commission when they were adjudicated. And
22 then any other policy-type information that may be
23 coming forth from the Commission that may be more
24 current than, you know, some of the historical data
25 that's being relied on.

1 Q And are those the factors -- is that,
2 would you say, an exhaustive list of the factors?

3 A And then I would add anything else that's
4 occurring either in Ohio or in the county that might
5 impact that decision. And that's kind of a big
6 blanket, anything else that might apply.

7 Q And, I guess, if I get the underlying
8 theme of what you are saying, it all goes back to
9 the probability of their recovery of those costs?

10 A Yes.

11 Q In your testimony that was marked as
12 Deposition Exhibit 9, you have a fairly --

13 A Hang on a second. What was marked as 9 was
14 the preliminary testimony.

15 Q No. The only testimony that was marked
16 was the testimony in response to the Staff Audit
17 Report?

18 A Oh, then we marked the wrong document. How
19 do you want to --

20 Q You can marked the other one as deposition
21 Exhibit 10, if you want to.

22 (Deposition Exhibit No. 10 was marked
23 for identification.)

24 THE WITNESS: Sorry about the confusion
25 on our part.

1 BY MR. SAUER:

2 Q No problem. But what I'm referring to now
3 is what I thought had been marked as Deposition
4 Exhibit Number 9, which is the testimony in response
5 to Staff Audit Report.

6 A Okay. I have that.

7 Q Okay. And attached to that, you have your
8 curriculum vitae.

9 A Yes.

10 Q And then there are -- Pages 2 through 5
11 are a number of cases where you've provided
12 testimony in other cases; is that correct?

13 A That's correct.

14 Q I presume you didn't take the stand in all
15 of these cases.

16 A No. Some would have been settled, and in
17 some I would have went on the stand.

18 Q Okay. Did any of cases that you have
19 listed here involve -- and I'll start with
20 storm-related expense referrals.

21 A Let me go down the list.

22 Q Sure. Take your time.

23 A There were none that were directly related
24 to storm. There was one case which covered a broad
25 amount of expenses and would have had a storm accrual

1 in it, as opposed to a storm recovery.

2 Q Can you point me to which case you are
3 referring to, sir.

4 A That would have been on Page 2.

5 Q Okay.

6 A In 2005.

7 Q All right.

8 A In the Florida Power and Light Company case
9 before the Florida Public Utility Commission.

10 Q Okay. When you say it had a storm accrual
11 aspect to it, can you tell me what you mean by that?

12 A Well, in Florida Power and Light's case,
13 they were allowed to recover storm costs in advance
14 of the storm. So, they would have been accruing --
15 and I forget the amount, but, let's say, fifty
16 million dollars a year even though storm costs have
17 not been incurred yet.

18 And then, in this case, there would be a
19 liability on the books, a regulatory liability for
20 that storm cost accrual. And when a storm would --
21 when storm costs would be incurred, then it would be
22 charged against the accrual as opposed to being
23 deferred.

24 Q So, in Florida, they were allowed to sort
25 of set up a reserve for their storm costs?

1 A Yes. In the case in point, I was
2 testifying on their forecast of revenue requirements.

3 Q Un-hun.

4 A So, it encompassed a lot of things,
5 including the storm costs.

6 Q Okay. And that's the only case of the
7 four pages of cases that you listed that have a
8 storm expense component to it?

9 A That would be the only one that had a storm
10 expense. There are a number of others that deal with
11 regulatory asset and liability accounting.

12 Q Okay. And just generally, in those cases,
13 what were the issues that you were testifying to
14 with regards to the creation of regulatory assets or
15 liabilities?

16 A Well, I guess some examples would be, in
17 two of the cases I testified whether the amounts of
18 pension costs were in excess of what was funded,
19 rather than, being included in other comprehensive
20 income on the financial statements, were a regulatory
21 asset. And that testimony was before the Wisconsin
22 Commission. Let's see here.

23 In the Narragansett case in 2012, we dealt
24 with purchase gas costs, and the amounts that can
25 properly be deferred on the books as a regulatory

1 asset.

2 In the 2009 case with Entergy Gulf -- in
3 the transaction that merged Gulf States with the
4 other Entergy companies, there was an unusual item
5 that -- an unusual cost element that popped out in
6 the accounting, and there were questions as far as
7 whether that should be a regulatory asset or not.
8 So, there was testimony there.

9 The 1998 case with the Public Service
10 Company of New Hampshire dealt with kind of the
11 timing of regulatory assets and when they would need
12 to be written off, if they needed to be written off.
13 And this would have encompassed a number of different
14 regulatory assets and liabilities.

15 And then, the Eastern Shore and Chesapeake
16 Utility cases back in the early '80s dealt with the
17 regulatory assets that are related to income tax
18 accounting. So, it would have dealt with income tax
19 accounting in the resulting regulatory assets and
20 liabilities. That's probably about it.

21 Q Okay. The first couple of cases that you
22 were talking about on Page 2, in 2012 and 2009, were
23 those to the deferral -- was your testimony in
24 regards to the creation of those deferrals?

25 A In the 2012 Narragansett case, what we did

1 was, we analyzed all of the gas costs that were
2 incurred over a period of about twelve years,
3 thirteen years to determine if the balance that was
4 being recorded as a regulatory asset was appropriate.

5 So, that was more of a cost verification
6 process of the balance in a regulatory asset, as
7 opposed to whether it should or should not be a
8 regulatory asset.

9 Q It was already -- well, if the regulatory
10 asset existed, you were just verifying the balance
11 of that asset.

12 A In essence, yes.

13 Q Okay.

14 A In the 2009 case with Entergy, I'm not
15 going to -- it's been a while, so the facts are going
16 to be a little muddled, but there was an unusual
17 transaction related to one of their power plants and
18 gas storage fields that had an item that ended up
19 being recorded on the balance sheet. And there was
20 -- the testimony dealt with whether that was a
21 regulatory asset or not.

22 Q Was your testimony in support of the
23 creation or the continuance of it being a regulatory
24 asset?

25 A The facts in the matter would dictate that

1 it was a regulatory asset. And then, there were
2 further facts to what company it should reside on in.
3 You know, rendering testimony as far as what company
4 it should be recorded on.

5 Q The 1998 Public Service of New Hampshire
6 case you discussed, your testimony was in regards to
7 whether regulatory assets should have been written
8 off?

9 A Yes. If you go back to the facts behind
10 that one, it was when the Public Service of New
11 Hampshire was attempting to come out of bankruptcy.

12 So, this -- the company was offering
13 testimony supported by their auditors that, in my
14 opinion, used a very Draconian approach as far as
15 when regulatory assets needed to be written off
16 because of a bankruptcy.

