

BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

- - -

In the Matter of the :  
Application of The Dayton :  
Power and Light Company : Case No. 16-395-EL-SSO  
for Approval of its :  
Electric Security Plan. :

:

In the Matter of the :  
Application of The Dayton :  
Power and Light Company : Case No. 16-396-EL-ATA  
for Approval of Revised :  
Tariffs. :

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In the Matter of the :  
Application of The Dayton :  
Power and Light Company :  
for Approval of Certain : Case No. 16-397-EL-AAM  
Accounting Authority :  
Pursuant to Ohio Rev. Code:  
§4904.13. :

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PROCEEDINGS

before Mr. Gregory Price and Mr. Nicholas Walstra,  
Attorney Examiners, at the Public Utilities  
Commission of Ohio, 180 East Broad Street, Room 11-A,  
Columbus, Ohio, called at 10:00 a.m. on Monday,  
April 3, 2017.

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VOLUME I

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## 1 APPEARANCES:

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8 Dayton Power and Light Company  
9 By Ms. Judi Sobecki,  
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15 On behalf of the Applicant.

16 Ohio Partners for Affordable Energy  
17 By Ms. Colleen L. Mooney  
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20 On behalf of the Ohio Partners for  
21 Affordable Energy.

22 Sierra Club Environmental Law Program  
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On behalf of the Ohio Energy Group.

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13 On behalf of IGS Energy.

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22 By Mr. Michael D. Dortch  
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25 On behalf of Calpine Energy Solutions.

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By Ms. Kimberly W. Bojko  
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On behalf of the Ohio Manufacturers'  
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Carpenter Lipps & Leland LLP  
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## 1 APPEARANCES: (Continued)

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14 and Sam's East, Inc.

15 Mr. Richard L. Sites  
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19 By Mr. Dylan Borchers  
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22 On behalf of the Ohio Hospital  
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24 Ohio Environmental Council  
25 By Mr. Trent A. Dougherty  
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On behalf of the Ohio Environmental  
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On behalf of the Environmental Defense  
Fund.

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## 1 APPEARANCES: (Continued)

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3 By Mr. William Wright,  
4 Section Chief  
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7 Assistant Attorneys General  
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10 On behalf of the Staff of the PUCO.

11 Bruce E. Weston, Ohio Consumers' Counsel  
12 By Mr. William Michael,  
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19 On behalf of the Residential Consumers of  
20 The Dayton Power and Light Company.

21 Doll, Jansen & Ford  
22 By Mr. Matthew T. Crawford  
23 and Mr. John Doll  
24 111 West 1st Street, Suite 1100  
25 Dayton, Ohio 45402

On behalf of the Utility Workers Union of  
America Local 175.

Ohio Citizen Action  
By Mr. Ellis Jacobs  
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On behalf of Advocates for Basic Legal  
Equality and the Edgemont Neighborhood  
Coalition of Dayton.

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## 1 APPEARANCES: (Continued)

2 Carpenter Lipps & Leland LLP  
3 By Mr. Joel E. Sechler  
4 280 North High Street, Suite 1300  
5 Columbus, Ohio 43215

6 On behalf of EnerNOC.

7 Bricker & Eckler, LLP  
8 By Mr. Devin D. Parram  
9 100 South Third Street  
10 Columbus, Ohio 43215-4291

11 On behalf of the People Working  
12 Cooperatively, Inc.

13 Calfee, Halter & Griswold LLP  
14 By Mr. N. Trevor Alexander,  
15 Mr. James F. Lang,  
16 Mr. Steven D. Lesser,  
17 and Mr. Mark T. Keaney  
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20 Columbus, Ohio 43215

21 On behalf of Honda of America  
22 Manufacturing, Inc., and City of Dayton.

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On behalf of the Adams County Residents  
and Adams County Board of Commissioners.

Benesch Friedlander Coplan & Arnoff LLP  
By Mr. Orla E. Collier, III,  
Mr. John F. Stock,  
Ms. Emily V. Danford,  
and Mr. Michael J. Meyer  
41 South High Street, Suite 2600  
Columbus, Ohio 433215

On behalf of the Murray Energy  
Corporation.

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APPEARANCES: (Continued)

Adams County Prosecutor's Office  
By Mr. C. David Kelley  
110 West Main Street  
West Union, Ohio 45693

On behalf of Sprigg Township, Adams  
County; Monroe Township, Adams County;  
Manchester Local School District; and  
Adams County Ohio Valley School District.

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1 Monday Morning Session,

2 April 3, 2017.

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

5 Good morning. The Public Utilities  
6 Commission has set for hearing at this time and  
7 place, Case No. 16-395-EL-SSO being In the Matter of  
8 the Application of The Dayton Power and Light Company  
9 to Establish a Standard Service Offer in the Form of  
10 an Electric Security Plan.

11 My name is Gregory Price, with me is  
12 Nicholas Walstra. We are the attorney examiners  
13 assigned to preside over today's hearing.

14 Let us begin by taking appearances from  
15 the parties. Starting with the company.

16 MR. SHARKEY: Thank you, your Honor.  
17 Jeff Sharkey from the law firm of Faruki Ireland Cox  
18 Rinehart & Dusing. My partner, Jeff Ireland, had an  
19 oral argument in another matter, so he is not here  
20 this morning, but he should be here for the afternoon  
21 session. I have with me Chris Hollon, who is an  
22 attorney with our firm.

23 In addition, brief introductions. The  
24 President of the Dayton Power and Light Company, Tom  
25 Raga, is here. The General Counsel for the Dayton

1 Power and Light Company, Judi Sobecki is here. Mike  
2 Schuler, Regulatory Counsel for the company is here.  
3 And we also have, in addition, our witnesses who are  
4 going to be supporting the stipulation.

5 EXAMINER PRICE: Thank you.

6 Mr. Alexander.

7 MR. ALEXANDER: Good morning, your Honor.  
8 Trevor Alexander, Steven Lesser, Mark Keaney, and Jim  
9 Lang, from the firm of Calfee, Halter and Griswold,  
10 The Huntington Building, 41 South High Street, 12th  
11 floor, representing Honda and the City of Dayton.

12 EXAMINER PRICE: Thank you.

13 Kroger.

14 MS. WHITFIELD: Good morning, your Honor.  
15 Angie Paul Whitfield with the law firm of Carpenter  
16 Lipps and Leland, 280 Plaza, Suite 1300, 280 North  
17 High Street, Columbus, counsel for The Kroger  
18 Company.

19 EXAMINER PRICE: Ms. Bojko.

20 MS. BOJKO: Thank you, your Honor. On  
21 behalf of the Ohio Manufacturers' Association Energy  
22 Group, Kimberly W. Bojko and James Perko, with the  
23 law firm Carpenter Lipps and Leland, 280 North High  
24 Street, Suite 1300, Columbus, Ohio 43215.

25 EXAMINER PRICE: Yes, sir.

1 MR. KELLEY: David Kelley, Adams County  
2 Prosecutor, on behalf of Sprigg Township, Adams  
3 County, Monroe Township, Adams County, Manchester  
4 Local School District in Adams County, Ohio Valley  
5 Local Schools in Adams County. Manchester will be a  
6 Manchester, Ohio address. I don't have it off the  
7 top of my head. The same with both the townships are  
8 rural and work out of small buildings and I do not  
9 have the address, your Honor.

10 EXAMINER PRICE: It's not a problem.

11 Mr. Settineri -- I'm sorry.

12 MR. LANDES: I'm Mark Landes. I'm here  
13 for the Adams County Board of Commissioners.

14 EXAMINER PRICE: Thank you.

15 MR. LANDES: I'm from Isaac Wiles.

16 EXAMINER PRICE: Mr. Settineri.

17 MR. SETTINERI: Good morning, your  
18 Honors. On behalf of the Retail Energy Supply  
19 Association, Michael J. Settineri, Gretchen L.  
20 Petrucci, with the law firm of Vorys, Sater, Seymour  
21 & Pease, 52 East Gay Street, Columbus, Ohio 43215.

22 MR. McNAMEE: On behalf of the staff of  
23 the Public Utilities Commission of Ohio, Thomas  
24 Lindgren, L-i-n-d-g-r-e-n, and I am Thomas McNamee,  
25 M-c-N-a-m-e-e. The address is -- what is the

1 address -- 30 East Broad Street, 16th floor,  
2 Columbus, Ohio 43215.

3 MR. KUMAR: Your Honor, on behalf of the  
4 residential consumers of The Dayton Power and Light  
5 Company, by the Office of Consumers' Counsel, Bruce  
6 Weston, Bill Michael, Ajay Kumar, Kevin Moore, and  
7 Andrew Garver. We are located at 10 West Broad  
8 Street, Suite 1800, Columbus, Ohio 43215.

9 EXAMINER PRICE: Thank you.

10 MR. KURTZ: Good morning, your Honors.  
11 On behalf of the Ohio Energy Group, Mike Kurtz, Kurt  
12 Boehm, Jody Cohn, Boehm, Kurtz & Lowry, 1510 URS  
13 Center, Cincinnati, Ohio.

14 EXAMINER PRICE: Thank you.

15 MS. HARRIS: On behalf of Wal-Mart Stores  
16 East, LP, and Sam's East, Inc., Carrie Harris with  
17 the law firm Spilman Thomas & Battle, 310 First  
18 Street, Suite 1100, Post Office Box 90, Roanoke,  
19 Virginia 24002.

20 MR. PRITCHARD: On behalf of the  
21 Industrial Energy Users of Ohio, I am Matt Pritchard,  
22 and also enter an appearance for Frank Darr, of the  
23 law firm McNees Wallace and Nurick, 21 East State  
24 Street, Columbus, Ohio 43215.

25 MR. OLIKER: Good morning, your Honors.

1 On behalf of IGS Energy, Joseph Oliker, 6100 Emerald  
2 Parkway, 43016, Dublin, Ohio.

3 EXAMINER PRICE: Thank you.

4 MR. COLLIER: Good morning, your Honors.  
5 On behalf of Murray Energy Corporation and Citizens  
6 to Protect Dayton Power and Light Jobs, Orla E.  
7 Collier, John Stock, Emily Danford, and Michael  
8 Meyer, of the law firm Benesch Friedlander Coplan &  
9 Arnoff, 41 South High Street, Suite 2600, Columbus,  
10 Ohio.

11 EXAMINER PRICE: Thank you.

12 MR. WANNIER: Good morning, your Honor.  
13 Of behalf of the Sierra Club, my name is Greg  
14 Wannier, Sierra Club Environmental Law Program. Our  
15 address is 2101 Webster Street, Suite 1300, Oakland,  
16 California 94612.

17 EXAMINER PRICE: Thank you.

18 MR. CRAWFORD: Good morning, your Honor.  
19 Matthew Crawford, along with John Doll, who is not  
20 here today, of Doll, Jansen and Ford, 111 West 1st  
21 Street, Suite 1100, Dayton, Ohio 45402, representing  
22 the Utility Workers Union of America Local 175.

23 EXAMINER PRICE: Thank you.

24 Anybody in the back?

25 MR. BORCHERS: Good morning, your Honor.

1 On behalf of the Ohio Hospital Association, Dylan  
2 Borchers of the law firm of Bricker & Eckler, 100  
3 South Third Street, Columbus, Ohio 43215. Also on  
4 behalf of the Ohio Hospital Association, Richard  
5 Sites, 155 East Broad Street, Suite 301, Columbus,  
6 Ohio 43215.

7 EXAMINER PRICE: Thank you.

8 Ms. Fleisher.

9 MS. FLEISHER: Good morning, your Honors,  
10 Madeline Fleisher on behalf of the Environmental Law  
11 and Policy Center, 21 West Broad Street, 8th floor,  
12 Columbus, Ohio 43215.

13 MR. SECHLER: Good morning, your Honors.  
14 On behalf of EnerNOC, Inc., Joel E. Sechler,  
15 Carpenter Lipps and Leland, 280 North High Street  
16 Columbus, Ohio 43215.

17 MR. DORTCH: Good morning, your Honors.  
18 On behalf of Calpine Energy Solutions, LLC, Michael  
19 Dortch, law firm of Kravitz, Brown and Dortch, 65  
20 East State Street, Suite 200, Columbus, Ohio 43215.

21 MS. LEPPLA: Good morning, your Honors.  
22 Miranda Leppla on behalf of the Environmental Defense  
23 Fund, 1145 Chesapeake Avenue, Suite I, Columbus, Ohio  
24 43212.

25 MR. DOUGHERTY: Good morning, your



1 Honors. On behalf of the Ohio Environmental Council,  
2 Trent Dougherty, 1145 Chesapeake Avenue, Columbus,  
3 Ohio.

4 MR. JACOBS: Good morning, your Honors,  
5 Ellis Jacobs on behalf of the Edgemont Neighborhood  
6 Coalition of Dayton, Advocates for Basic Legal  
7 Equality, 130 West Second Street, Dayton, Ohio.

8 MS. MOONEY: I'm Colleen Mooney on behalf  
9 of Ohio Partners for Affordable Energy, Post Office  
10 Box 12451, Columbus, Ohio.

11 EXAMINER PRICE: Mr. Parram.

12 MR. PARRAM: Good morning, your Honors,  
13 Devin Parram, the law firm of Bricker & Eckler, on  
14 behalf of the People Working Cooperatively, 100 South  
15 Third Street, Columbus, Ohio 43215.

16 EXAMINER PRICE: Thank you.

17 Just as a note, are all the parties who  
18 are cross-examining the next witness sitting at the  
19 counsel tables and not in the back? Because I am  
20 going to recognize people at the counsel table, so  
21 looking good, but just as a matter going forward, if  
22 there is any witness in which you intend to cross,  
23 please sit at the counsel table that day because we  
24 are not going to go through this exercise going  
25 through the whole room every day.

1           Okay. We have a number of pending  
2 motions we need to rule upon before we get to  
3 Mr. Michael's motion. We have motions to appear pro  
4 hac vice by Greg Wannier and Andrew S. Garver. Those  
5 motions will be granted at this time.

6           We have motions to intervene by Citizens  
7 to Protect Dayton Power and Light Jobs, Murray  
8 Energy, Adams County, Ohio Valley School District,  
9 Sprigg Township, Manchester Local School District  
10 Adams County, and Monroe Township. At this time we  
11 are going to go ahead and grant those motions to  
12 intervene.

13           I understand Dayton had opposed some of  
14 the motions to intervene, but, as we all know, the  
15 Supreme Court has asked us to construe intervention  
16 liberally. Given the status of this hearing, that we  
17 have had a lengthy process to get here and several  
18 continuances, I don't believe intervention is going  
19 to cause any undue delay. Parties who late -- who  
20 intervened late, we'll accept the record as it stands  
21 up until today and then we will move forward.

22           Mr. Michael.

23           MR. MICHAEL: Thank you. Bill Michael  
24 from the Ohio Consumers' Counsel. And we would like  
25 at this time, your Honor, to move the Bench now for a

1 motion to separate DP&L's witnesses, Schroder,  
2 Malinak, and Jackson.

3 As the court stated just recently in  
4 State ex rel. Livingston v. Lanzinger, quoting the  
5 Ohio Supreme Court case State v. Waddy, "The purpose  
6 of a separation order is so that witnesses cannot  
7 hear the testimony of other witnesses." The Ohio  
8 Supreme Court further explained in Laughlin v. State,  
9 "It is certainly a good practice, where a party  
10 requests it, to have the witnesses examined  
11 separately."

12 And the grounds for this motion are, your  
13 Honor, is that Witness Donlon, who I should also add  
14 to the request for the separation order, testifies to  
15 MRO versus ESP, as does Witness Malinak. Witness  
16 Donlon and Witness Schroder both testified to the  
17 three-prong test for under which the Commission  
18 examines proposed stipulations.

19 Intervening parties that oppose the  
20 stipulation would be severely prejudiced because  
21 there is going to be so much overlap of issues  
22 because multiple witnesses, both from the company and  
23 then the one witness from staff, Mr. Donlon, they  
24 would essentially get a dry run of what the  
25 cross-examination would be.

1           And we believe, your Honor, as recognized  
2 by the authority that I mentioned, that those dry  
3 runs would unduly prejudice opposing intervenors and  
4 actually benefit those witnesses that I mentioned  
5 that are going to be testifying in support of the  
6 stip.

7           So, therefore, your Honor, OCC would  
8 request the Bench issue an order separating witnesses  
9 Donlon, Jackson, Malinak, and Schroder. Thank you.

10           EXAMINER PRICE: Mr. Sharkey, any  
11 response?

12           MR. SHARKEY: Yes, your Honor. We  
13 certainly oppose the motion to separate. As an  
14 initial matter, your Honor, I don't believe there --  
15 that any of the applicable evidentiary rules that  
16 were cited to you apply in Commission proceedings.

17           The Commission is free to conduct its  
18 hearings in a way it finds to be most beneficial.

19           Secondarily, your Honor, I don't think  
20 it's appropriate here that the witnesses be excluded.  
21 Some of the testimony, for example, that Mr. Malinak  
22 is supporting is based upon information that he's  
23 received from Mr. Jackson, both in terms of review of  
24 his testimony and the exhibits. So his opinions are,  
25 in part, based upon Mr. Jackson.

1           It's important for him to know what --  
2 everything Mr. Jackson has to say regarding, you  
3 know, any of the financial matters. It's important  
4 that he have a complete record.

5           And very frequently in court proceedings  
6 that I have been involved in, expert witnesses were  
7 permitted to attend despite a separation order so  
8 that they can have and see a complete and accurate  
9 record. I can't pull up citations here because the  
10 motion came as a surprise, but that's certainly been  
11 a practice that I am aware of. So I think that they  
12 should be permitted to stay in the hearing room.

13           In addition, Ms. Schroder's testimony,  
14 your Honor, her testimony is -- while it addresses  
15 the three-part stipulation, it's largely independent  
16 of the testimony of Mr. Jackson and Mr. Malinak. So  
17 I see very little overlap and see no reason to have  
18 her excluded either, your Honor

19           EXAMINER PRICE: Mr. McNamee.

20           MR. McNAMEE: Yes, your Honor. The staff  
21 would oppose keeping Mr. Donlon out of the hearing as  
22 well. He relies very extensively on the presentation  
23 of the DP&L witnesses. At least in my experience,  
24 far from prejudicing parties having witnesses in the  
25 room, actually speeds up the process of

1 cross-examination.

2           There is very frequently reference to,  
3 you know, questions along the lines, "Well, were you  
4 here for the cross-examination of Witness X and what  
5 do you think about that?" And I think it speeds the  
6 process. I think it improves the product. I think  
7 you end up with a better record for the Commission to  
8 consider. It is certainly a more efficient hearing  
9 process. So the staff would oppose this so far as  
10 Mr. Donlon is concerned.

11           EXAMINER PRICE: Just -- I will let any  
12 other counsel who care to weigh on this that they  
13 would like to just with the qualification if I am  
14 excluding anybody, I am excluding everybody, so we  
15 are either -- all the witnesses will be excluded or  
16 no witnesses will be excluded. So anybody that cares  
17 to opine on this now, this is your opportunity.

18           Okay, Mr. Michael.

19           MR. MICHAEL: I was just going to say if  
20 your Honor wishes to exclude anybody or nobody, OCC  
21 would be fine with that. Just three brief responses,  
22 your Honor.

23           I am well aware, OCC is well aware, that  
24 your Honor and the Bench has a lot more latitude  
25 under the evidentiary rules in this hearing than, you

1 know, in a civil litigation courtroom.

2           However, I think that when your Honor and  
3 the Bench considers the fact they have multiple  
4 witnesses testifying to the very same thing, you've  
5 got one major party cross-examining the witnesses,  
6 representing to you there is going to be quite a bit  
7 of overlap in the nature of the questions. And, you  
8 know, at some level the hearing, I trust, is going to  
9 be about getting -- getting to the truth, getting a  
10 good factual record and what really matters.

11           So, you know --

12           EXAMINER PRICE: That's the whole purpose  
13 of the hearing, Mr. Michael.

14           MR. MICHAEL: Pardon me, your Honor?

15           EXAMINER PRICE: That's the whole purpose  
16 of the hearing.

17           MR. MICHAEL: Yeah, exactly right. And  
18 as your Honor recognizes, if we give witnesses dry  
19 runs on cross-examination, as the authority I pointed  
20 out said, you are giving those witnesses an undue  
21 advantage and you are prejudicing, in this hearing  
22 room, those opposed to the stipulation.

23           Real quickly. I understand Mr. Sharkey  
24 and Mr. McNamee indicated a couple of their witnesses  
25 are really relying on the testimony of other

1 witnesses; they can still do that. Nothing changes  
2 about that. It is just they are not going to be able  
3 to hear OCC's cross-examination of them and, thus,  
4 tailor what their responses are going to be and get  
5 sort of like a practice round before they,  
6 themselves, sit on the stand.

7           Lastly, Mr. McNamee mentioned a speedy  
8 process. You know, OCC is the last party that wants  
9 to unduly prolong this, but we do want to get at the  
10 truth, we do want a good record, and we don't think  
11 either the truth or a good record should be  
12 sacrificed for a "speedy process," particularly when  
13 this hearing is not going to last a long time anyway.  
14 You've got one major party in opposition. You've got  
15 some other parties that indicated a more limited  
16 cross-examination. So unlike the FE case or the AEP  
17 rider case, you know, there is no prospect here for a  
18 four-week hearing.

19           So I think with separation of witnesses,  
20 we will be able to get the hearing in in due time.  
21 And I think in the interest of a full, complete,  
22 fair, and truthful record outweigh any of the other  
23 objections that were raised by my motion. Thank you.

24           EXAMINER PRICE: Did you depose the  
25 witnesses for Dayton Power and Light?



1 MR. MICHAEL: I did not, your Honor.

2 EXAMINER PRICE: You did not depose them?

3 MR. MICHAEL: I did not.

4 MR. SHARKEY: Your Honor, if I may?

5 EXAMINER PRICE: No. I think we have  
6 spent enough time on this. We are going to deny the  
7 motion to separate witnesses. All the testimony in  
8 these proceedings is prefiled. There are no  
9 surprises. It's all expert testimony. It's not  
10 going to prejudice anybody to sit through the  
11 cross-examination of another witness, so the motion  
12 is denied.

13 Any other motions?

14 Mr. Sharkey, you may call your first  
15 witness.

16 MR. SHARKEY: Thank you, your Honor. The  
17 Dayton Power and Light Company calls Mr. Craig  
18 Jackson.

19 (Witness sworn.)

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

22 THE WITNESS: My name is Craig L.  
23 Jackson. Business address, One Monument Circle,  
24 Indianapolis, Indiana 46204.

25 EXAMINER PRICE: Please proceed,

1 Mr. Sharkey.

2 MR. SHARKEY: Thank you, your Honor.

3 - - -

4 CRAIG L. JACKSON

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

7 DIRECT EXAMINATION

8 By Mr. Sharkey:

9 Q. Mr. Jackson, do you have in front of you  
10 a copy of the confidential direct testimony of Craig  
11 Jackson, dated October 11, 2016?

12 A. Yes, I do.

13 MR. SHARKEY: Okay. And, your Honors, we  
14 designate the confidential version of Mr. Jackson's  
15 testimony as DP&L Exhibit 1 and the public version of  
16 DP&L -- of Mr. Jackson's testimony as DP&L Exhibit  
17 1A. I'm sorry, I misspoke. We want them 1A and 1B.

18 EXAMINER PRICE: One more time. We are  
19 going to designate the public version as Exhibit 1 --

20 MR. SHARKEY: No. The confidential  
21 version is Exhibit 1A.

22 EXAMINER PRICE: Okay.

23 MR. SHARKEY: The public version is  
24 Exhibit 1B.

25 EXAMINER PRICE: Okay. Perfect.

1 (EXHIBITS MARKED FOR IDENTIFICATION.)

2 EXAMINER PRICE: Do you have copies for  
3 the Bench and the court reporters?

4 MR. SHARKEY: Absolutely. You need  
5 copies?

6 EXAMINER PRICE: Just the confidential.

7 MR. SHARKEY: Confidential.

8 EXAMINER PRICE: Oh, my goodness, one of  
9 Mr. Sharkey's binders.

10 MR. SHARKEY: You will see in the binders  
11 the numbering doesn't exactly match the way we were  
12 planning on doing it, since the amended stipulation  
13 was put in the binders as Exhibit 1.

14 EXAMINER PRICE: I know. I'm let down.  
15 Thank you. You may proceed.

16 Q. (By Mr. Sharkey) Mr. Jackson, do you have  
17 any correction to your direct testimony?

18 A. Yes, I do. On page 13, line No. 7, the  
19 sentence that starts similar -- "Similarly, all the  
20 debt at DPL is unsecured...." "Similarly" should be  
21 changed to "Substantially."

22 Q. Do you have any other corrections or  
23 changes?

24 A. I do not.

25 Q. If I asked you these questions would your

1 answers be the same?

2 A. Yes.

3 MR. SHARKEY: Your Honor, no further  
4 questions. I would tender Mr. Jackson for  
5 cross-examination.

6 EXAMINER PRICE: Thank you.

7 Mr. Michael, would you care to go first?

8 MR. MICHAEL: That would be fine, your  
9 Honor. Thank you.

10 - - -

11 CROSS-EXAMINATION

12 By Mr. Michael:

13 Q. How are you, Mr. Jackson?

14 A. I am doing well. Thank you.

15 Q. Good. DPL Inc., is in a financial  
16 crisis, correct?

17 A. The company DPL Inc., the company DPL  
18 Inc., has some debt issues that we are working  
19 through, correct.

20 Q. And DP&L, as a result of DPL Inc.'s  
21 financial crisis, is also in a financial crisis,  
22 correct?

23 A. Yes, that is correct.

24 Q. And the reason is because they can't pay  
25 their bills, correct?

1           A.    The reason that we are in the position  
2   that we are in right now is because of some of the  
3   challenges that we have with respect to our -- our  
4   debt and the cash load to be able to support the  
5   debt.

6           Q.    And the debt total is approximately 1.1  
7   billion, correct?

8           MR. OLIKER:  Objection.  Your Honor, I  
9   believe it's a little confusing exactly what we're  
10   talking about here in the last two questions.

11          EXAMINER PRICE:  Please restate your  
12   question, Mr. Michael.

13          Q.    Certainly.  Between DPL Inc., and DP&L,  
14   the debt is approximately 1.1 billion, correct?

15          A.    No, that's -- when you say between DP&L  
16   and DPL Inc., the total consolidated debt so DP&L  
17   plus the debt that sits at DPL Inc. is approximately  
18   1.8 billion.

19          Q.    Oh.  So it's more than the 1.1 billion.

20          A.    That's correct.

21          Q.    And approximately 780 million of that  
22   debt is as a result of the AES acquisition of DP&L,  
23   correct?

24          A.    AES acquired DPL Inc., and then DP&L is a  
25   subsidiary of DPL.

1           Q.    And 780 million of that \$1.8 billion debt  
2 is as a result of that acquisition, correct?

3           A.    When AES acquired DPL Inc. approximately  
4 1.2 billion of debt was placed on the parent company,  
5 DPL Inc.

6           Q.    And as of today, \$780 million is a result  
7 of that acquisition, correct?

8           A.    I would have to confirm what the exact  
9 amount is that remains at DPL Inc. I believe it is  
10 more than 780.

11          Q.    Okay. Is it -- can you ballpark it at  
12 all for me? Is it between 780 and \$1 billion?

13          A.    Yes, in that range.

14          Q.    Mr. Jackson, you are familiar with the  
15 SSR rider that Dayton Power and Light had, correct?

16          A.    In our previous?

17          Q.    Correct.

18          A.    Yes, I am.

19          Q.    And how much money did the SSR rider  
20 collect?

21          A.    The amount that had been approved was  
22 approximately \$110 million per year, I believe.

23          Q.    And how many years did DP&L collect that  
24 amount of money?

25          A.    We had collected that for, I believe it

1 was about 2-and-a-half years before the Supreme Court  
2 order came, came into effect.

3 Q. Okay. And currently in effect, is the  
4 RSC rider, correct?

5 A. I believe that's the correct terminology,  
6 but it was the rider from the prior ESP.

7 Q. Okay. And Dayton Power and Light  
8 collects about \$85 million under that rider, correct?

9 A. I don't believe that's correct. I think  
10 it's approximately 73 million on annualized basis.

11 Q. Okay. And how long, total, has Dayton  
12 Power and Light collected that \$73 million?

13 A. Since it -- I guess I don't understand  
14 the question. Since it was reinstated.

15 Q. Okay. During the entirety that Dayton  
16 Power and Light has collected the RSC, how many years  
17 is that?

18 A. I don't know off the top of my head.

19 Q. Is it more than five?

20 A. Again, I'm not sure the exact number of  
21 years.

22 Q. Okay. You agree, Mr. Jackson, that you  
23 don't sound like -- you don't soundly manage your way  
24 into a financial crisis, correct?

