

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. 12-3062-EL-RDR
for Authority to Recover :
Certain Storm-Related :
Service Restoration Costs.:
:

In the Matter of the :
Application of The Dayton :
Power and Light Company : Case No. 12-3266-EL-AAM
for Approval of Certain :
Accounting Authority. :
:

- - -

PROCEEDINGS

before Mr. Gregory Price and Mr. Bryce McKenney,
Hearing Examiners, at the Public Utilities Commission
of Ohio, 180 East Broad Street, Room 11-C, Columbus,
Ohio, called at 9:00 a.m. on Wednesday, June 4, 2014.

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VOLUME II

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Wednesday Morning Session,
June 4, 2014.

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EXAMINER MCKENNEY: The Public Utilities Commission of Ohio calls for hearing at this time and place, Case No. 12-3062-EL-RDR, being In the Matter of the Application of The Dayton Power and Light Company for Authority to Recover Certain Storm-Related Service Restoration Costs. My name is Bryce McKenney, with me is Greg Price, we're the attorney examiners assigned by the Commission to hear this case.

At this time we'll continue with the testimony of Mr. Campbell.

Mr. Campbell, I will remind you that you are still under oath from yesterday.

MR. CAMPBELL: Yes, sir.

EXAMINER MCKENNEY: Ms. Yost, you may proceed.

MS. YOST: Thank you, Your Honor. I did ask Mr. Sharkey to go on the record and identify the Bates stamped pages that they no longer deem confidential. So if Mr. Sharkey could do that before I proceed. My first exhibit is one that was previously marked confidential.

1 MR. SHARKEY: I would be happy to,
2 Ms. Yost. Those would be documents Bates stamped
3 DP&L Storm 2821 through 2830, DP&L Storm 2849 through
4 2859, and DP&L Storm 2803.

5 MS. YOST: Thank you, Mr. Sharkey.

6 Your Honor, at this time, OCC requests to
7 have marked OCC Exhibit 10, a document that is Bates
8 stamped 2821 through 2830, titled DP&L Summary of
9 Regulatory Actions and Accounting Analysis, Fourth
10 Quarter 2012.

11 EXAMINER MCKENNEY: It will be so marked.

12 (EXHIBIT MARKED FOR IDENTIFICATION.)

13 MS. YOST: Your Honor, may I approach the
14 bench?

15 EXAMINER MCKENNEY: You may.

16 - - -

17 GREGORY S. CAMPBELL

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

20 CROSS-EXAMINATION

21 By Ms. Yost:

22 Q. Good morning, Mr. Campbell.

23 A. Good morning.

24 Q. Please take a moment to familiarize
25 yourself with that document. When you are ready to

1 proceed, please let me know and I will designate you
2 to certain portions of the document.

3 EXAMINER PRICE: Let's go off the record.
4 (Discussion off the record.)

5 EXAMINER MCKENNEY: We just had a
6 discussion briefly on the redactions in OCC Exhibit
7 10. Mr. Sharkey, would you like to address the
8 redactions in OCC Exhibit 10?

9 MR. SHARKEY: I'd be happy to, Your
10 Honor. As we discussed off the record, the
11 information in OCC Exhibit 10 that is not redacted is
12 also not confidential. Before DP&L produced this
13 exhibit to OCC, we redacted information as shown on
14 the exhibit. The information that was redacted is
15 both irrelevant to the storm matter and is also
16 highly confidential which are the reasons for the
17 redactions.

18 EXAMINER MCKENNEY: Thank you,
19 Mr. Sharkey.

20 Ms. Yost, did you have a response to
21 that?

22 MS. YOST: Thank you, Your Honor.

23 OCC was provided Exhibit 10, which is
24 Bates stamped 2821 through 2830, under a protective
25 order, and was -- and the terms and rights that are

1 subject to that protective order. OCC received it
2 redacted and OCC has not contested the Company's
3 assertions that that information is not related to
4 the deferrals of DP&L's storm costs. So without
5 waiving any right to later contest that, we're in a
6 position to proceed with Exhibit 10 as produced.

7 EXAMINER MCKENNEY: Thank you.

8 Ms. Yost, you may proceed.

9 MS. YOST: Thank you, Your Honor.

10 Q. (By Ms. Yost) Are you ready to proceed,
11 Mr. Campbell?

12 A. Yes, I am.

13 Q. Have you seen this document before
14 probably unredacted?

15 A. I have seen it both redacted and
16 unredacted.

17 Q. And could you tell the -- could you
18 identify what this document is?

19 A. It's a document prepared by Jared Hoying
20 that summarizes regulatory actions and accounting
21 analysis for the fourth quarter of 2012.

22 Q. And who is Jared Hoying?

23 A. At the time, Jared Hoying was my employee
24 who was in charge of the accounting policy group.

25 Q. Is he still an employee of Dayton Power

1 and Light?

2 A. He now works -- I don't know. He now
3 works in Indianapolis on behalf of Dayton Power and
4 Light and Indianapolis Power and Light, but I don't
5 know exactly what company he's an employee of.

6 Q. And this document's dated January 18th,
7 2013, at the top?

8 A. Yes, it is.

9 Q. And did Jared draft this document at your
10 instruction?

11 A. Both at my instruction, because I think
12 we had talked yesterday about how I wanted to give
13 information to Ernst & Young, particularly Michael
14 Barrett, related to the probability of regulatory
15 deferrals. But, in addition, it's a process that we
16 did every quarter for regulatory assets, in general,
17 related to AES or after our purchase by AES.

18 Q. Was this document used as a basis to
19 justify DP&L's change in its policy in regard to when
20 costs were deemed probable of recovery?

21 A. I think it was used as a basis to assist
22 in the decision we made on both the storm costs,
23 which are the unredacted portion and then other costs
24 that were redacted on the copy that we have in front
25 of us today, on the probability of recovery, to

1 ensure that all the assets that we had on the books
2 as regulatory assets at December of 2012 were
3 probable of recovery.

4 Q. And could I have you turn to page 2822?

5 A. Yes, I have that.

6 Q. Was this document created before or after
7 your discussion that we talked about yesterday with
8 Mike Barrett from Ernst & Young in regard to the
9 change of the policy regarding probability of costs?

10 A. I talked with Mike Barrett in December of
11 '12. So this would have been prepared later than
12 that.

13 Q. And on page 28 -- what is Bates stamped
14 2822, the top of the page, the first full sentence,
15 on that page it starts with the word "Support." It's
16 actually the second line. Do you see that, sir?

17 A. Yes, I see that.

18 Q. Could you read that sentence, please?

19 A. "Support for deferral has been documented
20 in the Regulated Assets & Liabilities Analysis memo
21 prepared as of December 31, 2011, (Whitepaper
22 #11-Q4-NA-38)."

23 Q. When it says "Support for deferral," what
24 is that referencing?

25 A. It's referencing the whitepaper that's

1 talked about in the latter part of the sentence.

2 Q. But is there a specific deferral that
3 that sentence is about?

4 A. I might have the whitepaper in my files
5 here, but my belief is it's related to support for
6 deferral of regulatory assets.

7 Q. And I actually do have the whitepaper and
8 I can give you a copy. I'll introduce that shortly.

9 A. That would be nice.

10 Q. I guess I'll ask this: The redacted
11 portions of this document, you said those were about
12 other deferrals, is that correct, not storm cost
13 deferrals?

14 A. They're related to other regulatory
15 assets and any other accounting analysis that we
16 might have done in the fourth quarter that might have
17 unusual items that might not be -- not be related to
18 regulatory assets.

19 Q. So those may not be under the
20 jurisdiction of the PUCO?

21 A. That is correct.

22 Q. Do you recall if any of them were under
23 the jurisdiction of the PUCO?

24 A. On the regulatory assets, many of them
25 would have been under the jurisdiction of the PUCO,

1 some of them would be under the jurisdiction of the
2 Federal Energy Regulatory Commission, and there may
3 have been items not related to regulatory assets, but
4 I don't recall specifically in the fourth quarter
5 versus the third quarter of 2012.

6 Q. And if we could now turn to what is Bates
7 stamped 2826.

8 A. Yes, I have that page.

9 Q. Could you take a moment just to briefly
10 familiarize yourself with those, the statements on
11 that page that are unredacted?

12 A. Yes, I looked at it.

13 Q. At the top of the page I see three
14 categories of deferred windstorm costs. One is dated
15 2008 and you have, right below it, 2011 and 2012. Do
16 you see where it says "Deferred Windstorm Costs"?

17 A. Yes, I see that.

18 Q. To the left of that there are numbers.
19 What do those numbers mean?

20 A. Those are the account numbers that we use
21 to track account or project numbers that we use to
22 track the different storm costs.

23 Q. Yesterday, I was asking whether those
24 deferrals were in separate accounts. This would
25 indicate those are in separate accounts, correct?

1 A. I believe I answered yesterday they were
2 either in separate accounts or in a separate
3 worksheet meaning an Excel worksheet, but we did know
4 the costs separately, yes.

5 Q. But this indicates they are in separate
6 accounts, correct?

7 A. I believe that's correct because the 182
8 would be the first three digits of the FERC account
9 that's associated with regulatory assets, but I'd
10 actually have to look at the ledger to answer
11 definitively.

12 Q. If you could go to the -- and this
13 document, we talked about the far left with the
14 account numbers. The far right, that indicates the
15 amount of deferrals. When would that amount -- would
16 that have been the fourth quarter of 2012?

17 A. If you go back to Bates stamp 2823,
18 you'll see, on the far right column, it says Balance,
19 December 31, 2012. So that carries through all the
20 numbers that would be on the far right column on this
21 schedule.

22 Q. And as we talked about yesterday, when we
23 were looking at the three categories of costs, the
24 deferred windstorm costs for 2008, that the Company
25 was calculating carrying charges on that amount,

1 correct, going forward?

2 A. When you say "going forward," I'm not
3 sure what you mean.

4 Q. This amount, the 18,930.216.79, would
5 have increased with carrying charges, that amount.

6 A. Yes, that's correct. Subsequent to
7 December of 2012, there would have been additional
8 carrying charges and possibly other adjustments to
9 the balance.

10 Q. What kind of other adjustments were you
11 referencing?

12 A. Not as much probably with the 2008 storm
13 because it was several years before December 2012.
14 But on the 2012 storm, if we found an adjustment, as
15 we went through the process, either a very, very late
16 bill or we found a cost that was misclassified and
17 should be added or should be subtracted from that, we
18 might have made an adjustment subsequent to December
19 2012.

20 Q. So you don't recall making any
21 adjustments to that amount, when I say "that amount,"
22 I mean the costs for 2008, subsequent to
23 December 2012?

24 A. I recall making adjustments to the costs,
25 but I don't remember which years they were made in.

1 Q. The deferred windstorm costs for 2011,
2 that amount would be the same, right? The \$4.3
3 million was the same amount up until the point that
4 the Company filed the most recent SEC filing on
5 May 9th and made adjustments; is that correct?

6 A. I would say no, because I'm comparing the
7 numbers here at December 31, 2012 to Schedule C-3 in
8 the filing that we made in December 2012 -- excuse
9 me. I'm looking at the wrong number. Let me look at
10 another number that I've got here.

11 Q. Take your time.

12 A. Yes, I believe the 4,359,108, at
13 December 31, 2012, would have remained the balance.
14 And, as I indicated yesterday, we did a writeoff or
15 adjustment in March of 2014. And depending on
16 whether you think that adjustment or write-down was
17 pro rata or related to a specific item in one of the
18 storms, that would have been the number prior to that
19 write-down.

20 Q. And the write-down amount was
21 \$3.3 million, correct? We talked about that
22 yesterday.

23 A. I think it probably was a little higher
24 than \$3.3 million because we would have been booking
25 a return at least in January and in February of 2014.

1 When I say "return," a carrying charge. And I don't
2 know whether they booked a carrying charge in March
3 before we did the adjustment or not.

4 EXAMINER PRICE: Just to be clear, you
5 would not have booked carrying charges on the 2011
6 storms because you had not been booking carrying
7 charges on 2011 storms. Is that right?

8 THE WITNESS: Correct. We have never
9 booked a return on the 2011 storms or carrying costs,
10 but I was referring to the 2008 storm.

11 EXAMINER PRICE: Thank you.

12 MS. YOST: Your Honor, at this time I'd
13 like to have marked as OCC Exhibit No. 11, the filing
14 by Dayton Power and Light with the SEC Form Q-10 for
15 the quarterly period ending March 31st, 2014. Just
16 for the record, it is the cover page and page 24 of
17 that filing.

18 EXAMINER MCKENNEY: It will be marked OCC
19 11?

20 MS. YOST: I believe so.

21 EXAMINER MCKENNEY: It will be so marked.

22 MS. YOST: Yes, Your Honor.

23 (EXHIBIT MARKED FOR IDENTIFICATION.)

24 MS. YOST: May I approach the witness,
25 Your Honor?

1 EXAMINER MCKENNEY: You may.

2 Q. Mr. Campbell, please take a moment to
3 familiarize yourself with this document and let me
4 know when you're ready to proceed.

5 A. Yes, I'm ready to proceed.

6 Q. If you could look at page 24 which is the
7 second -- well, first of all, do you recognize what
8 this is?

9 A. This is the quarterly report to the SEC
10 for March 31, 2014, of DPL Inc. and The Dayton Power
11 and Light Company.

12 Q. And this is what you referenced yesterday
13 when you said that the Company had made a filing, I
14 believe, May 6th?

15 A. I believe I said May 8th.

16 Q. Then I believe that is the correct
17 answer; May 8th. And the purpose of this filing,
18 what was the purpose of this filing, sir?

19 A. Companies that have debt or equity that
20 is publically traded, must file quarterly and annual
21 reports to the SEC and that's a requirement under the
22 federal laws.

23 Q. And on page 24 there is a paragraph that
24 is indicated No. 3, "Regulatory Assets." Do you see
25 that, sir?

1 A. Yes, I see that.

2 Q. And that paragraph indicates that the
3 deferred balances for the Company in regard to storm
4 costs was 25.6 million as of March 31, 2014; is that
5 correct?

6 A. It does not.

7 Q. Could you -- what was incorrect about my
8 statement there?

9 A. The 25.6 million is referencing the
10 December 31, 2013 balance. So there's two amounts
11 and two dates and it says "respectively."

12 Q. Oh, yes, I see that now. So the 25.6
13 million was for the December 31st, 2013?

14 A. Yes, that is correct.

15 Q. And the \$22.3 million as of March 31st,
16 that is because of the filing -- of this filing that
17 adjusted those amounts; is that correct?

18 MR. SHARKEY: I object because it's not
19 clear what this filing, you're referring -- what
20 Ms. Yost is referring to.

21 Q. How -- just strike that question.

22 How was the \$25.6 million balance reduced
23 to 22.3 million as of December 31st -- excuse me, as
24 of March 31st, 2014?

25 A. The 25.6 million at December 31st, 2013,

1 would have been the amount the Company was -- was
 2 probable at that point in time. As I had mentioned,
 3 we added carrying costs in the first quarter of 2014
 4 related to the 2008 storms and the 2012 storm, and
 5 then made an adjustment to reflect what we thought
 6 was probable of recovery at March 31, 2014, which was
 7 the \$22.3 million that's in the stipulation agreement
 8 with the PUCO staff and the Kroger Company.

9 Q. So, in essence, the Company made that
 10 adjustment to its books on March 31st, 2014?

11 A. We made them on the March books in 2014,
 12 but, as we discussed yesterday, we actually reopened
 13 the books prior to the filing with the SEC because
 14 the stipulation agreement was not signed and filed
 15 with the Commission until May 1, 2014.

16 Q. So in regard to the SEC filing and the
 17 writeoffs, you indicated that the actual writeoff was
 18 more than \$3.3 million?

19 A. That is correct.

20 Q. How would we know what that interest was
 21 and how it was booked for the first quarter of 2014?

22 A. You could look at the books of account of
 23 the Company.

24 Q. And when we spoke yesterday, the
 25 Company's already written off -- you said yesterday,

1 I think you said between 3 and 4 million dollars was
2 your testimony.

3 A. Yes, because I don't have the exact
4 amount of the writeoff with me.

5 Q. Was the writeoff more than 3-and-a-half
6 million dollars?

7 A. I do not have the exact amount with me so
8 I do not know the number.

9 EXAMINER PRICE: So the record is clear,
10 you covered this already, you made the adjustment on
11 your books even though the Commission has not issued
12 a final order in this case because that's your best
13 estimate every quarter as to what's probable of
14 recovery.

15 THE WITNESS: That's absolutely correct.

16 EXAMINER PRICE: So you're just not
17 waiting for a final order; you're making an ongoing
18 judgment call while the case is pending.

19 THE WITNESS: It's required by the
20 accounting rules and our professional judgment, yes.

21 EXAMINER PRICE: So other utilities would
22 have done the same thing.

23 THE WITNESS: Yes, indeed.

24 EXAMINER PRICE: We would like to think.

25 THE WITNESS: Yes, indeed they would.

1 Q. (By Ms. Yost) So the Company wrote off
2 \$3.3 million, plus three quarters of interest, on the
3 2008 and 2012 storm deferral amounts. Is that fair?

4 A. No, that's not correct.

5 Q. And what is incorrect about my
6 statements?

7 A. You said "three quarters." It would be a
8 portion of the first quarter and I don't know if it
9 was two months in the first quarter of 2014 or three
10 months in the first quarter of 2014.

11 Q. So we can agree that the Company wrote
12 off \$3.3 million, plus less than three months
13 interest that had accrued on 2008 and 2012 storm
14 deferral balances. Is that fair?

15 A. I would say three months or less, but I'm
16 an accountant so I'm very specific.

17 Q. I appreciate that.

18 So if the Commission approves the
19 stipulation as filed, the Company will have received
20 storm costs that they incurred in 2008, correct?

21 A. If the Company receives approval from the
22 Commission to collect the \$22.3 million over I
23 believe it's a year, they will collect that amount of
24 money, and some would be related to the 2008 storms,
25 some would be related to the 2011 storms, some would

1 be related to the 2012 storm. It's a black-box
2 settlement and it's dependent on whether you believe
3 that it's a pro rata return or specific years are
4 recovered in order or in sequence.

5 Q. When the Commission granted DP&L approval
6 to defer the 2008 and 2012 storm costs, minus the
7 three-year average, do you consider that to be the
8 granting of a partial deferral?

9 A. Well, as we discussed yesterday, and as
10 also discussed in witness Dona Seger-Lawson's
11 testimony, we are seeking recovery in this proceeding
12 of all of the costs related to the 2011 storms and
13 the 2012 storm, and are only seeking the 2008 storms
14 above the three-year average.

15 So I guess to answer your specific
16 question is it a partial deferral, we are deferring
17 what we believe is probable of recovery from an
18 accounting perspective which is a very high standard
19 and, in general, we are very conservative on booking
20 those regulatory assets.

21 Q. If I could have you look at 2826 again.
22 Hopefully you're still there. Second paragraph, it
23 starts on the word -- it states "On August 10, 2012."
24 Do you see that? I'm sorry, I'll slow down.

25 A. I have 2826. What --

1 Q. The second paragraph. It's actually the
2 second line of that second paragraph that I would
3 like to read out loud. It starts: "On December 19,
4 2012." Do you see that, sir? Second paragraph,
5 second line. "On December 19th, 2012."

6 A. Yes, I see that.

7 Q. You see that now? Okay. Please follow
8 along with me. "On December 19, 2012, the PUCO
9 issued an order permitting partial deferral
10 (\$4,747,141 requested less three year average storm
11 of storm costs of \$3,704,352) of costs associated
12 with the derecho." Do you agree with that statement?

13 A. I guess I partly do and partly don't. I
14 think we actually deferred part of the amount we
15 requested, but this doesn't get into, in the request
16 that we filed in December '12 that we were actually
17 seeking recovery of the entire amount or the other
18 things I just mentioned in my prior answer.

19 Q. So what part of that sentence do you find
20 that you don't agree with?

21 A. Well, I guess it's not elaborated that
22 the partial deferral was what was in the
23 December 19th order, but that we didn't necessarily,
24 and when I say "we," the Company did not necessarily
25 fully agree with that order, and had actually filed,

1 several days later, a request for the entire amount.

2 Q. Well, I think if you read on, it says
3 "Only the permitted costs are recorded as a
4 regulatory asset." Do you agree with that?

5 A. Yes, that's correct.

6 Q. And then it goes on to say "DP&L filed
7 for a rehearing of that order on January 18, 2013 for
8 the remaining costs." Does that address your
9 concerns with that statement?

10 A. No, because it doesn't say that we filed
11 in December, or at least not in this paragraph, it
12 doesn't say that we filed in December for the full
13 recovery of the costs without the three-year average.

14 Q. So you're not disputing the accuracy of
15 that statement, you just dispute the fact that it
16 doesn't tell the full story of what the Company
17 actually was requesting?

18 A. It's just a small paragraph and the
19 actual additions and filings would have made it quite
20 voluminous.

21 Q. Could I have you turn to page 2829?

22 EXAMINER PRICE: Ms. Yost, before we
23 depart this topic, I want to come back to something
24 in your previous line of questions. You have already
25 done your write-down on your books on the \$22.3

1 million figure; is that correct?

2 THE WITNESS: We wrote down to leave only
3 22.3 million remaining, yes.

4 EXAMINER PRICE: And you had a choice as
5 to how to allocate that amongst the different
6 accounts, or at least subaccounts or however you're
7 doing it; is that correct? So you've already made
8 that decision at least on a preliminary basis; is
9 that correct?

10 THE WITNESS: I haven't personally looked
11 at the ledger. I would believe they --

12 EXAMINER PRICE: Dayton Power and Light
13 has already made that decision.

14 THE WITNESS: I would believe they would
15 have taken it just as a lump, not allocated it
16 specifically to the three storm ledger balances or
17 Excel spreadsheet balances.

18 EXAMINER PRICE: They would have done it
19 as a lump?

20 THE WITNESS: As one number.

21 EXAMINER PRICE: As one number?

22 THE WITNESS: So they would have had, in
23 this example they would have had the 22 million, less
24 the provision or reserve, to come up with the 22.3.
25 So they would have had it not assigned to a specific

1 storm or storms.

2 EXAMINER PRICE: Will they -- would it be
3 your understanding that they would subsequently after
4 -- if and when the Commission approves this, that
5 they would allocate certain storms, or because it's a
6 black-box you think they would always leave it as a
7 lump?

8 THE WITNESS: In my past history, when it
9 was a black-box, you couldn't assign it to a specific
10 item. So you would just leave it as, I use the word
11 "lump," but as a general amount.

12 EXAMINER PRICE: Okay. Thank you.

13 Thank you, Ms. Yost.

14 MS. YOST: Thank you.

15 Q. (By Ms. Yost) Actually to follow up on
16 the Hearing Examiner's question. But if the three
17 items we discussed before are in separate accounts,
18 you can't do a lump sum writeoff.

19 A. Oh, yes, you can. You just set up
20 another subaccount.

21 Q. So you take the three separate accounts,
22 you merge them into one subaccount, and then you
23 write off a lump sum?

24 A. No. The easiest thing that I have done
25 in the past would be just set up a new account number

1 and that would be the provision or the loss which
2 would be a negative number or a credit. So that when
3 you summed these numbers, plus the credit, it would
4 add up to \$22.3 million. I see I lost you there.

5 So you would have an asset of these three
6 numbers and then you'd have basically an offset to
7 that asset as one additional number to come up with a
8 net of 22.3 million if that's more helpful.

9 Q. I appreciate the clarification.

10 You said in the past when you've dealt
11 with black-box settlements. My question for you is:
12 In the past have you dealt with a black-box
13 settlement that involved more than one separate
14 deferral account?

15 A. Yes, I have.

16 Q. And what were those type of deferral
17 costs?

18 A. It was associated with deferrals on fuel
19 costs, fuel and other purchased power and related
20 costs.

21 Q. There are multiple deferrals for
22 purchased power, fuel costs?

23 A. Yes, they were.

24 Q. And they were in separate accounts?

25 A. They were either in separate accounts or

1 tracked in separate projects or Excel ledger fields.

2 Q. Were they in separate accounts, though?
3 I guess I'm kind of confused by your answer. Can you
4 testify they were in separate accounts?

5 A. I don't know if they were specifically in
6 separate FERC-numbered accounts in the ledger, but
7 they were tracked separately.

8 Q. And so today, sitting here, you can't
9 identify another black-box settlement that involved
10 multiple deferrals in separate accounts that had to
11 be resolved?

12 A. Today I can't think of one where they
13 were actually booked in separate accounts on the
14 FERC, using the FERC account numbering system.

15 Q. Thank you.

16 If you could now turn to 2829, please.

17 A. Yes, I have that page.

18 Q. You see three numbered -- three lettered
19 paragraphs. If I could have you turn your attention
20 to paragraph C which is towards the bottom.

21 A. Yes, I have that.

22 Q. It indicates -- well, could you read that
23 paragraph out loud, sir?

24 A. "On December 21, 2012, DP&L filed a
25 request for recovery of all the deferred storm costs

1 (including the amounts in excess of the three-year
2 average of major storms) with the PUCO as well as an
3 accounting order to defer costs and a request for
4 recovery of costs associated with 2011 major storms
5 in Case No. 12-3062-EL-RDR. Because the PUCO had
6 previously issued an order permitting recovery of
7 2012 storm costs above a prior three year average of
8 major storms, Management applied this same threshold
9 to the 2011 storm costs to determine the amount that
10 was considered probable of future recovery. Total
11 cost for 2011 were \$10,035,297, less the average of
12 2008, 2009 and 2010 storm costs of \$5,676,189 for a
13 deferred amount of \$4,359,108. Management has
14 historically waited for, at a minimum, an accounting
15 order before deferring incurred costs as a regulatory
16 asset, however we feel in this case the cost are
17 probable even without a specific accounting order.
18 Even though the Company has not received an
19 accounting order permitting deferral of these
20 amounts, based upon recent action by the" -- you want
21 me to continue on to the next page?

22 Q. Yes. Just one more sentence, I'm sorry.

23 A. "...based on recent action by the PUCO
24 related to DP&L and other utilities related to the
25 ultimate recovery of storm costs, management feels

1 that it is probable that the Commission will
2 ultimately grant recovery of these costs in the
3 future."

4 Q. Thank you for reading that. I appreciate
5 it. It will make it a little bit easier.

6 Where you talk -- where you read out
7 loud -- and, just to be clear, Jared prepared this
8 for you and reviewed this memoranda?