17 So, I offered testimony that offered a more
18 conservative approach or provided for allowing the
19 regulatory assets on the books for a longer -- you
20 know, further in the process than what the company's
21 testimony was doing.

22 Q Who were you testifying on behalf of in
23 that case?

24 A I don't remember the parties specifically,
25 but it was maybe the -- it was either an intervenor

1 group against the company or the federal prosecutor.
2 One or the other. I would have to go and dig that
3 up.

4 Q Okay. In determining whether or not to
5 write off a regulatory asset, does it come down to,
6 again, the probability of recovery?

7 A Yes, it does.

8 Q And you talked about 1982 regulatory
9 assets regarding income taxes. And that one was a
10 long time ago and it's dealing with income taxes, so
11 maybe we should just stay clear of that.

12 A But income taxes can be fun.

13 Q Right. You mentioned that you may have
14 provided testimony on behalf of -- in support of a
15 party other than the utility. Are most of these
16 cases that are listed on Pages 2 through 5 where you
17 testified on behalf of the utility?

18 A Yeah. I mean, they are mainly on behalf of
19 the utility, but the case that we talked about, which
20 was the Public Service of New Hampshire case, was not
21 for the utility.

22 If you go to the 1997 cases -- no. Hang
23 on. -- the 1992, the Florida Cities Water and the
24 City of Palm Bay --

25 Q Un-hun.

1 A They were on behalf of -- they were -- I
2 was on the opposite side of the water companies that
3 were in the case.

4 In the Seaboard Water case in '92 and the
5 General Development Utilities at the Florida Public
6 Service Commission --

7 Q Un-hun.

8 A Those were, again, on the opposite side.
9 In the Seaboard Water in Hillsborough County, I was
10 acting as County staff in evaluating the water case
11 that was filed.

12 Q Okay.

13 A Those would probably be the bulk that would
14 be on the non-utility side, not the utility side.

15 Q Okay. So, in essence -- you have been on
16 behalf of public utility on the case.

17 A Can you repeat that.

18 Q I said, in the vast majority of your
19 testimony listed on those four pages of the
20 attachment to your Deposition Exhibit 9, your
21 testimony was on behalf of the public utility in the
22 case listed.

23 A I mean, I would have to count up to see if
24 I would agree with "vast", but the majority would be.

25 Q Okay.

1 A Now, I guess there is one unusual one. The
2 1992 North Carolina Municipal Power and Duke Power
3 case, it's two utilities, and I was on the side of
4 one.

5 Q Which utility were on you on the side of
6 in that case?

7 A The North Carolina Municipal Power.

8 Q Okay. In preparing for this case, sir,
9 have you read the 2008 DP&L application for its
10 deferral?

11 A Yes.

12 Q And have you read the 2008 PUCO Order
13 granting that referral? Which, again, would have
14 been Deposition Exhibit Number 4.

15 A Okay.

16 Q We marked that Finding and Order in case
17 08-1332.

18 A Yes.

19 Q Okay. And have you read DP&L's 2012
20 application for deferral?

21 A Yes.

22 Q And have you read the PUCO order granting
23 the deferral application which would have been
24 marked in this case as Deposition Exhibit Number 2,
25 the Finding and Order in Case Number 12-2281-EL-AAM,

1 and what was marked as Deposition Exhibit 3, which
2 is the Entry on Hearing in Case Number
3 12-2281-EL-AAM?

4 A Yes, I have.

5 Q Okay. On Page 3 of your testimony marked
6 as Deposition Exhibit Number 9, Lines 3 through 14,
7 you state that you disagree with the Staff's
8 recommendation that DP&L be denied recovery of
9 certain storm costs that the Commission has
10 previously authorized DP&L to defer as a regulatory
11 asset. And that would specifically be the 2008
12 storm costs regarding Hurricane Ike; is that
13 correct?

14 A Yes.

15 Q And if we look at what was marked as
16 Deposition Exhibit Number 1, that's the Audit Report
17 prepared by the Public Utilities Commission Staff --

18 A Okay.

19 Q Are you familiar with that document, sir?

20 A I have it before me.

21 Q Okay. And if you turn to Page 4, you are
22 not taking issue, are you, sir, with the fact that
23 the Staff has recommended a disallowance or -- or,
24 at least, not recovery in this case of the capital
25 expenditures not allowed?

1 A My testimony doesn't relate to the specific
2 items in the audit report.

3 Q Okay. If I go through all the items that
4 they've adjusted here, you are not taking issues
5 with any of those adjustments; are you?

6 A No, I'm not. That's not part of my
7 testimony.

8 Q Okay. On Page 3 of your testimony, Lines
9 5 through 10, you state that:

10 "Many third parties, such as investors,
11 lenders, auditors, and rating agencies, have relied
12 on the Commission's orders and the historical
13 precedents that have been set by the Commission, and
14 it would be unreasonable to deny recovery of the
15 storm expenses in light of that reliance."

16 Do you see that?

17 A Yes I do.

18 Q And regarding the third parties that you
19 mentioned, you stated you've been an auditor
20 auditing public utilities; is that correct?

21 A That's correct.

22 Q And you've been on audit engagement -- you
23 said that you have been on audit engagement for
24 DP&L.

25 A Yes. I signed off on DP&L's financial

1 statement for two years.

2 Q 2011 and 2012, correct?

3 A That's correct.

4 Q Those are the only two years?

5 A It would be those two years, and then the
6 quarterly reports. We don't issue an opinion on
7 them, but we do review procedures on them. Each of
8 the quarters are in those -- well, each of the
9 quarters in fiscal year '12.

10 Q And who were you auditing for? Which
11 company you were employed by?

12 A I was employed by -- I was a partner at
13 Ernst & Young.

14 Q Okay. So, was Ernst & Young conducting
15 audits prior to 2011?

16 A We were not the auditors of record for DP&L
17 prior to '11.

18 Q Okay. Who was the auditor at that time?
19 If you know.

20 A I know, for a while, they were audited by
21 KPMG, but I also think they were audited by Price
22 Waterhouse Coopers for a period of time. I'm not
23 sure about the sequence.

24 Q And you were with Price Waterhouse Coopers
25 at one time?

1 A I was with Ernst & Young since 1998. Prior
2 to 1998, I was with Coopers & Lybrand, who was a
3 predecessor to Price Waterhouse Coopers. And I would
4 have left Coopers & Lybrand just as the merger with
5 Price Waterhouse occurred. So, I was briefly with
6 Price Waterhouse Coopers for about two weeks.

7 Q Okay. And never, during that time, were
8 you auditing DP&L?

9 A No, I was not.

10 Q Have you ever been on an auditing
11 engagement for another public utility company in
12 Ohio?

13 A No, but I did a FERC audit of an Ohio
14 utility back early in my career.

15 Q Which utility was that?

16 A Toledo Edison.

17 Q As an auditor, would you specifically
18 audit the prudence of a regulatory asset such as a
19 storm cost deferral?

20 A No. I mean, prudence of the cost would not
21 be evaluated, but whether the costs are properly
22 related to the regulatory asset would be audited.