25 A. Can you repeat that question?

1 Q. Certainly. A company doesn't soundly  
2 manage itself into a financial crisis, correct?

3 A. I would agree with that.

4 Q. Okay. Has DP&L analyzed its management  
5 practices to come to some conclusion as to how it let  
6 itself get into a financial crisis?

7 A. There are, I believe, several factors  
8 that have contributed to where we are today. And  
9 you've noted a few of them in my testimony.

10 Q. Mr. Jackson, if I might just real  
11 quickly, we'll get to those factors here in a moment.  
12 But let me ask you a question --

13 MR. SHARKEY: Your Honor, I am going to  
14 object to the interruption of the witness.  
15 Mr. Jackson hadn't finished his answer.

16 EXAMINER PRICE: Objection sustained.  
17 Let him finish his answer and then you can follow-up  
18 or move to strike.

19 Go ahead and finish your answer,  
20 Mr. Jackson.

21 THE WITNESS: I was going to say there  
22 were several factors that have changed the outlook in  
23 a position to where we are today and I have noted  
24 those on page 8 of my testimony.

25 One of which was load growth, challenges



1 with load growth; the Supreme Court order which was  
2 related to moving us back to our ESP I rates through  
3 the series of events that occurred there; the changes  
4 in capacity pricing; and then, lastly, the  
5 continuation of depressed market prices for natural  
6 gas and subsequently power.

7 Q. Mr. Jackson, those four items are  
8 exogenous, if you will, to Dayton Power and Light's  
9 management practice, correct?

10 A. Those are all market-driven factors,  
11 that's correct.

12 Q. Okay. So my question is: Did Dayton  
13 Power and Light's management analyze its own  
14 practices, proceedings, management styles, and  
15 decision making as it relates to the financial crisis  
16 that it now finds itself in?

17 A. I would say we have looked at that and  
18 the company has taken several steps, several actions  
19 to address some of these issues. For example, I  
20 can't remember the exact year we ended up selling our  
21 interest in East Bend. We sold our interest in our  
22 retail businesses. And these were businesses that we  
23 felt, one, either weren't contributing from a  
24 positive cash flow standpoint or, two, were no longer  
25 core to the business. So I would say yes, in fact,

1 we do take proactive measures as a management team to  
2 address some of the challenges that we are faced  
3 with.

4 Q. And how much money do those asset sales  
5 generate?

6 A. So the -- the competitive retail -- sorry  
7 about that.

8 The competitive retail business, I  
9 believe, contributed approximately \$90 million, all  
10 in cash proceeds, including work capital.

11 And then East Bend, as another example, I  
12 can't remember the exact number but let's just say it  
13 was in the \$15- to \$20-million range. The  
14 longer-term benefit for East Bend though was the  
15 ongoing negative cash that it was having an impact on  
16 the business. So the cash we received upfront was  
17 one benefit, and then the elimination of negative  
18 cash flow on a going-forward basis.

19 Q. Do you recall roughly when those asset  
20 sales were?

21 A. The competitive retail -- sorry, this  
22 feels like it keeps going in and out. Competitive  
23 retail was over a two-year period. I believe we had  
24 just closed on the second one, officially January 1st  
25 or 2nd of 2016.

1 Q. And then what was the other one?

2 A. East Bend was prior to that. It was  
3 either in 2014 or maybe 2015. I can't remember the  
4 exact year.

5 Q. Okay. And DP&L is seeking the DMR rider  
6 to generate sufficient revenues so it can meet its  
7 debt obligations, correct?

8 A. That is correct.

9 Q. And it wants to generate enough revenue  
10 to meet those debt obligations to bolster its  
11 financial integrity, correct?

12 A. That is correct.

13 Q. Okay. If we can now turn, if we could,  
14 Mr. Jackson, to page 8 of your testimony and  
15 specifically lines 2 and 3. Are you there?

16 A. Yes, I am.

17 Q. And that's one of the reasons you  
18 identify in your testimony as to why DP&L and DPL  
19 Inc. currently find itself in a financial crisis,  
20 correct?

21 A. This is one of the factors driving the  
22 outlook, yes.

23 Q. Okay. And the reasons for anemic load  
24 growth are slow economic recovery and lower demand  
25 due to energy efficiency programs, correct?

1           A.    It's a combination of slow economic  
2 recovery and increased energy efficiency.

3           Q.    Okay.  And the load growth you are  
4 talking about is distribution load growth, correct?

5           A.    That is correct.

6           Q.    And it's true that distribution is a  
7 noncompetitive part of the electricity process,  
8 getting it to the retail consumer, correct?

9           A.    That's correct.

10          Q.    And Dayton Power and Light has a pending  
11 rate case right now, correct?  Distribution rate  
12 case?

13          A.    Yes, it does.

14          Q.    And it's asked to increase -- for an  
15 increase in its revenue in that distribution rate  
16 case, correct?

17          A.    Yes, it is.

18          Q.    And nothing in the amended stipulation  
19 would prevent Dayton Power and Light from filing a  
20 distribution rate case at any time during the ESP  
21 period, correct?

22          A.    That's correct.  And, in fact, our  
23 projections assume that there are future distribution  
24 rate cases and rate increases.  So that is captured  
25 in here.

1           Q.    If -- if and when the distribution rate  
2 case is approved, Dayton Power and Light will see a  
3 just and fair return on its investment as a result of  
4 that distribution rate case, correct?

5           A.    Can you repeat the question, please?

6           Q.    Certainly.  If and when the rate case is  
7 approved, whatever rate of return is authorized as  
8 part of that rate case, would lead you to conclude at  
9 that point that Dayton Power and Light is receiving a  
10 fair and reasonable return on investment of its  
11 distribution assets?

12          A.    Yes, pending the outcome of the  
13 proceeding, yes, you would assume that it would be a  
14 fair and reasonable outcome.

15          Q.    Dayton Power and Light owns transmission  
16 assets, correct?

17          A.    Yes, we do.

18          Q.    Okay.  And Dayton Power and Light does  
19 not claim it is earning an insufficient amount of  
20 revenue off of its transmission revenues, correct?

21          A.    That is correct.

22          Q.    And if it were claiming that, it would  
23 always have the opportunity to go to FERC for a rate  
24 case to increase transmission rates, correct?

25          A.    Yes, that is correct.

1 Q. And, currently, transmission costs are  
2 just a passthrough to Dayton Power and Light's retail  
3 distribution customers, correct?

4 A. Yes, that is correct. That is correct.

5 Q. And you don't any reason to believe,  
6 Mr. Jackson, that transmission revenues would be  
7 inadequate during the course of the proposed ESP,  
8 correct?

9 A. That is correct. I am not aware that  
10 it's -- transmission by itself is inadequate to cover  
11 its costs.

12 Q. Now, earlier, Mr. Jackson, when we were  
13 talking about the reasonings for point No. 1 on  
14 page 8, we mentioned energy efficiency programs.  
15 It's true that DP&L collects lost distribution  
16 revenues associated with energy efficiency programs  
17 that it offers, correct?

18 A. Yes, that is correct.

19 Q. Okay. I am going to move on to Item  
20 No. 2, Mr. Jackson. And that's the Supreme Court  
21 decision on the SSR, correct?

22 A. Yes, it is.

23 Q. And the 12-426-EL-SSO, you reference that  
24 in your direct testimony filed in this case, correct?

25 A. Yes, that is correct.

1 Q. And you actually testified in the 12-426  
2 case, correct?

3 A. That is correct.

4 Q. And you testified that DP&L needed the  
5 service stability rider because its ROE had been  
6 declining, correct?

7 A. That is correct, and for financial  
8 integrity.

9 Q. And the rationale for that testimony,  
10 Mr. Jackson, was increased customer shopping and  
11 declining capacity and wholesale power prices,  
12 correct?

13 A. Yes, I believe that was -- that's  
14 correct.

15 Q. And the increased customer shopping is a  
16 function of Ohio deregulating its generation service  
17 and, therefore, DP&L's retail customers can shop from  
18 whom they buy generation service, correct?

19 MR. SHARKEY: Your Honor, I am just going  
20 to object on relevancy grounds. He is  
21 cross-examining about a past case. I don't see how  
22 it's relevant to this case.

23 EXAMINER PRICE: Mr. Michael.

24 MR. MICHAEL: Well, there was a certain  
25 result reached in the case that Mr. Malinak

1 references in 12-426 for certain reasons. It's in  
2 his testimony. He specifically references it as one  
3 of the reasons why they need the DMR. So in order  
4 for the Commission to be able to understand past is  
5 prologue, and for me to evaluate Item No. 2 in his  
6 prefiled testimony, I think DP&L has opened the door  
7 for me to make some inquiries into it.

8 EXAMINER PRICE: We will give Mr. Michael  
9 a little leeway. Please proceed.

10 MR. MICHAEL: Thank you, your Honor.

11 EXAMINER PRICE: Is there a question  
12 pending?

13 MR. MICHAEL: No. I forget actually.

14 EXAMINER PRICE: I believe you asked a  
15 question and Mr. Sharkey objected.

16 MR. MICHAEL: Yes, he objected.

17 EXAMINER PRICE: Let's have the question  
18 back again.

19 (Record read.)

20 THE WITNESS: Yes, that is correct.

21 EXAMINER PRICE: Mr. Jackson, if you  
22 know, has retail shopping continued to increase over  
23 the last -- since the last time you testified before  
24 us?

25 THE WITNESS: So from the last time we --



1 before I testified before the Commission, shopping  
2 had increased. However, in that order, we  
3 transitioned to 100 percent market. So whether the  
4 customers have shopped or not, they are paying  
5 100 percent market rate at this point anyway.

6 EXAMINER PRICE: I understand that. I am  
7 just curious.

8 THE WITNESS: Yes, there had been  
9 increased shopping from that point in time.

10 EXAMINER PRICE: Thank you.

11 Thank you, Mr. Michael.

12 MR. MICHAEL: Thank you, your Honor.

13 Q. (By Mr. Michael) And this question will  
14 be unrelated to 12-426 as an initial matter, but you  
15 are aware, Mr. Jackson, that capacity prices are tied  
16 to generation, correct? Capacity service is a  
17 generation service?

18 A. Yes, I am aware of that.

19 Q. Okay. And you are also aware that  
20 declining wholesale power prices are also a  
21 generation service, correct?

22 A. Yes, I am aware of that.

23 Q. And those two reasons, declining capacity  
24 prices and declining wholesale power prices, were  
25 also part of your testimony in the 12-426 case as to

1 why DP&L needed the SSR, correct?

2 A. Yes. I had mentioned that in the prior  
3 case as well.

4 Q. Okay. I am going to move on to Item  
5 No. 3 now on page 8. Are you there?

6 A. Yes.

7 Q. Generation -- the capacity market is a  
8 competitive market, correct?

9 A. Yes, it is.

10 Q. In the electricity market, generation  
11 also is competitive, correct?

12 A. That is correct.

13 Q. And all else being equal, lower capacity  
14 prices will lead to less revenue for Dayton Power and  
15 Light's coal-fired generation, correct?

16 A. It will lead to less revenue, as of  
17 today, for DP&L, which includes the generation, yes.

18 Q. And same with lower energy prices, that  
19 lower energy prices would lead to less revenue for  
20 Dayton Power and Light's coal-fired generation,  
21 correct?

22 A. Yeah. And similar for DP&L and for the  
23 generation, yes.

24 Q. And your answers would be the same if  
25 DP&L had spun off its generation to, let's call it,

1 AES Ohio Generation, correct?

2 A. At that point then the revenues, yes,  
3 would be related to the generation which would then  
4 flow up to DP&L, Inc., not through the utility.

5 Q. But the revenues would be declining as a  
6 result of those lower capacity and electric wholesale  
7 prices, correct?

8 A. That's correct.

9 Q. Okay. I would like to turn to Item 4  
10 now, if I might, Mr. Jackson. It has to do with  
11 natural gas prices, correct?

12 A. That is correct.

13 Q. Okay. And it relates to low natural gas  
14 prices placing downward pressure on wholesale energy  
15 prices, correct?

16 A. Yes, that is correct.

17 Q. I am going to move on to another topic,  
18 at this point, Mr. Jackson, and I am going to talk to  
19 you a little bit about DPL Inc.'s subsidiaries, if I  
20 might.

21 Dayton Power and Light makes up about  
22 96 percent of DPL Inc.'s revenue, correct?

23 A. Today, I think it's in that ballpark.

24 Q. Okay. And the other subsidiaries of DPL  
25 Inc. are AES Ohio Generation, correct?

1 A. That is one of them, that's correct.

2 Q. And Miami Valley Lighting, correct?

3 A. That's correct.

4 Q. Excuse me. Miami Valley Insurance  
5 Corporation?

6 A. Yes.

7 Q. And are there any other subsidiaries?

8 A. There may be a few other small, but  
9 there's nothing really material going through those.

10 Q. The vast majority of DPL's increased  
11 revenue comes from DP&L, correct?

12 A. Yes, that is correct. I think it is in  
13 that same range we talked about earlier.

14 Q. Okay. So in the final analysis, DPL  
15 Inc.'s financial integrity is really dependent on  
16 DP&L's revenue generation, correct?

17 A. DPL Inc., yes, I mean it's largely  
18 dependent on DP&L, and to a lesser extent AES Ohio  
19 Generation as it exists today.

20 MS. HARRIS: Can I ask you to read back  
21 that question and response, please?

22 (Record read.)

23 Q. And -- I am going to move on to another  
24 topic now, Mr. Jackson. Based on your testimony, one  
25 of your main points is that the DMR would allow DPL

1 Inc. and DP&L to reach what you believe is an  
2 appropriate capitalization and FFO to debt ratio,  
3 correct?

4 A. That is correct.

5 Q. And if that's accomplished, you believe  
6 the credit rating agencies would not downgrade DPL  
7 Inc.'s credit rating, correct?

8 A. I think we would see, you know, potential  
9 improvement in the credit ratings, particularly at  
10 DPL Inc.

11 Q. And if the appropriate FFO to debt ratio  
12 were achieved, you believe that DP&L's credit rating  
13 wouldn't be reduced, correct?

14 A. That is correct.

15 Q. And as part of the proposed stipulation,  
16 the FFO to debt ratio plays no role in the  
17 \$105 million, correct?

18 A. Well, the way I think about it is  
19 obviously we want to achieve a certain FFO to debt  
20 range. I don't believe that the 105 will get us  
21 there. The company is going to have to take some  
22 action, some cuts, which could have an impact to  
23 reliability, in order for to us achieve a certain FFO  
24 to debt metric.

25 Q. I want to discuss with you a little bit

1 the tax sharing liability portion of the amended  
2 stipulation, if I could, please.

3 A. Sure.

4 MR. SHARKEY: Your Honor, let me object.  
5 Mr. Jackson is not testifying in support of the  
6 amended stipulation. His testimony addressed DP&L's  
7 as-filed case.

8 EXAMINER PRICE: Are these questions that  
9 are better left for Mr. Malinak?

10 MR. SHARKEY: Mr. Jackson does discuss in  
11 his testimony the tax sharing, so I am not suggesting  
12 that it's off limits. I am just suggesting questions  
13 about the amended stipulation aren't really best  
14 addressed to Mr. Jackson.

15 EXAMINER PRICE: Okay. We'll note your  
16 comment and we will -- we will take it one question  
17 at a time here.

18 MR. MICHAEL: Thanks, your Honor.

19 Q. (By Mr. Michael) It states in the stip  
20 that AES "will convert the entirety of the current  
21 and non-current DPL Inc. Tax Sharing Liabilities to  
22 an additional equity investment in DPL Inc...." You  
23 are familiar with that provision, Mr. Jackson?

24 A. I am. Do you happen to have an extra  
25 copy of the stipulation agreement?

1           Q.    Mine is marked up, so we are going to get  
2 a clean one real quick.

3           A.    Thank you.

4           EXAMINER PRICE:   Please give the witness  
5 a copy of the stip, Counsel, from Dayton Power and  
6 Light.

7           MR. MICHAEL:   Thank you, your Honor.

8           EXAMINER PRICE:   I would give you mine,  
9 but mine is marked up as well.

10          Thank you.

11          Please proceed, Mr. Michael.

12          MR. MICHAEL:   Thank you.

13          Q.    (By Mr. Michael) Okay.  I would draw your  
14 attention to page 3, Mr. Jackson.

15          A.    Yes, I'm there.

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

18          (Discussion off the record.)

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

21          Mr. Sharkey, at this time you would like  
22 something marked?

23          MR. SHARKEY:   Yes, your Honor.  We had an  
24 off-the-record discussion and as I told you off the  
25 record, we intend to offer the amended stipulation

1 and recommendation that was filed with the Commission  
2 on March 13, 2017, as Joint Exhibit 1. I intended to  
3 move it for -- move for admission of it with another  
4 witness, but since we are questioning Mr. Jackson on  
5 it, it will be marked now.

6 EXAMINER PRICE: It will be so marked.

7 Thank you.

8 (EXHIBIT MARKED FOR IDENTIFICATION.)

9 EXAMINER PRICE: Please proceed,

10 Mr. Michael.

11 MR. MICHAEL: Thank you.

12 Q. (By Mr. Michael) Mr. Jackson, to bring us  
13 back to where we left off, we are talking about  
14 page 3 and the provision in the proposed amended  
15 stipulation that provides that "the entirety of the  
16 current and non-current DP&L Inc. tax sharing  
17 liabilities to an additional equity investment in  
18 DPL Inc...." You are familiar with that provision,  
19 correct?

20 A. Yes, I am.

21 Q. Okay. Thank you. What period does the  
22 "current tax sharing liabilities" cover?

23 A. It would cover up to current day.

24 Q. Beginning when?

25 A. Beginning from the time the liabilities



1 began accruing, which would have been, I think we  
2 made our last tax sharing payment was in 2012, I  
3 believe. So it was from that point until current  
4 day.

5 Q. And what are the non-current,  
6 quote-unquote, tax sharing liabilities?

7 A. What we are referring to there is kind of  
8 what would have been available now versus, you know,  
9 we accrue a liability and then you pay it at a future  
10 date. So we are looking at both the current and  
11 non-current, but it's effectively what's sitting on  
12 the balance sheet as of today.

13 Q. So between the current and non-current,  
14 it's that -- from 2012 to today, that dollar value,  
15 whatever it is?

16 A. Yes, that's correct.

17 Q. And the -- this "equity investment," it  
18 will reduce -- will it reduce DPL Inc.'s debt?

19 A. So our -- as I had included in my  
20 original testimony and what our plan is, we are using  
21 that cash, keeping that cash within DPL to fund debt  
22 repayments, interest obligations, so on and so forth,  
23 yes.

24 Q. Okay. Were the -- I believe you said  
25 this earlier, but just to clarify: The tax payments

1 that should have been made from 2012, Dayton Power  
2 and Light has been accruing them as liabilities on  
3 its balance sheet?

4 A. DPL Inc.

5 Q. Correct. Thank you for correcting me. I  
6 knew it as soon as I said it. DPL Inc. has been  
7 accruing the tax sharing as a liability on its  
8 balance sheet.

9 A. That's correct.

10 Q. Okay. Now, let's go back to 2012 if we  
11 could, Mr. Jackson. AES Corporation could have made  
12 an equity investment regarding the tax sharing  
13 liabilities in 2012, correct?

14 A. Yeah, potentially yes, they could have  
15 done that, yes.

16 Q. And they could have in 2013 as well,  
17 correct?

18 A. They could have, but what they had done  
19 is we did not make a tax sharing payment in that  
20 period. So the liability did increase, but, in  
21 essence, the company was using that cash to repay  
22 debt.

23 Q. But it was also accruing the commensurate  
24 liability, correct?

25 A. The liability was accruing.

1 Q. Okay. So in 2013, AES could have made  
2 the equity investment by essentially waiving the tax  
3 sharing liability in that year, correct?

4 A. Yes.

5 Q. And they could have done the same thing  
6 for each year between 2014 and 2016, correct?

7 A. Yes. And, again, officially waiving it,  
8 yes; although, they had agreed to forego those tax  
9 sharing payments during that period of time.

10 Q. And DPL Inc. accrued the commensurate  
11 liability during that period of time.

12 A. That's correct.

13 Q. And had -- pardon me -- had AES Corp.  
14 made those equity infusions into DPL Inc., DPL Inc.'s  
15 balance sheet today would be better than it actually  
16 is, correct?

17 A. Our FFO to debt metrics would not be any  
18 different. Our capitalization, because, again, we  
19 would have had a little bit higher equity, our  
20 capitalization would have been a little bit better  
21 than what it is currently.

22 Q. And that would have translated into  
23 better opportunities to borrow more competitively,  
24 correct?

25 A. Unlikely not. I think the liability

1 today that we have on the books is probably around  
2 100 million. So not a significant amount. But I  
3 think the -- you have to remember the ability to  
4 borrow isn't based on where your metric is right now.  
5 It's the expectation of where it's going to be going  
6 forward. And, again, I continue to look at the FFO  
7 to debt as the key metric.

8 Q. Okay. So what would the FFO to debt have  
9 been had AES made equity infusions between 2012 and  
10 2016?

11 MR. SHARKEY: Your Honor, let me object.  
12 I believe that these numbers, including the number  
13 Mr. Jackson just quoted, may be confidential. I  
14 would like to ask Mr. Jackson to -- if they are, to  
15 so identify that for questions to be pushed off until  
16 the confidential section.

17 A. So the amount of the liability that's on  
18 the books today, that's public since we filed our  
19 10-K. And then any historical FFO to debt, someone  
20 could calculate based on information in the 10-K.

21 Q. So I think that means you can answer the  
22 question.

23 A. Yes. Can we repeat the question, please?

24 MR. MICHAEL: Certainly.

25 (Record read.)

1           A.    And this question was along the lines  
2   that they forgive the tax sharing liability?

3           Q.    Correct.

4           A.    The FFO to debt would not be any  
5   different because we kept the cash in-house and paid  
6   down debts.  Our FFO to debt already reflected us  
7   paying down that debt.

8           Q.    Yeah, but because you -- because DPL Inc.  
9   also carried the liability, wouldn't that then factor  
10  into the lack of change in the FFO to debt ratio?

11          A.    On a going forward basis, you know, their  
12  view of -- how much debt we would be able to pay  
13  down, it could have an effect.  I think the larger  
14  impact is going to be on your capitalization -- would  
15  have been on the capitalization ratio, which is your  
16  equity versus your overall debt.

17          Q.    And would you say the same thing then  
18  about the provision in paragraph 1.b. on page 3 of  
19  the amended stip?  That's not going to have that big  
20  of an impact on the FFO to debt ratio?

21          A.    On a going-forward basis?

22          Q.    Uh-huh.

23          A.    So 1.b., now we are looking forward, so  
24  they are forgiving the tax sharing payments that we  
25  would have -- that would occur during the ESP period

1 so that we have the ability to use that cash to pay  
2 down debt. So, yes, in the forecast period it would  
3 have a benefit.

4 Q. Okay. So, but it would have an equal and  
5 similar benefit had AES forgiven the 2012 tax  
6 liability, correct?

7 A. I guess I'm not following the line of  
8 questioning.

9 Q. Well, what I am trying to understand is  
10 in provision 1.b., AES is basically forgiving the  
11 liability, correct?

12 A. That's correct.

13 Q. Okay. And that is going to improve,  
14 based upon what you just said, on DPL Inc.'s  
15 financial outlook, correct?

16 A. It will help, yes, improve the financial  
17 outlook.

18 Q. Okay. And I want to know if AES had done  
19 the same thing in 2012 through 2016, would your  
20 answer be the same? It would have improved DP&L's  
21 Inc. outlook?

22 A. I will answer that similar to how I think  
23 I just answered. From an FFO to debt perspective, if  
24 you go back to where we were in 2012, now looking  
25 forward, we knew that AES was going to forgive the

1 tax liability; yes, at that point in time you would  
2 have said yes, that will improve your FFO to debt  
3 metric for the next three years. And then,  
4 obviously, from that point going forward.

5 Because AES did not -- DPL did not pay  
6 any tax sharing payments during that period, we were  
7 able to pay down debt; our FFO to debt metric did  
8 improve. They have now since agreed to forgive  
9 permanently the liability. On a going-forward basis  
10 from where we are today, that liability is forgiven  
11 and we are going to use that cash to pay down debt.

12 Q. Mr. Jackson, do you know if the tax  
13 sharing liability provision in the proposed amended  
14 stipulation will be in effect if and when DP&L seeks  
15 to extend the ESP -- pardon me -- the DMR?

16 A. It's my understanding that it will be in  
17 effect -- what we've agreed to and I think we've  
18 noted in here. Let's see. I believe it will be in  
19 effect at the time the order is -- order is approved.

20 Q. Okay. So if there is an extension of the  
21 DMR, the tax sharing provision would also be extended  
22 is your understanding.

23 A. The tax -- if it is extended for the  
24 additional two years?

25 Q. Correct.

1           A.    Yes.

2           Q.    Okay.

3           A.    Yes.    Just one clarification.    So it's  
4    tied to the term of the DMR.    So yes, if it's  
5    extended two years, it would be extended as well.

6           Q.    Mr. Jackson, you haven't quantified the  
7    impact a credit rating downgrade may have on DP&L's  
8    borrowing costs on an annual basis, correct?

9           A.    No.    I don't believe I have that.

10          Q.    And you are not aware of any such  
11    calculation having been done at DPL Inc., correct?

12          A.    I'm not -- not aware of it at the moment.

13          Q.    Okay.    And you are not aware of any such  
14    calculation having been done at DP&L, correct?

15          A.    That is correct.    One -- just one  
16    comment.    I would say without doing the calculation,  
17    a ratings downgrade does make it more expensive to go  
18    out in the market and borrow, whether you are  
19    tracking debt or really any type of capital.

20                MR. MICHAEL:    Your Honor, I move to  
21    strike that quote.    I asked the question and he  
22    answered it in full and that was editorial.    If  
23    Mr. Sharkey would like to take it up on redirect, he  
24    is able to.

25                Can I have the question and answer back



1 again, please?

2 (Record read.)

3 EXAMINER PRICE: Well, when you  
4 preference your comment with "just one comment,"  
5 regarding the motion to strike, the motion is  
6 granted.

7 MR. MICHAEL: Thank you, your Honor.

8 Q. Mr. Jackson, you have not quantified the  
9 impact of a credit rating downgrade on DP&L's  
10 borrowing costs on an annual basis, correct?

11 A. That's correct.

12 Q. And you are not aware of any such  
13 calculation being done at DP&L, correct?

14 A. Can you repeat that question? I thought  
15 that was the same question. I'm sorry.

16 (Record read.)

17 A. That's correct.

18 Q. I want to talk a little bit, if we could,  
19 Mr. Jackson, about the approximately 1.8 billion in  
20 debt between DPL Inc. and DP&L. You're not asserting  
21 that DP&L without the DMR would have insufficient  
22 cash available to service its debt, correct?

23 A. I'm sorry, can you repeat that?

24 Q. Certainly. You are not testifying that  
25 DP&L without the DMR would have insufficient cash

1 available to service its debt, correct?

2 A. What I am referring to in terms of the  
3 DMR is that DP&L may have -- if the debt at DPL Inc.  
4 cannot be serviced, which does rely on cash flow from  
5 DP&L, it may prevent us from meeting our debt  
6 obligations at the parent as well as being able to  
7 raise capital investments at DP&L.

8 MS. HARRIS: Your Honor, at this point, I  
9 just sort of have -- I would ask that you ask the  
10 witness to actually answer the question if he has a  
11 clarifying point. It makes it very unclear record to  
12 have to go back to get a "yes" or "no" and "I don't  
13 know" on the record.

14 MR. MICHAEL: I was going to clarify it  
15 with his deposition testimony, your Honor, but I  
16 certainly appreciate Ms. Harris's point.

17 EXAMINER PRICE: Why don't you proceed  
18 with your impeachment.

19 Q. (By Mr. Michael) Mr. Jackson, you had  
20 your deposition taken in December 2016, correct?

21 A. Yes, that's correct.

22 MR. MICHAEL: May I approach, your Honor?

23 EXAMINER PRICE: You may. Do you have  
24 copies for the Bench? No? That's fine.

25 MR. MICHAEL: I did do it double-sided to

1 preserve trees. I tell you what, I can stand up here  
2 with him and give you this one. Okay.

3 MS. WHITFIELD: We have a clean copy if  
4 you want ours.

5 EXAMINER PRICE: Thank you.

6 Thank you, Ms. Bojko.

7 MS. WHITFIELD: Volume I or Volume II?

8 MR. MICHAEL: This is Volume I.

9 MS. WHITFIELD: Okay. I have Volume II  
10 if you need it too.

11 Q. (By Mr. Michael) If I could draw your  
12 attention, Mr. Jackson, if I could, please, to  
13 page 41, specifically lines 12 through 16. And if  
14 you would let me know when you are there.