9 A. Yes, he prepared it.

10 Q. Do you remember making any edits to it?

11 A. I remember making edits to it, but I
12 don't recall the specific edits today.

13 Q. I appreciate that.

14 Would your edits have been incorporated
15 or would have Jared overruled you in regard to your
16 edits?

17 A. At that time Jared did not overrule me on
18 my edits.

19 Q. Fair enough. I figured that was the
20 case.

21 Where the memo speaks that "Management
22 has historically waited for, at a minimum, an
23 accounting order before deferring incurred costs as a
24 regulatory asset.....," do you agree with that
25 statement?

1 A. I think in general, yes.

2 Q. And that would have been because -- well,
3 actually, strike that.

4 And when he's speaking to "historically,"
5 that time frame would be before the 2011 storm costs
6 were deferred without a regulatory order? Is that a
7 fair assessment of when he means "historically"?

8 A. Yes, that's a fair assessment.

9 Q. And then, towards the end of this page,
10 there is a discussion, "based upon recent action by
11 the PUCO related to DP&L...." What recent action is
12 the basis for the Company concluding that they could
13 defer 2011 storm costs without an order?

14 A. Can you show me the sentence you're
15 referring to?

16 Q. Yes. Start on 2829, towards, it's almost
17 the -- it's the last sentence, but it states "Even
18 though the Company has not received an accounting
19 order permitting deferral of these amounts," my
20 question is about the second part of that sentence,
21 "based upon recent action by the PUCO related to
22 DP&L," and then it goes on, "and other utilities
23 related to the ultimate recovery of storm costs,
24 management feels that it is probable that the
25 Commission," unfortunately it says "with" but I think

1 it is "will ultimately grant recovery of these costs
2 in the future."

3 My question is: What is the recent
4 action by the PUCO, related to Dayton, that made the
5 Company think or feel that it's probable that the
6 Commission would ultimately grant recovery of the
7 costs in the future?

8 A. Well, I think it's referring to probably
9 several things, one of which would be the deferral
10 order that was received in December of 2012 related
11 to the 2012 derecho costs; and also it would probably
12 be referring to the Commission granting Duke recovery
13 of their Hurricane Ike storm costs. I'm not sure, in
14 my mind, whether the Duke and AEP storm riders were
15 done before or after this time, but I know they were
16 discussed for a while; so it might also be referring
17 to that.

18 Q. So this statement is related about events
19 that made the Company feel that the Commission would
20 ultimately grant recovery of the costs in the future,
21 and your testimony is that in regard to PUCO action
22 related to Dayton Power and Light, that action was
23 the granting of a deferral of 2012 storm costs.

24 A. I don't believe that reflects what I was
25 answering, because you had asked about the sentence

1 that talked about recent action.

2 Q. Yes.

3 A. I would say that the deferral was based
4 on a probable and that would go back to actually
5 collecting money in the 2004 and 2005 storms by
6 Dayton Power and Light, and other factors such as the
7 deferral order related to the 2008 Hurricane Ike and
8 other storms.

9 Q. And I didn't mean to misstate, but yes,
10 I'm still focusing on the recent action that's
11 indicated in that sentence. And, just to clarify,
12 the recent action in regard to DP&L by the PUCO was
13 the granting of the 2012 storm deferral.

14 A. But, again, I think you're
15 mischaracterizing what he says, because it says
16 "related to DP&L and other utilities related to the
17 ultimate recovery of storm costs," and that's on the
18 top of Bates 2830.

19 Q. Right. And you told me about Duke, but I
20 was being specific to the actions related to DP&L.
21 The recent actions related to DP&L and you said that
22 was the approval of 2012 deferral of storm costs.

23 A. Yes, that would have been the recent
24 action in January 2013 when this was written.

25 Q. Thank you.

1 If you could go back to page 2821, the
2 very first page of this document, OCC Exhibit 10.

3 A. Yes, I have that.

4 Q. It will be the second bullet that we can
5 actually see here. Five lines down toward the end of
6 this sentence there's a sentence that starts "As
7 such, in Q4, 2012." Do you see that sentence, sir?

8 A. Yes, I do.

9 Q. It reads "As such in Q4, 2012. DP&L has
10 re-evaluated the point at which incurred costs are
11 deemed probable of future recover and have changed to
12 be more in line with how AES assesses probability."
13 In regard to the statement "more in line with how AES
14 assesses probability," is that in regard to your
15 testimony yesterday that AES policy indicated that
16 they deemed probable for recovery being 75 percent or
17 more?

18 A. Yes. In general, AES had a slightly less
19 conservative policy for their entire company which
20 DP&L adopted after it was purchased by AES. But,
21 really, when you compare 75 percent to 80 or
22 85 percent, it's really a matter of judgment. And,
23 in my past history, it's usually pretty clear whether
24 it's probable or not probable, and you don't actually
25 do an accounting policy worksheet to come up with an

1 exact percentage.

2 Q. So DP&L now operates under the AES policy
3 that deferrals shall be sought in regard to costs
4 when probability of recovery is 75 percent or more?

5 A. No. I may have misspoke on my prior, but
6 the 75 percent is related to the probability of a
7 regulatory asset, 75 percent or higher. And you had
8 asked in your question about filing for a regulatory
9 deferral order or accounting order. And I know Ohio
10 has that rule, but I don't know that that rule is in
11 effect in Indiana where Indianapolis Power and Light
12 is. When I was at AEP, most of the states that were
13 in the AEP service territory did not have that rule.

14 Q. The rule you're speaking of is that you
15 have to receive Commission authority to change your
16 accounting procedures?

17 A. No. It was a rule that the Commission
18 has the authority to grant an accounting deferral
19 order. So, basically, the Commission had the
20 authority to do that and customarily did that in the
21 past. And I know Ohio does that, but I can't think
22 of a whole lot of other states. In fact, right now,
23 I can't think of any state that does that at this
24 moment.

25 Q. So in other states, like you said

1 Indiana, do they not grant the regulatory asset until
2 you get the accounting order, or how does that
3 operate in other states?

4 A. Well, the principle is really the same
5 because we're following, "we," Indianapolis Power and
6 Light, Dayton Power and Light, and really all the
7 utilities in the United States are following the
8 accounting rules where you set up a regulatory asset
9 when it's believed to be probable of recovery, and an
10 accounting deferral order is one measure in that
11 evaluation, but it's not the only measure.

12 MS. YOST: Your Honor, at this time I'd
13 like to have marked OCC Exhibit 12, Technical
14 Accounting Memoranda, dated 1/15/2012, identified as
15 11-Q4-NA-38, Bates stamps 2849 through 2859.

16 EXAMINER MCKENNEY: It's all one exhibit,
17 OCC 12?

18 MS. YOST: Yes, Your Honor.

19 EXAMINER MCKENNEY: Okay. It will be so
20 marked.

21 (EXHIBIT MARKED FOR IDENTIFICATION.)

22 MS. YOST: Your Honor, may we go off the
23 record?

24 EXAMINER MCKENNEY: Let's go off the
25 record.

1 (Discussion off the record.)

2 EXAMINER MCKENNEY: Briefly off the
3 record we had indication that the exhibit which has
4 been marked OCC 12 also contains redacted
5 information. Mr. Sharkey, would you like to address
6 the redacted information in that exhibit?

7 MR. SHARKEY: I'd be happy to, Your
8 Honor. As with the prior document that was marked as
9 OCC Exhibit 10, OCC Exhibit 12 we have redacted
10 certain information that is irrelevant to the storm
11 issues in this case and that is also highly
12 confidential. The unredacted portions of the exhibit
13 we do not consider them confidential and, as
14 discussed earlier, the exhibit can be admitted in the
15 public record without objection.

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

18 Ms. Yost, your response?

19 MS. YOST: Thank you, Your Honor. This
20 document was provided to OCC under the terms and
21 rights of a protective agreement. Since that time,
22 the Company has designated the document, as provided
23 to the OCC in redacted form, not to be confidential.
24 At this time OCC does not contest the redactions;
25 however, we do reserve any right to contest that at a

1 later time if necessary.

2 EXAMINER MCKENNEY: Thank you, Ms. Yost.

3 You may proceed.

4 Q. (By Ms. Yost) Mr. Campbell, have you had
5 a chance to familiarize yourself with this document?

6 A. Yes, I have.

7 Q. And could you just describe what this
8 document is?

9 A. This is a Technical Accounting Memorandum
10 discussing regulatory assets and liabilities. It's
11 dated January 15th, 2012.

12 Q. And this is the document, I hate to go
13 back, but what was previously marked as OCC Exhibit
14 10, the redacted document that has a cover page,
15 2821, just to make the record clear, Exhibit 12 which
16 is the Technical Accounting Memorandum is what is
17 referenced on page 2822, the top paragraph, as
18 whitepaper 11-Q4-NA-38?

19 A. Yes, it is.

20 Q. Thank you.

21 And again, Mr. Hoying prepared this
22 Technical Accounting Memorandum which is OCC Exhibit
23 12?

24 A. Yes, he did.

25 Q. It shows it was reviewed by you, it looks

1 like your signature is above your typed name; is that
2 correct?

3 A. It was reviewed by me and that is my
4 signature.

5 Q. And the date of this Technical Accounting
6 Memorandum indicates it was January 15th, 2012; is
7 that correct?

8 A. Yes, that's correct.

9 Q. And what was the purpose of this
10 memoranda when it was drafted January 15th, 2012?

11 A. Well, if you look on Bates 2849, under
12 the "Executive Summary," it outlines the purpose and,
13 if you would like, I can read it on the record.

14 Q. That would be nice. Thank you.

15 A. "The purpose of this memo is to document
16 the applicability of Accounting Standards
17 Codification ('ASC') 980, 'Regulated Operations,' to
18 Dayton Power and Light's ('DP&L', the 'Utility')
19 books and records, to document our assessment of the
20 probability for recovery of our regulatory assets and
21 whether any of the Orders establishing our
22 jurisdictional rates and charges constitute
23 derivatives, guarantees or leases."

24 Q. Thank you.

25 And OCC Exhibit 12, which you just read

1 the "Executive Summary" from, that is the -- scratch
2 that.

3 Yesterday, we talked about your
4 discussion with Mike Barrett from Ernst & Young and
5 he had indicated that the Company could change its
6 policy and adopt the more lenient policy of AES in
7 regard to probability of recovery if they could
8 document the reasons for the change?

9 A. Yes, that's what I indicated.

10 Q. And is OCC Exhibit 12 what the Company is
11 relying on as documentation for the reasons for the
12 change in the policy?

13 A. Not at all. Because the discussion with
14 Mike Barrett was in December of 2012, and this, as
15 you indicated, was written in January of 2012.

16 Q. What documentation does the Company have
17 to support its change in policy to adopt the
18 75 percent threshold in lieu of the 85 percent
19 threshold?

20 A. You handed that out earlier. I believe
21 it's OCC Exhibit 10. It starts Bates stamp numbers
22 2821 and forward. It's the Summary of the Regulatory
23 Actions and Accounting Analysis prepared by Jared
24 Hoying on January 18, 2013, after my discussion with
25 Mike Barrett.

1 Q. I was not correct there.

2 So this is the, Exhibit 10, which we just
3 talked about, is the documentation that OCC -- or,
4 that Dayton Power and Light maintains supports the
5 reasons for the change in the threshold in the policy
6 in regard to probability of recovery?

7 A. This is the document we gave to Mike
8 Barrett and Ernst & Young, but we also had oral
9 discussions with Mike Barrett.

10 Q. And anywhere in this, I guess we're back
11 to 10, anywhere in this document does it discuss the
12 threshold or the threshold level?

13 A. I do not see that specific discussion in
14 here.

15 Q. If I could have you turn back to the
16 technical accounting memoranda which is OCC 12,
17 specifically Bates stamp page 2858. There's a lot of
18 redactions, but there's some text at the top of the
19 page.

20 A. 2858, yes, I have that.

21 Q. Could you explain the very top line that
22 actually shows text, there's an account number,
23 1820200. Do you see that, sir?

24 A. Yes, I do.

25 Q. Then it says "Deferred Windstorm Costs -

1 2008." Then it has two figures, a 16-point-something
2 million, and a 17-point-something million. Do you
3 know what the difference of those numbers are and
4 what they represent?

5 A. Yes. If you go back to Bates stamp 2855,
6 you'll see that there's a heading where the first
7 column with numbers would be the balance at
8 December 31, 2010, and the next column would be the
9 balance of the asset at December 31, 2011.

10 Q. Thank you. I was confused by that.

11 EXAMINER PRICE: Excuse me. Just briefly
12 just so I'm clear. And the difference between those
13 two numbers is the carrying costs.

14 THE WITNESS: It would be the carrying
15 costs and any adjustments that we may have made that
16 I don't know specifically.

17 EXAMINER PRICE: Okay. Thank you.

18 Q. On that same page, 2858, the
19 second-to-the-last line of the paragraph, it starts
20 on "January 14, 2009." It's four lines up.

21 A. Yes, I see.

22 Q. Do you see that? It says "On January 14,
23 2009 the PUCO issued an order granting DP&L the
24 authority to defer these costs with a carrying cost
25 of 5.86% until it seeks their recovery in a future

1 rate proceeding. We will be including this cost in a
2 recovery rider as part of our next Electric Security
3 Plan...which will be filed on or before March 31,
4 2012, or a subsequent Base Rate Case."

5 And again, looking at the document dated
6 January 15, 2012, you're aware that the Company did
7 propose an Electric Security Plan after the drafting
8 of this memo?

9 A. When the memo was drafted in January '12,
10 this was our belief of the two mechanisms that it
11 might be recovered through, but that's not what
12 occurred later.

13 MS. YOST: Could you read back my
14 question, please?

15 (Record read.)

16 MS. YOST: I just ask that the witness
17 answer the question.

18 Q. You're aware that an ESP was filed after
19 the drafting of this memo.

20 A. Considerably after the drafting of the
21 memo.

22 Q. And are you aware that the ESP did not
23 include a request to recover 2008 storm costs in it?

24 A. My memory was that we filed the request
25 for the storm costs in December 2012, before the ESP

1 was filed in 2013. So if we'd have asked for it in
2 the ESP, we'd have asked for it a second time.

3 Q. But you didn't ask for it. The Company
4 did not ask for it in the ESP. Is that fair to say?

5 A. That's correct.

6 Q. And the Company has not filed a
7 subsequent base rate case yet, after the drafting of
8 this memo, correct?

9 A. We have not, that's correct.

10 EXAMINER PRICE: Before we move on from
11 this document. This was your quarterly review of all
12 your regulatory assets?

13 THE WITNESS: It was used for that, but
14 it was also the first quarter that we had been owned
15 by AES. So we went through a whole lot of additional
16 words in the whitepaper to talk about the regulatory
17 asset approach.

18 EXAMINER PRICE: So there wouldn't
19 necessarily be a similar document every other quarter
20 since then. This one might be a little more
21 detailed.

22 THE WITNESS: This one is quite a bit
23 more detailed. But we would have listed all the
24 regulatory assets in mainly the redacted areas.

25 EXAMINER PRICE: And you would have done

1 the review whether they were still probable for
2 recovery.

3 MR. CAMPBELL: Correct. Yes.

4 EXAMINER PRICE: Thank you.

5 Q. (By Ms. Yost) Mr. Campbell, the Company
6 is currently operating under a 75 percent
7 probable-for-recovery threshold still? Is that fair
8 to say? To the best of your knowledge. You're not
9 with the Company anymore.

10 A. Yes, that is correct.

11 Q. So under that threshold for probability
12 for recovery, and sitting here in 2014, could the
13 Company go back, take a look at storm costs in 2004
14 that were expensed and seek recovery of those costs
15 today if they determined that they are 75 percent
16 probable of recovery?

17 A. I don't think it would be right to go
18 back and get the major storm costs for 2004 because
19 they've already been recovered through a mechanism,
20 both those in 2004 and 2005, and I don't think we
21 should ask for recovery a second time.

22 Q. We can agree to that.

23 Let me take it back another year. 2003,
24 the Company did not seek any major storm costs
25 correct, to your knowledge, sir?

1 A. I don't know if in 2003 there were major
2 storm costs.

3 Q. Can we assume that there were 2003 major
4 storm costs for purposes of this question? Let's
5 call it a hypothetical.

6 A. Yes, as a hypothetical.

7 Q. 2003, the Company incurred \$10 million in
8 major storm costs. The Company fully expensed those,
9 as you say, all O&M expenses or all O&M costs are
10 expensed. So 2003, \$10,000,000 in major storm costs,
11 today the Company goes back, takes a look at those,
12 and deems that those costs are 75 percent -- have a
13 75-percent probability of recovery. Could they seek
14 recovery of those costs today?

15 A. If we had a major storm in the
16 hypothetical of \$10 million in 2003, there is nothing
17 that limits us to asking that, but I don't know if we
18 would set up a regulatory asset associated with them
19 because I don't know, without knowing specific facts,
20 whether it would be probable of recovery.

21 Q. Well, let's assume it's probable of
22 recovery, that's been determined, 75 percent or more
23 probability of recovery.

24 A. If it's probable of recovery, we would
25 set up a regulatory asset for the amount that we

1 think is probable of recovery and would be required
2 to do so by the accounting rules.

3 Q. In your opinion, you could also start
4 deferring those without Commission authority,
5 correct?

6 A. If we had made the determination it was
7 probable of recovery, yes.

8 MS. YOST: Your Honor, could we have just
9 a -- this might be a good time to take a break. I
10 can get organized and then transfer over to Larry
11 after I complete my questions. I don't anticipate
12 many more.

13 EXAMINER MCKENNEY: Let's take a short
14 break. We'll reconvene at 10:30. Let's go off the
15 record.

16 (Recess taken.)

17 EXAMINER MCKENNEY: Mr. Sharkey, you
18 indicated to us, off the record, that you wanted --
19 you had a clarification you wanted to make with the
20 witness; is that correct?

21 MR. SHARKEY: Yes, Your Honor. While we
22 were off the record, Mr. Campbell identified to me
23 that he made an error in a statement as to when a
24 particular filing occurred and wanted to correct one
25 piece of his earlier testimony. So I'd ask that he

1 be given permission to make that correction.

2 EXAMINER MCKENNEY: Absolutely.

3 Mr. Campbell.

4 THE WITNESS: Thank you.

5 On Bates 2858, it discusses that the
6 deferred windstorm costs from 2008 will be included
7 as part of the next ESP plan which will be filed on
8 or before March 31, 2012. And I had incorrectly
9 indicated that that was filed in early 2013, when,
10 actually, it was filed in 2012. Thank you.

11 EXAMINER MCKENNEY: Thank you,
12 Mr. Campbell.

13 Thank you, Mr. Sharkey.

14 Ms. Yost, are you ready to proceed?

15 MS. YOST: Yes. Thank you, Your Honor.

16 Q. (By Ms. Yost) Mr. Campbell, I discussed
17 with you at break that we would be talking about what
18 has been previously marked OCC Exhibit 1, which is
19 the PUCO's audit report, and you said you had a copy
20 of that in front of you?

21 A. Yes, I have that.

22 Q. Could you turn to page 4 of that report?

23 A. Yes, I have that.

24 Q. During your deposition we discussed the
25 amount that the PUCO staff excluded that was related

1 to capital expenditures. Do you recall that?

2 A. Yes, I do.

3 Q. As indicated on the PUCO staff audit
4 report, page 4 of OCC Exhibit 1, what is that amount
5 that the staff found to be attributed to capital
6 costs?

7 A. It's \$27,624,990.

8 Q. And during your deposition you confirmed
9 that that amount is correct.

10 A. Yes, I did.

11 Q. Thank you.

12 The amount that the PUCO staff identified
13 in regard to the Company's application related to O&M
14 expenses, \$37,021,654. Do you see that also on the
15 top of page 4?

16 A. Yes, I do.

17 Q. And is that the correct amount requested
18 in the application?

19 A. Yes, it is.

20 Q. Thank you.

21 And you don't have to pull the exhibit
22 out, but we were talking about the SEC filing which
23 is OCC 11, and the fact that on the -- that the
24 Company had deferred, as of March 31st -- excuse me,
25 as of December 31st, 2013, 25.6 million? Do you

1 recall that, sir, that figure, 25.6?

2 A. Yes. That was the amount at December
3 31st, 2013, that we believed was probable of recovery
4 from an accounting sense.

5 Q. In looking at the Company's requested
6 amount in the application of 37-plus million dollars
7 versus the amount that was on the books as a --
8 excuse me, the amount that is indicated to be
9 deferred as of December 31st, 2013, which is
10 \$25.6 million, my question to you, sir, is: What
11 adjustments were made to that \$37 million to get down
12 to the 25.6 or what was removed?

13 A. Well, that's not how we really did the
14 calculation. We really built up the amount that was
15 deferred to come up to the 25.6, because, as we had
16 discussed, the filing was not made until December of
17 2012, and we had deferrals that went back to 2008 and
18 all the intervening years.

19 Q. Well, I think that based on what you said
20 that storm costs for all three years, 2008, 2011, and
21 2012, those deferred amounts reflect the removal of
22 the average three-year major storm costs figure for
23 each appropriate year?

24 A. The amounts on the ledger, as regulatory
25 assets, show that adjustment, yes.

1 EXAMINER PRICE: I just want to be clear
2 here. Showed one method of making that adjustment.

3 THE WITNESS: That's correct.

4 EXAMINER PRICE: There are different ways
5 to make that adjustment.

6 THE WITNESS: Right. And it was --
7 actually, the method that we used for 2011 and 2012
8 is a method that we didn't agree with.

9 EXAMINER PRICE: That was my point. And
10 you don't necessarily agree with the method that you
11 used; you simply took the most conservative approach.

12 THE WITNESS: Because we only booked the
13 amount that we thought was probable.

14 EXAMINER PRICE: But you intended to
15 advocate in the hearing for a different adjustment.

16 THE WITNESS: And have advocated, yes.

17 Q. (By Ms. Yost) Well, based on your
18 statement that the 25.6 amount is what you built up
19 from, how did you determine the \$25.6 million that is
20 deferred?

21 A. We basically started with the O&M costs
22 that were associated with the storms and to those O&M
23 costs added a carrying cost for both the 2008 series
24 of storms and the 2012 storm.

25 Q. In regard to the cost amount that you

1 started with for the 2008 storms, if you look at page
2 4 of the staff audit report, in regard to the 2008
3 O&M adjustments, the fifth line down says "Cost of
4 non-major storms during 2008," \$3.5 million. Do you
5 see that, sir?

6 A. I see the amount, yes.

7 Q. Was that cost of nonmajor storms which
8 the PUCO staff identified to be \$3,574,943, was that
9 reduced from your initial cost for 2008, or is that
10 included in the deferral amount, less the three-year
11 average?

12 A. That is included in the deferral amount,
13 and I believe Witness Nickel talked that he had gone
14 back and retroactively looked at the 2.5 beta test,
15 and that the majority of those costs were actually
16 meeting the current 2.5 beta test which did not exist
17 in 2008.

18 Q. So, just to be clear, the \$3,574,934 for
19 nonmajor storm costs, that amount is included in the
20 deferral amount for 2008, correct?

21 A. It was included at December 31st, 2013,
22 less the three-year average, which we applied on this
23 series of storms, and we did the writeoff that we
24 discussed in the first quarter of 2014.

25 Q. What number would be included in the 25.6

1 regulatory balance account for nonmajor storms
2 incurred in 2008?

3 A. I don't have that exact number with me.

4 Q. How would that be calculated?

5 A. You would take the \$3.6 million shown in
6 this report, add a return on that or a carrying cost
7 on that, and then apply, in some way, the three-year
8 average to those storms and the Hurricane Ike storm
9 whether it was assigned pro rata or another method.

10 Q. So the \$25.6 million includes no other
11 adjustments for 2008 storm costs except for the
12 reduction of the three-year average and any
13 appropriate carrying costs, correct?

14 A. Yes, that is correct.

15 Q. And in regard to the -- we'll speak to
16 the December 31st, 2013, balance amount, if that's
17 okay. So when I'm speaking to the 25.6, I'm
18 accepting the recent adjustment with the May 8th
19 filing. So back again to the \$25.6 million, in
20 regard to the 2011 storm costs the Company incurred,
21 what adjustments were made to that \$25.6 million in
22 regard to 2011 storm costs?

23 A. I'm sorry, I'm going to have to ask your
24 preamble to be reread because I think you said 25.6
25 with the adjustment we booked in May 8th, which would

1 have reduced the balance.

2 Q. I want to stick with the 25.6 million as
3 of December 31st 2013. Sorry if I didn't make that
4 clear.

5 A. Could you redo the question, because I
6 was focused on the first part of your preamble.

7 Q. Sure.

8 EXAMINER MCKENNEY: Ms. Yost, could you
9 restate the question?

10 MS. YOST: Yes.

11 Q. All right. Again, with only looking at
12 the \$25.6 million as of March -- as of December 31st,
13 2013, what adjustments were made to the \$25.6 million
14 in regard to the 2011 storm costs?

15 A. The 2011 storm costs included in the
16 balance at December 2013 would have been reduced by a
17 three-year average.

18 Q. Any other reductions to the 2011 storm
19 costs?

20 A. No.

21 Q. In regard to the \$25.6 million balance as
22 of December 31st, 2013, what adjustments were made in
23 regard to the 2012 storm costs?

24 A. They would have had a reduction for a
25 three-year average and the 2012 storm costs would

1 have included a carrying cost, month by month,
2 through December of 2013.

3 Q. Thank you.

4 Do you know what the carrying costs for
5 deferred amounts as of January 1, 2014, is?

6 THE WITNESS: Can you please read the
7 question?

8 (Record read.)

9 A. No, I do not.

10 Q. In regard to my question, I was seeking
11 the carrying cost rate, just to be clear, as of
12 January 1, 2014, for any deferred balances.

13 A. Through the end of December 31st, we
14 booked at -- excuse me, through the end of December
15 31st, 2013, we booked at one carrying cost rate and
16 then, in January 2014, we switched to another
17 carrying cost rate, and I don't have that in front of
18 me.

19 Q. Thank you.

20 EXAMINER PRICE: You don't have either in
21 front of you or you don't have the second one?

22 THE WITNESS: I don't have the second
23 one.

24 EXAMINER PRICE: What's the first one?

25 THE WITNESS: It's 5.86 percent.

1 Q. But are you aware that there was a change
2 in the carrying cost rate as of January 1st, 2014?

3 A. Yes. We changed to reflect the most
4 recent one in the ESP case decision.

5 Q. And in the application filed in this
6 case, is that carrying cost rate accurately depicted
7 in any schedules or workpapers for deferred balances
8 after January 1, 2014?

9 A. When the case was filed in December of
10 '12, we didn't know what the answer was going to be;
11 so the answer is no.

12 Q. And, fair to say, in the application for
13 any calculations that show the carrying costs for
14 deferred balances after January 1, 2014, that
15 calculation of carrying charges is higher than what
16 it actually is?