23 Q And how would you in your audit verify
24 that the costs relate to the regulatory asset?

25 A We would perform audit procedures on the

1 cost being accumulated in the regulatory asset. And
2 those types of costs would be, you know, payroll,
3 materials and supplies, you know, outside vender
4 costs, et cetera. And we would validate on a test
5 basis that those costs relate to whatever the
6 regulatory asset would pertain to.

7 For example, in that Narragansett case, we
8 talked about -- we would have been verifying that the
9 gas costs being included were proper gas costs under
10 the Commission policies relative to the recovery of
11 gas costs in that case.

12 Q But the audit would not, in any way,
13 evaluate the reasonableness or prudence of the
14 expenditures the utility made; is that correct?

15 A It would not evaluate the prudence because,
16 again, that is not a generally-accepted accounting
17 standard on which to measure something.

18 Q How about the reasonableness of the costs?

19 A I would say, yes, depending on your
20 definition of reasonableness. I mean, when we would
21 validate those costs in the account -- I mean, you
22 are looking at the underlying documentation to make
23 sure that the documentation is supportable. You are
24 looking at the reasonableness of it, meaning that it
25 was incurred to perform duties related to something.

1 But -- I mean, if it's overtime or direct
2 time or, you know, regular hourly time, I mean, the
3 underlying records support that being related to the
4 storm, so that would be included. So, it's not a
5 regulatory reasonableness that's applied; it's a
6 financial accounting reasonableness that's applied.

7 Q Would you say you are looking more at the
8 company's internal controls to make sure that the
9 costs are reasonable in that regard?

10 A Well, I mean -- yes. I mean, an audit is
11 designed around the internal controls of the company.
12 And depending on those internal controls, it -- it
13 determines what substantive audit procedures need to
14 be done.

15 So, yes, internal controls are relied on,
16 but -- I mean, the key element is the substantive
17 test around it, which, you know, may be limited
18 because of the controls but are still required.

19 Q Is your audit assessing the probability of
20 recovery of that regulatory asset?

21 A Yes. I mean, that's a major component when
22 you look at regulatory assets or liabilities. I
23 mean, that it's probable or that there is support
24 that it's probable that those amounts would be
25 recovered in the future in rates.

1 Q And how is that accomplished in the audit
2 itself?

3 A Well, you look to the company's
4 documentation where they have normally gathered what
5 they've relied on in making their determination,
6 which, you know, would be generally the list that we
7 talked about earlier. I mean, those key items.

8 Q Okay.

9 A You would then go and look outside the
10 company to see if there is any other information
11 that's available. And a good example would be a
12 recent commission order relative to whatever that
13 regulatory asset is to see if that would impact the
14 probability of recovery, either of the total amount
15 or a portion of the amount.

16 And to give you an example there would be
17 if, in the case of the Ohio Commission, and the Ohio
18 Commission ruled that another utility could no longer
19 recover a certain cost element in their fuel cost
20 adjustment, you would expect that that same element
21 would be disallowed for the client that you are
22 evaluating. So, you take that into consideration.

23 Q And then, if you are looking at Commission
24 decisions -- for example, let's hypothetically say
25 another utility company in Ohio had a storm

1 deferral. And just using random numbers, let's say
2 they had a twenty-five million dollar deferral
3 authorized by the Commission, and then they sought
4 recovery of that. And the Commission decided that,
5 for reasons of imprudent spending, they allowed the
6 company to recover only ten million dollars.

7 Does that Commission decision play into
8 your review of the utility you are auditing, looking
9 at their regulatory asset if they have a storm
10 deferral as well?

11 A Yes. I mean, as I had in my example
12 earlier. I mean, that's an example where you are
13 looking outside of a recent Commission decision. You
14 would look at what was deemed to be imprudent by the
15 Commission of what was being disallowed.

16 Q Un-hun.

17 A And then, you would evaluate if the client
18 that you are evaluating their regulatory asset had
19 similar facts and circumstances.

20 Q Okay.

21 A And then, if they did, you would have to
22 then understand all of the facts around it and then
23 evaluate whether that should be written off also.

24 Q And I guess what I'm trying to understand
25 is, would your audit go to that detail? Because,

1 now, the hypothetical that I gave you was that the
2 Commission is looking at prudence. And let's say
3 they felt like they had just had too many employees
4 dedicated to the restoration efforts, and they've
5 overpaid for reasons of that, just an imprudent
6 spending.

7 You are going to go in and look at the
8 deferral for that company and try to evaluate
9 whether they had sufficient staffing? Is that kind
10 of what you are telling me?

11 A Yes. I mean, you would look at what the
12 underlying facts were of the commission order in the
13 utility that they were ordering it on and determine
14 how that applied to the client that you are
15 evaluating. So, you know, if you had a situation
16 where -- I think you used the hypothetical of just
17 too many people.

18 Q Un-hun.

19 A You would bring that back. If there was
20 enough detail to understand how that too-many-people
21 criteria was being applied, then you would apply that
22 back to your client and determine if an accounting
23 entry was needed to reduce the regulatory asset.

24 That hypothetical though seems kind of
25 vague because "too many people" is a relative kind of

1 thing, right? So, it would have to be more detailed
2 on the fact side to do the evaluation.

3 Q And my hypothetical was vague. I agree.
4 And I understand that -- what I was trying to
5 understand is how you would, from an auditor's
6 prospective, approach that. And I understand, from
7 what you are telling me, that you would actually try
8 to apply those same facts and circumstances that
9 took place in the disallowance and see if they were
10 present in the regulatory asset you were auditing.

11 A Yes. I mean, a more crisp hypothetical
12 would be -- in fuel costs deferrals, there is a PJM
13 cost, you know, that comes through. And all the
14 utilities are incurring that cost. And the
15 Commission in the other company's case decided that
16 that's no longer reasonable to include that in the
17 fuel adjustment costs, but -- I mean, there is a case
18 on point that's pretty easy to move over to the other
19 utility and say this probably isn't going to be
20 recoverable in your case either.

21 Q Okay.

22 A But other prudence type items that are more
23 penalty like or -- I'll use the term "arbitrary", are
24 difficult to apply from one utility to another.

25 Q And from an auditor's prospective, how do

1 you treat that? If you find that a disallowance for
2 prudence was somewhat arbitrary, what does that do
3 to your recommendations for the deferral or the
4 regulatory asset you are auditing?