15 A. Yes, I'm here.

16 Q. Okay. I am going to read the question  
17 and answer and then I am going to ask you if I read  
18 it correctly.

19 "Question: And in your testimony you are  
20 not testifying that DP&L without the DMR would have  
21 insufficient cash available to service its debt,  
22 correct?"

23 "Answer: At the DPL level, that is  
24 correct."

25 Did I read that correctly?

1           A.    Yes, you did.

2           EXAMINER PRICE:  I do think we've left --  
3   as counsel pointed out, we have left the transcript a  
4   muddle here.

5           Okay.  Mr. Jackson one more time.  Are  
6   you testifying that Dayton Power and Light, without  
7   the DMR, would have insufficient capital --  
8   insufficient cash available to service Dayton Power  
9   and Light's debt?

10          THE WITNESS:  I believe without the DMR,  
11   Dayton Power and Light could service its existing  
12   debt.

13          EXAMINER PRICE:  Could service.

14          THE WITNESS:  Yes.

15          MR. MICHAEL:  Thank you, your Honor.

16          Q.    (By Mr. Michael) I wanted to talk, if I  
17   could, Mr. Jackson, a little bit about the AES Corp.  
18   acquisition of I guess it was first DPL Inc. I mean  
19   there was like a whole -- why don't you explain the  
20   AES acquisition of DP&L and how that transpired  
21   structurally?

22          A.    So -- so the acquisition occurred back in  
23   2000 -- I guess it was 2011, late 2011.  Effectively  
24   AES owns DPL Inc. which then owns, obviously, Dayton  
25   Power and Light, but they have 100 percent ownership

1 in DPL Inc.

2 Q. Okay. And as part of that acquisition --  
3 were you involved at the time in that acquisition,  
4 Mr. Jackson?

5 A. So, at that time, I was on the DP&L side  
6 of the transaction. So all the financing that was  
7 done at that point that was on the AES side, I was  
8 not necessarily involved in that process.

9 Q. Okay. All right. Are you aware that  
10 there were basically two pools of debt issued by AES  
11 in connection with that transaction?

12 A. There were a series -- series of debt  
13 that was issued. Some of which resides now at AES  
14 and some which resides at DPL Inc.

15 Q. Okay. And one of those pools was about a  
16 note that totaled about \$450 million, correct?

17 A. That is correct.

18 Q. Okay. And those notes were due in 2016,  
19 correct?

20 A. I would have to confer. Subject to check  
21 I think that's -- that's correct.

22 Q. And do you know if those notes were, in  
23 fact, paid off?

24 A. I believe as I -- again, I would have to  
25 confirm on the schedule. There's two tranches of

1 debt; one due in 2019 and one in 2021. But the 2019  
2 debt, I believe, was a refinanced debt that got moved  
3 in '19.

4 Q. And the other pool of debt was about  
5 800 -- \$800 million with notes that were due in 2021,  
6 correct?

7 A. That's correct.

8 Q. And upon consummation of the acquisition,  
9 DPL Inc. assumed 1.25 billion of debt that was issued  
10 by AES' Dolphin Subsidiary, correct?

11 A. That is correct.

12 Q. Is the amount -- has DPL Inc. paid off  
13 some of that debt?

14 A. There has been a portion that has been  
15 paid off. That was related to the debt that is now  
16 due in 2019.

17 Q. Okay. And how much has been paid off?

18 A. I believe there is approximately  
19 200 million remaining. So the 780 that's in 2021,  
20 plus the 200, gets us close to about a billion  
21 dollars.

22 MR. MICHAEL: Your Honor, might we  
23 approach the witness and have an exhibit marked OCC  
24 Exhibit 1?

25 EXAMINER PRICE: You may. It will be so

1 marked.

2 (EXHIBIT MARKED FOR IDENTIFICATION.)

3 Q. (By Mr. Michael) Mr. Jackson, can you  
4 please identify what has been previously marked as  
5 OCC Exhibit 1?

6 A. This one is not marked, but I am assuming  
7 it is. It's the Interrogatory 4-1. The question and  
8 response that we provided.

9 Q. And the interrogatory was propounded by  
10 another intervenor in this case, IGS, correct?

11 A. That is correct.

12 Q. And if you please, Mr. Jackson, turn to  
13 the last page of OCC Exhibit 1, you were the witness  
14 responsible for providing this answer to the  
15 interrogatory, correct?

16 A. That's correct.

17 Q. And in the interrogatory you summarized  
18 basically in writing what you just described to me  
19 orally as it relates to the acquisition price and how  
20 it was accomplished, correct?

21 A. We didn't necessarily talk about the  
22 acquisition price. We talked about the debt and how  
23 much debt got pushed down, yes.

24 Q. And that's reflected in writing in what  
25 we've marked as OCC Exhibit 1, correct?

1           A.    That's correct.

2           Q.    Okay.  I wanted to move on to another  
3 topic, if I could, Mr. Jackson.  SmartGrid.  And some  
4 of the functionality of some of these riders that are  
5 being proposed in the amended stipulation.

6                    The purpose of the DIR is to provide DP&L  
7 with revenue to maintain distribution reliability  
8 through incremental investments, correct?

9           A.    I believe that's correct.  I'm not the  
10 expert witness around the DIR or the SmartGrid.  Yes,  
11 that is correct.

12           Q.    Okay.  But I suppose, though, you are the  
13 CFO of DP&L, correct?

14           A.    That's correct.

15           Q.    And DPL Inc?

16           A.    That's correct.

17           Q.    And so, the revenues collected under the  
18 DIR would enable DP&L to make those infrastructure  
19 investments, correct?

20           A.    You would initially need to make the  
21 investments first before you could start getting  
22 recovery on them.  But, yes, once you start getting  
23 recovery, after you've made some initial investments,  
24 that cash can be used for further investment.

25           Q.    Okay.  And for the SmartGrid rider, the



1 revenue generated through the SmartGrid rider will  
2 help DP&L pay for its modernization to its  
3 distribution system, correct?

4 A. I would say similar to my prior response,  
5 you need the cash first to make the investment, but  
6 then, yes, once the investment is made, returns that  
7 you are getting on that can be used for future  
8 investment.

9 Q. And is both DIR and SmartGrid rider a  
10 return of and on?

11 A. Yes, that's my understanding.

12 Q. Okay. I want to go through, if we could,  
13 Mr. Jackson, some of your responsibilities in what I  
14 will describe as your dual role as CFO of DPL Inc.  
15 and DP&L. And assume for the purposes of my question  
16 that I am referring to your role in your capacity as  
17 CFO of DPL Inc. and DP&L, and if there is a  
18 difference in your roles, if you would point those to  
19 -- point those differences out to me, please.

20 Your responsibilities include tax-related  
21 matters, correct?

22 A. That is one of the responsibilities I  
23 have oversight for yes, that's correct.

24 Q. Internal auditing?

25 A. That's correct.

1 Q. Accounting?

2 A. Yes.

3 Q. SEC filings?

4 A. Yes.

5 Q. Does DP&L make independent SEC filings  
6 and by -- when I say "independent," I mean  
7 stand-alone SEC filings?

8 A. I'm sorry, did you say DP&L?

9 Q. Yes, I did.

10 A. Yes. DP&L makes stand-alone filings.

11 Q. Okay. And you would review those  
12 filings?

13 A. Yes.

14 Q. Okay. And does DPL Inc. make stand-alone  
15 SEC filings?

16 A. Yes, we do. It's a combined filing we  
17 make, but there are separate financial statements in  
18 separate filings for both within the combined SEC  
19 document.

20 Q. Okay. And AES Corp. makes SEC filings,  
21 correct?

22 A. Yes, that is correct.

23 Q. And are you involved in those SEC  
24 filings?

25 A. With respect to the information that's

1 coming from DPL, because DPL rolls up into AES's  
2 overall consolidation and SEC filings. So we do  
3 provide, you know, for example, various explanations  
4 on differences in results of operations for DPL may  
5 be reflected in some of AES's. So we provide some of  
6 that guidance.

7 Q. Okay. And once you provide that  
8 guidance, do you review AES's own SEC filings?

9 A. I do review AES's filings, not in  
10 totality, but as it's specific to the U.S. portion,  
11 because I have responsibility for the U.S.  
12 operations.

13 Q. Okay. So would that review including --  
14 would that include an awareness of AES Corp.'s U.S.  
15 net income?

16 A. That's correct. So I mentioned before I  
17 have responsibility for the U.S., so there is a U.S.  
18 market that is reflected in -- and the results are  
19 reflected in AES's overall SEC documents.

20 Q. Okay. You're familiar with a company  
21 called Value Line, correct, Mr. Jackson?

22 A. Yes, I am.

23 Q. And you would agree that Value Line  
24 publishes documents, among other things, called an  
25 "Investment Survey"?

1           A.    Yes, I am aware of that.

2           Q.    Okay.  And you agree that Value Line is a  
3 reputable publication within the financial community,  
4 correct?

5           A.    Yes, I would agree with that.

6           Q.    And you review Value Line investment  
7 surveys, from time to time, in your capacity as CFO,  
8 correct?

9           A.    It's infrequent.  Not -- not all the  
10 time, but I have looked at it in the past, yes.

11           MR. MICHAEL:  If we could approach, your  
12 Honor?

13           EXAMINER PRICE:  You may.

14           MR. MICHAEL:  I would like to have that  
15 marked as OCC Exhibit 2, your Honor.

16           EXAMINER PRICE:  So marked.

17           (EXHIBIT MARKED FOR IDENTIFICATION.)

18           Q.    Mr. Jackson, I am going to represent to  
19 you that what was previously marked as OCC Exhibit 2  
20 is an investor survey, dated March 24, 2017, and do  
21 you see that date in the lower right-hand corner?

22           A.    Yes, I do.

23           Q.    Okay.  And have you ever seen this  
24 particular investor survey before?

25           A.    I haven't read this particular one.  This

1 is the first time I am looking at it right now.

2 Q. But you recognize this as a Value Line  
3 investor survey?

4 A. Yes, I do.

5 Q. Okay. And this investor survey, like the  
6 previous investor surveys you have looked at,  
7 Mr. Jackson, include information on AES Corp.'s  
8 earnings, correct?

9 A. That is correct.

10 Q. And on AES Corp.'s dividends to its  
11 shareholders, correct?

12 A. Yes, that is correct.

13 Q. And this document also projects dividend  
14 growth, correct?

15 A. It does have a projection, yes, sir, in  
16 the '17 and '18 period.

17 Q. And if I could draw your attention,  
18 Mr. Jackson, to sort of the lower right-hand box  
19 where Mr. Butler's name appears. It's in the lower  
20 right-hand portion of that document.

21 A. Yes, I see that.

22 Q. And there is a bold heading there that  
23 says "AES continues to seek long-term power purchase  
24 agreements...to replace those that are expiring." Do  
25 you see that?

1           A.    Yes, I do.

2           Q.    And in the paragraph underneath that bold  
3 heading, Value Line discusses an acquisition that AES  
4 recently made, correct?

5           A.    I am just going to read it briefly.

6           Q.    Certainly.  Take your time.

7           A.    Yes, it does include the recent  
8 acquisition announcement.

9           Q.    And it appears as if the purchase price  
10 in that acquisition is -- well, not purchase price,  
11 but AES paid 853 million in cash and assumed  
12 724 million in non-recourse debt for FTP Power LLC,  
13 correct?

14                   MR. SHARKEY:  Your Honor, I am going to  
15 object.  The questioning regarding other uses by AES  
16 of cash acquisitions it's engaged in are wholly  
17 irrelevant to this proceeding.  This proceeding  
18 relates to the financial integrity of DPL and DP&L.  
19 So I would submit it's entirely irrelevant.

20                   EXAMINER PRICE:  Mr. Michael.

21                   MR. MICHAEL:  Certainly, your Honor.  
22 DP&L has come to the Commission to ask for no less  
23 than \$315 million of consumer money to pay for debt  
24 that was largely incurred at its parent company.

25                           In connection with that ask, the

1 Consumers' Counsel, the Office of the Consumers'  
2 Counsel thinks it's relevant that we continue on up  
3 the chain of ownership. If we are going to go to DPL  
4 Inc., DPL Inc. is owned by AES, to see what their  
5 financial wherewithal is.

6 And further, DP&L and the proponents of  
7 the proposed stipulation have trumpeted, with varying  
8 degrees of vociferousness, the contributions that AES  
9 Corp. is making of up to and including the tax  
10 sharing liability and waiving that.

11 So the company, the applicant in this  
12 case, has put AES and what it is doing and the  
13 financial wherewithal of DP&L's parents squarely at  
14 issue in this case. And, therefore, what AES is  
15 doing with its money is entirely relevant.

16 EXAMINER PRICE: Mr. Sharkey.

17 MR. SHARKEY: Yes, your Honor.

18 Initially, my understanding, Mr. Jackson  
19 wasn't the lead or principally involved in these --  
20 this matter, so I think it's, first of all, improper  
21 to be asking him about it.

22 More generally, your Honor, the ability  
23 and the finances of AES are not, I submit, relevant  
24 to this case. The case is about DP&L's ability to  
25 maintain its financial integrity. The effect that

1 DPL Inc. has on that, what AES is doing in a wholly  
2 separate and different transaction, starts to expand  
3 this case unnecessarily to matters that are just  
4 entirely irrelevant.

5 MS. HARRIS: Your Honor, to the extent I  
6 want to weigh in for future cross. The company has  
7 come here and asked for extraordinary relief that is  
8 outside the normal relief in a rate case. And as  
9 part of that relief, they have asked that you look at  
10 a company that is not subject to the jurisdiction of  
11 this Commission.

12 And so, I think its parent and its  
13 ability to spend \$800 million is wholly relevant to  
14 who should be dealing with the financial crisis faced  
15 by DPL Inc. And questions about that are relevant  
16 to who should ultimately have to fund the financial  
17 crisis faced by DPL Inc.

18 EXAMINER PRICE: Mr. Jackson, was your  
19 testimony earlier that DPL Inc. has not made a  
20 dividend payment to AES within the last several  
21 years?

22 THE WITNESS: Yes. We have not made one  
23 since I think 2012.

24 EXAMINER PRICE: So there is no way that  
25 AES is using DPL Inc. dividends to fund this



1 purchase; is that correct?

2 THE WITNESS: That's absolutely correct.

3 EXAMINER PRICE: Your objection on  
4 relevance is sustained.

5 MR. SHARKEY: Thank you, your Honor.

6 MR. MICHAEL: Your Honor, I may be at the  
7 end of my cross, but I would like 5 minutes, if I  
8 could, to talk with my co-counsel and just wrap  
9 things up, if you will.

10 EXAMINER PRICE: Let's take 10 minutes  
11 then. Let's go off the record.

12 (Discussion off the record.)

13 EXAMINER PRICE: Let's go back on the  
14 record.

15 You have a motion?

16 MR. LANDES: I do. I am Mark Landes here  
17 for the Board of County Commissioners of Adams  
18 County, Ohio. By working through capable counsel, we  
19 have reached a stipulation that the written testimony  
20 of Commissioner Brian Baldrige will stand as his  
21 testimony. And -- and the kind counsel here have  
22 agreed not to cross-examine him. So his written  
23 testimony can stand as his testimony for this  
24 hearing.

25 I understand that my brother, who

1 represents two townships and one school district in  
2 Adams County, the elected prosecuting attorney, has  
3 had the same conversations and stands in the same  
4 shoes, by your leave and by the leave of others who  
5 might find interesting cross-examination of two  
6 superintendents and two township trustees.

7 EXAMINER PRICE: I was looking forward to  
8 see them. Okay. Let's take these one at a time.  
9 You would like your testimony marked as Adams County  
10 Exhibit 1?

11 MR. LANDES: 1 is a good number.

12 EXAMINER PRICE: It will be so marked.

13 (EXHIBIT MARKED FOR IDENTIFICATION.)

14 EXAMINER PRICE: Any objection to the  
15 admission of Adams County Exhibit 1?

16 MR. McNAMEE: No.

17 EXAMINER PRICE: Hearing none, it will be  
18 admitted.

19 (EXHIBIT ADMITTED INTO EVIDENCE.)

20 MR. COLLIER: We would ask you mark  
21 Sprigg Township, Monroe Township, Manchester Local  
22 Schools, and Ohio Valley Local Schools as 2, 3, 4,  
23 and 5.

24 EXAMINER PRICE: For Adams County?

25 MR. COLLIER: They are all Adams County

1 entities.

2 EXAMINER PRICE: Okay. That works. That  
3 makes sense.

4 MR. COLLIER: But they are separate  
5 intervenors, your Honor.

6 EXAMINER PRICE: That's going to confuse  
7 the court. It confuses me. Let's go ahead and mark  
8 them each with their individual township name so we  
9 will mark Sprigg 1. And then what's the --

10 MR. COLLIER: Monroe Township.

11 EXAMINER PRICE: Monroe Township.

12 The next one?

13 MR. COLLIER: Manchester Local School  
14 District. Manchester, Ohio.

15 EXAMINER PRICE: And --

16 MR. COLLIER: And Adams County Ohio  
17 Valley Local Schools, West Union, Ohio.

18 EXAMINER PRICE: They will all be so  
19 marked.

20 (EXHIBITS MARKED FOR IDENTIFICATION.)

21 EXAMINER PRICE: Any objections to  
22 admission of Sprigg 1, Monroe 1, Manchester 1, and  
23 Ohio Valley Exhibit 1?

24 MR. McNAMEE: Staff has no objection.

25 EXAMINER PRICE: They will all be -- they

1 will all be admitted.

2 (EXHIBITS ADMITTED INTO EVIDENCE.)

3 EXAMINER PRICE: On your way out, if you  
4 would provide one copy for the court reporter, so  
5 that our record before the Supreme Court is complete,  
6 we would appreciate it.

7 Now we will go back off the record  
8 until --

9 MR. COLLIER: Your Honor, on the same  
10 issue, we have -- Citizens to Protect DP&L jobs has  
11 two witnesses, Michael P. Pell and Rick Adamson from  
12 Adams County. I have word from my client that they  
13 would agree to stipulate their testimony in; not come  
14 up for cross-examination.

15 So we would propose to mark Mr. Pell's  
16 direct testimony prefiled as Citizens Exhibit 1.

17 EXAMINER PRICE: So marked.

18 MR. COLLIER: And Mr. Adams' direct  
19 testimony as Citizens Exhibit 2. And we will move  
20 the admission of that direct testimony into evidence.

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

23 (EXHIBITS MARKED FOR IDENTIFICATION.)

24 EXAMINER PRICE: Any objection to the  
25 admission of Citizens Exhibit 1 and Citizens Exhibit

1 2?

2 MR. McNAMEE: Staff has no objection.

3 EXAMINER PRICE: Seeing none, those will  
4 be admitted.

5 (EXHIBITS ADMITTED INTO EVIDENCE.)

6 EXAMINER PRICE: If you could just make  
7 sure to leave a copy for the court reporter by the  
8 end of the day.

9 Okay. Now, we will go back off the  
10 record until 11:45.

11 (Recess taken.)

12 EXAMINER PRICE: Let's go back on the  
13 record.

14 Mr. Michael, further questions?

15 MR. MICHAEL: Yes, your Honor.

16 Q. (By Mr. Michael) Mr. Jackson, excuse me,  
17 I wanted to draw your attention -- we are going to  
18 stay in that same box, the right-hand column under  
19 the heading, "We look for the company to sell off  
20 more overseas assets." Do you see that?

21 A. Yes, I do.

22 Q. And there is a section in there that  
23 reads: "Second, the Trump administration is  
24 encouraging energy companies to do business in the  
25 U.S. with greater deregulation, and the possibility

1 of lower corporate taxes." Do you see that  
2 provision?

3 A. Yes, I do.

4 Q. The 105 million DMR includes taxes,  
5 correct?

6 A. It does include taxes, that's correct.

7 Q. Okay. And the stipulation doesn't  
8 provide for a reduction in the amount collected under  
9 the DMR in the event taxes are reduced under  
10 President Trump's leadership, correct?

11 A. That's correct.

12 Q. Would the company be amenable to  
13 including such a provision in the proposed  
14 stipulation?

15 A. No. And as you recall, we are retaining  
16 all tax payments within DPL, so the -- even if you  
17 made a reduction on the tax component, we would need  
18 to increase, I guess I will call it the pretax  
19 component. So the amount that we need is -- is  
20 greater than the 105, but what we stipulated to is  
21 the \$105 million, whether the taxes is -- the tax  
22 rate is reduced or not.

23 EXAMINER PRICE: I didn't understand that  
24 answer.

25 THE WITNESS: So the -- so the -- we are

1 retaining all the tax sharing payments.

2 EXAMINER PRICE: I understand that.

3 THE WITNESS: So there was a reduction in  
4 the tax rate. So if you looked at, like, different  
5 components of the DMR. So let's say it's 35 percent  
6 tax, I am just using round numbers as an example,  
7 let's just say it was \$80 million and the tax  
8 component was \$25 million. If the tax rate got  
9 reduced to such that the tax component was 15 million  
10 instead of 25, we would still need what was in the  
11 stipulated agreement. Since we are retaining all the  
12 cash to pay down debt, a reduction in the tax rate is  
13 going to be a reduction in our cash flow that we are  
14 going to need to pay down debt.

15 EXAMINER PRICE: Using your numbers, I am  
16 not sure the number is correct, using your numbers,  
17 \$80 million is -- is -- would be the what was left  
18 after you paid taxes; that would be your -- in your  
19 cash from operations; is that correct? "FFO" is  
20 funds from operations, that is cash, correct?

21 THE WITNESS: That's correct.

22 EXAMINER PRICE: So under current tax  
23 rates, you would have \$80 million available for FFO  
24 to debt ratio; is that correct?

25 THE WITNESS: That's correct.

1 EXAMINER PRICE: And if taxes were  
2 lowered so that instead of 25 million in taxes you  
3 were paying 50, wouldn't you have \$90 million  
4 available for FFO to debt?

5 THE WITNESS: And the reason I am saying  
6 no is --

7 EXAMINER PRICE: That's what I am looking  
8 for. First answer my question.

9 THE WITNESS: Our FFO to debt, let's just  
10 say the DMR was 105 total, our FFO would still be 105  
11 because we are not making any tax payments to AES.  
12 So that cash is still within -- within our  
13 calculation.

14 EXAMINER PRICE: Okay. This is "our"  
15 versus "we." Does Dayton Power and Light pay its  
16 share of taxes up to DPL?

17 THE WITNESS: Yes, it does. Okay. So  
18 for -- I was looking at it from a DPL Inc.  
19 perspective. I'm sorry. Yes, from DP&L there would  
20 be a change in the amount that it would have to pay  
21 up to DPL Inc. in terms of a tax sharing. So yes,  
22 your FFO would improve at DP&L.

23 EXAMINER PRICE: So in the event that  
24 there is a reduction in corporate tax rates, then  
25 Dayton Power and Light -- Dayton Power and Light's



1 FFO to debt would improve unless the Commission  
2 adjusted the DMR downward to account for that.

3 THE WITNESS: That's correct.

4 EXAMINER PRICE: Thank you.

5 Q. (By Mr. Michael) And following up on that  
6 same theme, Mr. Jackson, I wanted you to address  
7 though, in addition, if the corporate tax rate is  
8 decreased, and AES Corp. has to pay less taxes, would  
9 that increase the equity -- could that increase the  
10 equity infusion that AES Corp. could make?

11 A. So AES has agreed to converting the tax  
12 liability to the equity contribution and that's  
13 what's in the stipulated agreement. I can't speak to  
14 whether or not they would put additional money. My  
15 expectation is no at this point.

16 Q. Have you ever -- have you, as CFO, ever  
17 asked AES for additional equity infusion above and  
18 beyond the tax sharing?

19 MR. SHARKEY: I am going to object, your  
20 Honor. This, again, is getting into discovery as to  
21 AES which isn't subject to this Commission's  
22 jurisdiction, and we believe these questions are  
23 entirely irrelevant.

24 MR. MICHAEL: DPL Inc. isn't subject to  
25 this Commission's jurisdiction either, but we are

1 paying off their debt with consumer dollars, so.

2 EXAMINER PRICE: Let's not -- we've been  
3 having an even-keeled hearing so far. Let's not be  
4 argumentative.

5 In any event, he is asking what he knows  
6 as DP&L and DPL's CFO, so he can answer what he  
7 asked. He may not be able to answer what the answer  
8 was. So we are going to overrule your objection.

9 THE WITNESS: The only discussions we  
10 have had has been around the tax sharing and  
11 converting that to -- the tax liability to equity.

12 Q. Okay. Is there any reason why you  
13 haven't asked AES for additional equity infusion?

14 A. So AES has -- in my mind has already made  
15 a significant contribution to -- in the acquisition  
16 of DPL. They have not received, other than the one  
17 dividend payment I mentioned earlier as well as the  
18 one tax sharing payment, in my mind I think it's not  
19 reasonable to ask not only AES but really any outside  
20 equity investor to put in money into DPL when you  
21 know you are not going to get a return on that until  
22 at least 2022.

23 Q. But you are willing to ask consumers to  
24 pay for those, correct?

25 A. We have a stipulated agreement where we

1 are seeking the 150 million.

2 MR. MICHAEL: Move to strike, your Honor.  
3 I asked him that DP&L was willing to ask consumers to  
4 pay that money. And he referred to an answer that  
5 wasn't responsive to my question.

6 EXAMINER PRICE: Denied. It was fully  
7 responsive.

8 MR. MICHAEL: Okay. Thank you. I may  
9 have just a skosh of confidential, your Honor, but it  
10 will not be a lot, and I am through for the public  
11 version. Thank you, Mr. Jackson.

12 EXAMINER PRICE: Thank you.

13 - - -

14 CROSS-EXAMINATION

15 By Ms. Harris:

16 Q. Well, good afternoon, Mr. Jackson. My  
17 name is Carrie Harris. I am here on behalf of  
18 Wal-Mart and Sam's Club. I will refer to them as  
19 "Wal-Mart" collectively to the extent I do. I don't  
20 know that we have had a chance to meet.

21 A. Good afternoon.

22 Q. I am going to try to jump around to be  
23 efficient, but I want to start with sort of the very  
24 last statement I think you made which is that you  
25 have not requested a cash contribution or equity

1 infusion from AES because -- if I state incorrectly,  
2 please correct me, but you believe they have already  
3 made a significant contribution; is that correct?

4 A. I believe they have.

5 Q. And am I correct that when you testified  
6 earlier, under questioning from Mr. Michael, that the  
7 tax sharing has no impact on the FFO to debt; is that  
8 correct?

9 A. I'm saying if you looked at our FFO to  
10 debt, for example, in the ESP period, so just over  
11 the next several years, we are using that cash to pay  
12 down debt. So that will have an impact on the FFO to  
13 debt calculation in that period of time.

14 Q. So I just want to make sure the record is  
15 really clear. To the extent I ask a "yes"/"no" type  
16 question, if you will answer that first, so that the  
17 record is clear and then you respond, that would be  
18 super helpful, so I am going to ask again.

19 Did you testify earlier that the tax  
20 forgiveness does not, in and of itself, have any  
21 impact on the FFO to debt ratio?

22 A. The -- yes, that's correct. The tax  
23 forgiveness, that's correct.

24 Q. Okay. Thank you.

25 A. Yes.

1           Q.    And did you also testify that the FFO to  
2 debt ratio is what you believed to be the most  
3 important factor in the ability of DPL or DP&L to  
4 invest or to get investment?

5           A.    In my view, yes, I believe that's  
6 correct.

7           Q.    So then is it fair to say that simply  
8 forgiving taxes, in and of itself, does not address  
9 the issue that you believe that the entities that you  
10 are the CFO of has, which is their FFO to debt?

11          A.    Can you repeat that question, please?

12                   (Record read.)

13          A.    So I believe it has an impact. I think I  
14 need to clarify one thing from earlier. When I said  
15 that AES forgiving, permanently forgiving, is what I  
16 don't believe that has an impact on the FFO to debt.  
17 And the reason for that is I believe it's already  
18 captured in our ESP period.

19                   So if I go back to my original testimony,  
20 we had assumed we weren't making any tax sharing  
21 payments anyway. So that was naturally improving our  
22 FFO to debt. AES coming in and saying we are going  
23 to permanently approve that during that ESP period, I  
24 don't think that does any additional -- it doesn't  
25 have any additional benefit to the FFO to debt. It's

1 already factored in.

2 Q. And I think you also indicated some of  
3 the significant contributions that AES has made is  
4 not obtaining a dividend payment; is that correct?

5 A. That's correct.

6 Q. And I want to explore that a little bit.  
7 So from the perspective of DPL Inc., who, it's my  
8 understanding, doesn't have enough revenue to pay its  
9 debts; is that a fair recitation? Absent the DMR.

10 A. Absent the DMR, that's correct.

11 Q. So a company that doesn't have enough  
12 money to pay its creditors, could it ever make a  
13 dividend payment to its parent?