17 A. Since I don't have the number in front of
18 me, I don't know if it's higher or lower, but it
19 would need to be adjusted to the correct carrying
20 charge. And, in addition, when we filed, we were
21 asking for carrying charges from the period March of
22 2014 to February of 2015, which, in the most recent
23 settlement, we've agreed to forego.

24 Q. You're not getting any carrying costs in
25 the settlement agreement?

1 EXAMINER PRICE: Do you have a copy of
2 Joint Exhibit 1 with you?

3 THE WITNESS: Yes, I do. I'm looking for
4 it, please.

5 A. On the stipulation, it's a black-box
6 settlement, and we agreed, as we had discussed, to
7 recover the \$22.3 million. I'm looking on page 2 of
8 the stipulation.

9 Q. Could you pause for just a second while I
10 look for the exhibit?

11 A. Yes, I can.

12 On page 2 under Roman Numeral II, Storm
13 Recovery, Item 2, the second part of that sentence
14 says "and shall accrue no additional carrying costs
15 during recovery," which is different than the
16 application in December of '12, and of course makes
17 the amount requested in December '12 higher.

18 Q. The words "additional carrying costs
19 during recovery," that means that the Company is
20 recovering some carrying costs, is that fair to say,
21 in the settlement?

22 A. It's a black-box settlement, but I would
23 say yes.

24 EXAMINER PRICE: When you say it's a
25 black-box, but you would say yes, I'm assuming what

1 you're saying is, mathematically, you could not get
2 to 22.3 million without there being some carrying
3 costs embedded in there.

4 THE WITNESS: That's correct.

5 EXAMINER PRICE: Thank you.

6 MS. YOST: Your Honor, at this time OCC
7 would like to mark as OCC Exhibit 13, it is Chapter
8 11, titled "Regulatory Accounting and Reporting." It
9 goes from 11-1 to 11-8.

10 EXAMINER MCKENNEY: It will be so marked.

11 (EXHIBIT MARKED FOR IDENTIFICATION.)

12 MS. YOST: Permission to approach the
13 bench, Your Honor?

14 EXAMINER MCKENNEY: You may approach.

15 Q. (By Ms. Yost) Mr. Campbell, please let me
16 know when you're ready to proceed and I can direct
17 you to a specific page.

18 A. I am ready.

19 Q. You've seen this before, Mr. Campbell,
20 correct?

21 A. Yes.

22 Q. This is part of the Uniform System of
23 Accounts by two publishers you mentioned yesterday,
24 and OCC provided this to you previously?

25 A. No, that's not what this is. This is a

1 portion of a book written by two accountants, but
2 it's not part of the Uniform System of Accounts.

3 Q. I apologize. It's the "Accounting for
4 Public Utilities."

5 A. That's correct.

6 Q. Thank you. And we talked a little bit
7 about this yesterday that you've used this reference
8 manual before in your career, occasionally?

9 A. Yes, I have.

10 Q. If I could have you turn to what is
11 marked as page 11.4 at the top -- 11-4 at the top
12 right-hand column.

13 A. Yes, I see that page.

14 Q. Throughout your career have you heard of
15 what is termed as FERC Order No. 552?

16 A. Yes, I've heard of it.

17 Q. Halfway down the page there is a heading
18 that talks about "Allowances Under the Clean Air Act
19 Amendments of 1990 and Regulatory Assets and
20 Liabilities." Do you see that it starts off with a
21 No. [1]?

22 A. Yes, I see that.

23 Q. And could you read that short first --
24 excuse me, the short second paragraph that starts off
25 "In Order No. 552"?

1 A. "In Order No. 552, the FERC not only
2 addressed the subject of regulatory assets and
3 liabilities for emission allowances; it also
4 addressed the broader subject of accounting for
5 regulatory assets and liabilities, in general, for
6 both electric and natural gas companies, by amending
7 their respective USOA. The FERC did not approve the
8 creation of separate accounts for allocated
9 allowances and bonus allowances in Order No. 552."

10 Q. When you just read that, what does "USOA"
11 stand for?

12 A. It's the Uniform System of Accounts.
13 It's also called the "FERC Chart of Accounts."

14 Q. Thank you.

15 The next sentence in the next paragraph
16 starts "The FERC defined regulatory assets and
17 liabilities as assets and liabilities that result
18 from rate actions of regulatory agencies." Do you
19 see that sentence?

20 A. Yes, I do.

21 Q. And yesterday we talked about the
22 definition of regulatory assets and liabilities.

23 A. Yes, we did.

24 Q. Do you recall that discussion?

25 Thank you.

1 Is it your understanding that based on
2 the Uniform System of Accounts that a regulatory
3 asset or liability can be only created as a result of
4 a rate action of a regulatory agency?

5 A. They're a determination of the expected
6 probability of a rate action by an agency based on
7 the judgment of the company, because the company is
8 trying to present its financial statements, both to
9 the FERC and to the SEC and to the State of Ohio,
10 with what it believes is the proper income and
11 expenses that will be the result of those rate
12 actions.

13 Q. So that's a yes?

14 A. I think that's definitely not a yes.

15 Q. It's a no.

16 A. It's a -- I think the question is not a
17 simple yes/no.

18 Q. Do you agree with the statement that "The
19 FERC defined regulatory assets and liabilities as
20 assets and liabilities that result from rate actions
21 of regulatory agencies"? You don't dispute that
22 statement there, correct?

23 A. I don't dispute the statement, but it
24 might be rate actions of regulatory agencies that
25 occur in the future and have occurred in the past.

1 It doesn't have to -- you don't set up a regulatory
2 asset in a lot of cases based on an exact
3 determination from the Commission that you're going
4 to get a hundred-percent recovery guaranteed. That,
5 to me, almost never happens.

6 Q. Is the granting of a deferral a rate
7 action?

8 A. I think the granting of a deferral order
9 is one of the pieces of evidence to be looked at to
10 determine if a regulatory asset is probable.

11 MS. YOST: Thank you, Mr. Campbell. I
12 have no further questions at this time.

13 EXAMINER MCKENNEY: Thank you, Ms. Yost.
14 Does staff have cross-examination?

15 MR. O'ROUKE: No, Your Honor.

16 EXAMINER MCKENNEY: Thank you.

17 As we discussed previously, at this time
18 we're going to go ahead and proceed to redirect.

19 Mr. Sharkey, are you prepared or do you
20 need a minute?

21 MR. SHARKEY: I am prepared, Your Honor.

22 EXAMINER MCKENNEY: All right. You may
23 proceed.

24 - - -

25 REDIRECT EXAMINATION

1 By Mr. Sharkey:

2 Q. Mr. Campbell, Ms. Yost spent a
3 considerable amount of time asking you about
4 deferrals. Can you describe, from a high level, the
5 purpose of a deferral and why utilities may record
6 deferrals on their books?

7 A. Utilities are recording deferrals on
8 their books to show what they believe is the proper
9 net income and earnings impact on the Company so that
10 that can be presented properly to investors and
11 regulators.

12 Q. Is it important for the Company to be as
13 accurate as possible when it creates deferrals?

14 A. It's extremely important.

15 Q. Why is that?

16 A. Because the Company could face problems
17 with its auditors and investors if it made incorrect
18 decisions and could even be sued for considerable
19 amounts of money.

20 Q. Do you have available to you OCC
21 Exhibit 8 which was Chapter 12 of the materials that
22 Ms. Yost had been asking you about?

23 A. Yes, I have that.

24 MS. YOST: Jeff, could you hold just for
25 a minute?

1 Thank you.

2 Q. Turn if you would, please, to page 12.5
3 -- 12-5, rather.

4 A. Yes, I have that.

5 Q. Okay. There's a paragraph, I guess it's
6 the third full paragraph, begins with "ASC 980." Do
7 you see that?

8 A. Yes, I do.

9 Q. Okay. I'm going to read the paragraph,
10 but I'm going to skip over the citations in the
11 middle. "Probable is defined...as 'likely to occur,'
12 which is a high test to meet." Do you see that?

13 A. Yes, I do.

14 Q. Okay. That "high test to meet," can you
15 describe what that means to accountants?

16 A. Basically, what the accountants are doing
17 is looking at either the nature of the costs, meaning
18 that the costs are prudently-incurred costs, and also
19 looking at prior ratemaking actions by the regulator
20 associated with costs that are similar costs, either
21 for that company or other companies, or the exact
22 same type of costs, for example storm costs in our
23 2004 and 2005 storms.

24 We're also looking at is there an
25 accounting deferral order from the Company. We are

1 looking at is there a settlement agreement on prior
2 ESPs that permit a particular cost to be recovered.
3 But it's a professional judgment as to whether the
4 Company's management, accountants, and rate people
5 believe that the assets are probable of recovery.

6 Q. You have referred a number of times
7 throughout the day to a 75 or 80 or 85 percent
8 likelihood of recovery. First of all, are similar
9 percentages, to your knowledge, used by utilities
10 across the country?

11 A. I think it's a matter of judgment, and
12 when I worked at AEP they used a high level, but we
13 did not have an exact percentage similar to the
14 current AES percentage. But it's a high test, and
15 all the utilities in the country would have a high
16 test, but not necessarily have an exact percentage.

17 Q. Were the 75, 80, 85 percent figures, that
18 you had cited earlier, discussed internally at DP&L
19 and with AES after AES acquired DP&L?

20 A. Yes, they were.

21 Q. Okay. For you, is there a meaningful
22 difference between whether the test is 75 percent or
23 80 percent or 85 percent likely to recover?

24 A. Not to me meaningfully on my experience
25 in working in the rate arena.

1 Q. You don't have a computer that says "Plug
2 in all of these variables" and a percentage pops out,
3 right?

4 A. I wish I did.

5 Q. Were there ever discussions internally
6 about whether a 51 percent or greater standard should
7 be used?

8 A. No. Because that is not a high standard
9 as required by the accounting rules.

10 Q. Did anybody ever specifically tell you
11 that you should not use a 51 percent standard?

12 A. That was never -- that would have never
13 been considered as an option because the accounting
14 rules have a test that's called "possible," which is
15 more likely than not, which is really the 51 percent,
16 and you cannot record a regulatory asset if it's only
17 possible.

18 Q. Turn back, if you would, to page 12-5
19 within OCC Exhibit 8. Towards the bottom there's a
20 list of four items, but preceding that list there's a
21 sentence that says "Evidence that could support
22 future recovery and corroborates utility management's
23 representation includes." My first question is: Do
24 you understand the list of those items to be an
25 exclusive list?

1 A. It is not an exclusive list. And this is
2 not accounting authoritative literature done by the
3 Financial Accounting Standards Board.

4 Q. As to the storm, a request to defer --
5 strike that.

6 When you were evaluating whether or not
7 the Company should defer storm expenses, would you
8 consider whether or not the storms were unusual or
9 nonrecurring storms?

10 A. Yes, you would; and yes, we did.

11 Q. Would you also, if you were aware of
12 facts that suggested that particular costs were
13 imprudently incurred, consider that fact in making a
14 decision as to the amounts to be deferred?

15 A. The Company would not ask for imprudent
16 costs in its filing.

17 Q. So then you would --

18 A. The Company did not ask for imprudent
19 costs in its filing.

20 Q. If, in a hypothetical situation, you were
21 aware of facts suggesting that some of the costs that
22 were sought to be recovered were imprudently incurred
23 would that be something you would consider in making
24 a determination of whether and how much to defer for
25 a storm?

1 A. Yes, of course.

2 Q. Would you also consider whether the
3 Company was in fact going to seek recovery of the
4 amounts at issue?

5 A. If the Company has determined that it's
6 not going to seek recovery or is uncertain that it's
7 going to seek recovery, it can't be probable, in my
8 mind, at all.

9 Q. Ms. Yost also asked you a number of
10 questions about whether the amount of recovery would
11 be limited to the deferral amount. Do you recall
12 those questions?

13 A. Yes, I do.

14 Q. Okay. As you understand it, can you
15 describe the difference between a case like this in
16 which recovery is being sought and a case in which a
17 utility has sought Commission approval of a deferral?

18 A. When you do the request for deferral,
19 it's usually done in a relatively short filing, there
20 usually are not witnesses and supporting schedules.
21 The request usually asks for a fairly quick
22 turnaround from the Commission.

23 In a request for recovery of costs, there
24 are witnesses and many detailed schedules, there are
25 opposing parties that file to intervene in the case,

1 depositions, hearings; it's a much longer and
2 involved process.

3 Q. Are you aware of any rule that says that
4 the amount of recovery cannot be more than the
5 deferral amount?

6 A. There is no such rule.

7 Q. Okay. Are you aware of any rule --
8 strike that.

9 Let me ask you about DP&L's 2011 deferral
10 in particular. You've testified earlier that DP&L
11 recorded the deferral for the 2011 storms on DP&L's
12 financial books and records starting in December of
13 2012. Is that right?

14 A. That is correct.

15 Q. Okay. Are you aware of any deadline in
16 any PUCO -- sorry, any statute or PUCO rule for DP&L
17 to record a deferral of costs on its books?

18 A. There is no such rule.

19 Q. Okay. Are you aware of any PUCO rule or
20 any statute that says that DP&L must have a deferral
21 order before DP&L would take a deferral?

22 A. There is no such rule.

23 Q. Was DP&L's decision to seek recovery of
24 the 2011 storm costs, the only factor that you
25 considered when you and DP&L were deciding to record

1 the 2011 storm costs as a deferral?

2 A. It was not the only factor, no.

3 Q. What other factors did you consider, if
4 you recall?

5 A. We looked at the storms being unusual and
6 large. We looked at if the storms were
7 prudently-incurred costs. We reviewed the settlement
8 agreement on the ESP case that permitted us to ask
9 for recovery of costs. We looked at prior Commission
10 precedent on recovery of the 2004 and 2005 storm
11 costs of DP&L. We looked at the deferral order
12 associated with the 2008 storms and the 2012 storm.

13 I read through the Duke Hurricane Ike
14 information related to their requesting recovery for
15 storms. Also, Ohio, in general, is greatly
16 interested in the financial health of the utilities
17 and that was in my mind when I looked at that. And
18 it was also based on discussions that I had with
19 Ernst & Young, Michael Barrett, and others.

20 Q. Did customers -- assuming that DP&L's
21 eventually granted recovery of its request, in the
22 absence of the stipulation, but DP&L is granted
23 recovery of its request to recover 2011 storm costs,
24 did customers benefit from the delay of DP&L seeking
25 the deferral?

1 A. They did, to the extent that we had
2 gotten the deferral order and it included a carrying
3 cost similar to the 2008 and 2012 storms.

4 EXAMINER PRICE: Can I have that question
5 and answer read back again, please?

6 (Record read.)

7 Q. Do you recall that Ms. Yost, in response
8 to an answer you gave about your involvement in the
9 2011 process, showed you your deposition and an
10 answer in your deposition in which you described your
11 involvement in the decision-making process in 2011?

12 A. Yes, I recall that.

13 Q. Okay. And, if I recall, you had begun to
14 offer an explanation, but were asked to wait until it
15 was my turn to question you to provide that
16 explanation.

17 A. That's correct.

18 Q. Can you provide the explanation you were
19 going to provide then?

20 A. Yes. She had asked, in the deposition,
21 was I involved in the decision on when to seek
22 deferral. And I answered I was involved in people
23 asking about it, but I was not involved in the final
24 decision.

25 And, if I could reanswer that and further

1 elaborate, I would have said I was involved in
2 wanting to ask for a deferral, but the deferral
3 request and the decision on the request for the
4 recovery of all the costs, including the 2011 costs,
5 were made by another person where I was not involved
6 at all. And, as I had testified yesterday, I don't
7 know who that person or persons was.

8 Q. In terms of distinguishing between the
9 request to recover and request to defer, as opposed
10 to the actual taking of the deferral on DP&L's books,
11 were you involved in the decision-making leading up
12 to the actual deferral of the 2011 storm expenses on
13 DP&L's books?

14 A. I was heavily involved in the actual
15 bookkeeping, recording of the deferral of the
16 regulatory asset related to those 2011 storms.

17 Q. Ms. Yost asked you a number of questions
18 relating to three-year average. Do you recall those?

19 A. Yes, I do.

20 Q. Do you know who DP&L's witness is on the
21 three-year average in this case?

22 A. That would be Dona Seger-Lawson.

23 MR. SHARKEY: Your Honors, can I have a
24 minute to talk to my client?

25 EXAMINER MCKENNEY: Off the record.

1 (Off the record.)

2 EXAMINER MCKENNEY: Mr. Sharkey.

3 MR. SHARKEY: I have no further questions
4 at this time for Mr. Campbell.

5 EXAMINER MCKENNEY: Thank you.

6 Recross, Ms. Yost?

7 MS. YOST: Yes, Your Honor. Very
8 briefly. If I could have just a minute.

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

11 (Off the record.)

12 EXAMINER MCKENNEY: Recross, Ms. Yost?

13 - - -

14 RECROSS-EXAMINATION

15 By Ms. Yost:

16 Q. Mr. Campbell, during your redirect with
17 Counsel, he asked you a question whether the
18 Company's delay in seeking 2011 storm costs deferral
19 was a benefit to the Company. Do you recall that
20 question?

21 A. I recall a question, a benefit to
22 customers.

23 Q. Customers, sorry. That is true. And is
24 it your answer that it was a benefit of customers
25 to -- strike that.

1 So is it your testimony that because the
2 Company delayed seeking deferral of the 2011 storm
3 costs, it benefited customers because they did not
4 incur nor will customers have to pay carrying costs?

5 A. That was what I had just answered, yes.

6 Q. So is it your testimony that a company
7 can defer costs without PUCO order; however, a
8 company cannot defer carrying costs without a PUCO
9 order?

10 A. I don't believe I testified that
11 yesterday or today.

12 Q. Well, can a company defer carrying costs
13 without a PUCO deferral order, the original costs?

14 A. Yes, they could, if they believed it was
15 probable of recovery ultimately in the ratemaking
16 process.

17 Q. And you talked about the settlement being
18 a black box, correct?

19 A. Yes, I did.

20 Q. So we don't know if 2011 storm carrying
21 costs are included in the \$22.3 million, correct?

22 A. We just know it's \$22.3 million and don't
23 know the math of the components that make it up.

24 Q. So it could include carrying costs for
25 2011, correct?

1 A. Is that a hypothetical question?

2 Q. It's an actual question.

3 A. It's a black box. So I don't know that I
4 can answer that question.

5 EXAMINER PRICE: You cannot exclude the
6 possibility there are carrying costs for the 2011
7 charges in that \$22.3 million.

8 THE WITNESS: That is correct.

9 Q. And your testimony is you can recover
10 amounts larger than amounts deferred, correct?

11 A. Yes, that's correct.

12 Q. So although there's \$4.3 million on the
13 books for storm costs, the Company could collect a
14 lot more money from customers than \$4.3 million for
15 2011 costs, correct?

16 A. In your hypothetical example that might
17 be correct, but I go back to the actual balance that
18 was deferred at December 13 -- excuse me, not
19 December 13 -- December 31st, 2013, where the amount
20 deferred was \$25.6 million on a conservative basis
21 that included the exclusion of three-year averages
22 that were high three-year averages to be conservative
23 and, yet, 23.2 million is less than that.

24 Q. But we don't know whether the settlement
25 takes into account three-year averages, do we?

1 A. The settlement is a black-box settlement
2 so we don't know what is in that, and one of the
3 parties may think A is in there, and another party
4 may think B is in there. That's the nature of a
5 black-box settlement.

6 Q. So you cannot say that the Company's
7 decision to delay requesting a deferral of 2011 storm
8 costs benefits customers because we don't know how
9 much, if any, of those carrying costs customers are
10 paying as part of the black-box settlement, correct?

11 A. I believe the question I was asked by my
12 attorney was if we had asked for deferral of the 2011
13 storm costs earlier and then collected that money
14 subsequent. So that was the interpretation I was
15 putting on or what I understood his question to be.

16 So if we had asked for a deferral in 2011
17 and the Commission had given us authority to book the
18 carrying costs of the 5.86 percent, that would have
19 grown from the deferral balance and we recovered it
20 subsequently, then delaying from 2011 to 2012 would
21 have had a lesser amount of carrying costs that would
22 ultimately be paid for by customers.

23 Q. But we can agree that customers would
24 have been better off if the Company never deferred
25 2011 costs and collected them through a settlement in

1 this case, correct?

2 THE WITNESS: Can I have the question
3 repeated, please?

4 (Record read.)

5 A. I don't think that's correct, because I
6 think customers benefit by the prompt and workmanlike
7 return of lines to service, and there is a regulatory
8 compact that the customers will pay for the costs of
9 that prudent utility service; and, therefore, in the
10 long run, I think it's to the customers' benefit to
11 pay for these costs.

12 Q. Well, if about two years passes and the
13 Company does not seek those costs, wouldn't it be a
14 fair assessment that customers would believe they
15 won't have to pay those costs?

16 A. Well, I think you had asked me a
17 hypothetical that went back to 2003 and had given me
18 the assumption that it was probable that those costs
19 would be recovered and that's many more years than
20 two.

21 Q. So the answer to my question?

22 THE WITNESS: I'll have to ask you to
23 reread the original question, please.

24 (Record read.)

25 A. I think no.

1 Q. Did DP&L accurately reflect its net
2 earnings in 2011 and 2012 because of its treatment of
3 the 2011 O&M storm costs?

4 A. Yes, it did.

5 Q. How did the earnings of DP&L -- strike
6 that.

7 How were the earnings of DP&L accurately
8 reflected in 2011 when it expensed costs that it
9 seeks to collect today?

10 A. Because when financial statements are
11 issued, they are based on the facts and circumstances
12 known at that time, and at that time it was not
13 probable of recovery, meaning in the end of
14 December 2010, beginning of 2011, it was not probable
15 of recovery.

16 Q. During redirect with Mr. Sharkey, you
17 were asked what were some of the factors that you and
18 others considered in the decision to seek deferral of
19 the 2011 storm costs. And it looked like you were
20 reading from something. Could I see what you were
21 reading from?

22 A. Certainly.

23 Q. Are these your handwritten notes, sir?

24 A. Yes, they are.

25 Q. And could you read the first factor?

1 A. Well, actually it starts -- I've got them
2 in two different groups.

3 Q. If you could read each one that you read
4 to Mr. Sharkey, please.

5 A. And I didn't really read them verbatim.
6 I'll read some of the notes here and I might --

7 Q. Just the factors as you recall that you
8 had said them.

9 A. Okay. One was prudently-incurred costs
10 related to unusual storms of a large size and high
11 cost to repair.

12 Q. Sir, after each factor, if I may ask you
13 a question. Did you also know that in 2011?

14 A. When you said "2011," can I stop and go
15 back because I think I said "2010" incorrectly a
16 couple questions before and I should have said 2011
17 when I was saying we were closing the books and it
18 wasn't probable. I think I accidently said 2010, but
19 I meant 2011.

20 Q. I appreciate that clarification.

21 A. So I better ask for the question to be
22 reread because I went back a couple questions in my
23 mind.

24 (Record read.)

25 A. Yes, I did.

1 Q. Thank you.

2 Could you read the next factor you
3 stated?

4 A. There was a settlement agreement of a
5 prior ESP case related to DP&L that specifically
6 permitted storm recoveries to be requested via a
7 special or new rider.

8 Q. Did you also know that in 2011?

9 A. Yes, I did.

10 Q. Thank you.

11 Could you read the next factor?

12 A. Prior Commission precedent on DP&L on
13 recovery of the 2004, 2005 storms.

14 Q. And you knew that in 2011, correct?

15 A. Yes, I did.

16 Q. Could you please read the next factor?

17 A. The deferral orders on the 2008 storms
18 and the 2012 storm.

19 Q. You knew the deferral order in 2008, but
20 you did not know of the deferral order in 2012 --

21 A. That is correct.

22 Q. -- in year 2011. Thank you.

23 And the next factor?

24 A. Excuse me. I'll wait until the end of
25 your sentence and I'll say yes, that's correct.

1 The next was recovery of another Ohio
2 utility's storm costs, and I mentioned Duke related
3 to the Hurricane Ike.

4 Q. Did you know that in 2011?

5 A. That was a relatively long case and I
6 don't remember when the order came out on that.

7 Q. That's fair.

8 Could you read the next factor?

9 A. It had to do with the Commission in Ohio
10 being interested in the financial health of
11 utilities.

12 Q. The Commission in Ohio was interested in
13 the financial health of utilities in 2011, wouldn't
14 you agree?

15 A. Yes, indeed.

16 Q. Thank you.

17 Could you read the next factor?

18 A. That it was discussed and reviewed by our
19 outside auditors.

20 Q. Did you discuss and review the deferral
21 of 2011 costs, in year 2011, with the outside
22 auditors?

23 A. I think I told them we were not going to
24 defer them because it wasn't probable; so, yes.

25 Q. In light of all the factors you discussed

1 on redirect and during this cross-examination, what
2 made the likelihood of -- excuse me -- in light of
3 the factors we just discussed, what made the
4 probability of recovery likely in 2012, but not
5 likely in 2011?

6 A. Because the Company had made its mind up
7 to ask for the recovery of the costs at the end of
8 2012, which, in 2011, it had not decided whether or
9 not it was going to ask for the costs.

10 EXAMINER PRICE: Why would the Company
11 not have asked for the costs if they were prudently
12 incurred?

13 THE WITNESS: Well, you have to remember
14 that at the very end of 2011, November of 2011, we
15 were bought by AES. A number of our senior
16 management people left shortly thereafter and some
17 left during 2012. So most of the senior management
18 had changed and new people had come in that may not
19 be familiar with regulatory accounting or State of
20 Ohio procedures, could have been one of the reasons,
21 but I really do not know. I was not personally
22 involved in those discussion.

23 EXAMINER PRICE: Okay. Fair enough.
24 Thank you.

25 Q. You're aware that the largest of the five

1 storms that the Company seeks cost recovery of
2 occurred in February of 2011?

3 A. I believe it's in one of these many data
4 requests, but I don't know as an absolute fact.

5 MS. YOST: Thank you, Mr. Campbell, for
6 your time today and yesterday.

7 I have no further questions, Your Honor.

8 EXAMINER MCKENNEY: Thank you, Ms. Yost.
9 Staff? You had no cross-examination?

10 MR. O'ROUKE: No, Your Honor.

11 EXAMINER PRICE: I just had a couple of
12 questions just to fill in the gaps in my lack of
13 knowledge of accounting and financial statements.

14 - - -

15 EXAMINATION

16 By Examiner Price:

17 Q. Let's say in 2014, this year, you work
18 for the utility, and they incur \$100 million in
19 costs. You get approval from the Commission to defer
20 it. Does that have an impact on your earnings when
21 you report your 2014 earnings?