5 A We have to then determine if those facts
6 that made the arbitrary disallowance on the one
7 utility similar to the facts of the company that you
8 are evaluating. And many times, it wouldn't be
9 because, you know, the arbitrary facts or the facts
10 that drove the arbitrary decision would be different.

11 Q Okay.

12 A And, again, a good hypothetical would be,
13 you know, one utility took five weeks to, you know,
14 restore after a storm, which the Commission thought
15 was too long, so, therefore, there is some kind of
16 penalty or arbitrary adjustment being made. But when
17 you brought it back to the client that you are
18 evaluating, they got the storm done in three weeks.

19 Well, you know, your three-weeks fact
20 pattern is better than the five weeks, but could the
21 Commission still feel that was too long when they got
22 into adjudicating the costs? Potentially, but it's
23 hard, as the auditor, to apply that back since they
24 were done so much faster.

25 Q Again, I'm looking at the language that's

1 on Page 3 of your testimony that's marked as
2 Deposition Exhibit Number 9. In Lines 5 through 10
3 that we had talked about earlier, you talk about --
4 "Many third parties, such as investors, lenders,
5 auditors, and rating agencies, have relied --" and
6 I'm focussed on the word 'relied' "-- on the
7 Commission orders and the historical precedents."
8 Do you see that?

9 A Yes.

10 Q If you look at the commission order and
11 the finding order in case 12-2281-EL-AAM, which is
12 Deposition Exhibit Number 2 -- if you look at
13 Paragraph 10 on Page 3 --

14 A Okay.

15 Q The Commission states that "The
16 determination of the reasonableness of the deferred
17 amounts and the recovery thereof, if any, will be
18 examined and addressed in a future proceeding before
19 the Commission." Do you see that?

20 A Yes.

21 Q And that language appears in the other
22 case as well, 08-1332, Deposition Exhibit Number 4.
23 That's Page 2, Paragraph 6. Do you see that?

24 A Yes.

25 Q What does that "if any" language mean to

1 you as an auditor looking at that?

2 A Again, that there is a risk that reasonable
3 costs could be disallowed by the Commission.

4 Q So, that language should alert third
5 parties, such as investors, lenders, auditors, or
6 rating agencies, that there is uncertainty regarding
7 the eventual recovery of the deferral; is that
8 correct?

9 A Well, if this is the only thing that's
10 being relied on, yes. But if this is the only thing
11 being relied on, then you would not get deferral
12 accounting. And the Commission's finding and order
13 is meaningless if this is the only facts that you are
14 evaluating in determining if a deferral of a cost
15 should be recorded.

16 Q On Page 9 of your testimony, Deposition
17 Exhibit Number 9, Lines 8 through 10 or so -- 12,
18 you talk about "Investors prefer to reduce or
19 eliminate risk and uncertainty." Do you see that?

20 A Yes.

21 Q Would it be your understanding that
22 investors understand that they cannot completely
23 eliminate risk?

24 A They would understand that they cannot
25 completely eliminate risk. They just try to manage

1 it.

2 Q And if you are relying on a deferral or
3 the deferral creation, as an investor, you are doing
4 so at your -- at an investor's peril, correct?

5 A I mean, the investor is making the
6 investment, so, it's at his peril, but he has the
7 certainty provided by accounting guidance that says
8 management has evaluated whether those costs are
9 probable of recovery, the auditor has evaluated it.
10 And in that evaluation, the Commission has provided
11 precedent that it would be probable of recovery. So,
12 I don't think he knows that he's taking that risk in
13 that case. So, he has managed that risk because of
14 those factors that are in place.

15 Q But it's understood that there still is
16 another Commission proceeding that would be required
17 before that recovery becomes certain. And in that
18 proceeding, reasonableness and prudence of those
19 costs would be examined.

20 A Yes. And I said that in my testimony, that
21 they understood that the costs -- the only risk in
22 the costs left was when a rate case would occur and
23 the costs begin to be recovered in rates, and whether
24 the company, in capturing all of the costs, has
25 captured those costs that are reasonably and

1 prudently incurred.

2 Q But "probable" does not equate to
3 "certainty", correct?

4 A I mean, it's not a hundred percent certain,
5 but it's highly probable.

6 Q But it's just as probable that some of the
7 items included, by their very nature, that there is
8 a possibility that deferral amount will not be
9 recovered.

10 MR. SHARKEY: Objection to form.

11 BY MR. SAUER:

12 Q Correct?

13 A Yeah. I mean, I don't know how you can
14 have two probables in the same piece. In other
15 words, when you are assessing probability, what you
16 are saying is that, you know, there is a
17 seventy-five, eighty, ninety percent chance that
18 these costs are going to be recovered. So, then to
19 say there is also an eighty-five -- you know,
20 seventy-five to ninety percent chance that the costs
21 aren't going to be -- you know similar costs aren't
22 going to be recovered -- mathematically, I don't know
23 how that applies.

24 Q Well -- and I don't think it does. I
25 think you are right. I think you assess it as -- I

1 guess the point is, it's not a hundred percent sure
2 that the recovery is going to be dollar for dollar
3 of what was deferred in that regulatory asset,
4 correct?

5 A No. As I said in my testimony, the
6 investor or third party understands that there is a
7 risk that some of those risks may not be recoverable
8 because they were not reasonable or prudently
9 incurred.

10 Q Looking at Page 3, Lines 5 through 10.
11 There is a statement in there where you say,
12 "Further, Staff's justification for its
13 recommendation - an ad hoc financial analysis used
14 to apply retroactive ratemaking to the last twelve
15 years of DP&L's financial results - is
16 unprecedented." Do you see that?

17 A Yes.

18 Q What is your understanding of retroactive
19 ratemaking?

20 A That -- my understanding of retroactive
21 ratemaking would be that a current event or a current
22 cost has been incurred. And the Commission would be
23 looking back at several prior years, saying that that
24 cost was actually recovered sometime in the past, for
25 whatever reason, and I'm changing the rates or the

1 revenues that were collected from the company because
2 of that event that occurred subsequent to that
3 period.

4 Q If I might turn your attention back to the
5 finding and order again in case 12-2281, Deposition
6 Exhibit 2. I'm looking at Paragraph 10. Do you see
7 the statement, "As Supreme Court has previously
8 held, deferrals do not constitute ratemaking." Do
9 you see that?

10 A Yes, I do.

11 Q So, the deferral creates the regulatory
12 asset, correct?

13 A Yes. The costs incurred, in this case for
14 storm costs, are deferred, and it would be a
15 regulatory asset.

16 Q And then it's a subsequent proceeding
17 where the Commission decides how much of that
18 regulatory asset can ultimately be recovered from
19 customers, correct?

20 A In this case, that would be correct.

21 Q So, in your definition of retroactive
22 ratemaking, how does the Staff's recommendation to
23 deny the recovery of Hurricane Ike storms constitute
24 retroactive ratemaking?