14 A. If it wasn't paying its creditors, yes, I  
15 would agree with you that we would not be making  
16 dividend payments up to the parent.

17 Q. So DPL Inc. cannot presently make  
18 dividend payments to AES without running afoul of  
19 issues with its creditors; is that fair?

20 A. Well, as of today, we are -- we are not  
21 in default and we are not behind any payments to our  
22 creditors. So, from that perspective, if we made a  
23 dividend payment up to AES, it wouldn't be in  
24 violation or we are not behind on payments to our  
25 creditors, I guess that's the point I am trying to

1 make.

2 I do agree that on a go-forward, if the  
3 expectation is you can't meet your debt payments,  
4 then certainly you wouldn't be making a dividend  
5 payment up to our parent.

6 Q. So if -- so I think you agree with me  
7 that DPL Inc. is not in a position to make a dividend  
8 payment today, correct?

9 A. I agree with that.

10 Q. Okay.

11 A. We are using all our cash to pay down  
12 debt.

13 Q. Okay. So assuming they can't, can you  
14 explain to me what AES is giving up by not receiving  
15 a dividend payment?

16 MR. SHARKEY: I am going to object, your  
17 Honor. She's asking assume they can't. He just  
18 testified they could.

19 MS. HARRIS: Your Honor, the record  
20 reflects itself. He says he agreed with me; they  
21 could not make a dividend payment right now.

22 EXAMINER PRICE: I think the record is  
23 very muddled as to what was the situation 2012, 2013,  
24 2014, 2015, 2016, versus what may be the situation  
25 going forward. I don't think he has ever testified

1 that they could not pay their debts in the years up  
2 until now, but they did not pay a dividend. I think  
3 he is testifying at some point in the future they  
4 will not be able to pay their debts and at that point  
5 they will not be able to pay the -- pay a dividend.  
6 So I think that's the source of the confusion.

7 Maybe if you want to rephrase your  
8 question to be more clear as to what's in the past  
9 versus going forward, we might get a better record.

10 MS. HARRIS: Sure.

11 Q. Well, to the extent there has been any  
12 confusion, I am not talking about the past. Other  
13 than to say that you agree that prior to today, from  
14 2012 to the present, DPL Inc. has not made a dividend  
15 payment to AES, correct?

16 A. We did make -- I think I note in my  
17 testimony there was a dividend payment that was made  
18 shortly after the acquisition.

19 Q. So since --

20 A. Since that point in time to today we  
21 haven't made any further dividend payments.

22 Q. So from 2012 to today you have not made a  
23 dividend payment.

24 A. That's correct.

25 Q. Okay. So I'm talking about today. And I



1 am asking if you are in a position, without factoring  
2 in DMR dollars, able to make a dividend payment to  
3 AES?

4 A. We would not be making a dividend payment  
5 to AES, no. I mean, yes, I agree with you, we would  
6 not be in a position to make a dividend payment.

7 Q. So then --

8 A. Going forward.

9 Q. -- as to my next question, if you are not  
10 in a position today to make a dividend payment to  
11 AES, what is AES giving up by not receiving a  
12 dividend payment?

13 A. AES is giving up -- and further, I would  
14 say the dividend payment is a six-year commitment.  
15 So I can't sit here today and tell you that in  
16 2020 -- in the sixth year that we would not be in a  
17 position to make a dividend payment. So certainly I  
18 do think there could be a point in the future that  
19 we're in a position to make a dividend payment.

20 MS. HARRIS: I am going to move to strike  
21 that entire response that was not related to my  
22 question about today.

23 EXAMINER PRICE: Granted.

24 Mr. Sharkey can follow-up with you if you  
25 want to make that answer on redirect. Go ahead and

1 answer the question as presently pending.

2 MS. HARRIS: And I am happy to rephrase.

3 MS. BOJKO: Your Honor, may I ask the  
4 witness, instead of "we" and "you," start using  
5 "DP&L" or "DPL Inc." because I think all these  
6 questions will very muddled with that.

7 EXAMINER PRICE: That's actually correct.  
8 I would also like to, although I am not going to  
9 reject the use of "DP&L", it will be best if people  
10 just said "Dayton Power and Light" if they mean the  
11 utility, and "DPL" if they mean the holding company,  
12 and of course "AES." I think that's a very good  
13 point, Ms. Bojko.

14 MS. BOJKO: Thank you.

15 Q. (By Ms. Harris) I think the whole  
16 premise, and I believe I clarified in the beginning,  
17 they are all DPL Inc. questions. So my question to  
18 you is: If you agree with me that, today, DPL Inc.  
19 cannot made a dividend payment to AES, what is AES  
20 giving up by not receiving a dividend payment?

21 A. Just the option for a future dividend  
22 payment. But other than that, I agree with you.

23 Q. So you agree that, today, it's nothing  
24 that they are giving up.

25 A. They have given up the option for a

1 future dividend payment. That's what they have given  
2 up.

3 Q. So I think that under some questioning  
4 from Mr. Michael, you indicated that there is  
5 approximately 1.8 consolidated -- 1.8 billion in  
6 consolidated debt between Dayton Power and Light and  
7 DPL Inc.; is that correct?

8 A. That is correct.

9 Q. And approximately 1 billion of that is  
10 related to the acquisition of Dayton Power and Light  
11 by AES; is that correct?

12 A. The acquisition of DPL Inc. by AES.

13 Q. Of which 97 percent of that is the  
14 utility.

15 A. From a revenue standpoint, correct.

16 Q. And so, subject to check, would you agree  
17 with me that 55 percent of the debt is that  
18 acquisition of DPL Inc.?

19 A. The --

20 Q. Of the total debt. If 1 billion of the  
21 debt is related to the acquisition of a total debt of  
22 1.8, would you agree, subject to check, that's  
23 approximately 55 percent of the total debt?

24 A. Yes.

25 Q. And this is a hypothetical, so I am sure

1 Mr. Sharkey will not like it.

2 MR. MICHAEL: He lives in a hypothetical  
3 world, so maybe he will.

4 Q. Sir, I want you to hypothesize that  
5 rather than having placed that 1 billion in debt at  
6 the DPL Inc. level, that AES had retained that debt.  
7 Do you understand my hypothetical?

8 A. Yes, I do.

9 Q. If what we were left with is \$800 million  
10 in consolidated debt, would it be your position that  
11 there is a financial crisis?

12 MR. SHARKEY: I will object, your Honor.  
13 I believe that is speculative in nature as to what  
14 the state of financial situation would be at DP&L and  
15 DPL Inc. Certainly, there is a lot of questions that  
16 would still need to be answered as to what the  
17 financial status of DPL Inc. and DP&L would be.

18 EXAMINER PRICE: If she asked the  
19 question without the prefatory "assumed that AES  
20 retained the debt," she simply asked him if he --  
21 what the situation would be if they only had \$800  
22 million in debt, would you object to that?

23 MR. SHARKEY: Perhaps not, your Honor.

24 EXAMINER PRICE: Why don't you rephrase  
25 your question.

1           Q.     (By Ms. Harris) If DPL Inc. and Dayton  
2 Power and Light only had consolidated debt of  
3 \$800 million, would it still be your opinion that  
4 they are in a financial crisis?

5           A.     Not like we are in today, but there still  
6 would be a need, as we are trying to get down to a  
7 50/50 capitalization ratio for DP&L, but certainly  
8 not to the extent that we are in today.

9           Q.     And do you believe that you would still  
10 require a DMR?

11          A.     It's possible. I would have to review  
12 that, but it's possible.

13          Q.     And under the stipulation, are you aware  
14 as to what level you expect your debt to be at the  
15 end of the stipulation period?

16          A.     So we are -- we expect the capitalization  
17 of Dayton Power and Light to be at 50/50 by the end  
18 of the ESP period.

19          Q.     I'm sorry, I apologize, I didn't mean the  
20 capitalization. I meant specifically you are at 1.8  
21 billion in debt and you expect to pay it down to what  
22 level? To what amount?

23          A.     So assuming the additional two years,  
24 let's just say the five years, we are at 1.8 today,  
25 we would anticipate to be in the 1.2 to 1.3 range.

1 1.2 billion to 1.3 billion. I think your question  
2 was --

3 Q. So you would expect --

4 MR. SHARKEY: Your Honor, can I  
5 interject? I wanted to make sure whether that number  
6 is confidential from Mr. Jackson.

7 EXAMINER PRICE: Mr. Jackson, is that  
8 number confidential?

9 THE WITNESS: I mean, in my mind  
10 everybody sees this size of the DMR, they can do the  
11 math, and that's --

12 MR. SHARKEY: Thank you, your Honor. I  
13 just wanted to check.

14 EXAMINER PRICE: Thank you.

15 Q. (By Ms. Harris) So you would expect to  
16 reduce the total debt 40 percent?

17 A. Yeah, I believe that's approximately  
18 correct.

19 MR. ALEXANDER: Your Honor, could I ask  
20 Ms. Harris to use a microphone, please.

21 MS. HARRIS: Sure.

22 EXAMINER PRICE: Yes.

23 Q. So I want to go back, I think you and  
24 Mr. Michael spent a couple of minutes on page 8 of  
25 your direct testimony, if we could turn back there.

1 I think that you've described the items at A.,  
2 subparts 1 through 4, as market-driven forces. And I  
3 think that Mr. Michael asked you what steps has  
4 management taken, and I think that you indicated, and  
5 I'm sort of reciting from memory here, some sales  
6 that you all made in effort to free up some cash. Is  
7 that an accurate description of your earlier  
8 testimony?

9 A. Yes, that's correct.

10 MR. SHARKEY: I would object, your Honor.  
11 It's compound.

12 EXAMINER PRICE: Rephrase, please.

13 Q. Mr. Jackson, do you recall your testimony  
14 about the four subparts on page 8 of your direct  
15 testimony?

16 A. Yes, I do.

17 Q. Do you recall discussing those are  
18 market-driven forces?

19 A. Yes, I do.

20 Q. Do you recall Mr. Michael asking you if  
21 management decisions had been made to address the  
22 financial crisis?

23 A. Yes, I do.

24 Q. Do you remember stating that you all had  
25 taken some steps to free up cash?

1           A.    Yes, I do.

2           Q.    In your role as the CFO of DPL Inc. and  
3 Dayton Power and Light, is it your job responsibility  
4 to frequently forecast the finances of those two  
5 companies?

6           A.    Yes, it is.

7           Q.    And as I look at these factors, 1 through  
8 4, I want to direct your attention to No. 4. Do you  
9 have any opinion as to whether the low natural gas  
10 prices are a new phenomenon or a phenomenon that has  
11 been ongoing for more than the recent past?

12          A.    It's been ongoing for several years.

13          Q.    So as you were forecasting finances,  
14 would it make sense for the CFO to take into account  
15 these historically low prices?

16          A.    So when we look at -- I am looking more  
17 forward at this point. So it's based on where -- I  
18 think as indicated in Mr. Crusey's testimony, the  
19 forward projections of pricing for gas and for  
20 other --

21                   EXAMINER PRICE: I don't think  
22 Mr. Crusey's testimony is going to be admitted.

23                   THE WITNESS: Yes, but we look more  
24 forward --

25                   MR. SHARKEY: That's correct, your Honor.



1           Q.    And I don't require his testimony.  I  
2   guess my point to you is that it's your job to look  
3   at factors as they are present day and to forecast  
4   into the future, correct?

5           A.    That is correct.

6           Q.    And so, if we are looking at the  
7   decisions that have been made today or in the future,  
8   do we need to look at management decisions as a  
9   whole, at either DPL or DP&L Inc., and ask whether  
10  those have had an impact on the financial crisis?

11          A.    Can you repeat that question, please?

12          Q.    Sure.  I'll rephrase it.

13                I think that what you have suggested here  
14  on page 8 are market-driven forces.  And I am asking  
15  are there other factors, other than market-driven  
16  forces, that have contributed to the financial  
17  crisis?

18          A.    Not that I am aware of.

19          Q.    So -- so that I understand your  
20  testimony, you are stating that the financial crisis  
21  is due entirely to market-driven forces?

22          A.    These are what we consider to be the key  
23  factors that have driven the outlook for the company  
24  and the financial condition the company is in  
25  currently, yes.

1           Q.    You and I just talked a second ago about  
2 the 1 billion in debt that's held at DPL related to  
3 the AES acquisition, correct?

4           A.    Yes.

5           Q.    And that is -- I am going to simplify it,  
6 that's the purchase price, correct?

7           A.    No.

8           Q.    Not the total purchase price, but it is  
9 part of the purchase price of DPL Inc.; is that fair?

10          A.    Yes, yes, that's correct.

11          Q.    So if AES overpaid for DPL Inc., that is  
12 not a market-driven force, is it?

13          A.    I struggle with the "overpaid." I mean,  
14 you can look back and kind of "Monday morning  
15 quarterback" the transaction, but I think at the time  
16 of the deal I think it was a reasonable -- the market  
17 looked at it as a reasonable price.

18          Q.    And I guess that's why I am asking about  
19 these market-driven forces, because we are looking at  
20 things like the historically-low natural gas prices.  
21 And as you are forecasting those things, what I am  
22 trying to understand is whether part of the factors  
23 that you need to consider should include the price  
24 paid for DPL by AES.

25                   And is it my understanding -- am I

1 understanding you correctly that you don't think  
2 that's a factor that is included in determining the  
3 financial crisis faced by DPL Inc. and Dayton Power  
4 and Light?

5 A. I am looking at the things that have been  
6 noted here, things that have occurred over the past  
7 several years. These are the most -- in my view the  
8 most significant drivers impacting DPL and DP&L.

9 Q. So your answer to my question is "no"; is  
10 that correct?

11 A. That's correct.

12 Q. Do you agree with me that the DMR is  
13 relief that is not ordinarily available to a utility?

14 MR. SHARKEY: Objection. Calls for a  
15 legal conclusion, your Honor.

16 EXAMINER PRICE: Are you a lawyer,  
17 Mr. Jackson?

18 THE WITNESS: I am not.

19 EXAMINER PRICE: Well done.

20 Nonetheless, we are going to overrule the  
21 objection. I think that she is asking Mr. Jackson  
22 the question in terms of his experience as a  
23 regulatory expert in this state and not as to whether  
24 it is or is not legal and his knowledge of what the  
25 Commission has and has not done in this state. So

1 overruled.

2 MS. HARRIS: That's correct, I am not  
3 seeking a legal conclusion.

4 A. I am sorry, can you just repeat the  
5 question one more question?

6 Q. Let me just ask you a couple more  
7 questions. Are you familiar with what I am going to  
8 call the "traditional regulatory compact" which is,  
9 as a utility, you are providing a public service and,  
10 in exchange, you are entitled to receive a reasonable  
11 return on your investment? Are you familiar with  
12 that concept?

13 A. Yes, I am.

14 Q. Is the DMR typically considered in that  
15 traditional regulatory compact?

16 A. No, I don't believe it is.

17 Q. Is it linked in any way to cost causation  
18 principles?

19 A. No, I do not believe so.

20 Q. So is it fair to say that -- and I am  
21 going to use the collective "we" here since that's  
22 how the case has been filed or "you" being DPL and  
23 Dayton Power and Light, that the traditional  
24 regulatory compact is insufficient for you all to  
25 continue to provide safe and reliable electric

1 service in Ohio?

2 A. I believe that is correct.

3 MS. HARRIS: I don't have any other  
4 questions.

5 EXAMINER PRICE: Thank you.

6 Any other questions for this witness?

7 MR. COLLIER: I understand Sierra Club  
8 has no questions.

9 EXAMINER PRICE: Pardon me?

10 MR. WANNIER: That's correct.

11 MR. COLLIER: We have no questions.

12 EXAMINER PRICE: Mr. Michael, do you  
13 still have some confidential questions?

14 MR. MICHAEL: Yes, very briefly.

15 EXAMINER PRICE: We will go on to the  
16 confidential.

17 MR. ALEXANDER: Your Honor, do you want  
18 to circle the room? I don't have any questions, but  
19 I didn't know if you wanted to circle the room and  
20 clarify.

21 EXAMINER PRICE: It was my understanding  
22 all the proponent counsel did not have questions for  
23 this witness. So I was jumping ahead without going  
24 through the room, but I'll do better next time.

25 Mr. McNamee, do you have any questions

1 for this witness?

2 MR. McNAMEE: No, I do not.

3 MR. SHARKEY: Your Honor, I would have  
4 redirect.

5 EXAMINER PRICE: No, no. We are going to  
6 do the confidential direct and then on to redirect,  
7 public and then confidential.

8 Okay. So, at this time, we will go into  
9 the confidential portion of our transcript. If  
10 anybody does not have a confidentiality agreement or  
11 is not a member of the staff, can please exit the  
12 room.

13 (CONFIDENTIAL PORTION EXCERPTED.)

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(OPEN RECORD.)

EXAMINER PRICE: Mr. Sharkey, redirect?

MR. SHARKEY: Yes, your Honor.

- - -

REDIRECT EXAMINATION

By Mr. Sharkey:

Q. Mr. Jackson, can you describe the effect upon DP&L that would occur if the Commission were to deny a DMR to DP&L?

MS. HARRIS: I am going to object. I think that's outside the scope of any questioning.

EXAMINER PRICE: Mr. Sharkey?

1 MR. SHARKEY: Your Honor, there was  
2 extensive questioning about the effect upon the  
3 respective entities in the event DP -- in the event  
4 the Commission were to deny the DMR, including upon  
5 whether DP&L could, for example, pay its debts. That  
6 was a very specific question.

7 EXAMINER PRICE: Yeah. The objection is  
8 overruled.

9 A. Yes. I think there are a few things.  
10 One, I had mentioned earlier that I don't believe  
11 DP&L would be able to get to the 50/50 capitalization  
12 structure. So I do believe that absent the DMR, DPL  
13 could service its debt, which means it could meet its  
14 interest obligations.

15 On top of that, if we didn't get the DMR,  
16 there is risk that the parent, DPL Inc., does not  
17 have the ability to meet its obligations which means  
18 it may require some rationalization of the CAPEX at  
19 the utility, and OPEX, operating expenditures, so  
20 that could have an impact on service quality

21 Q. There was some questions posed to you  
22 about how DP&L would fund the SmartGrid rider and the  
23 DIR. Can you explain how those would be funded and  
24 whether they could be funded in the absence of the  
25 DMR?



1           A.     So we would -- in order to fund the  
2 capital required for a SmartGrid program or  
3 investments that would roll through the DIR, we would  
4 need to access the capital markets to do so. We are  
5 not in a position to do that today.

6           The DMR will enable us to pay down debt  
7 to put us in a position in the future to be able to  
8 access the debt and equity markets. But where we are  
9 today, we are not in a position to be able to access  
10 capital to fund SmartGrid and DIR.

11          Q.     There was some questions asked to you  
12 regarding the debt that was taken on by DPL Inc.  
13 associated with the AES transaction. Do you know  
14 whether taking on of that debt was approved by the  
15 Commission?

16          A.     Yes, that was approved by the Commission.

17          Q.     There were also some questions asked to  
18 you about the tax sharing contribution and, in  
19 particular, AES's agreement not to collect tax  
20 sharing payments from DPL Inc. Can you explain why  
21 that is a benefit to DPL Inc. and to DP&L?

22          A.     So the immediate benefit is it's a  
23 contribution to equity, which when you look at our  
24 capitalization, so that's our total debt and total  
25 equity which adds up to our total capitalization, it

1 will have a significant improvement to the  
2 capitalization ratio.

3 MR. SHARKEY: Thank you, Mr. Jackson.

4 Thank you, your Honor. I have got no  
5 further questions for Mr. Jackson.

6 EXAMINER PRICE: Any proponent intervenor  
7 witnesses have questions -- recross for this witness?

8 Recross, Mr. Michael?

9 MR. MICHAEL: No, your Honor.

10 EXAMINER PRICE: Ms. Harris?

11 MS. HARRIS: Quick question.

12 - - -

13 RECROSS-EXAMINATION

14 By Ms. Harris:

15 Q. I think Mr. Sharkey just asked you about  
16 things that would happen absent the DMR. Do you  
17 recall that line of questioning?

18 A. Yes, I do.

19 Q. Is it your position that only the DMR  
20 could get you all to a 50/50 structure?

21 A. I don't see us getting to the 50/50  
22 structure without the DMR. I don't see another path  
23 at this point.

24 Q. But isn't it true that AES could give you  
25 all an outright capital infusion?

1           A.    Yes, I guess in theory that is correct.  
2    Again, I think they are making a significant equity  
3    contribution through the forgiveness of the tax  
4    sharing liabilities.

5           MS. HARRIS:  I am going to move to strike  
6    everything after "that is correct."

7           EXAMINER PRICE:  Motion to strike will be  
8    granted.

9           Q.    But you have not requested an infusion of  
10   equity from AES, correct?

11          A.    That is correct.

12          MS. HARRIS:  No further questions.

13          EXAMINER PRICE:  I only have a couple of  
14   questions, maybe only one.

15                Can you turn to page 10 of your  
16   testimony.  Line 7.  However we got here,  
17   transactions in the past aside, you currently have a  
18   covenant package which precludes you from raising  
19   debt to modernize your transmission and distribution  
20   infrastructure; is that correct?

21          THE WITNESS:  That is correct.

22          EXAMINER PRICE:  And as part of that  
23   covenant, does that include any advanced metering,  
24   any -- I am not -- does that include any advanced  
25   metering?

1 THE WITNESS: This covenant really  
2 prevents us from raising any debt at all, whether  
3 it's for advanced metering or SmartGrid, so on and so  
4 forth. We don't have the ability to raise debt at  
5 DP&L.

6 EXAMINER PRICE: Any grid modernization?

7 THE WITNESS: Correct.

8 EXAMINER PRICE: And so, again, this  
9 covenant package is in place because you were  
10 downgraded.

11 THE WITNESS: Because we were downgraded  
12 given the uncertainty at that time around the outcome  
13 in this proceeding, the Supreme Court order that had  
14 come down, we were forced to go to the high-yield  
15 market to issue this debt. As part of that debt that  
16 we issued, this covenant package was required.

17 EXAMINER PRICE: Thank you. That's all I  
18 have.

19 THE WITNESS: Thank you, your Honor.

20 EXAMINER PRICE: You are excused.

21 THE WITNESS: Thank you.

22 EXAMINER PRICE: Mr. Sharkey.

23 MR. SHARKEY: Yes, your Honor. Ready for  
24 my next witness?

25 EXAMINER PRICE: Move admission of your

1 exhibits.

2 MR. SHARKEY: Oh. Yes, your Honor. We  
3 would move for admission of DP&L Exhibits 1A and 1B.

4 EXAMINER PRICE: Any objection to  
5 admission of DP&L Exhibits 1A and 1B? Seeing none,  
6 they will be admitted.

7 (EXHIBITS ADMITTED INTO EVIDENCE.)

8 EXAMINER PRICE: Mr. Michael.

9 MR. MICHAEL: We move for the admission  
10 of OCC Exhibits 1 and 2.

11 EXAMINER PRICE: Any objection to the  
12 admission of OCC 1 and 2?

13 MR. SHARKEY: No objection, your Honor,  
14 as to Exhibit 1. DP&L objects to the admission of  
15 Exhibit 2. We believe it's irrelevant and thus  
16 should not be admitted, your Honor, for the reasons  
17 we have already argued in the record.

18 EXAMINER PRICE: Mr. Michael, care to  
19 respond?

20 MR. MICHAEL: Yeah. I mean, there was a  
21 lot of questioning above and beyond the one narrow  
22 thing that Mr. Sharkey just mentioned. You know,  
23 this is a document that Mr. Jackson said, you know,  
24 he was familiar with Value Line. He regularly -- he  
25 looked at their investor surveys. It reflected a

1 variety of different financial aspects that was going  
2 on with the company.

3 We also got into the tax issue as relates  
4 to whether or not the 105 million includes taxes. If  
5 there was a reduction in taxes as this investment  
6 survey forecast, would, you know, the DMR be reduced.

7 Even your Honor had some questions on  
8 that subject matter. So I think given the breadth of  
9 the questioning and answers and even questions from  
10 your Honor, that OCC Exhibit 2 should be admitted.

11 EXAMINER PRICE: We are going to go ahead  
12 and admit this exhibit. I believe the Commission  
13 will understand the objections raised by the company  
14 and accord it its due weight at that point.

15 MR. SHARKEY: Thank you, your Honor.

16 (EXHIBITS ADMITTED INTO EVIDENCE.)

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

18 (Discussion off the record.)

19 EXAMINER WALSTRA: Go back on the record.

20 Now you may call your witness.

21 MR. SHARKEY: Your Honors, the Dayton  
22 Power and Light Company would call Jeff Malinak.

23 (Witness sworn.)

24 EXAMINER WALSTRA: Thank you. You may be  
25 seated. Please state your name and address for the

1 record.

2 THE WITNESS: Robert Jeffrey Malinak,  
3 10723 Normandy Drive, Potomac, Maryland 20854.

4 EXAMINER WALSTRA: Thank you.

5 - - -

6 ROBERT J. MALINAK

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

9 DIRECT EXAMINATION

10 By Mr. Sharkey:

11 Q. Mr. Malinak, do you have before you a  
12 copy of your confidential direct testimony in support  
13 of the amended stipulation and recommendation?

14 A. I do.

15 MR. SHARKEY: And, your Honor, we would  
16 identify as DP&L Exhibit 2A the confidential version  
17 of Mr. Malinak's testimony, and Exhibit 2B the public  
18 version of Mr. Malinak's testimony.

19 EXAMINER WALSTRA: So marked.

20 (EXHIBITS MARKED FOR IDENTIFICATION.)

21 Q. Mr. Malinak, do you have any corrections  
22 or changes to your testimony?

23 A. Yes.

24 Q. Can you please identify them?

25 A. Yeah. There's three minor corrections.

1 In the record footnote 33B currently cites a website  
2 "dpandl.com/about-dpl/who-we-are/economic-  
3 development." It should be "dpandl/about-dpl/who-we-  
4 are/the-basics." Okay. So the website reference  
5 is -- was wrong.

6 And then in my exhibits this is the same  
7 change on both RJM-1 and RJM-20. Both of those  
8 exhibits cite an amended stipulation and  
9 recommendation dated "January 30, 2017." The date  
10 should have been "March 13, 2017."

11 MR. SHARKEY: Your Honor, could we go off  
12 the record briefly?

13 EXAMINER PRICE: Yes.

14 (Discussion off the record.)

15 EXAMINER WALSTRA: We'll go back on the  
16 record.

17 Q. (By Mr. Sharkey) Mr. Malinak, since the  
18 time of your testimony, have there been any  
19 developments regarding the amended stipulation and  
20 recommendation?

21 A. Yes.

22 Q. Can you describe the development?

23 A. Yes. On March 27, 2017, Standard &  
24 Poor's issued a ratings direct research update in  
25 which they downgraded DP&L's issuer rating to BB-



1 from BB. That's one notch. They maintain their  
2 negative outlook on DP&L.

3 They also lowered their rating on DPL's  
4 senior unsecured debt to B+ from BB. So that was  
5 losing a B, if you will. Again, one notch -- or I  
6 guess maybe two notches there because BB- would have  
7 been in between.

8 And then also they lowered DP&L's  
9 stand-alone credit profile, which is another  
10 methodology that they apply, from BB+ to BB -- or  
11 BBB+ to BBB. So, again, one notch.

12 MR. SHARKEY: So the record is clear,  
13 your Honor, in the binders that we have distributed,  
14 they would be DP&L Exhibit 105.

15 EXAMINER PRICE: Are you asking to mark  
16 it 105?

17 MR. SHARKEY: That's what we are going to  
18 mark it, your Honor.

19 EXAMINER WALSTRA: So marked.

20 (EXHIBIT MARKED FOR IDENTIFICATION.)

21 Q. Mr. Malinak, can you comment then on  
22 whether DP&L is an investment grade credit rating  
23 under different measures used by S&P?

24 A. Yeah. Under the issuer rating measure,  
25 which is the one my testimony focuses on, they are

1 not -- not an investment grade credit right now at  
2 the issuer credit rating level. They are a BB- now.  
3 They were -- that's because S&P, the way they do  
4 their ratings, they -- they link it with the holding  
5 company, and so it's a lesser of the two, if you  
6 will.

7 Q. And what, if any, effect does this have  
8 on your view as to the need for the DMR for DPL and  
9 DP&L?

10 A. Well, it's clear evidence, I think, from  
11 this outside source that the DMR is, if anything, too  
12 low because they are being downgraded. They are  
13 already non-investment grade. They are being  
14 downgraded again. And S&P had access to the  
15 information in the stipulation, so they are aware of  
16 the terms of the stipulation, including the size of  
17 the DMR, and they put through a downgrade based on  
18 that information, so it's fairly strong evidence that  
19 the DMR is likely too low.