22 A. Yes. If we believe it's probable of
23 recovery for the entire amount, we would defer that;
24 where, if we didn't believe it was probable of
25 recovery, we would record it all to expense.

1 Q. So you think it's probable for recovery.

2 A. We would have deferred that. So
3 basically our net income would be greater, to the
4 tune of \$100 million, less the tax effects.

5 Q. And you report that on your financial
6 statement for 2014.

7 A. That's correct.

8 Q. And then let's say it takes a couple
9 years for the Commission to get to the ultimate
10 decision on this and the Commission disallows,
11 despite your best, good-faith estimates, we disallow
12 \$50 million. Now your 2014 earnings were not
13 accurate. How do you show that? Do you go back and
14 restate your 2014 earnings or do you take a charge in
15 the 2016 earnings?

16 A. The 2014 earnings were correct because it
17 was based on the probability assessment at that time.
18 If, two years later, \$50 million is disallowed,
19 that's an expense in the quarter that it is no longer
20 probable, and that's an expense in that period, and
21 it's actually covered specifically in the accounting
22 literature.

23 Q. So you would then take that writeoff in
24 2016 against your earnings.

25 A. Correct.

1 Q. And your 2016 earnings would be less than
2 they otherwise would have been.

3 A. Correct.

4 Q. But you would not go back and restate
5 2014 or '15.

6 A. It would be contrary to the accounting
7 rules to go back and restate the prior years.

8 EXAMINER PRICE: Okay. Thank you.

9 EXAMINER MCKENNEY: Let's take a -- let's
10 go off the record real quick.

11 (Discussion off the record.)

12 EXAMINER MCKENNEY: Ms. Yost.

13 MS. YOST: Your Honor, at this time, OCC
14 moves to -- moves Exhibits No. 4, 5, 6, 7, 8, 9, 10,
15 11, 12, and 13 into evidence.

16 EXAMINER MCKENNEY: Thank you, Ms. Yost.

17 Do we have any objection to the admission
18 of OCC Exhibits 4 or 5?

19 MR. SHARKEY: I have no objections to any
20 of the ones you listed, Your Honor.

21 EXAMINER MCKENNEY: So admitted.

22 (EXHIBITS ADMITTED INTO EVIDENCE.)

23 EXAMINER MCKENNEY: Take administrative
24 notice of OCC Exhibit 6 which is 2281-EL-AAM.

25 OCC Exhibits 7, 8, and 9, is there any

1 objection to the admission of those exhibits?

2 MR. SHARKEY: No, Your Honor.

3 EXAMINER MCKENNEY: They will be so
4 admitted.

5 (EXHIBITS ADMITTED INTO EVIDENCE.)

6 EXAMINER MCKENNEY: Any objection to the
7 admission of just the unredacted portions of OCC
8 Exhibit 10?

9 MR. SHARKEY: No, Your Honor.

10 EXAMINER MCKENNEY: It will be so
11 admitted, just the unredacted portions of OCC Exhibit
12 10.

13 (EXHIBIT ADMITTED INTO EVIDENCE.)

14 EXAMINER MCKENNEY: OCC Exhibit 11. No
15 objection?

16 MR. SHARKEY: No objection, Your Honor.

17 EXAMINER MCKENNEY: So admitted.

18 (EXHIBIT ADMITTED INTO EVIDENCE.)

19 EXAMINER MCKENNEY: OCC Exhibit 12, just
20 the unredacted portions of OCC Exhibit 12. Any
21 objection?

22 MR. SHARKEY: No objection, Your Honor.

23 EXAMINER MCKENNEY: It will be so
24 admitted.

25 (EXHIBIT ADMITTED INTO EVIDENCE.)

1 EXAMINER MCKENNEY: And OCC Exhibit 13.

2 MR. SHARKEY: No objection, Your Honor.

3 EXAMINER MCKENNEY: It will be so
4 admitted.

5 (EXHIBIT ADMITTED INTO EVIDENCE.)

6 MR. SHARKEY: Your Honor, on behalf of
7 DP&L, I'd like to move for the admission of DP&L's
8 Exhibit 3 and 4.

9 EXAMINER MCKENNEY: Objections to the
10 admission of DP&L's Exhibits 3 and 4?

11 They will be so admitted.

12 (EXHIBITS ADMITTED INTO EVIDENCE.)

13 EXAMINER MCKENNEY: At this time, we'll
14 take a five-minute break. Let's go off the record.

15 (Recess taken.)

16 EXAMINER MCKENNEY: Mr. Campbell, you are
17 still under oath, I will remind you, so you do not
18 have to take it a second time.

19 THE WITNESS: Thank you. I was confused.

20 EXAMINER MCKENNEY: Mr. Sharkey, are you
21 prepared to proceed?

22 MR. SHARKEY: I am, your Honor.

23 - - -

24 GREGORY S. CAMPBELL ON BEHALF OF MICHAEL BARRETT
25 being first duly sworn, as prescribed by law, was

1 examined and testified as follows:

2 DIRECT EXAMINATION

3 By Mr. Sharkey:

4 Q. Mr. Campbell, do you have before you the
5 testimony in response to the staff audit report that
6 was sponsored by Mr. Michael Barrett?

7 A. Yes, I do.

8 Q. Okay. And do you understand that Michael
9 Barrett was unable to attend this hearing due to
10 other commitments?

11 A. That is correct.

12 Q. Are you adopting and sponsoring the
13 substance, not the qualifications piece, but the
14 substance of Mr. Barrett's testimony?

15 A. Yes, I am.

16 Q. Have you reviewed that testimony in
17 advance of today to be sure that you agreed with the
18 answers given by Mr. Barrett?

19 A. Yes, I have.

20 Q. And excluding the portions of his
21 testimony that describe his business address and
22 background and education, if I asked you the same
23 questions that were contained in this document, would
24 you give me the same answers?

25 A. Yes, I would.

1 Q. Do you have any corrections or changes to
2 this testimony that you wish to make?

3 A. No, I do not.

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

5 Your Honor, we'd ask that this testimony
6 be designated DP&L Exhibit 8, and I would offer
7 Mr. Campbell for cross-examination in support of the
8 testimony that was originally written by Mr. Barrett.

9 EXAMINER MCKENNEY: Thank you,
10 Mr. Sharkey. It will be marked DP&L 8.

11 (EXHIBIT MARKED FOR IDENTIFICATION.)

12 EXAMINER MCKENNEY: Mr. Sauer, you're
13 prepared for cross-examination?

14 MR. SAUER: Thank you, Your Honor.

15 Per the agreement to allow Mr. Campbell
16 to stand in for Mr. Barrett, I'd like to have marked
17 OCC Exhibit No. 14, the deposition of Michael Barrett
18 that was taken on January 30th of 2014.

19 EXAMINER MCKENNEY: So marked OCC 14.

20 (EXHIBIT MARKED FOR IDENTIFICATION.)

21 - - -

22 CROSS-EXAMINATION

23 By Mr. Sauer:

24 Q. Good morning, Mr. Campbell.

25 A. Good morning.

1 Q. I just handed you what has been marked as
2 OCC Exhibit 14. Have you had a chance to review
3 Mr. Barrett's deposition that was taken for this
4 proceeding?

5 A. I have read through it before today.

6 Q. Okay. Thank you.

7 If you could turn to page 44, line 18,
8 and read that, if you would, through page 46, line
9 10.

10 A. Starting on page 44, line 18 --

11 Q. Page 44, line 18, through 46, line 10.

12 A. Yes, I can do that.

13 Question: "Is it your understanding --

14 Q. You don't have to read it out loud.

15 A. Excuse me, I misunderstood.

16 Q. That's fine. I'll have some questions on
17 that aspect of the deposition when you're ready.

18 A. Yes, I've reviewed that section of the
19 deposition.

20 Q. Okay. The section that you read pertains
21 to the issue of DP&L not seeking the deferral
22 authority for 2011 restoration expenses in 2012, and
23 Mr. Barrett, specifically at lines 45 -- page 45
24 lines 18 to 20, states that DP&L did not have
25 sufficient documentation to support the probability

1 to create the deferral. Do you see that?

2 A. Yes, I do.

3 Q. And can you explain to me what
4 documentation was lacking in 2011?

5 A. Let me first point out that this answer
6 is related to a hypothetical question that's on the
7 same page that starts on line 10.

8 Q. Uh-huh.

9 A. And the question involves retro -- does
10 that create retroactive ratemaking or not create
11 retroactive ratemaking. So his answer is for a
12 hypothetical question that's posed by, I believe you
13 were the questioner on this section?

14 Q. Yes.

15 A. So he's basically saying, in 2011, the
16 Company did not have sufficient documentation to
17 create the deferral because the Company had not made
18 its mind up to ask or not ask for recovery of the
19 costs or the deferral.

20 Q. And I believe when Ms. Yost was
21 cross-examining you, there was some discussion about
22 some documentation that was prepared by Jared Hoying.

23 A. That is correct.

24 Q. Is that the documentation that was
25 eventually provided to Mr. Barrett?

1 A. Yes, it was.

2 Q. And Mr. Barrett reviewed that
3 documentation?

4 A. Yes, he did, and also had a number of
5 oral conversations with me and maybe others.

6 Q. And then if you would look at page 46,
7 lines 3 to 10, it starts out with his answer, when we
8 were discussing the facts surrounding when and why a
9 deferral decision is being made that it's a better
10 question for the Company. Do you see that?

11 A. Yes, I see that question and answer.

12 Q. And he suggested his "assumption to those
13 facts would be that they felt that they had
14 sufficient documentation to support the probability
15 of recovery of the 2008 costs and therefore created
16 the regulatory asset. And then, in 2011, it came to
17 a different conclusion around those costs." And you
18 agree with that?

19 A. I read the words and, basically, in 2008,
20 the regulatory asset was set up and the costs were
21 deferred because we believed it was probable of
22 recovery. And in 2011, when we closed the books for
23 2011, it was not probable of recovery for the 2011
24 costs.

25 Q. I believe you testified that for the 2011

1 deferral costs you're not accruing any carrying
2 charges.

3 A. That is correct.

4 Q. Was that a recommendation by the auditors
5 that you not accrue carrying charges for the 2011
6 deferral amounts?

7 A. No, it was not.

8 EXAMINER PRICE: I think you need to fix
9 the record, because I think you said "2011 deferral
10 amounts" and I don't think there are any 2011
11 deferral amounts. You might want to restate your
12 question for 2011 storm damage costs.

13 Q. Okay. Is it true that the regulatory
14 asset that has been established for the 2011 storm
15 restoration costs are accruing no carrying charges?

16 A. They are accruing no carrying costs.

17 Q. And was the decision not to accrue
18 carrying charges on that particular regulatory asset,
19 a decision that came to DP&L because of a
20 recommendation by your auditor?

21 A. It was not.

22 EXAMINER PRICE: I'm sorry, Mr. Sauer. I
23 misstated that.

24 MR. SAUER: What's that?

25 EXAMINER PRICE: I screwed that up

1 totally. It's my fault.

2 MR. SAUER: No problem.

3 MR. SHARKEY: That was on the record
4 even.

5 Q. (By Mr. Sauer) If you could look at, I
6 think what had been previously marked as OCC Exhibit
7 9. It is an e-mail document that begins with Bates
8 stamp DPL Storm 0002814.

9 A. I have Bates stamp 2814.

10 Q. Okay. The very first page on 2814, three
11 paragraphs down, there's an explanation that
12 discusses "Due to the timing, some accounting entries
13 related to 2011 storms are recorded in subsequent
14 years." Do you see that?

15 A. Yes, I see that sentence.

16 Q. And "the timing" that's being discussed
17 there, can you explain what is meant by that?

18 A. Give me a moment to read the rest of this
19 e-mail.

20 My belief is this is discussing the
21 recordation of the expense of the 2011 storms to
22 match or offset the recovery of that cost from
23 customers. So that if the Commission, for example,
24 would give us recovery in 2014 and '15, those
25 expenses would be recorded in 2014 and '15 to offset

1 the revenues which really would show that the Company
2 was made whole for those costs.

3 Q. So the timing being discussed here has
4 nothing to do with whether or not there was
5 sufficient time in 2011 to assess whether or not to
6 make a request for a deferral in 2011.

7 A. No. And if you look at the last sentence
8 on the first paragraph, the last sentence, "The
9 expenses will only be recorded on DP&L's books once,
10 at the time DP&L collects revenue for those
11 expenses." And that's under the hypothetical that
12 they have granted -- been granted those through a
13 Commission order.

14 Q. The next sentence states "However, this
15 is consistent with accounting rules and regulatory
16 accounting principles which say a Company should
17 evaluate the probability of all regulatory assets
18 during the closing of that accounting period." Do
19 you see that?

20 A. Yes, I do.

21 Q. Do the same accounting principles exist
22 in making a decision whether to create the regulatory
23 asset in the first place?

24 A. Yes, they did exist at the same time.

25 Q. So the Company should evaluate the

1 probability of all regulatory assets during the
2 closing of that accounting period.

3 A. The Company is required, by the
4 accounting rules, to evaluate the probability of
5 recovery of all regulatory assets at least quarterly.

6 Q. And if you look at the bold text right
7 below the "Financial Accounting Standards
8 Codification" information there. It says "A cost
9 that does not meet these asset recognition criteria
10 at the date the cost is incurred shall be recognized
11 as a regulatory asset when it does meet those
12 criteria at a later date."

13 A. Yes, I see that sentence.

14 Q. Is the determination that a cost does not
15 meet these asset recognition criteria at the date the
16 cost is incurred, is that a condition precedent for
17 recognizing the cost as a regulatory asset at a later
18 date?

19 A. I'm not sure what "condition precedent"
20 means. Could you make the question a little simpler
21 for me?

22 Q. Do you have to have made an affirmative
23 decision, in a year that a cost is incurred, not to
24 create a regulatory asset based on those expenses,
25 before you can record it as a regulatory asset in a

1 subsequent period?

2 THE WITNESS: Could you please read back
3 the question?

4 (Record read.)

5 A. Let me tell you what the process is. You
6 determine whether the cost is probable of recovery,
7 then you would record the regulatory asset. The
8 specific sentence that you're talking about that's
9 highlighted in this e-mail is discussing a situation
10 where it doesn't -- a cost does not meet that
11 probable standard in one period, but later does meet
12 it, which is really the example that we have on the
13 2011 costs.

14 Q. A little while ago, Ms. Yost was -- you
15 had responded to some questions from Mr. Sharkey and
16 she was recrossing you --

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

18 (Discussion off the record.)

19 Q. (By Mr. Sauer) Was Mr. Barrett involved
20 in any specific discussions that surrounded DP&L's
21 decision in 2011 not to book the deferrals in 2011?

22 A. I personally discussed it with him, so
23 yes.

24 Q. Was he involved with -- were his
25 discussions solely with you or were there other DP&L

1 management people that were involved in that
2 decision?

3 A. You used the word "decision." Did you
4 mean "discussion"?

5 Q. Discussion.

6 A. I can't today recall if other people were
7 in that discussion. Ritu Furlan, who was another
8 Ernst & Young partner, may have been involved in the
9 discussion also.

10 Q. Was Mr. Barrett involved in discussions
11 with DP&L management in 2011 when the decision was
12 made to defer the 2011 storm costs in 2012?

13 A. I personally discussed it with him.

14 Q. And was it discussion with you solely or
15 were there other DP&L management involved in that
16 discussion?

17 A. I can't recall today of other members of
18 A -- excuse me, I almost said "AEP" -- DP&L
19 management being involved in those discussions.

20 MR. SAUER: Your Honor, that's all the
21 questions I have for Mr. Campbell.

22 EXAMINER MCKENNEY: Thank you, Mr. Sauer.

23 Does staff have cross-examination for
24 Mr. Campbell on Mr. Barrett's testimony?

25 MR. O'ROUKE: No, Your Honor.

1 EXAMINER MCKENNEY: Mr. Sharkey?

2 MR. SHARKEY: No redirect, Your Honor.

3 EXAMINER MCKENNEY: Thank you,
4 Mr. Campbell.

5 THE WITNESS: Thank you.

6 EXAMINER PRICE: Well, not so fast. I
7 have one question. I don't want to violate my
8 caution to Mr. Sauer.

9 - - -

10 EXAMINATION

11 By Examiner Price:

12 Q. You indicated that you had discussion on
13 when you would not restate your earnings if the
14 Commission had disallowed a recovery of a deferral
15 that had been previously granted. When would a
16 utility or any other company restate its earnings?

17 A. There's another accounting standard that
18 has to do with subsequent events related to lawsuits
19 and other things like that. But, on the regulatory
20 accounting, as we just read in this highlighted
21 sentence here, the requirement is to do it in the
22 quarter that it either becomes probable or no longer
23 is probable.

24 Q. And the document you are showing me is
25 which one?

1 A. This is --

2 Q. Just so the reporter has it. It's OCC 9,
3 right?

4 A. This is Bates 0002814, but it's also in
5 my rebuttal testimony, I believe, and might be in the
6 former Michael Barrett testimony.

7 EXAMINER PRICE: We'll be able to find
8 it; so don't worry.

9 Thank you. Now you're excused.

10 MR. SHARKEY: Your Honor, DP&L would move
11 for the admission of DP&L Exhibit 8.

12 EXAMINER MCKENNEY: Objection to the
13 admission of DP&L 8?

14 So admitted.

15 (EXHIBIT ADMITTED INTO EVIDENCE.)

16 MR. SAUER: OCC would move for the
17 admission of OCC Exhibit No. 14.

18 EXAMINER MCKENNEY: Objection to OCC 14?

19 It will be so admitted.

20 (EXHIBIT ADMITTED INTO EVIDENCE.)

21 EXAMINER MCKENNEY: Let's go off the
22 record real quick.

23 (Discussion off the record.)

24 EXAMINER MCKENNEY: Mr. Sharkey, are you
25 prepared?

1 Let's go back off the record.

2 (Discussion off the record.)

3 EXAMINER PRICE: Ms. Yost.

4 MS. YOST: Thank, you your Honor. At
5 this time the OCC calls Mr. Anthony J. Yankel to the
6 stand.

7 (Witness sworn.)

8 EXAMINER PRICE: Please be seated and
9 state your name and business address for the record.

10 THE WITNESS: Anthony J. Yankel,
11 Y-a-n-k-e-l. 29814 Lake Road, Bay Village, Ohio,
12 44140.

13 EXAMINER PRICE: Thank you.

14 Please proceed, Ms. Yost.

15 MS. YOST: At this time OCC requests to
16 have the direct testimony of Anthony J. Yankel, filed
17 January 31st, 2014, public version, marked as OCC
18 Exhibit 15.

19 The February 4th, 2014, letter with
20 Attachments AJY-2, AJY-3, marked as OCC Exhibit 15A.

21 The confidential version of the direct
22 testimony of Anthony J. Yankel filed, January 31st,
23 2014, marked 15B.

24 EXAMINER PRICE: All -- sorry. Go ahead.

25 MS. YOST: And the testimony of Anthony

1 J. Yankel in opposition to the stipulation and
2 recommendation, dated May 23rd, 2014, marked OCC 16.

3 EXAMINER PRICE: All the exhibits will be
4 so marked.

5 MS. YOST: Thank you.

6 (EXHIBITS MARKED FOR IDENTIFICATION.)

7 - - -

8 ANTHONY J. YANKEL

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

11 DIRECT EXAMINATION

12 By Ms. Yost:

13 Q. Good morning. Are you the same Anthony
14 Yankel whose direct testimony and testimony in
15 opposition to the stipulation was filed in these
16 cases?

17 A. Yes.

18 Q. And on whose behalf do you appear today?

19 A. The Ohio Office of Consumers' Counsel.

20 Q. And you have three pieces of testimony in
21 front of you. You have them all with you, correct?

22 A. I do not have the public version, but I
23 do have the confidential which covers all of it.

24 Q. Thank you.

25 Did you prepare those pieces of testimony

1 or have them prepared at your direction?

2 A. Yes.

3 Q. And we'll start with your testimony, your
4 direct testimony. Do you have any changes to that
5 testimony?

6 A. Yes, I do.

7 Q. Would you please start with OCC Exhibit
8 15 and indicate your changes?

9 A. Page 13, line 8, the sentence there at
10 the end starts with the word "of." "Of" should be
11 removed and, in its place, put "In addition to."

12 Q. Thank you.

13 A. Page 18, line 3, near the end of the line
14 there's the word "on." It should be "of," o-f.

15 Q. Thank you.

16 A. Page 29, line 17, remove at the end of
17 the line the words "slightly more complicated than."

18 And I have one comment to make. During
19 my deposition I had suggested that footnote 33 was
20 wrong; it is correct as written.

21 Q. Footnote 33, what page is that?

22 A. It's on page 23.

23 Q. Thank you.

24 Did you have any corrections to your two
25 attachments to your direct testimony?

1 A. No.

2 Q. Do you have any corrections to your
3 testimony in opposition to the stipulation and
4 recommendation?

5 A. No, none at this time.

6 Q. Thank you.

7 If I ask you the same questions found in
8 your direct testimony filed on May -- filed on
9 January 31st, 2014, and your testimony in opposition
10 to the stipulation and recommendation filed May 23,
11 2014, would your answers be the same?

12 A. Yes.

13 MS. YOST: Thank you.

14 At this time, the OCC moves for the
15 admission of OCC Exhibits 15, 15A, 15B, and 16 into
16 evidence, and we offer Mr. Yankel up for
17 cross-examination.

18 EXAMINER PRICE: Thank you.

19 We'll defer ruling on the motion for
20 admission until after the conclusion of
21 cross-examination.

22 Mr. Sharkey.

23 MR. SHARKEY: Thank you, Your Honor.

24 - - -

25 CROSS-EXAMINATION

1 By Mr. Sharkey:

2 Q. Mr. Yankel, as you know, I represent The
3 Dayton Power and Light Company in this matter. As an
4 initial matter, you agree with me that the purpose of
5 this proceeding is to allow DP&L to seek recovery of
6 atypical storm costs that would not be included in
7 DP&L's base distribution rates?

8 A. Depends on what you mean by "atypical,"
9 but certainly these are more severe storms, yes.

10 Q. You haven't done any studies or at least
11 don't sponsor any studies relating to whether or not
12 the storms at issue in this case were major storms,
13 right?

14 A. That is correct.

15 Q. You haven't done any analysis to
16 determine whether they were unusual or nonrecurring
17 storms, right?

18 A. That is correct?

19 Q. Okay. You would at least agree with me
20 that the 2008 Hurricane Ike storm was unusual and
21 atypical, correct?

22 A. I would certainly call it unusual and
23 atypical, yes.

24 Q. And would you also agree with me that the
25 2012 derecho was an unusual and atypical storm,

1 right?

2 A. Yes, I think there's no question about
3 those two.

4 Q. Okay. You don't dispute that DP&L's
5 response to those storms was quite good?

6 A. No, I do not.

7 Q. Okay. You, during discovery in this
8 case, received numerous documents from The Dayton
9 Power and Light Company, right?

10 A. Yes.

11 Q. And you, in fact, traveled to The Dayton
12 Power and Light Company's offices and had the
13 opportunity to inspect invoices?

14 A. Yes.

15 Q. And documents that you requested were
16 provided to you by DP&L?

17 A. Yes.

18 Q. Did you review a lot of them?

19 A. A lot of them, yes.

20 Q. And you didn't identify any payments by
21 DP&L you believed to be imprudent?

22 A. To contractors?

23 Q. Correct.

24 A. No, I did not find anything with respect
25 to contractors that was a problem.

1 Q. And you didn't identify any expenses for
2 work done outside of DP&L's service territory its
3 seeking to recover here, did you?

4 A. I don't follow the question.

5 Q. You recall that there was a Duke case
6 where there were issues relating to work that DP&L --
7 work that was done outside of Duke's service
8 territory that it was seeking to recover at least
9 potentially. You didn't identify any similar issues
10 in this case.

11 A. There was nothing like the Duke case,
12 yes.

13 Q. I understand that in your testimony that
14 you recommend that DP&L not be permitted to recover
15 any amounts for 2008 and 2011 storms, right?

16 A. Yes.

17 Q. Okay. I'm going to ask you about that
18 testimony later. What I'd like to start with is your
19 testimony in opposition to the stipulation. Turn, if
20 you would, to AJY-2.

21 A. The exhibit in the back?

22 Q. The exhibit at the back, yes. Attachment
23 AJY-2.

24 A. Yes.

25 Q. Okay. As I understand what this exhibit

1 shows, is that you assume that even if DP&L were
2 permitted to recover amounts associated with the 2008
3 and 2011 storms, the appropriate starting point to
4 evaluate DP&L's request would be the \$22.3 million
5 figure that you have on line 10?

6 A. That is correct.

7 Q. Okay. So let's talk about how you
8 arrived at the \$22.3 million figure. You started, on
9 line 1, with a \$29.7 million O&M original request by
10 DP&L, correct?

11 A. Correct.

12 Q. That amount excludes carrying costs.

13 A. Correct.

14 Q. You then propose a number of adjustments
15 to DP&L's figure on lines 2, 3, 4, and 5, which
16 total, on line 6, \$11.8 million, right?

17 A. That is correct.

18 Q. You then subtract that \$11.8 million in
19 adjustments that you're advocating for from DP&L's
20 original request of \$29.7 million to get, on line 7,
21 the \$17.9 million figure?

22 A. Yes.

23 Q. You then apply carrying costs of
24 \$4.4 million, on lines 8 and 9, to arrive at your
25 \$22.3 million figure.

1 A. Yes.

2 Q. Okay. I want to ask you about the
3 adjustments that -- well, let me step back.

4 That \$22.3 million figure, then, you
5 believe would be a starting point for evaluation --
6 for evaluating DP&L's request, right?

7 A. Yes.

8 Q. Let me ask you then about any additional
9 changes that would need to be made, at least as
10 sponsored by your testimony.

11 A. I certainly have, in my direct testimony,
12 discussion about the management fees and straight
13 time union fees that are paid for work during a
14 regular work week.

15 Q. Actually, can I interrupt, because I
16 think I can short-circuit this. Do you have a copy
17 of the staff audit report that's been marked as OCC
18 Exhibit 1?

19 A. Yes, I do.

20 Q. If you --

21 A. I'm not there yet. It doesn't
22 short-circuit it if I can't find it.

23 Q. Tell me when you're ready. I can provide
24 a copy of it to you.

25 A. I'm afraid you're going to have to.

1 Sorry.

2 Q. I'll represent to you I believe the only
3 documents that I'll be asking you about today will be
4 your two -- that's not true, but, for a while, the
5 only documents you'll need available will be your two
6 pieces of testimony and the staff audit report.