25 A As I understand their basis for their

1 recommendation, it was because of the fact that O&M
2 expenses were lower in prior periods prior to the ice
3 storm, and, therefore, these costs relate to that
4 period of time.

5 Q Staff hasn't filed testimony in this case
6 yet; have they?

7 A They have -- I don't believe they filed
8 testimony. They do have the audit report.

9 Q They do have the audit report.
10 Hypothetically, if Staff filed testimony in this
11 case explaining in greater details recommendations
12 to deny DP&L's storm cost recovery for the deferred
13 Hurricane Ike expenses, and in that explanation
14 Staff is holding DP&L accountable for its imprudent
15 decision to under spend O&M during the years 2000
16 and 2011, would that change your position as well
17 that it was retroactive ratemaking?

18 MR. SHARKEY: Object to the form,
19 incomplete hypothetical. You can answer.

20 THE WITNESS: I mean, what I think your
21 hypothetical is saying is that, independent of
22 the storm cost investigation, the Commission
23 issued a new proceeding in which it stated
24 that the company -- DP&L underspent on their
25 distribution O&M for the period 2002 to 2006,

1 I mean, just to pick a period of time, and
2 whether that would change my opinion.

3 BY MR. SAUER:

4 Q Well, let me go a step further. And let
5 me suggest that, because of that underspending, it
6 resulted in unreasonably-maintained distribution
7 system which made DP&L's distribution system more
8 susceptible to widespread and devastating damage to
9 its distribution system to Hurricane Ike's winds
10 because its system had not been appropriately
11 maintained.

12 A I mean, there you are getting into that
13 prudence question that we had the hypothetical
14 earlier about. Now you are applying it to Dayton
15 Power and Light as opposed to another jurisdictional
16 utility.

17 Q Yes.

18 A We are not talking about recovery of a
19 regulatory asset. I mean, my opinions in this case
20 wouldn't change. My opinions under your hypothetical
21 might be different because, one, doing something in
22 2014 related to 2006 -- I mean, there are a lot of
23 other facts in the hypothetical that I would want to
24 evaluate to render some opinions around.

25 Q I guess the point being is they are not --

1 they are not using the fact that DP&L had underspent
2 to come up with an offset to storm costs, but
3 rather, that underspending led to the requirement
4 that DP&L spend dollars to restore the system. Do
5 you see the distinction there?

6 A I see the distinction. And, I mean, in
7 your hypothetical, I would expect to see a lot of
8 testimony from engineers around the quality of the
9 distribution system. I would expect to see, not only
10 underspending of O&M, but what the company was
11 spending in capital and what other technological
12 improvements the company has made.

13 I mean, in your hypothetical case, to me, I
14 don't think it would be limited to just distribution
15 O&M. It would encompass everything, which is
16 different than what the Commission Staff is doing in
17 this case.

18 Q Is it your understanding that DP&L did not
19 seek deferral authority for the 2011 storm
20 restoration expenses until late 2012?

21 A That is my understanding.

22 Q And having not deferred the 2011 storm
23 expenses, the utility has already expensed them,
24 correct?

25 A They would have expensed them in '11.

1 Q Yes.

2 A Yes.

3 Q So, in these proceedings, the utility is
4 now seeking authority to defer and recover them
5 through a rider established in this case, correct?

6 A Yes. They are trying to -- they are
7 proposing to include those costs in the rider. I
8 would need to go back and check if those costs
9 weren't deferred on the books at some point in time.

10 Q Well, hypothetically, if those costs have
11 never been deferred, and in 2011, they were expensed
12 through their normal course of business, wouldn't
13 the utility's actions to seek that deferral of the
14 storm restoration expenses already written off in
15 the year incurred constitute retroactive ratemaking?

16 A I don't believe so.

17 Q And why not?

18 A Because it was an old event which they did
19 not have, at the time, sufficient documentation to
20 support the probability to create the deferral. So,
21 the process would say that you have to wait until the
22 final rate order, which is what's being applied for
23 now.

24 Q But then, why in 2008, would they have
25 sought a deferral request within a hundred days or

1 so of the actual event when Hurricane Ike came
2 through?

3 A I mean, the facts surrounding when and why
4 is probably a better question for the company. My
5 assumption to those facts would be that they felt
6 that they had sufficient documentation to support the
7 probability of recovery of the 2008 costs and
8 therefore created the regulatory asset. And then, in
9 2011, it came to a different conclusion around those
10 costs.

11 Q As an auditor of DP&L, in 2011, were there
12 any discussions surrounding whether or not to create
13 a regulatory asset for 2011 storm expenses?

14 A In 2011, when they had made the
15 determination not to seek recovery, they would have
16 been expensed because they wouldn't have met the
17 probability, and there were discussions around that.

18 In 2012 -- and this is why I wanted to
19 check, I thought that, once they requested it, that
20 they created a regulatory asset at that point in
21 time. But that, again, is from recollection. I
22 would want to go check. And, again, because they had
23 met the hurdle that it was now a probable recovery.

24 Q Can you give me some examples of what may
25 have occurred between 2011 and 2012 that might have

1 changed their perception of probability relative to
2 those 2011 storm expenses?

3 MR. SHARKEY: Objection, calls for
4 speculation, but you can answer it if you
5 know.

6 THE WITNESS: I mean, again -- I mean,
7 that's a better question to talk to the
8 company about, but, I mean, if management in
9 2011 said 'we don't believe we are going to go
10 ask for recovery of these costs', that kind of
11 ends the probability assessment because they
12 decided that they are not going to ask for
13 them.

14 BY MR. SAUER:

15 Q Right. Got you.

16 A In 2012, if management looks at it and
17 says, you know, 'we really think we shouldn't request
18 recovery of these costs', then you are into a
19 different evaluation process.

20 Q And what would have to happen? You would
21 have to restate your 2011 financials?

22 A No. The accounting guidance would say
23 that, if you don't meet the probability to record a
24 deferral, then the amounts should be expensed as
25 incurred. Once you meet the probability and you feel

1 that recovery is probable, then those costs should be
2 then deferred in that period.

3 Q But you are now deferring costs that have
4 already been expensed and written off in a prior
5 year.

6 A That's correct, but the probability of
7 whether those amounts are going to be recovered
8 changes, or has changed in the current period.

9 MR. SHARKEY: Larry can we go off the
10 record?

11 MR. SAUER: Sure.

12 (Discussion held off the record.)

13 (Brief recess.)

14 BY MR. SAUER:

15 Q Mr. Barrett, in your testimony, and it was
16 marked as Deposition Exhibit Number 9, you discussed
17 some accounting guidance reflecting, in the
18 financial statements, the financial effects of
19 cost-based regulation of utilities. That's Pages 3
20 to 5 of your testimony. Are you familiar with that?