20 Q. What effect, if any, does that have on  
21 your view as to whether the two-year extension of the  
22 DMR term should be granted?

23 A. I mean, it increases the probability that  
24 it should be granted for sure because S&P is basing  
25 their action, I understand, on -- in part on --

1 MS. HARRIS: I am going to object to  
2 this. It's my understanding they are going to have  
3 to file a whole separate case for the two-year  
4 extension, so I am not sure why him offering an  
5 opinion on it is appropriate in this proceeding.

6 EXAMINER WALSTRA: Mr. Sharkey.

7 MR. SHARKEY: Certainly, your Honor.  
8 It's a term of the stipulation. And Ms. Harris is  
9 right, DP&L will be filing a future application, but  
10 this certainly relates to the entirety of the ESP  
11 term, and he had assumed that the two years would be  
12 granted in his testimony. So I certainly think it  
13 clears a minimal relevancy bar.

14 MS. HARRIS: If I may, your Honor, I  
15 would just hate to see, three years from now, a  
16 citation to this record proceeding about how  
17 Mr. Malinak had already testified as to the need for  
18 the DMR. And I think to the extent he is going to  
19 opine whether the two years is appropriate, that's  
20 really outside the scope of these proceedings and  
21 should take place in a subsequent filing made by the  
22 company at that time.

23 EXAMINER WALSTRA: I'll sustain the  
24 objection, especially that this is new information  
25 that people haven't had a chance to review yet. You

1 know, we will let it stand it's been downgraded and  
2 that will be the extent of the testimony.

3 MR. SHARKEY: Thank you, your Honor.

4 Q. (By Mr. Sharkey) Can you describe, as you  
5 understand it, the reasons that S&P downgraded DP&L?

6 A. Yes. There were -- seemed to be two  
7 primary reasons. One of them was the uncertainty  
8 around the two-year extension and another was the  
9 large amount of debt that's coming due in the near  
10 term. So those were two of the major factors. And  
11 then, you know, I guess this was a factor as well,  
12 but just the general weakness in the market, I think  
13 they cited as well, but that's kind of a less  
14 important one from my understanding.

15 Q. Turning then back to your testimony,  
16 Mr. Malinak. With the corrections that you noted  
17 earlier, if I asked you the same questions, would you  
18 give me the same answers?

19 A. I would.

20 MR. SHARKEY: Thank you, your Honors. I  
21 have no further questions for Mr. Malinak at this  
22 time.

23 EXAMINER WALSTRA: Thank you. We will go  
24 off the record and break for lunch.

25 (Discussion off the record.)

1                   (Thereupon, at 12:45 p.m., a lunch recess  
2 was taken.)

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1 Monday Afternoon Session,  
2 April 3, 2017.

3 - - -

4 EXAMINER WALSTRA: We'll go on the  
5 record. Go ahead.

6 - - -

7 CROSS-EXAMINATION

8 By Mr. Kumar:

9 Q. Good afternoon, Mr. Malinak. My name is  
10 Ajay Kumar, and I am an attorney with the Ohio  
11 Consumers' Counsel. How are you doing?

12 A. I am doing well, thanks.

13 Q. I have a few questions about your  
14 testimony. On page 35 of your testimony, could you  
15 go there for me.

16 A. Yes, I'm there.

17 Q. Now, on page 35 and 36 you talk about how  
18 the SSR supported the financial integrity of  
19 Dayton -- Dayton Power and Light and DP&L Inc.

20 A. DP&L Inc.?

21 Q. Yes.

22 A. Dayton Power and Light and DPL.

23 Q. Okay, yeah.

24 A. Yes.

25 Q. And just to -- before we go on, just to

1 clear up any confusion when I refer to "The Dayton  
2 Power and Light Company," I am referring to the  
3 subsidiary that's the regulated utility in Ohio, and  
4 then when I talk about "DP&L," that will be the  
5 holding company.

6 EXAMINER PRICE: No, DPL.

7 MR. KUMAR: DPL, thank you, your Honor.

8 Q. When I talk about "DPL," that will be the  
9 holding company that is the -- that owns Dayton Power  
10 & Light. Does that make sense?

11 A. Yes.

12 Q. And is your testimony that the SSR served  
13 a similar function to the proposed function of the  
14 DMR and that's to support the financial integrity of  
15 DPL Inc.; isn't that correct?

16 A. Well, it supported -- it -- equipment  
17 malfunction.

18 It supported the financial integrity of  
19 both entities.

20 EXAMINER PRICE: Mr. Malinak, do your  
21 best to ignore the microphone and it will be fine.  
22 Pretend it's not there and you will be fine.

23 THE WITNESS: Thank you, your Honor.

24 Q. So it's your testimony that it supported  
25 the financial integrity of both Dayton Power and

1 Light and DPL.

2 A. Correct.

3 Q. Now, it's also your testimony that DP&L,  
4 The Dayton Power and Light Company, is in a difficult  
5 financial position; isn't that true?

6 A. You know, it's hard to describe what -- I  
7 don't know exactly what you mean by "difficult" but,  
8 yes, DP&L is under financial stress. Dayton Power  
9 and Light is under financial stress.

10 Q. And one of the reasons for that financial  
11 stress, as you put it, is because load growth has  
12 been slower than expected.

13 A. Correct. That's one of the causes.

14 Q. And when you say -- when I use the term  
15 "load growth," you mean to understand that as the  
16 demand for electricity in Dayton Power and Light's  
17 service territory?

18 A. Yes.

19 Q. And you would agree that that slow load  
20 growth is an issue that most, if not all, utilities  
21 in Ohio are experiencing?

22 A. I haven't actually analyzed the detail of  
23 the other utilities, but I wouldn't be surprised.

24 Q. And you would agree that that is  
25 actually -- slow load growth is an issue that the



1 entire PJM footprint is experiencing?

2 A. Again, I haven't looked at that in  
3 detail, so I don't know one way or the other but,  
4 again, it wouldn't surprise me if the load growth was  
5 a little slower than they had predicted it would be.

6 Q. Do you have a copy of your deposition  
7 that was taken, I guess, in December?

8 A. I do.

9 Q. Could you turn to page 54 of your  
10 deposition.

11 A. Public version?

12 Q. Yeah, public version.

13 A. Yeah, I'm there.

14 Q. Now, on lines 15 through 23, you state  
15 that there's change in the market, including declines  
16 in the natural gas prices, that have resulted in  
17 worse economics for coal assets; isn't that true?

18 A. Correct.

19 Q. And you stated there is "slow load growth  
20 in Ohio that affects transmission and distribution  
21 assets."

22 A. Yes, that's what I said.

23 MR. SHARKEY: I am going to object, your  
24 Honor. This isn't impeaching the question. What he  
25 said he had studied was load growth in the PJM

1 footprint.

2 MR. KUMAR: Your Honor, I am getting  
3 there.

4 EXAMINER WALSTRA: Go on.

5 Q. And so these -- in your deposition you  
6 cite these as market conditions that are affecting  
7 Dayton Power and Light; isn't that true?

8 A. Yes, Dayton Power and Light and DPL Inc.

9 Q. Could you turn to page 57 of your  
10 deposition.

11 A. Yes.

12 Q. And on page 57, lines 15 through 20, you  
13 state that -- that all the utilities in the region,  
14 and I am paraphrasing here, are experiencing these  
15 market conditions; isn't that true?

16 A. Yeah.

17 Q. Okay.

18 A. Yeah, I say they probably all will.

19 MR. SHARKEY: Your Honor, object. It's  
20 not inconsistent with his answer. He said he hadn't  
21 studied it, but he believed that was true.

22 MR. KUMAR: Your Honor, he stated he  
23 cited the market conditions I just cited, and in his  
24 deposition he stated they applied to all the  
25 utilities in the region. It's not inconsistent with

1 his answer. He said he didn't know. I confirmed the  
2 fact that previously he said that it could affect the  
3 entire region. I agree with Mr. Sharkey, that's not  
4 inconsistent with his answer, but I just refreshed  
5 his recollection. It wasn't impeachment.

6 EXAMINER WALSTRA: Okay. Overruled.

7 Q. (By Mr. Kumar) Now, Mr. Malinak, would  
8 you say that the slow load growth that you discussed  
9 is at least, in part, due to increased energy  
10 efficiency holding down the demand for electricity?

11 A. That's my understanding is one of the  
12 sources of it, in part, from discussions with Craig  
13 Jackson.

14 Q. Uh-huh.

15 A. Review of his testimony.

16 Q. And it's also an increase in demand  
17 response that has contributed to this load growth as  
18 well, this slow load growth.

19 A. That's a question? Is that a question?

20 Q. Yes.

21 A. Okay. So the question is, is -- was  
22 demand response --

23 Q. Response --

24 A. -- also one of the things?

25 Q. Yes.

1           A.    I don't know.

2           Q.    And just for the sake of clarity, the  
3 slow load growth would result in less income for  
4 Dayton Power and Light because lower demand produces  
5 less revenue from generation; isn't that true?

6           A.    Well, it could produce less revenue for  
7 various aspects of the business. I mean, if you have  
8 faster load growth, you are going to be investing  
9 more in the -- in the transmission and distribution  
10 network and getting a return of and on those  
11 investments, and so that's where a regulated utility  
12 gets its profit.

13          Q.    Are you familiar with PJM's base residual  
14 auctions or BRAs?

15          A.    I am generally familiar with PJM's  
16 capacity and energy auctions, but it's not an area of  
17 particular expertise of mine.

18          Q.    And would you agree with me if I said  
19 that part of the reason for DP&L's financial  
20 stress -- sorry, DPL's financial stress is that  
21 DP&L's generation has produced less income because  
22 those base residual auctions -- base residual  
23 auctions have resulted in lower clearing prices than  
24 DP -- Dayton Power and Light Company expected?

25          A.    Yeah. I would agree that one of those

1 reasons for DP&L's situation is the lower revenues  
2 from those assets along with the other factors that  
3 have been identified here.

4 Q. So, to summarize, Dayton Power and  
5 Light's power plants are producing less income for  
6 the company than they expected?

7 A. I think that's fair to say.

8 Q. Would you also agree that the competitive  
9 dynamics of the generation market have an impact on  
10 those capacity prices -- on capacity prices? Excuse  
11 me.

12 A. Yes.

13 Q. And these competitive dynamics of the  
14 generation market, they are not unique to Dayton  
15 Power and Light, are they? They are affecting the  
16 entire PJM region.

17 A. Yes.

18 Q. And the low capacity -- the lower prices  
19 in the PJM region are also not unique to Dayton Power  
20 and Light, are they? They are affecting the entire  
21 PJM region.

22 A. I think that's fair to say. I'm not  
23 aware of any -- whether DPL would be more affected or  
24 less affected based on their mix of generation.  
25 Again, it's not something I studied in detail. But

1 it's certainly possible they were differentially  
2 affected, but the whole region is experiencing  
3 competitive dynamics like you are describing.

4 Q. Part of the reason that we are seeing  
5 lower prices for power, both at PJM and at the retail  
6 level, is because there is lower natural gas prices;  
7 isn't that correct?

8 A. Yes, that's one of the causes, yes.

9 Q. And these lower natural gas prices have  
10 also resulted in a decrease in the dollars per  
11 megawatt-hour energy margins that you've seen from  
12 coal plants; isn't that also true?

13 A. Yeah. I think the natural gas price  
14 trends have squeezed margins at coal plants.

15 Q. I would like to move on to another topic.  
16 Are you familiar with the merger of --  
17 sorry, the acquisition of Dayton Power and Light and  
18 DPL by AES?

19 A. I'm generally familiar with the  
20 acquisition of DPL Inc. by -- by AES generally, yeah.

21 Q. And in 2011, AES, through its subsidiary  
22 at the time, which was Dolphin Subsidiary II,  
23 acquired DPL Inc.; isn't that true?

24 A. That's my understanding, yes.

25 Q. And as part of these financing

1 arrangements, DPL Inc. issued around \$1.2 billion of  
2 new debt; isn't that correct?

3 A. I don't think so. I can explain. I  
4 think AES issued the debt and then pushed it --  
5 pushed down some debt to Inc.

6 Q. Okay. Yeah, that's true. That's my  
7 understanding as well. Now, it is your understanding  
8 that as part of the merger agreement, Dayton Power  
9 and Light agreed that customers of Dayton Power and  
10 Light would not be required to pay any of these  
11 direct costs or acquisition premiums related to the  
12 merger; isn't that true?

13 A. As part of the merger agreement?

14 Q. Yes.

15 A. I don't know that I've reviewed the  
16 merger agreement in detail. Are you referring to the  
17 stipulation? Is there a merger stipulation?

18 Q. There was an Opinion and Order in that  
19 case. I believe there was also a stipulation; maybe  
20 a few.

21 A. I'm sorry, could you repeat the question?

22 Q. Yes, I will. Hold on.

23 Now, let's talk about the stipulation in  
24 that case, I guess there were a few, but in that  
25 stipulation it's your understanding that Dayton Power

1 and Light agreed not to pay any of the direct costs  
2 of the merger.

3 MR. SHARKEY: I am going to object, your  
4 Honor. He is cross-examining Mr. Malinak about a  
5 lengthy document and the exact language in it without  
6 showing the document to him. I think, in all  
7 fairness, Mr. Malinak ought to look at the document  
8 if he is going to be cross-examined to what it says.

9 EXAMINER WALSTRA: Do you have the  
10 document?

11 MR. KUMAR: I don't have that specific  
12 document with me right now, your Honor. But we might  
13 be able to clear this up by taking a look at  
14 Mr. Malinak's deposition.

15 EXAMINER WALSTRA: Okay. Or if he needs  
16 the document, he can ask for it. If he already knows  
17 as well.

18 A. I mean, I would like to see the document  
19 because I didn't think the language that he just  
20 cited was the language I remembered. I could be  
21 wrong, but I would like to have some sort of  
22 documentation of that exact language.

23 Q. Do you recall any commitments that were  
24 made in the merger, that 2011 merger we have been  
25 discussing?



1           A.    Yeah.  I recall one and it's related to  
2 the merger premium -- or the acquisition premium.  I  
3 can't remember the exact language.  I would need the  
4 document to see it, but I do recall that one.

5           Q.    And what is your understanding of that  
6 particular commitment regarding the acquisition  
7 premium?

8           A.    I would really like to see the language  
9 to remind myself what it says exactly.

10           EXAMINER PRICE:  Are you saying you don't  
11 recall?

12           THE WITNESS:  I don't recall what it says  
13 exactly.  The language is fairly particular, your  
14 Honor.

15           EXAMINER WALSTRA:  I think he asked for  
16 your understanding.  You can give what your  
17 understanding is.

18           THE WITNESS:  Okay.  I will do my best.

19           A.    Okay.  It was -- the gist of it was that,  
20 as I recall, is that customers would not be on the  
21 hook or not have to pay for an acquisition premium,  
22 any acquisition premium paid by AES, something  
23 along -- and I think the term was "acquisition  
24 premium" not "merger premium."

25           Q.    All right.  That's all.  That's all I

1 need.

2 A. Okay.

3 Q. Would you agree that most other Ohio  
4 utilities have some sort of minimum debt level they  
5 currently have?

6 A. I would be surprised if Ohio utilities  
7 didn't all have some debt.

8 Q. And their holding companies or parent  
9 companies usually also have a certain amount of debt;  
10 isn't that true?

11 A. I haven't looked at it, but I would be  
12 surprised if companies didn't also have debt.

13 Q. So the Dayton Power and Light Company and  
14 DPL are not unique in the fact they have debt.

15 A. I would agree with that.

16 Q. Could you turn to page 52 of your  
17 testimony.

18 A. Yes. I'm sorry, 52 of my testimony or  
19 deposition?

20 Q. Testimony.

21 A. Okay.

22 Q. Now, you state on page 52 that DP&L  
23 recently financed its \$445 million debt facility.  
24 I'm sorry, I will give you a minute to get that.

25 A. Yes.

1           Q.    And you did not have any role in DP&L's  
2 negotiation -- Dayton Power and Light's negotiation  
3 of that \$445 million in debt facility, did you?

4           A.    I did not.

5           Q.    And have you personally reviewed all the  
6 terms and conditions of that debt facility?

7           A.    Not all of them.

8           Q.    And you've not had any communications  
9 with any banks regarding Dayton Power and Light's  
10 ability to rate that capital, have you?

11          A.    I have not.

12          Q.    And you've not had any communications  
13 with other creditors regarding Dayton Power and  
14 Light's ability to rate that capital; isn't that  
15 correct?

16          A.    That's correct.

17          Q.    And you've not had any communications  
18 with creditors of the \$445 million debt facility  
19 regarding how the terms and conditions of those  
20 facilities were established?

21          A.    That's correct.

22          Q.    And you have not had any communications  
23 with banks or other creditors regarding Dayton Power  
24 and Light's ability to rate the \$445 million debt  
25 facility.

1           A.    That's also correct.

2           Q.    And you haven't reviewed any written  
3   communications between Dayton Power and Light and  
4   potential or current creditors regarding the issuance  
5   of new debt; isn't that correct?

6           A.    I have not.

7           Q.    And you don't have any personal  
8   experience in negotiating on behalf of a utility for  
9   new debt instruments; isn't that correct?

10          A.    That's correct.

11          Q.    And you don't have any experience in  
12   negotiating on behalf of a utility for new equity  
13   investment; isn't that correct?

14          A.    That's correct.

15          Q.    Now, I am wondering, if you could turn  
16   to, I guess, Exhibit RJM-19B of your testimony.

17          A.    I'm there.

18          Q.    Do you have a copy of OCC Exhibit 1 with  
19   you at the witness stand? This was a discovery  
20   response that we discussed earlier.

21          A.    I don't think so.

22                   MR. KUMAR: Your Honor, may I approach?

23                   EXAMINER WALSTRA: You may.

24          Q.    Could you take a chance to look at, I  
25   guess, part c. of this answer which is on pages 6 and

1 7. It's labeled pages 6 and 7.

2 A. Yeah, I'll take a look. Okay. I have  
3 reviewed it, that answer.

4 Q. Now, on page 7, the answer describes what  
5 is described as a 2016 note which is a \$450 million  
6 aggregate principal amount of 6.5 percent senior  
7 notes due in 2016.

8 A. Yes, I see that.

9 Q. Could you take another look at RJM-19B.

10 A. Yes.

11 Q. That's -- that note appears to be shown  
12 as a 2016 bond in RJM-19B; is that correct?

13 A. It very well could be. 6-and-1/2  
14 percent, yeah, it appears to be, yes.

15 Q. They have the same issued amount; isn't  
16 that correct?

17 A. Yeah, issued amount and the same interest  
18 rate.

19 Q. And could you take a look at the 2021  
20 note that's described in OCC Exhibit 1?

21 A. Yep.

22 Q. That appears to be the same as the 2021  
23 bond that's described in RJM-19B; isn't that true?

24 A. It appears to be the same. They have the  
25 same maturity date, the same interest rate, and the

1 same issued amount.

2 Q. Okay. Now, according to your RJM-19B,  
3 Dayton -- sorry. DPL holds around 1 point --  
4 actually \$1.7 billion -- excuse me -- \$1.2 billion of  
5 debt at the time -- at the current time.

6 A. Yeah, I have these two different  
7 schedules. There is 19A as well. And one of them is  
8 projected and one of them is actual. You know, as of  
9 the end of 2016, when I first did my report back in  
10 the fall, we were working off of projected numbers  
11 for various things and we still are. They are very  
12 close to the actuals.

13 Q. But 19A is an update of 19B.

14 A. Yeah. I would have to look back in my  
15 text to see which one is which. I just wanted to  
16 throw that out there.

17 19B shows 1.2 billion and I just can't  
18 remember whether that's the actual or the projected,  
19 but they are close in any event.

20 Q. Could you turn, I guess, to the page  
21 before that which is 19A.

22 A. Yep.

23 Q. Is this the actual you were describing?

24 A. Yes, it is.

25 Q. And that shows --

1           A.    With the caveat that I got to go back and  
2 look at my text and make sure which one is which.

3           Q.    But this appears to be the actual that  
4 you described earlier.

5           A.    Actual or projected?

6           Q.    19B is the projected; 19A is the actual?

7           A.    Yeah, okay. I'll take your  
8 representation for that.

9           Q.    And 19A shows about \$1.12 billion?

10          A.    Correct.

11          Q.    In outstanding debt for DPL?

12          A.    Correct.

13          Q.    Okay.

14          A.    And I'll just note the 2016 bonds don't  
15 appear on 19A, the 57K is gone, but the 780K is still  
16 there. 780 million.

17          Q.    Could you turn to, I guess, then as a  
18 result of that, could you turn to 19B.

19          A.    I'm there.

20          Q.    And in Footnote 1 to 19B, you describe  
21 how the \$200 million that were issued in the 2019  
22 bonds were initially part of the 2016 bonds?

23          A.    Yep.

24          Q.    And could you turn back to 19A.

25          A.    Yep.

1 Q. And you can confirm the 2019 bonds are in  
2 DPL's --

3 A. Yeah, they are.

4 Q. -- debt?

5 A. Yeah, they are excluded from the total in  
6 19B or they would be double-counting.

7 Q. Yeah.

8 A. So that's why those numbers don't total  
9 up.

10 Q. And it's true that you don't know whether  
11 a downgrade for DPL would trigger any collateral  
12 obligations for DPL debt; isn't that correct?

13 A. I don't know that specifically, but it  
14 wouldn't surprise me.

15 Q. And you don't know whether a DPL  
16 downgrade would trigger any collateral obligations  
17 for Dayton Power and Light, do you?

18 A. I don't know that specifically.

19 Q. But it wouldn't surprise you?

20 A. I don't know that I can say that for  
21 sure.

22 Q. Now, preparing your testimony, you did  
23 not attempt to quantify the likelihood that AES would  
24 be downgraded if the DMR is not approved, correct?

25 A. I did not try to quantify that.



1 Q. Now, you do testify that if Dayton Power  
2 and Light were downgraded, its cost of debt would go  
3 up, correct?

4 A. Yes.

5 Q. But you have not quantified the rate  
6 impact or expense impact to Dayton Power and Light or  
7 DPL if they were downgraded.

8 A. I have quantified that.

9 Q. You have quantified the rate impact to  
10 DP&L?

11 A. Yeah. There is a rate impact and then  
12 there is also a volume impact to both DPL and DP&L.

13 Q. Now, when you prepared your projections  
14 of DP&L's finances and DPL's finances, did you  
15 include any revenue from the proposed distribution  
16 investment rider, the DIR?

17 A. I did not.

18 Q. Now, Mr. Malinak, isn't it true that a  
19 company which has a junk issuer rating could have an  
20 investment grade debt issuance? It's possible, isn't  
21 it?

22 A. Not the company that had the junk rating.

23 Q. But the debt issuance, itself, could be  
24 investment grade.

25 A. Not by the entity that has the junk

1 rating.

2 Q. Could you turn to page 116 of your  
3 deposition.

4 A. I'm there.

5 Q. And lines 8 through 10, it's asked:  
6 "Could a company which has a junk issuer rating have  
7 an investment grade debt issuance?"

8 A. Yeah. And if you look further down --  
9 and I say that's probably possible, but it's through  
10 an entity that's collateralized in a way that you  
11 could have a special purpose entity that has, say, a  
12 AAA rating, because you've pushed collateral down to  
13 that, separated it from the rest of the company,  
14 which is what I talk about in lines 16 through 22.

15 I say if there's sufficient security for  
16 the secured debt, and it was legally ironclad and so  
17 forth, and companies with lower issuer ratings are  
18 able to borrow, but they have to secure borrowing  
19 with particular assets which has an economic cost.

20 Q. So it is possible to have an investment  
21 grade debt issuance if those conditions that are  
22 discussed in lines 16 through 22, that you just  
23 enumerated for us, were met.

24 A. Yes, absolutely. But there's an economic  
25 cost to it.

1 MR. KUMAR: Your Honor, I would ask for  
2 the lines "there is an economic cost to it" to be  
3 struck as nonresponsive to the question that was  
4 asked.

5 EXAMINER WALSTRA: Overruled.

6 Q. Now, on page 64 of your testimony, you  
7 discuss the potential benefits of economic  
8 development through the amended stipulation; isn't  
9 that true?

10 A. Yeah, in the context of grid  
11 modernization.

12 Q. Yeah, of course. And you state that  
13 there could be new jobs and investment in human and  
14 physical capital due to grid modernization; isn't  
15 that true?

16 A. Yes.

17 Q. You have not quantified the economic  
18 development impact of those grid modernization  
19 programs that are discussed in page 64, have you?

20 A. I have not quantified it, no.

21 Q. And you have not quantified the number of  
22 new jobs that are projected to arise from grid  
23 modernization programs in your testimony, have you?

24 A. That's true.

25 Q. And you have not quantified the

1 investment in human, physical capital which you would  
2 believe would result from grid modernization programs  
3 discussed in this portion of your testimony, have  
4 you?

5 A. I have not.

6 Q. Okay. Could you turn to page 8 of your  
7 testimony.

8 A. Yes.

9 Q. And on page 8, lines 3 through 5, you  
10 state that without the DMR, DP&L's -- Dayton Power  
11 and Light's ability to provide safe and reliable  
12 service to its customers could be jeopardized?

13 A. Yeah. This is the sentence that sort of  
14 sums up the prior three or four sentences talking  
15 about the fact that without a DMR, DP&L -- DPL and  
16 Dayton Power and Light would both experience  
17 additional financial distress which could jeopardize  
18 safe and reliable service.

19 Q. Now, have you reviewed the standards for  
20 safe and reliable service that have been established  
21 in the Ohio Administrative Code in the rules of the  
22 PUCO?

23 A. I may have seen those before, but I don't  
24 recall reviewing them specifically.

25 Q. Are you aware that electric distribution

1 companies must set minimum reliability goals under  
2 these standards?

3 A. I'm not specifically aware of it. But it  
4 wouldn't surprise me.

5 Q. And would you -- are you aware that the  
6 electric utilities must report annually whether they  
7 meet these goals to the PUCO?

8 A. Again, I am not specifically aware of it,  
9 but it would not surprise me.

10 Q. And are you aware that these electric  
11 utilities in Ohio must file an annual report  
12 detailing the current condition of their distribution  
13 system at the PUCO?

14 A. Again, it would not surprise me that  
15 regulation exists.

16 MR. KUMAR: Your Honor, I would like to  
17 have an exhibit marked as OCC Exhibit 3. And this is  
18 the March 31, 2017, filing by The Dayton Power and  
19 Light Company in Case No. 17-1000-EL-ESS.

20 EXAMINER WALSTRA: So marked.

21 (EXHIBIT MARKED FOR IDENTIFICATION.)

22 MR. KUMAR: Your Honor, may I approach?

23 EXAMINER WALSTRA: You may.

24 Q. Now, in this report could you turn about  
25 15 pages in to the page labeled 1a:1?

1           A.    Yes, I'm there.

2           MS. BOJKO:  Excuse me, your Honor.  Could  
3 we have OCC identify the document again, since copies  
4 were not distributed?

5           MR. KUMAR:  Sorry.  It's the filing on  
6 March 31, 2017, in Docket No. 17-1000-EL-ESS.

7           MS. BOJKO:  Thank you.

8           MR. SHARKEY:  Which page were you on?

9           MR. KUMAR:  It's 1a:1.  It's about 15  
10 pages in.  It's oddly numbered.

11          A.    1a-1 or 1a:1?

12          Q.    Yeah, 1a:1.  And under "Notable  
13 Characteristics" for the row labeled "Distribution,"  
14 it says that DP&L's "historical reliability  
15 performance clearly shows distribution system to be  
16 in excellent condition."

17          MR. SHARKEY:  I am going to object, your  
18 Honor.  These questions deal with a document that he  
19 hasn't laid a foundation that Mr. Malinak has ever  
20 seen it; hasn't established that Mr. Malinak studies  
21 these documents.  In fact, Mr. Malinak testified that  
22 he wasn't, you know, aware of these types of  
23 documents, other than saying that he wouldn't be  
24 surprised if they exist.  I just don't think this is  
25 a proper document to be asking Mr. Malinak about.

1 MR. KUMAR: Your Honor, Mr. Malinak  
2 comments on the safety and reliability of DP&L's  
3 distribution system. This is DP&L's document where  
4 they describe their own distribution system to the  
5 PUCO.

6 EXAMINER WALSTRA: I don't think he has  
7 established he is familiar with this document at all  
8 or even any foundational questions about this  
9 document.

10 MR. KUMAR: Okay.

11 Q. (By Mr. Kumar) Now, Mr. Malinak, you did  
12 not quantify the impact on reliability that would  
13 result from approving the DMR, did you?

14 A. By "quantify" you mean develop some sort  
15 of metrics related to service quality?

16 Q. Yes. There are metrics that we often  
17 use. Are you familiar with the CAIDI or SAIFI?

18 A. Yeah. I'm familiar with those types of  
19 measures. I didn't develop those kinds of measures.

20 Q. Okay. And you didn't quantify the impact  
21 of not improving -- of not approving the DMR on those  
22 measures, those reliability metrics that we discuss,  
23 CAIDI and SAIFI?