7 A. Okay.

8 Q. The staff audit report includes and is,
9 in fact, the source for the adjustments you show on
10 lines 2, 3, and 5 of AJY-2, correct?

11 A. For some of the adjustments, yes. There
12 are more adjustments in the staff audit report, but
13 yes.

14 Q. Okay. But the source for lines 2, 3, 4
15 and 5, was the staff audit report.

16 A. Yes.

17 Q. Okay. And I'll represent to you that
18 I've added up the remaining adjustments in the staff
19 audit report and they total \$1.8 million.

20 A. Okay.

21 Q. You assume that's true?

22 A. I'll accept that.

23 Q. If my math's wrong, then that's my
24 problem and not your problem.

25 Then, if you would, within your testimony

1 in opposition to the stipulation -- keep your finger
2 on AJY-2, because I'm going to be coming back to
3 that, but turn to page -- I apologize, I have a bad
4 page cite within my testimony -- within my record.

5 In addition to those items, you have
6 advocated for changes to DP&L's request associated
7 with mutual assistance, right?

8 A. In my direct testimony, yes.

9 Q. Okay. And do you recall the amount of
10 that proposed adjustment?

11 A. Not off the top of my head, but I think
12 it was --

13 MS. YOST: Tony, is that number
14 confidential?

15 Q. Turn, if you would, to page 21 of your
16 confidential testimony.

17 A. Yes.

18 Q. The individual figures I believe DP&L
19 considers to be confidential or at least they come
20 from confidential sources, but we're comfortable
21 putting into the public record the total of those two
22 figures so that it can't be determined what they
23 broke down to or how they were added up to. If you
24 add those two figures up, approximately \$600,000?

25 A. 600,000, yes.

1 Q. In addition to those items, are there any
2 other amounts that you believe would need to be
3 reduced in DP&L's O&M request?

4 A. As I mentioned before, the labor
5 adjustments for management labor and for union labor
6 straight time during the regular 40-hour workweek.

7 Q. Okay.

8 A. As well as the salary labor during the
9 40-hour workweek.

10 Q. Those are all reflected on page 4 of the
11 staff report?

12 A. They may be, I didn't check the numbers,
13 but I assume they are correct.

14 Q. Okay. So I guess that's the question.
15 It appears to me that any adjustments you have
16 advocated for would be what's in the staff report in
17 terms of the various items, plus mutual assistance,
18 which I did not see in the staff report. Are you
19 aware of any adjustments besides those that are
20 quantified or suggested in any of your testimony?

21 A. Well, there's certainly the adjustments
22 for year 2008 and 2011 for the removal of those
23 completely.

24 Q. I'm setting that aside for now.

25 A. Okay.

1 Q. But I understand that.

2 A. Okay. Setting those aside, then yes,
3 it's pretty much what's in the staff report -- or, in
4 the staff audit report.

5 Q. The staff audit report plus the \$600,000
6 associated with mutual assistance.

7 A. Yes.

8 Q. Totaling \$2.4 million.

9 A. Okay.

10 Q. Right?

11 A. Close enough.

12 Q. Turn back then, if you would, to
13 Attachment AJY-2. I want to ask you about the
14 adjustments you make on lines 2 through 5. I want to
15 start on line 2. That's an adjustment for a
16 three-year average, correct?

17 A. For the 2008 storms, yes.

18 Q. Okay. And then within the staff report,
19 can you pull out page 4?

20 A. Yes, I have it.

21 Q. Okay. Towards the top there is a
22 \$554,503 number of the staff report that exactly
23 matches AJY-2, right?

24 A. Yes.

25 Q. And you see the staff is saying that the

1 total amount to be used for a three-year average was
2 roughly \$2.9 million?

3 A. Yes.

4 Q. Okay. You understand that there's an
5 issue in this case as to whether there should be an
6 adjustment for three-year averages or not.

7 A. I know the Company has an issue with
8 that; I don't.

9 Q. Fair enough.

10 If you would turn, please, to DP&L
11 Exhibit 13. There's binders behind you, and tell me
12 when you're there.

13 (EXHIBIT MARKED FOR IDENTIFICATION.)

14 A. I'm there. I'm assuming it's from the
15 08-1332?

16 Q. Yes, it's the Finding and Order in
17 08-1332. If you look on page 1, paragraph 2, there's
18 a sentence that begins "The portion" in the middle?

19 A. Yes.

20 Q. Take a moment and read that to yourself,
21 would you.

22 A. Yes.

23 Q. First of all, you understand this to be a
24 description of what DP&L asked for in that case,
25 right?

1 A. That is correct.

2 Q. And what DP&L had asked for essentially
3 was its Hurricane Ike expenses plus its other storm
4 expenses minus the three-year average of major storm
5 expenses.

6 A. Yes.

7 Q. Okay.

8 A. For O&M.

9 Q. Yes, for O&M. Thank you.

10 Turn, if you would, then, to page 2,
11 paragraph 4.

12 A. Yes.

13 Q. Okay. You understand that to be the
14 ordering paragraph of the Commission, right?

15 A. Yes.

16 Q. Okay. And as you have interpreted that
17 order, it makes no reference to the recovery by DP&L
18 of any storm expenses other than Hurricane Ike,
19 right?

20 A. Yes. It did not grant permission to do
21 that, for you to do that.

22 Q. That's how you understand the order.

23 A. Yes.

24 Q. Okay. And it also, in that paragraph,
25 makes no mention of the reduction of the Hurricane

1 Ike expenses by a three-year average, does it?

2 A. No, it does not.

3 Q. At Exhibit AJY-2 to your testimony --

4 A. Yes.

5 Q. -- if the Commission were to conclude
6 that no three-year average should be applied as to
7 2008, that would mean that \$2.8 million would need to
8 be added back, right?

9 A. That would be true if that was the case.
10 I don't really believe that's the case at all. But,
11 yes, if that was the case that's numerically correct.

12 Q. Okay. That one adjustment would exceed,
13 on its own, the additional \$2.4 million in
14 adjustments that you've advocated for?

15 A. Numerically, yes.

16 Q. Okay. Let's talk then about line 3.
17 Line 3, you show a subtraction of approximately
18 \$3.6 million associated with nonmajor storms in 2008,
19 right?

20 A. Correct.

21 Q. And the reason that you made that
22 adjustment is the one we just discussed about, as you
23 interpret the Commission order, it didn't authorize
24 DP&L to recover expenses associated with nonmajor
25 storms?

1 A. That is correct.

2 Q. Turn again, if you would, please, to the
3 staff report, page 4.

4 A. Yes.

5 Q. Okay. That's again the source of that
6 \$3,574,000 number you have on line 3, right, on that
7 page?

8 A. Yes. I'm not sure if that's my source,
9 but yes, it agrees with what I have; same number.

10 Q. And turn, if you would, to page 6 of the
11 staff report.

12 A. Yes.

13 Q. Okay. It says, "Under Costs of Non-Major
14 Storms in 2008" --

15 A. Yes.

16 Q. -- the first sentence of that section
17 says "The Company's application includes, along with
18 Hurricane Ike repair costs, repair costs associated
19 with non-major storms in 2008." Did I read that
20 accurately?

21 A. Yes.

22 Q. Turn, if you would, to page 7. The last
23 paragraph of that section. So up towards the top
24 that begins with the word "Therefore." Do you see
25 that?

1 A. Yes.

2 Q. "Therefore, for those reasons, Staff
3 believes an adjustment of \$3,574,934 to remove the
4 minor storm repair expenses is appropriate." Did I
5 read that accurately?

6 A. Yes, you did.

7 Q. Okay. I'll represent to you that
8 Mr. Bryce Nickel has testified earlier today -- I'm
9 sorry, yesterday, relating to testimony that he
10 sponsored, and I'd like you to take a quick look at
11 it. It's DP&L Exhibit 1 in that same binder.

12 A. Yes.

13 Q. I apologize. I gave you the wrong cite.
14 It's DP&L Exhibit 2. Turn, if you would, to page 8.

15 A. I'm there.

16 Q. Okay. At the bottom of page 8, starting
17 on line 18, there is a series of sentences from
18 Mr. Nickel. I'd like you to read essentially from
19 line 18 to line 23. Tell me when you're ready.

20 A. I've read it.

21 Q. I'm not going to ask you whether you
22 agree with what Mr. Nickel says, but I want to
23 inquire as to how you understand it. Mr. Nickel, as
24 you understand his testimony, is explaining that
25 roughly \$2.3 million of the staff's \$3,574,000 number

1 was, in fact, for major storms, right?

2 A. That's what it says.

3 Q. Okay. And there's nothing in your
4 testimony in which you have calculated which storms
5 in 2008 were major and which storms in 2008 were
6 minor.

7 A. That is correct.

8 Q. So you don't have any basis to disagree
9 with Mr. Nickel's testimony here.

10 A. Neither agree nor disagree.

11 Q. Okay. Turn, if you would, then, to your
12 direct testimony, page 26. Are you there?

13 A. Yes.

14 Q. Starting on line 29 --

15 A. Excuse me?

16 Q. I'm sorry. Answer 29, line 7.

17 A. Okay.

18 Q. Thank you for catching the error.

19 About halfway through the line you say
20 "The PUCO has established a calculation whereby the
21 average annual major storm costs for the three
22 previous years is subtracted from the major storm
23 costs of the year in question." Did I read that
24 accurately?

25 A. Yes.

1 Q. And you understand that the term "major
2 storm" is a term that's defined under the
3 Commission's rules?

4 A. Yes.

5 Q. Okay. A utility has many storms per year
6 that do not qualify as major storms?

7 A. Correct.

8 Q. And under the formula that you're
9 describing here, storms that don't qualify as major
10 storms are ignored for the purposes of the three-year
11 average calculation, right?

12 A. Yes.

13 Q. So they're not included either in the
14 amounts to be recovered or the amounts subtracted to
15 be recovered; they're simply ignored.

16 A. Yes, in both cases.

17 Q. In both cases.

18 If the Commission were to accept
19 Mr. Nickel's testimony that the 3.5 -- I'm sorry,
20 \$3,574,000 that the staff had concluded was for
21 nonmajor storms was in error and that he's in fact
22 determined that there are \$2.3 million in that amount
23 that were for major storms, you would agree with me
24 that you would need to add back \$2.3 million in major
25 storms?

1 A. There's certainly a big assumption there,
2 but, mathematically, you're correct.

3 Q. Okay. Why do you say it's a "big
4 assumption," which piece?

5 A. I'm not sure whether or not they were or
6 were not major storms as far as that goes.

7 Q. That depends on Mr. Nickel's credibility
8 with the Commission, right?

9 A. I recall, I think the Company's
10 application said nonmajor storms is what it said with
11 respect to those storms. So I think the Company,
12 itself, previously called them nonmajor.

13 Q. In any event, if Mr. Nickel's sworn
14 testimony is that there was \$2.3 million in major
15 storm expenses included in that \$3.5 million number,
16 you do agree with me that if the Commission credits
17 that, you would add that \$2.3 million amount back.

18 A. Mathematically that's correct.

19 Q. And DP&L would eventually recover
20 carrying costs on that \$2.3 million number, right?

21 A. It depends on -- I feel like you're kind
22 of going back and forth a little bit. In the order
23 that we read, authorizing the deferrals, it did not
24 say anything about carrying costs either. So, you
25 know, if you want to say that there was no

1 requirement for a three-year average, the Commission
2 certainly left out the requirement for deferrals as
3 well.

4 Q. In any event, if deferrals were to be --
5 if carrying charges were to be added to that
6 \$2.3 million figure, the formula would be
7 \$2.3 million times 1.2467?

8 A. Where are you getting that from?

9 Q. I got -- I've looked on line 8 of your
10 testimony.

11 A. Line 8, page?

12 Q. AJY-2. Sorry. Most of my questions are
13 going to be directed, focused on AJY-2. I was not
14 clear. So that was on me, not you.

15 A. Okay. Do that again now.

16 Q. Okay. If the Commission credits
17 Mr. Nickel's testimony for the \$2.3 million figure,
18 and we applied carrying charges to that \$2.3 million
19 figure, the formula to determine how much that would
20 add would be \$2.3 million times 1.2467.

21 A. Yes.

22 Q. Okay. And I'll represent to you that
23 I've done that math and that equals \$2.8 million.
24 Without checking my math, does that sound
25 approximately right? If you'd like a calculator, I'd

1 be happy to give it to you.

2 A. The original number was what, again, that
3 Mr. Nickel's had?

4 Q. The original number was \$2.3 million that
5 Mr. Nickel had.

6 A. But 2.39 times basically one-and-a-fourth
7 is, you know, under 3 million.

8 Q. Right. I said 2.8. If I said a
9 different number, I misspoke. I meant to say 2.8.

10 A. Okay. That's fine.

11 Q. 2.8 sounds within the realm of reason
12 without having to check my math?

13 A. Okay.

14 Q. Right?

15 A. We're close enough.

16 Q. And you would agree that 2.8 million is
17 also greater than \$2.4 million?

18 A. Yes.

19 Q. Let's talk, then, about line 4 of your
20 testimony. In fact, in lines of 4 and 5 --

21 A. Excuse me. Which testimony?

22 Q. I've done it to you again. AJY-2.

23 A. Okay.

24 Q. Lines 4 and 5 where you have additional
25 adjustments to DP&L's figure. Those are to subtract

1 out a three-year average from DP&L's requests,
2 correct?

3 A. Correct.

4 Q. And you understand that DP&L did not
5 deduct a three-year average from its request for 2011
6 and 2012?

7 A. That is correct.

8 Q. And it is DP&L's litigation position in
9 this case that such an adjustment was not
10 appropriate.

11 A. That's the Company's position, yes.

12 Q. Okay. For purposes of my questions here
13 on lines 4 and 5, I'm going to assume the Commission
14 will, in fact, employ a three-year average. Okay?

15 A. Okay.

16 Q. And what I want to ask you about is the
17 appropriate way to calculate the numbers. If you
18 would, keep AJY-2 available to you, but take a look
19 at the staff report, page 5.

20 A. Yes.

21 Q. Okay. The three-year average that you
22 have on line 4 of AJY-2 for 2011, is the same
23 three-year average that the staff calculated for the
24 year 2011, right?

25 A. Yes.

1 Q. Okay. And you can see that the 2011
2 three-year average includes years 2008, 2009, and
3 2010, right?

4 A. It should, yes.

5 Q. Okay. It must include some amount of
6 2008 because --

7 A. Right.

8 Q. -- the average is significantly above the
9 numbers for 2009 and 2010, right?

10 A. Yes.

11 Q. Okay. And you're aware that 2008
12 included Hurricane Ike, right?

13 A. Correct.

14 Q. And we've agreed that was an
15 extraordinary, atypical storm, right?

16 A. Yes.

17 Q. Let's also then look at line 5 of AJY-2.
18 You have a three-year average calculation of roughly
19 \$3,482,000 for 2012, right?

20 A. Yes.

21 Q. And your figure matches the staff report,
22 page 5, it's three-year average for 2012, right?

23 A. Correct.

24 Q. And looking at the staff's number, you
25 can again tell that the staff's number must include

1 some major storm costs out of 2011, right?

2 A. I wouldn't say "some." I'd say the whole
3 10 million.

4 Q. Fair enough. And you're aware that 2011,
5 at least DP&L says, there were at least one, and
6 actually multiple major storms that year.

7 A. I think DP&L said there was -- that's
8 right. There was, like, five, I think.

9 Q. And, again, that's not a point that
10 you've contested.

11 A. No, I've not.

12 Q. So within the three-year average for both
13 2011 and 2012, there are unusual or atypical storms,
14 right?

15 A. Storms that apparently meet the
16 Commission's criteria for major storms, yes.

17 Q. Okay. Turn, if you would, please, to
18 DP&L Exhibit 15.

19 A. Yes.

20 (EXHIBIT MARKED FOR IDENTIFICATION.)

21 Q. Okay. This is testimony that was filed
22 with the Commission by Mr. Jeffrey Hecker in a case,
23 I'll refer to them as AEP Case No. 11-346-EL-SSO. Do
24 you see that?

25 A. Yes.

1 Q. Turn, if you would, to page 2 of that
2 testimony. It's actually the third page, but has
3 number 2 at the bottom. Are you there?

4 A. Yes. I'm there.

5 Q. Take a moment and read the question and
6 answer that spans from line 11 to line 14.

7 A. I've read it.

8 Q. In addition, I'd like you to read lines
9 16 through 22, but, on line 22, stop at the word
10 "also." I don't need you to go on to the next page.
11 All the information I want to ask you about is on
12 this page.

13 A. I've read it.

14 Q. Okay. I want to compare and contrast the
15 \$8.9 million figure and the \$5 million figure. You
16 understand the \$8.9 million figure to be an average
17 of all of the major storm repairs over the years 2005
18 to 2009?

19 MS. YOST: Objection, Your Honor. I
20 object to use of this testimony. He's using it to
21 assert -- basically, it's hearsay. He's using it to
22 assert the truth of the matter and it's inappropriate
23 hearsay. If he needed Mr. Hecker to speak, he should
24 have subpoenaed him, and it's inappropriate hearsay.
25 I won't have the opportunity to cross-examine Hecker

1 in regard to this testimony. It's prejudicial and
2 it's also irrelevant.

3 EXAMINER PRICE: Mr. Sharkey.

4 MR. SHARKEY: Yeah, Your Honor. I think
5 it's relevant, really, as background information.
6 I'm not going to offer it for the truth of the matter
7 asserted. I'm offering it to explain a Commission
8 decision that we are going to be looking at later,
9 where it's making a decision between the \$8 million
10 figure and the \$5 million figure.

11 But, what this is, is information that
12 explains and provides a little bit of background to
13 assist in understanding what exactly the Commission
14 was discussing in an order that we'll look at in an
15 exhibit or two.

16 EXAMINER PRICE: We'll give Mr. Sharkey
17 some leeway here and hopefully this will all wrap up
18 the way he's explaining it.

19 MR. SHARKEY: I'll be done with this page
20 very rapidly. Thank you, Your Honor.

21 Q. (By Mr. Sharkey) You understand the
22 \$8.9 million figure, Mr. Yankel, to be the major
23 storm expenses over the years 2005 to 2009 of AEP,
24 correct?

25 A. Actually, I do not. The testimony, for

1 all practical purposes, begins on page 1, line 17.
 2 It says "What is the purpose of your testimony?" It's
 3 basically supporting the staff for a storm damage
 4 recovery mechanism. I'm not sure what, quote,
 5 mechanism means. And then it just goes on and gives
 6 me some numbers. I mean there's a lot of stuff, I
 7 think, some place ahead of this some place else. You
 8 know, I don't have knowledge of it at this point in
 9 time.

10 Q. I'm not asking for your knowledge, but
 11 you can testify that the numbers are accurate. But
 12 on line 17, Mr. Hecker says that the Company's
 13 calculated the requested amount, 8.9 million, by
 14 averaging the amount of expenses incurred for major
 15 storm repairs per year over the years 2005 through
 16 2009, correct?

17 A. That's what it says, yes.

18 Q. And it goes on to say that in a
 19 transaction detail provided in response to a data
 20 request, one of the years in calculating the average,
 21 2009, had an unusually high level of expenses, right?

22 A. That's what it says, and it mostly makes
 23 no sense to me, but yes, that's what it says.

24 MS. YOST: Your Honor, I want to object
 25 again. This witness has no knowledge of what this

1 document is. If Mr. Sharkey wanted to introduce
2 this, he should have provided a witness to testify
3 about this. What you have here is you're throwing a
4 document in front of a witness, reading what it says
5 into evidence, and that's inappropriate.

6 EXAMINER PRICE: Overruled.

7 Q. And you understand that on line 12, staff
8 describes its conclusion that the appropriate average
9 to be used over the period is \$5 million, right?
10 That's what Mr. Hecker says in lines 12 to 14?

11 A. Again, on 12 to 14, and again, I do not
12 know where the numbers come from because I don't
13 understand why 2009 was, quote, high. Hurricane Ike
14 came in 2008; that should have been, by far, an
15 anomaly. So I'm not sure what we're talking about
16 here at all.

17 Q. All right. Why don't you turn to the
18 next exhibit, DP&L Exhibit 16.

19 A. Okay.

20 (EXHIBIT MARKED FOR IDENTIFICATION.)

21 Q. This is the testimony of Beth Hixon, on
22 behalf of the office of the Ohio Consumers' Counsel.
23 Do you know Ms. Hixon?

24 A. Yes, I do.

25 Q. You recognize it's the same case number

1 as the testimony we looked at earlier, right?

2 A. I believe so.

3 Q. Turn, if would you, to page 21.

4 A. I'm there.

5 Q. Do you see there's a chart at the bottom
6 of that page?

7 A. Yes.

8 Q. Okay. I'll represent to you -- actually,
9 do you have a calculator available to you?

10 A. No, I don't. I'll take your math.

11 Q. I want to make sure I'm right. What I'd
12 like you to do is determine the average for the
13 years, 2005 through 2010. There's only a partial
14 year as to 2011. So look at those years.

15 A. I came up with a bad number.

16 Q. What number did you come up with?

17 A. Nine. Which is obviously wrong.

18 Q. You understand Mr. Hecker, in his
19 testimony, was addressing the years 2005 to 2009?

20 A. Yes.

21 Q. If we average those years --

22 A. I thought you told me to do '10 as well.

23 Q. I believe I did. So I believe that I
24 misled you.

25 A. 9.14.

1 Q. Okay. And if you excluded the 2009 year?
2 Roughly 5 million?

3 A. I can do it. I have 6.

4 Q. I have 6.

5 A. When I took the average, if I excluded
6 '9, I only divided by 4 instead of by 5.

7 Q. Okay. Turn then, with that, to DP&L
8 Exhibit 17.

9 A. Yes.

10 (EXHIBIT MARKED FOR IDENTIFICATION.)

11 Q. You understand that to be the
12 Commission's Opinion and Order in the same case that
13 we've been looking at the testimony from Mr. Hecker
14 and Ms. Hixon?

15 A. That's what it appears to be, yes.

16 Q. Okay. Turn to page 68.

17 A. Yes.

18 Q. Are you there? You see there, we're in
19 Subsection 19 of the testimony, titled "Storm Damage
20 Recovery Mechanism." I want you to take a look at
21 the second paragraph, first sentence. (As read):
22 "OCC notes that while AEP-Ohio's actual storm
23 expenses are currently unknown, it is likely that AEP
24 will incur more than 5 million based upon historical
25 data which indicates the average annual expenses

1 amount to approximately 8.97 million per year." Did
2 I read that correctly?

3 A. Yes.

4 Q. And you'll see it's citing to OCC Exhibit
5 114, 20 and 21, which were the pages that we were
6 looking at that contained earlier data. And those
7 numbers are close to the same numbers that you
8 calculated out of Ms. Hixon's testimony, right?

9 A. Close, yes.

10 Q. And you'll see, down at the bottom,
11 there's the "Therefore" clause.

12 A. Yes.

13 Q. "Therefore, we find that AEP-Ohio may
14 begin deferral of any incremental distribution
15 expenses above or below \$5 million per year, subject
16 to the following modifications," and it goes on,
17 right?

18 A. Yes.

19 Q. So it appears in this calculation that
20 the Commission has rejected an argument by Ms. Hixon
21 that the unusual 2009 storm expenses that were shown
22 in her testimony should be included in the average,
23 right?

24 MS. YOST: Your Honor, I'm going to
25 object. This is in regard to establishment of a

1 baseline for a mechanism going forward. What
2 Mr. Yankel's testimony is about is a three-year
3 average in regard to the amount of major storm damage
4 costs that the Company's currently collecting in base
5 rates.

6 I don't understand how it's relevant at
7 all, because, one, it's a different company; and,
8 two, it's a different mechanism. The stipulation did
9 not establish a storm damage recovery mechanism with
10 a baseline going forward where customers -- where
11 DP&L would collect X amount and it would be trued up
12 going forward.

13 EXAMINER PRICE: Mr. Sharkey.

14 MR. SHARKEY: Absolutely, Your Honor.
15 The essential question here that I'm driving at is
16 the appropriate way to calculate a three-year
17 average, what should be included and what should be
18 excluded. And so, for example, 2008, if you're
19 sitting, evaluating 2008 in 2009, you would, under
20 the mechanism advocated by staff, consider the -- I'm
21 sorry, advocated by OCC here in Mr. Yankel's
22 testimony, consider 2007, 2006, and 2005 storm costs.
23 That's the position that he's advocated for.

24 Suppose, instead, we're still evaluating
25 2008, but we're doing it, instead, in 2007, setting a

1 forward looking storm mechanism which is what the
2 Commission is discussing here. In that situation,
3 the mechanism should be the same in terms of
4 calculating the three-year average. There's no
5 reason that the utility should recover more or less
6 when you're making a look-back at 2008 in terms of
7 establishing the average or if you're making a
8 look-forward to establish the average.

9 So it's our position that the three-year
10 average, or, in AEP's case, it was the five-year
11 average, should be calculated in a consistent way.
12 And the exclusion of an extraordinary item, as the
13 Commission approved in this order here, on a
14 looking-forward basis, demonstrates it's the same if
15 you're looking-back.

16 EXAMINER PRICE: It will be up to the
17 Commission to decide whether looking forward and
18 looking back should be consistent. So I'll go ahead
19 and let you establish your testimony -- or, establish
20 your evidence and the Commission will decide.
21 Overruled.

22 MR. SHARKEY: Thank you, Your Honor.

23 EXAMINER PRICE: We are -- let's go off
24 the record.

25 (Discussion off the record.)

1 EXAMINER PRICE: OCC's objection's been
2 overruled. We have a question pending. Do you need
3 it read back, Mr. Yankel?

4 THE WITNESS: Certainly.

5 EXAMINER PRICE: Can you read it back?

6 (Record read.)

7 A. It would appear for this particular
8 mechanism that that is what the Commission did.
9 Again, this mechanism is different than what we're
10 talking about today. But it is a -- this one, as I
11 recall for AEP, it's a plus or minus. If you're
12 under the 5 million in the year, you owe money and,
13 if it's over 5 million, you get to collect more
14 money. So it's very different than what we're
15 talking about now when the Company just comes in and
16 applies for an increase or not. Different mechanism;
17 that's all.

18 MR. SHARKEY: I'd suggest, Your Honor, we
19 go off the record, because I'll have questions to ask
20 him, but it won't be easy to wrap up in a matter of
21 moments.

22 EXAMINER PRICE: Okay. Let's go off the
23 record.

24 (At 1:17 p.m. a lunch recess was taken
25 until 2:30 p.m.)

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Wednesday Afternoon Session,
June 4, 2014.

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EXAMINER PRICE: Mr. Sharkey, your next
question.

MR. SHARKEY: Thank you, your Honor.