21 A Yes.

22 Q Would you agree that the company created
23 an expectation by creating the deferral in the first
24 place?

25 A I mean, I will agree that an expectation

1 was established when they created the deferral, but
2 they had an -- I mean, they just didn't create the
3 deferral. They had to have facts and circumstances
4 that supported the deferral, so -- I mean, your
5 question made it sound like it was done -- like out
6 of thin air, they did this.

7 Q Well, that wasn't my intent. As an
8 auditor signing off on financial statements, is
9 there a concern for liability if the deferral
10 request is not approved for recovery?

11 MR. SHARKEY: Objection, Larry.

12 Liability to whom?

13 MR. SAUER: Liability to the auditor.

14 THE WITNESS: I mean, there is always a
15 concern about liability, meaning that you made
16 a mistake. If all the facts and circumstances
17 are present, then, you know, generally the
18 creation of the deferral would not be a
19 mistake. If it was subsequently determined
20 that these amounts shouldn't have been
21 deferred for whatever reason, then I don't see
22 where a liability would come out of it, so --

23 BY MR. SAUER:

24 Q Are your auditor opinions typically
25 sufficiently qualified to insulate the auditor from

1 liability as well?

2 A That sounds like a legal question. I mean,
3 I would imagine that our general counsel at Ernst &
4 Young would say that our opinion is sufficient,
5 but -- I mean, I don't think that's up to me.

6 Q In your experience, have you -- would
7 investors -- have you heard investors indicate that
8 a disallowance of deferred costs changed their view
9 of risks associated with the utility?

10 A I mean, as far as specifics -- I mean, I've
11 never had a dialogue, but as far as the things I've
12 read in rating agencies' reports and other
13 information that I've read over the years -- I mean,
14 the investor looks to the regulatory climate that the
15 utility functions in and evaluates that risk. And if
16 costs are continually disallowed or amounts cannot be
17 deferred and ultimately recovered, that changes that
18 risk profile.

19 Q Can you reconcile for me the guidance that
20 you are discussing in your testimony and the PUCO
21 order which state 'The Commission further notes that
22 the determination of the reasonableness of the
23 deferred amounts and the recovery thereof, if any,
24 would be examined and addressed in a future
25 proceeding before the Commission'.

1 A Well, I think we've talked about it
2 earlier. The Commission order on its own would not
3 be sufficient to give the company the right to defer
4 those costs, or the ability to defer those costs.
5 It's the Commission order plus the Commission
6 practice that has always surrounded those orders
7 where the costs were ultimately allowed recovery
8 absent any, you know, prudence-type, you know,
9 reasonableness-type disallowances that all lay into
10 the factors to evaluate whether a regulatory asset
11 can be deferred.

12 Q Are you aware of any write-offs by the
13 PUCO of a regulatory asset in Ohio?

14 A Related to storm costs or just in general?

15 Q Well, we'll start in general, and then, if
16 you know more specifically with storm costs, we will
17 go there.

18 A Well, I guess the one that I'm recollecting
19 was -- if I remember the facts right, Duke had some
20 storm costs, that were ultimately disallowed,
21 recovered within the last year or two, but the facts
22 surrounding that case were kind of unique, as I
23 recall.

24 Q What's your understanding of the facts and
25 the uniqueness of that case?

1 A That the costs being accumulated were
2 deemed by the Commission not to be reasonable.

3 Q Why is that unique, or why is that?

4 A Again, from a recollection point of view,
5 they were costs that other utilities might not
6 normally capture as a regulatory asset related to
7 storm, and that's why they would be unique.

8 Q So, it wasn't the fact that the
9 Commission, in reviewing Duke's application, found
10 there to be costs that were imprudent. That isn't
11 unique or unusual, is what you are saying.

12 A Well, if we are going to talk in
13 generalities. Yes. I mean, that Narragansett case
14 that we talked about -- I mean, we identified costs
15 that were not reasonable to include in the gas
16 adjustment price. So, they were ultimately adjusted
17 out of the regulatory asset. And it doesn't change
18 the Commission's policies or regulations around
19 deferral accounting because it was just isolated
20 costs that were not proper to include.

21 And, again -- I mean, if that's what the
22 Commission does -- I mean, that's that risk we talked
23 about, which is whether the costs were reasonable and
24 prudently incurred, but not the fact that storm
25 costs, in and of itself, which are prudently incurred

1 and reasonable aren't recoverable.

2 Q And do the generally-accepted accounting
3 principal rules address how disallowance of a
4 deferral should be treated?

5 A Yes. I mean, when the Commission
6 determines that -- when the Commission disallows the
7 cost, the determination is obviously that it's not
8 probable of recovery. And those amounts are written
9 off. Case in point, I believe DP&L in one of their
10 fuel case cost reviews had some cost elements that
11 were disallowed. And they were written off at the
12 time.

13 Q And they were written off from any
14 regulatory asset?

15 A Yes. But it doesn't change the assessment
16 on whether the remaining costs are probable of
17 recovery, so they continued to be recorded as a
18 regulatory asset.

19 Q You make a statement on Page 9 in your
20 testimony that investors and lenders know that, once
21 a deferral order is issued, the only remaining
22 uncertainty is whether the company has included only
23 reasonable and prudent costs in the deferral. Do
24 you see that?

25 A Yes. I see it.

1 Q Do you believe that the Commission in its
2 review in a subsequent proceeding to a referral
3 request has limits on what it can review?

4 A No. That's not what I'm saying there.

5 Q Okay. Would you agree that the deferral
6 request is made because the utility does not believe
7 that there are revenues to match the deferred
8 expenses?

9 A Can you repeat that question?

10 Q I will strike that question. Is the
11 ability to attract capital the only thing that the
12 PUCO should consider in determining whether to grant
13 recovery of the storm costs? That's on Page 8 of
14 your testimony.

15 A It's not the only factor. I mean, there
16 are obviously other factors that are to be
17 considered, but -- I mean, it's a key element, given
18 the nature of the utility.

19 Q In the Staff report that was marked as
20 Exhibit 1, on Page 4, where the Staff made some
21 adjustments. Staff made -- in the 2008, 2011 and
22 2012 deferrals, they made an adjustment for the
23 three-year average. Do you see that?

24 MR. SHARKEY: I'm sorry, Larry. Which
25 exhibit are you asking him about?

1 MR. SAUER: It's his Deposition Exhibit
2 Number 1, the Audit Report, on Page 4 where
3 the Staff makes various adjustments to the
4 various deferral requests.