24 A. On those specific kinds of metrics,  
25 that's correct.

1           Q.    Were you aware that Dayton Power and  
2 Light has exceeded both the SAIFI and CAIDI measures  
3 for each of the last five years?

4           A.    I was not aware of that, but it wouldn't  
5 surprise me.

6           Q.    Were you aware -- are you aware of the  
7 fact that PJM is obligated to ensure the reliability  
8 of the electric transmission system in Ohio?

9           A.    I think I am generally aware of there  
10 being some responsibility there.

11          Q.    Now --

12          A.    I don't know -- I am sorry, just to  
13 finish -- I don't know the exact nature of it, but,  
14 anyway, go ahead.

15          Q.    Now, your conclusion in your testimony  
16 that a decline in credit ratings could jeopardize  
17 Dayton Power and Light's ability to provide safe and  
18 reliable service is based, in part, on your analysis  
19 of capital expenditures and debt ratings of  
20 similarly-placed utilities; isn't that true?

21          A.    Yes. Based on a variety of factors  
22 including that one as well.

23          Q.    Could you turn to, I guess, page 34 of  
24 your testimony.

25          A.    Yes, I'm there.



1           Q.    Now, on page 34 you have a graph that  
2 shows the capital expenditure per retail  
3 megawatt-hour for a group of utilities that you  
4 chose; isn't that correct?

5           A.    I selected them by taking them from a  
6 Fitch report, Fitch selected them, and I --

7           Q.    You used them.

8           A.    I used that sample, yeah.

9           Q.    And but your testimony does not contain a  
10 current calculation of Dayton Power and Light's  
11 capital expenditures -- capital expenditures per  
12 megawatt-hour, does it?

13          A.    Not for purposes of this chart.

14          Q.    Now, could you turn to the next page,  
15 page 35.

16          A.    Yes, I'm there.

17          Q.    Again, you detail capital expenditures  
18 per retail electric customer; isn't that correct?

19          A.    Capital expenditures, yes, per retail  
20 electric customer, that's correct.

21          Q.    And your testimony does not contain a  
22 current calculation of Dayton Power and Light's  
23 capital expenditures per retail electric customer.

24          A.    That's correct. My testimony does not  
25 include that. I will say that subsequent to my

1 deposition, I did look at those numbers, though,  
2 because I was asked about them in my deposition.

3 MR. KUMAR: Your Honor, I would ask that  
4 everything after "subsequent to my deposition" be  
5 struck as outside the scope of the question I asked.

6 EXAMINER WALSTRA: Mr. Sharkey?

7 MR. SHARKEY: Yes, your Honor. I think  
8 it's just a clarifying comment as to what he does or  
9 does not know. And it's just a fair comment on the  
10 state of his knowledge and what was in his testimony.

11 MR. KUMAR: Your Honor, as Mr. Sharkey  
12 says, it is a comment and not an answer to the  
13 question.

14 EXAMINER WALSTRA: We'll strike it.

15 Q. (By Mr. Kumar) Now, your testimony also  
16 does not contain any projections or calculations of  
17 Dayton Power & Light's future capital expenditures  
18 that could receive accelerated recovery through a  
19 distribution investment rider; isn't that true?

20 A. Yeah, I've not included a DIR estimate in  
21 my forecast, my projections.

22 Q. Now, could you turn to page 27 of your  
23 testimony.

24 A. I'm there.

25 Q. And on page 27 of your testimony, you

1 state that DP&L has committed to closing certain  
2 generation-related assets and selling some of its  
3 generation-related assets; isn't that true?

4 A. No, not exactly. DP&L announced plans to  
5 close certain coal generation and is committed to  
6 sell.

7 Q. Could you turn to page 31 of your  
8 testimony. On page 31 you state that your financial  
9 analysis of Dayton Power and Light assumes that the  
10 generation assets were made part of DP&L.

11 A. That's correct.

12 Q. Therefore, your financial analysis does  
13 not include any reductions to production capital  
14 expenditures due to the possible sale or closing of  
15 any generation assets?

16 A. Yeah, it doesn't include either -- any --  
17 it still includes the revenues, the costs, and the  
18 CAPEX for the generation -- various generation  
19 assets.

20 Q. Okay. Yes. So the CAPEX is still there.

21 A. The CAPEX is there along with, you know,  
22 the revenues and O&M cost.

23 Q. And your financial analysis also doesn't  
24 include any increased revenue that could come from  
25 the sale of any generation assets. The possible sale

1 of any generation assets.

2 A. Yeah, I've not tried to model the sale of  
3 the assets. It would be speculative to try to figure  
4 out when and how they would be sold and for how much.  
5 Same is true of the shutdown of the plants.

6 Q. So your financial analysis wouldn't  
7 include any projections of that.

8 A. Right. I have not -- I am not trying to  
9 do that.

10 Q. It looks like we are going to keep  
11 jumping around, Mr. Malinak. Page 14.

12 A. I'm there.

13 Q. Now, on page 14 you state that you did  
14 not quantify any of the nonbypassable charges, like  
15 the DIR rider, in your analysis of the aggregate  
16 price test for the ESP versus MRO portion of your  
17 testimony.

18 A. Yeah, I mean, as I state here, there are  
19 these various riders that I list, and I do not  
20 explicitly address them in my MFA test analysis,  
21 because they are largely passthrough various costs  
22 and would be present in both an ESP and an MRO.

23 Q. Okay. And in your analysis of the  
24 financial integrity of Dayton Power and Light, did  
25 you include revenue from the distribution investment

1 rider?

2 A. I think you already asked me that.

3 Q. No. I asked you about the MFA test.

4 A. You asked me about the DIR before. Yeah,  
5 I have not included revenue from the DIR.

6 Q. What about the regulatory compliance  
7 rider?

8 A. I have included that.

9 Q. You have?

10 A. Yeah, for purposes of my rating analysis.

11 Q. Okay. What about the storm cost recovery  
12 rider?

13 A. No, I have not included an estimate of  
14 revenue for that. It was set at zero.

15 Q. The uncollectible rider?

16 A. Yeah, I have -- I have included that.

17 Q. The energy efficiency rider?

18 A. I have. I have included only program  
19 costs for that.

20 Q. Program costs?

21 A. Program cost, yeah.

22 Q. Oh, program cost, okay. And what about  
23 the SmartGrid rider?

24 A. No. Not included anything for that in my  
25 projections.

1 Q. Now, Mr. Malinak, do you have a copy of  
2 what has been previously marked as OCC Exhibit 2 up  
3 there with you?

4 A. I don't believe I have.

5 MR. KUMAR: Your Honor, may I approach?

6 EXAMINER WALSTRA: You may.

7 Q. Mr. Malinak, have you used -- you have  
8 used data from Value Line in the past, haven't you?

9 A. I certainly have.

10 Q. And Value Line is a widely-used financial  
11 survey and market report that you are familiar with;  
12 isn't that correct?

13 A. That is correct.

14 Q. Now, you have a copy in front of you  
15 which has been marked -- previously marked as OCC  
16 Exhibit No. 2. It's a Value Line report for AES.

17 A. I have that.

18 Q. And could you turn to, I guess, that  
19 bottom box on Value Line. There is a couple  
20 sentences there regarding the new administration and  
21 how their plans for lower corporate taxes would  
22 affect AES; isn't that correct?

23 A. Could you point me to that?

24 Q. Yeah. It's -- do you see the sentence --

25 A. Oh, here we go. It says, "Second, the

1 Trump administration is encouraging energy companies  
2 to do business...." That part?

3 Q. Yeah.

4 A. Yeah.

5 Q. So this exhibit shows that it's possible  
6 that a new administration may lower corporate tax  
7 rates; isn't that true?

8 MR. SHARKEY: I am going to object, your  
9 Honor. Similarly to my prior objections regarding  
10 this document. Value Line's view as to what the  
11 Trump administration may do, I think is beyond the  
12 scope of this proceeding.

13 MR. KUMAR: Your Honor, I am just asking  
14 whether it's possible corporate tax rates may  
15 decrease. That seems to be what this document says,  
16 that it's possible.

17 EXAMINER WALSTRA: Overruled.

18 A. Yeah, I mean, I don't know how likely it  
19 is given the gridlock we have got going in our  
20 government these days, but it's certainly possible.

21 Q. Now, if corporate tax rates are lowered,  
22 then the AES Corporation would pay less taxes; isn't  
23 that correct?

24 A. I don't know.

25 Q. If corporate tax rates were lowered, it's

1 possible that the allocated tax burden to DP&L --  
2 sorry, DPL would be lower; isn't that true?

3 A. What do you mean by "allocated tax"?

4 Q. You are aware that AES has a tax sharing  
5 agreement with most of its subsidiaries?

6 A. I didn't know that. I know there is a  
7 tax sharing agreement with DPL Inc.

8 Q. Between AES and DPL Inc.

9 A. Correct.

10 Q. Okay. And that AES, under the terms of  
11 the stipulation, AES has agreed to forego payments  
12 under that tax sharing agreement from DP&L for the  
13 collection on payments.

14 A. Yes, I am aware of that.

15 Q. And you are saying that results in equity  
16 infusions from AES into DPL Inc.?

17 A. Definitely, yes.

18 Q. Now, assuming AES's tax burden would be  
19 lower, then those equity infusions that would result  
20 from AES's commitment would be reduced as well; isn't  
21 that correct?

22 A. So you are asking me to assume that the  
23 lower rates --

24 Q. Yeah.

25 A. -- would actually result in a lower tax



1     burden for AES?

2             Q.     Yes.

3             A.     Which we don't know if that's true or  
4     not.

5             Q.     Yes.

6             A.     Because they have, you know, wells and so  
7     forth, so they may not be paying any tax rate. So  
8     the tax rate may not have any impact on their taxes.  
9     I'll assume it, okay, but -- I'm sorry, lost track of  
10    the question.

11            MR. KUMAR: Your Honor, may we have the  
12    question reread?

13            EXAMINER WALSTRA: Sure.

14            (Record read.)

15            A.     Well, the amount of the cash flow benefit  
16    to DPL and D -- or DP&L and then also DPL would be  
17    unchanged because you would still need the  
18    \$105 million, as I believe was discussed earlier, in  
19    order to stave off further downgrades, okay, so. But  
20    from the point of view of AES, if the tax rates are  
21    lowered, then if the value to AES -- or of those tax  
22    forgiveness payments will, in fact, go down, they  
23    won't be as valuable, but they will still be very  
24    valuable from AES's perspective, assuming the tax  
25    rates falls to, say, 20 percent, not zero.

1 Q. Now, could you turn to Exhibit RJM-14.

2 A. I'm there.

3 Q. Now, Exhibit RJM-14 shows a ratings grid  
4 for both regulated electric and gas utilities and  
5 unregulated -- unregulated utilities and unregulated  
6 power companies; isn't that correct?

7 A. Yes.

8 Q. And to the extent that a vast majority of  
9 a utility company's operations are regulated, the  
10 regulated grid on the top part of this page is more  
11 appropriate.

12 A. Yeah. By vast mortgage I am assuming a  
13 very high percentage, and if it's mostly regulated,  
14 then the regulated grid would be -- would be a focus,  
15 should be a focus.

16 Q. 96 percent?

17 A. Yeah, that would be a large majority. It  
18 depends obviously on each individual situation.

19 Q. Now, I understand that Mr. Sharkey has --  
20 I guess I shouldn't call it improper rebuttal  
21 testimony, but it's a late-filed exhibit, document  
22 Exhibit 105. Now, you testified about this DP&L  
23 Exhibit 105 in your direct examination by  
24 Mr. Sharkey; isn't that correct?

25 A. Is that the S&P downgrade?

1 Q. Yes, it is.

2 A. I did.

3 Q. And you've testified this rating report  
4 assumes approval of Dayton Power and Light's current  
5 stipulated DMR level?

6 A. I believe they took the DMR into  
7 consideration when they set these ratings. If you  
8 look at line -- the last bullet on page 2 --

9 Q. I think you answered my question.

10 A. Okay. I am just trying to be helpful.

11 EXAMINER PRICE: You should let him  
12 finish his answers; then you can object.

13 MR. KUMAR: I apologize, your Honor.

14 Your Honor, may I have a few minutes? I  
15 think that might be the end of my cross.

16 EXAMINER WALSTRA: Sure. We'll take a  
17 10-minute recess. Off the record.

18 (Recess taken.)

19 EXAMINER WALSTRA: Mr. Kumar.

20 MR. KUMAR: Nothing else.

21 EXAMINER WALSTRA: Okay. Ms. Harris.

22 - - -

23 CROSS-EXAMINATION

24 By Ms. Harris:

25 Q. Good afternoon, Mr. Malinak. I know you

1 were here this morning, but I am Carrie Harris, I am  
2 here on behalf of Wal-Mart.

3 I'm correct that the purpose of your  
4 testimony is to testify as to whether the ESP is more  
5 favorable than the MRO; is that correct?

6 A. Right. More favorable in the aggregate.

7 Q. And if I direct your attention to page 8  
8 of your testimony -- well, I'm sorry, I apologize,  
9 page 4 of your testimony, specifically at lines 5  
10 through 16, would you agree with me that the text of  
11 your direct testimony there at lines 5 through 16 are  
12 ultimately the reasons why you have concluded that  
13 the ESP is more favorable in the aggregate than the  
14 MRO?

15 A. I mean, it sets forth all of them. My  
16 testimony is like 70 pages long. I may have, you  
17 know, included some other reasons in the back here,  
18 but this is what I include -- I included this section  
19 up front in the summary. There might be other things  
20 in the body.

21 Q. So to the extent you believe there might  
22 be other things, what do you believe those to be?

23 A. I would have to, you know, refresh myself  
24 and go back through and see what I put up here versus  
25 what I have back here.

1           Q.    So you are not prepared to testify as to  
2 what you believe the benefits of the ESP to be as  
3 opposed to the MRO? Without reading through your  
4 whole testimony?

5           A.    No, that's not true. I'm not prepared to  
6 say that these are all of the reasons right here in  
7 these lines without double-checking and reading it  
8 and making sure that there isn't something in the  
9 back. Because this is a summary just like up front.

10          Q.    So let me have you read the testimony  
11 that you have beginning at line 4.

12          A.    Okay.

13          Q.    If you could read those -- your answer,  
14 "Yes," if you could read the next sentence.

15          A.    Yeah, I would be happy to. "The Amended  
16 Stipulation is more favorable in the aggregate as  
17 compared to the results that would be expected under  
18 a hypothetical MRO. More specifically" --

19          Q.    Just one second. Just the first  
20 sentence, just that one sentence. So am I to  
21 understand that's your ultimate conclusion?

22          A.    With respect to the MFA test, yeah.

23          Q.    And so, then you go on, after drawing  
24 that conclusion and say more specifically and list  
25 subparts (a) and (b), correct?

1           A.    I do.  I do exactly write that, yeah.

2           Q.    And so, those (a) and (b) are what you  
3 summarize in response to your conclusion are the  
4 reasons it's more favorable; is that correct?

5           A.    Well, there's some summary language here.  
6 Like I said before, this is summary language that  
7 might -- there might be some other elements further  
8 back in my testimony.

9           Q.    But presumably if they were important  
10 enough, you would have included them in response.

11          A.    I don't know.  There's some -- there's  
12 some sort of a -- when you are doing a summary, you  
13 know, you have to make some judgment as to what you  
14 put up here; so, I mean, I am not prepared to say --  
15 certainly these are important ones, I will say that.  
16 If I put them up here, they are important.

17          Q.    Well, Mr. Malinak --

18          A.    If they are back here doesn't mean they  
19 are not important.

20          Q.    Well, Mr. Malinak, I am asking you,  
21 having been the drafter of this testimony and having  
22 adopted it, if there are other benefits other than  
23 these two, what are they?

24          A.    Yeah.  For example, in (b) I say  
25 "significant non-quantifiable benefits, derived, in

1 particular, from more rapid and robust grid  
2 modernization, and commitments from AES regarding  
3 dividends and tax payments...."

4 So I said "in particular" and that was  
5 specifically because there could be other reasons,  
6 you know, that I identify in more detail in the back.  
7 I singled these out for emphasis in this paragraph.

8 Q. And so, Mr. Malinak, I am asking you to  
9 tell me what those other items are --

10 A. Okay.

11 Q. -- that you believe are benefits because,  
12 I want to make sure we are operating under the same  
13 understanding as to what you believe convinces you  
14 that the ESP is more favorable in the aggregate than  
15 what would be expected under a hypothetical MRO?

16 A. Sure. Just give me a while.

17 EXAMINER WALSTRA: We'll go off the  
18 record.

19 (Recess taken.)

20 EXAMINER WALSTRA: We'll go back on the  
21 record and I believe you had a pending question.

22 A. Yes. I believe the question related to  
23 lines 6 through 16, or 4 through 16, of page 4 of my  
24 testimony. Beginning on page -- on line 16 and going  
25 to the end of that paragraph is yet another reason

1 for my opinion. And as I state on line 16, "Perhaps  
2 even more importantly, without the" -- more  
3 importantly, the two (a) and (b) above is the fact  
4 that without this charge, DP&L and DPL would be --  
5 would experience financial downgrade and the  
6 financial distress that goes along with it. So  
7 that's a pretty major point. That's the rest of that  
8 paragraph that was excluded from the question.

9           And if you turn to page 64 of my  
10 testimony, on pages 64 and 65 I talk about grid  
11 modernization. I do mention grid modernization in  
12 lines 6 through 16 on page 4, but in this section I  
13 provide some more detail as to the benefits that  
14 would be available both to the economy of west  
15 central Ohio and also the many benefits that  
16 customers would receive from grid modernization,  
17 including better reliability, better technology, you  
18 know, more rapid response to weather events, things  
19 like that. On page 65 -- I am a sorry, that was part  
20 of my prior answer.

21           On page 67, I point out that, under the  
22 stipulation, DP&L would remain subject to the SEET  
23 test while it would not be subject to such a test  
24 under an MRO. So there is a protection there, okay?

25           Right below that I point out the fact



1 that if the MRO is approved, there would be -- the  
2 utility would have given up the opportunity to file  
3 an ESP in the future which is, you know, a reduced  
4 option value that they would have.

5 And the next, No. 5, I talk about the  
6 transfer of the generation assets outside of DP&L.  
7 That has -- I mean, the assets will still be part of  
8 the DPL umbrella. But if they are transferred  
9 outside of DPL, it's possible that DP&L might get --  
10 might have some benefit to their -- to their debt  
11 cost or their debt rating once those assets are  
12 transferred out.

13 And then I also point out that if they --  
14 if they are sold for a good price, this is, I guess  
15 item 6, at the bottom of page 68 plus 69, once those  
16 assets are sold, as required under the stipulation if  
17 they are sold for a good price, that could also be a  
18 credit positive for -- for DP&L and DPL both.

19 And then finally, No. 7, they are sort of  
20 a series of kind of miscellaneous agreements that  
21 have been made. These are all, by the way, under the  
22 rubric of nonquantifiable benefits to the ESP, but  
23 there are a., b., c., d., e., f., g., just  
24 miscellaneous agreements.

25 DP&L will explore a partnership with the

1 City of Dayton and the University of Dayton's Hanley  
2 Sustainability Institute. I am sure these programs  
3 are likely important to the various parties that  
4 are -- that are the subject of these agreements.

5 City of Dayton accounts will be exempt  
6 from paying service charges. Again, these are  
7 nonquantifiable kind of agreements, but they are all  
8 part of the stipulation and they are all part of the  
9 nonquantifiable benefits from the stipulation.

10 Q. Thank you, Mr. Malinak.

11 I want to go back into a couple of these.  
12 No. 5, let's start there, on page 68 of your  
13 testimony.

14 A. Yes.

15 Q. Are you aware that the companies were  
16 already required to have divested themselves of the  
17 generation assets?

18 MR. SHARKEY: Objection, your Honor.  
19 That calls for a legal conclusion.

20 EXAMINER WALSTRA: Overruled.

21 A. I am aware there was a -- I don't know if  
22 "agreement" is the right word, but there was  
23 discussion of transferring these assets out.

24 But in terms of the divestiture, the  
25 agreement to initiate a sales process, I think that

1 was part of the stipulation that was new.

2 Q. So you are not aware as to whether the  
3 Commission previously entered an order requiring them  
4 to divest?

5 A. Of the coal assets, require them to sel  
6 them?

7 Q. Correct.

8 A. I am not aware of that.

9 MS. BOJKO: Your Honor, may I have  
10 counsel use the microphone, please.

11 MS. HARRIS: Sorry, sorry.

12 MS. BOJKO: Thank you.

13 Q. Mr. Malinak, when it comes to the  
14 quantifiable benefits set forth on page 4, subpart  
15 (a) of that 11.5 million, who is entitled to those  
16 benefits? Or what is your understanding as to who is  
17 entitled to those benefits? And I will go ahead and  
18 ask my follow-up questions.

19 Are any parties -- are any interest  
20 groups or businesses or entities, other than  
21 signatory parties, entitled to any of those benefits?

22 A. My understanding is those benefits will  
23 flow directly to the signatories. I haven't thought  
24 about whether they will have some kind of follow-on  
25 benefits like there is this one that's an economic

1 development grant fund annually for five years. That  
2 seems like something -- again, I have to go back -- I  
3 don't really understand exactly what that is, but  
4 it's possible that that will benefit sort of multiple  
5 parties, for example, not just a single -- not just  
6 the single party. I am looking at my RJM-20 by the  
7 way.

8 MS. HARRIS: Your Honor, I would move to  
9 strike everything after him agreeing that it was  
10 available to the signatory parties.

11 EXAMINER PRICE: Could we have the  
12 question and answer read back, please. Actually just  
13 the question.

14 (Record read.)

15 MR. SHARKEY: May I be heard, your Honor?

16 EXAMINER WALSTRA: You may.

17 MR. SHARKEY: His answer -- the question  
18 was whether signatory parties were the only ones who  
19 could receive benefits of the stipulation, and his  
20 answer identified the fact that he believed that the  
21 economic development grant fund may benefit people  
22 who are other than signatories. So his reference to  
23 the economic development grant fund are absolutely  
24 responsive to the question. I would also perhaps add  
25 the economic development grant fund discussed on

1 page 11 of the stipulation does not limit itself to  
2 signatory or non-opposing parties.

3 MS. HARRIS: Well, first of all, two  
4 parts. No. 1, Mr. Sharkey is not testifying. No. 2,  
5 my question is whether signatory parties were  
6 entitled to benefits, and he answered the question  
7 and he stopped and that is his answer. The question  
8 was not could there be any ancillary effects down the  
9 road; it was who is entitled to benefits. He  
10 answered and agreed it was the signatory parties.

11 EXAMINER WALSTRA: I am going to  
12 overrule.

13 Q. (By Ms. Harris) Mr. Malinak, between --  
14 well, you've reviewed the stipulation, the amended  
15 stipulation in this case; is that correct?

16 A. I have.

17 Q. And, in fact, your testimony cites to  
18 that stipulation in a couple of places, correct?

19 A. I believe it does.

20 Q. Sir, I want to draw your attention -- is  
21 there a copy of the amended stipulation in front of  
22 you?

23 A. I'm looking for it right now and it looks  
24 like the copy I have is incomplete. It's just  
25 excerpts.

1 MS. HARRIS: It was my understanding,  
2 Mr. Sharkey, did you not offer the stipulation as an  
3 exhibit earlier today?

4 MR. SHARKEY: Yes, your Honors, we  
5 offered the joint -- the amended stipulation and  
6 recommendation as Joint Exhibit 1. I intend to move  
7 for its admission at the conclusion of Mr. Malinak's  
8 testimony since he's testified in support of it.

9 MS. HARRIS: He just indicated he doesn't  
10 have a complete copy in front of him.

11 MR. SHARKEY: We'll deliver a complete  
12 copy to him.

13 EXAMINER WALSTRA: Thank you.

14 MR. ALEXANDER: Your Honor, could we go  
15 off the record for just a moment?

16 EXAMINER WALSTRA: Sure.

17 (Discussion off the record.)

18 EXAMINER WALSTRA: We'll go back on the  
19 record.

20 Q. (By Ms. Harris) Can I draw your attention  
21 to the very top of page 27 of the stipulation?

22 A. I am there.

23 Q. Do you see that large capitalized "X"?  
24 What language is beside that?

25 A. It says "Individual Signatory Parties."

1           Q.    And so, going from page 27 to 36, which I  
2 think you cite a couple of times in your testimony,  
3 including at footnote 76 on page 69 of your  
4 testimony, you are referencing the benefits under  
5 Article X of the amended stipulation entitled  
6 "Individual Signatory Parties," correct?

7           A.    Yes.  Yeah, I do have a sec -- an opinion  
8 at page 69 that references that.

9           Q.    And drawing your attention to page --  
10 bear with me one second.  Never mind.  Scratch that.

11                  Turning to subpart (b) of the benefits  
12 you identify on page 4 of your testimony, and I want  
13 to point out a couple of different pieces of your  
14 testimony here all at one time because I would like  
15 for you to look at them at the same time.  So you  
16 have there at line 9, do you see where you use the  
17 phrase "commitments from AES"?

18           A.    I do.

19           Q.    And then bear with me a second.  There  
20 are a couple of other places in your testimony and,  
21 of course, I can't find them at this time, but where  
22 you reflect certain commitments by AES.  Are you  
23 familiar with having said that a couple of times in  
24 your testimony?

25           A.    Yes, with respect, in particular, to the

1 dividends and tax payments.

2 Q. And can you point to me anywhere in the  
3 stipulation or any other written document where AES  
4 makes that commitment?

5 A. On page 3.

6 Q. 3 of the?

7 A. Of the stipulation. Item Roman Numeral  
8 II.1.a. It says -- it's under "AES/DPL  
9 Contributions." It says "During the ESP term, DPL  
10 Inc. will not make any dividend payments to AES  
11 Corporation or to AES Ohio Generation, LLC."

12 Q. And is it your understanding that AES is  
13 a party to the amended stipulation?

14 A. That sounds like a legal question. I  
15 don't know.

16 Q. So let me have you look at the last  
17 couple of pages of the amended stipulation. I would  
18 like for you to look through pages 39, 40, 41. And  
19 at the top of page 39, I want to draw your attention  
20 to the language that says "In witness thereof, the  
21 undersigned Signatory Parties agree to this  
22 Stipulation and Recommendation...."

23 So without asking you to draw a legal  
24 conclusion, if a party agreed to the stipulation, you  
25 would expect to see their signature on the signature



1 box at pages 39, 40, and 41; is that fair?

2 A. You know, I honestly don't know what the  
3 legal rules are. But I note that DPL, it says here  
4 in the stipulation, DPL shall not pay dividends to  
5 AES Corporation, and there is a signatory for DPL  
6 Inc.

7 Q. Absolutely, but I don't think that was my  
8 question. I think my question had to do with AES and  
9 whether AES is a signatory on this document.

10 A. These pages that you've shown me, I do  
11 not see in capital letters the words "AES" here as  
12 one of the signatory parties.

13 Q. And as you crafted your expert testimony  
14 in this case as an expert for the company, by "the  
15 company" I mean Dayton Power and Light or its parent  
16 DPL Inc., as you indicated in your testimony that AES  
17 was making certain commitments, what were you basing  
18 that testimony on?

19 A. Well, I was basing it on the fact that  
20 this section says AES DPL contributions and the fact  
21 that AES is the potential beneficiary, for example,  
22 of dividends, and this clearly binds DPL Inc. not to  
23 pay them any.

24 Q. But, at best, that binds DPL Inc.,  
25 correct?

1 MR. SHARKEY: I am going to object, your  
2 Honor. That's a legal question.

3 MS. HARRIS: He just testified it  
4 binds -- I mean, it was his testimony, not mine for  
5 him.

6 MR. SHARKEY: It's his testimony it bound  
7 DPL Inc. He didn't -- whether that binds AES is a  
8 legal question I don't think this witness is  
9 qualified to answer.

10 EXAMINER WALSTRA: Are you a lawyer?

11 THE WITNESS: I am not.

12 EXAMINER WALSTRA: I'll sustain.

13 Q. So, Mr. Malinak, would your expert  
14 testimony be different if, in fact, there was no way  
15 to ensure that AES guaranteed that it wouldn't seek  
16 tax sharing payments or wouldn't seek a dividend or  
17 wouldn't seek some sort of calling a debt due from  
18 the company? Would that change your evaluation?

19 MR. SHARKEY: I am going to object, your  
20 Honor. That's a compound question.

21 Q. Let me break it up.

22 EXAMINER WALSTRA: Thank you.

23 Q. You have used the phrase "commitments  
24 from AES" in your testimony. In particular, line 9  
25 of page 4. We've gone over that, correct?