Q. (By Mr. Sharkey) Before we went off the
record, Mr. Yankel, we were talking about the
three-year average and the topic of whether or not
extraordinary storms should be included. Do you
recall we were talking about that subject?

A. Yes.

Q. Okay. If you would, there is a piece of
supplemental testimony, it's DP&L Exhibit 6 in your
binder.

A. Exhibit 6?

Q. It is.

A. I'm there.

Q. Okay. This is supplemental testimony of
Dona Seger-Lawson. She has graciously allowed you to
testify in front of her. So she hasn't had a chance,
yet, to sponsor this, but I'm going to ask you to
assume that she will, in fact, sponsor DP&L Exhibit 6
under oath here either later today or tomorrow
morning. And what I'd like you to do is, within her

1 testimony, turn to DRSL-Exhibit B.

2 A. I'm there.

3 Q. You're there. Okay. You see that she
4 has calculated a 10-year average of major storm
5 events, excluding 2005, 2008, and 2011, to equal
6 \$1.1 million?

7 A. I see that calculation, yes.

8 Q. Whether you agree it's an appropriate
9 calculation or not, you don't have any reason to
10 disagree with Ms. Seger-Lawson's math?

11 A. No, I assume the math is correct.

12 Q. Okay. Turn back, then, to AJY-2 which
13 was the exhibit to your testimony in opposition to
14 the stipulation and recommendation.

15 A. Yes.

16 Q. Okay. And then just to retouch on the
17 three-year average. You understood, as we covered
18 earlier, that DP&L's litigation position was that no
19 three-year average should be employed, right?

20 A. With respect to 2011, 2012.

21 Q. Right. You also understand that DP&L's
22 alternative litigation position is if a three-year
23 average is to be employed, it should exclude the
24 extraordinary storms and the three-year average
25 should be the 1.1 million dollar figure that was

1 described in DRSL-Exhibit B?

2 A. I believe that to be the case.

3 Q. Okay. I'm not asking you whether you
4 agree with it or not, but if the Commission were to
5 agree with Ms. Seger-Lawson's testimony, that would
6 add back money that you had subtracted out for 2011
7 and 2012, right?

8 A. Yes.

9 Q. Okay. And for 2011, you had a deduction
10 of 4.2 million. If the number from
11 Ms. Seger-Lawson's testimony of 1.1 million was used,
12 that would add back \$3.1 million, right?

13 A. That's the math, yes.

14 Q. Okay. And you agree with me that that's
15 greater than the \$2.4 million figure in additional
16 deductions that you had to the bottom line figure of
17 \$22.3 million here?

18 A. Correct.

19 Q. Then again, you have, on line 5, a
20 \$3.5 million figure approximately for the 2012
21 three-year average?

22 A. Yes.

23 Q. And, again, if the Commission were to
24 agree with Ms. Seger-Lawson's testimony, that would
25 create an add-back essentially of \$2.4 million,

1 right?

2 A. Yes, if the Commission agreed with that,
3 yes, it would.

4 Q. Okay. And that \$2.4 million would, in
5 addition, accrue carrying charges? Let me ask that
6 differently.

7 You understand that DP&L, at least on its
8 books, before the stipulation, was accruing carrying
9 charges on its 2012 deferrals?

10 A. They were, I just don't know, in an order
11 at this point in time, if there would be deferrals
12 based upon that. But, other than that, I know there
13 were deferrals prior to this.

14 Q. Okay. Fair enough.

15 So actually, let's change subjects.

16 I want to go back to the original
17 position that we discussed relating to whether DP&L
18 should be allowed to recover 2008 or 2011 storm costs
19 based on DP&L's historic earnings.

20 A. Yes.

21 Q. That's one of the subjects that's covered
22 in your testimony, correct?

23 A. In my testimony, and primarily in
24 Dr. Duann's, but yes, it is in mine as well.

25 Q. Okay. There's five things I want to ask

1 you about that testimony. The first thing I want to
2 ask you about is precedent for your recommendation.
3 It's true, isn't it, that you're not aware of any
4 statute or rule that requires the PUCO to deny the
5 recovery of actually- and prudently-incurred expenses
6 based on the utility's historic earnings?

7 A. That is correct.

8 Q. Okay. It's also true, isn't it, that
9 you're not aware of any PUCO decision in which the
10 PUCO has ever denied the recovery of actually- and
11 prudently-incurred expenses based upon the utility's
12 historic earnings.

13 A. That is correct. And, again, I didn't
14 know one way or the other, but yes.

15 Q. Okay. Well, you --

16 A. I don't know whether they had or had not.

17 Q. Okay. You did search for decisions
18 issued by the PUCO that related to topics of your
19 testimony, right?

20 A. Within primarily DP&L and AEP. I mean I
21 didn't go to First Energy or anything like that.

22 Q. You didn't read every decision the PUCO
23 used, but --

24 A. Yes.

25 Q. -- in your limited -- in the searching

1 that you did do, you didn't find any PUCO decisions
2 in which the PUCO did that.

3 A. That is correct.

4 Q. Okay. And none has been called to your
5 attention by Counsel for OCC either, right?

6 A. I didn't ask them, but no, they didn't
7 announce anything either.

8 Q. Okay. The second topic I want to ask you
9 about relates to stipulations. You would agree with
10 me, in general, that if DP&L signs a stipulation, it
11 should comply with its obligations under the
12 stipulation.

13 A. All parties should, yes.

14 Q. Okay. So DP&L should also be entitled to
15 the benefits that it would be entitled to receive
16 under its stipulations too, right?

17 A. Assuming that the benefits are within the
18 stipulation, yes.

19 Q. Okay. Within your binder, if you would,
20 please, turn to DP&L Exhibit 9.

21 EXAMINER PRICE: Are you going to mark
22 this one and introduce it or --

23 MR. SHARKEY: I intended to, Your Honor.

24 EXAMINER PRICE: Okay. Okay. I'm --
25 let's go off the record.

1 (Off the record.)

2 (EXHIBIT MARKED FOR IDENTIFICATION.)

3 Q. (By Mr. Sharkey) Okay. Do you have DP&L
4 Exhibit 9 before you?

5 A. Yes, I do.

6 Q. Start with page 22 of the document. See
7 that document was signed by OCC? Upper right-hand
8 corner?

9 A. Yes.

10 Q. Okay. Turn, then, to page 3 of the
11 document.

12 A. Yes.

13 Q. Okay. You see there -- actually, let me
14 step back. You understand that the Dayton Power and
15 Light had an Electric Transition Plan proceeding in
16 1999?

17 A. Yes.

18 Q. And this stipulation is from that
19 proceeding?

20 A. Yes, I believe so.

21 Q. Okay. And you see that this stipulation
22 on page 3, under roman numeral IV, first sentence,
23 created a distribution rate freeze for DP&L through
24 December 31, 2006?

25 A. Yes.

1 Q. None of the storms at issue in this case
2 occurred in that period, right?

3 A. That is correct.

4 Q. Bear with me because later stipulations
5 will refer back to this stipulation so that's why I'm
6 asking you questions about this one. Take a moment
7 and read the sentence, the second sentence of that
8 section that begins "After December 31, 2003," down
9 to the "storm damage expenses" on the last line.

10 A. Yes.

11 Q. You understand that this stipulation has
12 an exception to the distribution rate freeze that
13 allowed DP&L's distribution rates to be adjusted for
14 storm damage expenses, right?

15 A. Yes.

16 Q. Okay. And at least of the portions of
17 this stipulation that you've read already, you
18 haven't seen any type of earnings test within the
19 stipulation, have you?

20 A. No, I have not.

21 Q. I'll represent to you that I don't
22 believe that there is; if there is, your counsel can
23 ask you, but I'm not going to ask you to read it all
24 here today.

25 I then want to turn to the next

1 stipulation in the binder. That's DP&L Exhibit 10.

2 (EXHIBIT MARKED FOR IDENTIFICATION.)

3 Q. DP&L Exhibit 10 is yet another
4 stipulation and recommendation from Case No. 02-2779.
5 Do you understand this to be a stipulation that,
6 among other things, created a rate stabilization plan
7 for DP&L?

8 A. Yes.

9 Q. Okay. Turn, if you would, initially to
10 page 18.

11 A. Yes.

12 Q. You see in the upper right-hand corner,
13 once again, that OCC signed the stipulation, right?

14 A. I see that, yes.

15 Q. Okay. And are you aware of any facts
16 suggesting that DP&L failed to comply with this
17 stipulation?

18 A. I'm unaware one way or the other.

19 Q. Turn, if you would, to page 11. You'll
20 see that that refers to the rate stabilization period
21 and, on the last line, lopping onto the next page,
22 the RSP is to run from January 1, 2006, to
23 December 31, 2008, right?

24 A. I see that.

25 Q. Okay. And you'd agree with me that 2008

1 Hurricane Ike occurred during that period?

2 A. Yes.

3 Q. Okay. And then, on page 12, subparagraph
4 C, right? Take a moment to read that paragraph.

5 MS. YOST: What document are you on? I'm
6 sorry.

7 MR. SHARKEY: DP&L Exhibit 10, page 12.

8 MS. YOST: Thank you.

9 MR. SHARKEY: Subparagraph C.

10 A. I see that, yes.

11 Q. Okay. And you understand that paragraph
12 that we just looked at to refer back to the ETP
13 stipulation distribution rate freeze and its
14 exceptions, right?

15 A. Saying that you were able to apply for,
16 whatever, storm recovery, yes.

17 Q. Okay.

18 A. I assume that's the part you're
19 interested in.

20 Q. That is the part I'm interested in,
21 you're right. Thanks for making it easy instead of
22 having to drag it out of you.

23 Turn, then, to DP&L Exhibit 12, please.

24 (EXHIBIT MARKED FOR IDENTIFICATION.)

25 Q. Exhibit 12 is dated February 24, 2009,

1 and is from the Stipulation and Recommendation from
2 Case No. 08-1094. Do you understand this to be a
3 document from a DP&L ESP case?

4 A. Yes.

5 Q. Okay. Turn within this document, if you
6 would, to page 21.

7 A. I'm there, and yes, I see it.

8 Q. You see that OCC signed it, correct?

9 A. Yes.

10 Q. Okay. And then turn back, if you would,
11 to page 3. Paragraph 1, you'll see that DP&L's then
12 existing rate plan was extended through December 31,
13 2012, right?

14 A. Yes.

15 Q. Okay. And you understand that the 2011
16 to 2012 storms occurred within that period?

17 A. Yes.

18 Q. Okay. Then, if you would, turn to page
19 10, please.

20 A. Yes.

21 Q. I'd like you to take a look at paragraph
22 18, and then subparagraph b. that's on the following
23 page. You can skip over subparagraph a.

24 A. I see that.

25 Q. Okay. Another stipulation OCC signed

1 that would permit DP&L to apply to recover the costs
2 of storm damage, correct?

3 A. It gives DP&L the right to apply; it
4 doesn't say that nobody can oppose that. It just
5 does say that can you apply.

6 EXAMINER PRICE: Is it implicit in there
7 that the Commission shouldn't grant storm damage
8 relief if DP&L was earning adequately?

9 THE WITNESS: No, there's nothing
10 explicit in there, but again --

11 EXAMINER PRICE: I know there's nothing
12 explicit. I said "Is it implicit in there?"

13 THE WITNESS: I think it's implicit that
14 the costs have to be prudent. There's a bunch of
15 tests that have to be gone through.

16 EXAMINER PRICE: I'm just asking about if
17 DP&L is, in the view of the parties, over-earning, is
18 it implicit in there that the parties would oppose
19 it?

20 THE WITNESS: Not specifically on the
21 earnings, no.

22 EXAMINER PRICE: Okay.

23 MR. SHARKEY: I'm sorry, Your Honor, are
24 you done?

25 EXAMINER PRICE: I'm done.

1 Q. (By Mr. Sharkey) On page 11, subparagraph
2 20?

3 A. Yes.

4 Q. Take a moment to read that paragraph,
5 would you.

6 A. I see that.

7 Q. You understand that paragraph to be
8 referring to the Significantly Excessive Earnings
9 Test in Ohio Revised Code Section 4928.143(F)?

10 A. I see that, and I think that's different
11 than what we're talking about now, but it's dealing
12 with significant earnings.

13 Q. Okay. And you claimed that DP&L's
14 earnings were excessive in 2008 and 2011, correct?

15 A. Based upon Mr. Duann's testimony, yes.

16 Q. Okay.

17 A. I mean I did not make the calculation
18 myself.

19 Q. But based on his calculations of the
20 earnings --

21 A. Yes.

22 Q. -- you opined that DP&L should not be
23 able to recover.

24 A. Yes.

25 Q. You didn't make a claim that DP&L was

1 over-earning in 2012, did you?

2 A. No. Neither did Mr. Duann to my
3 recollection.

4 Q. Okay. And under this paragraph, at least
5 the Significantly Excessive Earnings Test could be
6 first applied in 2013 for 2012 to DP&L, right?

7 A. Yes.

8 Q. Let me ask you then about the third topic
9 and that's going to relate to investor reliance. If
10 you would, please, Volume II -- actually -- yeah,
11 volume II, Exhibit 24.

12 EXAMINER MCKENNEY: Did you say 24?

13 MR. SHARKEY: Yes, Exhibit 24.

14 (EXHIBIT MARKED FOR IDENTIFICATION.)

15 A. Yes.

16 Q. Exhibit 24 purports to be from the
17 Uniform System of Accounts promulgated by the Federal
18 Energy Regulatory Commission. Do you see that?

19 A. Yes.

20 Q. And you understand that utilities are
21 required to comply with the Uniform System of
22 Accounts?

23 A. Yes.

24 Q. And that's good utility practice to do
25 so?

1 A. Yes.

2 Q. Okay. The document contains excerpts
3 from the Uniform System of Accounts. If you turn to
4 the third page which has, in the upper right-hand
5 corner, page 50.

6 A. Yes.

7 Q. Okay. Take a moment, at the bottom of
8 the page, to read section 182.3, subparagraph B. I
9 only particularly care about the first sentence, but
10 you're welcome to read anything you feel you need to.

11 A. Yes.

12 Q. You understand that under that rule a
13 utility must be -- start that over.

14 You understand that under that rule an
15 expense must be probable for recovery before a
16 utility can defer it?

17 A. That's what it's supposed to be, yes.

18 Q. Okay. And then also take a look at DP&L
19 Exhibit 25.

20 (EXHIBIT MARKED FOR IDENTIFICATION.)

21 Q. It is, as you can see from the bottom,
22 rules promulgated by the Financial Accounting
23 Standards Board. Is that a board that you've heard
24 of?

25 A. Yes.

1 Q. That's a well-recognized authority?

2 A. Yes.

3 Q. Okay. And take a moment to read up at
4 the top, it's 980-430-25-1, and subparagraph a.

5 A. Yes.

6 Q. That rule again permits a utility to
7 defer expenses only if it's probable for recovery,
8 right?

9 A. Probable for recovery, yes. It doesn't
10 say "guaranteed," but yes, probable.

11 Q. Fair enough.

12 You do understand that the Commission
13 authorized DP&L to defer expenses associated with
14 2008 Hurricane Ike?

15 A. Yes.

16 Q. You would agree with me that investors in
17 DP&L should be able to conclude that recovery of
18 those expenses was probable for recovery after the
19 Commission authorized DP&L to defer those expenses?

20 A. Probable; again, not guaranteed.

21 Q. Fourth topic I want to ask you about is
22 DP&L's historic earnings. I'm sorry. Fourth topic,
23 relating to DP&L's historic earnings is the cost of
24 capital going forward. You understand that DP&L, in
25 fact all utilities, attract capital through either

1 equity investments or debt?

2 A. Yes.

3 Q. Okay. And you agree with me that a lower
4 cost of capital is in the best interest of customers?

5 A. Generally speaking. It depends. There
6 is a "depends" there on what it costs to get the
7 lower cost of debt. If the customers are paying
8 double the rates, then, obviously, a lower cost of
9 debt may not be in their best interest --

10 Q. Okay.

11 A. -- but all else being equal, yes.

12 Q. You also understand that utility
13 investors are more risk adverse than other investors?

14 A. Generally speaking that's my
15 understanding.

16 Q. Okay. And investors would consider a
17 utility to be risky if the utility was not able to
18 recover its costs?

19 A. It depends. I mean there's obviously a
20 lot in your question as to why, but if a utility, on
21 a going-forward basis, is not collecting its money,
22 whatnot, they would be found to be more risky.

23 Q. Okay. And that would lead to a higher
24 cost of capital?

25 A. Yes.

1 Q. All right. Last topic I want to talk to
2 you about, not for the day, but for your testimony
3 relating to DP&L's historic earnings, relates to
4 future incentives for utilities to repair storm
5 damage. You understand that extraordinary storms can
6 cause hundreds of thousands of customers to lose
7 power?

8 A. Yes.

9 Q. Okay. And it's in the best interest of
10 customers that utilities restore power safely and
11 quickly?

12 A. Yes.

13 Q. And it's at least frequently in the best
14 interest of customers that utilities call mutual
15 assistance in response to major storms.

16 A. Yes.

17 Q. Okay. And it's also frequently in the
18 best interest of customers that utilities ask their
19 employees to work overtime, perhaps substantial
20 overtime, in response to these types of extraordinary
21 storms.

22 A. In general I would assume it's helpful,
23 but how helpful, I don't know. But yes, in general,
24 it's a plus.

25 Q. Okay. You're not aware of any obligation

1 that DP&L has to call in mutual assistance in
2 response to major storms, right?

3 A. No.

4 Q. You're agreeing with me?

5 A. I'm agreeing with you that I'm unaware of
6 any responsibility that DP&L has.

7 Q. Thank you. And so whether DP&L calls in
8 mutual assistance is a subject of its discretion?

9 A. Yes. And I assume the quantity of mutual
10 assistance as well, yes.

11 Q. It's also within the utility's discretion
12 whether to have its employees work overtime?

13 A. Oh, yes.

14 Q. Okay. You understand that mutual
15 assistance and employee overtime can become very
16 expensive, right?

17 A. It can, depending on, again, how much is
18 paid to who and what, yes.

19 Q. Okay. And you understand that as to the
20 2008 and 2011 storms, it's your recommendation that
21 DP&L recover none of those amounts, right?

22 A. Because of the excess earnings, yes.

23 Q. Okay. Looking to the future, you agree
24 that it would be rational for Ohio utilities, like
25 DP&L, to evaluate whether they would be able to

1 recover costs like those before they incurred them,
2 right?

3 A. I can understand the utility looking into
4 what those costs are, especially if they've been
5 denied some cost recovery in the past. But, by the
6 same token, they are a public utility and I think
7 that they have to weigh that against their
8 obligations.

9 Q. All right. Let me change topics on you.
10 Your testimony also addresses whether
11 DP&L's request to defer 2011 expenses was made in a
12 timely manner, right?

13 A. Yes.

14 Q. Okay. You're not aware of any injury to
15 customers that resulted from DP&L's delay in seeking
16 the deferral, right?

17 A. Certainly not directly. I guess, you
18 know, sort of taking a second bite at the apple, I
19 think, hurts customers, but there's nothing, when you
20 say "injury," I mean there's -- they've had their
21 electricity on. I'm not sure what you're, you know,
22 referring to being detrimental to customers.

23 Q. Well --

24 A. I mean I can come up with a lot of
25 thoughts.

1 Q. Well, there's nothing in your testimony
2 that identifies any injury to customers from the fact
3 that DP&L didn't seek the deferral in December of
4 2011, but did seek the deferral in December 2012,
5 right?

6 A. There's nothing in my testimony, yes.

7 Q. And, in fact, DP&L's delay in seeking a
8 deferral would reduce the amount of carrying charges
9 the customers would otherwise pay in an ordinary
10 case, right?

11 A. Assuming that they would get deferral of
12 the costs, that would be correct.

13 Q. It's true, isn't it, that you're not
14 aware of any authority, statute, or rule that a
15 utility must seek a deferral in a specific time to be
16 able to recover those expenses.

17 A. No, it does seem appropriate that it's
18 done in an appropriate time, usually near the year
19 end, but I don't think there's any rule specifically
20 that says when.

21 Q. Okay. You're not aware of any authority
22 showing that -- start over.

23 You're not aware of any statute or rule
24 that says that a utility must seek PUCO approval
25 before it defers expenses, correct?

1 A. I thought everything we went through, in
2 my opinion, you know, the FASB stuff, the FERC stuff,
3 pretty much says you need, you know, a strong
4 probability, whatever, of recovery. Without PUCO
5 approval of the deferral, I would think you don't
6 have that strong indication.

7 Q. If the utility concluded -- let me step
8 back.

9 Is it your belief that the probability
10 for recovery standard can't be met in the absence of
11 a PUCO order?

12 A. I guess if I was running the Company, I
13 would think that. That would be kind of dangerous,
14 in my opinion, to not get a deferral and then to
15 defer something. It's certainly less likely, let's
16 put it that way. I mean the probability is certainly
17 worse or less in your favor if you did that without
18 Commission approval.

19 Q. Let's be real clear. Are you aware of
20 any statute or rule anywhere that says the utility
21 must seek PUCO approval before deferring amounts on
22 its books?

23 A. I'm unaware one way or the other.

24 Q. You're not aware of any authority that a
25 utility must seek a deferral before it begins to

1 recover things like extraordinary storm expenses,
2 right?

3 A. You would need a case of some sort in
4 order to do that. You can't recover the expenses
5 without some kind of Commission authorization.

6 Q. I understand that, but you're not aware
7 of anything that would prevent a utility from never
8 seeking or deferring expenses on its books, simply
9 showing up at the Commission, filing a case, asking
10 to recover them.

11 A. I'm agreeing with you.

12 Q. Okay. And you're not aware of any
13 requirement that recovery of deferred expenses must
14 be limited to the amount of the deferral, correct?

15 A. I'm assuming it's to the amount of the
16 deferral and the carrying charges. I would assume it
17 would be greater than that.

18 Q. Are you aware of any statute, rule, PUCO
19 decision that establishes that recovery of deferred
20 expenses is limited to the amount of the authorized
21 deferral?

22 A. I'm unaware one way or the other.

23 Q. Okay. Your initial testimony, the direct
24 testimony that you filed, addressed the subject of
25 mutual assistance, correct?

1 A. Yes.

2 Q. We talked about that earlier. You agree
3 with me -- just to be clear, we're talking about the
4 instances when DP&L provides mutual assistance to
5 other utilities, right?

6 A. In my testimony that's what I addressed,
7 yes.

8 Q. Okay. And you agree that, at least when
9 appropriate and DP&L can spare the resources, that
10 DP&L should provide mutual assistance to other Ohio
11 or other neighboring utilities, right?

12 A. Yes.

13 Q. And you understand that DP&L is not
14 seeking to recover, in this case, any of its
15 incremental costs associated with providing mutual
16 assistance to any of its neighboring utilities,
17 right?

18 A. That's because primarily its incremental
19 costs were picked up by the neighboring utilities
20 that they had worked for.

21 Q. Well --

22 A. It would have been double recovery.

23 Q. Well, it's true, isn't it, that you don't
24 know how revenue that DP&L recovers from providing
25 mutual assistance would be treated in a rate case?

1 A. No, I don't specifically know. I
2 obviously can guess, but I'm not an accountant.

3 Q. Your initial testimony addressed
4 insurance proceeds, that essentially you said that if
5 DP&L received insurance proceeds they should be
6 credited against DP&L's request. Do you remember
7 that testimony?

8 A. Yes, I do.

9 Q. Okay. Your understanding is that OCC
10 investigated to see whether DP&L received such
11 proceeds and OCC didn't find any?

12 A. That's my general understanding. They
13 may have found a little bit, but it wasn't worth
14 doing anything about. So the answer is basically
15 there's no insurance proceeds that we're talking
16 about in this case.

17 Q. Okay. Let me talk to you about, then,
18 your management labor and straight time labor
19 testimony from your initial testimony. And if you
20 would, please, turn to DP&L Exhibit 23.

21 A. I'm there.

22 Q. Okay. This is a document that Mr. Nickel
23 has previously identified as the storm team incentive
24 plan. Is this a document you've seen previously?

25 A. It's a document I've seen previously,

1 yes.

2 Q. Okay. And do you understand it to be
3 DP&L's storm team incentive plan?

4 A. It's called "management team," but yes,
5 other than that, yes, I think it's about the same
6 thing, yes.

7 Q. Fair enough.

8 Now, despite having seen this document,
9 you don't know whether DP&L has a contractual
10 obligation to pay its management employees under this
11 document when they've worked the necessary extra
12 hours on storm team response, correct?

13 A. They have an obligation, under this
14 document, to pay those employees who have decided
15 that they've taken the incentive program. That would
16 not be all of the employees. So it would not be all
17 of management, but only specifically the ones who
18 have signed this document and taken the incentive,
19 yes.

20 Q. Okay. And you don't know the ordinary
21 scope of the duties of the employees who are
22 providing storm team response pursuant to their
23 signature of this document, DP&L Exhibit 23, right?

24 A. Let me ask: Are you referring to their
25 normal job requirements or their job requirements

1 during a storm?

2 Q. I'm asking you about their normal job
3 requirements. Thanks for the request for
4 clarification.

5 A. No, I do not.

6 Q. Okay. So you don't know whether
7 responding to storms is something within their
8 ordinary job responsibilities as defined when they're
9 hired or not, right?

10 A. My assumption is that they are not part
11 of their normal responsibilities or else there would
12 not be extra incentive paid to get people to do that.

13 Q. Okay. Believe it or not, we're almost
14 done.

15 You rely repeatedly in your report on the
16 PUCO staff report to support positions that you
17 sponsor, right?

18 A. I mention them in support; I didn't
19 really rely on them. I really did this
20 independently, but they certainly fell in line with
21 my thought process.

22 Q. Okay. You have no reason to doubt that
23 the Commission staff is fully capable of
24 understanding the arguments that you've presented?

25 A. I have no question about the staff's

1 capabilities.

2 Q. Okay. And you'd agree with me that the
3 staff should not favor either utilities or customers?

4 A. That is correct.

5 Q. Okay. They should balance their
6 interests to reach a fair position?

7 A. Certainly the Commission needs to do
8 that. The staff, I'm not sure if that's their
9 mission statement or not, but I would think that
10 would be close to their mission statement as well.

11 Q. Okay. And you're aware of the fact that
12 staff signed the stipulation, aren't you?

13 A. Yes, I am.

14 MR. SHARKEY: Thank you, Mr. Yankel.

15 Your Honors, no further questions.

16 EXAMINER PRICE: Thank you.

17 Mr. O'Rourke, cross?

18 MR. O'ROURKE: No cross, Your Honor.

19 EXAMINER PRICE: Redirect?

20 MS. YOST: Can we have about five
21 minutes?

22 EXAMINER PRICE: You may.

23 Let's go off the record.

24 (Off the record.)