5 MR. SHARKEY: Thank you. I thought you
6 were on Exhibit 4. I'm with you.

7 BY MR. SAUER:

8 Q Are you with me, Mr. Barrett?

9 A Yes, I am. I see that.

10 Q Okay. And I was talking specifically
11 about the Staff's three-year average adjustment. Do
12 you see that they made that in each of the three
13 years?

14 A I see that.

15 Q In the Commission's Entry on Rehearing,
16 which is Deposition Exhibit Number 3, the -- on Page
17 4. I'm in the carryover paragraph at the very top
18 of the page. "The Commission notes that allowing
19 DP&L to recover the full amount could allow for DP&L
20 to engage in double-recovery of the O&M expenses,
21 first from base distribution rates and second from
22 this proceeding." And they were saying that to, I
23 guess, prevent that the -- or the three-year average
24 of stormwater be removed from the deferral request.
25 Do you see that?

1 A Give me a second. I mean, it's --

2 Q Sure. Take you time and read that.

3 A It's Paragraph 7 starting on Page 3?

4 Q Yes.

5 A Okay.

6 Q So, in the Commission's attempt to prevent
7 the company from a double-recovery, would you agree
8 that PUCO's three-year average adjustment is
9 consistent with your assessment of what can be
10 included within the Commission's reasonableness
11 review?

12 MR. SHARKEY: Objection. It's beyond the
13 scope of his testimony. You can answer it if
14 you know.

15 THE WITNESS: Yeah. I mean, I did not
16 look at the calculation of the three-year
17 average.

18 BY MR. SAUER:

19 Q Right. And I'm not asking for your --

20 A I've seen -- -

21 Q I'm asking about what the Commission Staff
22 did. In an attempt to prevent double-recovery,
23 isn't it an appropriate review or a reasonableness
24 review from the Commission?

25 MR. SHARKEY: Objection to form. You can

1 answer the question if you understand it.

2 THE WITNESS: Yeah. I guess -- you kind
3 of made it as an exclusion. I mean, I could
4 see a three-year average being a reasonable
5 policy that the Commission would apply to
6 these types of costs. I've seen it done
7 elsewhere on my clients. But, again, when
8 they've done it, they kind of included all
9 storm costs since, you know, a three-year
10 average -- you know, there are major storms
11 and lesser storms. And, I mean, there are a
12 lot of facts and circumstances that need to be
13 evaluated in doing the calculations and
14 establishing the policy.

15 BY MR. SAUER:

16 Q And, as an auditor, how would you evaluate
17 this type of adjustment in light of the fact that in
18 DP&L's deferral request, there was an adjustment for
19 a three-year average by the company, but in 2011,
20 2012 their deferral request excluded a
21 three-year-average concept? And how, as an auditor,
22 do you address that kind of an internal
23 inconsistency by utility actions in establishing
24 regulatory assets?

25 A Again, I think that the process is as we've

1 described it. You have to evaluate the probability.
2 I would have to go back and look at the accounting
3 orders, but I think -- I have the recollection that
4 one had the three-year average in it and the other
5 ones may not have had it.

6 Obviously, when the company filed for the
7 information, they gave some information around how
8 they did the calculation. So, you are evaluating all
9 of that. And if the conclusion is that it's
10 probability, then it would be a regulatory asset.

11 If now, subsequently, the Commission has
12 determined that, no, in 2008, it was the Commission's
13 policy that the three-year average should be
14 subtracted out, then -- to me, that's just now
15 evidence that it's no longer probable of recovery and
16 should be adjusted.

17 Q On Page 10 of your testimony, Lines 18
18 through 22, you state that, "Indeed investors have
19 substantial experience with the 'prudently incurred'
20 standard. However, investors have no experience
21 with the new standards being advocated by the
22 Staff." Do you see that?

23 A Yes.

24 Q How do investors go about making a
25 determination of prudence of a deferral request?

1 A You would go back to the risks around the
2 Commission and Commission regulations in the state.
3 So, what you would have is the company determining
4 that it's probable of recovering. That these costs
5 that they are putting as a regulatory asset are
6 probable of recovery. You have the company's
7 auditors agreeing with that determination and that
8 the evidence supports it. So, now the risk is
9 prudence in whether the costs incurred were prudent.

10 So, again, in the case of a storm, if the
11 company responded timely, and, you know, storm
12 restoration costs occurred within a reasonable
13 timeframe and there wasn't a lot of negative
14 publicity around it, an investor would look at that
15 and begin to think that there is probably not much
16 risk to the prudence side of the cost.

17 If, however, there was a, you know, a lot
18 of facts that would kind of show that the company did
19 not respond adequately, then you might begin to look
20 for some prudence disallowances and make those
21 judgments. But, again, you wouldn't know how much.
22 You would just know that there was a risk of them.

23 Q Do the investor's evaluation change from
24 jurisdiction to jurisdiction?

25 A Yes.

1 Q Do you find the Ohio Commission to be more
2 or less for the utilities than other jurisdictions?

3 A I haven't looked. I do know that there are
4 services out there that rate all of the regulatory
5 commissions. And there are differences between the
6 different commissions.

7 Q Are you aware of investors to pay
8 particular attention to the storm damage referral
9 cases?

10 A I mean, that's, again, a broad question. I
11 mean, if I think about Katrina and I think about
12 Hurricane Sandy and the costs that were incurred, I
13 would bet you that, if we listen to the analyst calls
14 for those companies, there is a lot of discussion
15 around it.

16 If you are talking about the tornado that
17 leveled the small city in Oklahoma, there is probably
18 not so much discussion from the analyst point of view
19 because of the materiality.

20 Q Would you have any personal knowledge of
21 those discussions or communications?

22 A None specifically, but I do have on other
23 major issues like that.

24 Q For example?

25 A Well, for example, SCANA in South Carolina

1 is building the nuclear plant. And when I listened
2 to their analyst call last quarter -- I mean,
3 probably sixty percent of the calls centered around,
4 you know, the costs of the nuclear plant, the future
5 cost estimates, their current recovery mechanism and
6 how that's -- I mean, the debt financed and -- I mean
7 that, was the major topic of conversation because it
8 was so big.

9 Q Did you -- and I know we've marked the
10 Staff comments in this case as Deposition Exhibit
11 Number 5. Did you review those?

12 A Yes, I have.

13 Q And on Page 4, did notice that the last
14 DP&L case was in 1991?

15 A Yes.

16 Q And that the staff indicated the
17 authorized equity rate of return was 12.06 to 13.19
18 percent?

19 A Yes.

20 Q And that the average equity rate of return
21 DP&L has actually realized since 1999 was 19.65
22 percent?

23 A That's what it says, yes.

24 Q Do you have any individual knowledge that
25 that is incorrect?

1 A No. I mean, I have not tried to evaluate
2 that at all.

3 Q Would an investor be paying much closer
4 attention to the historical returns experienced by a
5 utility than individual deferral requests, for
6 example?