1           A.    Yes, we've discussed that.

2           Q.    And would it be fair for me to say that  
3 you viewed that as -- as something you were depending  
4 on when you made your expert analysis?

5           A.    I would say it's one of the things that I  
6 based my analysis on was that commitment.

7           Q.    So if, in fact, it wasn't a commitment  
8 and AES changed its mind and that's with respect to  
9 either the tax sharing or -- or wanting to see more  
10 profit, would your expert opinion change?

11          A.    That would take some work to figure out  
12 because, you know, if they -- both the agreement not  
13 to pay dividends and the agreement to forego taxes  
14 flows into my financial model. So I would have to  
15 check that out and see what happened to ratings and,  
16 you know, because without those things, the ratings  
17 would be lower and -- under the ESP, and so the  
18 benefits of the ESP would be less.

19          Q.    So --

20          A.    And --

21          Q.    Sorry, I didn't mean to kept you off. Go  
22 ahead.

23          A.    And, you know, I would have to roll that  
24 into my overall "more favorable in the aggregate  
25 test" to see what I get with it, but it would make

1 the -- those things being gone, which I understand is  
2 not the case, but if those things are gone, then,  
3 yeah, I would have to reassess.

4 Q. And so, would you feel more confident in  
5 your expert opinion if you, in fact, had a guarantee  
6 from AES about the tax sharing payments?

7 A. I mean, the way I read the stipulation is  
8 there is a commitment, but, again, that's a legal  
9 opinion. Would I feel more comfortable, I mean,  
10 that's really hard to say given that I feel like  
11 there is one sitting here in front of me, so.

12 Q. But we already agreed that AES's name is  
13 not -- they haven't signed the stipulation. So to  
14 the extent they made a guarantee, it's not reflected  
15 on their signature on this amended stipulation  
16 anywhere, correct?

17 A. What do you mean by "guarantee" exactly?

18 Q. Well, you use the word -- you used the  
19 words "commitment" and "guarantee" throughout your  
20 testimony?

21 A. Where did I say "guarantee"?

22 Q. Bear with me. I'll find it. It may take  
23 me a second.

24 A. I may have said that.

25 Q. Even the word "commitment," to the extent

1 they have made a commitment, it's not reflected in  
2 this document; isn't that fair?

3 A. Again, I think that calls for a legal  
4 conclusion. I mean, we have this -- it says "AES/DPL  
5 Contributions." I don't know what the legal  
6 significance of that is. As a layperson sitting  
7 here, with Inc. saying we are not going to make any  
8 dividend payments, will not make any, this is under a  
9 heading "AES/DPL Contributions." Again, as a  
10 layperson, that seems like a pretty strong  
11 commitment.

12 Q. Mr. Malinak, can I draw your attention to  
13 page 2 of your testimony?

14 A. Yes.

15 Q. I think there at line 13 you indicate  
16 you've had 25 years of experience in, among other  
17 things, financial consulting; is that fair?

18 A. I have -- I do and I have.

19 Q. Have you consulted entities on contracts?

20 A. I have had multiple breach of contract  
21 matters that I have worked on.

22 Q. So if I were talking with you about a  
23 contract matter and we are talking about someone who  
24 was not a party to that contract, what would your  
25 financial advice be?

1           MR. SHARKEY: Your Honor, I am going to  
2 object. I think we've exhausted the area about  
3 whether AES is bound as a signatory. He has  
4 explained his answers very thoroughly here. I don't  
5 think this is advancing the ball and I think it is  
6 wasting our time.

7           EXAMINER WALSTRA: I will allow the  
8 question, but we are getting there.

9           A. Okay. I'm sorry, could you repeat the  
10 question?

11          Q. Let me just try to clarify that.

12                 I am having a tough time because you've  
13 indicated you are an expert with 25 years experience  
14 in financial consulting and I'm showing you a  
15 contract and you indicate that you are familiar with  
16 breach of contract matters. And I'm showing you  
17 that -- I've asked you to look and I have asked you  
18 where AES makes a commitment, not as a lawyer but  
19 just do you see anything, and I am just trying to  
20 understand what you looked at when you formed your  
21 expert opinion to say AES was making commitments to  
22 draw that conclusion.

23           MR. SHARKEY: Your Honor, object. It's  
24 asked and answered and it was a lengthy speech that  
25 ends up making it a significantly compound question,

1 and it's different -- different than the question  
2 that you just said was permissible. But I renew my  
3 objection, at this point we have exhausted this  
4 witness's knowledge on this subject.

5 EXAMINER WALSTRA: I'll overrule.

6 A. Okay. So I will say that to the -- first  
7 of all, to the extent I describe things as  
8 "commitments" or "guarantees" in my testimony, that  
9 I'm relying at least, in part, on instructions from  
10 counsel, okay?

11 But just as I said, from a layperson's  
12 point of view, just reading this thing, again I've  
13 said this before, it says "AEP/DPL Contributions." I  
14 don't know the fact that AES didn't sign it, I don't  
15 know the strength of that.

16 But as I said before, it seems like from  
17 an economic point of view anyway, AES is not going  
18 to -- DPL Inc. can't pay any dividends to AES. I  
19 mean, it's the same thing as if AES committed to it.  
20 DPL committed to it and isn't going to do it and it's  
21 not going to happen, I think.

22 Q. Well, let's assume that I agree with you  
23 with respect to the dividend issue. What is your  
24 response to the tax sharing issue?

25 A. It's the same answer. Part b. says "DPL

1 Inc. agrees it will not make any  
2 contractually-required tax sharing payments to AES  
3 Corporation." They forego. It just says this is  
4 Part 1a., 1b. II.1.b. And under the same section it  
5 says "AES/DPL Contributions."

6 Q. But you just talked about what DPL said  
7 it would do, not AES, correct?

8 A. I'm at a loss for how AES -- what would  
9 AES do to force DPL to breach its contract? I don't  
10 even know what that would result in.

11 Q. Well, Mr. Malinak, I think what I am just  
12 trying to understand is, you know, you're testifying  
13 as to how it's more favorable in the aggregate than  
14 the MRO, and I am just trying to understand how you  
15 made that calculation and what you relied upon so  
16 that's -- if the big thing is this commitment from  
17 AES, that's what I am trying to understand. Because  
18 if there is not an actual commitment, does that  
19 affect your testimony; that's what I am trying to  
20 understand.

21 MR. SHARKEY: Objection, asked and  
22 answered, your Honor.

23 EXAMINER WALSTRA: He can answer.

24 A. I mean from an economic point of view,  
25 this looks to me, again, as a layperson, not as a



1 lawyer, as if DPL is committed to make the dividend  
2 payments and to make the tax payments. Not to make  
3 the tax payments excuse me. So if AES has not  
4 committed to this from an economic point of view and,  
5 again, this requires some quasi legal interpretation,  
6 from an economic point of view, there's no  
7 difference. Because the document appears to commit  
8 DPL not to pay dividends and not to pay tax. So the  
9 money stays with the DP&L and is used to pay down  
10 debt which is very beneficial to customers, to  
11 employees of DPL and DP&L, all the stakeholders.

12 MS. HARRIS: I am going to move to strike  
13 everything. I am going to need you to read back his  
14 response.

15 EXAMINER PRICE: Can we have the question  
16 too, please.

17 (Record read.)

18 MS. HARRIS: I move to strike everything  
19 after "not to pay dividend and not to pay tax."

20 EXAMINER WALSTRA: I am going to  
21 overrule. Kind of a compound question. Your initial  
22 part was just wanting to understand how he came up  
23 with his rationale, so overruled.

24 Q. (By Ms. Harris) Mr. Malinak, at page 19  
25 of your testimony.

1           A.    Yes.

2           Q.    Going into the very last line, I believe,  
3 going on to page 20, you indicate that you conducted  
4 a rigorous analysis of the financial condition of DPL  
5 and -- yeah, DPL and Dayton Power and Light; is that  
6 correct?

7           A.    Yes.

8           Q.    And do you have -- do you have an  
9 understanding as to what has contributed to the  
10 financial condition and integrity of DPL and Dayton  
11 Power and Light?

12          A.    I have some understanding of that, yes.

13          Q.    Would you agree that one of the reasons  
14 is because it collectively has too much debt?

15          A.    I mean, I have a little bit of trouble  
16 with the words "too much." But I would say that the  
17 debt load, the debt burden at DP&L and DPL is  
18 certainly one of the factors affecting their current  
19 financial condition, no question.

20          Q.    And do you understand the sources of that  
21 debt?

22          A.    Yeah, I have some understanding of that.

23          Q.    And would you agree with me that, subject  
24 to check, approximately 1 million of that is related  
25 to AEP's acquisition of DPL?

1           A.    I would say that as a finance person, you  
2 know, the capital and debt is fungible.  So the debt  
3 they have now is a function of debt they had before  
4 the acquisition, after the acquisition, and the  
5 amount they have been able to pay down, but there  
6 are -- there are certain of the loans that are still  
7 not completely paid off from the acquisition.

8                    But their total debt load is a function  
9 not just of that debt but also of preexisting debt  
10 and, you know, other debt they may have issued, net  
11 debt they've issued in the interim.

12           Q.    Mr. Malinak, you were here this morning  
13 when Mr. Jackson testified; is that correct?

14           A.    I was.

15           Q.    And do you recall him agreeing with me  
16 that approximately 1 billion of it relates to the  
17 sale of AES -- by AES of DPL?

18           A.    I remember that conversation.  I can't  
19 remember the exact numbers.  It was like between 800  
20 and a billion, may have ended up being close to a  
21 billion, something in that neighborhood.

22                   MS. HARRIS:  I don't have any further  
23 questions.

24                   EXAMINER WALSTRA:  Thank you.  Anyone  
25 else?

1                   MR. COLLIER: I have questions. Can I  
2 inquire if Sierra Club will have questions?

3                   MR. WANNIER: Sierra Club has no  
4 questions.

5                   MR. COLLIER: Then I am ready on behalf  
6 of Murray Energy and Citizens to Protect Dayton Power  
7 and Light Jobs.

8                   EXAMINER WALSTRA: Okay. Go ahead.

9                   MS. WHITFIELD: Sorry. Could we just ask  
10 you use the microphone as well?

11                   MR. COLLIER: I will give it a shot.

12   - - -

13   CROSS-EXAMINATION

14 By Mr. Collier:

15                   Q. Mr. Malinak, I have some questions  
16 concerning the original ESP and your testimony as  
17 well as the stipulation. I will tell you and tell  
18 the parties that my clients are not opposing or  
19 taking a position on any of the rate elements of the  
20 amended stipulation. You understand that?

21                   A. By "rate elements," what do you mean  
22 exactly?

23                   Q. Various riders, that sort of thing.

24                   A. The DMR, for example?

25                   MR. KUMAR: Your Honor, I would move to

1 strike Murray Energy's statement as it's not a  
2 question, it's just a comment.

3 MR. COLLIER: I was just trying to help  
4 the examiners and the witness understand the scope of  
5 where I really want to go with this testimony and  
6 what I am not going to touch on.

7 MR. SHARKEY: And, your Honor, we are  
8 having a difficult time hearing Chip at this end.  
9 So, Chip, I would appreciate it if you could speak  
10 into your mic.

11 EXAMINER PRICE: Speak loudly. Don't  
12 speak into it, because it won't let you speak into  
13 it. Just project.

14 MR. COLLIER: All right. May I proceed?

15 Q. (By Mr. Collier) I want to start with the  
16 original 2016 electric security plan. Did you  
17 provide direct testimony previously in this case with  
18 respect to that original plan?

19 A. Yes, I did. You are referring to the one  
20 with the 145 million DMR?

21 Q. I am referring to what was filed, I  
22 believe, in October of 2016.

23 A. Yes.

24 Q. All right. In the original ESP the  
25 statement appears that the application was designed

1 to promote economic growth and stability in Ohio by  
2 allowing at-risk generation plants to remain  
3 operational. Do you recall that?

4 MR. SHARKEY: Your Honor, I guess I have  
5 two objections. He is questioning the witness about  
6 a document he is not showing him. I think if he  
7 reads from a document it's only fair Mr. Malinak can  
8 see it in the context of any statements he is being  
9 asked about exist.

10 MR. COLLIER: If the witness requires the  
11 document to answer the question --

12 THE WITNESS: I would like to see it.  
13 It's been a while.

14 MR. COLLIER: All right. If I may  
15 approach?

16 EXAMINER WALSTRA: You may.

17 MR. COLLIER: And I don't have an extra  
18 copy.

19 MR. KUMAR: Your Honor, just to help out,  
20 I may have extra copies of his October 11 testimony.

21 MR. COLLIER: I am not talking about his  
22 October 11 testimony.

23 EXAMINER PRICE: He is talking about the  
24 application.

25 MR. KUMAR: The original testimony?

1 MR. WANNIER: Your Honor, objection as to  
2 relevance. The original cause is no longer at issue  
3 here.

4 MR. COLLIER: I don't think that's the  
5 case at all, your Honor. This docket, this  
6 proceeding, was initiated by this application. It  
7 has not been withdrawn. There is a stipulation that  
8 purports to amend this ESP application. That is the  
9 subject of this inquiry and eventually will be the  
10 subject of what the Commission does in this case. If  
11 the stipulation is not accepted by the Commission, at  
12 least in all material respects, seems to me we  
13 default back to what was originally filed and the  
14 company will have to decide how to proceed on that  
15 basis.

16 EXAMINER PRICE: Even if -- even if what  
17 you are saying is true, why is Murray Energy  
18 precluded from cross-examining a company witness  
19 about an additional provision that they would like to  
20 see in the ESP? I mean, this happens all the time.  
21 We have parties come in and say here is the company's  
22 ESP, but we also think it ought to have a retail  
23 adder on its SSO load or something like that. This  
24 happens all the time.

25 MR. MICHAEL: Subject to a refund

1 provision.

2 EXAMINER PRICE: Subject to refund.

3 Advocate away.

4 MR. MICHAEL: We will.

5 EXAMINER WALSTRA: You may go ahead.

6 MR. COLLIER: All right. Thank you.

7 Q. (By Mr. Collier) Mr. Malinak, I'll hand  
8 you the original 2016 application.

9 A. Okay.

10 Q. I would like you to read the first  
11 paragraph which is denominated No. 1.

12 A. "The Dayton Power and Light submits this  
13 Application pursuant to Ohio Revised Code 4928.141  
14 and 4928.143, for approval of its Electric Security  
15 Plan ('ESP'). DP&L's ESP will have a term of  
16 January 1, 2017 through December 31, 2026. This  
17 Application is designed to promote economic growth  
18 and stability in Ohio by allowing at-risk generation  
19 plants to remain operational. If those plants were  
20 to close, then the adverse effects would include  
21 \$26.5 billion in economic losses in Ohio, the loss of  
22 almost 19,000 jobs, and a significant increase of  
23 reliability risks."

24 Q. Thank you, sir.

25 MR. SHARKEY: Your Honor, first of all, I



1 think we'd ask to have that be stricken. That's from  
2 an application that has been withdrawn by the Dayton  
3 Power and Light Company. It's merely a pleading that  
4 there is no evidence Mr. Malinak participated in the  
5 participation of. And so, I think any efforts to  
6 bring in something that was in a pleading from a --  
7 that's been withdrawn by the company are improper.

8 And Mr. Collier represented that was from  
9 the October 11 filing?

10 MR. COLLIER: The original security plan.

11 MR. SHARKEY: That was -- having not seen  
12 the document, your Honor, I am a little bit  
13 prejudiced here, but I believe that was from the  
14 February filing that's long since been withdrawn as  
15 part of DP&L's prior RER filing and not part of this  
16 DRO filing at all.

17 MR. COLLIER: I believe, your Honor, the  
18 docket in this case reflects no withdrawal of what is  
19 denominated the 2016 electric security plan. I am  
20 not done.

21 MR. SHARKEY: Sorry.

22 MR. COLLIER: No. 1.

23 Number 2, the point of this inquiry is to  
24 determine whether this witness agrees with or has any  
25 basis in his testimony today to challenge the

1 statement that he just read into the record.

2 And I continue to assert, your Honor,  
3 that this stipulation, as the witnesses have  
4 addressed in this case so far, the proposed  
5 stipulation purports to modify or amend that electric  
6 security plan. So that it is still very much in  
7 play.

8 In the event the Commission were not to  
9 adopt or approve the stipulation in all material  
10 respects, and it seems to me we default back to what  
11 was originally filed, which may or may not be  
12 prosecuted during this case. But the statement  
13 appears, it's a matter of record, and I am entitled  
14 to cross-examine him since he's referred to the  
15 stipulation and the ESP in his testimony.

16 EXAMINER WALSTRA: Mr. Sharkey.

17 MR. SHARKEY: Yes, your Honors,  
18 Mr. Collier has represented DP&L did not withdraw  
19 that prior testimony or the application. But, in  
20 fact, on September 23, 2016, DP&L made the filing in  
21 this case that very specifically provides notice that  
22 it was withdrawing its request for a reliability  
23 electric -- I'm sorry -- a reliable electricity  
24 rider, the RER, that was the subject of that prior  
25 application.

1           So all of those points related to that  
2 prior item, that's been withdrawn, it's not the  
3 subjects of DP&L's current application. And it would  
4 be one thing if he was, you know, we could argue if  
5 this was statements out of Mr. Malinak's testimony  
6 but, all they're questioning him about is a pleading  
7 that was previously filed in the case.

8           MR. COLLIER: They may have withdrawn the  
9 rider.

10          EXAMINER PRICE: First of all, Counsel --  
11 Counsel, just as a matter of course, Mr. Walstra will  
12 recognize every attorney when he wants them to speak.

13          MR. COLLIER: Thank you.

14          EXAMINER PRICE: Now I have lost my train  
15 of thought and I was trying to help you.

16          MR. SHARKEY: Then I'm glad you lost it.

17          EXAMINER PRICE: So it is a pleading,  
18 Mr. Sharkey. The pleading was filed by his employer.  
19 Why is he not entitled to cross-examine the witness  
20 based upon statements that were in the previous  
21 pleading and to the extent of his knowledge of those  
22 statements and why they were withdrawn?

23          MR. SHARKEY: Well --

24          EXAMINER PRICE: And, certainly, he is on  
25 the hook for his prior testimony.

1 MR. SHARKEY: Haven't disputed that, your  
2 Honor. What I am contesting is the questioning of a  
3 pleading that it has not been established that  
4 Mr. Malinak reviewed previously, it has not been  
5 established he authored it, is familiar with the  
6 terms, and --

7 EXAMINER PRICE: So this is a foundation  
8 question, foundation objection.

9 MR. SHARKEY: Foundation. It's also  
10 relevancy. It's both of those, your Honor.

11 MR. COLLIER: My next question is whether  
12 he agrees with the representation that was made in  
13 the document. And, if so, how that impacts his  
14 current testimony.

15 EXAMINER WALSTRA: I think at least he  
16 needs more foundation before you get to that point.

17 Q. Well, you recall reading into the record  
18 what appears in the 2016 electric security plan,  
19 right?

20 A. Yes, what I just read.

21 Q. Okay. Do you agree or disagree that the  
22 application as originally filed was designed to  
23 promote economic growth and stability in Ohio by  
24 allowing at-risk generation plants to remain  
25 operational?

1 MR. SHARKEY: Objection, your Honor.  
2 It's the same foundational question. He is asking  
3 about the same document that we were just discussing.

4 EXAMINER PRICE: Prior to this hearing,  
5 have you seen that document?

6 THE WITNESS: I don't recall, your Honor.

7 EXAMINER PRICE: Did you review the  
8 company's application before you prepared any  
9 testimony in this proceeding?

10 THE WITNESS: I probably did.

11 EXAMINER PRICE: So although you don't  
12 recall it, it's likely, in the course of preparing  
13 your testimony, you would have read the company's  
14 application?

15 THE WITNESS: Yes, sir.

16 EXAMINER WALSTRA: Go ahead.

17 Q. (By Mr. Collier) All right. The first  
18 question follow-up is: Do you know what "at-risk  
19 generation plants" are for purposes of this  
20 proceeding?

21 A. For purposes of this proceeding, I don't  
22 know what that means exactly.

23 Q. You know that Dayton Power and Light has  
24 an ownership interest in Stuart station?

25 A. Yes, sir.

1 Q. And Killen station?

2 A. Yes, sir.

3 Q. And the Conesville station?

4 A. Yes, sir.

5 Q. And the Stuart station?

6 A. Did you already ask me about Stuart?

7 Q. I'm sorry. The Zimmer station.

8 A. Yes, sir.

9 Q. All right. And your testimony relates to  
10 the question, at least in part, as to what impacts  
11 will arise in the events that those at-risk -- that  
12 those generation stations are either transferred,  
13 closed, or sold.

14 A. I do have a very brief discussion of  
15 that.

16 Q. All right. And did you have any role to  
17 play in any calculation of economic loss in Ohio in  
18 the event that any of these plants were to close?

19 A. Actual quantification of it?

20 Q. Yes.

21 A. No.

22 Q. And did you have any role to play in the  
23 determination of the loss of almost 19,000 jobs as a  
24 result of divestiture?

25 A. I had no calculational input to that

1 number.

2 Q. And do you address, for purposes of your  
3 testimony, the reliability risks that might be  
4 associated with the closure of those generation  
5 plants?

6 A. Only in the nonquantifiable sense. I  
7 didn't quantify that.

8 Q. Okay. We'll get to your testimony where  
9 you do talk about quantifiable and nonquantifiable  
10 benefits in a moment. I want to work through these  
11 documents. Surely, Mr. Malinak, you have reviewed  
12 the amended stipulation and recommendation.

13 A. Yes.

14 Q. And you are aware and you have it before  
15 you that what the company proposes currently is that  
16 generation assets will be transferred from Dayton  
17 Power and Light to AES Ohio Generation LLC.

18 A. Yeah, I believe a transfer of the assets  
19 is contemplated.

20 Q. All right. I want to direct your  
21 attention to page 4 of the amended stipulation.

22 A. I'm there.

23 Q. All right. Paragraph c., "Assuming FERC  
24 approval, DP&L agrees to transfer its generation  
25 assets and non-debt liabilities to AES Ohio

1 Generation, LLC, an affiliated subsidiary of DPL  
2 Inc., within 180 days following final Commission  
3 approval of this Stipulation, provided that the  
4 Commission approves this Stipulation without material  
5 modifications." Do you see that?

6 A. I see that.

7 Q. All right. And do you have any knowledge  
8 concerning what is required for F -- FERC approval?

9 A. Not as I sit here today.

10 Q. All right. Now, the generation assets  
11 that are proposed to be transferred are the ownership  
12 in the units that we just talked about.

13 A. Yes. Those units are -- would be part of  
14 the transfer.

15 Q. All right. Now, this is an important  
16 question, Mr. Malinak: What is included in the term  
17 "generation assets"? Is it just the plants  
18 themselves? If you know.

19 A. Well, the term "generation assets" is a  
20 more general term than -- and I am not 100 percent  
21 sure what you mean by "just the plants." But, you  
22 know you could have accounts receivable, you could  
23 have prepaid, you know, assets that go along with  
24 that that are associated with the generation assets,  
25 and I frankly don't know if those are part of what



1 would be transferred.

2 Q. You don't know. All right.

3 A. Yeah.

4 Q. Does it include any land?

5 A. I don't know, you know, precisely what is  
6 made up of -- what goes into generation assets. It  
7 could include land.

8 Q. Do you know whether or not Dayton Power  
9 and Light or any of its affiliated companies owns  
10 5,500 acres along the Ohio River?

11 A. Not specifically.

12 Q. Do you know whether Dayton Power and  
13 Light or any of its affiliates own coal ash handling  
14 equipment?

15 A. I would be surprised if they didn't.

16 Q. If they did not?

17 A. Yeah.

18 Q. Sure. Don't they own a landfill also?

19 A. They probably do if that's part of the  
20 assets that they own in terms of that allow them to  
21 operate their coal plants.

22 Q. As you sit here today, Mr. Malinak, are  
23 you able to quantify the dollar amount of the booked  
24 value of what's referred to as "generation assets"?

25 A. "Generation assets" as referred to in the

1 stipulation?

2 Q. Yes, sir.

3 A. I might be able to.

4 Q. Tell us what you know about that.

5 A. Without looking --

6 EXAMINER PRICE: One second. Does that  
7 question tend to ask for confidential information?

8 THE WITNESS: It very well could.

9 EXAMINER PRICE: We will have to do this  
10 in the confidential session. Do you want to go ahead  
11 and ask the rest?

12 Q. Sure. I will go as far as I can in the  
13 nonconfidential portion. And we will address the  
14 balance sheet that's attached to your report that is  
15 not confidential, Mr. Malinak. The term "non-debt  
16 liabilities," do you know what is included in the  
17 term "non-debt liabilities"?

18 A. It might be some accounts payable, you  
19 know, that sort of thing.

20 Q. That sort of thing. All right. Does it  
21 include the environmental costs of maintenance of  
22 coal ash handling or other facilities?

23 A. What do you mean by environmental costs?

24 Q. The costs of compliance with operations  
25 of certain facilities including specifically the coal

1 ash handling facilities?

2 A. That doesn't sound like a balance sheet  
3 item to me.

4 Q. Does it include -- you are saying it's  
5 none -- it's not a non-debt liability or a non-debt  
6 liability?

7 A. Well, the cost is an income statement  
8 item.

9 Q. All right. Well, are you saying that the  
10 liabilities referenced here, the non-debt liabilities  
11 are solely balance sheet liabilities?

12 A. Well, by definition, liabilities are a  
13 balance sheet item.

14 Q. All right. What about the compliance  
15 costs of maintaining coal ash handling facilities in  
16 Adams County?

17 A. Again, compliance costs are an income  
18 statement item.

19 Q. All right. Will the expenses stay with  
20 the Dayton Power & Light or will they be transferred?

21 A. I would expect that they would be -- they  
22 would be transferred. They would no longer be borne  
23 by DP&L because the units would be transferred out.

24 Q. Okay. You are speculating at this point,  
25 aren't you, sir?

1           A.    Not by much.

2           Q.    All right.  So are you aware that the  
3 Public Utilities Commission has entered an entry in  
4 the transfer case involving these assets previously?

5           A.    That's ringing bells, but I can't bring  
6 it -- bring it up to exactly in my memory.

7           Q.    Are you aware of any prior Commission  
8 order that addressed environmental liabilities as to  
9 whether they would -- should follow the assets upon a  
10 transfer?

11          A.    I'm not aware specifically of any order  
12 like that.

13          Q.    When you say "non-debt liabilities,"  
14 you're saying non-debt liabilities will remain with  
15 Dayton Power and Light as a result of this proposed  
16 transfer, right?

17          A.    Well, yeah, I am not saying non-debt  
18 liabilities.  The stipulation is.

19          Q.    Okay.  And we'll talk about your balance  
20 sheet here in a moment and what is assumed in that  
21 balance sheet.  But the debt, whether it's fungible  
22 or not, allocated or not, that might relate to the  
23 Stuart and Killen plants and the other plants, that  
24 remains with Dayton Power and Light, does it not?

25          A.    That's my understanding that all of the

1 debt will be left behind.

2 Q. The assets get transferred but the debt  
3 stays with the operating company, right?

4 A. No. The assets get transferred and  
5 non-debt liabilities get transferred too.

6 Q. But debt liabilities stay with Dayton  
7 Power and Light.

8 A. That's my understanding.

9 Q. Do you know how the date of "180 days  
10 following final Commission approval" was determined?

11 A. Not specifically.

12 Q. Have you seen representations from the  
13 company that the company intends to close Stuart and  
14 Killen by June 1 of 2018?

15 A. I have seen that they have announced  
16 plans to do that, yes.

17 Q. And that was very recent, wasn't it?

18 A. Define "very recent."

19 Q. March 20 of this year.

20 A. Well, yeah, it was within the last  
21 several weeks is my -- my memory.

22 Q. And I believe reference was made to a  
23 Standard & Poor's or a market analysis that talks  
24 about the fallout of that announced closure in  
25 transferring these plants, right?

1 MR. SHARKEY: Object, your Honor. At  
2 this point there is nothing in the stipulation that  
3 addresses the closure of the plants. I think we have  
4 gotten pretty far afield as to what's relevant in  
5 this proceeding given that there is nothing in the  
6 stipulation regarding that.

7 MR. COLLIER: It's represented in this  
8 witness's testimony and other witnesses' testimony  
9 that a decision now has been made to close Stuart and  
10 Killen as opposed to selling or going through a sale  
11 process for those two plants; and an exhibit was just  
12 introduced as part of the new exhibit book that talks  
13 about the rating implications of that announcement.

14 EXAMINER WALSTRA: Overruled.

15 A. I'm sorry, is there a question?

16 Q. Yes.

17 MR. COLLIER: Could you read back the  
18 question, please.

19 (Record read.)