25 EXAMINER PRICE: I have a couple of

1 questions before we go on to redirect.

2 - - -

3 EXAMINATION

4 By Examiner Price:

5 Q. In your testimony you use, for the amount
6 of the baseline that should be subtracted from each
7 year's major storm, you use the same numbers as the
8 staff, right?

9 A. My understanding is they're the same,
10 yes. I think they're exactly the same.

11 Q. But you derived yours independently from
12 the staff?

13 A. Certainly on the three-year averages.
14 Again, I had the same -- probably the same chart that
15 the staff had and went off of that.

16 Q. But you did derive them independently.

17 A. Yes.

18 Q. So you made your own judgments as to what
19 should go in, what should be excluded, what should
20 not be excluded.

21 A. Yes.

22 Q. You testified in the AEP and Duke storm
23 damage recovery cases; is that correct?

24 A. Yes.

25 Q. And so, in preparing for the testimony in

1 this case and those cases, you've probably reviewed
2 all of the storm damage recovery cases the
3 Commission's had; is that correct?

4 A. I couldn't tell you that, but I
5 certainly, I think in the last three or four years
6 have, yes.

7 Q. How many cases would that be, grand
8 total?

9 A. Just those two --

10 Q. Just those two.

11 A. -- plus this one.

12 Q. Plus this one.

13 You did not look at The Dayton Power and
14 Light 2005 storm damage recovery case?

15 A. No, I did not.

16 Q. Okay. That's a pretty small number,
17 three, right? It's probably fair to say the
18 Commission's views on these topics are evolving?

19 A. There's, to me, there's more than just
20 what's in the cases. With the ESP cases there's
21 orders that talk about, again, the three-year
22 average, that type of thing. So it crops up in a lot
23 of places, but there's only been three actual storm
24 cases.

25 Q. We've been doing rate cases a lot longer.

1 A. Yes.

2 Q. Eighty-some, a hundred years.

3 Do you think the Commission, when it's
4 reviewing -- accepting that all expenses need to be
5 incremental to what's in the base rates, when the
6 Commission is reviewing these cases, would you
7 expect, in making a disallowance, the Commission
8 would apply the same sort of reasoning and logic the
9 Commission uses in making disallowances in
10 distribution rate cases?

11 For example, like, advertising. If a
12 utility came in for advertising on a storm damage
13 case, it would be logical for the Commission to use
14 the Commission's precedence on advertising for rate
15 cases.

16 A. Yes. I think, actually, in the AEP case
17 there was something like that with respect to hats.

18 Q. Baseball hats.

19 A. Baseball hats.

20 Q. Or if somebody ran a newspaper ad.

21 A. Yes.

22 Q. Where if it was strictly promotional,
23 that should be disallowed. If it was something
24 educational for the consumers then that would be
25 allowed.

1 A. Yes.

2 Q. And do you think that's true when
3 allowing costs, the Commission should use the same
4 standards we would use in a base rate case, as long
5 as the costs were incremental?

6 A. Again, in being consistent with what the
7 Commission has said in the past, yes, I think that
8 they're -- I think that storm costs have been kind of
9 carved out more recently just because of deregulation
10 and distribution rates and we're looking at them
11 differently now and putting them together
12 differently.

13 Q. And the rate freezes.

14 A. And the rate freezes. I mean the whole
15 ball of wax, as a package, is being looked at
16 differently, I think, more specifically than it was
17 10 years ago, let's say.

18 Q. Let's talk about management comp and
19 incentives then. You would agree that if a utility
20 came in on a storm damage case and had incentives or
21 compensation that was based upon improving the
22 Company's finances, the Commission should disallow
23 that, as we traditionally do in distribution rate
24 cases. If a management employee had some incentive
25 that's based on rate of return, the Commission

1 traditionally disallows that.

2 A. Yes.

3 Q. And you would expect in these cases we
4 would allow -- we would disallow it also.

5 A. Yes.

6 Q. But in cases on management comp and
7 incentives where the Commission finds that the
8 customers benefit from the standards or goals for the
9 incentives, let's say it's a lower CAIDI or a lower
10 SAIFI, or improved customer service times, the
11 Commission generally allows those sort of incentives
12 for management; is that correct?

13 A. Yes. But in, like, for example, in the
14 Duke case, the Commission disallowed --

15 Q. I understand what happened in the Duke
16 storm damage case. I'm just talking about
17 distribution rate cases in general. The Commission
18 generally allows some management incentive
19 compensation.

20 A. I'm not sure if it does. I'm just not
21 sure, that's all. It may. I just don't recall if
22 there's, quoted, incentives on top of -- I would
23 think, in all honestly, that there wouldn't be
24 incentives. It seems, at least as I recall over 30
25 years, that, you know, a utility employee is supposed

1 to do his job and do a good job and there shouldn't
2 be incentives on top of that to do a good job.

3 Q. But if the Commission does allow
4 incentives that the customers benefit from in rate
5 cases, do you think it's fair, then, to allow the
6 utility employees to have incentives and to get
7 recovery for those incentives if the customers
8 benefit in terms of reduced outage time?

9 A. The logic follows.

10 Q. In the storm damage cases.

11 A. The logic follows.

12 Q. But in these cases you don't support any
13 sort of management compensation incentives.

14 A. There's two parts to that. One part that
15 is a lot of --

16 Q. No. Answer my question first and then I
17 will let you explain.

18 A. Well, I'm trying to get to the incentive
19 part. I mean there's really a non-incentive part, in
20 my opinion, which is just regular salary, regular 40
21 hours a week time that, you know, is included within
22 this. Then there's what I would consider the over
23 40-hour incentive. But, again, both of those are put
24 into the case.

25 Ask your question again on the second

1 part, I'm sorry.

2 Q. You do not -- even though you agree that
3 it would be logical if the Commission were to allow
4 it generally in a rate case, incentives or
5 compensation for management where the customers
6 benefit from the goals that you need to hit to get
7 incentives, it would be logical to apply it in storm
8 damage cases, but you do not actually agree with it
9 in this case. You don't support any management
10 incentives in this case.

11 A. If they do that in a rate case, and I'm
12 not sure that they do, it would follow, it would be
13 logical to do it in this case.

14 EXAMINER PRICE: Okay. Thank you.
15 That's all I have.

16 - - -

17 REDIRECT EXAMINATION

18 By Ms. Yost:

19 Q. Mr. Yankel, Jeff Sharkey, counsel for
20 DP&L, started off your cross-examination by asking a
21 question whether the storm costs that the Company
22 sought were atypical and not in base rates. Do you
23 recall that question?

24 A. Yes.

25 Q. Are any of the storm costs that Dayton

1 Power and Light seeks in its application included in
2 base rates?

3 A. My understanding is that they should be
4 and the Commission has so ruled in the past that
5 there is some level of storm recovery costs in base
6 rates.

7 Q. Thank you.

8 EXAMINER PRICE: When was the last test
9 year for a Dayton Power and Light rate case?

10 THE WITNESS: It was a '91 case so it
11 could have been 1990.

12 EXAMINER PRICE: 1990. The Examiner was
13 much younger then.

14 MS. YOST: Your Honor, at this time I'd
15 like to mark as OCC Exhibit 17, Entry on Rehearing in
16 Case No. 12-2281-EL-AAM, and it is dated
17 February 13th, 2013.

18 EXAMINER PRICE: It will be so marked.

19 (EXHIBIT MARKED FOR IDENTIFICATION.)

20 MS. YOST: May I approach the bench, Your
21 Honor?

22 EXAMINER PRICE: You may.

23 Q. Mr. Yankel, if you can please take a
24 moment to familiarize yourself with OCC Exhibit 17,
25 specifically paragraph (7). Please let me know when

1 you're ready to proceed.

2 A. Yes.

3 Q. The last page of this, on page 6, you see
4 where this was entered into the journal of the
5 Commission on February 13, 2013? Do you see that on
6 the very last page?

7 A. Yes.

8 Q. And do you recognize this as an entry in
9 the case, which is 12-2281, where the Commission
10 authorized Dayton Power and Light to defer 2012 storm
11 costs?

12 A. Yes, I've seen this document before.

13 Q. Could you please read aloud, into the
14 record, paragraph 7?

15 A. "The Commission finds that DP&L's
16 application for rehearing should be denied and that
17 DP&L's recovery of O&M expenses should be reduced by
18 the three-year average of O&M expenses associated
19 with major storms. Reducing DP&L's recovery of O&M
20 expenses by the three-year average of O&M expenses
21 associated with major storms is consistent with
22 Commission precedent, most notably Case No.
23 08-1332-EL-AAM. In that case, DP&L applied for
24 authority to defer, as a regulatory asset, a portion
25 of its O&M expenses associated with restoring

1 electric service to its customers in the aftermath of
 2 Hurricane Ike. DP&L proposed to defer the amount by
 3 which the total O&M expenses associated with the
 4 Hurricane Ike-related service restoration expenses
 5 experienced in 2008 exceeded the three-year average
 6 service restoration O&M expenses associated with
 7 major storms. Here, DP&L makes a similar application
 8 except the application is for the entire amount and
 9 not just the amount that exceeds the three-year
 10 average service restoration O&M expenses associated
 11 with major storms. The Commission notes that
 12 allowing DP&L to recover the full amount could allow
 13 for DP&L to engage in double-recovery for the O&M
 14 expenses, first from base distribution rates and
 15 second from this proceeding."

16 Q. Thank you.

17 And what you just read, the Commission's
 18 Entry on Rehearing talked about the three-year
 19 average that we've been talking about in regard to
 20 this case. What's the difference between the
 21 three-year average in this case that this entry
 22 addresses, versus the discussion you had with
 23 Mr. Sharkey about the five-year baseline that was in
 24 the AEP storm case?

25 A. They're quite different. The AEP case

1 was trying to set a level for base rates. AEP
2 basically was looking for 8.9, \$9 million to be put
3 in base rates based upon their average of five years
4 worth of storm costs. And then they were attempting
5 to collect anything over and above that in their
6 storm recovery rider going forward.

7 The difference there is certainly to take
8 out the larger storm as the staff had proposed, would
9 essentially set the baseline lower and, with the
10 baseline lower, they also proposed, or I assume maybe
11 the OCC as well, that the deferrals include
12 essentially overrecovery and underrecovery of the
13 \$5 million.

14 And that only, ultimately, the net amount
15 after a year or two, five years, of overrecovery
16 would be collected and/or given back to the
17 customers. So it's a very different mechanism.

18 Where the three-year average is an
19 assumption, on the part of the Commission, given the
20 fact that it has not gone through that process with
21 DP&L.

22 EXAMINER PRICE: Through which process?

23 THE WITNESS: The process of setting up a
24 storm recovery rider, you know, setting a base limit
25 as to what the number is in base rates. The

1 Commission has not done that. Again, back to the '91
2 case. The Commission has assumed that there is a
3 certain amount in there, that's why the three-year
4 average is used versus setting a number as in AEP.

5 EXAMINER PRICE: The most recent case --
6 distribution rate case for AEP would be roughly?

7 THE WITNESS: I don't know.

8 EXAMINER PRICE: 2011.

9 THE WITNESS: Okay.

10 MS. YOST: Thank you, Mr. Yankel. I have
11 no further questions.

12 - - -

13 RECROSS-EXAMINATION

14 By Mr. Sharkey:

15 Q. You're aware of the practice of
16 normalization in a distribution rate case?

17 A. In most cases, yes.

18 Q. And you understand that under the
19 normalization process, as ordinarily applied, that
20 unusual or atypical expenses would be excluded from
21 the utility's distribution rates?

22 A. Yes.

23 MR. SHARKEY: No further questions, Your
24 Honor.

25 EXAMINER PRICE: You're excused.

1 THE WITNESS: Thank you.

2 EXAMINER PRICE: Have a safe trip back.

3 THE WITNESS: Thank you.

4 EXAMINER PRICE: Ms. Yost.

5 MS. YOST: You're Honor, at this time
6 we'd like to move OCC Exhibits 15, 15A, 15B, and 16
7 into evidence.

8 EXAMINER PRICE: Any objections to the
9 admission of 15, 15A, 15B and 16?

10 MR. SHARKEY: No, Your Honor.

11 EXAMINER PRICE: Okay. They will be
12 admitted.

13 (EXHIBITS ADMITTED INTO EVIDENCE.)

14 EXAMINER PRICE: Mr. Sharkey.

15 MR. SHARKEY: Yes, Your Honor. I would
16 move for the admission of Exhibits 9, 10, and 12,
17 which were the three stipulations that I referred to.
18 I'd ask the Commission to take Administrative --

19 EXAMINER PRICE: Let's break these down
20 slowly.

21 MR. SHARKEY: Okay.

22 EXAMINER PRICE: As to 9, 10, and 12,
23 these are documents that are contained in the
24 Commission's docketing system, therefore, we will not
25 admit them, but we will take administrative notice of

1 them.

2 MR. SHARKEY: Exhibit 13 is a Finding and
3 Order of the Commission and I'd ask that the
4 Commission take administrative notice of it.

5 EXAMINER PRICE: And I will deny that
6 because Commission orders speak for themselves and
7 they can be cited by anybody, at any time, anywhere.

8 MR. SHARKEY: Exhibits 15 and 16 are
9 testimony that was filed in the AEP Case 11-346, and
10 I'd move for the admission of those.

11 MS. YOST: Your Honor, OCC would object
12 to moving Dayton Power and Light Exhibits 15 and 16
13 into evidence. The basis of the objection is that
14 they are hearsay under Ohio law and that they're
15 irrelevant to this proceeding.

16 EXAMINER PRICE: Let's take them one at a
17 time. As to 16, why is it, that is a statement from
18 Ms. Hixon, why is that not perfectly admissible as a
19 statement by a party opponent? You can bring in
20 Ms. Hixon and she can explain her testimony.

21 MS. YOST: Relevance, Your Honor. It's
22 in regard to a mechanism that is not at issue in this
23 proceeding.

24 EXAMINER PRICE: Well, the Commission
25 will decide whether a backward-looking mechanism or a

1 forward-looking mechanism are consistent -- should be
2 consistently applied. So overruled -- or, your
3 objections are overruled. 16 will be admitted.

4 (EXHIBIT ADMITTED INTO EVIDENCE.)

5 EXAMINER PRICE: Mr. Sharkey, do you have
6 any comments on her arguments that 15 is hearsay?

7 MR. SHARKEY: Yeah, Your Honor. The real
8 point of my sponsoring it and offering it is to
9 provide a little background information so that the
10 Commission's order, which was DP&L Exhibit 17, has
11 some context. I didn't really intend it to have
12 evidentiary value other than explaining the context
13 as to what the Commission eventually holds. So
14 that's why I move to admit it. I don't think it
15 constitutes hearsay because it's not so much for the
16 truth of the matter asserted; it's the context that
17 it provides to explain a later Commission order.

18 EXAMINER PRICE: If you are arguing that
19 it is not going to be admitted for the truth of the
20 matter asserted, then we will take administrative
21 notice of it as a document in the Commission's
22 docketing system and it will not be admitted, but we
23 will take administrative notice of it.

24 MR. SHARKEY: Thank you, Your Honor.

25 Then lastly, Your Honor, I would move for

1 the admission of DP&L's Exhibits 24 and 25, which
2 were excerpts of the Uniform System of Accounts and
3 the FASB rules that I asked Mr. Yankel about.

4 EXAMINER PRICE: Any objection to the
5 admission of 24 and 25?

6 MS. YOST: No, Your Honor. Thank you.

7 EXAMINER PRICE: Those will be admitted.

8 (EXHIBITS ADMITTED INTO EVIDENCE.)

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

10 (Recess taken.)

11 EXAMINER PRICE: Mr. Sharkey, you may
12 call your next witness.

13 MR. SHARKEY: Thank you, Your Honor. The
14 Dayton Power and Light Company would call Dona
15 Seger-Lawson to the stand.

16 (Witness sworn.)

17 EXAMINER PRICE: Please be seated and
18 state your name and business address for the record.

19 THE WITNESS: My name is Dona
20 Seger-Lawson. Business address is 1065 Woodman
21 Drive, Dayton, Ohio.

22 EXAMINER PRICE: Please proceed,
23 Mr. Sharkey.

24 - - -

25 DONA R. SEGER-LAWSON

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

3 DIRECT EXAMINATION

4 By Mr. Sharkey:

5 Q. Ms. Seger-Lawson, do you have before you
6 the direct testimony of Dona R. Seger-Lawson?

7 A. Yes.

8 Q. Do you have any changes or corrections to
9 that testimony?

10 A. I do not have any corrections to that.

11 Q. I'm sorry?

12 A. I don't have any corrections to that
13 piece.

14 Q. If I ask you the same questions, would
15 you give me the same answers?

16 A. Yes.

17 MR. SHARKEY: Your Honor, DP&L would
18 designate Ms. Seger-Lawson's direct testimony as DP&L
19 Exhibit 5.

20 EXAMINER PRICE: It will be so marked.

21 (EXHIBIT MARKED FOR IDENTIFICATION.)

22 Q. Ms. Seger-Lawson, do you also have a copy
23 of the supplemental testimony of Dona R. Seger-Lawson
24 before you?

25 A. Yes.

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

3 A. Yes. On page 5, line 3, before the word
4 "Commission," should add "the," t-h-e. And the next
5 word, instead of "Orders," plural, it should be
6 "Order," singular. I think that's it.

7 Q. With those changes, if I asked you the
8 same questions as are contained in the supplemental
9 testimony, would you give me the same answers?

10 A. Yes.

11 MR. SHARKEY: Your Honor, DP&L would
12 designate the supplemental testimony as DP&L Exhibit
13 8.

14 EXAMINER PRICE: So marked 6.

15 (EXHIBIT MARKED FOR IDENTIFICATION.)

16 MR. SHARKEY: Six. Thank you for the
17 correction.

18 Q. And then, Ms. Seger-Lawson, do you have
19 before you the testimony of Dona R. Seger-Lawson in
20 support of the stipulation and recommendation?

21 A. Yes.

22 Q. Do you have any corrections or changes to
23 that testimony?

24 A. Yes. On page 3, we didn't get line
25 numbers on this. I'm sorry. On page 3, the

1 question, second question from the bottom, the answer
2 that starts "Yes. The 2005 Stipulation," I would
3 like to add the words "both the 2003 and the 2005
4 Stipulation." So add the words "both the 2003 and"
5 before "the 2005 Stipulation."

6 Q. Do you have any other changes?

7 A. No, that's it.

8 Q. If I asked you the same questions that
9 are contained in that testimony, would you give me
10 the same answers?

11 A. Yes.

12 MR. SHARKEY: Your Honor, DP&L would
13 designate this piece of testimony as DP&L Exhibit 7.

14 EXAMINER PRICE: So marked.

15 (EXHIBIT MARKED FOR IDENTIFICATION.)

16 MR. SHARKEY: All right. Thank you,
17 Ms. Seger-Lawson.

18 Your Honors, I have no further direct
19 questions. I offer Ms. Seger-Lawson for
20 cross-examination.

21 EXAMINER PRICE: Thank you.

22 Ms. Yost.

23 MS. YOST: Thank you, Your Honor. At
24 this time I have two motions to strike.

25 EXAMINER PRICE: Let's take the first

1 one. What is the exhibit you'd like -- which one
2 does the first one apply to?

3 MS. YOST: DP&L Exhibit 5 which is the
4 direct testimony. And starting on page 7, OCC moves
5 to strike lines 1 through 15. Also on page 7, lines
6 21 through 22. Page 8, lines 1 through 9. Page 10,
7 lines 4 through 16. And page 12, lines 13 through
8 15. And the basis of OCC's objection is the
9 October 23rd, 2013, entry that found that DP&L's
10 request to recover capital expenditures from
11 customers as a result of storm-restoration efforts is
12 denied. The parts of the testimony identified just
13 now are specific to capital cost recovery. And, in
14 accordance with that entry, we move to strike that as
15 irrelevant.

16 EXAMINER PRICE: Mr. Sharkey?

17 MR. SHARKEY: Well, we've been through
18 this before, Your Honors, so I think I can anticipate
19 your ruling. As to her motion, we would argue that
20 it should not be denied, but I understand you've
21 already ruled on the ground.

22 I would ask, Your Honor, that I be given
23 time to review this, talk to Ms. Seger-Lawson,
24 perhaps tonight or in advance of the hearing
25 tomorrow, so that I can respond specifically if

1 there's something in any of these sections that we
2 want to argue would fall outside the scope of your
3 prior ruling, that I be permitted to do so.

4 EXAMINER PRICE: Yes. We'll defer ruling
5 on the motion until the hearing tomorrow.

6 MR. SHARKEY: Thank you, Your Honor.

7 MS. YOST: Thank you, Your Honor.

8 I would now like to move to strike
9 portions of DP&L Exhibit 6 which is the supplemental
10 testimony. Starting on page 14, lines 6 through 23.

11 MR. SHARKEY: Can you hold on just a
12 moment, Melissa, so I can catch up with you?

13 MS. YOST: Sure.

14 MR. SHARKEY: Page 14?

15 MS. YOST: Of the supplemental testimony,
16 your Exhibit 6, lines 6 through 23. Page 15, line 1
17 through 18. And page 18, line 14 through line 17, up
18 until the word "reason."

19 Starting on line 19.

20 MR. SHARKEY: I'm sorry, Melissa. Can
21 you go back and re-identify that for me?

22 MS. YOST: Sure. We're on page 18,
23 starting with line 14. Line 14 in its entirety, 15
24 in its entirety, 16 in its entirety, and 17 up until
25 the word "reason," comma, should be stricken.

1 And then line 19 through 20, the sentence
2 that begins "Further, even if DP&L's distribution
3 rates are reset, I suggest that a baseline of zero is
4 still appropriate." That sentence there.

5 And the basis of OCC -- oh, I'm sorry. I
6 have one more. Page 20, on line 13, after the
7 numbers 2008, 2011 and 2012, OCC moves to strike the
8 remainder of that sentence that reads "and establish
9 a baseline of zero until such time as DP&L's base
10 distribution rates are reset." All the way to the
11 end of line 14.

12 And the basis of OCC's motion is what has
13 been previously marked as OCC Exhibit 17 which is the
14 most recent entry on Dayton Power and Light's 2012
15 deferral. It's an Entry on Rehearing. And in
16 regards to the testimony that Mr. Yankel just gave,
17 specifically paragraph (7), the Commission has
18 already determined that the O&M expenses with major
19 storms should be reduced by a three-year average.

20 And the basis of that decision is that
21 the Commission, in allowing -- if the Commission were
22 to allow them not to reduce deferrals by the
23 three-year average, that that may lead to
24 double-recovery of expenses, first from base
25 distribution rates and second from this proceeding.

1 The basis of this motion is that the
2 doctrine of collateral estoppel estops DP&L from
3 re-litigating this claim that there are -- they are
4 not collecting any storm costs in base distribution
5 rates. Clearly the Commission has decided this idea
6 of normalization and that it should be set at zero
7 has already been determined by the Commission.

8 The amount, of course, is still subject
9 to dispute. That's why we try to be very specific
10 and just strike portions of testimony that was just
11 trying to re-litigate whether there were any major
12 storm costs being collected in the 1991 rates which
13 are still in effect.

14 So based on the doctrine of collateral
15 estoppel and the Ohio Supreme Court's
16 characterization of that doctrine, it precludes the
17 re-litigation of an issue that has been actually and
18 necessarily litigated and determined in a prior
19 action and that's the basis of the motions.

20 EXAMINER PRICE: Overruled.

21 The order you're characterizing was
22 simply an accounting order. There was no hearing
23 held. There was no actual litigation in the matter.
24 And, if I recall correctly, subsequent to that in the
25 ESP order, the Commission deferred the establishment

1 of a baseline to this very proceeding.

2 MS. YOST: I would say a baseline, Your
3 Honor, for a future storm --

4 EXAMINER PRICE: I understand that that's
5 been consistently your point, but I'm not sure that
6 the Commissioners necessarily agree with you, and
7 they'll get to decide that point. It's our job to
8 make sure they have enough of a record to decide that
9 point.

10 MS. YOST: Thank you, Your Honor.

11 - - -

12 CROSS-EXAMINATION

13 By Ms. Yost:

14 Q. Good afternoon.

15 A. Good afternoon.

16 Q. What did you review in preparation of
17 your testimony today?

18 A. I reviewed my, what I call my "stand
19 book," the book that has all the things that I have
20 in front of me.

21 Q. Would that include testimony of OCC
22 witnesses?

23 A. No.

24 Q. Have you had an opportunity to review the
25 testimony that was filed in this proceeding,

1 specifically the testimony of Dr. Duann on May 23rd,
2 2014?

3 A. Yes, I read it.

4 Q. Did you have an opportunity to read the
5 testimony of Tony Yankel, that was filed that same
6 day, May 23rd, 2014?

7 A. Yes, I read that as well.

8 Q. And have you also reviewed the testimony
9 of Dave Effron that was filed May 25th, is that
10 right, or 26th, the testimony in opposition to the
11 stipulation filed by Dave Effron. Did you read that
12 also?

13 A. Yes, I read that as well.

14 Q. You've been involved in rate proceedings
15 at the PUCO regarding applications made pursuant to
16 4909.18, correct?

17 A. No, actually, I haven't. In my mind,
18 4909.18 is a rate case proceeding.

19 Q. You've never been involved in a rate case
20 proceeding?

21 A. DP&L's last rate case proceeding was in
22 1992, and I joined the Company in 1992.

23 Q. Are you aware what the filing
24 requirements are for a rate case filed in accordance
25 with 4909.18?

1 A. I have reviewed the Commission's standard
2 filing requirements for every case proceeding, yes.

3 Q. And what is your understanding of those
4 requirements?

5 A. I don't really have an opinion of them.
6 There's a lot of information there.

7 Q. What type of information is required to
8 be filed with an application?

9 A. There are probably, I'm guessing, 50 to
10 80 schedules that are required to be filed. So I
11 don't have an opinion about every single one of
12 those.

13 Q. What's your understanding of an ATA
14 filing?

15 A. An ATA filing, in my mind, is much
16 smaller than a rate case proceeding. It's something
17 where the Company would file, asking the Commission
18 to approve a specific adjustment to rates or a
19 specific tariff filing. "ATA" stands for Application
20 for Tariff Approval, I believe.

21 Q. Have you been involved in a ATA filing?

22 A. Yes. Many.

23 Q. Did you say "many"?

24 A. "Many."

25 Q. What type of cases have you been involved

1 in ATA filings?