7 A Can you --

8 MR. SHARKEY: Objection. At what time,
9 Larry?

10 MR. SAUER: At any time. Especially,
11 when they are thinking of investing.

12 THE WITNESS: I think I lost the
13 question. Can you repeat it.

14 BY MR. SAUER:

15 Q Would an investor be paying much closer
16 attention to the historical returns experienced by a
17 utility relative to their authorized return as
18 opposed to, say, individual deferral requests?

19 A I mean, they are obviously going to look at
20 historical returns, and then evaluate whether those
21 historical returns are going to be achieved in the
22 future.

23 So, to the extent a storm deferral request
24 or a substantive change in commission policy or
25 whatever other facts that would change those -- I

1 mean, they are being evaluated by the investor.

2 Q On Page 8, Line 7 to 10 of your testimony,
3 you state, 'the recording of storm expenses in the
4 current period would have a very significant
5 negative impact on expenses and DP&L's earnings'.

6 Do you see that?

7 A Where again? I'm sorry.

8 Q Page 8, Lines 7 through 10.

9 A Yes.

10 Q Have you calculated that impact?

11 A No. I have not.

12 Q And you go on to state that the reduction
13 will have a negative impact on DP&L's debt-to-equity
14 ratio during a time of significant restructuring.'

15 Do you see that?

16 A Yes.

17 Q Now, have you calculated the impact on the
18 debt-to-equity ratio?

19 A No, I have not.

20 Q Do you know what DP&L's equity is,
21 approximately?

22 A I would have to check.

23 Q Would it be in the neighborhood of 1.4
24 billion dollars?

25 A I would have to go check. I don't have

1 that number in my head.

2 Q But are you suggesting that, in this case,
3 if the Commission would order a thirty-seven million
4 dollars write-off of O&M storm expenses, assuming a
5 full write-off, that that would have an impact on
6 the debt-to-equity ratio on the company DP&L's size?

7 A Well, it's going to change the numbers.

8 Q I understand it will change the numbers.
9 But, I mean, you are saying that there will be a
10 change to the debt-to-equity ratio as a result of a
11 thirty-seven million dollars write-off?

12 A I mean, it's going to change the numbers at
13 a time when there is a whole generation of
14 restructure going on.

15 Q Well, there are other things going on, but
16 is that act of writing off a regulatory asset of
17 that size -- is that decision going to do something
18 to the debt-to-equity ratio?

19 A I believe it's going to change it, yes.

20 Q Can you give me an order of magnitude of
21 what that change might be?

22 A I would have to look at the numbers.

23 Q But you haven't looked at the numbers.

24 A No.

25 Q Okay.

1 MR. SAUER: Can we take a break for a
2 minute, Jeff? I may be just about finished
3 here.

4 MR. SHARKEY: Absolutely.

5 (Brief recess.)

6 BY MR. SAUER:

7 Q Mr. Barrett, just a couple of follow-up
8 questions. I don't know if you -- Mr. Barrett, are
9 you an economist?

10 A No, I'm not.

11 Q Okay. And I know you mentioned that you
12 are retired. When did you retire?

13 A June of '13.

14 Q June of 2013. And you said that you were
15 on an analyst call last quarter.

16 A Yes, it would have been -- it would have
17 been the September quarter year end, so it would have
18 been, you know, probably around the November
19 timeframe.

20 Q So, you were still staying involved in
21 financial activities?

22 A Yes. I mean, when I retired, I established
23 a consulting practice.

24 Q Okay.

25 A So, in addition to providing services to

1 DP&L, I have had a number of other projects so far to
2 date --

3 Q Okay.

4 A -- which require me for stay current.

5 Q Okay.

6 MR. SAUER: I think that is all I have.

7 Unless --

8 BY MR. SAUER:

9 Q Do any of your present consulting -- your
10 other clients have any issues regarding a regulatory
11 asset deferral request pending?

12 A Well, the one dealt with regulatory
13 accounting, but it wasn't an investor-owned utility,
14 so it wasn't with the commission.

15 Q Okay.

16 A It related to whether -- it related to the
17 regulatory accounting around a plant closure.

18 Q Okay.

19 A And then, the another project that I have
20 ongoing is, again, not with an investor-owned
21 utility, but with a municipal utility helping them
22 adopt ASP-980 or 571.

23 Q Okay. And those are the only projects
24 that have some --

25 A Some touch on regulatory accounting.

1 Q Yeah. Okay.

2 MR. SAUER: I think that is all I have.
3 I appreciate your time today. Mr. Barrett,
4 take care.

5 MR. SHARKEY: Well, before we go off the
6 record here, I just want to make sure that
7 nobody else on the phone, counsel, have
8 questions for Mr. Barrett.

9 (No response.)

10 MR. SHARKEY: All right. Well, hearing
11 none, I would like to state that he would like
12 to read. And then we can go off the record.

13 (Deposition concluded.)
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S-T-I-P-U-L-A-T-I-O-N

It is hereby stipulated by and between
the attorneys and the witness that the witness
will not waive his right to read and sign the
deposition.

- - - - -

1 CERTIFICATE OF OATH

2
3 STATE OF FLORIDA

4 COUNTY OF HILLSBOROUGH

5
6 I, the undersigned authority, certify
7 that MICHAEL BARRETT personally appeared
8 before me and was duly sworn.9
10 WITNESS my hand and official seal this
11 1st day of February, 2014.12
13 _____
14 Sonja Bonanno
15 Notary Public - State of Florida
16 My Commission Expires: 07/24/14
17 Commission No. DD997348
18
19
20
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25

1 REPORTER'S CERTIFICATE

2 STATE OF FLORIDA

3 COUNTY OF HILLSBOROUGH

4
5 I, SONJA BONANNO, Court Reporter, certify
6 that I was authorized to and did
7 stenographically report the foregoing
8 deposition of MICHAEL BARRETT, that the
9 transcript is a true, accurate, and correct
10 computerized transcription.
11

12 I FURTHER CERTIFY that I am not a
13 relative, employee, attorney, or counsel of
14 any of the parties, nor am I financially
15 interested in the action.
16

17 IN WITNESS WHEREOF, I have hereunto set
18 my hand and seal in Tampa, Hillsborough
19 County, Florida, this 1st day of February,
20 2014.
21
22

23 _____
24 SONJA BONANNO
25 Court Reporter
Notary Public

DO NOT WRITE ON TRANSCRIPT - ENTER CHANGES

[illegible]

DATE MICHAEL BARRETT

Reporter: Sonja Bonanno

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Summary: Deposition Deposition Transcript of Michael E. Barrett by the Office of the Ohio Consumers' Counsel electronically filed by Patti Mallarnee on behalf of Yost, Melissa Ms.