20 A. Yeah. One of the things mentioned in  
21 that Standard & Poor's downgrade was the -- was  
22 related to the coal assets, including the, I believe,  
23 the announced plans to close. I would have to look  
24 back at it to be sure.

25 Q. I will present it to you in a moment, but

1 following up on the question.

2 The second -- or next paragraph, d., says  
3 "DP&L" -- Dayton Power and Light -- "(or the  
4 affiliate to whom the generation assets are  
5 transferred) will commit to commence a sale process  
6 to sell to a third party its ownership in Conesville,  
7 Miami Fort, and Zimmer Stations." Do you see that?

8 A. I do.

9 Q. Nowhere mentioned there is Stuart and  
10 Killen, right?

11 A. I would agree it's not mentioned here.

12 Q. Do you know whether or not the company  
13 proposes a sale process that would include Stuart and  
14 Killen?

15 A. My understanding -- "sale process" you  
16 said?

17 Q. Yes.

18 A. No. My understanding is that they have  
19 announced plans to close those facilities.

20 Q. All right. There is a big difference,  
21 Mr. Malinak, between transfer of generation assets  
22 from a regulated affiliate to a nonregulated  
23 affiliate, compared to sale of the generation assets,  
24 compared to outright closure of the generation  
25 assets, wouldn't you agree?

1           A.    I would say there is -- yeah, those are  
2 three different, three different things.

3           Q.    Okay.  All of which have different  
4 ramifications for this Commission in its review of  
5 the stipulation in this case; isn't that true?

6           A.    Well, yeah, only marginally with respect  
7 to the transfer, because the transfer -- the  
8 generation assets are still under the umbrella of DPL  
9 and the debt is still under the umbrella of DPL and  
10 still there.  So, from an economic point of view, the  
11 transfer out has less of an implication than  
12 potentially a sale or a -- or a closure of the plants  
13 would.

14          Q.    All right.  And then e., the  
15 representation, commitment, whatever, that "AES  
16 Corporation will use all proceeds from any sale of  
17 the coal generation assets to make discretionary debt  
18 repayments at Dayton Power and Light and DPL Inc."  
19 Do you see that?

20          A.    I do.

21          Q.    All right.  But that's just the proceeds  
22 of a sale as opposed to a closure, right?

23          A.    That particular provision only addresses  
24 the sale.

25          Q.    Because if there is a closure of Stuart



1 and Killen, there won't be any proceeds, will there?

2 A. Depends on how you define "proceeds."

3 Q. Any proceeds from the sale.

4 A. Well, if -- well, first of all, you know  
5 the plants are not economic, so selling them is going  
6 to be difficult. For a positive amount. But they  
7 are running -- their projected cash -- free cash  
8 flows are negative. And so when you close the plant,  
9 you no longer are facing the negative free cash  
10 flows, so that's a form of economic proceeds.

11 Q. And you alluded to that in your testimony  
12 and I am going to get to that point in a moment. But  
13 as of this point, if there is no sale of Killen and  
14 Stuart and the plants are instead closed, there will  
15 be no proceeds of any sale.

16 A. If you define "proceeds" as sort of cash  
17 in from outside, I would agree with that, but,  
18 economically, there will be these proceeds. There  
19 will be the savings from the foregone negative cash  
20 flows which are substantial.

21 Q. All right. I would like to turn your  
22 attention now to the stipulation at page 17.

23 EXAMINER PRICE: Before we leave that  
24 page, I do have a question.

25 THE WITNESS: Yes, your Honor.

1 EXAMINER PRICE: Is there any provision  
2 in the stipulation which requires Commission approval  
3 to close Stuart or Killen, or are the closure of  
4 Stuart and Killen in any part of the stipulation?

5 THE WITNESS: I am not aware of it being  
6 there anywhere.

7 EXAMINER PRICE: Thank you.

8 You may proceed.

9 Q. (By Mr. Collier) Yes, page 17 you have a  
10 discussion here in the stipulation of the regulatory  
11 compliance rider. Do you see that?

12 A. Yes, sir.

13 Q. That regulatory compliance rider would  
14 include generation separation costs, would it not?

15 A. Yes, that's one of the elements.

16 Q. And what are those generation separation  
17 costs?

18 A. As I sit here, I am not -- I am not aware  
19 of exactly what they mean by "generation separation  
20 costs." If they mean sort of the transaction costs  
21 of transferring the generation assets to another part  
22 of DPL, then, you know, it would be things like  
23 transaction costs and that kind of thing would be my  
24 guess, but, again, I would be guessing to a large  
25 degree there.

1           Q.    And you don't know how much money that  
2 is, do you?

3           A.    I don't.

4           Q.    Or whether that deferral of those  
5 generation costs has already been addressed in other  
6 proceedings.

7           A.    I think it very well could have been  
8 addressed in other proceedings. It was contained in  
9 the application and then I've incorporated some  
10 revenues from it in my model.

11          Q.    How much in revenues did you incorporate?

12          A.    25 million.

13          Q.    \$25 million?

14          A.    Over three years.

15          Q.    Didn't the Commission cap the deferral at  
16 \$10 million?

17          A.    My understanding was 20 million was the  
18 cap.

19          Q.    The record will reflect it, but you have  
20 got it in at 20 million.

21          A.    That's the RCR overall.

22          Q.    RCR. I am asking about the generation  
23 separation cost component of that.

24          A.    I don't know what that is.

25          Q.    All right.

1           A.    What component of it is.

2           Q.    So you can't say whether that's  
3 consistent with prior Commission directives on how  
4 that deferral should be treated and capped?

5           A.    With respect to the separation, 10  
6 million separation costs?

7           Q.    Yes.

8           A.    Yeah, I don't know about that.

9           Q.    I want to turn to your public portion of  
10 your testimony that you offer in support of the  
11 amended stipulation and recommendation.  Are you with  
12 me?

13          A.    If you could direct me to a page, I'll be  
14 with you.

15          Q.    Well, I am directing you to the document,  
16 first, and I will direct you to specific pages as I  
17 work through the cross-examination.

18          A.    I don't actually have a copy of the  
19 public version of my testimony, just confidential.

20          Q.    I think we can work with the  
21 confidential, but I will caution you that I am only  
22 asking about the public portion.

23          A.    Okay.

24          Q.    Now, you're a consultant for the  
25 companies here, are you not?

1           A.    I think so.  I think the only reason I am  
2 hesitating is I was retained by counsel for DP&L.

3           Q.    The point is you are not an employee --

4           A.    Correct.

5           Q.    -- of any of the affiliated companies.

6           A.    Correct.

7           Q.    Now, I want to direct your attention,  
8 first of all, to page 6 of your testimony.

9           A.    I'm there.

10          Q.    And there you identify what we just  
11 talked about, the commitment by the companies to  
12 transfer generation assets out of Dayton Power and  
13 Light, to begin a sale process, and to use any  
14 proceeds, part which you are addressing here, are you  
15 not?

16          A.    That's correct.  Well, I don't  
17 actually -- in my current analysis I don't actually  
18 model the transfer in the sale.

19          Q.    I understand that.

20          A.    Okay.

21          Q.    I would like to direct your attention  
22 then to page 68 of your testimony.

23          A.    I'm there.

24          Q.    Page 68 at point 5, you say you  
25 understand that the Companies have agreed that Dayton

1 Power and Light will transfer its generation assets  
2 to one -- to another DP&L subsidiary and initiate a  
3 process to divest itself of any interest in certain  
4 of the transferred coal generating assets. Do you  
5 see that?

6 A. I do.

7 Q. You say, first of all, you understand  
8 that the generation assets will be transferred  
9 without debt. Confirming what you just testified to  
10 earlier.

11 A. Correct.

12 Q. That is, the debt will be left behind.

13 A. Correct.

14 Q. And you talk about some of the  
15 implications of leaving that debt behind, don't you?

16 A. I do.

17 Q. Okay. And you state "Because DPL and  
18 DP&L are linked from a credit rating perspective, the  
19 assets still would have some effect on DP&L's credit  
20 ratings."

21 A. Yes. Correct, I do state that.

22 Q. All right. And you also state,  
23 "Therefore, while DP&L's indicated credit rating in  
24 my model would decline, perhaps significantly, upon  
25 transfer, the credit rating that would be assigned to

1 DP&L by the agencies is difficult to predict," right?

2 A. I do state that.

3 Q. Okay. In your cross-examination, you  
4 stated that it would be difficult for you to model in  
5 your analysis the impact of the closure of Killen and  
6 Stuart and transfer the other generating plants. Do  
7 you recall that?

8 A. I don't think I said it would be  
9 difficult.

10 Q. You said you didn't do it.

11 A. That I think I did say.

12 Q. All right. So when we get into your  
13 balance sheet and your income statement that are  
14 attached to your exhibit, we do so with the  
15 understanding that those documents are neutral as  
16 respects any transfer of these generating assets.

17 A. I am not sure what you mean by neutral.

18 Q. You are assuming the generation assets  
19 are still on the books of the operating company,  
20 Dayton Power and Light.

21 A. That's correct.

22 Q. All right. So you didn't attempt in your  
23 exhibits, your financial exhibits, to allocate any  
24 portion of debt to generating assets, any specific  
25 generating assets.

1           A.    Yeah.  I made no effort to allocate debt  
2 to any particular asset.

3           Q.    Okay.  Did you make any effort to  
4 allocate net plant in service for any of these units?

5           A.    What do you mean by "allocate"?

6           Q.    Assign, ascribe, determine a net plant in  
7 service value for any of these units.

8           A.    Yeah, I think if you look -- just find it  
9 in my testimony, I have a table that sets forth that  
10 plant in service at different points in time.  I  
11 don't remember what page it is.

12                   MR. SHARKEY:  Your Honor, let me note and  
13 caution Mr. Malinak to the extent it's forward  
14 looking, it's possibly confidential.  If it's  
15 backward looking, it's not.

16                   EXAMINER WALSTRA:  Thank you.

17           A.    Yeah.  These are based on historical  
18 data.  My -- if you look at page 27 of my testimony.

19           Q.    Right.

20           A.    And then you have gross and net plant in  
21 service from -- taken from a period prior to the  
22 recent charge-off that the company took, and then in  
23 the footnote I provide the net plant in service data  
24 from the most recent 10-K which was filed a few weeks  
25 ago.



1 Q. Let's break that down. And I am now at  
2 page 27 of your testimony and the table you have  
3 there. What you've listed here is each unit, the  
4 ownership percentage, the summer capacity in  
5 megawatts, the gross plant in service in millions of  
6 dollars, and the net plant in service in millions of  
7 dollars.

8 A. Uh-huh.

9 Q. Okay. And this is from the books of the  
10 company?

11 A. I'm sorry. Is that a question?

12 Q. Yes.

13 A. The numbers in the table I believe are  
14 from the spreadsheets the company provided us, but I  
15 think we were able to cross reference them with --  
16 with a 10-K or 10-Q or some outside source. And then  
17 the -- certainly the net plant in service in the  
18 footnote is from their 10-K.

19 Q. Okay. As we sit here today, none of the  
20 of generating assets have actually been transferred  
21 to the affiliate, have they?

22 A. That's my understanding.

23 Q. As we sit here today, the net plant in  
24 service value appears on the books of Dayton Power  
25 and Light.

1           A.    Yes, that's my understanding.

2           Q.    All right.  And, again, we have these  
3 ownership units and the percentage and the summer  
4 capacity.  What's the difference between gross plant  
5 in service and net plant in service?

6           A.    Usually it's depreciation.

7           Q.    Deprec -- accumulated depreciation?

8           A.    Yeah, accumulated depreciation usually.

9           Q.    All right.  So that's a net balance but  
10 does not reflect any debt liability.

11          A.    Correct.  That's my understanding.

12          Q.    All right.  Now, in your  
13 cross-examination I believe you testified that the  
14 results before any sale would be difficult to  
15 predict.  Do you recall that?

16          A.    I agree with that, and I think I did say  
17 that.

18          Q.    All right.  And that if there were net  
19 proceeds from a sale, that is, some third party was  
20 willing to pay something that generated net proceeds,  
21 that would inure to the benefit of both DP&L and DPL?

22          A.    If you are talking about any of the  
23 units, if they are able to sell any of the units.

24          Q.    Yeah.

25          A.    And I have already mentioned with Stuart

1 and Killen I think that would be difficult or  
2 impossible based on the data that I have.

3 Q. Right.

4 A. But for -- but, yes, to the extent they  
5 can sell any of their coal assets for positive -- for  
6 positive dollars, that would be beneficial.

7 Q. All right. What a potential third party  
8 would be willing to pay for assets in a sale would  
9 depend at least in part on what was put up for sale,  
10 right?

11 A. I think that probably would be axiomatic.

12 Q. Right. Okay. And we don't know that  
13 until we know more details concerning about this  
14 commitment to put at least the three plants up for  
15 sale in a competitive bid.

16 A. You are talking now about Conesville?

17 Q. Yes.

18 A. Miami Fort, yeah, I don't know that -- I  
19 don't know that it has to be a competitive bid.

20 Q. Put it up for sale.

21 A. If I put it up for sale, you mean. Offer  
22 the plants for sale and start to get bids and you  
23 have -- you could also estimate what you think it  
24 might be able to sell them for by looking at their  
25 free cash flows, you would have an indication from

1 that as well as bids.

2 Q. And we know from a good deal of  
3 experience in this hearing that sometimes third-party  
4 buyers are willing to pay a premium over and above  
5 the net plant in service.

6 A. Well, that would depend.

7 Q. Sure, it would depend. It would depend  
8 on what the motivation of the potential seller is or  
9 buyer, right?

10 A. Well, I mean, most potential buyers want  
11 to make money.

12 Q. Right.

13 A. They want to make a profitable purchase  
14 so with respect to Stuart and Killen that would be  
15 very difficult.

16 Q. It is potential with respect to Stuart  
17 and Killen that the sale could occur on cents on the  
18 dollar because the company is going to close the  
19 plants anyway.

20 A. Well, not based on the cash flows that  
21 I've seen. I've seen free cash flows and negative --  
22 they are in my model, so they are available to  
23 everybody but, you know, on the order of negative --

24 MR. SHARKEY: Your Honor, I believe he is  
25 about to stray into a confidential answer.

1 EXAMINER WALSTRA: Thank you.

2 MR. SHARKEY: The positive or negative  
3 aspect is not confidential, but the specific numbers  
4 we consider to be confidential.

5 EXAMINER WALSTRA: Okay.

6 Q. But in any event if any one unit is sold  
7 for positive value, positive proceeds, that will  
8 inure to the benefit of Dayton Power and Light and  
9 DP&L Inc.

10 A. As long as that positive amount is market  
11 or better.

12 Q. And if I recall your testimony correctly,  
13 you said if any unit was sold for a good price,  
14 producing positive result, it would benefit both the  
15 ratepayers and the companies.

16 A. I think used the word customer, not  
17 ratepayer, but a good price, exactly what I meant was  
18 market or better.

19 EXAMINER PRICE: Why not benefit  
20 ratepayers?

21 THE WITNESS: Because the proceeds are  
22 going to be used to pay down debt which improves  
23 financial integrity and everything gets better.

24 Q. What entity of all the entities in the  
25 family, Dayton Power and Light, is responsible for

1 making the decision to close Stuart and Killen?

2 MR. SHARKEY: Objection, your Honor,  
3 foundation.

4 EXAMINER WALSTRA: He can answer if he  
5 knows.

6 A. I don't know.

7 Q. Have you in your modeling considered the  
8 potentiality or possibility of a Chapter 11  
9 reorganization?

10 A. No, not in my modeling.

11 Q. And specifically with regard to the  
12 potentiality of selling assets out of a  
13 reorganization without the recurring debt  
14 obligations.

15 A. I have not addressed the value of these  
16 units in a bankruptcy proceeding.

17 Q. I would like to turn your attention now  
18 to page 70 of your testimony. I want to direct your  
19 attention to the question lines 14 through 16.

20 "Question: Have you considered any nonquantifiable  
21 or quantifiable costs or benefits from DP&L's  
22 announced decision to close two of the coal  
23 generating facilities" -- "generation facilities in  
24 which it owns an interest?" Do you see the question?

25 MR. SHARKEY: Your Honor, the question is

1 public. The answer is confidential.

2 MR. COLLIER: I understand that.

3 A. I see the question.

4 Q. All right. And then what follows is a  
5 paragraph that has been redacted, not public,  
6 correct?

7 A. I'll take your word for it.

8 Q. All right. Have you considered here to  
9 the extent you are able to say on the public record  
10 what, if any, detriment there would be to ratepayers  
11 in the event that Stuart and Killen are closed?

12 A. By ratepayers I use the word customers  
13 but.

14 Q. Customers.

15 A. Yes, I have considered that.

16 Q. Have you considered, whether quantifiable  
17 or nonquantifiable, the impact on Adams County if  
18 these two plants are closed?

19 A. I mean, I have indirectly, yes.

20 Q. Indirectly. And you -- do you disagree  
21 with the testimony that's now been admitted that  
22 there will be a significant impact on the communities  
23 in Adams County?

24 MR. SHARKEY: I am going to object to the  
25 characterization of testimony that's been admitted.

1 Can you identify what you are referring to? I'm  
2 sorry.

3 MR. COLLIER: Yeah. Again, Exhibits 1  
4 and 2 admitted this morning with no objection, the  
5 testimony of Mr. Pell, testimony of Mr. Adamson,  
6 testimony of the four people and the commissioner.

7 MR. SHARKEY: I apologize. I will  
8 withdraw the objection.

9 A. Yeah. For my purposes the quantum of  
10 potential harm is not relevant because the plants are  
11 uneconomic, and they would be shut down on an MRO or  
12 ESP. And so my -- it doesn't affect my more  
13 favorable in the aggregate test. It's the same cost  
14 both -- both worlds.

15 Q. It's not something you took into account  
16 under the auspices of what's in the public interest.

17 A. Well, I mean, I considered it explicitly  
18 because I wanted to think about it and I realize  
19 because the plants were uneconomic and they are going  
20 to be shut down under an MRO or ESP, it has no impact  
21 on my MFA test so I wanted to think about it so I  
22 did.

23 Q. All right. Is it -- do you have any  
24 justification for the decision to close Stuart and  
25 Killen without even going through a sale process?



1           EXAMINER PRICE: You know, I think,  
2   counsel, we have given you a lot of leeway to talk  
3   about a sale but -- and versus closure, but they are  
4   not asking the Commission to close these plants --  
5   for permission to close these plants. Under the law  
6   they can close the plants with or without the  
7   Commission's decision. The Commission has already  
8   given them authority to transfer the plants at will.  
9   I am not sure of the relevance of continuing down  
10  this path to this proceeding.

11           MR. COLLIER: All right. I will move on,  
12  your Honor, but I would state this, that we do not  
13  oppose the transfer to the affiliate. What we are  
14  inquiring into are what are the implications of that  
15  transfer, particularly for the Commission's purposes,  
16  on customers. And so, in large measure that's what  
17  we are going after.

18           But I also would argue potential closure  
19  as opposed to sale also impacts the company for the  
20  reasons Mr. Malinak just gave and that is in the  
21  event there is a positive sale proceed that could  
22  benefit both parties.

23           EXAMINER PRICE: But as he's testified,  
24  it's a wash whether it's ESP or MRO.

25           MR. COLLIER: For purposes of whether

1 it's an ESP or MRO but not at all for purposes of  
2 when this Commission -- what factors and weight this  
3 Commission will give as to what is the public  
4 interest for the whole of the proposed stipulation as  
5 it exists today.

6 Q. (By Mr. Collier) Let me turn your  
7 attention to some of your exhibits, just a couple,  
8 Mr. Malinak. I am going to turn your attention to  
9 Exhibit RJM-19A. Do you have that?

10 A. Almost. Okay. I got it.

11 Q. All right. Would it be fair to say that  
12 this is a snapshot of DP&L Inc. and DP&L outstanding  
13 debts of December 31, 2016?

14 MR. SHARKEY: Your Honor, I am just going  
15 to object to the line of questioning, and at this  
16 point Mr. Collier represented they don't oppose any  
17 of the rate impacts. Neither of his clients is a  
18 customer of The Dayton Power and Light Company. I  
19 don't see how further questioning is conceivably  
20 relevant to this proceeding.

21 MR. COLLIER: The purpose of this  
22 questioning is simply to obtain clarification of the  
23 debt that's listed there and whether or not that is  
24 specific to any particular unit or units.

25 EXAMINER WALSTRA: I'll allow it.

1 MR. SHARKEY: Can I be heard, your Honor?

2 EXAMINER WALSTRA: Go ahead.

3 MR. SHARKEY: Again, it seems this is an  
4 attempt to avoid or, you know, your Honor Price's  
5 ruling at this point that the sale of the assets  
6 is -- or potential closure of the assets is beyond  
7 the scope of the --

8 EXAMINER PRICE: I didn't rule anything.  
9 I just asked him the continued relevance, and he was  
10 kind enough to move on.

11 MR. SHARKEY: Sorry. I took that as a  
12 ruling. I didn't mean to overstate.

13 EXAMINER PRICE: Resolved the issue.

14 EXAMINER WALSTRA: I'll allow it but. I  
15 think he has an understanding.

16 Q. Thank you. You see that exhibit.

17 A. I do.

18 Q. All right. What you list is Dayton Power  
19 and Light debt. Now, you have listed there a 2006  
20 Ohio air quality, 2015 Ohio air quality series A, and  
21 2015 air quality series B. Do you see that?

22 A. I do.

23 Q. What is Ohio air quality?

24 A. A debt. I'm not specifically familiar  
25 with exactly what these are; but, I mean, I am

1 generally familiar with pollution control bonds and  
2 how they get issued and why they get issued and so  
3 forth.

4 Q. These are state-issued pollution control  
5 bonds, are they not?

6 A. I don't know for sure, but they sure look  
7 like it.

8 Q. Do you know whether they relate to  
9 Stuart, Killen, Conesville, any particular unit or  
10 units?

11 A. I do not.

12 Q. Do you know if the assets -- the  
13 generation assets have been pledged to secure the  
14 obligations of these pollution control bonds?

15 A. I do not know that specifically.

16 Q. With respect to RJM-22A, DP&L income  
17 statement 2010 through 2016. Do you see that?

18 A. I do.

19 Q. Does that income statement reflect the  
20 operation of Stuart and Killen?

21 A. Yes.

22 Q. Does it reflect the operation of the  
23 other units as well?

24 A. Yes. It's the whole company.

25 Q. All right. I would like to direct your

1 attention to RJM-23, the DPL Inc. balance sheet 2010  
2 through 2016. Do you see that?

3 A. I do.

4 Q. You see an entry under current assets or  
5 see an entry under assets for property, plant, and  
6 equipment.

7 A. I do.

8 Q. That would include generation plant?

9 A. It would, yes.

10 Q. But you can't further break that figure  
11 down as to what would pertain to Stuart, Killen, or  
12 any of the other units?

13 A. I might be able to do that.

14 Q. And how -- first of all, tell me how you  
15 would do that.

16 A. I would do it through -- it's in my  
17 model, okay, like in the subsidiary spreadsheets of  
18 my model, and it's in some deposition exhibits to --  
19 that were exhibits to my deposition.

20 Q. All right.

21 A. Which I believe might be confidential.

22 Q. All right. I think it suffices for my  
23 purpose that you've stated that that figure does  
24 include the units.

25 A. Okay.

1 Q. All right?

2 A. Okay.

3 MR. COLLIER: If I can have a moment,  
4 your Honor, I may be close.

5 EXAMINER WALSTRA: Sure. We will go off  
6 the record for a couple of minutes.

7 (Discussion off the record.)

8 EXAMINER WALSTRA: We will go back on the  
9 record.

10 Do you have any further questions?

11 MR. COLLIER: No, I don't. Thank you.

12 EXAMINER WALSTRA: Before I do redirect,  
13 anyone else have any questions?

14 Mr. McNamee?

15 MR. McNAMEE: No, no questions. Thank  
16 you.

17 EXAMINER WALSTRA: Any redirect?

18 MR. SHARKEY: Yes, your Honor, briefly.

19 - - -

20 REDIRECT EXAMINATION

21 By Mr. Sharkey

22 Q. Mr. Malinak, you have been asked a number  
23 of questions about whether your modeling included the  
24 potential sale of certain generation assets that have  
25 been identified in the stipulation as being subject

1 to the sale or the closure of Stuart and Killen. My  
2 question to you is would including those items in  
3 your modeling have any material effect on your  
4 results or conclusion?

5 A. No.

6 Q. Why not?

7 A. Well, because with respect to the sale, I  
8 assume they are going to sell it at market price so  
9 that's going to be equal to the present value of the  
10 future free cash flows which is all -- which is what  
11 I currently included in my model, so it's really  
12 getting it early. You are getting it later. You  
13 know, you are still going to have a positive rating  
14 impact from those -- from those -- the sale of those  
15 assets. And then with respect to the closure, you  
16 have -- you will forego the negative cash flows,  
17 okay, but you'll also have, you know, this is  
18 mentioned in the S&P downgrade, the recent downgrade,  
19 you'll also have fewer riskier assets than rating  
20 agencies rating coal assets as having some risk  
21 associated with them so there will be kind of an  
22 offsetting effect there. And I say in my testimony  
23 that it's hard to predict what that -- the outcome of  
24 those offsetting effects would be, but they would be  
25 offsetting. I don't think they would have a big

1 impact on my numbers.

2 Q. You were also asked a number of  
3 questions, Mr. Malinak, about the potential reduction  
4 in the corporate income tax rate. If the income tax  
5 rate were to be reduced, would it be reasonable or  
6 appropriate to reduce the DMR amount?

7 A. No.

8 Q. Why not?

9 A. Because as we know from the recent  
10 downgrade, this -- the level of the DMR and the  
11 stipulation right now is not even protection against  
12 the downgrade. So if you reduce it even further, you  
13 have an even larger downgrade that would produce even  
14 more deleterious effects in terms of financial  
15 distress on the entity.

16 Q. And are the DMR proceeds to be used to  
17 pay any AES corporate income taxes?

18 A. No.

19 Q. What are they used for?

20 A. They are used for debt reduction. They  
21 are going straight to debt reduction.

22 Q. You said on questioning earlier that you  
23 were not surprised that DP&L has been achieving its  
24 reliability requirements that exist under the  
25 Commission rules. Why did you say you wouldn't be



1 surprised by that?

2 A. Well, because they've been operating up  
3 until recently under the SSR which gives them the  
4 financial wherewithal to, you know, to make the CAPEX  
5 that they need to do the things they need to do to  
6 provide reliable service and that's -- you know, if  
7 they did not, that's why I have those charts in my --  
8 without a DMR, similar to an SSR, you would have  
9 significant issues with reliability.

10 Q. Last question for you, are you aware of  
11 any provision in the stipulation that addresses the  
12 closure of the Stuart and Killen facilities?

13 A. I am not.

14 MR. SHARKEY: Thank you, your Honors. I  
15 have got no further questions.

16 EXAMINER WALSTRA: Thank you.

17 OCC?

18 Ms. Harris?

19 MS. HARRIS: No questions.

20 EXAMINER WALSTRA: Mr. Collier.

21 MR. COLLIER: No questions.

22 EXAMINER WALSTRA: You may step down.

23 THE WITNESS: Thank you.

24 EXAMINER WALSTRA: Address your exhibits.

25 MR. SHARKEY: Yes, your Honor. DP&L

1 would move for the admission of DP&L Exhibit 2A and  
2 2B which were respectively as confidential and public  
3 versions of the testimony. DP&L would move for the  
4 admission of DP&L Exhibit 105 which was the S&P  
5 ratings direct. And DP&L would move for admission of  
6 Joint Exhibit 1, the stipulation, and just to be sure  
7 that would include the exhibits to the joint  
8 stipulation that was later filed on March 1 with the  
9 Commission. We can provide to the court reporter to  
10 make sure we have the absolutely right copy.

11 EXAMINER WALSTRA: Thank you.

12 Any objections?

13 Hearing none, they will be admitted

14 (EXHIBITS ADMITTED INTO EVIDENCE.)

15 EXAMINER WALSTRA: Mr. Kumar.

16 MR. KUMAR: Sorry. I know we have one  
17 exhibit. I am not going to move for admission at  
18 this point.

19 EXAMINER WALSTRA: Okay. If there is  
20 nothing further, we will be adjourned until 9:00 a.m.  
21 tomorrow.

22 (Thereupon, at 5:06 p.m., the hearing was  
23 adjourned.)

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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 April 3, 2017, and carefully compared with my original stenographic notes.

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Karen Sue Gibson, Registered Merit Reporter.

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Carolyn M. Burke, Registered Professional Reporter.

(KSG-6340)

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Summary: Transcript in the matter of The Dayton Power and Light Company hearing held on 04/03/17 - Volume I electronically filed by Mr. Ken Spencer on behalf of Armstrong & Okey, Inc. and Gibson, Karen Sue Mrs.