2 A. We filed -- essentially, I think any --
3 any tariff filing before the distinction that the
4 Commission came out with a RDR filing; I think the
5 RDR has only been around for a couple years. But any
6 tariff filing prior to that time, I think was
7 designated as ATA filing.

8 So that could be a change in language of
9 a tariff, that could be a change in rate of tariffs.
10 There are many different reasons to file an ATA
11 filing, and the Company has filed several of those
12 during my time at the Commission -- or, at the
13 Company.

14 Q. Can you recall just the most recent ATA
15 filing you've been involved in?

16 A. Again, the Company -- the Commission
17 changed the designation from an ATA to an RDR filing
18 just a few years ago. So I'm not sure if you're
19 referring to something that's more recent and,
20 therefore, would have an RDR designation, and that
21 would be anything from our fuel rider, our
22 alternative energy rider, all those are RDR filings
23 which were the same thing as an ATA filing.

24 Q. Does the Commission no longer permit ATA
25 filings?

1 A. I think that's still a designation, but I
2 don't see it used as often as it used to be.

3 Q. And what does "RDR" mean in terms of
4 filing?

5 A. I can't recall off the top of my head.
6 It has something like "rider" in the name of it.

7 Q. Is there a Commission rule that controls
8 RDR filings?

9 A. There is a Commission rule that sets
10 forth all the Commission's designations for case
11 filings.

12 Q. Would that be procedural rules you're
13 speaking of?

14 A. The procedural rules? Yes.

15 Q. Is there any Ohio law in regard to an RDR
16 filing as far as you know?

17 A. To the extent that it's in the procedural
18 rules.

19 Q. And what's your understanding of an AAM
20 filing?

21 A. AAM, I believe, stands for an Application
22 for Accounting Modification.

23 Q. And when does the Company request or file
24 AAM cases?

25 A. An AAM designation for a case is usually

1 when the Company is requesting deferral authority. I
2 suppose there could be other reasons to file an AAM,
3 but deferral authority is the -- is the reason that
4 comes to mind.

5 Q. The Company is currently collecting base
6 distribution rates that were established in a 1991
7 stipulation and recommendation; is that correct?

8 A. I'm sorry. Can you repeat the question?

9 MS. YOST: Could you reread that
10 question?

11 (Record read.)

12 A. I think, as I've laid out in my
13 supplemental testimony, page 14, starting at line 10,
14 DP&L's base rates were established in the 1991 rate
15 case which was settled in a black-box settlement. So
16 the level of cost included in that total recovery is
17 subject to many different interpretations.

18 Q. But you're collecting rates that were
19 established in the 1991 -- base distribution rates
20 that were established in that 1991 case, correct?

21 A. 1991 was the last base rate case that we
22 had. In 1991 we unbundled our rates to establish
23 transmission, distribution, and generation rates. So
24 the distribution rates that resulted, I guess
25 essentially from the 1991 case, are the rates we have

1 in place today.

2 MS. YOST: Your Honor, I'd like to have
3 marked as OCC Exhibit 18, the Stipulation and
4 Recommendation from Case No. 91-414-EL-AIR.

5 EXAMINER PRICE: It will be so marked.

6 (EXHIBIT MARKED FOR IDENTIFICATION.)

7 MS. YOST: Your Honor, may I approach the
8 bench?

9 EXAMINER PRICE: You may.

10 Q. Please let me know when you're ready to
11 proceed.

12 A. Okay.

13 Q. Is this the stipulation that you're
14 referencing in your supplemental testimony in regard
15 to the 1991 base rates?

16 A. No, it is not. This is every other page
17 of that stipulation.

18 MS. YOST: Could we go off the record for
19 a second?

20 (Discussion off the record.)

21 Q. If you could turn to page 5. At the top
22 of page 5 there is paragraph 5 that indicates it's an
23 -- it's titled "Earnings Cap." Do you see that?

24 A. Yes.

25 Q. And that states "There will be an

1 'earnings cap' until DP&L's next rate case as
 2 follows: There is a target return on equity of
 3 13 percent." And then there's additional language
 4 outlining this earnings cap. Were you aware that in
 5 the 1991 stipulation there was an earnings cap
 6 imposed upon DP&L?

7 A. Yes, I am.

8 Q. And what is your understanding of how
 9 long that earnings cap was applicable to DP&L's
 10 distribution?

11 A. That earnings cap applied to DP&L until
 12 such time as Senate Bill 3 was implemented in 1999.
 13 Senate Bill 3 had a provision in it that said any
 14 utility in Ohio that had an earnings cap, that
 15 earnings cap would be eliminated starting in 2001, I
 16 believe. I'd have to go back and reread that
 17 section, but it's in the Ohio Revised Code.

18 Q. I will leave the rest of my questions for
 19 tomorrow, since the document is not complete.

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

21 (Discussion off the record.)

22 Q. I have copies of the stipulations and
 23 recommendations that you discuss in your testimony,
 24 but, rather than introducing more paper, if you could
 25 use the exhibits that your counsel has provided, it

1 would be the first volume of exhibits, specifically
2 starting with Exhibit No. 9.

3 A. Okay.

4 Q. You've seen exhibit No. 9, correct?

5 A. Yes.

6 Q. Could you turn to page 3, please? And
7 there's some questions that counsel for DP&L had for
8 Mr. Yankel. In regard to paragraph IV at the bottom
9 of page 3, the second line of paragraph IV states
10 that after 30 -- "After December 31, 2003, such
11 distribution rates can be adjusted by an application
12 under Ohio Revised Code 4909.18 to reflect the costs
13 of complying with" and then it has several things
14 listed there. And one of the things listed is
15 "relief from storm damage expenses," correct?

16 A. Yes.

17 Q. And in this case the Company has not
18 filed an application under Revised Code 4909.18, has
19 it?

20 A. No, it hasn't. But this stipulation was
21 in place, I believe, through 2003, and the Company
22 did not file this case in 2003.

23 Q. If you look at the first sentence under
24 paragraph IV, doesn't it address distribution rates
25 through December 31, 2006?

1 A. Yes. That's talking about the
2 distribution rate freeze through 2006. And then this
3 provision says after 2003, if we were to file a rate
4 case, then we could seek recovery of these other
5 items.

6 Q. Thank you.

7 A. But, again, this stipulation does not
8 apply in 2012 when we filed this recovery case.

9 Q. Let's move on to the next stipulation.
10 That would be the 02 stipulation that is Exhibit
11 No. 10.

12 A. Okay.

13 Q. Are you there?

14 A. Yes.

15 Q. And what was the term of DP&L Exhibit
16 No. 10?

17 A. I believe the term of DP&L Exhibit 10 was
18 to extend its then current rate plan through
19 December 31st of 2005.

20 Q. So it superceded OCC -- or, excuse me,
21 DP&L Exhibit No. 9?

22 A. I don't know if it superceded, because
23 I'm not a lawyer so I can't tell you that every
24 provision was superceded, but this stipulation came
25 after the last one we just discussed, and it extended

1 our rate plan until 2005.

2 Q. And, again, this speaks of giving the
3 Company the opportunity to seek adjustments to its
4 RSP permitted in the ETP stipulation which is Exhibit
5 No. 9, correct?

6 A. I'm sorry. Can you repeat that?

7 MS. YOST: Would you read that question
8 back, please?

9 (Record read.)

10 A. No, I disagree with that. Back in 2002
11 and 2003, when this case was going forward, we didn't
12 call it an "RSP," we called it an "MDP," which stood
13 for "Market Development Period." So this extended
14 the market development period through 2005.

15 EXAMINER PRICE: But it did more than
16 that. If you want to look at page 11.

17 THE WITNESS: Yes, I'm sorry, it did
18 establish a rate stabilization period. I just wasn't
19 looking at that section. It did establish a rate
20 stabilization period that went through 2008.

21 EXAMINER PRICE: And the stabilization
22 period began on?

23 THE WITNESS: January 1st of 2006 and
24 went through 2008.

25 Q. (By Ms. Yost) And Exhibit 10, the 2002

1 stipulation, did the Company receive any type of
2 stability charge or transition charge through the
3 stipulation?

4 A. This stipulation, it says at section
5 Roman II.B., that the transition charges would stop.

6 Q. What page are you on? I'm sorry.

7 A. Page 6.

8 Q. So it ended the transition charges?

9 A. Yes.

10 Q. What date was that effective?

11 A. Effective January 1st of 2004.

12 Q. Thank you.

13 If you could now go to DP&L Exhibit 11.

14 EXAMINER PRICE: Let's back up just a
15 little bit. If you can go -- we're still on Exhibit
16 10. If you can go to page 10 -- or, page 12, and
17 read the first sentence of section C, please.

18 THE WITNESS: Page 12, section C. It
19 says "DP&L distribution rates and charges, as stated
20 in tariff sheets set forth in Attachment B, will
21 remain frozen at current levels through the RSP
22 subject to adjustments permitted in the ETP
23 Stipulation that the Company will make by filing of
24 an 'ATA' application."

25 EXAMINER PRICE: Perfect.

1 Now you can move on.

2 Q. And the next exhibit, 11, please. You've
3 seen that exhibit before, correct?

4 A. Yes.

5 Q. And that stipulation extended the rate
6 stabilization period from January 1, 2006, to
7 December 31st, 2010, correct, and that would be on
8 page 4?

9 A. Yes. That stipulation extended the rate
10 stabilization period from January 1st, 2006, to
11 December 31st of 2010.

12 Q. And did the Company receive any type of
13 stabilization or transition charge pursuant to this
14 Exhibit 11?

15 EXAMINER PRICE: I think you're asking a
16 compound question. So I think you need to ask a
17 stability charge and then you need to ask a
18 transition charge because the two are not necessarily
19 the same.

20 Q. Does DP&L Exhibit 11, did it provide the
21 Company with a stability charge?

22 A. It did. However, I don't see how that's
23 at all relevant in this case.

24 Q. Page 5 of Exhibit 11. So --

25 EXAMINER PRICE: Don't be argumentative,

1 Ms. Seger-Lawson.

2 Q. Do you see, on the top of page 5, it says
3 "Rate Stabilization Charge?"

4 A. Yes.

5 Q. And it states "Beginning on January 1,
6 2006 and continuing throughout the RSP, DP&L shall be
7 entitled to charge a Rate Stabilization Charge,
8 ('RSC') to compensate DP&L for providing stabilized
9 rates for customers and Provider of Last Resort
10 service." Did I read that correctly?

11 A. Yes.

12 Q. And do you recall what the amount of that
13 charge -- right below it it talks about "The RSC
14 shall equal 11 percent of DP&L's January 1, 2004
15 tariffed generation rates." Do you see that?

16 A. Yes, I see that.

17 Q. Was the RSC -- that's no longer being
18 collected, correct?

19 A. That's correct.

20 Q. Was the RSC a generation charge?

21 A. I don't recall. I'd have to look at the
22 tariff to find out where it was located on our
23 tariffs.

24 Q. You don't recall how it was classified?

25 A. I don't recall.

1 Q. And does DP&L Exhibit 11 provide the
2 Company with the ability to seek storm costs?

3 EXAMINER PRICE: Ms. Seger-Lawson, why
4 don't you look at page 6.

5 A. Yes. I'm sorry. I was getting there.
6 Page 6, section E, talks about the RSP stipulation,
7 and it says "As market conditions have changed, this
8 Stipulation supercedes Section" and it lists the
9 certain sections, and then it says "Section IX.C of
10 the RSP Stipulation ends December 31, 2008."

11 And Section IX.C of the RSP stipulation
12 was the section that says "DP&L's distribution rates
13 and charges, as stated in tariff sheets set forth in
14 Attachment B, will remain frozen at current levels
15 throughout the RSP subject to the adjustments
16 permitted in the ETP Stipulation that the Company
17 will make by the filing of an 'ATA' application."

18 Q. And the Company made an ATA application
19 in regard to storm costs incurred in 2004 and 2005,
20 correct?

21 A. Yes, that's correct.

22 Q. The next, Exhibit 12, please. Are you
23 there?

24 A. Yes.

25 Q. And it's your understanding that Exhibit

1 12 is the Stipulation and Recommendation that
2 established the Electric Security Plan of the Company
3 that terminated on December 31st, 2013?

4 A. Yes.

5 Q. And you're familiar with the Company's
6 current Electric Security Plan, correct?

7 A. Yes, I'm familiar with the Company's
8 Electric Security Plan.

9 Q. And you were involved in the preparation
10 and you testified in that proceeding, correct?

11 A. Yes, that's correct.

12 Q. And in that proceeding the Company did
13 not propose a storm rider, correct?

14 A. Yes, that's correct. However, there's no
15 requirement in the Ohio Administrative Code or
16 Revised Code that in order to seek a storm rider the
17 Company must first ask for it in an ESP.

18 I guess, and further, the ESP that was in
19 place, when we filed this case, specifically allowed
20 for the Company to file for a storm rider.

21 Q. You're aware that AEP has a storm rider?

22 A. Yes.

23 Q. And are you aware that AEP received
24 approval for their storm rider through an ESP?

25 A. I'm generally familiar with that, but

1 that doesn't mean that every utility has to ask for a
2 storm rider through an ESP.

3 Q. Are you aware of any other utility that
4 has a storm rider?

5 A. I believe Duke has a storm rider.

6 Q. And are you aware of how Duke received
7 authority for its storm rider?

8 A. No, I'm not.

9 Q. In regard to --

10 EXAMINER PRICE: I'd like to back up for
11 a second. It was your testimony, Ms. Seger-Lawson,
12 that you did receive authority to apply for storm
13 damage recovery under an ESP. Isn't that your
14 testimony?

15 THE WITNESS: Yes, it is my testimony
16 that the ESP that was in place in 2012, when we filed
17 this case, specifically allowed us to seek a separate
18 rider for storm recovery.

19 EXAMINER PRICE: Can you direct the bench
20 to where that is --

21 THE WITNESS: Yes.

22 EXAMINER PRICE: -- where that might be?

23 THE WITNESS: That's in the '08 case.

24 EXAMINER PRICE: Which exhibit?

25 THE WITNESS: I'm sorry. That was

Exhibit 12. Page 10, paragraph 18. "DP&L's distribution base rates will be frozen through December 31, 2012. This distribution rate freeze does not limit DP&L's right to seek emergency rate relief pursuant to Section 4909.16, Revised Code, or to apply to the Commission for approval of separate riders to recover the following costs." There's paragraph a. which isn't relevant and there's a b. that says "The cost of storm damage."

EXAMINER PRICE: Then what's the remainder of that paragraph?

THE WITNESS: "Although other parties may move to intervene, DP&L will not oppose OCC's intervention in any of the above proceedings referenced in this Stipulation including with regard to this paragraph."

MS. YOST: Anything else?

THE WITNESS: I'm sorry. I was just going to say that this stipulation, as it was drafted, was supposed to end in December of 2012, but the Commission, by order, extended it through December of '13.

EXAMINER PRICE: Thank you.

Ms. Yost?

1 Q. (By Ms. Yost) So paragraph 18 gave DP&L
2 the ability to seek storm costs even though its
3 distribution rates were frozen, correct?

4 A. Yes. I believe paragraph 18 makes an
5 exception that it essentially says the parties who
6 signed this stipulation, DP&L as well as OCC, and I
7 believe the staff and Kroger also all signed the
8 stipulation, they all agreed that DP&L's distribution
9 rates would be frozen, that means that DP&L would not
10 seek to increase the rates, nor would anyone else
11 seek to decrease the rates. And, in addition to
12 that, the Company may seek recovery of storm damage.

13 Q. And the Company rates are not frozen
14 under the current ESP, correct?

15 A. The current ESP is in place by Commission
16 order and there's nothing in the order about DP&L's
17 distribution rates being frozen.

18 Q. Thank you.

19 The '08 stipulation, before we move on,
20 that gave DP&L the ability to collect an RSS charge
21 from its customers, correct?

22 A. I'm sorry. Which one are you looking at?

23 Q. The '08 stipulation which is No. 12.

24 A. What was the question?

25 Q. The '08 stipulation, I'll give you a

1 specific cite, page 4, paragraph 3, that continued
2 the RSS charge, correct, through December 31st, 2012,
3 correct?

4 A. Yes.

5 Q. And the RSS charge was known as the rate
6 stability service charge, or I can't remember the --
7 just a second.

8 A. I think the name changed over time. I
9 think it was the rate stability surcharge, I think.

10 Q. Okay. Page 2 it says "rate stabilization
11 surcharge." And so, DP&L Exhibit 12, which is the
12 '08 stipulation, gave the Company the ability to
13 collect the RSS surcharge through December 31, 2012.
14 And do you recall what the amount of that surcharge
15 was on a yearly basis?

16 A. It changed, year to year, based on what
17 the sales level was. So it was a stated rate and it
18 was applied to kW and kWh that the Company billed.

19 Q. Did the Company collect approximately
20 \$74 million in 2012 for the RSS?

21 A. I believe it was -- when we testified in
22 the ESP case, I think it was \$73 million.

23 Q. In 2012; is that correct?

24 A. Yes.

25 Q. And was the RSS a distribution charge?

1 A. Again, I'd have to look it up. I don't
2 know off the top of my head.

3 EXAMINER PRICE: Ms. Seger-Lawson, do you
4 recall that OCC appealed the RSP extension case in
5 05-371-EL-AIR to the Ohio Supreme Court?

6 THE WITNESS: I think I recall that, yes.

7 EXAMINER PRICE: Do you recall the
8 Supreme Court, on one issue, remanded that case back
9 to the Commission because the Commission ordered that
10 the charge be placed in the distribution tariffs;
11 whereas, the Court ruled that the charge should be in
12 the generation tariffs. Do you recall that?

13 THE WITNESS: Yes. And I guess that's
14 why I was struggling with where it was located in the
15 tariff.

16 EXAMINER PRICE: And, on remand, the
17 Company followed the Supreme Court's directive.

18 THE WITNESS: Yes, it would follow the
19 Supreme Court's order.

20 EXAMINER PRICE: Off the record.

21 (Discussion off the record.)

22 MS. YOST: At this time OCC would like to
23 mark as Exhibit 19, Interrogatory and DP&L Response
24 to 165 and 166, which is a two-page document that is
25 stapled together.

1 EXAMINER PRICE: So marked.

2 (EXHIBIT MARKED FOR IDENTIFICATION.)

3 MS. YOST: Permission to approach the
4 bench?

5 EXAMINER PRICE: You may.

6 Q. (By Ms. Yost) Let me know when you're
7 ready to proceed.

8 A. Yes, I'm ready.

9 Q. And you are identified as the witness
10 responsible for Exhibit No. 165 and 166 -- I'm sorry,
11 Interrogatory 165 and 166, correct?

12 A. Yes.

13 Q. And did you compile the information that
14 is contained in this response?

15 A. I likely had someone on my staff compile
16 the information and I reviewed it for accuracy.

17 Q. Thank you.

18 And how much did DP&L collect for billing
19 cost recovery through its rider for years 2006
20 through 2011?

21 A. As this document states, \$36.6 million.

22 Q. And this document states that there was a
23 total of \$8.5 million that the Company collected
24 pursuant to the storm rider, and that's for years
25 2006, 2007, and 2008, correct?

1 A. No. We collected it in 2006, 2007, and
2 2008, but it was for storms that we incurred -- storm
3 expenses that we incurred in 2004 and 2005.

4 Q. Thank you.

5 Were you involved in calculating the
6 baseline used in the 2008 deferral?

7 A. Yes. Calculation of the 2008 baseline
8 amount would have been calculated by a combination of
9 my group, the regulatory group, which is also the
10 rates department and the accounting group.

11 Q. I apologize. I'm trying to find an
12 exhibit that's already been introduced. It would be
13 OCC Exhibit 7. Is that up there?

14 A. There's nothing up here.

15 Q. Can you take a look at this OCC exhibit,
16 specifically Bates stamped 2800. Specifically, if
17 you could look at the bottom of the page, there's an
18 e-mail to Greg Campbell and you're copied on it.
19 It's dated December 20, 2012 at 9:20 a.m.

20 A. Yes.

21 Q. At the bottom of that e-mail, the very
22 last paragraph it talks about how the 2008 storm
23 three-year storm average was calculated. And it
24 states that "For consistency purposes, I believe it
25 would make the most sense to use the 2.5 beta storm

1 amounts in 2009 and 2010, and the total storms less
2 the deferred costs in 2008. That is consistent with
3 how we created the 2008 deferral (excluding 2005
4 costs that had been recovered in the storm
5 rider)...."

6 So is it your understanding that when the
7 2008 three-year average was calculated, the Company
8 excluded the 2005 costs that it had collected through
9 the storm rider?

10 A. Yes. The purpose of a baseline is to, in
11 my opinion, estimate how much one might think is
12 already included in base rates. DP&L believes that
13 there is no recovery in base rates for a storm;
14 however, if one was to argue that some level of storm
15 was included in base rates, you may estimate that by
16 calculating a baseline, and that baseline should not
17 include costs that the Company has already recovered.

18 The company would never recover the full
19 amount it is authorized to, its full cost of -- its
20 full prudently-incurred cost if you were to include
21 costs that were already recovered through rates.

22 And in 2004 and '5, we had a storm and
23 those costs were recovered in, as we just went over,
24 2006, '7 and '8, and, therefore, those costs should
25 not be included in a baseline --

1 MS. YOST: Your Honor --

2 A. -- because those clearly were outside the
3 base rates.

4 MS. YOST: -- I'm asking questions that
5 are pretty short -- any responsive answer would be
6 relatively short and the answers are going on and on
7 and I would just ask that the witness be directed to
8 give a full answer, but be responsive to the question
9 asked.

10 EXAMINER PRICE: Please give a full
11 answer and be responsive to the question asked.

12 MS. YOST: Thank you.

13 Q. So when the Company calculated the
14 baseline or the three-year average for the 2011 storm
15 costs, it removed costs from the 2008 total major
16 storm costs it had incurred, correct?

17 A. Yes. Because it would be inappropriate
18 to include that cost in a baseline.

19 Q. And how much cost was removed from that
20 2008 amount that was used to calculate the baseline?

21 A. The 2008 -- I'm sorry, which baseline are
22 we talking about?

23 Q. The baseline for 2011, but for year 2008.

24 A. For a 2011 baseline, we would have looked
25 at what the major storm costs would have been in

1 2008, '9, and '10, and we would have subtracted out
2 the cost that was specifically excluded from base
3 rates, which would have been the amount that was
4 justified -- I'm sorry, the amount that was collected
5 in 2008 for the 2004 and '5 storms.

6 Q. Do you know what that amount is?

7 A. I'm sorry. That's not right. Let me
8 think about this a second.

9 The amount in 2011 would have been based
10 on '10, '9 and '8, and we would have backed out any
11 amount in 2008 that we were also seeking to recover.
12 So, again, we can't double-count costs that are not
13 in base rates. So we would have backed out any costs
14 in 2008 that we were seeking to recover.

15 Q. Do you know the amount of those costs
16 that you backed out of 2008?

17 A. Not off the top of my head.

18 Q. Would OCC Exhibit 19 help you?

19 A. Which one was OCC 19?

20 Q. The interrogatories, second page.

21 A. I think there's two separate items that
22 we would have backed out of the 2011 baseline.
23 Again, a baseline is trying to calculate what is
24 assumed to be included in rates. And so, I believe
25 we would have backed out any amounts that we were

1 seeking to recover from 2008. In addition, we would
2 back out anything that we had recovered to the extent
3 it was recovered through this separate storm rider in
4 2008.

5 Q. Do you recall that -- so what you're
6 saying is you backed out storm costs, from a storm
7 that occurred in 2004, 2005, but were collected in
8 2008. Is that what your testimony is?

9 A. I would have to relook -- I would have to
10 look at the calculation we used for 2011 to tell you
11 specifically what we backed out.

12 Q. So you don't know what you backed out of
13 2008.

14 A. Well, this e-mail says that we backed out
15 any costs that we had recovered from the '05 storm.
16 But I'm thinking we would have backed out anything
17 that we asked for recovery of in 2008.

18 Q. So any amounts that you backed out would
19 have lowered the three-year average, correct?

20 A. Yes. And, again, the purpose of a
21 baseline is to calculate something that is included
22 in base rates. So if it isn't included in base rates
23 and it's collected through a separate rider, it
24 shouldn't go into the calculation for a baseline.

25 Q. The Commission's entries that authorized

1 the deferral of 2008 and 2012 storm costs, authorized
2 deferrals that exceeded the three-year average storm
3 costs, correct?

4 A. You're asking about which year?

5 Q. We can start with 2012, which is OCC
6 Exhibit 17, which is the entry on rehearing in Case
7 No. 12-2281. Page 3, paragraph (7), it reads "The
8 Commission finds that DP&L's application for
9 rehearing should be denied and that DP&L's recovery
10 of O&M expenses should be reduced by the three-year
11 average of O&M expenses associated with major
12 storms." Do you see that?

13 A. Yes.

14 Q. And that language does not include any
15 language saying that adjustments were to be made to
16 the three-year average; is that correct?

17 A. It does not, but, as you're well aware,
18 that is what is at issue in this case.

19 Q. Then it goes on to say "Reducing DP&L's
20 recovery of O&M expenses by the three-year average of
21 O&M expenses associated with major storms is
22 consistent with Commission precedent, most notably
23 Case No. 08-1332-EL-AAM." And, again, that does not
24 reference any adjustments to the three-year average,
25 correct?

1 A. It does not, but I think that this order
2 is not consistent with the Commission's order in Case
3 No. 08-1332-EL-AAM, because the Commission's order in
4 08-1332-EL-AAM allowed for DP&L to recover all storm
5 costs less a three-year average, and that is
6 different from taking a single storm and backing out
7 a three-year average. Those are two very different
8 calculations.

9 MS. YOST: Would you read back her last
10 answer?

11 (Record read.)

12 MS. YOST: Thank you.

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

14 (Discussion off the record.)

15 EXAMINER PRICE: As it is approaching
16 5:00, we will simply adjourn for the day and take up
17 again at 9:00, at which point I believe we will take
18 OCC Witness Duann and Effron, and then come back to
19 Ms. Seger-Lawson. Thank you all. We are adjourned.

20 (Thereupon, the proceedings concluded at
21 5:00 p.m.)

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CERTIFICATE

I do hereby certify that the foregoing is a true and correct transcript of the proceedings taken by me in this matter on Wednesday, June 4, 2014, and carefully compared with my original stenographic notes.

Carolyn M. Burke, Registered Professional Reporter, and Notary Public in and for the State of Ohio.

My commission expires July 17, 2018.

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Summary: Transcript in the matter of The Dayton Power and Light Company hearing held on 06/04/14 electronically filed by Mrs. Jennifer Duffer on behalf of Armstrong & Okey, Inc. and Burke, Carolyn M. Mrs.